

(2003) 04 JH CK 0008
In the Jharkhand High Court
Case No : Writ Petition (S) No. 6084 of 2002

Dr. Arjun Prasad Sinha

APPELLANT

Vs

Hon'ble Chancellor Jharkhand, University Ranchi and Others

RESPONDENT

Date of Decision : 22-04-2003

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 65, 66, 85
Bihar State Universities Act, 1976 — Section 57(1)

Citation : (2003) 2 JCR 651

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : A.R. Choudhary and K.P. Choudhary, for the Appellant; R.S. Muzundar, G.A. and I. Sinha, J.C. to G.A. for State and M.S. Anwar and R. Kumar, for University, for the Respondent

Final Decision : Allowed

Judgement

Vikramaditya Prasad, J.—This writ petition has been filed for a declaration that the Bihar State University Service Commission constituted under the Bihar State University (Constituent Colleges) Service Commission Act, 1987, continues to operate in the State of Jharkhand and the respondents are bound to consider and act upon the recommendations made by the aforesaid University Commission (hereinafter referred to as the Commission) and for quashing the order dated 17.8.2001 as also order dated 5.10.2001, Annexure-8, whereby the authority including the Vice Chancellor, Siddhu Kanhu University, Dumka, was directed not to act on the recommendations/concurrence received from the Commission after creation of the State of Jharkhand and for a further direction upon the respondent No, 1 and 2 to immediately appoint the petitioner on the post of Registrar, Siddhu Kanhu University, Dumka, in pursuance of the recommendations made by the Commission as contained in Annexure-5 with all consequential benefits.

2. The basic question to be answered in this writ petition is whether the

Commission continues to operate in the State of Jharkhand.

3. The short facts of the case are that the petitioner was appointed as Lecturer in Mathematics in 1972 and in the year 1990, he was promoted to the post of University Professor under Merit Promotion Scheme with effect from 6.6.1990. In the year 1976, the Bihar State University Act, 1976, was enacted, which also governed the Siddhu Kanhu University, Dumka, (now in the State of Jharkhand). The Bihar State University (Cohstituent Colleges) Service Commission Act, 1987, was enacted in the year 1987, under which the recommendations for appointment of the Officers and Teachers of the Universities, were to be made. On 29.6.1999, the Siddhu Kanhu University made a request to the Commission to recommend the names of the persons for appointment to the post of Registrar of the said University. Accordingly, an advertisement was published by the Commission in the year 2000, Annexure-3. The petitioner applied on 11.9.2000, Annexure-4, for his appointment to the aforesaid post of Registrar. On 15.11.2000 the State of Jharkhand was created pursuant to the Bihar Reorganization Act, 2000. On 13.12.2000, the State of Jharkhand adopted the Bihar State University Act, 1976, with modification for the State of Jharkhand. Now this Act is known as Jharkhand State Universities Act. The State of Jharkhand has not passed any Act for adopting the Bihar State University (Constituent Colleges) Service Commission Act, 1987. The State of Jharkhand has not established Jharkhand State University Service Commission for making recommendations for appointment of the Officers and Teachers of the Universities. The case of the petitioner is that the Commission is a body corporate. Accordingly, it is governed by Section 66 of the Bihar Reorganization Act, 2000. On 16.8.2001, the petitioner was issued interview letter, Annexure-4/1, for the said post and on 11.9.2001, the petitioner was duly interviewed. On 16.3.2002, the name of the petitioner was recommended for the post by the Commission, despite that, the petitioner did not hear anything from the concerned authorities of Siddhu Kanhu University. He therefore filed representations on 17.3.2002 and 2.4.2002, Annexure-6 and 6/1, to the Vice Chancellor. Another representation was also filed by the petitioner on 14.5.2002 and 10.7.2002 for the same relief to the Chancellor, Annexure-6/2 and 7. The petitioner did not receive any reply from either of the authorities. But later on the petitioner came to know that by letter dated 5.10.2001, Annexure 8, Governor's Secretariat addressed a letter to all the Vice Chancellors informing that in a meeting dated 17.8.2001, it was observed that the recommendations received from the Commission, after creation of the new State, are not binding to be acted upon by the Universities of Jharkhand, and further directing not to act upon such recommendations, till further direction from the Chancellor.

4. According to the respondent Siddhu Kanhu University, a request made to the Commission for recommending the name for the post of Registrar had been withdrawn by the University on 28.7.2000, yet interview was held on 11.9.2000. Thus, despite the withdrawal, the Commission held interview only to deprive the people of the new State for appointment to the said post. The further case of the

respondents is that the State Government, vide Annexure-A, issued directive that all the appointments in the State of Jharkhand after 15.11.2000 will be made only by it. It also clarified that any recommendation made by the Commission will not be valid after 14.11.2000. The University respondent further got a direction from the O.S.D. to the Governor, Annexure-B, not to act on the recommendations of the Commission after creation of the State of Jharkhand. By Annexure-C, the representation of the petitioner appears to be not maintainable and this letter was issued by the Registrar of the said University. Annexure-D has been annexed with the counter- affidavit. On perusal of this Annexure, it transpires that the State Government, considering the effect of the recommendations of the Commission, by its order dated 10.9.2001, passed order in two paragraphs. In the first paragraph, it has been stated that "the Government of the new State of Jharkhand decided that the list of candidates selected for direct recruitments prepared by the Bihar State Universities (Constituent Collects) Service Commission and Bihar College Service Commission shall not be acted upon for the purpose of appointment in the new State" and secondly, "the Government decided that as far as the promotions are concerned, the Bihar Universities Service Commission constituted under the 1987 Act shall continue to function for the State of Jharkhand until separate authority is constituted for the purpose of making recommendations for promotion of Lecturers to Readers and Readers to Professors." This matter was reconsidered by the next incumbent to the office of Chancellor. The question before the Chancellor was whether the order aforesaid be vacated and after considering the same, the Chancellor vacated the order partially. Stay on the recommendations for direct recruitment made by the Commission was not vacated.

6. The respondent No. 5, the State of Jharkhand, filed counter-affidavit. The Chairman of the Commission, by his letter dated 15.1.2001 (Annexure-A) had sought a clarification from the Chancellor of the Jharkhand State as to whether there should be interview of the candidates for direct recruitments/promotions. Then by Annexure-B was relied upon wherein under the Executive Orders of the State of Jharkhand, it was decided that after 15th November, 2000, all the appointments shall be made by the State of Jharkhand and no recommendations made by the Commission shall be accepted and the Commission shall not be competent to hold Interview or to issue advertisement or make recommendations and if it does so, it shall not be accepted and only in cases of those promotions, which were pending before 23.9.1995 and could not be materialized for delay at different levels, this can be accepted. This executive order was effective from 15.11.2000. One more Annexure-A, a letter dated 5.10.2001 was filed along with the supplementary counter-affidavit on behalf of the respondent No. 2 issued by the O.S.D. to the Governor, wherein it was directed that any recommendation received from the Commission is not binding or not to be acted upon.

7. Admittedly, prior to the creation of the State of Jharkhand, the Bihar State University Act, 1976, and the Commission were having jurisdiction in the entire

Bihar State including the Universities which now fall within the territorial jurisdiction of the State of Jharkhand, Admittedly, u/s 57 of the Act, appointments of the Teachers and Officers of the Universities were to be made on the basis of the recommendations of the Commission and the Commission had to discharge the same function as was assigned to the Bihar State Public Service Commission.

8. The Bihar Universities Act, 1976, was adapted by the State of Jharkhand in exercise of the power vested in it u/s 85 of the Reorganization Act (hereinafter Act, 2000} with some amendments, which was gazetted on 14th December, 2000 (Annexure-1). The following is amendment after adoption :--

"Adhichuchna Sankhya--JhO SaO UoO ShiO/001/2000- 18 Dtnak 13 December, 2000-Jharkhand Gazette Ashadharan Ank SanO 8 Dinak 14 December, 2000 Me Prakashit-Bihar Rajya Punargathan Adhiuniam, 2000 ke Bhag 10 ke Dhara 85 ke Aalok Me Bihar Rajya Vishwavidhyala Adhiniyam, 1976 ko (Iske Bad Yatha Ullikhit Adhiniyam ke Roop Me) Nimnlikhit San-shodhano Ke Saath Angibhut Karti Hat:--

1. Yatha Ullikhit Adhiniyam Ki Dhara-1 (1) Ke Adhin Yah Adhiniyam" Jharkhand Rajya Vishwavidhyala Adhiniyam 2000" Kahlayega.

2. Yatha Ullikhit Adhiniyam Ki Dhara 3 (1) Ki Up Dhara (AO) (BO) (CO) (GO) (hO) (IO) (JO) (kO) Tatha (LO) Ko Bilopit Samjha Jaye.

3. Yatha Ullikht Adhiniyam Ki Dhara 9 Ke Adhin "Mahamahim Rajapal, Bihar " "Ke Sthan Par "Mahamahim Rajyaypal, Jharkhand" Pratisthapit Samjha Jaye.

4. Yatha Ullikhit Adhiniyam Ki Dhara 18Ke Adhin Senate Ke Gathan Ke Kram Me.

(i) Up Dhara (15) Ko Bilopit Samjha Jaye.

(ii) Up Dhara (17) Ke Parantuk Ko Bilopit Samjha Jaye.

5. Yatha Ullikht Adhiniyam Ki Dhara 22 Ke Adhin Syndicate Ke Gathan Ke Kram Me Up Dhara (4) Ke Bidhayi Sanshodhan 1982 Ki Kandika I (Ek) Me Anya Sadsyon Ke Roop Me Anushuchit Janjati Ke Ek Sadasya Ranchi Vish-wavidyala, Ranchi Aw Sidhu Kanhu Vishwavidhyala, Dumka Me Awan Anushuchit Jati Ke Ek Sadasya Binoba Bhave Vishwavidhyala, Hazaribagh Me Mahamahim Rajyapal, Jharkhand Dwara Namit Hoga.

6. Yatha Ullikhit Adhiniyam Ki Dhara 27 Ko Bilopti Samjha Jaye.

7. Bihar Rajya Vishwavidhyala Adhiniyam Me Jahan Jahan "Bihar Rajya" Ya "Bihar" Sabdon Ka Prayaog Kiya Gaya Hat Un Sabhi Sthanon Par Kram-sha "JharkhandRajya" Athwa "Jharkhand" Sabdon Ko Pratistapit Samjha Jaye."

The amendment as contained in Section 7 aforesaid is relevant for the purpose; of decision of the case. The Section 57(1) of the Bihar Universities Act reads as follows :--

"57. Appointment of teachers and officers :--(I) Subject to the provisions of this

Act and the Statutes, the Bihar State Universities (Constituent Colleges) Service Commission, shall, as far as may be, perform, in respect of appointment to the post of teachers and officers (other than Vice-Chancellor, Pro-Vice-Chancellor and the Dean of Faculty) of the University the same functions as are assigned to the State Public Service Commission in respect of the State Services under Article 320 of the Constitution of India."

After the amendment/adaption of the Bihar Act, this section now assumes the following form :--

"Yaiha Uilikhit Adhiniyam Ki Dhara 22 Ke Adhtn Syndicate Ke Gattian Ke Kram Me Up Dhara (4) Ke Bidhayi San-shodhan 1982 Kt Kandika 1 (Ek) Me Anya Sadsyon Ke Roop Me Anashuchit Janjati Ke Ek Sadasya Ranchi Vishwav-dyala, Ranchi Aur Sidhu. Kanhu Vish-wavidhyala, Dumka Me Awan Anushuchit Jatt Ke Ek Sadasya Binoba Bhawe Vishwavidhyala, Hazaribagh Me Mahamahim Rajyapal, Jharkhand Dwara Namtt Hoga."

Thus, under this amended/adapted form the Jharkhand State Universities (Constituent Colleges) Service Commission has to make recommendations for appointment to the post of Teachers and Officers of the University. Admittedly, the Jharkhand State Universities (Constituent Colleges) Service Commission has not been constituted. Also admitted is the fact that the Bihar State Universities (Constituent Colleges) Service Commission Act, 1987, (hereinafter Bihar Commission) has neither been amended, nor adapted, nor repealed by the State of Jharkhand. The Bihar Commission Act is an independent Act, not deriving its enactment under the Bihar Universities Act and therefore, even though the Bihar State Universities (Constituent Colleges) Act has been amended, it has no effect on the Bihar Commission Act (supra). Section 2 of the Bihar State University (Constituent Colleges) Service Commission Act, 1987, reads as follows :--

"2. Constitution of the Commission.--(1) The State Government shall, by a notification published in the Official Gazette, set up the Bihar State University (Constituent Colleges) Service Commission (hereinafter referred to as the Commission").

(2) The Commission will be a body corporate, having its head office in Patna, which will have perpetual heritance and there will be a common seal and will sue or will be sued in the said name.

(3) The Commission will make recommendation for the appointment of officers and teachers of the Universities and its constituent colleges."

Under this Act, the Commission is constituted and it is a Body Corporate. It has, at its own, common seal and has a perpetual inheritance and can sue and be sued.

9. The learned counsel appearing for the petitioner has argued that since it is a statutory Corporation, it becomes a Statutory Body Corporate u/s 66 of Act, 2000 and under the aforesaid Act, it has to continue its function and operate in

those areas in which it was functional immediately before the appointed date, subject to the directions issued by the Central Government from time to time, until other provision is made by law in respect of the said Body Corporate and in the instant case, no direction of the Central Government has been issued in respect of the functioning of this Corporation. The learned counsel appearing for the petitioner, thus, impresses that since this is a Body Corporate and since it was operating in the areas of Jharkhand on the appointed date, so in absence of Central Government's directions, it is functional in the State and consequently, its recommendations are binding.

To the contrary, the learned counsel appearing for the State and other respondents have argued that it is not a Corporation and it has to be governed u/s 65 of the Act, 2000 and since it is not included in the 9th Schedule of the Act, 2000, this Corporation is not functional in Jharkhand.

10. Section 66 has to be read with Section 65 because Section 66 clearly provides in the opening line "Save and otherwise expressly provided by the foregoing provisions of the Act," thus, while Section 65 regulates the functioning of these companies specified in 9th Schedule. Section 66 speaks of other statutory Corporations, which are not included in the 9th Schedule. Section 65 relates to companies and fix the division of interest and share from the existing State of Bihar in the companies among the successor States, whereas the special statutory Corporation may not have such material, for example any corporation constituted under the Bihar State Act. The provisions of Section 65(2), makes it clear that the Company is a Corporation created under the aforesaid Act. Therefore, companies and statutory corporations are two distinct entities. Since the Bihar Commission is a corporation under this Act, there cannot be any dispute that it is not a statutory corporation. As this was functional prior to Act 2000 u/s 86 of the Act, It remains functional. Therefore, it is considered, viewed and held that this Commission is functional in the State of Jharkhand amendment/adaptation of the Bihar Universities Act notwithstanding. I fortify my views from a pari-materia provisions of Section 109 of the State Organization Act, 1956, and a decision of the Apex Court rendered in the case of H.H. Shri Swamiji of Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others,

Therefore, as the Commission is functional, it has a power to make recommendation. The University respondent was not justified in recalling the request from the Commission on a misconceived reasoning that the Commission had no jurisdiction after the appointed date. Therefore, If u/s 57 of the Bihar University Act the Commission interviewed the petitioner and recommended his name as such, it acted within the ambit of its power. Though there is nothing to show that in exercise of the power u/s 58(3) of the Jharkhand Universities Act, the Vice Chancellor refused to accept the recommendation sent by it to the Chancellor, but as the representations of the petitioner were not answered by the respondent and view of the Government and Chancellor's direction that the

recommendation of the Commission be not acted upon, it becomes a case of deemed non- acceptance of this recommendation on the ground of Government's or Chancellor's direction.

11. Now the question is whether such an order that the Commission's recommendation be not acted upon is a valid and legal order.

Section 85 of the Act, 2000 gives the successor State a power to Adapt Laws and the purpose of such "adapting power" is to facilitate the application (of existing Law) in the successor States, A pari-materia provision is there in Section 120 of the State Reorganization Act, 1956. I wish to rely on the decision rendered in the case of Mooljee Sicka and Co. Vs. Sardar Narhar Singh, . The word, "facilitate" has been defined as follows:--

(i) "Render easier" Iyer Law Lexicon.

(ii) "ease in performance or Action" Chamber's Dictionary.

(iii) "To make something easy or easier to do or achieve."

(iv) "To make ease, promote, help forward (action or result)" The Concise Oxford Dictionary.

This Bihar University Act was amended by Jharkhand in exercise of power u/s 85 of the Act 2000 but as a consequence of that, the Jharkhand University Commission has not been constituted, even after two years and more. The question is whether that adaptation facilitates the object of the old Act. The facts suggest that in absence of any constitution of Jharkhand Commission, the thing has come to a standstill. Thus, it appears that the adaptation/amendment has not served the facilitating, rather it has obstructed the application of the old Act, just to play to gallery that in the interest of the people of Jharkhand, this amendment has been made which is obvious from the Government decision (Annexure-A and B). Thus, no appointment could be made to the post of Registrar.

12. On consideration of the above facts and the provisions of law, I am of the opinion that in absence of any Jharkhand Commission for University appointments, the recommendations of the Statutory Bihar Commission cannot be rejected in the way and for the reasons it has been done. The reason that the recommendation of the Bihar Commission should not be acted on is no reason, as it does not fit in the mandate of law as contained in Section 85 of the Act 2000.

13. In the result, it is declared that:--

(i) The Bihar State University (Constituent Colleges) Commission, being a statutory Corporation, is functional in the State of Jharkhand.

(ii) Notwithstanding the adaptation/amendment of the Bihar University Act, the Commission has a power to recommend for appointment for the Universities of

the State of Jharkhand.

(iii) The recommendation has to be dealt with in accordance with Section 58(3) of Bihar Act (now Jharkhand Act) and the reason "not to act upon the recommendation on the Commission" is not a legal and valid reason for not acting upon the recommendation of the Commission.

(iv) The Vice-Chancellor/ Chancellor, Siddhu Kanu University is directed to pass a clear order on the recommendations made by the Commission in the light of the discussions made above.

14. With the aforesaid observations/ directions, this writ petition is allowed to aforesaid extent.