
(2023) 04 PAT CK 0040

In the Patna High Court

Case No : Letters Patent Appeal No. 405, 409, 537, 538, 539 Of 2022 In Civil
Writ Jurisdiction Case No. 86, 3516, 3365, 3516, 3365 Of 2021

Chairman, Bihar School Examination Board

APPELLANT

Vs

Sambadh Degree Mahavidyalaya Seva Sangh

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Bihar Intermediate Education Council Act, 1992 — Section 2(j), 19(1), 19(2), 39

Citation : (2023) 04 PAT CK 0040

Hon'ble Judges : K. Vinod Chandran, CJ; Madhuresh Prasad, J

Bench : Division Bench

Advocate : Lalit Kishore, Satyabir Bharti, Nivedita Nirvikar, Shashi Bhushan Singh, Shilpa Singh

Final Decision : Dismissed

Judgement

1. The appeals are filed by the Bihar School Examination Board (hereinafter referred to as the 'Board') and the State of Bihar against the impugned common judgment dated 12.07.2022 in three writ petitions. The writ petitions were filed by a registered trust, 15 colleges joining together and a society of the teachers and employees of the Intermediate Colleges. The common issue raised is the continued affiliation and grant-in-aid to the Intermediate Colleges, which were deemed to be recognized after the intermediate classes were delinked from colleges and made a part of school education at the senior secondary level; commonly termed as '+2'. The Intermediate Colleges were affiliated to the Universities and had recognition under the Bihar Intermediate Education Council Ordinance, 1980, which was kept in force till the Bihar Intermediate Education Council Act, 1992 was enacted (hereinafter referred to as the 'Act of 1992'). On the Act of 1992 coming into force, there was provision for establishment, recognition and management of the Intermediate Colleges as a separate entity, imparting education of intermediate standard as senior secondary education; spread over two academic years. The Intermediate Colleges, which existed prior

to the enactment, were also deemed to be duly recognized by the Council under Section 39 of the Act of 1992.

2. While the said situation continued, the Bihar Intermediate Education Council Act, 2007 repealed the Act of 1992 and the Intermediate Council was merged with the Bihar School Examination Board. The repeal did not in any manner affect the deemed recognition of the Intermediate Colleges under the Act of 1992, since every action taken under that Act was deemed to be one taken in exercise of the powers under the subsequent enactment. By resolution dated 19.05.2009, the State Government introduced grants to the recognized institutions and released the same to the member colleges of the union even where intermediate studies were attached to the degree colleges, based on the students admitted for the intermediate courses.

3. While so, a resolution was passed on 04.07.2020 which interfered with the release of grant issued on 19.05.2009 to 599 Intermediate Colleges, based on the pass standard ratio of students, on the premise that these Intermediate Colleges had not fulfilled the requisite norms. It was also directed that the grant should be released only if they were able to fulfill the requisite norms on or before 31.12.2020. The challenge in the writ petitions was with respect to the said resolution and also an order dated 03.10.2021 passed by the Bihar School Examination Board notifying the list of colleges and schools, which are to comply with the norms for recognition by 31.12.2021; failing which those colleges were restrained from allowing registration of students for the academic year 2022-23, which spreads over to the next academic year also. There was also a contention taken that the Senior Secondary Affiliation Bye-laws, 2011 would not have any bearing on the institutions already existing and recognized under the Act of 1992. There was a list brought out of Intermediate Colleges permitted to admit students during the academic session 2022-24, which did not include certain petitioner colleges, hence, challenged in CWJC No. 3365 of 2021. These colleges having been deemed to be recognized under the Act of 1992, would not be required to follow the norms published later, was the contention taken.

4. The State and the Board, while recognizing the deemed recognition granted under the Act of 1992, asserted their power to bring in fresh norms for continued recognition, carry out inspection and withhold, withdraw or stop the grant if the recognized institutions failed to implement the conditions for continued recognition, brought in from time to time. It was also argued that the Act of 2007, which repealed the Act of 1992, specifically provided for senior secondary schools defined under Section 2(j) which included institutions duly recognized under Section 39 of the Act of 1992. When the Bihar School Examination Board (Senior Secondary Affiliation) Regulation, 2011 was brought in, the colleges, which were recognized under the Act of 1992 and affiliated, were required to fulfill the specified enhanced standards within three years and only those which failed to comply with the terms and conditions even in the year 2021, were de-recognized by the Board and the State.

5. The learned Single Judge, after examining the statutory provisions, looked at the Act of 1952, 1992 and 2007 and also looked at the enactment in force as of now, the Bihar School Examination Board Act, 2019, which came into effect as on 30.07.2019, wherein also the deeming provision in the Act of 1992 was given due recognition under the first proviso to Section 19(1). The second proviso to Section 19(1) required all recognized Intermediate (+2) Education Institutions to rename themselves as Senior Secondary Schools with facilities and teachers for imparting education at secondary and senior secondary stage, in accordance with the Regulations made by the Board within the time frame indicated in it. Sub-section (2) of Section 19 also empowered the Board to withdraw, cancel and suspend affiliation of secondary and senior secondary schools, which are granted affiliation under sub-section (1) of Section 19 or deemed to be affiliated with the Board under Section 19(1); if in the opinion of the Board, the affiliated institution failed to maintain the requisite standards for grant of affiliation or in any manner acted to the detriment or prejudicial to the interest of the students, Board and the education system in general. There was also sufficient protection of the students provided by the first proviso to sub-section (2) insofar as permitting them to be allowed to continue their studies for the entire academic session and appear at the Board Examination, even if such cancellation is effected in the course of an academic year.

6. Looking at Section 19, it was held that there is no question of a further affiliation or recognition being granted to institutions, which were deemed to be affiliated by the Act of 1992 but, however, they should comply with the Regulations in its letter and spirit. It was held that though the Regulation is of the year 2011, the present enactment having been enforced in 2019, the time period of three years, as available from the Regulation, should run from the date of enactment of the Act of 2019. It was also held that the impugned resolution of the State and the notification of the Board, did not speak of any inspection report or inadequacies noticed by the Board, as regards individual institutions, which is required under Section 19. The impugned orders were found to be blanket orders which sweepingly took within its ambit, all institutions recognized and affiliated with the Board and affiliated to the Universities as aided colleges. The grant was also withdrawn for reason of the institutions having not applied afresh for affiliation. It was held that the purpose though would serve a public cause, the manner in which the State and the Board went about the cancellation was not as per the procedure delineated in Section 19 of the Act of 2019. The notification dated 03.10.2021 issued by the Bihar School Examination Board and the subsequent notification dated 22.06.2022 were set aside. The order dated 04.07.2020 of the Bihar Government refusing the grant on account of non-affiliation was also set aside. The institutions deemed to be affiliated with the Board were allowed to admit and register the students for the +2 classes in their institutions. A reservation was made insofar as the Board being entitled to take action against any individual institution as provided under Section 19 of the Act of 2019. The impugned judgment also provided for admission to the +2 classes

commencing in the academic year 2022-23.

7. The State and the Board have filed these appeals and we heard Shri Lalit Kishore, learned Senior Counsel, appearing for the Board, Smt. Shilpa Singh, learned counsel for the State and Smt. Nivedita Nirvikar, learned Senior Counsel appearing for the respondent-writ petitioners. The learned Senior Counsel for the appellants reiterated his submission made before the learned Single Judge and took umbrage on the learned Single Judge having set aside the orders issued by the Board and the State, despite finding the deemed institutions to be covered under the Act of 2019 and required to comply with the standards brought in under the Regulation of 2011. It is pointed out that the orders were issued withdrawing the affiliation and the grant, only after 09 years of the enforcement of the Rules of 2011. Learned Senior Counsel appearing for the respondents, however, sought to challenge the applicability of the Act of 2019 on the writ petitioners' institutions; which we declined to permit, especially since there was no appeal filed by the writ petitioners against the learned Single Judge's judgment.

8. We also perfectly agree with the judgment of the learned Single Judge regarding the applicability of the Act of 2019, even with regard to the institutions already recognized and deemed to have been recognized under the Act of 1992; which recognition was continued in the subsequent enactments till date. We find no reason to countenance the arguments of the respondents that they would not be brought under the Act of 2019 or the Regulation of 2011, since their continued recognition and affiliation depended solely on the deemed recognition granted under the Act of 1992. The Act of 1992 stood repealed, but the recognition continued as per the deeming provisions in the subsequent enactments. Without resort to the continuance of the deemed recognition in the successive Acts, their recognition would have ceased to operate when the Act of 1992 was repealed. But for the applicability of the successive enactments; the deemed recognition of the institutions would have vanished with the repeal of the Act of 1992.

9. We cannot also countenance the arguments of the respondents that once recognized, there could be no further conditions imposed on the recognized institutions or standards prescribed in imparting secondary and senior secondary education. Secondary and senior secondary education are the foundation of any student who aspires to go for higher studies. Unless the foundation is built on terra firma, cemented with the required facilities and inputs, the aspirations and hopes of students to take such higher education would be frustrated. It is the secondary and senior secondary education that empowers a student to compete and get admitted to the undergraduate and graduate courses, paving the way to a good professional career. It cannot at all be said that the conditions and standards that existed in 1992, should be allowed to be continued insofar as the institutions recognized by an enactment of that year. Changing times and the changing needs and requirements of education would require implementation of

better standards and this cannot be compromised merely for continued recognition and affiliation of the Intermediate Colleges. Narrow parochial considerations cannot weigh with the State, its Examination Board and this Court while looking at the enhancement of educational standards specially at the secondary and senior secondary level. The higher standards prescribed are in the interest of the students, their future and strengthening the education system within the State; which cannot be interfered with lightly by this Court.

10. We cannot accept the finding of the learned Single Judge that the present enactment having been enforced in the year 2019, the three year period as provided under the Regulation of 2011, for enhancing the standards, should commence from the date of enforcement of the Act of 2019. However, we do not interfere with the same since the three year period from 2019 has already expired and it was for the institutions to have complied with such standards at least in extended period. We are in full agreement with the learned Single Judge insofar as the interference caused to the notification issued by the Board and the resolution passed by the State, which sweepingly de-recognized the institutions without any inspection or finding as regards the insufficiency of standards prescribed under the Regulation of 2011. It is trite that when the statute prescribes the manner in which a particular thing has to be done, it has to be done in that manner or not at all.

11. We perfectly agree with the interpretation given to Section 19 of the Act of 2019, which we have referred to in the earlier paragraphs. Section 19 specifically requires a finding by the Board with respect to the standards provided in an individual institution and there cannot be a sweeping withdrawal of recognition of institutions deemed to have been recognized under the Act of 1992; which recognition also stood continued in the subsequent years and the successive enactments. They cannot also be coerced into seeking fresh recognition under the new enactment as long as their deemed recognition stands continued.

12. The learned Single Judge had permitted the students to be admitted to the +2 classes in the academic session commencing in July, 2022. Admittedly no such admissions have occurred and none, in the course of the pendency of the writ appeals. We are at the fag end of the academic session 2022-23 and the academic session of 2023-24 is said to be commencing in June, 2023. Hence, the Board, if required to act under Section 19, would proceed to inspect the individual institutions and after due verification, issue orders either continuing affiliation on finding the Regulations of 2011 being adhered to or withdraw, cancel or suspend affiliation of such institutions which have failed to raise the standards in accordance with the Regulations of 2011; which orders interfering with the deemed recognition, shall be speaking orders. We also direct that if any institution is not issued with an order of withdrawal, cancellation or suspension of recognition, on or before 30.05.2023, it shall be entitled to admit students to the academic session 2023-25 to the +2 courses. The continued recognition shall be subject to any orders issued in the course of the academic sessions but, the

protection under the first proviso to Section 19(2) would be available to the students. In such circumstances of the academic session being continued, under the first proviso to Section 19(2), the individual institutions would also be entitled to bring in the standards required under the Regulations of 2011 within the remaining period, to seek a fresh recognition under the Act of 2019.

13. With the above reservation, which we direct in exercise of our power to mould the relief in accordance with and reckoning the factual realities that exist, the writ appeals would stand dismissed, leaving the parties to suffer their respective costs.