

(1995) 01 PAT CK 0014

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7124 of 1993

D.P. Lal and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-01-1995

Acts Referred:

Bihar Intermediate Education Council Ordinance, 1992 — Section 15, 15(12), 39, 39(1), 39(2)

Bihar Intermediate Education Council Rules — Rule 4

Citation : (1995) 01 PAT CK 0014

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : J.P. Shukla, R.K. Shukla, Jitendra Nath Tripathi and Anjana Mishra, for the Appellant; Shashi Anugrah Narain, A.P. Jittu for Intermediate Council and Azfar Hassan, for University, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The controversy in this writ petition relates to the jurisdiction of the Bihar Intermediate Education Council (hereinafter called "the Council") established under the Bihar Intermediate Education Council Ordinance, 1992 (now Act 26 of 1992, hereinafter called "the Intermediate Council Act") vis-a-vis the University established and incorporated under the Bihar State Universities Act, 1979 in the matter of constitution of governing body/ad hoc committee and, consequentially, administration of the Intermediate Section of Degree College.

2. The College in question named Jhumak Mahaseth Dr. Dharmpriya Lal Mahila Inter College, Madhubani (hereinafter called "the College") was initially established as an Intermediate College. It was recognised by the Council on October 6, 1982. In course of time the College developed itself into a Degree College. On November 5, 1986 the College was "taken over" by the Lalit Narayan Mithila University (hereinafter called "the University") with all its assets and liabilities. The University started taking the stand that as a consequence of take

over, the College had come under its exclusive jurisdiction and the Council has no jurisdiction to control its management and administration. The Petitioners filed the instant writ petition challenging one such communication dated February 2, 1992 as contained in Annexure-8. During pendency of the case the Council also issued notification taking the same very stand, that is, abdicating its jurisdiction in the matter of control of management and administration of the College on October 6, 1994. The validity of the said notification, copy marked Annexure-12 to the supplementary petition, has also been challenged by amendment. In substance, however, what the Petitioners seek is a declaration that the University has no jurisdiction to interfere with the management and administration of the Intermediate Section of the College notwithstanding the take over which according to them, must be deemed to be confined to the Degree section. The question for consideration is whether after take over of the College by the University the jurisdiction of the Council with respect to the Intermediate section of the College, (minus the examination part which undisputedly continues to be under the control of the Council) comes to an end.

3. In support of the plea that the jurisdiction of the Council with respect to the Intermediate section does not cease notwithstanding the take over of the College by the University, counsel for the Petitioners placed reliance on the preamble of the Intermediate Council Act. He submitted that the Council was established, inter alia, for separating the Intermediate education from the University and, therefore, the University cannot interfere with the management of educational institutions of the Intermediate standard. Counsel submitted that although preamble of the Act cannot be read and construed as a substantive provision, the same can be looked into for removing ambiguity or vagueness in the substantive provisions of the Act, besides indicating the aim and object of the enactment. Counsel also referred to certain other provisions which I shall notice hereinafter.

4. Chapter II of the Intermediate Council Act contains provisions regarding establishment of the Council, its Constitution, appointment etc. of the Chairman, vice-Chairman and members, its powers and functions. Chapter III deals with officers. Chapter IV deals with various Committees of the Council. Chapter V is in respect of finance, accounts and audits. Chapter VI contains provisions in regard to the establishment, recognition and management of the institution imparting education of Intermediate standard. Chapter VII deals with the Constitution etc. of the Governing Body of recognised institutions. Chapter VIII contains provisions regarding creation of posts, appointment etc. of teachers and non-teaching staff of the institution. Chapter IX contains miscellaneous provisions.

5. Section 41 of the Intermediate Council Act provides for establishment and recognition of the Institution imparting intermediate education. Sub-section (1) bars establishment of any such Institution without prior approval of the Council. Sub-section (7) lays down the conditions for grant of recognition. Section 39 enumerates colleges which "shall be deemed to be Institutions imparting education of Intermediate (+2) standard" in the following four categories:

(a) Constituent College of any University of the State of Bihar of College maintained by the State Government in which there is Arrangement for Intermediate (+2) teaching;

(b) Degree College admitted to the privilege by any University of the State of Bihar before promulgation of this Act in which there is arrangement for teaching of Intermediate (+2) standard;

(c) College admitted to the privilege by any University of the State of Bihar affiliated upto the Intermediate (+2) standard before promulgation of this Act, and

(d) Institutions imparting education upto Intermediate (+2) standard recognised by the Council under this Act.

It would appear that colleges mentioned in Clauses (a), (b) and (c) are such colleges which were in existence at the time of promulgation of the Ordinance with respect to which Sub-section (2) of Section 39 provides that such institutions shall "with the promulgation of this Act be deemed to be recognised by the Council". Institutions coming into existence after the promulgation of Ordinance are covered by Clause (d) of Section 39(1) above. They are obviously governed by the provisions of Section 41 so far as recognition is concerned.

6. Learned Counsel for the Petitioners does not dispute the jurisdiction of the University with respect to the Intermediate section of such colleges which were already in existence prior to the Ordinance as a constituent college or affiliated college mentioned in Clauses (a), (b) or (c) of Section 39(1). So far as the Institutions coming in Clause (d) are concerned, they are undoubtedly under the control of the Council in the matter of both establishment and recognition u/s 41. It should, however, be noted that Clause (d), in terms, relates to institutions "imparting education upto the Intermediate (+2) standard". If the institution has improved itself and grown into a Degree or Post-Graduate College i.e., above the Intermediate standard, can it still be said to be covered by Clause (d)?

7. Learned Counsel for the Petitioners submitted that one of the conditions of recognition of the Institution by the Council is that it shall not impart education of higher standard. In my opinion, that kind of condition is bound to be there inasmuch as Council has jurisdiction to grant recognition to institution imparting education upto the Intermediate Standard alone. Can such a condition be interpreted to mean an embargo on the Institution from developing itself? This was one of the questions which arose for consideration in the case of Maharaj Laxmishwar Singh Memorial College, Darbhanga and Anr. v. The State of Bihar and Ors. (1983 PLJR 471). Rule 4(q) of the Bihar Intermediate Education Council Rules, 1981 contained a provision requiring the Organising Committee/Managing Committee of the College to give an undertaking, alongwith the application for recognition, that they shall not open degree classes in the college. This Court observed:

As a first impression it cannot be held to be a reasonable restriction on the educational institution seeking recognition. It is well known that any institution which starts as an Intermediate College has a right in due course to develop that institution into a degree college as well as Post-graduate institution or Research institution.

The rule, however, was not declared invalid in view of the undertaking of the State that the same shall be suitably amended.

8. It should be kept in mind that even with respect to the colleges which are enumerated in Clauses (a), (b) or (c) of Section 39(1), the deemed recognition by the Council is only with respect to holding of examination of the Intermediate standard. Since conduct of examination of the Intermediate standard in all types of colleges rests with the Council, in absence of such deemed recognition, it would not have been possible for the Council to hold any examination with respect to the Intermediate standard of such colleges. The same legal position must be held to be true of the new institutions which have been established under the Intermediate Council Act and recognised by the Council under the said Act for the first time. In other words the conduct of the examination of Intermediate standard in such colleges also shall rest with the Council like other categories of Institutions mentioned in Clauses (a), (b) or (c), but it has improved itself, became a Degree College and taken over by the University, only the examination part shall remain with the Council like other categories of colleges. So far as other matters relating to the management and administration are concerned, the jurisdiction of the Council will be deemed to have come to an end.

9. There may be cases where the Managing Committee with the same infrastructure has established the degree college. There may be other cases where the Intermediate colleges and Degree colleges are run and managed separately with separate infrastructure etc. In the second type of colleges, both the Council and the University will have independent control as the colleges will be deemed to be separate legal entities. In the former type, however, after the take over, the control, so far as management and administration are concerned, must be deemed to be vested in the University alone to the exclusion of Council. The management being indivisible, it would be anomalous to hold that both the Council and the University have control. Such an interpretation will make the system unworkable. There is nothing in the Intermediate Council Act to suggest dual control in management and administration. It may be mentioned here that the above distinction was approved in the case of Maharaj Laxmishwar Singh Memorial College (*supra*). On the question of interpretation of Rule 4(q) of the Bihar Intermediate Education Council Rules, 1981 (*supra*), the State Government took the following stand which was approved:

It the same managing committee sets up and manages an Inter College and a Degree College separately distinct from one Anr. with separate infrastructure prescribed in the terms of affiliation then the Council/Government will have no

hesitation in granting affiliation to them separately for Inter and Degree

10. Learned Counsel for the Petitioners placed strong reliance on the provisions of Section 15(12) of the Intermediate Council Act Section 15 sets out the purposes and powers of the Council. Clause (12) runs as follows:

To give approval for the creation of posts, and to the appointment made in the manner prescribed, and to make Rules regarding other service conditions subject to the provisions of this Ordinance and the Rules made thereunder, in respect of teachers and non-teaching staff of recognised Institutions of Intermediate (+2) standard other than the Institutions of Intermediate (+2) standard run by the Centre or managed or controlled by the State Government or the Secondary Education Board, minority's or autonomous institutions or of Intermediate classes of affiliated degree colleges.

According to the Counsel, in terms of Section 15(12) the power of the Council extends to giving approval in regard to creation of posts, appointment etc., making rules in regard to the service conditions of teachers and non-teaching staff of an affiliated degree college as well. It is true that the words "or of Intermediate classes of affiliated degree college" occur in the above provision. However, it would appear that the provision, so to say, is in two parts. As per the first part the Council is empowered to approve creation of post etc. and make rules regarding conditions of service of teachers and non-teaching staff of recognised Institutions of Intermediate standard. The second part of the provision enumerates the institutions which are not subject to the above jurisdiction of the Council. The words "other than" leave no room for doubt that institutions mentioned thereafter are not covered by the main provision. If the teachers or non-teaching staff connected with the intermediate section of affiliated degree colleges are held to be under control and jurisdiction of the Council, notwithstanding the fact that the management of the two colleges is the same, it will give rise to an anomalous and unworkable situation inasmuch as the same set of staff may be engaged in managing the Inter classes as well as Degree classes. The control in respect of the staff etc. therefore, cannot vest both in the Council and the University. Even if the same ambiguity is there the provisions of the Act have to be construed harmoniously and in that process the words creating ambiguity, if any should be ironed out.

11. I, accordingly, hold that where an Intermediate College upgrades itself into degree college with the same managing committee and infrastructure etc. and taken over as such by the University, control with respect to its management and administration shall vest exclusively in the University. The jurisdiction of the Council with respect to such college will be deemed to have come to an end except in the matter of conduct of examination of the Intermediate standard.

12. In the instant case, in view of Annexure-A to the counter affidavit of the University which is the agreement entered into by the Governing Body of the College with the University on November 25, 1986 handing over the entire

management along with the assets and liabilities to the University, there can be no doubt that the Inter and degree Colleges are one and same. Factually and legally they are one legal entity. In that view of the matter, I have no hesitation in rejecting the challenge to validity of Annexures 8 and 12 as being completely misplaced.

13. This writ petition has no merit and is, accordingly, dismissed.