

(2013) 02 PAT CK 0052

In the Patna High Court

Case No : LPA No. 1525 of 2010 (in CWJC No. 10142 of 2001)

National Institute of Technology

APPELLANT

Vs

Rekha Sinha

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

National Institute of Technology Act, 2007 — Section 5(c)

Citation : (2013) 3 PLJR 14

Hon'ble Judges : T. Meena Kumari, J;Chakradhari Sharan Singh, J

Bench : Division Bench

Advocate : Shashi Bhushan Prasad, for the Appellant; Sanjeet Kumar for the Respondent No. 1 and Dr. Kumar Amitesh Chandra for the Patna University, for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.—Heard Mr. Shashi Bhushan Prasad, learned counsel for the appellant, Mr. Sanjeet Kumar, learned Counsel for Respondent No. 1 and Dr. Kumar Amitesh Chandra, learned counsel for the Patna University. The present appeal under Clause 10 of the Letters Patent of Patna High Court has been filed by National Institute of Technology, Patna questioning the legality of the order passed by learned Single Judge dated 6.5.2010 in CWJC No. 10142 of 2001, whereby the learned Single Judge has allowed the writ application with certain directions to the appellant, National Institute of Technology, Patna (NIT, Patna) to hold special examination of respondent No. 1 herein.

2. In effect, learned Single Judge, while allowing the writ petition, has issued following directions:--

(i) The 1996 Batch Part-IV (Engineering) result of the Respondent be declared by the Authorities who have the entire records of the said examination within a period of one month.

(ii) If a situation arises where the Respondent No. 1 is required to clear some

carry over papers of IVth year, the Controller of Examination will at once make a request to the NIT, Patna for holding special examination with respect to the Respondent by giving "No Objection Certificate" to the NIT, Patna and NIT, Patna in turn will hold the special examination for the Respondent No. 1 within a reasonable period.

3. The objection to this order raised by the appellant, NIT, Patna is only to the effect that Respondent No. 1 was student of Bihar College of Engineering, Patna which was under Patna University and was taken over subsequently by the Ministry of Human Resources and Development, Government of India and was rechristened as National Institute of Technology, Patna. The said Bihar College of Engineering was a constituent unit of Patna University before it was taken over by the Ministry of Human Resources and Development, Government of India and, therefore NIT, Patna could not have been directed to conduct special examination in respect of Respondent No. 1 in view of changed circumstances and the nature of course and examination being conducted by the NIT, Patna.

4. The facts are short and not in dispute. The respondent No. 1 was admitted to B.Sc. (Engineering) of Bihar College of Engineering, under Patna University, Patna. She cleared first year examination in October, 1998. She appeared in the second year examination held in July, 1999 and cleared six papers out of eight. She, with a view to clear back log papers of second year appeared in the examination held in November, 1999 but failed to clear the said two papers. She again appeared to clear two papers of the second year examination and cleared all those papers, result of which was published on 30th January, 2001. She appeared in 3rd year examination held in November, 2000 and cleared all the papers. She was, accordingly, admitted to 4th year in February, 2001 and attended classes thereafter. However, when the examination for 4th year was going to be held from 28th August, 2001, her admission, alongwith few others students came to be cancelled vide notice dated 19.7.2001 issued by the Bihar College of Engineering, Patna under the signature of its Principal (Annexure-1 to the writ application) on the ground that they were not eligible for admission to B.Sc. (Engineering) Part-IV. The said notice was purported to have been issued under Clause 12 of the Regulation for the Bachelor of Science (Engineering), Bachelor of Technology (Production Engineering) and Bachelor of Architecture Examinations, 1977 (hereinafter referred to as the 1977 Regulation). The said Regulation reads as under:--

12(i) If at any examination, a candidate passes in sessional work but fails in not more than three subjects he may be promoted to the next higher class, such candidate shall be required to appear and pass in the written papers of the subject(s) in which he has failed, in the next examination alongwith the subjects of the next higher class. If he fails in more than three subjects he may appear as no collegiate candidate in the subsequent examination but shall have to appear in all the subject. If he fails in sessional work, he has to take readmission.

(ii) If a candidate promoted as in (i) above, passes in all the papers (or fails in 3

papers or less) and also passes in sessional work of the higher examination, but does not pass the lower examination, his result of the higher examination shall be withheld, till he is declared to have passed the lower examination. However, he has the option of appears in all the papers of the higher class as in (i) above.

5. The notice dated 19.7.2001 was challenged by respondent No. 1 and two other students by filing the said CWJC No. 10142 of 2001. The writ petition was admitted vide order dated 29.8.2001 and the operation of notice dated 19.7.2001 as contained in Annexure-1 to the writ application was directed to be stayed. The respondents Patna University and the Bihar College of Engineering were directed to accept fees of the writ petitioners for their appearance in Part-IV B.Sc. (Engineering) Course with a further direction that they shall be allowed to appear in the examination. It was however, observed that the ultimate decision of these cases shall govern the publication of result. Other two writ petitioners, namely, Shailesh Kumar Dhiraj and Girja Nand Singh withdrew from the case subsequently and the writ petition was pursued solely by respondent No. 1.

6. From the pleadings in the writ proceeding it appears that the respondent No. 1, on the strength of the interim order dated 29.8.2001 appeared in the B.Sc. (Engineering) final year examination in September, 2001 alongwith other students. The result of the examination of the batch was declared on 30.11.2001 but the result of the Respondent No. 1 was withheld, pending ultimate decision on the said CWJC No. 10142 of 2001. An interlocutory application vide I.A. No. 5846 of 2001 was, accordingly, moved for modification of the interim order dated 29.8.2001 and for a direction to the Patna University to publish the result. The interlocutory application was, however, not entertained and was dismissed vide order dated 12.11.2002 with the observation that the only course open to the writ petitioner was to press for final hearing of the writ petition.

7. The other facts, as regards pendency of the writ application need not be gone into in detail.

8. During the pendency of the writ application certain important developments took place. On 28.1.2004, the said Bihar College of Engineering, Patna (hereinafter referred to as the BCE, Patna) was taken over with immediate effect by the Ministry of Human Resources and Development, Government of India as fully funded Institute of Central Government and was rechristened as National Institute of Technology, Patna vide gazette notification dated 28.1.2004 issued by the Department of Secondary and Higher Education, Ministry of Human Resources and Development, Government of India which is Annexure-1 to the memo of appeal. This was consequent upon transfer of Bihar College of Engineering (BCE), Patna, Bihar from the jurisdiction of Patna University as contemplated by the Patna Universities Act, 1976; with the consent of the Patna University, Patna as well as State of Bihar, to the National Institute of Technology, Patna, Patna Society, a body registered under the Societies Registration Act vide registration No. 1284 dated 22.1.2004. The Gazette notification further contemplated that the Institute would be integrated with other NITs for

academic, administrative management and financial purposes and that the personnel and the assets both moveable and immovable of erstwhile BCE, Patna, which were hitherto under the control of Government of Bihar on the date of such transfer shall be deemed to have been transferred to the National Institute of Technology, Patna, Bihar.

9. Thereafter the National Institute of Technology Act, 2007 (No. 29 of 2007) came to be enacted with a view to declare certain Institutes of Technology to be the Institutions of national importance. The Institute mentioned in Column 3 of the Schedule to the Act were thus, declared Institutions of national importance which included the Institute in question i.e. NIT, Patna as its name figures at item No. 11 of the Schedule to the Act. Section 5(c) of the Act prescribes that all the rights and liabilities of the society shall be transferred to, and be the rights and liabilities of the corresponding Institute.

10. The writ application, in the meanwhile remained pending, however, and came to be finally heard and decided by the learned Single Judge vide order dated 6.5.2010. Learned Single Judge while allowing the writ application held in paragraph 4 as follows:--

4. On perusal of sub-clause (ii) of Clause 12, it appears that a candidate who is promoted and has failed in three papers or less, would be permitted to appear in the next examination held for those papers and would also be permitted to take admission in the higher class, however, the results of the higher class would be withheld until he has been declared to have passed the lower examination. The petitioner admittedly passed her second year examination before the declaration of the results of the third year examination. This is not a case where the petitioner had not passed the second year examination at all, rather the petitioner had cleared all the papers and had taken admission in the third year, sat for the examination and cleared the examination of Part-III B.Sc. (Engineering). It appears that Patna University, as it was then, has not given the correct interpretation to Clause 12(H) of the 1977 Regulation. In any event, it is about time that the fourth year results of the petitioner should be declared.

11. The learned Single Judge thus, held that Patna University had not given correct interpretation of Clause 12(H) of the 1977 Regulation and directed that fourth year results of respondent should be declared.

12. There is no challenge to the order of the learned Single Judge on issue by which learned Single Judge held the cancellation of admission of respondent No. 1 not to be in accordance with Regulation 12(H) of-1977 Regulations. There is no challenge to the direction of the learned Single Judge that the result of respondent No. 1 for fourth year B.Sc. (Engineering) examination held on the basis of the interim order of this Court should be declared. The only objection which has been raised in the present Letters Patent Appeal is that NIT, Patna cannot publish the result as the examination was held in 2001 by the Patna University and it is the Patna University which is required to declare the result.

13. A counter affidavit has been filed on behalf of the Patna University in the present appeal. It has been pleaded in the counter affidavit that Patna University, after the taking over of Bihar College of Engineering by the Government of India does not have an engineering faculty and as such it would not be possible for the Patna University to arrange for examination if required. It has also been stated that the concerned Tabulation Register does not have any trace of first year marks alongwith sessional marks in fourth year. It has further been stated in the counter affidavit that in view of the order passed by this Court in CWJC No. 10142 of 2010, the Controller of Examinations, Patna University has already issued "No Objection Certificate" to National Institute of Technology on 19.10.2010 for holding special examination of the candidates.

14. In order to ascertain the actual position of Respondent No. 1 about assessment on the basis of fourth year B.Sc. (Engineering) examination held in 2001, the Court had directed Patna University to produce marks-sheet of Respondent No. 1 which they produced in sealed cover.

15. In my opinion, the teamed Single Judge, in the facts and circumstances of the case rightly directed the National Institute of Technology to hold such special examination if respondent No. 1 was required to clear some carry over papers for which the Patna University was directed to make a request to National Institute of Technology, Patna for holding special examination. In view of the notification of taking over of Bihar College of Engineering by the Government of India and subsequent enactment i.e. National Institute of Technology Act, 2007, I am of the view that the rights and liabilities of Bihar College of Engineering stood transferred and vested in the National Institute of Technology, Patna Society, Patna and it is the National Institute of Technology now which has to conduct special examination, if required, in respect of respondent No. 1. We have taken note of the fact that respondent No. 1 had approached this Court with the allegation that the cancellation of her admission was not proper. The said contention of the respondent No. 1 was finally upheld by the teamed Single Judge. The judgment of the learned Single Judge to the extent the cancellation of admission of respondent No. 1 has been held to be contrary to Regulation 12(H) of 1977 Regulation is not in controversy and has not been challenged by any of the parties. In such circumstance the respondent No. 1 has to be treated as student IVth year B.Sc. (Engineering) of BCE, Patna, as on the date of passing of the impugned notice dated 19.7.2001 as also on the date (30.11.2011) when result of other students of her batch was declared. (Result of Respondent No. 1 was withheld pending ultimate decision in CWJC No. 10142 of 2001 by virtue of interim order dated 29.8.2001). The College having been taken over by the National Institute of Technology, it is obligatory on a National institute of Technology to hold special examination if required as per the syllabus which governed the course of respondent No. 1. Actus curiae neminem gravabit (act of court shall prejudice no one) is a very well accepted legal doctrine and requires that no one shall suffer by an act of court. The doctrine is founded upon justice and good sense and is a guide for the administrative law. The writ petition filed

on behalf of Respondent No. 1 remained pending for nearly nine years. Cancellation of her admission, which was under challenge, was held to be illegal by learned Single Judge. No party has any grievance or any objection to such finding. In view of the fact that it is more than a decade since respondent No. 1 approached this Court raising successfully a grievance against cancellation of her admission, we direct that on the basis of Tabulation Register and other documents available with the Patna University, the Patna University shall publish the result of IVth year examination in respect of Respondent No. 1 forthwith within a period of three weeks from date of receipt/production of a copy of this order. I expect the Patna University and its competent authorities to exercise their discretion under the Statutes/Rules/Regulation of the University as far as possible to award grace marks if respondent No. 1 is found to have failed in any subject/subjects marginally so as to avoid future complication. Finally if the NIT, Patna is of the opinion that some carry over papers were required to be cleared by respondent No. 1 and for that purpose respondent No. 1 is required to attend practical classes, the NIT, Patna will take a decision to this effect and will communicate to respondent No. 1 in this regard and allow her to appear at the special examination to be held by the National Institute of Technology, Patna in terms of the direction of learned Single Judge.

The appeal is, accordingly, dismissed with the modification as aforesaid. There will be, however, no order as to costs.

T. Meena Kumari, J.

I agree.