
(1974) 05 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jur. Case No's. 1612 and 1613 of 1973

Dr. R.C. Chatterji

APPELLANT

Vs

The Bihar State Board of Homeopathic Medicine and Others

RESPONDENT

Date of Decision : 14-05-1974

Acts Referred:

Bihar Development of Homeopathic System of Medicine Act, 1953 — Section 3
Bihar State Universities (Patna, University of Bihar, Bhagalpur and Ranchi) Act, 1960
— Section 3(4)
Constitution of India, 1950 — Article 226

Citation : AIR 1975 Patna 100

Hon'ble Judges : Lalit Mohan Sharma, J;K.B.N. Singh, J

Bench : Division Bench

Advocate : Ras Bihari Singh and Rana Pratap Singh, for the Appellant; Birendra Prasad Sinha, G.P. No. 2, Prabhunath Roy and Shambhu Nath Jha, Jr. Counsel to G.P. No. 2, Indu Shekar Prasad Sinha, Fanish Singh, Vinod Kumar Kanth, G.M. Sinha and Maya Sinha, for the Respondent

Final Decision : Allowed

Judgement

Lalit Mohan Sharma, J.—Both these writ applications have been filed on account of the circumstances arising from the promulgation of an Ordinance (Patna University (Amendment) Ordinance, 1973) dated 6-4-1973, and a notification dated 10th April, 1973 under the powers given by Section 3 (4) of the Bihar State Universities (Bihar, Bhagalpur and Ranchi) Act, 1960, Section 3 (3) of the Magadh University Act, 1961, and Section 3 (3) of the Mithila University Ordinance, 1973. There are some common points involved in the two cases, and this judgment will govern both the cases. C. W. J. C. 1613 of 1973

2. The petitioner is a student in the Universal Homeopathic Medical College, Patna, where he was admitted in 1971 and asserts that he has completed the studies for the course of D. H. M. S. and was eligible to sit in the examination which was due to be held in July, 1973 by the Bihar State Board of Homeopathic Medicines (Respondent No. 5) (hereinafter to be referred to as "the Board").

Under the provisions of the Bihar Development of Homeopathic System of Medicine Act, 1953 (hereinafter to be referred to as the Homeopathic Act"), the Board has been authorised to hold examinations and grant certificates and confer degrees or diplomas and, admittedly, the Board has been exercising such powers holding examinations and conferring degrees. The last examination for D. H. M. S. course had been conducted by the Board for the year 1972, actually held in May, 1973. It appears that the State Government took a decision to put 19 Homeopathic Colleges throughout Bihar, detailed in Annexure "1" to the writ application, under the control of the Bihar University and with that view, the Patna University (Amendment) Ordinance, 1973 (Bihar Ordinance 13 of 1973), a true copy whereof has been annexed to the writ application as Annexure "2" was passed on 6-4-1973. Four days later, on the 10th April, 1973, a Notification, referred to above, under the powers of Section 3 (4) of the Bihar State Universities (Bihar, Bhagalpur and Ranchi) Act, 1960 (Bihar Act 14 of 1960). Section 3 (3) of the Magadh University Act, 1961 (Bihar Act 4 of 1962) and Section 3 (3) of the Mithila University Ordinance, 1973 (Bihar Ordinance 84 of 1973) was passed, a true copy whereof is annexed as Annexure "1" to the writ application, whereby 19 Homeopathic Colleges in Bihar were purported to have been placed under special powers of the Bihar University. The Universal Homeopathic Medical College, Patna, is one of them. The Under Secretary, Education Department, State of Bihar (Respondent No. 4) issued a letter dated 27-4-1973 to the Principals of all the Colleges enumerated in Annexure "1" informing them that the colleges had been put under special control of the Bihar University and requesting them that steps should be taken for affiliation to the Bihar University. A copy of the letter is annexed to the writ application as Annexure "3". By Annexure "6" dated 30th April, 1973, the Deputy Registrar of the Bihar University informed the Principal of the Universal Homeopathic Medical College, Patna, that the college had been transferred to the University and the Principal should apply to the Vice-Chancellor through the Registrar with an inspection fee of Rs. 500/- for affiliation of the college to the University, Certain other matters also, not necessary to be stated here, were mentioned. Annexure "7" to the writ application is a copy of the letter dated 20th January, 1973 sent by the Director. Health Services, Bihar, to several Principals including the Principal of the Universal Homeopathic Medical College informing them in advance about the State's decision to establish an Ayurvedic, Unani and Homeopathic Faculty and requesting them to start correspondence with the University for affiliation.

3. It is asserted on behalf of the petitioner that the decision taken for the transfer of the college to the Bihar University and all steps taken in that regard are illegal and highly prejudicial to the interest of the students including the petitioner and the students all over the State boycotted the examination held by the Bihar University on 28-11-1973. Out of 1635 students at Patna, only 40 students appeared at the examination. Similar was the situation at other places. The petitioner also boycotted the examination and has prayed in the present case

for quashing of Annexures "1" and "3" to "7".

4. The State of Bihar, The Deputy Director, Health Services, Bihar; The Under Secretary, Education Department, Bihar and the Director of Health Services-cum-Deputy Secretary, Government of Bihar have been impleaded as Respondents 1, 3, 4 and 7 respectively. Respondent No. 2 is the Vice-Chancellor, Bihar University and Respondent No. 6 is the Inspector of Colleges, Bihar University. The fifth respondent is Bihar State Board of Homeopathic Medicines. The Board has supported the stand of the petitioner. This case has been mainly contested on behalf of the Bihar University and the State of Bihar has adopted the arguments addressed on behalf of the University.

5. A counter affidavit has been filed on behalf of Respondents 2 and 6 asserting that the order contained in Annexure 1 is neither illegal nor without jurisdiction and it is not necessary to expressly amend the Homeopathic Act. It is said that neither Annexure 1 nor Annexure 2 has created any confusion and have rather made improvement in the system of examination and the students boycotted the examination held from November 20, 1973, presumably, for the reason that they were not prepared for the examination. All title steps taken by the respondents, as indicated by the annexures to the writ application, have been defended and it is said that the writ application is fit to be dismissed.

6. In order to appreciate properly the contentions raised by learned Counsel in this case, it will be helpful to briefly recapitulate the history of the aforementioned Acts and the Ordinance. Earlier there was only one University in Bihar established under the Patna University Act, 1917. In 1951, two Acts were passed by the Bihar Legislature, namely, the Patna University Act, 1951 and the University of Bihar Act, 1951 and they came into force on the 2nd January, 1952 whereby the new Patna University with its territorial jurisdiction extending to such local areas as were comprised within the limits of the Patna City Municipality and the University of Bihar with its territorial jurisdiction extending to the whole of the State of Bihar other than local areas included within the limits of Patna City Municipality were established. In 1953, Bihar Development of Homeopathic System of Medicine Act, 1953 was passed and received the assent of the President, The Preamble of the Homeopathic Act read as follows:

"Whereas it is expedient to provide for the development of the Homeopathic system of medicine and to regulate its teaching and practice in the State of Bihar:

It is hereby enacted as follows:"

Till that time, there was no law regulating either the teaching or the practice of Homeopathic Medicines. Section 3 of this Act empowered the State Government, by notification, to establish the Homeopathic Board and the Board was actually established. Chapter IV of the Homeopathic Act dealt with the functions of the Board and Section 21 provided that there shall be a register kept by the Board in prescribed form containing the names of every registered Homeopathic practitioner with certain details. Detailed procedure has been laid down in

Sections 22 to 34 for the purpose of registration of Homeopathic practitioners and the object clearly appears to exclude unqualified and undesirable persons from practising as doctors. The Board was also given power to hold qualifying examinations for the purpose of registration as Homeopathic practitioner. Section 35 of the Act gives "other powers of the Board". Clause (iv) mentions the power "to appoint examiners and publish results of the examination held by the Board". Section 49 refers to degrees, diplomas or licences to be granted by the Board. Section 52 authorised the Board with the previous sanction of the State Government to make regulations, inter alia, in respect of the teaching and examinations. Subsequently, detailed regulations were made. It is admitted that so far Homeopathic Board has been holding examinations for diplomas only and no arrangements have been made for the teaching in a degree course and for conferment of any degree.

7. The Patna University Act, 1951 and the University of Bihar Act, 1951, were both repealed by the Bihar State Universities (Patna, University of Bihar, Bhagalpur and Ranchi) Act, 1960 which established four Universities in Bihar, namely, Patna University, University of Bihar, Bhagalpur University and Ranchi University. The territorial jurisdiction of each of these Universities was clearly defined in Section 3 of the Act. The jurisdiction of the new Patna University extended to the whole of Patna division. Soon thereafter, two more Acts were passed, namely, Patna University Act, 1961 and Magadh University Act, 1961 and suitable amendments were made in the Bihar State Universities (Patna, University of Bihar, Bhagalpur and Ranchi) Act, 1960. The word "Patna from the title of this Act was deleted and the Act is now called "The Bihar State Universities (University of Bihar, Bhagalpur and Ranchi) Act, 1960 and will be referred to hereinafter as the State Universities Act." The territorial jurisdiction of the new Patna University extended to the local areas within the Patna Municipal Corporation (Municipality in the meantime was substituted by a Corporeation) and bounded by certain lines, indicated in Section 5 of the Patna University Act, 1961. Under the Magadh University Act, 1961, Magadh University was established with territorial jurisdiction over the whole of Patna division except the local areas comprised within the territorial jurisdiction of the Patna University. Subsequently, Mithila University was also established by an Ordinance and certain areas covered by the State Universities Act were allotted to this University.

7A. Section 3 (4) of the State Universities Act provided as follows:

"No educational institution beyond the territorial jurisdiction of a University specified in Sub-section (1) shall, except by an order of the State Government published in the Official Gazette, form part of or be admitted to the privileges of that University, and no such institution within the said territorial jurisdiction shall similarly form part of or be recognised by or seek admission to any privileges of any other University incorporated by law in India, and any such recognition granted by any such other University to any such institution within the said territorial jurisdiction prior to the commencement of this Act shall be deemed to

be withdrawn on the commencement of this Act."

Similar provisions were incorporated in Section 5 of the Patna University Act, 1951, Section 5 of the University of Bihar Act, 1951, Section 3 (3) of the Magadh University Act, 1961 and Section S (3) of the Mithila University Ordinance, 1973.

8. A serious question arises in this case as to whether under the impugned notification (Annexure 1) the institutions mentioned therein can be legally placed under the control of the Bihar University, The order has been admittedly passed u/s 3 (4) of the State Universities Act and the corresponding provisions of the Magadh University Act and the Mithila University Ordinance. For the purpose of their arguments, learned Counsel divided the said provisions into three parts; the first and Second parts prohibiting the institutions within the territorial jurisdiction of the other Universities from forming part or being admitted to the privileges of the Bihar University except by an order of the State Government and the third part deals with the effect of the commencement of the Act on the recognition granted earlier by any other University to the institution within the territorial jurisdiction of the Bihar University, It is said on behalf of the Respondent-University that in view of the language of Section 5 of the Patna University Act 1951, amendment had to be made by Annexure "2 to the writ application so as to enable the transfer of Homeopathic Colleges in Patna to the Bihar University; and as the language of Section 3 of the State Universities Act, the Magadh University Act and Mithila University Ordinance are similar, the Homeopathic Colleges within the territorial jurisdiction of Bhagalpur, Ranchi, Magadh and Mithila Universities could be and were transferred to the Bihar University by an order of the State Government, as contained in Annexure "1" to the writ application. In Annexure "1" are included two Homeopathic Colleges functioning within the territorial jurisdiction of the Bihar University itself and Mr. Indu Shekhar Pra sad Sinha, learned Counsel for Respondent No. 2, contended that as an effect of the third part of Section 3 (4) of the State Universities Act, these institutions came within the control of the Bihar University on the commencement of the State Universities Act in 1960.

9. It is clear from the language of Section 3 (4) of the State Universities Act, quoted above, that the said provision can only apply to the transfer of an institution which has been functioning under a University. Mr. Indu Shekhar Prasad Sinha has strongly contended that the Homeopathic Board is included within the term "University" in this sub-section. The term "university" has been defined u/s 2 (r) of the Act to mean either Bihar University or Bhagalpur University or Ranchi University but this definition is qualified in the opening sentence of the said section by the following words:

"In this Act, unless there is anything repugnant in the subject or context."

Mr. Sinha, therefore, appears to be right that the meaning of the word "University" in Sub-section (4) is not limited to the definition given in Section 2 (r). The object of Sub-section (4) is to exclude all the Universities incorporated

by law in India from giving a recognition to an institution within the territorial jurisdiction of the Universities established under the State Universities Act. But that by itself will not lead to the conclusion that the Homeopathic Board should be considered to be included within the word "University". Mr. Sinha submitted that the word "University" has been used in this sub-section in its widest amplitude and he has referred to the Shorter Oxford English Dictionary. He has invited us to hold that the following meaning being one of the several meanings mentioned in the said Dictionary should be applied:

"The whole body of teachers and students pursuing, at a particular place, the higher branches of learning: such persons associated together as a society or corporate body, having the power of conferring degrees and other privileges and forming an institution for the promotion of education in the higher branches of learnings; the colleges, buildings etc. belonging to such a body."

The argument is that in the functions of the Homeopathic Board are included the power and duty of the Board to hold examinations and to confer degrees, diplomas or licences and for that reason the Board must be considered to be a University within this subsection. After having considered the argument of the learned Counsel, the provisions of the Act and the other relevant circumstances, I do not feel inclined to agree with this contention. In the present case, it is not possible literally to lift one of the many meanings given in the Dictionary which may be suitable to the Bihar University for its application in the present case, Stroud in his Judicial Dictionary of words and phrases has said that the word "University" is not a word of art and whether or not an educational institution can claim to be a university or not must depend on whether an ordinary man of good education would consider that the institution in question is one. The fact that an institution possesses all or most of the essential qualities of a university does not necessarily prove that it is a University. A similar question arose in England whether a particular institution was a University or not and it was held in the case of *St. David's College, Lampeter v. Ministry of Education* (1951) 1 All ER 559, that although the institution in question possessed many of the qualities and attributes associated with a university, but in its charters it had not been expressly or impliedly declared to be a University and it would not generally be considered to fall within the meaning of "university"; and having regard especially to the limited character of the right of the college to confer degrees, it was not a university. The royal charters had granted on the institution right to confer only the degrees of bachelor of arts and bachelor of divinity.

10. In the case before us, the term "University" with capital "U" in Section 3 (4) of the State Universities Act has not been used in its widest amplitude as has been suggested on behalf of the University. On a close scrutiny of the scheme of the Homeopathic Act, it is clear that the main function of the Board is to regulate the professional side of the practice of Homeopathic medicines. Only after the Act has exhaustively dealt with the main functions of the Board, it introduces "other" functions in Section 35 which, inter alia, refers to the duty of the Board of

holding examinations and conferring degrees. If the legislature really intended to confer status or a University on the Board, it could have easily said so, or taken note of the Board as a University while amending the several University Acts. The real character of the Board should be decided in accordance with its main functions and in that view I hold that the Board is not included within the term "University".

11. My above view is also supported impliedly by Annexure "1" itself. The Notification has rightly assumed that Homeopathic Colleges in Muzaffarpur and Chapra (that is, within the jurisdiction of the Bihar University) were not under the control of the Bihar University before the said notification and had to be formally transferred. The interpretation put by Mr. Sinha is inconsistent with this position. He has argued that these two colleges ceased to be under the Homeopathic Board since the commencement of the State Universities Act and there was no occasion of their transfer under Annexure "1". He, however, said that the legal consequence of the Act was not correctly appreciated by authorities and under a misconception of law they have purported to transfer the already transferred colleges again under Annexure "1". I am not inclined to accept this plea of ignorance of the correct interpretation of Section 3 (4) of all the authorities concerned for the last many years. The matter does not rest there. If the interpretation of Mr. Sinha be accepted, then in view of the provisions of Section 5 of the Patna University Act, 1951 and the University of Bihar Act, 1951, the Homeopathic Board established under the Homeopathic Act, 1953 did not get any jurisdiction over any of the Homeopathic Colleges in Bihar for the purpose of holding examinations and conferring diplomas. Even assuming an implied partial repeal of the provisions of Section 5 of the said two Acts of 1951, by provisions of the subsequent Homeopathic Act, 1953, the Homeopathic Board got jurisdiction to hold examinations and confer diplomas only for a period till the commencement of the Bihar State Universities Act, 1960. By application of the same principle of repeal by implication, the Homeopathic Board got stripped off its powers in that regard. All the examinations which have been held and diplomas granted by the Board in the meantime have to be held to be void and of no effect. Such a far-reaching result could not have been ignored by all the authorities concerned including the different Universities functioning in Bihar and the State of Bihar itself. Not only the order contained in Annexure "1" assumes that the Homeopathic Board had been functioning in this regard, Annexure "2" also implies the same. The transitory regulations approved by the Vice-Chancellor (Respondent No. 2) as mentioned in Annexure "4" recognised the power and validity of the Homeopathic Board in the matter of examinations till before Annexure T. The same appears to be the position emerging from Annexures 3, 5, 6 and 7 and Mr. Sinha contended that this aspect of the matter merely deals with the question of "convenience" and should not be taken into account for the purpose of interpretation of the section. He has placed reliance on the case of *The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others*, . In paragraph 27 of the judgment, the Supreme

Court observed as follows:

"Before we conclude, we may refer to another argument advanced by the learned Attorney General. The learned Attorney General has submitted that if a question between the Board and a consumer is to be referred to an arbitration, then in cases where the Board itself supplies electric energy, there may be thousands of consumers, each of whom may raise dispute a call for arbitration. In that event, there will be thousands of arbitrations and the legislature could never have contemplated such a situation. This is really an argument based on inconvenience and we do not think that inconvenience is a decisive factor in interpreting a statute."

I do not think, the above principle has any application in the present case. It is not a question of inconvenience which is being considered while interpreting the word "University" in Section 3 (4) of the Act. The learned Counsel claimed that the language of the section was ambiguous. Assuming that to be so, the aspect which I have discussed above, should be held to be relevant while resolving the ambiguity. I do not suggest that this factor is "decisive" in the interpretation. It is only one of the many considerations to be taken into account with other factors.

12. I am, therefore, of the view that the word "University" in Section 3 (4) of the State Universities Act does not include the Homeopathic Board. It is rightly conceded on behalf of the respondents that if the Homeopathic Board is not considered to be included within the term "University" in this sub-section, Annexure "1" cannot legally affect the transfer of the institutions mentioned therein.

13. Mr. G. M. Sinha, learned Counsel for the Board, also drew our attention to the provisions of Sections 21, 31, 32 and 34 of the Homeopathic Act and argued that if the power to hold examinations and confer diplomas is taken away from the Board, without suitable amendments in the Homeopathic Act, the result will be that no Homeopathic doctor may be entitled to be registered for the purpose of practising under the Act. The examinations referred to in the Homeopathic Act have to be held by the Board and it is not contemplated that they could be conducted by the Bihar University. The contention appears to have force. The order contained in Annexure "1" is inconsistent with the various provisions of the Homeopathic Act and the question whether the same can prevail in preference to the provisions of the Homeopathic Act is another serious question. In view of my finding recorded in the previous paragraphs, this case can be disposed of in favour of the petitioner even without deciding this question, but as elaborate argument was addressed on this question by Mr. Indu Shekhar Prasad Sinha, I propose to deal with it briefly.

14. Mr. Indu Shekhar Prasad Sinha contended that in case of irreconcilable inconsistency between the two statutes, the latter will prevail on the basis of doctrine of implied repeal. Attempt to interpret the Homeopathic Act and

Annexure "1" should be made in such a way that their repugnancy may be avoided, but in case that be not possible, it is contended, that the maxim "*legis posteriores priores contrarias abrogant*" will apply. He relied upon certain passages from Craies on Statute Laws and Maxwell and certain decisions including those in *British Columbia Electric Rly. Co. Ltd. v. Stewart* 1913 AC 816 and in *State of Orissa Vs. M.A. Tulloch and Co.*, The doctrine of implied repeal, however, is of no avail to the University inasmuch as the order contained in Annexure "1" is not a legislative enactment and has been passed by the State Government u/s 3 (4) of the State Universities Act. This argument by Mr. Indu Shekhar Prasad Sinha could have been relevant only if the attempted transfer had been made by an amendment in the State Universities Act itself. The amendment in Section 5 of the Patna University Act (Annexure 2) does not purport to effect the transfer -- it is merely enabling. I, therefore, do not accept the submissions made on behalf of the University on this aspect of the matter. Mr. Indu Shekhar Prasad Sinha also argued that the result of the interpretation put by him on the different provisions as mentioned in the argument of learned Counsel for the Homeopathic Board should not be taken into account. He has relied upon the decision in *N.S. Shethna Vs. Vinubhai Harilal Panchal*, for the proposition that the interpretation of any provision is not affected by consequences flowing therefrom. There cannot be any quarrel with this proposition. But in the present case, the problem is different. The consequences here are being considered along with various other factors in construing the term "University". This is certainly permissible as is clear from the following observation made by the Supreme Court in paragraph 6 of the above decision:

"In the second place, unless the rules are found to be ambiguous, we do not see how a particular consequence can affect the construction of the rules."

(Some of the words have been underlined by me).

For all the reasons mentioned above, I am of the view that the notification contained in Annexure "1" to the writ application purporting to transfer the institution mentioned therein to the control of the Bihar University is illegal and has to be quashed.

15. Lastly, Mr. Indu Shekhar Prasad Sinha challenged the right of the petitioner to maintain this writ application. He said that the foundation of the writ jurisdiction of the Court is Right. Only such a petitioner who can establish that he has, under law, a right, which is being affected adversely, can invoke the jurisdiction under Article 226 of the Constitution, He concedes that the institutions mentioned in Annexure 1 themselves could have come to this Court for appropriate writ or order, but contends that the petitioner who is merely a student in one of the affected institutions cannot be said to have a legal right which he can enforce by the present application. Mr. Indu Shekhar Prasad Sinha referred to Salmond's Jurisprudence (Paragraphs 41 and 221, 12th Edition) and the decision in *State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo*, . The Supreme Court, in the case of *State of Orissa Vs. Ram Chandra Dev*

and Mohan Prasad Singh Deo, , held that although the jurisdiction under Article 226 is wide, the concluding words of the article clearly indicate that before a writ can issue in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The question, however, is whether the petitioner can be said to be an aggrieved person on account of the illegal invasion of his right. The petitioner was admitted in a college which was preparing the boys for appearing at the examination to be held by the Homeopathic Board. If the petitioner had passed the examination, he would have been entitled to be enrolled as a practising doctor. The order contained in Annexure "1" purports to debar the Homeopathic Board to hold examinations and to confer any degree or diploma on the petitioner. The petitioner will not be entitled to be registered under the Homeopathic Act even if he appears at and passes the examination held by the Bihar University. In these circumstances, I think, there is no element of doubt at all that the petitioner is going to be seriously prejudiced by Annexure "1". Although the interest of the petitioner is derivative, as was put by Mr. Indu Shekhar Prasad Sinha, there is a clear infringement of his right, I, therefore, overrule the objection to the maintainability of this application at the instance of the present petitioner.

16. In the result, C. W. J. C. 1618 of 1973 succeeds and Annexures "1" and "3" to "7", annexed to this writ application, are quashed. The Homeopathic Board should now proceed to hold the examinations as was being done earlier.

C. W. J. C. No. 1612 of 1973

17. This writ application has been filed by the Principal of the Homeopathic College at Bhagalpur. He had applied to the Homeopathic Board for recognition of the institution in 1968 and the Board granted recognition to the College for one year on the 29th April, 1973. Before the recognition could be communicated to the petitioner, a certain person not party to the present case filed a suit for a declaration that the petitioner's college was not entitled to get recognition and affiliation and also prayed for temporary injunction in the matter, details whereof are not necessary for the purpose of this case. The injunction was refused and the petitioner pressed his application before the Homeopathic Board and in absence of a suitable reply from the Board, the petitioner filed C. W. J. C. 130 of 1973 in this Court, An assurance was given to the petitioner that a decision in the matter would be taken within 2 months and on that assurance the petitioner withdrew the writ petition. The question of recognition was taken up by the Board but before any orders could be passed, the notification (Annexure 1 of C. W. J. C. 1613 of 1973) was made. The same is attached to this writ application as Annexure "4". A copy the Ordinance amending Section 5 of the Patna University Act is attached to this writ application as Annexure "5". Other orders by several other authorities in pursuance of Annexures "4" and "5" were also passed, true copies whereof have been attached to the writ application. In a meeting of the Homeopathic Board held on 16th September, 1973, it was resolved that the Board was agreeable to give recognition to the petitioner's

college for a period of three years but as the powers of the Board had been transferred (Presumably under Annexure "4") to the Bihar University, the petitioner's college approached the University in the matter; a true copy of the resolution is annexed as Annexure "3" to the writ application. The petitioner has challenged the legality of Annexure "4" and consequently of other impugned annexures and has made a prayer for quashing the same. There is a further prayer for a writ of mandamus to be issued against the Homeopathic Board directing it to renew the recognition of the petitioner's college,

18. Mr. Indu Shekhar Prasad Sinha, appeared on behalf of Respondents 4 and 6, namely, the Vice Chancellor, Bihar University and Inspector of Colleges, Bihar University respectively. The Homeopathic Board also appeared and filed a counter affidavit. Common arguments were made in the two writ applications and the findings given in C. W. J, C. 1613 of 1973 above are good findings for the purpose of this case also.

19. The Homeopathic Board has substantially accepted the allegations of fact made in the writ application and stated in paragraph 6 that the matter concerning recognition was placed before the Board on the 19th August, 1972, when the Board decided to allow the students of the petitioner's college to appear in the examination to be held in 1972. It is further stated in paragraph 7 of the counter affidavit that in accordance with the directions of the High Court given in C. W. J. C. 130 of 1973, the Board appointed three Doctors to inspect the petitioner's college and to submit a report. The Inspectors submitted a report which was considered by the Board on the 16th September, 1973, but the Board ultimately referred the matter to the Bihar University vide its letter dated 22nd September, 1973. The decision of the Board that the petitioner's college should be recognised for a further period of three years, as stated in Annexure 3 to the writ application is not denied. It appears, however, that tentative decision could not be given effect to in view of the notification (Annexure "4").

20. For the reasons stated in the earlier portion of this judgment, while disposing of C. W. J. C. 1613 of 1973, I have that the notification contained in Annexure "4" to this writ application is illegal and without jurisdiction and is fit to be quashed. The other orders as contained in Annexures "6" to "9" being dependent on Annexure "4" are also fit to be quashed. The view expressed in Annexure "8" by the Board regarding the Jurisdiction of the Bihar University in the matter is also illegal. As the Homeopathic Board is of the view, that, but for the impugned annexures, the petitioner's college should be given recognition for a fixed period, it is fit and proper that the Homeopathic Board be directed to do so.

21. In the result this writ application succeeds and the orders contained in Annexures "4" and "6" to "9" are quashed. The order passed in Annexure "3" to the writ application referring the petitioner to the Bihar University is also quashed and Respondent No. 1 Homeopathic Board is directed by a writ of mandamus to pass formal orders giving recognition to the petitioner's college for

a period of three years.

22. Having regard to the facts and circumstances of the case, parties in both the writ applications shall bear their own costs.

K.B.N. Singh, J.

I agree.