

(1993) 03 PAT CK 0038

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9613 of 1992

Governing Body of Siddharth Mahila Mahavidyalaya and
Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-03-1993

Acts Referred:

Citation : (1993) 03 PAT CK 0038

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—The petitioners in this application initially prayed for quashing of the order, contained in memo No. 629 dated 9th September, 1992, issued by the Additional Secretary, in the Human Resources Development Department, Government, Government of Bihar, Patna, respondent No. 4, (Annexure 17). Later, by a supplementary petition dated 21-12-1992, the petitioners also prayed for quashing of the order dated 2nd December, 1992, issued by the Secretary, Human Resources Development Department (Annexure 19), whereby and whereunder the claim of the petitioners to declare Sidharsh Manila Mahavidyalaya, Boring Cannal Road, Patna (hereinafter referred to as "the College"), as minority teaching institution, has been rejected by the State Government.

2. In short, the facts of this case are that petitioner No. 2, who claims to be a religious minority organisation consisting of persons having faith in Buddhist religion, established a girls' college in the name of Lord Buddha as the College aforesaid and, further, they constituted a Governing Body for running the said College, which is petitioner No. 1. The teachers were appointed and the students were admitted in 1979-81 sessions. Admittedly, the petitioners do not have their own building of the College. Petitioner No. 1 approached the Magadh University (hereinafter referred to as "the University") for grant of affiliation on 9-7-1980. The University vide order dated 6-10-1980 appointed the Principal of B.S. College, Danapur as one of the Inspector to inspect the College and to submit

report. Accordingly, after inspection, report was submitted on 17-11-1980, a true copy whereof has been annexed as Annexure 4/A to the writ application. The University accepted the report and recommended the case of the petitioners to the State Government for its consent for grant of affiliation to the College. The State Government vide order dated 20-11-1982 gave its consent and, accordingly, the College was granted purely temporary affiliation for three years for the Sessions 1980-81 up to Intermediate level. A true copy of the said order of the State Government is Annexure 5 to the writ application. It appears that the College was also later granted affiliation up to the Bachelor Standard which vide letter contained in Annexure 8 was extended by the State Government for three sessions without any financial liability subject to conditions mentioned in the report submitted by the Inspector.

3. In the meantime, an application was made by the petitioners to the University seeking declaration that the College has the protection of the provisions contained in Articles 29 and 30 of the Constitution of India. The College again was inspected and the report was submitted on 15-4-1-83. The Deputy Director, Higher Education, Bihar, on the application of petitioner No. 1, called for a report from the University, vide letter dated 10th September, 1985. A photo copy of the said letter has been annexed as Annexure 7 to the writ application. Again on 15th January, 1986, the Deputy Director, with reference to the earlier letter dated 10-9-1985, wrote to the University calling for the report. It appears from the averments made in paragraph 15 of the writ application that the Inspector of the Colleges wrote to the Deputy Director that the Senate had rejected the claim of the petitioners about the minority character of the College whereupon the Secretary had written to the Vice-Chancellor and other members of the Senate that as the College was established by the religious minority organisation, the recommendation requires to be reconsidered. In paragraph 16 of the writ application it has been contended that the University has no jurisdiction to reject the claim of the petitioners about the minority character of the College. However, it has been stated that the said matter was again placed for reconsideration by the Senate on 30th July, 1986 when it constituted a Subcommittee to examine the matter. According to this petitioners, the said matter remained pending and no final decision was taken. The petitioners claim to have filed several applications requesting the University and the Government to accept the minority character of the petitioner's institution. Later, University extended the affiliation and also wrote to the Government recommending for grant of affiliation/extension of affiliation to the College.

4. As claimed on behalf of the petitioner, on 10-9-1991 an order was issued constituting an ad hoc committee for the College in purported exercise of the power u/s 2(1) of Chapter XIII of the University Statute to which the petitioners immediately protested and the respondent University, however, did not implement the aforesaid notification.

5. On 10-12-1991, the University vide letter 75C/G-III B informed the Secretary

of the College that as the College has not been declared to be a minority institution by the State Government nor any material has been produced in support thereof, the Governing Body constituted by the earlier notification dated 10-9-1991 for the College shall continue to function. A true copy of the order dated 10-12-1991 is annexed as Annexure 16 to the writ application. Thereafter the petitioners filed a writ application being C.W.J.C. No. 455 of 1992 in this Court which was finally disposed of on 23-3-1992, whereby the orders contained in Annexures 15 and 16 of that writ application were quashed. This Court further directed the petitioners to file a representation before the Commissioner, Human Resources Development Department which is claimed to have been filed by the petitioners before the Education Commissioner, who, according to them, after hearing the matter had taken decision to declare the College as minority institution but, admittedly, no order to that effect was ever communicated to them.

6. The petitioners have annexed a copy of the order of the State Government, contained in Additional Secretary's memo No. 629 dated 9th September, 1992, addressed to the Secretary of the University, whereby and whereunder the State Government after through enquiry and consideration of the claim decided that the College does not fulfil the requisite criteria for the purpose of affiliation and accordingly, all proposals regarding new affiliation or extension sent by the University in respect of the College has been disapproved. Further, it was directed that the admission of the current session in the College should be banned. Photo copy of the said order has been annexed as Annexure 17 to the writ application. The present writ application was initially filed for quashing of the aforesaid order.

7. Later, a petition was filed on behalf of the petitioners in which prayer was made for allowing them to add Bihar Intermediate Education Council as party respondent and, further, to direct the respondent to accept the fees and forms of the students of the College without late fine and allow the students to appear in the ensuing examination and publish the result.

8. On 21-12-1992, the petitioners filed another supplementary application in which they prayed for quashing of the order dated 2nd December, 1992 (Annexure 19) which was issued during the pendency of the writ application, whereby and whereunder their claim for recognition of the College as minority teaching institution has been rejected by the State Government.

9. A petition was also filed by way of caveat on behalf of the Teachers Association of the College to allow them to intervene as intervenors and/or to implead them as opposite party in the writ petition. In the said petition it is stated, inter alia, that the institution was being run by the fund collected by the members of the Association who donated the different amount varying from Rs. 5, 000 to Rs. 25, 000 for their appointment and they have worked for a pretty long period without any salary and/or are getting a very meagre amount. They have claimed that the said institution is, in fact, their creation. Further, it is alleged that the entire

funds of the College have been misutilised by the Secretary of the College so much so that the Secretary got the entire income spent over construction of a five storied building which initially stood in his name but subsequently transferred in the name of his wife and that the entire development of the institution has come to a complete halt because of misappropriation of the entire fund by the Secretary for his personal gain, and/or for the gain of his family members. In the said petition it has also been alleged that the said Secretary has an evil eye over the institution and has fraudulently claimed it to have been established by a minority community, namely, Buddhist religious community, which, in fact, has nothing to do with the said institution. The Secretary in connivance with some unscrupulous persons wants to control this institution as minority institution in the name of Buddhism when, in fact, this attempt of their is only to take undue advantage from the University and the State Government and mishandle the administration of the College in the garb of being a minority institution.

10. A reply to the caveat petition as also another petition claiming to be on behalf of Siddharth Mahila Mahavidyalaya Sikshak and Shikshettar Karamchari Sangh have been filed refuting the claim of the aforesaid first intervenor petitioner that the said intervenor petition is not the General Secretary of the Association, as claimed by him. Further, the entire allegations made by the first intervenor petitioner have been denied as, according to them, they are totally incorrect and baseless. However, in such a situation, I do not feel inclined to entertain such claims and counter claims of the two intervenors, as it is not possible to decide the disputed claims in the present writ application. It is, therefore, not necessary to deal with them in detail.

11. A counter affidavit has been filed on behalf of respondents No. 1, 3 and 4 and reply thereto has also been filed on behalf of the petitioners. In substance, the stand of the respondents in the counter affidavit is that the College did not fulfil any of the conditions for grant of affiliation/recognition as prescribed in the statute/resolution of the State Government although it remained in existence for a period over 12 long years and, further, that the promoters and the management of the institution were playing with the career of the students without fulfilling single condition. It has also been alleged that the petitioners have launched themselves into the present business venture with a view to make money from the guardians anxious to obtain admission of their wards in a College. Thus, it has been contended that the petitioners cannot claim for extension of affiliation as a matter of right. In reply affidavit, the petitioners have, inter alia, stated that the College has all facilities for a good proper academic atmosphere established and managed by petitioner No. 2 and has fulfilled all the relevant requirements within the last 10 to 12 years except sufficient land for which petitioner No. 2 is making effort to acquire the same.

12. Mr. Singh, learned Counsel appearing for the petitioners has submitted that the State Government has no jurisdiction to the directly consider the recognition

or affiliation and thus it has acted in violation of the provisions contained in the Act and the Statute framed thereunder. He has submitted that the University is competent to affiliate or disaffiliate Colleges, according to the Statute, subject to prior approval of the State Government. According to him, the prior approval of the State Government mentioned in Sub-section (19) of Section 4 of the Bihar State Universities Act, 1976 (hereinafter referred to as "the Act") means that if the University after completing all the formalities refers the matter to the Government for its approval, only then the State Government gets the authority to approve or to disapprove the matter regarding affiliation of an institution.

13. Learned Counsel further submitted that in this case the University has already recommended the matter in favour of the petitioners as would be evident from reading of the contents of the impugned letter (Annexure 17) itself. It is difficult to accept this submission of Mr. Singh Annexure 17 does not mention anything about the recommendation. It just mentions about the proposal sent by the University to the State Government which has been refused as the College does not fulfil the requisite conditions for affiliation. Thus, I find that the State Government has, on receipt of the proposal from the University and after fully examining and considering the matter regarding grant of extension of affiliation to the College rejected the same. I do not find any infirmity in the said order, particularly as it is an admitted position, as already stated above, that the petitioners do not have the requisite land and building. The requisite conditions are prescribed in the Statute relating to admission and exclusion of College other than those managed and maintained by the University.

14. The conditions contained in Sub-clauses (f), (g) and (h) of Clause 3 of the said Statute read as follows:

(f) that the institution owns and possesses at least 10 acres of land for the college buildings, hostels, quarters and play grounds if situated in rural area or 5 acres in urban area, in not more than two blocks provided that in case the college building ;is not ready the institution has a separate Building--Reserve Fund which is deemed to be sufficient by the Syndicate for putting up suitable buildings within such time as may be fixed by the Syndicate ; and that the institution has at its disposal a building, to be approved by the Syndicate, for holding the classes regularly and efficiently till the construction of its own buildings is complete;

(g) that the institution has built up space duly furnished and sufficient for running the lecture and tutorial classes and for housing the office. Library, 4Staff Common Room and for the Laboratory and Museum where so required in each subject in which practical course is prescribed ;

(h) there is in the buildings of institution a sufficient number of class rooms for lectures, tutorials and practicals and that the floor space and cubic space in each class room are adequate.

15. Further, it is difficult to accept the first submission made by Mr. Singh in this

regard that the State Government cannot entertain/examine the matter regarding grant of affiliation to a College directly. The Sub-section (19) of Section 4 is quite clear that unless there is an approval of the State Government, the University cannot affiliate or disaffiliate a College. Thus the final authority in this regard is the State Government and it is for the State Government to examine the claim or get the same examined through any agency for considering the matter regarding grant of affiliation. The very words "subject to prior approval" used in Sub-section (19) of Section 4 of the Act makes it clear that the final authority is the State Government before the grant affiliation by the University.

16. Admittedly, the College is being run in rented house with no adequate buildings as required according to the aforementioned conditions. However, Mr. Singh has attempted to plead discrimination as, according to him, there are constituent Colleges in the town of Patna which have no building or land and they are running in rented building besides that there are affiliated Colleges also which have no land or building and are running in rented buildings whereas the case of the petitioners has been rejected on the ground of non-fulfilment of the conditions, one of which is relating to land and building. It is difficult to entertain the aforementioned submission of the learned Counsel for the petitioners as none of the said Colleges have been made party in the present writ application and, in my opinion, it is not proper to give any finding in favour or against them in their absence. However, in the facts and circumstances stated above one thing is clear that the State Government has granted temporary affiliation to the College from time to time right from the session 1980-81 till the impugned order dated 9th September, 1992 (Annexure 17) was passed whereby and whereunder the proposal regarding new affiliation or extension sent by the University has been disapproved besides banning of the admission of the students in the current session. The Counsel for the State has not been able to point out as to under what law the Government has imposed ban on the admission of the students in the College. Thus, it is difficult to sustain that part of the order and the same is, accordingly, quashed.

17. As regards disapproval of the proposal of the University for grant of affiliation/extension, in my opinion, the same will be inequitable now at this juncture as the same would render so many persons admittedly employed in the College without any job and, further, ruin the institution which at least, admittedly, has been in existence and teaching students and getting them appeared in the University examinations for the last 1.2 years. Thus, I am of the view that the State Government should either consider the desirability of take over of the College itself or fix some reasonable time limit for the fulfilment of the conditions laid down in the statute specially in view of the fact that it is not in dispute that there are even constituent Colleges of the University in his town of Patna which have no building or land and are running in the rented building besides that the University has also granted affiliation to similar such Colleges in the town of Patna.

18. Mr. Singh appearing for the petitioners has also assailed the order contained in Annexure 19 to the supplementary petition filed on behalf of the petitioners whereby and whereunder the Government has after considering the materials and the decisions of the Supreme Court and after considering the facts and circumstances disallowed the application of the petitioners for declaration that the College is established by minority community. Learned Counsel, however, submitted that the present Secretary of the Department, who has issued the order contained in Annexure 19, had never heard the matter personally pursuant to the direction of this Court in C.W.J.C No. 455 of 1992. According to him, his predecessor in office had heard the matter and had already taken decision on the file granting recognition to the institution as a minority institution.

19. On the other hand, Mr. Rafat Alam, learned Counsel appearing for the State as well as the University submitted that no material has been produced in this Court in this regard. According to him, in any view of the matter, as the only order communicated to the petitioners is Annexure 19, the petitioners cannot base his claim on any other alleged order as a decision/order unless communicated it will be of no effect. In support of the submission Mr. Alam placed reliance on a decision of the Supreme Court in the case of Bachhittar Singh Vs. The State of Punjab, . The relevant passage of the said decision is usefully quoted here under:

It is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.

20. Learned Counsel, for the petitioners further submitted that even this Court can decide the claim of the petitioners that the College was established by a minority community and, consequently, that they have the right to establish and administer the educational institution of their choice and have the protection under Articles 29 and 30 of the Constitution of India. He relied on the decision of this Court in the case of Mr. Mushtaque Ali Khan v. Magadh University 1974 PLJR 332. In the said case the petitioners had produced sufficient materials in support of their claim having established the institution in question by the minority community and, on a consideration of the facts and circumstances and the materials on the record, this Court held that the petitioners of that case have been able to prove denominational character of Mirza Ghalib College, Gaya. But, in the present case, hardly any material has been produced by the petitioners to substantiate their claim that the Collage in question has denominational character and that the College has been established in order to conserve distinct language, culture and religion of the Buddihist. From the order contained in Annexure 19 it appears that nothing was produced before the State Government also to show that the College has been established to cater mainly to the

institutional needs and requirements of the students of Bodh community for the purposes of advancement of language, culture and religion. Further, nothing has been produced to show that the College was established by the Bodh minority community or that it is being managed by the said community.

21. It may be mentioned here that the petitioners have filed the constitution and bye-laws of Vishwa Buddha Parishad, a registered society under the Societies Registration Act as Annexure 1 to the writ application but they have not filed any resolution of the said Parishad in regard to the establishment of the College in question. Nothing has been produced before this Court to show the aims and objects discussed in the meeting of the Parishad for establishment of the College in question. The only document which has been produced by the petitioners in this regard is Annexure 2 which is the resolution of a meeting of the Organisation Committee of the College and not that of the Parishad whereby and whereunder a Governing Body of the College has been constituted with petitioner No. 2 as its Secretary, besides taking decision to make effective publicity for admission of the students in College regarding making arrangement for accommodation of classes. This by itself is not sufficient to establish/prove the denominational character of the College in question.

22. I, therefore, do not find any merit in the submission of the learned Counsel for the petitioners that this College has been established by the Bodh minority community to conserve their distinct language, culture and religion. As I have already held earlier, it is well-settled that the right to establish educational institution whether by a minority community by any other community must mean that they have right to establish real institution which will effectively serve the needs of their community and the scholars who resort to their educational institution. There is no such thing as fundamental right to recognition by the State nor any body can claim affiliation/recognition unless the institution fulfils the requisite conditions and Maintains the requisite standard. I, therefore, on the materials placed before this Court, find that the College in question cannot be held to have been established by use Bodh minority community on that it was/is being managed by them and, thus, even if the contention of Mr. Singh that the present Secretary of the department did not hear the matter himself is accepted to be correct. I do not find any reason to interfere with the order contained in Annexure 19 to the writ application. However, the petitioners, if so advised, may move the State Government placing full materials, if any, for declaration that it the institution is a minority institution. If such an application is filed, the State Government shall be at liberty to dispose of the same in accordance with

23. It appears that this Court, by order dated 21-12-92 directed the Intermediate Education Council to accept the fees and forms of the students of this College already submitted by them but the said interim order was made subject to the result of this application. Thus, in my opinion, if the fees and forms have been accepted pursuant to the said order and if the students have not yet appeared in the examination pursuant thereof, then they should be

allowed to appear and if they have already appeared, then their results should be published.

24. Accordingly, the writ application is allowed to the extent indicated above but without costs.

Shamimul Hoda, J.

25. I agree.