

(2022) 03 PAT CK 0008

In the Patna High Court

Case No : Letters Patent Appeal No. 222, 293 Of 2020 In Civil Writ Jurisdiction
Case No. 3936 Of 2019, 2589 Of 2020

Prabha Kumari

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 07-03-2022

Acts Referred:

Citation : (2022) 03 PAT CK 0008

Hon'ble Judges : Ashutosh Kumar, J;Anjani Kumar Sharan, J

Bench : Division Bench

Advocate : Nivedita Nirvikar, Ashutosh Ranjan Pandey, Satyabir Bharti, Sunil Kumar Singh, Lalit Kishore

Final Decision : Dismissed

Judgement

We have heard Smt. Nivedita Nirvikar, learned Senior Advocate for the appellants in both the appeals and Mr. Satyabir Bharti and Mr. Sunil Kumar Singh for Bihar School Examination Board and National Council for Teacher Education respectively.

The National B.Ed college of Higher Education (hereinafter called 'the Institute') in the district of Patna has been established under the Jeevan Jyoti Educational and Social Welfare Trust, registered under the Trust Act, 1993. The Eastern Regional Committee of the National Council of Teachers Education (hereinafter called 'the NCTE') has issued a final order granting recognition to the aforesaid Institute on 02.05.2017 for conducting B.Ed course of two years duration for Session 2017-19 for hundred (100) students but subject to the condition of fulfillment of all other requirements as may be prescribed by any other regulatory body like UGC, affiliating University/body, the State Government etc. as applicable.

The intimation of recognition clearly specifies that the Institute shall take admissions only after it obtains affiliation from the examining body in terms of

Clause 8(X) of the NCTE (recognition norms and procedure) Regulation, 2014 (hereinafter called 'the Regulation of 2014').

The Institute thereafter made an application to the Secretary of Bihar School Examination Board (hereinafter called 'the Board'), the examination taking body, for affiliation on 31.07.2017 for the academic session 2017-19. The Institute was asked for the affiliation fee as well as the spot verification fee on 14.09.2017, which was paid on 16.10.2017. However, no order for affiliation was passed by the Board for the aforesaid academic session. It was only on 03.01.2018 that an order came to be passed by the Board granting affiliation to the Institute for the academic session 2018-20 for two years D.El.Ed. course and not for the session 2017-19.

The appellants of LPA No. 222/2020 (Prabha Kumari & Ors.) had taken admission in the aforesaid Institute for session 2017-19 for D.El.Ed. course. They moved before the High Court vide CWJC No. 16962/2019 for a direction to the Board to grant affiliation to the Institute for the academic session 2017-19 as also for holding the examination for the aforesaid session.

The aforesaid writ petition was disposed of by order dated 20.08.2019 directing the Board to consider their claim in terms of the judgment dated 28.03.2019 passed in CWJC No. 19046 of 2018 (Rajendra Kishore B. Ed. College, Siwan and Ors.) and accord to the petitioners/appellants/students the same benefit so that they may not suffer adversely.

The Board vide its order dated 13.09.2019, considered the case of the students (appellants in LPA No. 222 of 2020) and rejected their claim for granting affiliation to the Institute for session 2017-19 on the ground that the judgment of the Supreme Court in Maa Vaishno Devi Mahila Mahavidyalaya vs. the State of Uttar Pradesh 2013 (2) SCC 617 clearly forbade any breach in the timeline provided therein in matters of recognition and affiliation. It was also noted by the Board that the application for affiliation was filed by the Institute on 04.08.2017 which was way beyond the cut-off date. The case of the petitioners in CWJC No. 19046 of 2018 (Rajendra Kishore B. Ed. College, Siwan & Ors. vs. BSEB & Ors.) was different from the case of these students. The petitioners/institutes in CWJC No. 19046/2018 had been granted recognition by NCTE for academic session 2016-18, whereas the Institute in the present set of appeals was given recognition for the session 2017-19.

The aforesaid decision of the Board dated 13.09.2019 referred above was put to challenge in CWJC No. 2589 of 2020.

The Board also reviewed the case of the Institute for granting affiliation from session 2017-19 but after consideration of each and every aspect of the matter, found that because of the late deposit of application for affiliation by the Institute, no change was required to be made and therefore the earlier decision of granting affiliation for 2018-20 was endorsed vide order dated 17.12.2019.

It may be noted here that the Institute had also challenged the decision of the Board in granting affiliation for session 2018-20 and not for 2017-19 vide CWJC No. 3936 of 2019.

The judgment in the aforesaid case was reserved on 16.05.2019.

Even the decision of the Board not to grant similar relief as granted to the institutes/petitioners in CWJC No. 19046 of 2019 (Rajendra Kishore B. Ed. College, Siwan & Ors. vs. BSEB & Ors.) was challenged by the Institute vide CWJC No. 21059 of 2019 but that was disposed of with a liberty to the institute, if so advised to agitate the cause in CWJC No. 3936 of 2019 in which judgment was reserved.

The writ petition filed by the students/appellatns in LPA No. 222/2020 (CWJC No. 2589 of 2020) was also disposed of by another Bench of this Court vide order dated 25.02.2020 giving liberty to them also to ventilate their grievances in the same writ petition viz. CWJC No. 3936 of 2019 which had already been heard by a co-ordinate Bench of this Court.

The aforesaid order dated 25.02.2020 has been appealed against vide LPA No. 222 of 2020.

In the meantime, the judgment in CWJC No. 3936 of 2019 was pronounced on 13.08.2020 holding that the Institute cannot claim affiliation for session 2017-19 as the application for affiliation was filed before the Board only after a delay of three months and that the cases of other institutes governed by the judgment delivered in CWJC No. 19046 of 2019 (Rajendra Kishore B. Ed. College) (supra) would not come to the avail of the institute.

The aforesaid judgment in CWJC No. 3936 of 2019 has been challenged by the institute vide LPA No. 293 of 2020.

Both the appeals have been heard together and a common judgment is being passed.

From the impugned judgment dated 13.08.2020, we find that the NCTE granted delayed recognition to the Institute on 02.05.2017 though the schedule provided in Maa Vaishno Devi Mahila Mahavidyalaya (supra) obligated NCTE to issue formal order of recognition latest by 03.03.2017. The Institute had applied on-line before the NCTE for affiliation on 30.05.2016, when an inspecting team was sent to the college and inspection carried out, which report was placed in the 239th meeting of the Eastern Regional Committee of NCTE. On scrutiny of the application of the institute, recognition was granted on 02.05.2017.

The Institute was required to have submitted the proposal for affiliation before the Board by 10.03.2017 in accordance with the schedule provided in Maa Vaishno Devi Mahila Mahavidyalaya (supra) but since recognition was granted only on 02.05.2017, the application for affiliation should have, at best, been submitted by 09.05.2017(after seven days of the grant of recognition by NCTE).

The Institute appears to have made an application for affiliation on 31.07.2017.

As has been noted above, the application was entertained but the Board vide intimation/letter dated 03.01.2018 granted affiliation to the Institute for academic session 2018-20 instead of 2017-19.

In the case of Rajendra Kishore B. Ed. College, Siwan & Ors. (CWJC No. 19046 of 2018 and analogous cases) the petitioners/institutes therein had initially come to the Court seeking a mandamus against the Board to grant affiliation to those colleges with effect from sessions 2016-18 and for permitting the students of the colleges to fill-up the examination form on-line for the examination for session 2016-18.

During the pendency of the aforesaid writ petition, the Board vide its notification dated 07.07.2018 had amended the Bihar School Examination Board (issuance of teachers education, no objection certificate, affiliation norms and procedure) Regulation, 2016 (hereinafter called 'the Regulation of 2016') incorporating Clause 8(XIII) whereby all the training colleges which had obtained recognition from NCTE up to training sessions 2014-16, before the promulgation of NCTE Regulation, 2014 and were not granted affiliation by the Board for some reason or the other but had allowed the admitted students to participate in the examination organized by the Board and had published the results, were given deemed affiliation for those sessions. Since those petitioners/Institutes had challenged the amendment to 2016 Regulation, incorporating Clause 8(XIII) which gave deemed affiliation to 44 other Institutes, the matter was referred by the Single Judge to a Division Bench of this Court.

The Division Bench (in CWJC No. 19046 of 2018) found such notification and consequent amendment in the 2016 Regulation of the Board to be unnecessarily exclusionary and therefore read down the amended clause to the extent that such benefit of deemed affiliation be granted for sessions 2015-17 and 2016-18 also.

Pursuant to the aforesaid judgment of the Division Bench, against which the challenge before the Supreme Court could not be sustained, the Board had issued communication dated 15.02.2019 in daily newspapers for registration of DEled. students for academic sessions 2014-16, 2015-17 and 2016-18. For the in-service candidates the registration had to be completed between 16.02.2019 to 22.02.2019.

Under the Regulation of 2014, a duly completed application on behalf of the institute for recognition is to be submitted before the Regional Committee between 1st of March to 31st of May of the preceding year from the academic session for which recognition is sought. The Institute had applied before the Eastern Regional Committee of NCTE on 30.05.2016 within time after getting no objection certificate from the respondent Board on 18.05.2016.

For no good reason which has been shown to us, the recognition was though

granted by the Eastern Regional Committee of NCTE on 02.05.2017 for session 2017-19 for hundred students when, in fact, it should have been given latest by 3rd of March, 2017.

Under Clause 8(X) of the 2014 Regulation of the NCTE, the examining body is under an obligation to grant affiliation after the issue of formal recognition, subject to the Rules and Regulations framed in that regard by the concerned examination taking body/affiliation giving body.

The Board, as we find, did not make any objection with respect to the late filing of the application for affiliation and finally vide order dated 03.01.2018 granted affiliation to the institute for academic session 2018-20, leaving the students and the institute high and dry with respect to session 2017-19.

The Board has, as noted above, also rejected the representation of the students as also of the Institute to consider granting affiliation from 2017-19 as was done for the Institutions who were the petitioners in CWJC No. 19046/2018 (Rajendra Kishore B. Ed. College, Siwan & Ors.) by orders dated 13.09.2019 and 17.12.2019 respectively.

The major contention of the appellants is that if the Regulation, 2016 was amended for some of the Institutes to give deemed affiliation till session 2016-18, even though the affiliation had not earlier been granted, there was no good reason for not doing it for this Institute for session 2017-19 and that in the event of the NCTE having given recognition to the Institute after the cut-off date, no objection ought to have been taken by the Board in granting affiliation to the Institute if the application for affiliation was furnished after the cut-off date.

It has also been urged on behalf of the students that they had no idea and that they could not have known, even by exercising utmost diligence in the matter, that they were taking admission in the Institute, which did not have the requisite affiliation by the Board. Once it was represented to them that the Eastern Regional Committee of the NCTE had granted recognition to the Institute on the basis of "no objection certificate" by the Board, it was in their legitimate expectation that the Board had or would grant affiliation to the Institute for session 2017-19 for which recognition has already been granted by the NCTE.

The afore-noted objections have been dispelled by the learned Single Judge by noting that in Rajendra Kishore B. Ed. College, Siwan & Ors. (CWJC No. 19046 of 2018) (supra), the amendment in Clause 8 of the Regulation, 2016 was read down to include sessions 2015-17 and 2016-18 as the amendment had been brought on 07.07.2018 and there was no reason for keeping the cut-off date of the session to be 2014-16 only. The examination for those sessions had already been taken.

So far as the appellant/Institute is concerned, it had taken admission of the students without affiliation for the session 2017-19 even when the recognition by the NCTE clearly specified that no admissions were to be taken before affiliation

by the Board. With respect to giving deemed affiliation to other Institutes till session 2016-18, that was because of the restrictive amendment which was brought in the Regulation of 2016 keeping the cut-off session to be 2014-16 which was read down and was extended till session 2016-18 by an order of this Court which attained finality with the dismissal of the SLP against such order.

The rationale and justification for such reading down was that the amendment had been carried out only on 07.07.2018 and that the Institutes in question stood on the same footing with respect to sessions 2015-17 and 2016-18 as for such sessions, the students had already been permitted to appear in the examination even without the affiliation by the Board.

We find no flaw with the decision of the learned Single Judge in spelling out such distinction and not acceding to the request of either the Institute or the students for granting affiliation and validating the admission for session 2017-19.

The Supreme Court in *Maa Vaishno Devi Mahila Mahavidyalaya (supra)* has categorically held that none in the hierarchy of the State Government, University, NCTE or any other authority or body involved in the process of recognition and affiliation can breach the schedule for any direct or indirect reason. Anybody who is found to be defaulting in this behalf is bound to render himself or herself liable for initiation of proceedings under the provisions of Contempt of Courts Act, 1971 as well as for a disciplinary action in accordance with the orders of the Supreme Court.

It was also observed by the Supreme Court that adherence to the schedule provided in *Maa Vaishno Devi Mahila Mahavidyalaya (supra)* achieves the object of the Acts in question. Disobedience only results in unfair admissions.

The Supreme Court again in *Committee of Management, Anuragi Devi Degree College and Anr. vs. State of Uttar Pradesh and Anr.* (2016) 12 SCC 517 found that the conduct of University and Colleges in admitting students without necessary affiliation for the concerned academic sessions is a kind of disease, a disaster which could lead to cascading results. In the aforesaid case, the Supreme Court reiterated the censure and deprecation in *Sunil Oraon vs. CBSE*, (2006) 13 SCC 673 regarding the practice of Educational Institutions admitting students without requisite recognition or affiliation. Even though the ultimate victims are innocent students but that cannot ever be a ground for validating such wrong admissions.

The issue of delayed recognition by the NCTE forcing a private Institute to take admission without affiliation by the concerned body has been dealt with by the Supreme Court in *NCTE vs. Venus Public Education Society*, (2013) 1 SCC 223.

It would be apposite to refer to para-33 of the aforesaid judgment (SCC p. 242; para-33)

"33. ... It is urged by him that NCTE had procrastinated its decision at every stage and such delay was deliberate and, therefore, the Society was compelled

to admit the students and impart education, regard being had to the fact that there were really no deficiencies. As has been laid down in many a pronouncement of this Court that without recognition from NCTE and affiliation from the university/examining body, the educational institution cannot admit the students. An educational institution is expected to be aware of the law. The students who take admission are not young in age. They are graduates. They are expected to enquire whether the institution has recognition and affiliation. If we allow ourselves to say so, the institution had given admission in a nonchalant manner. Possibly, its functionaries harboured the idea that they had incomparable fertile mind. The students who had taken admission possibly immersed with the idea that ignorance is a bliss. It is also necessary to state that the institution had the anxious enthusiasm to commercialise education and earn money forgetting the factum that such an attitude leads to a disaster. The students exhibited tremendous anxiety to get a degree without bothering for a moment whether their effort, if any, had the sanctity of law.”

Thus, finding that the Institute had submitted the requisite application for affiliation three months after the cut-off date and had taken admission of students much before the affiliation was granted by the Board, we are of the view that differing with the learned Single Judge’s opinion in not validating the admissions or directing the Board to give affiliation from session 2017-19 to the Institute would be in the nature of misplaced sympathy for the students.

Such wrongful admissions in Institutes have to stop.

We have been informed that the appellants in LPA No. 222 of 2020 were permitted by this Court to appear in the examination but such permission was made purely subject to the outcome of this appeal with a special clarification that none of the students would claim any right of equity for having undertaken their examination pursuant to the direction issued by this Court.

The answer-sheets of the students were also directed to be evaluated but the results were asked to be withheld and kept in a sealed cover.

Since we have held that the Institute did not have necessary affiliation for taking admission of these students, their having written the examination does not create any right in them to continue as students of the Institute for session 2017-19.

We would have otherwise directed the Institute to restitute the students by returning their fee but since both, the students as well as the Institute, was represented by one and same lawyer and it was not prayed accordingly, we refrain ourselves from passing any direction in that regard.

However, the Institute, to avoid any future tortious claim of the students, would be well-advised to return the fee to those students.

The appeals are thus dismissed but without costs.