

(1997) 02 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 8540/95

Om Nath Keshri and Others

APPELLANT

Vs

Jai Prakash University Chapra and Others

RESPONDENT

Date of Decision : 14-02-1997

Acts Referred:

Bihar State Universities Act, 1976 — Section 21
Constitution of India, 1950 — Article 226, 32

Citation : (1997) 2 PLJR 760

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : Shakti Suman Kumar, Arbind Kumar and Pramod Kr. Pandey, for the Appellant; P.N. Rai and Mukesh Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The Petitioner No. 10 Secretary of the governing body of Mahendru Das College, Mathua Nechua, Jalalpur and Petitioners No. 1 to 9 claiming themselves to be the students of part 2nd of 3rd year degree course (Hons) of 1992-95 Session have filed the present application for a direction to the Respondents including the Jai Prakash University, Chapra (hereinafter referred to as the J.P. University (Respondent No. 1) to issue forms and accept fee and forms of Petitioner No. 1 to 9 and other students of the said College for appearing in the Part II examination of three years degree course for which a date i.e. 8.11.95 for the commencement of the examination has been announced by the Respondent University, to issue Admit Cards to the Petitioners and other students allowing them to appear in the said examination, to direct the Respondent No.6 Baba Saheb Bhim Rao Ambedkar University (hereinafter referred to as the Ambedkar University) to transfer the registration of the Petitioners and other students to the Respondent No. 1 J.P. University and to comply with the direction issued by 1 Court in L.P.A. No. 650/95 on 28.8.95.

2. The Petitioners assertion is that the College in question was established in the

year, 1982 and the College was granted affiliation upto Graduate Pass course in Science and Arts subjects. Originally the College was within territorial jurisdiction of Bihar University and now named as Baba Saheb Bhim Rao Ambedkar, University (Respondent No. 6). However, after creation of J.P. University (Respondents No.1)(sic) College fell within the territorial jurisdiction of the said University. The students of this college were registered with the Bihar University and the Bihar University then sent a proposal for affiliation of the College upto Hons, level and the said proposal was pending before the Government. The said College imparted studies to the students in Hons, subject and the students wanted to appear in B.A./B.Sc. Hons, examination but the same was not allowed by the Ambedkar University.

3. The Students and the Principal of the College filed a writ application being C.W.J.C. No. 7360/93 and a division Bench of this Court consisting of Hon"ble Mr. Justice N. Pandey and Hon"ble Mr. Justice S.K. Singh by order dated 27.7.93 directed the Vice-Chancellor to permit the students, who have already deposited the Fee and Forms, to appear in the examination but their results shall not be published until further orders of this Court. A copy of the said order has been annexed as annexure-F to the Counter Affidavit. In pursuance of the said order the students who had already deposited the Fee and Forms were allowed to appear in the Special Hons. Examination conducted by the Respondent No. 6. The said matter was finally disposed of on 3.12.93 by a Bench consisting of Hon"ble Mr. Justice B.P. Singh and Hon"ble Mr. Justice S.K. Singh. A copy of the said order has been annexed as Annexure-1 to the application. This Court in the said order after taking note of the fact that the College was not affiliated upto the Hons. Course and the Registrar of the Ambedkar University (Resp. No. 6) has already clearly stated to the College not to register any student of the Hons. Course even then the College has admitted the students of B.A. Hons. Course, held that no direction can be given in their favour to appear in B.A. Hons. Examination. However, this Court held that if there is any provision that B.A. Hons, student may be treated as a candidate of B.A. Pass Course the University will consider the same. This Court also directed that the grant of affiliation to the College upto B.A. Hons. Course, which is pending before the Government, should be considered by the Govt., within three months. This Court further directed that as the College now has fallen into the jurisdiction of the J.P. University, the students, who were registered with the Bihar University, are required to get themselves registered with the J.P. University but as there being no provision for transfer of the registration the State as well as the University should evolve a procedure for automatic transfer of the registration of the newly created University, However, in absence of registration the students should not be debarred from taking examination. In other words this Court rejected the prayer of the students to appear in the B.A. Hons. Course Examination. In pursuance of the aforesaid direction of the High Court contained in Annexure-1 the Department of Higher Education, Government of Bihar, considered the question of affiliation and granted the same by memo No. 387 dated 13.7.94. A copy of

the same has been annexed as Annexure-2 to the writ application, which shows that the affiliation in Honours Course has been granted in Science as well as in Arts faculty.

4. It is asserted by the Petitioners that the State Government and the University did not evolve a procedure for automatic transfer of the registration of the students from Ambedkar University (Resp. No. 6) to J.P. University (Resp. No. 1) and as such the students of the College, who were registered with the Ambedkar University (Resp. No. 6) continued to be registered as students of the said University. In the meantime, the examination of part 1 of three years degree course for 1992-95 Sessions of J.P. University was over, and thereafter Fee and Forms of the students including the Petitioner Nos. 1 to 9 for Part I Degree Course (Hons.) were submitted by the College to the Ambedkar University and the same were accepted. However, when the Admit Cards were not issued the Petitioners came to this Court in C.W.J.C. No. 7041/94 and at the stage of admission a Division Bench of this Court consisting of Hon'ble Mr. Justice N. Pandey and Hon'ble Mr. Justice S.K. Singh allowed the Petitioners to appear in the examination conducted by the Ambedkar University provided their fee and Forms have been accepted by the proper authority and provided the Petitioners were found duly qualified to appear in the examination. In the meantime, learned Counsel for the University was directed to obtain instructions as to whether the Fee and Forms of the students have been accepted or not by the Ambedkar University. The said order has been annexed as Annexure-3 to the writ application. The students, accordingly, appeared in Part I examination of three years Degree Course. Thereafter, the said writ application was listed on 1.2.95 and a learned single Judge of this Court on the basis of statements made by learned Counsel for the University (Respondent No. 6) that the students have been allowed to appear in the Part I examination of three years degree course and the result will be published in due course, disposed of the writ application after holding that the same has become infructuous. A copy of the said order has been annexed as Annexure-4 to the application. Thereafter, the result of the students including the Petitioners No. 1 to 9 was published from the Ambedkar University. In the mean time, the II Part Examination of three years degree, course of J.P. University was over. They again wanted to appear in the B.A. II Part examination (Hons.) from Ambedkar University. However, when the College was not successful again it filed a writ application being C.W.J.C. No. 3681/95 before this Court for a direction to the Ambedkar University to permit the students of the college to appear in B.A. Hons. Part II Examination which was going to commence from 29.6.95. A learned single Judge (Hon'ble B.R. Singh, J.) of this Court rejected the aforesaid prayer on the ground that as the college falls within the jurisdiction of J.P. University the students of the said College should not be allowed to appear in the examination conducted by the Ambedkar University. A copy of the said order has been annexed as Annexure-5 to the writ application.

5. Against the aforesaid order the Petitioners and Ors. filed L.P.A. and a division

Bench of this Court held that as the examination has been over no relief can be granted. However, the Appellants may approach the J.P. University and which University will take steps for allowing the students to appear in B.A. Part II (Hons) Examination. The J.P. University may request to the Ambedkar University to transfer the registration of the Appellants and other students of the College. A copy of the said order has been annexed as Annexure-6 to the writ application. Thereafter, J.P. University issued a communication dated 31st July, 1995 publishing the Schedule of B.A. Part II of three years degree course examination which was to commence from 8.11.95. The Principal of the College requested the University to allow the students to appear in the aforesaid examination but the Respondent J.P. University did not take any step inspite of the reminders sent by the Principal and, accordingly, he filed writ application in this Court for the aforesaid prayer. A learned single Judge of the Court on 3.10.95 directed the J.P. University to take Fee and Forms of the students and allow them to appear in B.A. part (sic)examination of three years degree course with an observation that this result of such students shall not be published till the final disposal of the present writ application. Thus, the stand of the Petitioners is that the College has been granted affiliation in the Hons. Course on 17.3.94 and as the students appeared and passed the Part I examination of three years degree course (Hons.) from the Ambedkar University in pursuance of the direction of this Court they are entitled to appear in Part II examination of three years degree course (Hons.) from J.P. University and denial of the same is arbitrary and unjustified.

6. The stand of the J.P. University as evident from the counter affidavit filed by it is that the J.P. University was created on 22.11.90 and thereafter the Principal of the College wrote a letter on 8.8.93 to the Controller of Examination to issue 500 Forms for 1992-95 Sessions" students of the College, which has been granted affiliation in pass course and Hons, course for Bachelor of Arts and Science. The Registrar by letter dated 18.9.93 asked the Principal of the College to submit documents in support of its affiliation and thereafter the Principal admitted in his letter dated 4.10.93 that the affiliation to the college has been granted only for B.A. Pass Course from 1990 Session for three years and since the students have been appearing for last two years in B.A./B.Sc. Hons. Course examination and their results have been published the students of the College be permitted to appear in the B.A./B.Sc. Hons. Course examination for 1992-95 Session. The University refused to permit the students to appear in the aforesaid examination as the College has no affiliation in the Hons, subject. Thereafter, the Petitioners came to this Court and this Court in C.W.J.C. No. 7360/93 vide Annex- 1 rejected the prayer to appear in the three years degree course (Hons.) examination, from the J.P. University. The Principal of the College instead of filing a representation before the J.P. University again he including some students filed a writ application being C.W.J.C. No. 7041/94 that they should be allowed to appear in B.A./B.Sc. Hons. Part I Examination from the Ambedkar University as the examination of B.A. Part-I Hons of J.P. University was over. This Court in the said Application issued direction to the Respondent No. 6 to allow the students to appear in the

aforesaid examination and the students in pursuance of the said direction appeared in the examination and their results were published by the Ambedkar University. Again they came to this Court for a direction to the Ambedkar University to accept the Fee and Forms of Part II Examination of three years degree course (Hons.) and the same was dismissed.

7. It asserted that it had no knowledge that the Petitioners were illegally appearing in the Hons. Examination and pass course examination from Ambedkar University. The College had no affiliation for B.A./B.Sc. Hons. Course and even in B.A. Pass Course in 1990-91 the College was granted temporary affiliation for the certain subjects in the Arts faculty for three Sessions from 1990-91 and, therefore, they have no right to appear in honours examination. It is also stated that once this Court in a writ application has held that the said College falls within the territorial jurisdiction of J.P. University then it is not permissible for the College to approach the Ambedkar University to accept the Fee and Forms and conduct the T.D.C. 1st year examination of 1993. It is further stated that the Joint Secretary, Government of Bihar, by letter dated 28.2.94 informed the University that the College did not have proper laboratory facilities, competent teachers and requisite number of students and as such the proposal for affiliation in Hons. Course has been rejected, copy of the said order has been annexed as Annexure-G to the Counter Affidavit. It is also stated that the number of students in many subjects, who have been allowed to appear in the examination in pursuance of the interim order, details of which have been given in paragraph-18 of the counter affidavit, is only one. It is further stated that the three years degree course (Hons.) is an integrated course and the students have to appear in all the three years examination i.e. Part I, II and III examination from the same University and, therefore, it is not possible to allow the students of the College to appear in Part. II examination from the J.R University. The further stand of the University is that the students cannot be allowed to appear in three years degree Course (Hons.) examination unless the College has a valid affiliation according to law.

8. it is well settled by the judgment of the apex Court reported in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., that-

recognition may be granted either by the Government or any other authority or body empowered to accord recognition. Similarly, affiliation may be granted either by the University or any other academic or other body empowered to grant affiliation to other educational institutions. In other words, it is open to, a person to establish an educational institution admit students, impart education, conduct examination and certificates to them. But he, or the educational institution has no right to insist that the certificates or degrees (if they can be called as such) awarded by such institution should be recognised by the State much less have they the right to say that the students trained by the institution should be admitted to examinations conducted by the University or by the Government or

any other authority, as the case may be. The institution has to seek such recognition or affiliation from the appropriate agency. Grant of recognition and/or affiliation is not a matter of course nor is it a formality. Admission to the privileges of an University is a power to be exercised with great care, keeping in view the interest of the general public and the nation. It is a matter of substantial significance, the very life-blood of a private educational institution. Ordinarily speaking, no educational institution can run or survive unless it is recognised by the Government or the appropriate authority and/or is affiliated to one or the other Universities in the country. Unless it is recognised and/or affiliated as stated above, its certificates will be of no use. No one would join such educational institution. As a matter of fact, by virtue of the provisions of the U.G.C. Act, noticed hereinabove, no educational institution in this country except an University is entitled to award degrees. It is for this reason that all the private educational institutions seek recognition and/or affiliation with a view to enable them to send the students trained by them to appear at the examinations conducted by the Government/University....

9. Section 21 of the Bihar State Universities Act defines the powers and duties of the Senate. One of the powers and duties of the senate is to grant affiliation to the College. The grant of affiliation is subject to approval by the State Government. It is admitted position that the Senate was not in existence at the relevant time as such the Vice-Chancellor was vested with the power to grant affiliation subject to the approval of the State, Government.

10. According to the Petitioner's case affiliation upto Hons. Course has been granted to the College on 17.3.94, a copy of which has been annexed as Annexure-2 to the writ application, which letter shows that the State Government has granted affiliation in Arts and Science subjects to the College in question.

11. The assertion made in the counter affidavit that J.P. University was created on 22nd November, 1990 has not been denied by the Petitioners. It is to be stated here that the State has not filed counter affidavit and the Addl. Advocate General No. II Mr. S. Narain has produced the relevant file and stated that he has nothing to say beyond what is stated in the file. From perusal of the same it appears that on 3rd November, 1990 the Bihar University made recommendation for grant of affiliation to the pass course and in April, 1991 affiliation was given in pass course for three years. In September, 1991 when the Bihar University had no jurisdiction it sought for an approval from the State Government for grant of affiliation in some subjects in Hons. Course to the College. Inspection teams were constituted twice and submitted the reports that the college was not found fit for grant of affiliation to Hons. Course. Considering the said reports the State Government rejected the prayer for grant of affiliation and that was communicated to the Ambedkar University as well as the J.P. University on 18.2.94. Thereafter, without any fresh material and without approval being sought for by J.P. University within which jurisdiction the College falls or even by

the Bihar University on 13.7.94 the State Government has granted affiliation, which has been annexed as Annexure-2 as stated above.

12. The question is as to whether the said College has been granted affiliation in the Honours Subjects or not. If it has a valid affiliation then the students can be allowed to appear in examination in Honours Subject.

13. Law is well settled that when a power is vested in an authority to do a certain thing that power is to be exercised by that authority and not by any other authority. The University Act vests the Senate to grant affiliation after approval by the State Government. The University has to consider in terms of the relevant statute as to whether the College fulfils the requirements of grant of affiliation in Hons. Course or not and only when the University is satisfied that the College fulfils the requirement for grant of affiliation in Hons. Course then the matter is sent to the State Government for approval. The provision of approval appears to have been incorporated with object that as the financial matter is involved and the State has to incur expenditure an approval has to be sought for before granting affiliation.

14. In this case after creation of J.P. University in 1990 the only competent University to grant affiliation is the J.P. University after the matter is approved by the State Government. At no point of time the J.P. University has considered the question of affiliation and the State Government on its own has granted affiliation which, as stated above, has no power to grant affiliation but has only power to approve the affiliation either in pass course or in Hons. Course. Thus, the order contained in Annexure-2 dated 17.3.94 cannot be held to be an order granting affiliation in the Hons. Course. The said order is no order in the eye of law as it does not fulfil the requirements of Section 21 of the Bihar Universities Act. The learned Addl. Advocate General No. II has fairly conceded that this order cannot be said to be an order of affiliation in terms of the relevant provision of the Universities Act.

15. Even assuming for the sake of argument that the order is order granting affiliation in the Hons. Course even the said order cannot be said to be an order passed according to law. As stated above, two inspection reports submitted by the Inspecting Team did not find the College fit for affiliation in degree course and taking into consideration the aforesaid reports by an specific order dated 28.2.94 the prayer for grant of affiliation was rejected by the State Government. There was no fresh material to take different decision granting affiliation on 17.3.94. Thus, the aforesaid order is arbitrary and passed on no-material at all. As such in my concluded opinion the order dated 17.3.94 contained in Annexure-3 cannot be said to be an order giving affiliation to the degree course.

16. This apart Anr. ground to disentitle the Petitioner to the prayer made in the writ application is that when they came to this Court in C.W.J.C. No. 7360/93 this Court while rejecting their prayer to appear in the Hons. Examination clearly held that as the College fell within the jurisdiction of the J.P. University the said

University is alone competent to any decision with regard to the college in question. As such even assuming that the affiliation was granted to the College the Petitioners could only appear in the examination conducted by the J.P. University and not by the Ambedkar University, which has no jurisdiction over the College in question.

17. No doubt, this Court in C.W.J.C..N0.7041/94 allowed the request/prayer made by the Petitioners to appear in Part-I of three years degree course examination (Hons.) from Ambedkar University and they appeared and their results were declared but that, in my view, will not make any difference. They made prayer before this Court and this Court allowed them to appear in the examination.

18. Admittedly, the College was not within the territorial jurisdiction of the Ambedkar University. Neither it was affiliated to the Hons. Course nor it could have been affiliated in view of the legal provision and in that view of the matter passing of Part-I examination conducted by the said University by the Petitioner will not confer any right on the Petitioners to appear in Part II Hons. Examination being conducted by the J.P. University which is a different University having different course. It is clearly stated in the counter affidavit that three years degree course is an integrated course and the candidate has to pass all the three examinations from the same University. Thus, the claim of the Petitioners that as they have been allowed to appear in Part-I Hons. Course Examination from the Ambedkar University by the order of this Court they should be permitted to appear in Part II Hons. Courses Examination to be conducted by the J.P. University cannot be allowed in law.

19. As stated above, in absence of a valid affiliation the prayer of the Petitioners to appear in the aforesaid examination cannot be allowed. The sympathy and sentiments can have no place in such matters. This Court should not allow the students of such colleges to appear in the examination as it creates an impression that this Court has no abhorrence to those institutions which disobeyed the law.

20. In the case of N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another, the apex Court has held that-

if by a fiat of the Court we direct the Government to permit them to appear at the examination we will practically be encouraging and condoning the establishment of unauthorised institutions. It is not appropriate that the jurisdiction of the Court either under Article 32 of the Constitution or Article 226 should be frittered away for such a purpose.

In the case of State of Maharashtra Vs. Vikas Sahebrao Roundale and others, the apex Court has held as follows.

Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education.

The direction to the Appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source of indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prelogrative power conferred under Article 226 of the Constitution directing the Appellants to permit the students to appear for the examination.

21. The grant of permission to the students of non-affiliated colleges to appear in the examination by this Court amounts to directing the authority to disobey the law. this Court cannot issue writ of mandamus to the authorities to commit illegalities or to violate the law.

22. It appears that the College wants to gain sympathy of this Court by adding certain students as Petitioner in the case but number of students who have appeared in the examination in pursuance of an interim order of this Court is only one in many subjects as appears from the averments made in the counter affidavit. Thus, no relief can be granted to the Petitioners in this case.

23. In the result, the writ application is dismissed.