
(1994) 02 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Cases No's. 4394 and 5384-5416 of 1990

Jeetendra Narayan Pandit and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-02-1994

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10A

Bihar State Engineering and Pharmacy Education Act, 1982 — Section 6

Citation : AIR 1996 Patna 41

Hon'ble Judges : Shashank Kumar Singh, J;S.B. Sinha, J

Bench : Division Bench

Advocate : Binod Bihari Singh, Tarakant Jha and Chandramouli Kumar Prasad, Chitaranjan Sinha, Subodh Kumar, Dilip Kumar Singh, Sujit Kumar Sinha, Bipin Kumar Saib, for the Appellant; Narendra Kishore Sinha, C.P., Punam Prasad, J.C. to G.P., Chandrasekhar, G.P.I, Usha Pandey and Hira Saib, for the Respondent

Judgement

1. All these writ applications involving common questions of fact with the consent of the parties were heard together and are being disposed of by this common judgment.

2. C.W.J.C, No, 4394 of 1990 has been filed by Bihar College of Pharmacy wherein a prayer has been made for issuance of an appropriate writ for quashing the Order dated 11-7-1990 passed by respondent No. 2 whereby and whereunder the Vice-Chancellor, Magadh University was informed that the State Government decided to cancel the recognition granted to the said institution as also for quashing the communication contained in letter No. 1985 dated 11-7-1990 by which the District Magistrate, Patna, directed closure of the said institution, which are contained in Annexures-11 and 12 to the writ application.

3. C.W.J.C. No. 5384 of 1990 has been filed by Patliputra College of Pharmacy praying therein for issuance of an appropriate writ calling upon the respondents to produce the Government Order by which recognition of the said institution has been cancelled as was communicated to the petitioner by letters dated

10-8-1990 and 16-8-1990 which are contained in Annexures-1 and 1/A respectively to the writ application.

4. C.W.J.C. No. 5416 of 1990 has been filed by the teaching and non-teaching staff of Bihar College of Pharmacy.

In the said writ application a prayer has been made for issuance of a writ of or in the nature of mandamus directing the respondent-State to carry out its legal obligations as contemplated under Bihar Engineering and Pharmacy Educational Institution (Regulation and Control) Act, 1982 (hereinafter to be referred to as "the Act").

5. Facts relating to C.W.J.C. No. 4394 of 1990:--

Bihar College of Pharmacy is an institution purported to have been established for imparting education in Pharmacy to the students so as to enable them to appear in the examination of Degree in Pharmacy conducted by the Magadh University. The petitioner filed an application for grant of affiliation before the Magadh University.

6. It is stated that on 5-10-1985 the Eastern Regional Committee of All India Council for Technical Education inspected the said College whereafter a report was submitted on 25-10-1985 which is contained in Annexure-14 to the writ application.

7. The State Government recognised the said institution by an Order dated 20-12-1985 which is contained in Annexure-3 to the writ application.

8. On 26-2-1986 the Ail India Council for Technical Education affirmed the report of Eastern Regional Committee which is contained in Annexure-4 to the writ application.

However, on 15-9-1989 a notice to show cause was issued by the State of Bihar directing the petitioner to show cause as to why the recognition granted to it shall not be cancelled purported to be on the ground that it violated the terms and conditions of recognition. The said show cause is contained in Annexure-7 to the writ application.

9. The petitioner submitted reply to the show cause on 19-8-1989 whereafter the impugned Order dated 11-7-1990 was passed,

10. Facts relating to C.W.J.C. No. 5384 of 1990:--

The institution was established in the year 1987. On 27-12-1987 an application for recognition of the institution was filed before the State Government which is contained in Annexure-2 to the writ application and pursuant thereto on the next day i.e. on 28-12-1987 the Minister for Science and Technology inspected the College.

The State Government constituted a committee on 30-9-1989 for making inspection as also for submitting a report to the State Government with regard to

the matter on grant of recognition to the said institution and pursuant thereto a report was submitted by the said Committee on 7-10-1989 which is contained in Annexure-4 to the writ application.

11. The Chairman of the institution, thereafter, filed an application before the Magadh University for grant of affiliation and pursuant thereto on 8-1-1990 the authorities of the said University inspected the said College and the institution was granted affiliation by the University on 8-1-1990 which is contained in Annexure-5 to the writ application.

12. On 4-12-1989 the Secretary of Science and Technology of the State Government referred the matter to the All India Council for Technical Education for grant of recognition which is contained in Annexure-6 to the writ application.

13. However, on 10-8-1990 the State of Bihar withdraw the recognition granted by the Magadh University. The said Order is contained in Annexure-A/1 to the counter-affidavit.

14. It is stated that, however, no Order has yet been passed by the All India Council for Technical Education in the said matters.

15. Mr. Tara Kant Jha, learned Senior Council appearing on behalf of the petitioner in C.W.J.C. No. 4394 of 1990 and Mr. Dilip Kumar Singh, learned counsel appearing on behalf of the petitioner in C.W.J.C. No. 5384 of 1990 raised a short question in support of these applications.

The learned counsel submitted that impugned orders have been passed by the State of Bihar without granting an opportunity of hearing to them and, thus, the minimal requirement of principles of natural justice has been violated.

It was further submitted that in any event the matter relating to grant of recognition now being within the domain of the Central Government and Central Council, the impugned orders must be held to be wholly illegal and without jurisdiction.

16. An intervention application has been filed in C.W.J.C. No. 4394 of 1990 by the students of the said institution. The intervenors supported the case of the petitioner and submitted that the students of the said institution should be permitted to appear at the examination which is to be conducted by the Magadh University.

17. The question raised in these applications is no longer *res Integra*.

18. In *Dr. Nityanand Prasad Gupta v. State of Bihar*, reported in 1993 (2) PUR 22, a Division Bench of this Court having considered the provisions of All India Council for Technical Education Act, 1987 (hereinafter to be referred to as "the Central Act") which came into force on 28-3-1988 and the Bihar State Engineering and Pharmacy Education Act, 1982 (hereinafter to be referred to as "the Bihar Act of 1982") which came into force with effect from 7-8-1982, *inter alia* held that the State Government had no jurisdiction to grant recognition in

contravention to the provision of Clause II of Section 6 of the Bihar Act of 1982.

19. This Court again in Syed Welayat Hussain and Others etc. Vs. State of Bihar and Others , while dealing with the amendment in the Indian Medical Council Act inserting Section 10A, 10B and 10C by reason of Indian Medical Council (Amendment) Ordinance, 1993, held that the power to grant recognition in such matters lies with the Central Government and Central Council and unless such recognitions are granted, the students of the institution cannot claim any right to get their results published.

20. The decision of Syed Welayat Hussain (supra) was considered in Board of Directors of the The Board of Directors of the Sarjug Dental College, Darbhanga Vs. The State of Bihar and others, wherein it was held as follows :--

"Unless the Central Government grants permission to the University as required u/s 10A(b) of the Central Act, for conducting the courses of studies in question and it is authorised to award recognised dental qualification, there cannot be any occasion for the Central Government for granting permission to the institution like the present one to have its permission for imparting courses and training in dentistry."

21. Yet, another Division Bench of this Court in Dr. S.M. Naqui Imam, Dental College and Hospital Vs. Dental Council of India and Others again considered the decision of Syed Welayat Hussain (supra) while considering the provision of Dentist Act, 1948 and held as follows:-

"Section 10C clearly embraces within its fold all institutions established before the commencement of the said Act. If the provisions are intended to apply to even existing institution the question of recognition of the institution in question has now to abide by decision of the Central Government in accordance with the provisions contained in Section IOA

The entire argument of the counsel for the parties proceeded on the premise that the State Government has to consider the matter first and only after it accords its permission or no objection, the Dental Council comes in the picture."

The aforementioned submission was negated by the Court.

22. In view of the aforementioned authoritative pronouncements there cannot be any doubt that recognition has to be granted in terms of the provision of Central Act and the State Government has a limited role to play in that matter under the Bihar Act of 1982.

23. As admittedly, no recognition of the institutions in question has been granted in terms of the Central Act, in our opinion, the orders passed by the State Government granting recognition and/or cancelling and/withdrawing the said Order of recognition are of no consequence.

24. For the reasons aforementioned, no relief can be granted to the petitioners in these two applications.

25. However, we may observe that at least in C.W.J.C. No. 5384 of 1990, the Secretary of State of Bihar has already referred the matter to the Central Government but" no Order has yet been passed thereupon by the Central Council, The Central Government as also the Central Council, in our opinion, being State should act fairly and dispose of the matter at an early date.

26. As noticed hereinbefore in C.W.J.C. No. 5384 of 1990 an inspection has been made by the Eastern Regional Committee of the Central Council and, although, the report submitted by it was approved, no final Order granting recognition to the said institution has yet been passed.

27. In this situation, we may observe that the Central Government and the Central Council should perform their statutory duties in terms of the provisions of the Central Act at an early date and preferably within a period of three months from the date of receipt/production of a copy of this order. C.W.J.C. Nos. 4394 of 1990 and 5384 of 1990 are accordingly disposed of.

28. So far as C.W.J.C. No. 5384 of 1990 is concerned, the relief prayed for therein cannot be granted to the petitioner until and unless the institution itself is recognised by the Central Government and in that view of the matter, the question of any duty being performed by the State of Bihar in terms of the provision of the said Act does not arise at this stage. This application is accordingly dismissed.

However, there will be no Order as to costs in all the three writ applications.