
(2001) 05 PAT CK 0049
In the Patna High Court
Case No : C.W.J.C. No. 4460 of 2001

Pawanh Prakaswh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-05-2001

Acts Referred:

Citation : (2001) 05 PAT CK 0049

Final Decision : Allowed

Judgement

Aftab Alam, J.—This matter was earlier heard on 25.4.2001. On that date after some submissions were made on behalf of the Petitioners, Mr. Bibhuti Pandey, Senior counsel appearing for the University made a prayer for adjournment. Mr. Pandey, said that till then he was briefed in the matter only by the advocate on record but he wished to personally ascertain from the Vice Chancellor of the Respondent University, if the University really intended to resist the reliefs claimed in the two writ petitions. On his prayer, the matter was adjourned for today. Today Mr. Pandey stated that the University felt some difficulty in holding further examinations for the students of the Katihar Medical College and in publishing the results of some of the examinations held of the students of this college as there was no direction or advice from the State Government on the issue of the affiliation of the college. The University was, therefore, not in a position to concede the reliefs claimed, by the Petitioners in these two writ petitions. Mr. Pandey submitted that for holding further examinations in future and for publishing the results of the examinations already held the University will, therefore, require a direction from this Court. Though Mr. Pandey would not say it, the position clearly is that the University means to contest the reliefs claimed in these two writ petitions.

2. It may be stated here that a counter affidavit was filed today on behalf of the State. In the counter affidavit the State declined to make any comment on the issue of the recognition/affiliation of the college and further took the stand that for holding examinations it was the University which had the necessary

competence.

3. In fairness to Mr. Pandey, it may be stated here that he got an opportunity to go through the counter affidavit filed on behalf of the State only after having stated before the court the stand of the University as noted above. But on going, through the contents of the counter affidavit, he submitted that as the State did not seem to raise any objections to the affiliation granted to the college, the University would have no difficulty in publishing the results of the past examinations as well as in holding further examinations for the students of the college. In my view, however, the stage for making any concessions is now over. The University asked for a direction from this Court and it must therefore, have a properly considered decision by this Court in these two cases.

4. There are five Petitioners in C.W.J.C. No. 4460/2001. They are the students of the Katihar Medical College, Katihar, which according to them was established as a minority institution under Article 30 of the Constitution. They seek a direction to the B.N. Mandal University and its officials to hold (i) the Second M.B.B.S. Examination 1999 (ii), (2) the Second M.B.B.S. Examination 2000 (i) and (3) the First M.B.B.S. Examination 2000 (i).

5. It is to be noted that forms and fees etc. for holding these examinations were accepted by the University from the students of the college long ago.

6. C.W.J.C. No. 4461 of 2001 has been similarly filed by 12 Petitioners, who are students of the same college. They seek a direction for publication of the results of certain examinations (the details of which are given in para 1 of the writ petition) held by the University in March, 2000.

7. Before proceeding further it may be noted that some students of another private medical college namely, Mata Gujri Memorial Medical College, affiliated to the same University, also came to this Court in C.W.J.C. Nos. 3606 and 3607 of 2001, seeking similar reliefs as in the two writ petitions in hand. Similar reliefs claimed by the students of the Mata Gujri Memorial Medical College was allowed by judgment and order, dated 1.5.2001. All that was said in that judgment applies with equal, if not greater force, to the Petitioners in this case and if any thing, the case of the present Petitioners is on stronger footing than the students of the Mata Gujri Memorial Medical College. This will be evident from the following facts and circumstances.

8. The Katihar Medical College was set up by AlKarim Educational Trust, Patna, professedly as a minority institution, established under Article 30 of the Constitution. The college and the Trust came to this Court in C.W.J.C. No. 7985 of 1990 seeking appropriate directions to the State and the University in the matter of recognition/affiliation of the college. That writ petition was finally dismissed by this Court by judgment and order, dated 7.4.1992. Against that order the trust of the college preferred a SLP (S.L.P. No. 7502 of 1992) before the Supreme Court. The Supreme Court granted special leave to appeal by order, dated 16.7.1992 and made the following, interim directions for permitting the

students of the college to appear in examinations:

By way of an interim order we direct that the students admitted to Katihar Medical College will be permitted to take examination, but their result will be withheld till further orders by this Court. The concerned University which will take the examination is B.N. Mandal University at Madhepura which we are told is successor University to L.N. Mithila University. We also make it clear that the college will not grant new admissions without express permission of this Court.

Arising from the S.L.P., Civil Appeal No. 2590 of 1992 was finally disposed of judgment and order, dated 27.2.1996. By that judgment the Supreme Court gave direction for grant of affiliation to the college. The operative portion of the judgment contained in paragraph 12 is reproduced below:

In the totality of the circumstances disclosed in the case and having regard to the fact that at each stage new deficiencies are being pointed out, the latest being the report dated 28.6.1995 (explained by the subsequent affidavit of the Appellants dated 4.9.95), we are satisfied beyond any manner of doubts that the deficiencies have been substantially complied with and minor deficiencies pointed out in the last mentioned report of 28.6.95 are not such as to permit withholding of the affiliation to which the Appellants institution is entitled. From the manner in which the deficiencies have been pointed out from time to time each time the old deficiencies are shown to have been removed, new deficiencies are shown, gives the impression that the affiliation is unnecessarily delayed. From the removal of the minor deficiency pointed out in the report of 28.6.95 a compliance affidavit dated 4.9.1995 is filed. Once the institution feels secure on the question of affiliation, we have no doubt that these minor deficiencies if they exist, shall be taken care of by those in charge of the institution. For taking such further steps, the grant of affiliation need not wait. We make this position clear. The steps for the grant of affiliation to the Appellants institution may now be expedited and we directed the Respondents to issue the necessary orders without loss of time.

(Emphasis added)

9. In compliance with the direction given by the Supreme Court, the University issued notification, dated 2.4.96 (Annexure-1) by which the college was given affiliation from the sessions 1987-88 in MBBS course. It is undeniable that this notification remains subsisting till date and it has not been recalled, rescinded or withdrawn.

10. The order of the Supreme Court was equally to the State Government, but apparently no formal order of recognition/affiliation was issued by the State Government. In the counter affidavit filed on behalf of the State it is stated in this regard that the State Government, in compliance to the direction of Hon"ble Supreme Court has already issued a press communique in daily news paper to make aware the people in general and students admitted in the Petitioner"s institute in particular as per order/direction of the Apex Court"

11. In the counter affidavit there is no mention of grant of any affiliation to the college by the State Government and the deponent of the affidavit and the Secretary, Deptt. of Medical Education appear to blissfully over look that they are already in contempt of the Supreme Court and are liable to be proceeded against for disobedience of the order passed by the Apex Court.

12. Be that as it may, it is noted above that the University issued notification dated 2.4.96 granting affiliation to the college for the MBBS course. Thereafter the University held more than half a dozen examinations for the students of the college, the results of which were duly published.

13. The last examinations were held in December, 2000, the results of which the University has declined to publish. At the same time the University is refusing to hold further examinations for the students of the college, though fees and forms for those examinations were already accepted from the students of the college.

14. Before proceeding to examine the reasons for this turn around in the stand of the University, it would be appropriate to take note of a significant development taking place in the meanwhile. The general body of the Medical Council of India at its meeting held on 14.2.2001 approved the recommendation of the Executive Committee of the Council for the grant of recognition to the college for the award of M.B.B.S. degree granted by the University with an annual intake of 60 students. The resolution of the Executive Committee which received the approval of the general body of the Council on 14.2.2001 is reproduced below:

The Executive Committee considered the compliance verification report (16th and 17th June, 2000) along with the previous inspection reports (June/July, 1999; August, 1999, December, 1999) and decided to recommend to general body of the Council that Katihar Medical College, Katihar be recognised for the award of M.B.B.S. degree granted by B.N. Manual University, Bihar with an annual intake of 60 (sixty) students and included in the 1st schedule of the I.M.C. Act, 1956.

15. Following the grant of recognition by the general body, the Medical Council of India by its letter, dated 19.2.2001 requested the Central Government to issue necessary notification with regard to recognition of the college. A copy of the letter was sent to the Principal of the College which may be found at Annexure-10.

16. A formal notification of recognition is now awaited from the Central Government.

17. It is in these facts and circumstances that this Court is required to examine the action of the University in reversing its decision to publish the results of the past examinations and of hold any further examinations for the students of this College. All that is stated on behalf of the University in justification its reversal of decision is that the State Government has not issued an order of affiliation to the college as directed by the Supreme Court and as required under, the proviso to Section 21(d) of the Bihar State Universities Act. It is further stated that in

absence of any order from the State Government, the University authorities thought that it would not be) proper or prudent for them to hold any further examinations for the students of this college. This decision was taken in the meeting of the Examination Board held on 20.12.2000 and the Government was also intimated about the decision by the Pro-Vice-Chancellor by his letter, dated 8.1.2001. It is stated that no reply was received from the State Government.

18. The decision of the University based on the omission by the State Government to issue an order of recognition/affiliation to the college will not bear a moment's scrutiny. Regardless of any action or inaction by the Government in this matter, the University cannot overlook that it is bound by the direction given by the Supreme Court and by the notification giving affiliation to the college issued by it in compliance with the direction of the Apex Court. Moreover, once the college is granted recognition by the Medical Council of India, the issue of recognition/affiliation by the State Government loses much significance. See *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, *Chas Bokaro Vikas Samitee and Another Vs. The Union of India (UOI) and Others*,

19. It may also be noted here that the decision of the examination Board held in its meeting dated 20.12.2000 was Considered by this Court in the case of the students of the Mata Gujri Memorial College and in that regard it was observed as follows:

The decision of the Examination Board arrived at by a majority vote appears to me to be quite invalid and incorrect both in law and on facts.

In the first place under the Bihar Universities Act, the Examination Board is not vested with the authority or power to take the decision as was taken by it in its meeting of 20.12.2000. Secondly, the decision is quite erroneous on facts. It is inconsistent with the directions given by the Supreme Court and it amounts to a reversal of its decision by the University for which there was no justification. This Court is constrained to say that in this matter the University has been acting with material irregularity and its decision appears to be based on considerations not germane to the issue. The reversal of the decision on the plea that the State Government had not issued an order of provisional affiliation of the college, in derogation of the direction given by the Supreme Court, and hence, the University should also follow the State in disobeying the orders given by the Supreme Court does not cut any ice with this Court and this Court unhesitatingly finds and holds that this sudden reversal of the decision by the University was wholly unjustified, unreasonable and arbitrary.

On the direction of the Supreme Court the grant of provisional affiliation to the college was a Legal act and it has some legal consequences. Having granted provisional affiliation to the college, the University is obliged, among other things, to hold examinations of its students and to declare the results of those examinations. The University cannot suddenly say that it will no longer hold any

examination though provisional affiliation granted to the college remains subsisting as also the interim order passed by the Supreme Court. This would plainly amount to flouting the direction given by the Supreme Court. As long as the interim order given by the Supreme Court subsists and as long as the provisional affiliation granted to the college on that basis remains alive, the University is bound to hold examinations for the students of this college regardless of what the State Government may or may not be doing.

20. As noted earlier whatever was said in the case of the students of Mata Gujri Memorial College applies with equal, if not greater, force to the Petitioners in these two writ petitions. Mata Gujri Memorial Medical College was granted provisional affiliation by the University in compliance with an interim order passed by the Supreme Court subject to a number of conditions based on the undertaking given to the court by the college. The appeal of the college remains pending before the Supreme Court and the interim directions were expressly made subject to the final result of the appeal. In this case, the appeal of the Katihar Medical College was disposed of by the Supreme Court with the direction for grant of affiliation (and not provisional affiliation) to the college. In the case of Mata Gujri Memorial Medical College, the matter of recognition by the M.C.I, was at the stage of the Executive Committee of the Council, but in the case of this college, the General Body of the Council has already recommended for the grant of recognition to the college and now the matter (sic) its recognition awaits the issuance of an order by the Central Government.

21. Apart from the decision, dated 20.12.2000, Mr. Pandey also brought to my notice the subsequent decision of the Examination Board taken in its meeting, dated 4.4.2001, it is simply a reiteration of the earlier decision and it is stated there that in the absence of any order from the State Government, it may not be possible for the University to publish the results of the past examinations and to hold any further examination for the college.

22. As it is already shown that the main decision of the Examination Board, dated 20.12.2000 was wholly unreasonable, arbitrary and invalid, it is not required to discuss the subsequent decision in any further detail because it was merely a reiteration of the earlier decision.

23. For the reasons discussed above, this Court directs the University to publish the results of the examination of the students of the Katihar Medical College already held by it (the details of which are given in para 1 of C.W.J.C. No. 4461 of 2001). The University is further directed to hold the examinations as prayed for in C.W.J.C. No. 4460 of 2001, for the students of the college. The results of the past examinations must be published within three weeks from the date of receipt/production of a copy of this order. The future examinations for which fees and forms etc. have already been accepted by the University must be held within six weeks from the date of receipt/production of a copy of this order and all future examinations must accordingly be held on schedule.

24. In the result, these two writ petitions are allowed with a token cost of Rs. 5/-