

(1993) 01 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8323 of 1992

Dr. Nityanand Prasad Gupta

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 20-01-1993

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 2(g), 2(h)
Constitution of India, 1950 — Article 14

Citation : (1993) 2 PLJR 221

Hon'ble Judges : S.B. Sinha, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : I.S. Sinha and M/s. Surendra Prasad Sharma, for the Appellant; R.S. Roy for the State, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—In this application the petitioner has prayed for issuance of an appropriate writ for quashing the letter dated 17.8.1992 as contained in Annexure-3 to the writ application, the letter dated 17.8.1992 as contained in Annexure-4, the letter dated 20.8.1992 as contained in Annexure-5 issued by the respondent No. 5 as also advertisement published in Nav Bharat Times dated 22.8.1992 as contained in Annexure-6 to the writ application. The petitioner has also prayed for issuance of a writ of mandamus upon the respondent Nos. 3 to 5 for giving effect to and acting pursuant to Annexures 3 to 6 and to treat the petitioner's Institute as duly recognised and affiliated Institute and not hamper or interfere with its functions, admission, examinations of students and the results thereof in any way, and further to publish the results of the examination which has already been held.

2. The fact of the matter lies in a very narrow compass.

3. According to the petitioner the Institute of Business Management of which the petitioner is said to be the Director as duly recognised and affiliated Institute under law. The said Institute was allegedly granted affiliation by Respondent

University from time to time under orders issued by the State of Bihar. The said affiliation was cancelled. According to the State Government it was denuded of its power in the matter of grant of recognition and affiliation upon coming into force the Central Legislation on the subject.

4. The petitioner questioned the said order of the State Government by filing a writ application in this Court being CWJC No. 4792 of 1990. By a judgment dated 17th April, 1992 a learned Single Judge of this Court allowed the said writ application and quashed the orders impugned therein. this Court further directed that the Institute and its students must be treated by the University and the State Government authorities as if the impugned orders had not come into existence.

5. By a letter dated 12.5.1992 the Science and Technology Department of the State of Bihar directed cancellation of its earlier order dated 1.8.1990 which was Annexure-24 of the previous writ application. (Annexure-2). On 19.8.1992 the petitioner received a letter dated 17.8.1992 from the respondent No. 5 wherein it was stated that as directed (presumably by respondent No. 4), he was to inform the petitioner that pursuant to the resolution of the Examination Board in the light of legal opinion, the affiliation of the petitioner's Institute since its inception was against the rules and thereby respondent No. 5 required the petitioner to move the respondent Nos. 6 and 7 for obtaining affiliation of the said Institute.

6. It has also been averred that the respondent No. 5 informed the petitioner that it would take examination of the students of the 1991-93 batch in the light of the judgment of this Court (Annexure-1) but the results would not be declared. The petitioner was further prohibited from admitting the students from 1992 batch. The petitioner alongwith the aforementioned letter also received a copy of the purported "Important Notice" dated 17.8.1992 from respondent No. 5 the said letter is contained in Annexure-4 to the writ application.

7. By another letter dated 19.8.1992 the petitioner requested the Respondent No. 5 to furnish a copy of the opinion and Resolution in question which was denied to the petitioner.

8. Thereafter on 22.8.1992 an advertisement was issued in Nav Bharat Times, which is contained in annexure-6 to the writ application whereby it was notified to all concerned that the petitioner's Institute is illegally affiliated by the State of Bihar since its inception and thus the University would not conduct any examination from the sessions 1990-92 onwards.

9. The petitioner has questioned the aforementioned orders inter-alia on the ground that the same had been passed mala fide and in violation of the judgment of this Court passed in CWJC No. 4798 of 1990 as contained in Annexure-1 to the writ application which had attained finality, as no appeal therefrom was preferred.

10. The petitioner filed a supplementary affidavit on 28.7.1992 wherein it was contended, that the Department of Science and Technology, Bihar Patna directed

the University to allow the students of the petitioner's Institute to sit in the examination of Business Management course without any discrimination. The said order is contained in Annexure-11 to the said supplementary affidavit.

11. According to the petitioner, the Commissioner of the Darbhanga Division also requested the University to act in terms of Annexure-11 to the application.

The petitioner has filed a second supplementary affidavit on 22.10.1992. In that supplementary affidavit it has been contended that the aforementioned letter dated 28.7.1992 had been issued in the context of the University's letter dated 20th May, 1992 in terms whereof University requested the Department of Science and Technology Bihar, Patna to ask the All India Council for Technical Education, New Delhi for cancellation of the recognition of the petitioner's Institute and the university further requested the said Department to issue direction to the petitioner's Institute restraining it from taking further admission of the students. The said order dated 20.5.1992 is contained in Annexure-12 to the writ application. The petitioner has further stated that he had received another letter dated 1.10.1992 from the Commissioner, Darbhanga Commissionery, wherewith a copy of another letter dated 30.9.1992 had been annexed and addressed to the respondent No. 4 by the respondent No. 2, in terms whereof the Commissioner had asked the petitioner to take up the matter at his own level. In view of the said letter dated 30.9.1992 the respondent No. 2 asked the respondent No. 4 to provide all privileges to the petitioner's Institute which were available to it prior to 1.8.90. The said letter is contained in Annexure-13 and 14 to the writ application.

11A. In this case a counter affidavit has been filed on behalf of the respondent No. 3. In the said counter affidavit, it has been contended that the Institute has not been granted any valid affiliation. According to the respondent No. 3, the University has taken steps by reason of Annexures 3 and 6 to the writ application not to allow the students of an unrecognised unaffiliated institution to appear at the Examination conducted by respondent University from the sessions 1992-94.

12. According to the University, the said action has been taken in assertion of its independence as an autonomous Institution and in view of the fact that affiliation has to be granted in terms of the provisions of Bihar State Engineering and Pharmacy Education Institution (Regulation and Control) Act, 1982 and all India Council of Technical Education Act, 1987. The University has, however, stated that the results of 1991-93 sessions would be published by the University.

13. It has been submitted that the purported interim affiliation was granted to the State of Bihar in complete violation of the provisions of the aforementioned statutes. It has further been contended that this Court in CWJC No. 4792/90 declined to decide the question with regard to the interim affiliation granted by the State to the petitioner's Institution.

14. It has further been submitted that the petitioner's Institute does not fulfil the requirement of affiliation to the respondent University as would be evident

from the report of the Inspection Committee.

15. Mr. Indu Shekhar Sinha, the Learned Counsel appearing on behalf of the petitioner has raised a short question in support of this application.

The Learned Counsel submitted that the University is bound by the judgment passed in CWJC No. 4793 of 1990 as contained in Annexure-1 thereto, and thus action of the University for prohibiting admission of the students of 1992 batch must be held to be an act of arbitrariness and thus violative of Article 14 of the Constitution of India.

16. The Learned Counsel in this connection has drawn our attention to paragraph 18 of the said judgment.

17. Mr. Azfar Hussain, Learned Counsel appearing on behalf of the University, on the other hand, submitted that in terms of the provisions of the All India Council of Technical Education Act, 1987, the State Government had no jurisdiction to grant any affiliation to the Institute in question and in view of the fact that no approval of All India Technical Education which yet had been received by the State Government, the purported temporary affiliation granted to the Institute by the State Government was invalid in law.

18. According to the respondent, the Institute in question has not been recognised by the All India Council of Technical Education. It has been submitted that by reason of the judgment of the High Court no recognition of the Institute could be conferred and thus the University has passed the impugned order. It has further been submitted that the stand of the University is not based on the letters which are subject matter of the previous writ application but on the fact that the students of an unrecognised institutions have no legal right to sit in examination and get their results published. The Learned Counsel pointed out that in the earlier writ application (Annexure-1), this Court merely directed the University to treat the institute as if the Annexures impugned therein have never been in existence.

19. The Bihar State Engineering and Pharmacy Education Act, 1982 came into force on 7.8.1982. (hereinafter referred to as the said Act).

On or about 11.1.1984 the Bihar State Engineering and Pharmacy Education (Regulation and Control) Management Ordinance, 1984 was promulgated in terms whereof the discipline of Business Management was brought within the ambit of the 1982 Act.

20. Section 2 of the said Act prohibits any person, society registered under the Society Registration Act, 1960 or any organisation to start courses of studies for degrees and diplomas unless previous sanction from the State Government in this regard has been obtained.

21. The said Act further provides that the sanction must be obtained before any student is admitted or before an application for recognition is filed.

22. Section 3 lays down for the procedure for grant of permission. Section 4 provides that grant of such permission shall be subject to certain undertakings to be given by the applicant. Section 5 of the Act provides for Inspection of the Institution for grant of such permission.

23. Section 6 of the said Act provides that upon receipt of an application for grant of recognition/affiliation, the State Government would take a decision as to whether the proposed Institute of Pharmacy or Polytechnic fulfil the conditions imposed and other conditions by the State or the Central Government or the All India Technical Education Council.

24. Clause I of section 6 of the said Act provides that in a case in which such conditions and standards are not fulfilled by the applicant, the application for grant of recognition shall be rejected.

25. Clause II of the said provisions, however, provides that all such application which are not rejected under Clause I shall be sent to All India Technical Education Council and Central Government for their consideration.

The State Government is conferred with the power to give its decision relating to grant of recognition/affiliation only upon receipt of the recommendations of the Central Council or Central Government.

Clause III of section 6 provides that if the recognition is granted in terms of Clause II thereof, in the order of recognition the number of students who may be admitted in the Institution should specifically be mentioned and no students in excess of the limit prescribed thereby shall be admitted. Section 7 provides for the grant of sanction.

26. Section 11 of the said Act is a penal provision in terms whereof any person who violates any provision of the said Act may be fined upto sum of Rs. 10,000/- or rigorous imprisonment upto three years or both.

It is, therefore, clear that the provisions of the said Act are mandatory in nature.

27. On or about 5.4.1984 the aforementioned Ordinance was replaced by the Bihar State Engineering and Pharmacy Education (Regulation and Control) Amending Act, 1983.

28. According to the petitioner in terms of the aforementioned statute the State Government has the final power to recognise/affiliate any institute falling under the purview thereof upon receipt of recommendations from the Central Council and the Central Government.

29. It appears that the Joint Secretary Department of Science and Technology issued a letter dated 15.5.1986 to the Registrar Lalit Narayan Mithila University informing that Govt. has decided that the affiliation granted to the petitioner's Institute shall continue till the formalities are completed.

30. On 21.6.1987 the Joint Secretary has also written a letter to the Central

Government recommending affiliation to the petitioner's Institute by the Central Council and the Central Government and thereby sought their opinion on the question of the affiliation u/s 6 (ii) of the State Act.

31. On 28.3.1988 the Parliament enacted the All India Council for Technical Education Act, 1987 (Act no. 52 of 1987) hereinafter referred to as "the Central Act"). The Central Act was enacted for establishment of the All India Council for Technical Education (Central Council).

32. Section 2(g) of the Central Act defines "Technical Education" in the following terms :

Section 2(g)-"Technical education" means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government, may in consultation with the council, by notification in the official Gazette, declare;

Section 2(h) of the Central Act defines "Technical Education" in the following terms :

Section 2(h) :- "technical institution" means an institution, not being a University, which offers courses or programmes of technical education and shall include such other institutions as the Central Govt. may, in consultation with the Council, by notification in the official Gazette, declare as technical institution.

33. Section 10 of the said Act provide for power and functions of the Central Council.

Clause (k) of Section 10 empowers the Central Council to grant approval for starting new technical institution and for introduction of new courses or programmes or in consultation with the agencies concerned.

Clause (n) of section 10 of the Central Act imposes a duty upon the council to take all necessary steps to prevent commercialisation of technical education.

Clause (o) thereof provides for providing guidelines for admission of students to Technical Education and Universities imparting technical education.

34. It has been admitted by both the parties that the Institute was inspected by a team constituted by the Department of Science and Technology. It is also admitted that the Department of Science and Technology has sent the inspection report to the Central Government and the Central Council by a letter dated 25.5.1987.

35. However, by a letter dated 25.1.1991 the State Government has again constituted an Inspection Committee to inspect the Institute. It is also an admitted fact that no recommendations have been received by the State Government either from the Central Government or from the Central Council relating to grant of recognition of the petitioner's Institute by the State

Government.

It is also admitted that pursuant to the orders issued by the authorities of the State Government the respondent University had granted temporary affiliation to the petitioner's Institute from time to time.

36. However, as noticed hereinbefore, the cancellation of the temporary recognition and affiliation by the State and the University was questioned by the petitioner, by filing a writ application which was registered as CWJC No. 4792 of 1990.

In that application, a stand was taken by the respondent thereof that after coming into force of the Central Act, the State Government is denuded of its power to grant recognition. The State Government however took a further stand that after coming into force of the Central Act, the State Legislature has become void on account of its repugnancy with the Central Act.

37. In the said writ petition, no counter affidavit was filed by the respondent University. The Central Government and All India Council although they were impleaded as respondents did not give instruction to the Additional Standing counsel, Central Government and the case was thus disposed of in absence of any counter affidavit or even any verbal instructions from them.

38. A learned Single Judge of this Court in the aforementioned writ petition held that there is no question of any repugnancy between the Central Act and the State Act and thus the State Act did not become void upon coming into force of the Central Act. The learned single Judge also rejected the contention that the State Government has no power to grant temporary affiliation.

39. Paragraphs 16, 17 and 18 of the said judgement which are relevant for the purpose of this application read thus :

At this stage I may also note the submission advanced on behalf of the University. Mr. Hasan, Learned Counsel for the University, submitted that the affiliation granted to the Institute by order dated 15.5.1988 issued by the Joint Director in the Department of Science and Technology was itself without any competence or authority and the institute had been running for all these years and had been saddled upon the University without any valid and legal order of affiliation and in that view the petitioners were not entitled to any relief in this application. He submitted that in terms of Section 6 of the State Act there was no provision for the grant of any interim affiliation to any institution and the State Government was not authorised to grant affiliation without the prior approval of the Council and the Central Government. Mr. Hasan contended that in terms of Section 6 of the State Act if the State Government found on the basis of the inspection report that the institution in question did not come up to the prescribed standard it was obliged to reject the application for affiliation at the threshold. And in case an application for affiliation was not rejected at the threshold the law required the case to be referred to All India Technical Education

Council and the Central Government for their approval and the question of grant of affiliation could be finally determined by the State Government only after receipt of the approval from the All India Council and the Central Government. Mr. Hasan submitted that any interim affiliation of the nature as conferred by the order dated 15.5.1986 was clearly beyond the scope of section 6 of the State Act and was, therefore without any legal authority.

Mr. Basudev Prasad, on the other hand, contended that in terms of section 6 of the State Act the final authority for the grant of recognition/affiliation was the State Government and hence it was implicit that it had also the power to grant any interim affiliation awaiting the approval from the All India Council and the Central Government as had been the position in this case. Mr. Prasad further pointed out that admittedly the State Government had sought the approval of the All India Council and the Central Government and had favourably recommended the case of this Institute vide its communication dated 21.5.87 and as yet no response was received from either the council or the Central Government and under the circumstances the State Government was fully justified in granting affiliation to the Institute till other formalities in this regard was completed.

I am not inclined to decide this question in this application as I cannot permit the University to raise this question and to challenge the grant of affiliation to the Institute in such an oblique matter. As noticed above, the University has been impleaded in this case as a party respondent; the order in question was passed on 15.5.1986, that is, about six years ago and during the past years this order has been acted upon by all concerned including the University. For all these reasons the University cannot be allowed to challenge that order in this writ application.

40. The question which now falls for consideration is as to whether the judgment rendered in the aforementioned writ petition having attained finality, the University was precluded from passing the impugned orders.

41. The scheme of the said Act as also the Central Act have been noted hereinbefore. In my opinion the State Act and the Central Act are supplemental to each other and they can operate in their own fields. The Central Act has not made any provision for recognition of the Institutions imparting technical education.

42. However, by reason of the said Act provision of the recognition can be granted only upon obtaining recommendations in this behalf from the Central Council and the Central Government.

43. The State in terms of the provisions of the said Act is merely a statutory authority. It has, thus, to act within the four corners of the statute or not at all. Any action taken by the State in derogation of the provisions of the statute shall be void.

44. As indicated hereinbefore, the said Act contains mandatory provisions relating to establishment of the Institution, grant of recognition by the State Government and other matters connected therewith or incidental thereto.

45. Clause II of section 6 of the State Act is mandatory in nature in so far as the State Government in absence of any recommendation from the Central Government and/or Central Council has no jurisdiction whatsoever to grant recognition to any person.

46. Assuming that the State Government has the power to grant temporary affiliation (although existence of such a power is doubtful) such temporary affiliation could also be granted only upon fulfillment of the conditions prescribed in Clause II of section 6 of the said Act i.e. only upon obtaining the recommendations in this behalf from the Central Government and the Central Council in this behalf.

47. The provisions of Section 6(h) was existing at the time of coming into force of the Central Act. In view of the fact that the Central Act does not contain any provisions for grant of recognition, the said Act shall operate in that field subject to the conditions precedent required therefor and subject to fulfilling the other terms and conditions of the Central Act, if any.

48. For the reasons aforementioned, I am of the view that the State Government had no jurisdiction to grant recognition either for a temporary period or otherwise in contravention of provisions of Clause II of section 6 of the said Act.

49. The learned Single Judge in CWJC No. 4793 of 1990 has not considered this aspect of the matter at all as is evident from paragraph 18 of the judgement. In that decision the effect of provisions of Clause II of section 6 had not been considered at all.

50. From a perusal of the said decision it would be evident that in that case it has been held that the University was estopped from questioning the said orders as it acted upon the directions of the State Government for a long time. In that case it has not been taken into consideration that there cannot be any estoppel against statute and action of a statutory authority taken in complete violation of the mandatory provisions of the statute, would be a nullity, and thus becomes non-est in the eye of law.

When an order is a nullity and thus non est in the eye of law, the same being void abinitio, any action taken thereunder must also be held to be a nullity.

51. If the University has refused to follow the illegal direction of the State Government, in our opinion, no exception can be taken thereto.

52. It is now well known that students of an unrecognised institutions have no legal right to appear at the examination or getting the result published.

In view of my findings aforesaid, the purported temporary recognition granted to the institution being non-est in the eye of law cannot be acted upon.

53. The Supreme Court recently in *State of Maharashtra Vs. Vikas Sahebrao Roundale & ors* reported in J. T. 1992(5) S.C. 175, upon taking into consideration a large number of decisions held as follows :

Article 51A enjoins every citizen by clause (h) to develop the scientific temper, humanism, the spirit of inquiry and reform and clause (j) enjoins as fundamental duty to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; (a) respect for national flag and national anthem; (c) to promote harmony and spirit of common brotherhood amongst all the Indian people transcending religious, linguistic and regional or sectional diversities to renounce practice derogatory to the dignity of woman; (f) to value and preserve with heritage of our composite culture, etc. are some of the basic duties which the budding students need to be inculcated and imbibed. They should be sowed in the respective minds in their formative periods so that they take deep roots at maturity. The teacher needs, not only the training at the inception, but also periodical orientations in this behalf so that the children would reap the rich benefit thereof. The ill equipped and ill housed institutions and sub-standard staff therein are counter productive and detrimental to inculcate spirit of enquiry and excellence to the students. The disregard of statutory compliance would amount to let loose of innocence and unwary children. The proceedings of the recent seminar held in Delhi, as published by the Times of India dated 4th August, 1992, would demonstrate the admission by the teachers that they are not properly trained to cope up with the growing needs of the society and are unsuited to the duties they have to shoulder in imparting teaching to the children. The teacher plays pivotal role in moulding the career, character and moral fibres and aptitude for educational excellence in impressive young children. The formal education needs proper equipment by the teachers to meet the challenges of the day to impart lessons with latest technique to the students on secular, scientific and rational outlook. A well equipped teacher could bring the needed skills and intellectual capabilities of the students in their pursuits. The teacher is adorned as Gurudevobhava, next after parents, as he is a Principal instrument to awakening the child to the cultural ethos, intellectual excellence and discipline. The teachers, therefore, must keep abreast ever changing technique, the needs of the society and to cope up with the psychological approach to the aptitudes of the children to perform that pivotal role. In short teachers need to be endowed and energised with needed potential to serve the needs of the society. The qualitative training in the training colleges or schools would inspire and motivate them into action to the benefit of the students. For equipping such trainee students in a school or a college all facilities and equipments are absolutely necessary and institutions bereft thereof have no place to exist nor entitled to recognition. In that behalf compliance of the statutory requirements is insisted upon. Slackening the standard and judicial flat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the appellants to

disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline.

54. In this view of the matter, no relief can be granted to the petitioner in this writ application.

55. However, before parting with this case, we may observe that the students who had taken admission on the belief that the Institute in question is a recognised one, should not suffer for no fault on their part. Not only the State Government granted temporary affiliation to the Institute but this Court has also upheld the said order.

56. However, no direction to the University for publishing the result of the students who have already appeared, in this writ application is necessary and the University has undertaken to publish the result of the students after 1990-92 batches.

57. We further feel that the Central Government as also the Central Council being "State" within the meaning of Article 12 of the Constitution of India should have acted fairly in the matter.

The Joint Secretary of the State of Bihar had recommended for the recognition of the Institute as far back as 28.1.1987. It is beyond our comprehension as to why the Central Government and particularly the Central Council which has been constituted to fulfill the objects of the Central Act as is evident from the preamble thereof, has failed to carry out its duties for such a long time.

The "State" is bound to act reasonably which includes actions within a reasonable time. If an action is not taken within a reasonable time which affects the right of the parties and causes prejudice to many individuals may be considered to be unreasonable.

58. In this situation, we hope and trust that the Central Government and Central Council shall promptly act and give its decision on the recommendations of the State of Bihar with regard to the recognition of the petitioner's Institute at an early date.

59. We further hope and trust that such decision would be rendered by the Central Government and the Central Council within two months from the date of the receipt of a copy of this order.

60. We are making these observations keeping in view the fact that the petitioner's Institute, in view of this decision would not be in a position to admit any student from 1992. For the reasons aforementioned, there being no merit in this application it is accordingly dismissed but subject to the observations made hereinbefore. There will be no order as to costs.

G.C. Bharuka, J.

I agree.