
(2013) 02 PAT CK 0075
In the Patna High Court
Case No : CWJC No. 15327 of 2012

Gurucharan Sah and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Bihar State Universities Act, 1976 — Section 10, 12(4), 60

Citation : (2013) 3 PLJR 566

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : Amarendra Kumar, for the Appellant; Suman Kumar Jha for the State and Mr. Hansraj for the Magadh University, for the Respondent

Final Decision : Allowed

Judgement

Mihir Kr. Jha, J.—Heard learned counsel for the parties. The prayer of the petitioner in this writ application reads as follows:--

for quashing the order bearing memo No. 560/G-IIIA dated 18.2.2012 contained in Annexure-15 alongwith the order bearing memo No. 306/G-III-A dated 13.7.2012 contained in Annexure-16 by which without any rhyme or reason the order bearing memo No. 139/G-IIIB dated 31.1.2012 passed by the respondent No. 6 Vice-Chancellor on the basis of inquiry report submitted by the inquiry team of the University after receiving complaint of financial irregularity, has been changed by the respondent No. 7 Pro-Vice-Chancellor in most - illegal, wrongful and arbitrary manner.

2. Learned counsel for the petitioner has submitted that the impugned orders passed by the Pro-Vice-Chancellor of the Magadh University (hereinafter to be referred to as "the University") is wholly without jurisdiction, inasmuch as, u/s 60 of the Bihar State Universities Act (hereinafter to be referred to as "the Act"), no such power has been vested in the Pro-Vice-Chancellor for constituting the Governing Body of an affiliated college.

3. Learned counsel for the University, on the other hand, having filed the counter affidavit, has sought to justify the issuance of the impugned order under the order of the Pro-Vice-Chancellor by taking a plea that the office of the Vice-Chancellor vide its letter dated 29.1.2013 had directed for constitution of regular Governing Body in all affiliated colleges in place of Ad hoc Committee and, therefore, the Pro-Vice-Chancellor, under the oral orders of the Vice-Chancellor, had passed the impugned order constituting the Governing Body of Manila Mahavidyalaya, Tekari, Gaya.

4. When this case was heard earlier on 12.2.2013, this Court, by passing the following order:--

List this case on 27.2.2013 in order to enable learned counsel for Magadh University to file counter affidavit wherein it must be explained as to how the Pro-Vice-Chancellor had passed two orders contained in Annexures-15 and 16 and how it was notified by the Inspector of Colleges when such power has been vested in the Vice-Chancellor in terms of Section 60 of the Bihar State Universities Act and had to be notified only by the Registrar of the University, he being the Chief Executive Officer of the University.

List this case on 27.2.2013 at the top in Admission-II list.

had directed the learned counsel for the Magadh University to file counter affidavit explaining as to how the Pro-Vice-Chancellor had passed the two impugned orders constituting the Governing Body of an affiliated college and how the same was also notified by the Inspector of the college when such power of constitution of Governing Body of an affiliated college u/s 60 of the Act has been vested only in the Vice-Chancellor of the University and the same has to be notified by the Registrar of the University who is the chief administrative officer of the University.

5. The counter affidavit, which has been filed today, in fact would expose the action taken by both the Pro-Vice-Chancellor and the Inspector of Colleges. The Pro-Vice-Chancellor has taken a plea that he had issued the impugned orders constituting the Governing Body under the oral orders of the Vice-Chancellor. There is, however, nothing on record to substantiate this oral order of the Vice-Chancellor, inasmuch as, neither the Vice-Chancellor giving such oral orders has himself supported this fact nor even the Pro-Vice-Chancellor to whom such order was given has sworn the affidavit. The counter affidavit has been sworn by the nodal officer of Magadh University, wherein, it has been stated as follows:--

4. That it is respectfully stated that due to busy schedule of the Vice-Chancellor of the University, in many colleges including Tekari Mahila Mahavidyalaya, upon oral instruction from the Vice-Chancellor, Ad hoc Committee has been constituted by the order/signature of the Pro-Vice-Chancellor of the University.

5. That it is pertinent to mention here that as far as the orders passed by the Pro-Vice-Chancellor is concerned, the same had been presented before the Vice-

Chancellor and thereafter office order bearing memo No. 468/G-IIIA dated 4.12.12 has been issued under the signature of the Vice-Chancellor.

6. That as far as notification of any memo or office order is concerned it is respectfully stated that generally any memo or office order is notified under the signature of the Registrar but due to large number of affiliated colleges spread in seven districts namely Gaya, Patna, Jehanabad, Aurangabad, Arwal, Nalanda and Nawada the same have been distributed, district-wise, among two Inspector of Colleges (I/C), for proper functioning of all the works of Colleges, For the districts Patna, Nawada and Nalanda, I/C Sc. Who has been authorized and for the districts Gaya, Jahanabad, Aurangabad and Arwal, I/C Arts has been authorized. Both the I/Cs have been authorized to notify any memo or office order in the affiliated colleges of the said districts after receiving the approval/order from the Registrar of the University.

6. In view of the aforesaid stand of the University, it would be first necessary to examine the power of the Vice-Chancellor vested in him u/s 10 of the Act. From a bare perusal of Section 10 of the Act, it would be clear that he has been vested with no power to delegate his own power vested in him either under the Act or the Statute on any other officer of the University. Section 60 of the Bihar State Universities Act specifically vest power in the Vice Chancellor to constitute the Governing Body which reads as follows:--

60(1) There shall be a governing body for the management and administration of each affiliated College other than a College owned and maintained by the State Government or a College established and administered by a minority community on the grounds of religion or language or an affiliated technical or medical college.

It shall consist of following members--

- (i) Principal of the College--Ex-Officio,
- (ii) a member elected by and from amongst the teachers of the College,
- (iii) a representative of the University nominated by the [Vice-Chancellor].
- (iv) an officer of the State Government posted in the district, being not below the rank of a Sub-Divisional Magistrate, nominated by the [Vice-Chancellor].
- (v) a member elected by such donors from amongst themselves as have donated at least twenty five thousand rupees to the College,
- (vi) one member to be nominated by the [Vice-Chancellor], who is a member of the Parliament or the State Legislature and mainly resides in the district of the area in which the College is situated, and
- (vii) one member co-opted by the Governing body from amongst such educationalist or persons residing in the district where the College is situated as are reputed for their academic interest.

(2) The terms of office of the members of the Governing Body, their powers and functions shall be such as are prescribed by the Statutes.

(3) Any act or proceedings of the Governing Body of affiliated Colleges shall not be invalid merely because of any vacancy or vacancies in its membership.

(4) The [Vice-Chancellor], shall constitute an ad hoc committee for the management of the college so long as Governing Body is not constituted in accordance with the provisions contained in sub-section (1).

(5) The Governing Body/Managing Committee for the management and administration of a College owned and maintained by the Government, or established and administered by a minority community, on the ground of religion or language and declared, from time to time, as such by the State Government according to yardstick laid down by it, or of any affiliated technical or medical college, shall be constituted in accordance with the provisions prescribed in the Statutes.

(Underlining for emphasis)

7. From the underlined portion, it would be clear that it is the Vice-Chancellor who has been given power to constitute the regular Governing Body including naming of the members in such Governing Body of the affiliated colleges. Thus, when the Vice-Chancellor u/s 10 of the Act or even under the Statute has been given no power to delegate his statutory power, the plea taken in the counter affidavit that on account of busy schedule, the Vice Chancellor of the University is finding it difficult to constitute Governing Body or Ad hoc Committee, would only reflect the incompetence on the part of the Vice-Chancellor.

8. The exercise of statutory power has to be made by the authority in whom such power has been vested as was held in the case of Girja Shankar Shukla Vs. Sub-Divisional Officer, Harda and Others, . The aforesaid view has also been subsequently affirmed by the Apex Court in the case of Ramakant Shripad Sinai Advalpalkar Vs. Union of India and others, .

9. The reliance placed by learned counsel for the petitioner on the provision of Section 12(4) of the Act reading as follows:--

12. Pro-Vice-Chancellor.--(A) Subject to the provisions of this Act, the Pro-Vice-Chancellor shall exercise such powers and perform such duties as may be prescribed or as may be conferred or imposed on him, from time to time, by the Vice-Chancellor.

is also wholly misplaced because Section 60 of the Act itself does not permit the Vice-Chancellor to delegate his power of constituting the Governing Body in the Pro Vice-Chancellor. The use of expression "such duties" in Section 12(4) of the Act cannot mean that the power which has been exclusively vested in the Vice-Chancellor can also be delegated by him.

10. Be that as it may, in the present case, even such delegation of power by the

Vice-Chancellor is not on record nor even the Vice-Chancellor delegating such power to the Pro-Vice-Chancellor has himself sworn the affidavit as with regard to his oral orders. The counter affidavit in fact has been sworn by the nodal officer and not even by the Pro-Vice-Chancellor who is said to have been given oral order by the Vice-Chancellor. In that view of the matter, this Court cannot accept the plea of delegation of power by the Vice-Chancellor to the Pro-Vice-Chancellor for constituting the Governing Body.

11. From perusal of the impugned order as contained in Annexure-15, it would however be clear that it was under the order of the Pro-Vice-Chancellor that the order passed by the Vice-Chancellor on 31.1.2012 as with regard to constitution of the Ad hoc Committee was modified. The relevant portion of the order of the Vice-Chancellor dated 31.1.2012 contained in Annexure-14 reading as follows:--

would go to show that the Ad hoc Committee was constituted for 18 of the affiliated colleges of the Magadh University including the college in question under the order of the Vice-Chancellor and the same was notified under the signature of the Registrar of the University. This order dated 31.1.2012 was modified by the Pro-Vice-Chancellor on 18.2.2012 relevant portion whereof reads as follows:--

12. Surprisingly, this notification was issued under the orders of the Inspector of Colleges, Art and Commerce and again on 13.7.2012, it was under the specific order of the Pro-Vice-Chancellor of the University that one of the members of the Ad hoc Committee was substituted. Thus, the manner in which the two impugned orders dated 18.2.2012 (Annexure-15) and 13.7.2012 (Annexure-16) have been issued under the specific orders of the Pro-Vice-Chancellor alone and has been notified by the Inspector of Colleges will leave nothing for speculation that the provision of Section 60(4) of the Act was clearly flouted.

13. The alleged subsequent ratification of the action taken by the Pro-Vice-Chancellor by an office order No. 468 dated 4.12.2012 by the Vice-Chancellor would also be of no avail because an order without jurisdiction cannot be subsequently ratified giving legitimacy to an illegal order. Moreover, the order dated 4.12.2012 has also not been brought on record which apparently has been passed during pendency of this writ application which was filed on 23.8.2012.

14. That would bring this Court to yet another question as to whether the Inspector of Colleges can exercise the power of Registrar of the University. It has to be kept in mind that u/s 7 of the Act, the officer of the University has been prescribed and Inspector of Colleges is also one of the officers alike the Registrar. The Registrar of the University, however, has been vested with specific powers and function u/s 15 of the Act and Section 15(2) in this regard reads as follows:--

15(2) The Registrar shall be whole time officer of the University and he shall act as Secretary to the Senate, the Syndicate and the Academic Council and shall:--

(a) be the custodian of the records, the common seal and such other properties

of the University as the Vice-Chancellor and the Syndicate shall commit to his charge;

(b) conduct the official correspondence of the University, and shall maintain the proper investment of the University;

(c) perform such other duties as may be specified in the Statutes or prescribed by the Ordinance or the Regulation or as may be required from time to time by the Vice-Chancellor, Pro-Vice-Chancellor or the Syndicate;

(d) represent the University in suits or proceedings by or against the University, sign powers of attorney and verify pleadings or depute his representative for the purpose;

(e) render assistance to the Vice-Chancellor and Pro-Vice-Chancellor in discharge of their duties in regard to the conduct of the examination and the publication of the results;

(f) look after the proper functioning of the institutions affiliated to the other than the Constituent Colleges and the Departments of University and shall report to the Vice-Chancellor;

(g) have power to take disciplinary action against the employees belonging to the Ministerial staff and to suspend them pending inquiry to administer warning to them or to impose on them the penalty of censure or the withholding of increment:

Provided that no such penalty shall be imposed unless the person concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken against him.

15. As would be evident from reading of the provision of Section 15 of the Act, it is the Registrar who is the principal administrative officer of the University and has to perform the duties specified in Section 15 of the Act. No such power has been vested in the Inspector of Colleges nor does the Vice-Chancellor u/s 10 of the Act get any power to distribute the work of the Registrar. In that view of the matter, the plea taken by the respondents in the counter affidavit that generally all the office orders or notification is issued under the signature of Registrar but due to large number of affiliated colleges spread in the seven districts, the work of Registrar has been distributed district-wise among two Inspectors of Colleges again is in violation of the spirit of Section 10 read with Section 15 of the Act. The Vice-Chancellor of the University cannot whittle down the power of the Registrar and, therefore, though there may be officers who may assist the Registrar in functioning but the statutory duty of the post of Registrar has to be exercised by the Registrar alone.

16. The impugned orders emanating from unholy combination of the Pro-Vice-Chancellor of the Magadh University with the Inspector of Colleges both of whom have been given no power u/s 60 of the Act in any event cannot be allowed to

stand and consequently, this Court will have no difficulty in quashing both the orders contained in Annexure-15 & 16 respectively.

17. In view of the fact that the Ad hoc Committee constituted by the Pro-Vice-Chancellor and notified by the Inspector of Colleges has been quashed by this Court, the Ad hoc Committee constituted by the Vice-Chancellor on 31.1.2012 shall revive and into existence. In the counter affidavit, in paragraph Nos. 7 & 8 which has in fact been admitted by the deponent of the counter affidavit that the Vice-Chancellor of the University has already given a direction for constitution of regular Governing Body vide his order dated 29.1.2013 as contained in Annexure-R/1 and in pursuance of the said direction of the Vice-Chancellor for constitution of regular Governing Body is under process. To that extent, it would be relevant to quote paragraph No. 7 & 8 of the counter affidavit, which reads as follows:--

7. That the dispute about the constitution of regular Governing Body has been there in the present college i.e. Tekari Manila Mahavidyalaya for a long time. The Governor Secretariat has issued letter No. BSU-01-2013-64 dated 29.1.2013 vide which order has been passed to constitute regular GB in all affiliated colleges in place of Ad hoc Committee.

8. That in pursuance of the said letter the approval for starting the process of constituting regular GB in affiliated colleges is being sought and is under process. The process of constituting regular GB is under process.

18. In view of the above, it is on record that the Ad hoc Committee was constituted by the Vice-Chancellor of the University on 31.1.2012 but, such Ad hoc Committee cannot be allowed to continue in an indefinite period. This Court, therefore, would direct the Vice-Chancellor of the Magadh University to constitute regular Governing Body in terms of Section 60 of the Act within a period of two months from the date of receipt/production of a copy of this order. Till such Governing Body is constituted, it is the Ad hoc Committee constituted under the earlier order of the Vice-Chancellor dated 31.1.2012 Annexure-14 shall remain in office for doing day-to-day work. The said Ad hoc Committee shall not take any policy decision and all its decision taken shall be reviewed by the properly constituted Governing Body under the order of the Vice-Chancellor.

19. In the result this writ application is allowed to the extent indicated above. Let a copy of this order be sent to the Principal Secretary to the learned Chancellor of the Universities, Raj Bhawan, Patna for doing the needful as with regard to exercise of statutory power by the Vice-Chancellor, Pro-Vice-Chancellor, Registrar and other officials named u/s 7 of the Bihar State Universities Act and Patna University Act.