

(2003) 01 PAT CK 0019
In the Patna High Court
Case No : L.P.A. No. 622 of 2002

Magadh University

APPELLANT

Vs

Sarang Kumar Maghia and Others

RESPONDENT

Date of Decision : 31-01-2003

Acts Referred:

Bihar State Universities Act, 1976 — Section 21, 4
Teachers Education Act, 1993 — Section 14, 14(1), 15, 16

Citation : (2003) 1 PLJR 726

Hon'ble Judges : R.S. Garg, J; Nagendra Rai, J

Bench : Division Bench

Advocate : M.M.R. Sinha, Suresh Pd. Sinha and Nagendra Upadhyay, for the Appellant; Pursotom Kumar Jha, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.
2. The Appellant University has challenged the order dated 2.5.2002 passed by the learned single Judge by which the application for modification of the order dated 14.3.2002 passed in C.W.J.C. No. 3785 of 2000, whereby the learned single Judge has directed the University to accept fees and forms of the students of Swami Dayanand Arya (B. Ed.) Teachers Training College, Bikram, Patna (hereinafter referred to as the "College") for the Sessions 1992-93 to 1994-95 and to permit them to appear in the B. Ed. Examination scheduled to commence from 20.4.2002 has been rejected.
3. At the time of hearing of the appeal, learned Counsel appearing for the Appellant University sought permission of the Court to challenge the order dated 14.3.2002 also, which is already appended with the memo of appeal. We allowed the prayer. The court has also granted permission to the counsel for the Appellant to add the interveners and the State of Bihar as party Respondents.
4. The case has a chequered history and to appreciate the points involved in the

case, same has to be stated in the beginning. The aforesaid College claims its establishment in the year 1985. It filed an application for permission to start the institution which is loosely known as recognition under the provisions of Bihar Arajkiya Sharirik Prashikshan Mahavidyalaya Tatha Arajkiya Shikshak Prashikshan Mahavidyalaya Awam Arajkiya Prathmik Shikshak Shiksha Mahavidyalaya (Niyantaran Awam Viniyaman) Adhiniyam, 1982 (Bihar Adhiniyam Sankhya 21, 1982) (hereinafter referred to as "Act of 82"). The said College was not granted permission for establishment by the State Government. Then the College came to this Court in C.W.J.C. No. 4031 of 1991 and this Court by order dated 22.11.1991 directed the State Government to consider the matter. The concerned authority by order dated 29.9.1993 rejected the said prayer. Then again the said College came to this Court in C.W.J.C. No. 4720 of 1994 and the said writ application was disposed of on 19.9.1994 directing the concerned authority of the State Government to consider the matter and thereafter the permission for establishment was granted by the order of the State Government dated 16.12.1994 issued under the signature of Additional Secretary to the Government, which has been annexed as Annexure-5 to the writ application.

5. The students of the College were not allowed to appear in the examination and again the College filed C.W.J.C. No. 10734 of 1995 for a direction to the University to allow the students to appear at the examination of B. Ed. after accepting fees and forms. The said writ application was disposed of by the learned single Judge by order dated 20th May, 1996 and the direction was issued to accept fees and forms and to allow the students of the College to appear at the examination.

6. The said order was challenged in L.P.A. No. 717 of 1996 and during the course of hearing of the appeal, the Division Bench of this Court by order dated 9th August, 1996 deputed an officer of this Court to inspect the institute and report whether a genuine institution exists or not. After inspection on 10th August, 1996, report was submitted to this Court. According to the report, the institution was a fake one. Thereafter, the aforesaid L.P.A. was taken up for final hearing and that was allowed by order dated 29.1.1997 and the order passed by the learned single Judge was set aside. While allowing the said appeal, the Court held as follows:

(i) The letter dated 16.12.1994 whereby the State Government granted recognition/affiliation to the College was not recognition but it was only permission to start institution under the aforesaid Act of 82.

(ii) The College was never granted affiliation by the Magadh University and the (sic) was from to be fake one.

(iii) As the College is not affiliated, its students cannot be allowed to appear from Magadh University.

7. In paragraphs 21 and 22 of the judgment, this Court observed that the institution has no necessary infrastructure and it is ill-housed, ill-started and ill-

acquired institution.

8. It appears that in the meantime the matter with regard to affiliation was taken up by the Appellant University and the Inspector of the Colleges of the Magadh University informed the Secretary of the College by letter dated 12.2.1999 that the Academic Council and Syndicate of the University in its meeting held on 31.1.1999 and 1.2.1999 has resolved to grant affiliation to the College for Sessions 1992-93 to 1996-97. The Registrar of the University informed the Assistant Registrar by letter dated 18.2.1999 that 150 seats have been allotted to the College for making registration of the course of Bachelor of Education for the Sessions 1992-93 to 1996-97. The Registrar also informed the Additional Controller of Examination by letter dated 18.2.1999 to conduct the examination of B. Ed. course with regard to the students of the College. Copies of the said orders have been annexed as Annexure-6, 7 and 8 to the writ application.

9. In the year 1993 the Central Government enacted the National Council for Teacher Education Act, 1993 (hereinafter referred to as the "Central Act") which admittedly came into force on 1st July, 1995. Section 14 of the Central Act speaks of recognition of institutions offering course or training in teacher education and it provides that every institution offering or intending to offer a course or training in teacher education on or after the appointed day may apply for recognition of the institution before the Regional Committee. Proviso to Section 14(1) provides that an institution which are already offering a course or training in teacher education immediately before the appointed day shall be entitled to continue such course of training for a period of six months if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee. The said section further provides that if recognition has been refused then the institution shall discontinue the course or training in teachers education from the end of the Academic Sessions next following the date of receipt of the order refusing recognition and the examining body will grant affiliation to the institution only where recognition has been granted and cancel the affiliation of the institution where recognition has not been granted.

10. Section 16 of the Central Act provides that no examining body shall on or after the appointed day grant affiliation. whether provisional or otherwise, to any institution or hold examination, whether provisional or otherwise, for a course or training conducted by a recognised institution, unless the institution concerned has obtained recognition from the Regional Committee concerned u/s 14 or permission for a course or training u/s 15.

11. Thus, according to the provisions contained in Section 14 of the Central Act, even the existing institutions offering course of teachers training were required to apply for recognition but they were allowed to continue their course till the matter of recognition is decided, but once the recognition matter is finally decided and recognition has been refused, then the affiliation if already granted has to do cancelled, It further provides that after coming into force of the Act no

examining body either can grant affiliation or hold examination unless the institution has been recognised u/s 14 and permission has been granted for a course or training u/s 15 of the Central Act.

12. The power to grant affiliation is vested in the University under the provisions of Bihar State Universities Act (hereinafter referred to as the "Act"). Section 4 of the Act contains powers and purposes of the University and Sub-section (19) empowers the University to affiliate or disaffiliate Colleges subject to prior approval of the State Government. The Senate has been authorised u/s 21 of the Act to grant affiliation to a College subject to prior approval of the State Government. Thus, under the Bihar State Universities Act, it is the Senate which is a competent body to grant affiliation to the Colleges and that affiliation is subject to prior approval of the State Government.

13. In view of the provisions of Section 16 of the Central Act, University neither can grant affiliation nor hold examination of the training colleges covered by the Central Act unless recognition has been granted under the provisions of the said Act.

14. In view of the Division Bench judgment of this Court, the letter dated 16.12.1994 is only a permission to open the institution. Prior to coming into force the Central Act, no affiliation has been granted to the College by the University. When no affiliation have been granted prior to coming into force of the Central Act, the University neither can grant affiliation nor can allow the students of unaffiliated college to appear at the examination after coming into force of the Central Act, unless the recognition is granted, as mentioned above. Admittedly, no recognition has been granted to the College and in that view of the matter, the University cannot grant affiliation to the College. The three letters, which have been heavily relied upon by the learned Counsel appearing for the Respondents-students, who have filed writ application in representative capacity, out of which the matter arises, only indicate that the Academic Council and Syndicate of the University has granted affiliation to the College, but as stated above, the competent authority to grant affiliation is the Senate and admittedly the Senate has not granted affiliation. This apart, after coming into force of the Central Act the University has no power, as stated above, to grant affiliation unless the institution is recognised under the Central Act.

15. Learned Counsel appearing for the Respondents submitted that the appeal is not maintainable as the order is a consent order.

16. We are unable to accept this submission. From perusal of the impugned order it appears that the University never consented to allow the students of the College to appear at the examination. On the other hand, direction was issued to allow the students to appear at the examination, then at subsequent stage the University agreed to allow them to appear at the examination. Even otherwise also, concession contrary to the statutory provisions cannot be taken to be binding on the parties.

17. Thus, considering the question from any angle, the fact remains that the College in question has neither affiliation prior to 1st July, 1995 nor it has recognition or affiliation after July, 1995. In such a situation, this Court in exercise of writ jurisdiction cannot command the University to violate or disobey the law and allow the students of the College to appear at the examination. Writ jurisdiction is primarily meant for exercising power for advancement of justice, fairness, honesty and not to do illegality or to show misplaced sympathy.

18. In the result, this appeal is allowed and the orders passed by the learned single Judge dated 14.3.2002 and 2.5.2002 are set aside.