
(2001) 03 PAT CK 0077
In the Patna High Court
Case No : L.P.A. No. 1450 of 2000

Nitishwar Prasad Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-03-2001

Acts Referred:

Citation : (2001) 03 PAT CK 0077

Judgement

Nagendra Rai, J.—We have heard the learned Counsel for the parties on the point of limitation as well as on merit.

2. Having regard to the facts stated in the limitation petition, the delay in filing this appeal is condoned.

3. This appeal u/s 10 of the Letters Patent of the High Court of Judicature at Patna has been filed against the judgment and order dated 22nd August, 2000 passed in C.W.J.C. No. 3729 of 1998 by a learned Single Judge of this Court dismissing the writ application filed by the appellant, Secretary of Nitishwar Bhartiya Chikitsa Vigyan Sansthan, Muzaffarpur (hereinafter referred to as the Institution"), to grant permanent recognition to the Institution on the basis of the inquiry report submitted for the said purpose and to allow the students of first year of BAMS examination 1994-95 to 1996-97 to appear in the said examination scheduled to be held on 2-2-1999. Three students of the said institution of the Sessions 1994-95, 1995-96 and 1996-97 also filed writ application being C.W.J.C. No. 9406 of 1993 which was also dismissed, but no appeal has been filed by the students against the said judgment.

4. The facts which are not in dispute are that the said institution was established in the year 1979 and was registered under the Societies Registration Act to impart medical education in indigenous medicine (Ayurved). The appellant applied before Bhim Rao Ambedkar Bihar University (hereinafter referred to as the Bihar University) to inspect the institution for permitting the students to appear in BAMS examination in the year 1980. The Inspector of the Bihar University inspected the institution and submitted its report to the Bihar University and on

the basis of the report, the Vice-Chancellor of the Bihar University permitted the students to appear in Pre-Ayurvedic Examination 1980 to be held in January 1982. The students were allowed to appear till the year 1983. Thereafter, when the said prayer was not allowed, the appellant filed C.W.J.C. No. 2837 of 1985 before this Court for granting permission to the institution to allow the students to appear in the BAMS examination conducted by the University. The said writ application was disposed of on 6-3-1985 and this Court directed the State Government to consider the prayer of the institution to permit the students to appear at the BAMS examination. Thereafter, it appears that the State Government allowed the provisional recognition to the institution for admission and examination subject to the condition that the final decision will be taken after concurrence from the Central Council of Indigenous Medicines (hereinafter referred to as the Central Council) and the Government of India. It appears that the Government of India did not take any decision and the State Government granted temporary recognition in the year 1987 in anticipation of the approval by the Central Council and the Central Government. In the meantime the College was inspected by the Central Council and direction was given to the institution to remove deficiencies found by it. However, it allowed 20 students to appear for only one year subject to fulfilment of shortcomings. The College was again inspected by the Central Council on 22-4-1988 to assess the progress made by the appellant and to verify the statements made by it in the compliance report. In the year 1988, the State Government again granted provisional permission to the institution to conduct BAMS examination only for the year 1988. The Central Council again visited the institution and found several deficiencies. Thereafter, on the basis of the report submitted, the Central Council took a decision that the institution should be closed and no students should be admitted and students already admitted should not be permitted to appear in the examination and they should be transferred to some recognised institution. The said decision was communicated to the State Government by letter dated 24-7-1990 (Annexure-13 to the writ application). The said decision was also reiterated to the State Government on 15-1-1992 (Annexure-12 to the writ application) and on the basis of the said decisions, the State Government withdrew the provisional recognition granted to it by letter dated 31-12-1993 (Annexure-11 to the writ application). The said decision was challenged by the appellant before this Court in C.W.J.C. No. 7361 of 1994. It appears that the date for holding BAMS examination was announced and some colleges were permitted to take examination, though according to the appellant, they did not also fulfil the requisite criteria. This Court having taken note of the aforesaid fact stayed the holding of the said examination. However, by subsequent interim order dated 15-12-1994, students of the institution were allowed to appear in the BAMS examination on certain conditions mentioned therein. On 31-12-1993, when the provisional recognition was withdrawn, the State Government came out with a notification (Annexure-14) asking the Ayurvedic Colleges running in the Bihar to furnish the necessary information, in order to consider their matters for permanent recognition and for that purpose, a Committee was constituted.

(Annexure-1 5) The Committee submitted its report vide Annexure-18 to the writ application. The aforesaid writ application being C.W.J.C. No. 7361 of 1994 filed by the appellant and the writ applications filed by others were finally disposed of on 10-5-1995 (Annexure-19) with a direction to the Secretary-cum-Registrar, Central Council of Indian Medicine, New Delhi, to take a final decision in accordance with law within four weeks from the date of receipt/production of a copy of the recommendation by the State Government which was to be made in the light of the recommendation made by the Committee. The State Government thereafter on 23-6-1995 cancelled the committee as well as the report submitted by it. The said order was challenged by the appellant in C.W.J.C. No. 107 of 1996 which was finally disposed of on 1-9-1997 with the following directions:

Having regard to the aforesaid facts and circumstances, a direction is issued to the State Government to take a final decision on the question of grant of recognition to this college without any further delay and in accordance with law. The State Government and the C.C.I.M. are directed to have this college inspected by a team of members constituted by the C.C.I.M. which should submit its inspection report within two months from the date of receipt/ production of a copy of this order. Within six weeks from the date of submission of the report, the State Government will forward it to the C.C.I.M. and the Central Government along with its own recommendation for obtaining their permission as provided u/s 6 of the Act. Within two months from the date of receipt of the report along with the State Government's recommendations thereon, the Central Government and the C.C.I.M. will intimate the State Government, regarding their decision on the question of granting permission to the petitioner to run a course in Indian medicine. The State Government will then intimate the petitioner accordingly.

5. Thereafter, the Central Council inspected the institution and found several deficiencies and also noticed that the college has been admitting the students from 1991 onwards every year without permission of it. It also found that the information supplied by the College that 45 teachers were working is incorrect only 25 teachers were found working. It also found that teachers appointed up to July 1989, who were without post-graduate qualification, were not recognised teachers and out of 25 full-time teachers, there was no post-graduate teacher, hence number of teaching staff may be treated as Nil. It also found defects with regard to lab, lack of dissection hall, inadequate facilities of library and Ors.. On the basis of the said report, the Central Council by letter dated 17-6-1999 did not grant recognition to the institution. A copy of the same has been annexed as Annexure-29 to the writ application. Thereafter, it appears that the Deputy Secretary to the Government of Bihar on 29-2-2000 sent a letter to Central Council, New Delhi, with a request to consider the application filed by the appellant with regard to grant of permission to allow the students to appear in the examination. The Central Council wrongly treat-jng the same as recommendation of the State Government vide letter dated 27th March, 2000 (Annexure-32 to the writ application) granted permission to the students of the appellant's institution of the Sessions 1994-95 to 1998-99 to appear in the

University examination on the condition that it will not admit further students in future and provide facilities of study to the students of the aforesaid session 1994-95 to 1998-99.

6. The stand of the appellant originally was that as the State Government had granted provisional recognition and this Court by interim orders in the past had allowed the students to appear in the examination, the students of the sessions concerned may be allowed to appear in the examination and the respondents including the Central Council and the Central Government may be directed to grant recognition to the appellant's institution in question. Relying upon the letter dated, 27th March, 2000 (Annexure-32 to the writ application), the stand of the appellant is that the Central Council has already granted permission to the students to appear in the said examination and as such, University may be directed to take their examination.

7. The Central Council had filed two counter-affidavits. Its stand is that the Central Council has been established under the Indian Medicine Central Council Act, 1970 (hereinafter referred to as the Act) and its functions are to prescribe minimum standards for education for course in the Indian system of medicine viz. Ayurved, Siddha and Unani, to advise Central Government in matters relating to recognition of medical qualification of Indian medicine, to maintain the Central register of Indian medicine and revise the register from time to time and to regulate practice in Indian medicine and prescribe standards of professional conduct, etiquette and code of ethics to be observed by the practitioners. The Central Council being the apex body of the Indian medicine, its permission is required before starting institution and without its permission no institution can be opened. It is further stated that as per the norms laid down by the Central Council, permission of the State Government to start an Ayurvedic College is must. In absence of the recommendations of the State Government and the University, Central Council cannot give permission to start institution. In past, the Central Council has been granting permission to admit certain students, but after visiting the appellant's institution on 4-8-1989, it found several deficiencies and direction was given to remove the same and thereafter, the Central Council sent letters in the year 1990 and 1992 cancelling the recognition and prohibiting the admission of any students (vide Annexures-12 and 13 to the writ application). Again, the College was visited in 1998 in pursuance of the direction of this Court and several deficiencies were found and the Committee by letter dated 17-6-1999 (Annexure-29 to the writ application) did not grant permission to run institution.

8. In the second counter-affidavit, it is stated by the Central Council that after 1933, the appellant's institution was not permitted to admit the student and for that, decision was communicated from time to time. However, on 29-2-200, the Government of Bihar requested the Central Council that students already admitted in the institution be permitted for examination and the Central Council should also consider for permitting fresh admission in the appellant's institution.

The said request was considered by the Central Council and it decided that examination of the admitted students for the Sessions 1994-95 to 1998-99 can be conducted by the University concerned subject to provision of required teaching facilities in the Institute and no admission of any fresh student in this institute without prior permission of the Central Council be allowed. (Annexure-32 to the writ application). Later on, the Central Council informed the Court that under a wrong impression, the said letter was issued. There was no material to show that the deficiencies have been removed by the institute and the Central Council reiterated its earlier decision refusing recognition and restraining the institute from admitting the students.

9. The State Government had filed two counter-affidavits in the writ application. Its stand is that the Central Council is the competent authority to grant recognition and on the basis of the inspection report, it has already cancelled the recognition of the appellant institute in the year 1990 itself. The Government of Bihar has also cancelled the provisional recognition in the year 1993 and as such, the appellant's institution cannot take any admission and it has wrongly taken admission of the students even thereafter. It is further stated that the inspection report dated 14-1-1998 was forwarded by the State Government to the Secretary of the Central Council, but no decision has been taken. It is also stated that the State Government had only sent a letter of the Secretary of the Institution and the Central Council taking the same wrongly as the recommendation of the State Government granted permission to the students to the sessions 1994-95 to 1998-99 to appear in the examination.

10. Before proceeding to consider the points involved in this case, it is apt to mention the relevant provisions having relevancy in this case. The Central Government enacted an Act to provide for the constitution of a Central Council of Indian Medicine and the maintenance of a Central Register of Indian Medicine and for matters connected therewith. The Central Council is the competent body to lay down the norms with regard to opening of the institution and to prescribe the minimum standards for education for course in the Indian System of Medicine and to advise the Central Government in the matter of recognition of medical qualification of Indian Medicine. The State Government with a view to regulating and controlling the educational institution of indigenous system of medicine in the State of Bihar enacted the Bihar Indigenous Medical Educational Institution (Regulation and Control) Ordinance, 1981, later on substituted by Act and it provides that no institution of indigenous medicines shall be opened without permission of the State Government and the State Government will grant permission after seeking permission of the Government of India and the Central Council. Even if it is assumed that after enactment of the Act, the State Government has no power to make provision with regard to field occupied by the Central Government, it is clear that no institution can start its function unless it gets recognition under the provisions of the Act and the University will grant affiliation only if it is recognised by the authority in terms of the Act.

11. In the matter of grant or refusal of the recognition or affiliation to the institution, the authority under the Act and the University are the competent body to take decision on the basis of relevant provisions applicable in the matter. The role of the Court is minimised. Only when the recognition or affiliation has been refused arbitrarily, illegally, unreasonably or on irrelevant ground, the Court will interfere in such matters. The Court is not a substitute in place of the authority to decide the question of grant of recognition or affiliation to the institution. (See *Shivaji University Through Director Vs. Bharti Vidyapeeth Through Joint Secretary and Others*,).

12. In the matter of recognition, when the competent body points out certain defects, unless the same is removed, the Court can neither issue direction for recognition nor can allow the University to permit the students to take the examination. In the case of *Baba Mungipa Medical College and Research Centre Students Guardian Forum and Anr. v. Government of Tripura and Ors.* (1977) 8 SCC 682 the petitioners before the Supreme Court applied before the Central Government for permission to set up the College. While the matter was pending, it got the provisional affiliation of the College from the University and admitted the students. The Medical Council of India found several deficiencies. The apex Court having noticed that there were several deficiencies which were not removed by the Institution held that unless the defects pointed out by the Medical Council of India are removed, there cannot be any question of granting recognition to the College. After the defects are cured, they may apply to the Medical Council of India for further inspection and it is for the Council to decide whether the College had all the facilities for imparting proper medical education, but the Court cannot give a direction for granting recognition. It also directed that no students should be admitted till recognition is granted and the admission of the students even before grant of recognition by the Medical Council of India or affiliation by the University is very irresponsible step.

13. In the case of *Dental Council of India v. Harpeet Kaur Bal and Ors.* the apex Court held that direction by the Court to allow the students of unaffiliated and unrecognised dental college to appear in the examination is totally unjustified. In Paragraph 4 of the said judgment, it was held as follows:

There are many pronouncements of this Court cautioning against exercise of jurisdiction characterised more by benevolence than on settled legal principles. A relief must be such as could be considered permissible in law and worked out by the application of legally-recognised principles. The decision must have legitimacy of legal reasoning and should not incur the criticism of lacking objectivity of purpose and rational and legal justification. Where an educational institution embarks upon granting admissions without the requisite affiliation and recognition and the students join the institution with their eyes wide open as to the lack of legitimacy in the admission, it would be preposterous to direct the University to hold examinations for the benefit of such students. We cannot sufficiently deplore this attitude and approach. The High Court has, by its order,

simply bolstered the hopes and aspirations of these students without any means of gratifying these expectations in a manner known to law. We have, therefore, no hesitation in setting aside the order under appeal as totally unjustified.

14. The admitted facts are that though the institution is claimed by the appellant to be started in 1979, it was not recognised by the competent authority under the Act. The Central Council permitted some students to appear in the examination in 1987. Thereafter, it did not grant permission to the students and in 1990, the Central Council asked the State Government to withdraw recognition and no further students should be admitted. The Central Council visited the institution several times and in 1998, it is found that teaching staff of the institution is nil and accordingly it did not grant recognition and as no recognition was granted, there was no question of the University to grant affiliation to the College. The appellant has relied upon a latest letter of the Council dated 27-3-2000 whereas it permitted the students to the sessions 1994-95 to 1998-99 to appear in the examination conducted by the University. But, the stand of the Central Council is that the said letter was issued under a bona fide mistake and wrong impression that the recommendation was made by the State Government to permit the students to appear in the examination. The State Government has also stated that it has not made any recommendation and only forwarded the application. Thus, the direction in the aforesaid letter cannot be given effect to. There is nothing on record to show that defects pointed out by the Central Council in 1998 have been removed and as such, no material was before the Central Council to come to the conclusion that the defects pointed out by it were cured. Even assuming that such letters were issued, admittedly from 1994-95 to 1998-99 neither recognition has been granted nor students were allowed to be admitted as is evident from the letters of the Central Council of the years 1990, 1991 and 1992 as extracted above. There was neither valid recognition of the institution nor affiliation of the institution to any University during that period and in such a situation in view of the settled law as stated above, the students cannot be allowed to appear in the examination in absence of the recognition or affiliation.

15. The learned Single Judge, in our view, rightly held that neither direction can be issued for grant of recognition to the appellant's institution nor the students can be allowed to appear in the examination. After 1990, the appellant's institution was stopped from admitting any student. Thus, the admission was wholly illegal and unjustified. The students, who claim to have got admission, took their admission with their eyes wide open that the institution was neither recognised nor was affiliated to any University and in that view of the matter, this Court cannot show benevolence and sympathy in such matter. However, if the appellant approaches the Central Council and satisfies it that it has removed the defects or shortcomings as noticed in the inspection report, the Central Council may consider the matter and decide the question of recognition in accordance with law. In case recognition is granted, then the State Government and the University will consider the question of affiliation in accordance with law.

16. With the aforesaid observations, the appeal stands dismissed.

S.K. Katriar, J.

17. I agree.