
(2005) 02 PAT CK 0021
In the Patna High Court
Case No : CWJC No. 5422 of 2002

Indrajeet Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-02-2005

Acts Referred:

Citation : (2005) 2 PLJR 109

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : L.P.K. Rajgrihor, Rajendra Pd. Singh, Jay Shankar, Niranjana Kumar and Rajeev Kumar Singh, Ravi Ranjan and Ratan Kumar, Shivesh Chandra Misra, for the Appellant; S.K. Ghosh and Kumar Priya Ranjan, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—Heard Learned Counsel for the petitioner, Learned Counsel for the State, Learned Counsel for C.C.I.M. Learned Counsel for the University and Learned Counsel representing the Governing Body of Ayurved Medical College, Gaya. Petitioner is employee of Ayurved Medical College, Gaya which was established in the year 1972 and affiliated to Kameshwar Singh Sanskrit University, Darbhanga since 1974. Since 1981 it is running in its own building at Ghugharitar, Gaya.

2. The prayer of the petitioner in this writ petition was for a direction to the Governing Body of the College to pay the dues of salary with interest to the petitioner and all other teaching and non-teaching staff of the College and also to pay current salary to them. The other prayer was to direct the State Government to grant permission to the College for taking admission of students in B.A.M.S. course since 1998-99 for which the College has necessary permission from Central Council of Indian Medicine (hereinafter referred to as C.C.I.M.) the apex body under Indian Medicine Central Council Act, 1970.

3. The matter has been heard in detail on several dates at the stage of admission

itself. Considering the undisputed fact that the College is in existence since long, it is affiliated to the University in question in accordance with law and till the Sessions 1997-98 it has imparted teaching to different batches of B.A.M.S. students, this Court found the institution to be a genuine institution which should not be permitted to die because of extraneous reasons. this Court also found that the Governing Body of the College was being constituted by the State of Bihar from time to time and its President and Secretary used to be the Commissioner and Deputy Development Commissioner, Gaya respectively. As the letter of the President (Commissioner) Gaya Division contained in annexure-24 discloses, the College has sufficient land and building in urban area of Gaya town. In view of such findings this Court fails to understand the reason as to why the employees were not being paid their salary in due time. Initially an impression was created that since the President and the Secretary were high officials such as Commissioner and the Deputy Development Commissioner they have no time and were not looking after the interest of the College properly. Under this impression this Court asked the State Government either to bear the expenses of running the College or to constitute a proper governing body of teachers and other responsible citizens who may manage the college effectively and take interest in its affairs.

4. In order to avoid taking the responsibility of salary of the staff and other expenses the State of Bihar taking assistance from the observation of this Court decided to change the governing body itself. Hence during the pendency of this writ petition a fresh governing body was constituted of private citizens. At a later stage the petitioner expressed dissatisfaction with the subsequent governing body and a genuine doubt has arisen as to whether the property and building of the college will be saved in the hands of private management or not. On proper consideration of history of this institution and the stand of the parties who appeared to have no difference on this issue, this Court has no difficulty in directing the State Government to restore the earlier governing body which was running the institution from before with the Commissioner as President and Deputy Development Commissioner as its Secretary.

5. The salary of the petitioner or other staff of the Ayurved Medical College and Hospital, Gaya imparting education in indigenous medicines only cannot be paid and even other expenses of the College cannot be met effectively unless the college is permitted to take admission of students. The request of the Commissioner Gaya Division, Gaya as appears from annexure:24 dated 7.9.01 for approval of the State Government in the light of permission by C.C.I.M. who was not being paid any heed by the State Government resulting into no admission by the College since the Sessions 1998-99 although admittedly the C.C.I.M. had granted permission as well as approval. During the pendency of the writ petition the State Government took a decision to reject the grant of permission to the college for taking admission on the ground that the college, on inspection by persons deputed by the State Government, was found to be lacking in required infrastructure. Such decision of the State Government dated 27.11.04

has been annexed as annexure-26 with I.A. No. 131 of 2005 and has been challenged by the petitioner.

6. Learned Counsel for the petitioner had relied upon judgment of this Court reported in:

(i) Dr. Sudhir Kumar Singh and Others Vs. State of Bihar and Others

(ii) Niteshwar Prasad Singh Vs. The State of Bihar others, and

(iii) Judgment of the Supreme Court dated 12th December, 2002 in Civil Appeal No. 2194 of 1996 (Mata Gujri Memorial Medical College vs. The State of Bihar & Ors.) [2004(1) PLJR (SC) 53] to submit that in similar matters this Court has held that the Apex Technical Statutory Authority like C.C.I.M. must have primacy in the matter of grant of permission to take admission and particularly in the matter as to whether the institution has the necessary infrastructure for imparting the necessary training or not. It has further been submitted on behalf of the petitioner that under the Bihar Indigenous Medical Educational Institution (Regulation and Control) Act, 1981, (Bihar Act 23 of 1982) or under the Indian Medicine Central Council Act, 1970, there is no statutory provision giving primacy to the State Government over the C.C.I.M. and hence in accordance with law laid down in the judgments cited above the permission of the C.C.I.M. allowing admission of students by the college for different sessions must be honoured by the University as well as the State Government and in such matter the State Government cannot be permitted to assume a supervisory role nor the C.C.I.M. can delegate such supervisory power in favour of the State Government. Learned Counsel appearing for the State has relied upon some letters of C.C.I.M. annexed with counter affidavit of C.C.I.M. and has submitted that the State Government can have a role in this matter alongwith C.C.I.M. as per latter's wisdom.

7. The controversy which falls for determination is whether after finding the institution to be fit for taking admission even for the sessions 2004-2005 after due inspection by persons deputed by the C.C.I.M. the College can take admission as per permission of the C.C.I.M. only if the State Government grants permission for the same? The condition in respect of affiliation by the University is not an issue in this case because admittedly the college has necessary affiliation and there is no objection on that count. On careful consideration of different statutory provisions and the law laid down in the judgments cited above this Court finds substance in the submission advanced on behalf of petitioner that C.C.I.M. must have last word in the matter in issue and it cannot delegate its power as the final and highest apex body to the State Government. If the State Government, in any particular case has any objection it must forward its objection to C.C.I.M. for consideration as per law and such objection in appropriate cases can be made effective only if C.C.I.M. agrees with the views of the State Government and issues its own directive in the matter.

8. In this case the letters issued by C.C.I.M. granting permission to the College in question to take admission of different batches created an erroneous impression

in the State Government and on that account the State Government got the college inspected by its own team and passed the impugned order dated 22.11.04 contained in annexure-26. this Court finds, that C.C.I.M. itself erred in allowing such a role to the State Government and in any case the State Government had no jurisdiction to refuse the permission for admission once it had been granted by the C.C.I.M. Hence the writ petition is allowed and the impugned order contained in annexure-26 dated 27.11.04 is hereby quashed. The I.A. is, thus, allowed. As a result, for the Sessions 2004-2005, as per letter of C.C.I.M. dated 10.10.04 (Annexure-C) to the supplementary counter affidavit of respondents 4, 5, 6 and 9, the College will be free to take admission of 40 students for the Sessions 2004-05 without seeking permission of the State Government although such permission is mentioned as a condition in Annexure-C. this Court is not inclined to pass any order in respect of admission of earlier batches for which C.C.I.M. had given permission by different letters. If it is technically feasible and if admission for earlier batches is expressly permitted by C.C.I.M. on the request of the College then only the college may take admission for earlier batches on the directives of the C.C.I.M.

9. The only source of money available to the College for its development and for removing the various short-comings pointed out earlier by C.C.I.M. is by admission of students as per permission of the C.C.I.M. Since the admissions have remained disrupted since the Sessions 1998-99, the college is admittedly in bad financial shape, not even in a position to pay arrears of salary to its teaching and non-teaching staff. In such a situation it is difficult to visualise how this institution can sustain itself and take the much required steps to remove the short-comings pointed out by the C.C.I.M. unless some funds or grant is made available to the institution atleast for one time. As recorded earlier this Court has found this institution to be an old institution having its own land and building and since there is always dearth of good institutions of this nature, this Court is of considered view that the State Government should provide one time grant of Rs.5,00,000/- to this institution which may to some extent compensate the institution for the loss that it must have suffered on account of stoppage of admission since the Sessions 1998-99 due to refusal of permission by the State Government. Such grant shall be used by the Governing Body of the College solely for removing the short-comings in the college as pointed out by the C.C.I.M. and only 20 per cent of such grant may be utilised for other purpose like payment of salary etc. The aforesaid amount of Rs.5,00,000/- should be made available to the reconstituted governing body of the college as per direction in this judgment within two months.

10. In view of aforesaid direction no separate order is required for awarding costs. The writ petition is allowed to the aforesaid extent. Let a copy of this order be handed over to learned A.A.G. 2 for communication and compliance.