

(1988) 06 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 2723 of 1987

Narendra Narain Sinha

APPELLANT

Vs

University of Bihar

RESPONDENT

Date of Decision : 20-06-1988

Acts Referred:

Bihar State Universities Act, 1976 — Section 60(1), 60(4), 60(5)

Citation : (1988) 36 BLJR 653 : (1988) PLJR 546

Hon'ble Judges : S.B. Sinha, J;N.P. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.P. Singh, J.—This application has been filed by the Secretary of the Sinha Homeopathic Medical College and Hospital, Darbhanga, for quashing a notification of the Bihar University (hereinafter referred to as "the University") dated 27.2.1986 constituting an ad hoc committee for the management of the said College.

2. It is the case of the petitioner that the College in question was under the control and supervision of a duly constituted managing committee. It has also been stated in the application that the College has been recognised by the State Government in accordance with the Bihar Development of Homeopathic System of Medicine Act, 1963 for the purpose of examination and award of diploma and degree. Later after coming into force of the Bihar Development of Homeopathic System of Medicine (Amendment) Act, 1975 (Bihar Act 5 of 1975, 1976 the University of Bihar became an examining and affiliating body of all the Homeopathic Colleges of the State for award of diploma and degrees and the College in question was affiliated along with the other Homeopathic Colleges by the University. According to the petitioner, the University had no authority to dissolve the regular Governing body of the College and to appoint an ad hoc committee and that also without affording any opportunity to the petitioner to show cause.

3. In respect of Homeopathic System of Medicine different Acts have been enacted from time to time. In order to appreciate the controversy raised in the present writ application it is necessary to give the history of such Legislations. The earliest Act in respect of Homeopathic System of Medicine is Bihar Development of Homeopathic System of Medicine Act, 1953, which was amended later by Bihar Development of Homeopathic System of Medicine (Amendment) Act, 1975 (Bihar Act 5 of 1975, 1976). Under the Bihar Development of Homeopathic System of Medicine Act, 1953, the State Government by notification has to establish a Board to be called the Bihar State Board of Homeopathic Medicine. The Board was to register practitioners of Homeopathic Medicine and to conduct examination of all Homeopathic practitioners who did not possess the registrable qualifications. The Board had the power to grant recognition to any institution imparting instructions to the students for preparing them for qualifying examination. By the aforesaid amending Act of 1975, the power to grant affiliation to such College and to allow students of such Colleges to appear at the examination was vested in the University for the purpose of awarding diploma and degrees.

4. In the year 1976, the Bihar State Universities Act, came in force. u/s 60 the provisions regarding constitution of governing body for the management and administration of affiliated Colleges was prescribed. Section 60 (1) to 60 (4) are applicable to Colleges other than Colleges owned and maintained by the State Government or College establishment and administered by a minority Community on the ground of religion or language or "an affiliated technical or medical college . For such affiliated technical or medical colleges Section 60 (5) said that the constitution of governing body shall be in accordance with the provisions prescribed in the Statutes. Section 60 (5) is as follows :-

The Governing body/Managing Committee for the management and administration of a College owned and maintained by the State 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 yardsticks laid down by it, or of an affiliated or medical college, shall be constituted in accordance with ;he provisions prescribed in the Statutes.

A College imparting education in the Homeopathic System of Medicine shall be deemed to be a Medical College is not in dispute. As such after coming into force of the Bihar State University Act Section 60 (5) read with the Statutes framed thereunder become applicable even to such Homeopathic Colleges.

5 Chapter XIII of the Statutes of the University contains specific provisions in respect of constitution. of governing body for management of College affiliated to the University. Clause 1 of Chapter XIII which is relevant is as follows :

1. There shall be a Governing Body constituted for the management and administration of every admitted college, other than colleges owned and maintained by the State Government or colleges established and administered by

religious or linguistic minorities or admitted technical or medical colleges, which shall consist of the following members :-

- (i) Principal of the College-Ex-Officio.
- (ii) One teacher elected from and by the teachers of the college.
- (iii) One representative of the University nominated by the Syndicate.
- (iv) One Government Officer of the State Government not below the rank of Sub-divisional Magistrate posted in the district nominated by the Syndicate.
- (v) One member elected from amongst themselves by donors who have paid not less than Rs. 25,000/- to the college.
- (vi) One member either of Parliament or the State Legislature residing in the district preferable of the locality where the colleges situated, to be nominated by the Syndicate, and
- (vii) One member co-opted by the Governing Body from amongst the educationists or persons noted for their academic interest residing in the district where the college is situated.

Provided that in the case of college owned and maintained by the Government, a Governing Body consisting of seven members shall be constituted by the Syndicate in consultation with the State Government.

Provided further that in the case of colleges established and administered by minorities based on religion or language and technical medical colleges, the Governing Body/Managing Committee consisting of seven members shall be constituted by the Syndicate in consultation with the sponsors/authorities of the college concerned.

Provided that where, however, the Syndicate is not able to satisfy itself about the bona fides of the sponsors/authorities of any such college, it may constitute an ad hoc Committee consisting of not more than five members.

(2) (i) if for any reason the Governing Body of an admitted college is not constituted, the Syndicate shall constitute an Ad hoc Committee of not more than five members until a Governing Body is constituted.

(ii) If any difficulty arises in the formation or the filling up of any seat in the Governing Body of any admitted college for any reason whatsoever, the Syndicate, on its own initiative or on a reference to it, shall decide the issue. If any body, however, is dissatisfied with the decision of the Syndicate, he shall have the right of appeal to the Chancellor within thirty days of the decision, whose decision thereon shall be final and binding on the persons concerned.

On a plain reading of clause 1 the governing body in accordance with said clause 1 has to be constituted in respect of affiliated Colleges. For Colleges covered by Section 60 (1) clause 1 will be applicable but in respect of Colleges covered by

section ,60 (5) including Medical Colleges the second proviso to clause 1 of Chapter XIII shall be applicable i.e., a Governing Body consisting of seven members shall be constituted by the Syndicate in consultation with the sponsors/ authorities of the college concerned. (Emphasis added). Clause 1 (2), however, vests power in the Syndicate to constitute an ad hoc committee in respect of all types of colleges covered by clause 1. If for any reason, the Governing Body in accordance with clause 1 is not constituted, such ad hoc body shall have five members and shall function till a governing body in accordance with clause 1 of Chapter XIII of the Statute is constituted.

6. On the date the impugned notification dated 27-2-1986 was issued in view of the amendment of the Bihar Development of Homeopathic System of Medicine Act, 1953 by Bihar Development of Homeopathic System of Medicine (Amendment) Act, 1975 (Bihar Act 5 of 1975, 1976) the power to grant affiliation and to allow the students to appear at the examination for the purpose of award of diplomas and degrees had been vested in the University. The provisions of the Bihar State Universities Act and Statutes framed thereunder became applicable to such Homeopathic Colleges, treating them as Medical Colleges. In view of Section 60 (5), the governing body for Homeopathic Colleges had to be constituted in accordance with the provisions prescribed in the Statutes. Chapter XIII (1), on its plain reading, does not recognise any existing governing body which might be functioning before the college in question was granted affiliation by the University. It describes any such body which was functioning before the college was admitted to the University as "the sponsors" (see second proviso to clause 1 of Chapter XIII). There is no provision under the new Statutes for recognising the old governing body which was functioning before the said college was admitted to the University or for dissolution thereof. The mandate of the framers of the Act and the Statutes is that any such body should be treated only as sponsors and a new governing body has to be constituted no sooner the College is admitted to the University. That is why clause 1 (3) (i) says that if for any reason the Governing Body of an admitted college is not constituted, the Syndicate shall constitute an Ad hoc Committee. The expression "If for any reason" shall mean due to any cause whatsoever because of which a regular managing committee according to that Statutes could not be constituted. In other words, if there is delay in the constitution of a regular governing body, according to clause 1 of Chapter XIII, then an ad hoc committee has to be constituted. In this background, it is futile to urge that whenever an ad hoc committee is constituted, the earlier governing body has to be dissolved or any opportunity to show cause has to be given to the body which was managing the affairs of such college before they were admitted to the University. When the framers of the Act and the Statutes do not recognise such body as governing body and only treat them as sponsors, there is no question of any dissolution or applying the principles of natural justice in this process. It cannot be disputed that while granting affiliation or admitting a private college into the University, it is always open to the University to put its

own terms before the management of such private colleges before they are affiliated to the University, As such I am left with no option but to hold that the Vice-Chancel for after the recommendation of the Syndicate could have constituted an ad hoc committee in exercise of the powers u/s 60 (3) read with Chapter XIII clause 1 (2) of the Statutes. Incidentally, I may mention that in the notification perhaps due to inadvertence instead of 60 (5) section 70 (4) has been mentioned. However, that mistake, in my view, shall not make that notification invalid once the power to issue such notification has been established by the University.

7. Faced with this situation the learned counsel for the petitioner submitted that as only temporary affiliation had been granted by the University from time to time for the purpose of enabling the students of the College to appear at the examination of the University it shall not be deemed that the College has been admitted to the University so as to attract the provisions of Section 60 (5) and clause 1 (2) of Chapter XIII of the Statutes.

8. u/s 21 (2) (d) of the Bihar State Universities Act the Senate has been vested with the power of control of Colleges and superintendence thereof including granting affiliation and disaffiliation of Colleges. Of course before any such affiliation to the College in question is granted, it has to be approved by the State Government because second proviso to Clause (d) says "no medical college shall be affiliated except without the prior approval of the State Government". In the present case, it appears that the State Government has approved the proposal of temporary affiliation and University has also been granting temporary affiliation from time to time. In my view, even in case where temporary affiliation has been granted to college it is open to the University to apply the provisions of Chapter XIII of the Statutes including in respect of the constitution of a governing body or ad hoc committee in accordance with clause 1 of Chapter XIII. When clause I of Chapter XIII speak about the colleges admitted to University it shall be applicable to even such colleges which have been admitted temporarily by the University. If in the eye of law the college in question has not been affiliated then how the students of the said college have been appearing at the examination of the University during the last several years. It need not be pointed out that the students of a private college including a private medical college are not entitled to appear at the examination of the University unless temporary or regular affiliation has been granted by the University to such colleges.

9. The petitioner has clearly stated in paragraph 5 of the writ application that "the petitioner college was also affiliated along with 10 other Homeopathic Colleges by the respondent No. 1 in 1985". Once the college has been affiliated, clause 1 of Chapter XIII become applicable vesting power in the Syndicate to constitute a governing body and if for any reason a regular governing body could not be constituted then to constitute an ad hoc committee for management of the college in question.

10. It may be mentioned that during the pendency of this writ application Bihar Homeopathic Treatment Training Institute (Biniyaman Avam Niyamtran) Ordinance, 1987 (Bihar Act 3 of 1987) has come in force after publication in the Official Gazette on 31st March, 1987. This Act has made drastic changes in respect of control and management of Homeopathic Colleges. Section 3 of this Act prescribed a bar on establishment of Homeopathic College without prior approval of the State Government. u/s 5 after an application for permission is made the State Government can get such institution inspected for the purpose as to whether it fulfils the requirements and conditions for establishing a Homeopathic College. Section 7 states in respect of colleges to whom the provisions of the Act shall be applicable. It pointedly says that the provisions of the Act shall also be applicable to such Homeopathic Colleges whose period of affiliation has come to an end and no temporary affiliation has been given by any concerned University. Section 8 says that notwithstanding any provision contained in any law of the University the power to constitute the governing body of such Homeopathic Colleges shall be vested in the State Government. Section 9 required such Colleges which were functioning without prior approval of the State Government to apply within one month from the date of the coming into force of this Act. It should admit any student, till such permission/approval is granted by the State Government. Section 10 provides the penalty for the contravention of the provisions of the Act.

11. From the bare reference to the aforesaid provisions it is apparent that so far private Homeopathic Colleges are concerned, again the University has been divested of the power of constituting governing bodies for such colleges and that power has been vested in the State Government. But as admittedly the provisions of the Act were not in force when the impugned notification dated 27-2-1986 had been issued it has to be held that the University could have constituted an ad hoc committee for the management of the College. Of course now after coming into force of the Act and after expiry of the period of temporary affiliation steps have to be taken in accordance with the provisions of that Act for grant of regular affiliation before the State Government. Now the State Government has the power u/s 8 aforesaid to constitute the governing body of the petitioner-College.

12. In the result this writ application is dismissed.

S.B. Sinha, J.

13. I agree.