

(2000) 12 PAT CK 0048

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No"s. 2583 and 6633 of 2000

Miss Rafat Batul and Another

APPELLANT

Vs

The Lalit Narayan Mithila University and Others

RESPONDENT

Date of Decision : 05-12-2000

Acts Referred:

Dentists Act, 1948 — Section 11, 15(3)

Citation : (2001) 1 BLJR 428 : (2001) 1 PLJR 521

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—Both these writ petitions involve common points and hence, they were heard together and with consent of parties, they are being finally disposed of at the stage of admission itself because of urgency of the matter.

2. CWJC No. 2583 of 2000 has been preferred by two students belonging to Mithila Minority Dental College, Laheriasarai, Darbhanga. They claim to be regular students of the said College of the Session 1989-93 and Session 1991-95 respectively. CWJC No. 6633 of 2000 has been preferred by four students of Darbhanga Dental College, Darbhanga belonging to various Sessions. The common prayer made in these writ applications is for a direction to the respondents, particularly to the respondent LN Minthila University to hold the pending examinations for all parts of BDS course for which these petitioners claim to be eligible on account of regular studies in their respective Colleges and also for publication/declaration of the pending results of various BDS examinations already held by the University and also of the examinations that may be held for the petitioners in future.

3. Although the lengthy leadings of the parties have made the records of both the writ applications quite voluminous but both the writ applications were argued within a narrow compass of facts as well as law. On behalf of the petitioners,

reliance was placed mainly upon the facts that both these Colleges have necessary approval of the Dental Council of India (hereinafter referred to as "DCI") to run BDS courses since the academic year 1989-90 and the academic year 1990-91 respectively. They also have permanent affiliation from the respondent-University for the aforesaid sessions respectively. These twin facts are supported by Annexures 4 and 5 to CWJC 2583/2000 and Annexures 6 and 7 to CWJC 6633/2000 and are not in dispute. It has also been submitted on behalf of the petitioners that admittedly, the students of these Colleges were permitted to take various BDS examinations conducted by the respondent-University and results of many of such examinations were also published in the past. It has further been submitted that till date DCI has not withdrawn its approval nor the University has cancelled its affiliation and hence, there is no legal justification available to the respondents for withholding the results of the petitioners or similarly situated other students of these Colleges or for not holding due examinations for various parts of the BDS course. According to petitioners, the respondent-University has a legal obligation to publish the results for the BDS examinations already held and also to hold such examinations for the students like the petitioners who have studied in a Dental College having approval of DCI as well as affiliation from the University.

4. The aforesaid facts submitted on behalf of the petitioners are not in dispute and in normal course, there was no occasion or any semblance of legal justification for the respondent-University to withhold the pending results of various BDS examinations or not to hold further due examinations for the students of the two Colleges concerned. Such a situation has admittedly arisen in view of a recent development concerning the Colleges concerned as well as several similar other Colleges. This particular development was initiation of a general vigilance inquiry by the State Government against all educational institutions affiliated to the respondent-University imparting technical education like BDS course, management course or B.Ed, course. After commencement of such vigilance inquiry some time in the beginning of the year 1999 the functioning of the University with regard to such Colleges got almost paralyzed. It is not in dispute and in fact, it is the stand of the University in these cases also that on account of the pending vigilance inquiry the results of various BDS examinations have been withheld and further examinations for such Colleges have been postponed or are not being announced. It has to be decided in these cases as to whether pendency of vigilance inquiry or even lodging of a criminal case as has been done with regard to management of Darbhanga Dental College vide, FIR dated 14.3.2000, Annexure-H to the counter-affidavit of DCI, respondent No. 6, in CWJC No. 6633/2000 can provide sufficient and lawful justification for the impugned action/inaction of the respondent-University.

5. At this stage, it is relevant to notice that some students of Darbhanga Dental College had filed a somewhat similar writ application for publication of their pending results vide CWJC No. 11381/1999. After noting the pendency of the vigilance inquiry and an interim order passed in the case of Amit Kumar

Choudhary (CWJC No. 10568/1999) dated 9.3.2000, this Court vide order dated 23.3.2000 (Annexure-8 to CWJC No. 6633/2000), disposed of the said writ application directing the University and its officials to take steps for publication of pending results of those petitioners within a fixed time. However, opportunity was given to the State Government or its officials that if they have any valid objection to such publication of results then they may communicate their objections to the University and in that event, the University instead of publishing the results may move the Court for review/modification of that order. It was also observed in that order that if no objection is received from the State Government then the University should take steps for holding all the pending and due BDS examinations at an early date preferably within three months from the date of communication of that order to the University. It was also clarified in that order that such examinations will be held only for students of such Dental Colleges about whom there is no adverse report from DCI or from the vigilance department of the Government made in accordance with law. Subsequently, the words vigilance department of the Government were modified to read as the State Government. Thereafter, on receipt of objections from the State Government, the University filed applications for modification of the aforesaid order passed in CWJC No. 11381/1999 concerning students of Darbhanga Dental College and also for modification of two other orders passed with regard to two other Dental Colleges affiliated to the respondent-University. Those applications were considered by this Court and as per order dated 10.5.2000 (Annexure-11 to CWJC No. 6633/2000), the order in favour of students of Darbhanga Dental College was recalled and the writ petitioner was dismissed on the ground that against the institution concerned the Darbhanga Dental College a substantive criminal case has been lodged on 14.3.2000 alleging that this institution obtained affiliation and recognition on account of fraud and collusion when in fact, no institution existed. The prayer for modifying or recalling similar orders with regard to two other Dental Colleges were, however, refused by the same order mainly on the ground that the recent inspection by the team of inspectors appointed by the Dental Council of India in presence of observers has found "the infrastructure in these institutions to be adequate. This inspection has taken place after the preliminary inquiry conducted by the vigilance. In such circumstances, it would not be proper to allow the students of such institution to suffer only because vigilance may take long time in coming to its conclusion so far as these institutions are concerned." The aforesaid order with regard to other two Colleges directing for publication of results as well as for holding examinations has attained finality as all the parties concerned accepted the same. The earlier writ application with regard to Darbhanga Dental College was, no doubt, dismissed but Annexure-11 mentioned above, discloses that at that very stage, this Court noticed the submission advanced on behalf of those petitioners that there may have been some lapses earlier when the College was being founded but presently, the College has adequate infrastructure and inspection by the team of inspectors deputed by DCI is likely to take place soon will reveal the actual state of affairs. After noticing the aforesaid submission, this

Court observed thus: "This submission may have to be considered later by the authorities concerned if the inspection supports the case in the writ petitions but as the facts stand today, keeping in view the nature of allegations against the institution concerned, it will not be proper for this Court to direct the University to publish the result of the students of this institution or to hold examination for the students of this institution."

6. The aforesaid facts portray the picture with regard to Darbhanga Dental College which is concerned with CWJC No. 6633/2000, as it was on 10.5.2000, i.e., prior to filing of CWJC No. 6633/2000. So far as Mithila Minority Dental College which relates to CWJC No. 2583/2000 is concerned, it had not moved in the matter earlier but on behalf of the petitioners in both the cases it has now been submitted that subsequent to preliminary vigilance inquiry and lodging of FIR against Darbhanga Dental College on 14.3.2000 both these Colleges have been inspected by inspectors appointed by DCI in presence of observers from the University as well as from the State Government and that those reports which are on record, show the existence of sufficient infrastructure for running of the Colleges although certain shortcomings have been pointed out in those reports of July 2000. It has further been submitted that although in May 2000 DCI had imposed ban on further admission in these Colleges but after due inspection, the DCI has issued letters dated 10.11.2000 whereby the ban on admissions in BDS course in these Colleges earlier approved for 40 seats has been revoked on the condition that deficiencies as pointed out by DCI through letters dated 5.9.2000 and 11.9.2000 respectively, be made good before 30.4.2001 failing which admissions in BDS courses in these Colleges shall be stopped. On these facts which have not been controverted by the respondents concerned, it was submitted that the Colleges concerned are not non-existent Colleges existing merely on paper but the apex body controlling Dental education as per the Dentists Act, 1948, i.e., DCI., has found these Colleges fit to take even further admissions on certain conditions and hence, it is not just, proper and legal for the respondent-University not to treat these Colleges at par with the other two Dental Colleges under the respondent-University in whose favour there is already an order of this Court for publication of result as well as for holding of BDS examinations. It has further been submitted that the facts that DCI has not initiated any steps for derecognizing of the Colleges or for withdrawal of its earlier approval and the permanent affiliation granted by the University remains intact in favour of the Colleges make it obligatory for the University to fulfil its statutory duties of publishing the results for the examinations already held and for holding further BDS examinations that are due, for the petitioners and other students of the Colleges concerned.

7. On behalf of the University, no other plea was raised against the petitioners except the matter mentioned above relating to the vigilance inquiry and FIR against management of Darbhanga Dental College. On behalf of the State of Bihar and its officials, a plea was raised that doubt is created regarding collusion of the authorities of DCI with the management of these Colleges because

approval for running of BDS courses by these Colleges was granted in the year 1997 from earlier academic years and that the consequent affiliation by the University was also of similar nature. It was also attempted on behalf of the State, by referring to a circular of the Central Government dated 17.2.1972 which has been printed as a part of BDS course regulations of DCI., that as per said circular the State Governments and the Universities have a duty to ensure that no Dental College is permitted to start functioning or to start a post-graduate course unless DCI is satisfied in this regard through inspection, etc. that the College meets with the minimum requirements laid down by the Council and approved by the Central Government. This was submitted probably because of stand taken by the petitioners that in matters of Dental education, the ultimate control and responsibility lies with DCI and as per several judicial pronouncements, the State Government has no role to play in such matters and the University is obliged to act in conformity with directions of the DCI.

8. Having given anxious consideration to all the aforesaid facts, submissions and broader aspects of the entire controversy, this Court finds sufficient force in the submissions advanced on behalf of the petitioners that so long, the Colleges have necessary approval of DCI and affiliation of the University, merely pendency of a vigilance inquiry or even of criminal case alone will not be sufficient justification for the University to withhold the pending results of the otherwise eligible-students of such Colleges and/or not to hold further examinations which are already due for such students. In larger public interest as well as in the interest of students who have taken admission and pursued their studies for long years in a College which has approval of DCI as well as affiliation of the University, it would not be proper or justified to allow the University to treat such Colleges as one which does not exist or does not have such approval and affiliation. This Court would, however, hasten to add here that the aforesaid view may not hold good in a situation where there is such play of fraud that a College or institution has no practical existence but has obtained approval or affiliation purely as a result of collusion and fraud. In the present case, this Court has placed strong reliance upon the inspection reports of period subsequent to vigilance inquiry and lodging of criminal case to come to a conclusion that these Colleges do not fall in the aforesaid category. As on date, these Colleges have been found to have sufficient infrastructure to conduct BDS courses and although there are still many things lacking, most importantly in the area of adequate teaching faculty but in the opinion of the expert body, DCI these shortcomings can be allowed to be removed in the coming months. In such a situation, it is only just and proper that the University be directed to perform its duties and functions and publish the pending results of the petitioners and other similarly situated students of the Colleges concerned and also to hold the due BDS examinations for such students strictly in accordance with law and as per intake capacity prescribed for these Colleges by the DCI, with utmost expedition and at the earliest possible time.

9. As a result of aforesaid discussion, it has to be held that the objection raised on behalf of the University and the State authorities are without substance. With

regard to stand of the State, it is relevant to observe that a constitutional authority such as a State Government has very important role to play in development of educational facilities in the State in accordance with law and it has sufficient police powers to ensure that timely action is taken to prevent any illegality or fraud. The only caution required is that such authority or Government must not intrude into areas which are lawfully allotted to other authorities but even while keeping this in mind, the police powers can be exercised meaningfully and constructively. Generally, law will not come into the way of such action if it is bona fide and in a manner not prohibited by law. There is ample scope for such meaningful role even under the provisions of the Dentists Act, 1948 as would be apparent from mere perusal of some of the provisions like Section 11, Section 15(3) and Sections 16 and 16-A which deal with withdrawal of recognition. No further discussion on this issue is required as it is not really relevant for the issues decided in this case.

10. This Court further finds it necessary to observe that it has purposely refrained from entering into submissions and controversies such as whether the action of DCI or the University in granting approval and affiliation from earlier periods was proper or not, because in the larger prospective it was found to be only of academic interest so far as rights of the students and the petitioners are concerned and further because it may affect, one way or the other, the vigilance inquiry and the criminal case which is still pending. It is also clarified that this Court has maintained a distinction between the College and its management, whether past or present. This order has been passed keeping in view the interest of the College, the students, the parent and the people of the State but nothing in it should be construed in favour of the management of these Colleges and if in any inquiry or criminal case, it is found that they have committed any offence in relation to affairs of their respective Colleges then action against them must be taken in accordance with law notwithstanding anything contained in this order.

Both the writ applications are accordingly allowed but in the facts of the case without costs.