

(1994) 01 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurn. Case No's. 8415, 8795, 8910 and 9173 of 1993

Prafull Ranjan and Others

APPELLANT

Vs

The Chancellor and Others

RESPONDENT

Date of Decision : 24-01-1994

Acts Referred:

Bihar Inter University Board Act, 1981 — Section 5(2)
Constitution of India, 1950 — Article 14, 226

Citation : AIR 1996 Patna 13 : (1994) 42 BLJR 670 : (1994) 1 PLJR 473

Hon'ble Judges : Gurusharan Sharma, J;B.P. Singh, J

Bench : Division Bench

Advocate : Banwari Sharma and Ajay Kumar, S.R.P. Pandey and Shyam Prasad Mukherjee, Binod Kumar Singha and Vijay Shankar Shrivastava, Kalika Nand Jha and Uday Kant Thakur, Avds, for the Appellant; Rafat Alam, for the Respondent

Final Decision : Dismissed

Judgement

1. These writ applications involve common questions and have been heard together. They are being disposed of by this common judgment.

2. In all the writ applications the petitioners have challenged the legality and validity of the order of the Vice-Chancellor dated 6-8-1993 passed by him on the recommendation of the Examination Board, which resolved by its resolution dated 28-7-1993 that "0" (zero) marks be awarded to all those students who walked out, or stayed out, from the examination held on 15th, 16th, 19th and 20th April, 1993, in accordance with the relevant regulation. The petitioners herein are students of B. A. (Honours) 1989-1992 batch, and by reason of the aforesaid recommendation of the Examination Board and the order of the Vice-Chancellor they have been awarded "0" marks in the papers in which they had stayed away/ walked out of the examination hall. In C.W.J.C. No. 8415 of 1993 the petitioners have also challenged the vires of the Regulations framed u/s 5(2) of the Inter-University Board Act, 1981, on the ground that it gives unfettered

and uncontrolled power to the authorities concerned to award "0" marks to the student concerned in the specified situations, without affording the student concerned an opportunity of being heard in the matter. However, at the hearing of these writ applications, counsel for the petitioners did not press the question of vires of the Regulations.

3. Before advertng to the facts of the case, I may only notice the background in which such situations arise in this State. We can take judicial notice of the fact that the system of education as it exists in this State, is in a shamble. There are over a dozen Universities in the State, some created recently. There are large number of colleges, and thousands of teachers casting a heavy burden on the State exchequer, yet there is no education in the State of Bihar. There are many reasons which contribute to this unfortunate state of affairs and, perhaps, some harsh decisions have to be taken before some semblance of discipline is restored in the University campus. At the same time, to restore the glory of the Universities, and to restore the academic atmosphere, which is completely absent, all concerned must be compelled to follow a code of conduct. Discipline is lacking not only in the students of the Universities, but even in the teaching and non-teaching staff of the Universities. The Vice-Chancellor of the University, who has a crucial role to play in the affairs of the University, must be restored his due status and respect. Unfortunately, the Vice-Chancellor, who in the days gone by, commanded great respect and status, has been reduced to a mere official at the beck and call of the powers that be in the Secretariat, not necessarily political but also bureaucratic. Having lost his importance in the functioning of the University, he is content with his designation, and apathetic towards the affairs of the University knowing fully well that he cannot make any useful contribution in that direction. This State boasts of the largest number of Professors in the country, and some tend to believe that the number of Professors engaged in the different Universities of Bihar outnumber the total number of Professors engaged in the other Universities of the country. Large number of teachers have been illegally appointed without following any procedure and without even caring about their eligibility and qualifications. Large number of colleges, which do not even qualify to be called an educational institution, have been declared constituent colleges of the various Universities. Reasons, purely political and monetary, are at the bottom of this pathetic situation, and education is the first casualty. It is, therefore, not surprising that there is exodus of serious minded students from the State, and it is not surprising that most of them perform brilliantly in other Universities of the country. Only the less fortunate ones are left behind, and it would be not an exaggeration to say that many of them complete three year's course sometimes in five years, sometimes in six years and sometimes in seven years. A sense of frustration, therefore, is prevalent in the student community of the State, and unless the situation is arrested, the Government may have to perform the unpleasant duty of closing down the Universities. Frequently the examinees boycott the examination or stage a walk out. The grounds on which such walk outs are staged are shocking. Sometimes it

is said that the invigilation is too strict, meaning thereby that the examinees have a right to adopt unfair means. Sometimes a walk out is staged because it is said that the questions asked are difficult, meaning thereby that the questions asked are not the questions in the guess papers and answers which are available in the market. Very often a walk out is staged because it is said that one or two questions are out of course. These are mere excuses to boycott the examination in the hope that another examination will be held, and may be, in more congenial circumstances so that the examinees may have no reason to protest. But, after all is said, it must be accepted that such walk outs are not encouraged by the serious minded students. Unfortunately, they do not assert their rights, and in the hope that another examination will be held, they also act in tune with others and join the walk out. Such is the situation that prevails in the Universities of this State.

4. As early as in the year 1981 the Bihar Conduct of Examination Act, 1981 was passed providing for penal action against those who adopt unfair means in the examination. Deterrent punishment was provided and the offence was made punishable with imprisonment, which may extend to six months, and shall not be less than one month, or with fine which may extend up to Rs. 2,000/- or with both. The rampant use of unfair means compelled the Legislature to enact a law to prevent use of unfair means at the examination. u/s 5(2) of the Inter University Board Act, 1981, power has been conferred upon the Chancellor to frame Regulations in this regard, on the basis of the advice tendered by the Inter University Board and the recommendation of the State Government. The relevant regulations have been annexed as Annexures 6 and 7 in C.W.J.C. No. 8415/93. The first Regulation, which was approved on 9th August, 1984, by the Chancellor provides that in case of walk-out or stay-out or cancellation of examination due to disturbance created at the centre, for which the examinees are responsible, or in case of cancellation of examination due to mass scale use of unfair means, there shall be no re-examination, nor shall average or any other mark be awarded to the examinees in the paper or papers concerned. Willing students, who resist and do not come out of the examination hall, will be permitted by the Centre Superintendent to continue their examination or to write fresh answer book, where answer book is torn, and in that case the time wasted in disturbance shall be duly compensated.

The University has also been authorised to cancel any examination if there is report of large scale use of unfair means by the centre Superintendent or by the Observer or by the members of the Flying Squad.

The aforesaid Regulation was partially modified by the Regulation approved by the Chancellor on 24th November, 1986, which provides that where it has not been possible to hold the examination of any paper or papers due to the walk out or stay out by the examinees, or where the examination of any paper or papers has been cancelled for the reasons noted in Clause I, the candidates concerned may be permitted to appear in the paper or papers concerned at the next

succeeding examination on payment of the prescribed fees. The marks obtained by the candidates in the paper or papers concerned at that examination shall be taken into account for determining their results of the last examination, but no change will be made in the merit list.

5. The Regulations aforesaid, which have been approved by the Chancellor of the University, based on the advice of the Inter University Board and the recommendation of the State Government, appear to be most reasonable and by no stretch of imagination can it be said that the Regulations are arbitrary or discriminatory. It gives ample opportunity to serious students to take the examination, even if some examinees attempt to disturb the examination. For this reason the time consumed by the disturbance is taken note of and the examinees are given further time to write their answers. In case their answer books have been torn by some of the rowdies, they are given fresh answer books to write their answers. However, if they still choose to stay away from the examination, they have to blame themselves. In case they choose to stay away from the examination, they must wait for the next succeeding examination and cannot claim re-examination on the ground that the earlier examination was disturbed.

6. In the light of the aforesaid legal provisions I shall now proceed to consider the facts of these cases. Unfortunately, the pleadings in the various writ applications are not specific, and rather vague, and an effort has to be made to understand what actually happened on the dates in question. In C.W.J.C. No. 8415 of 1993 it is stated that on 15th April, 1991 at the Patna College Centre there was some disturbance, and the students were forced to walk out from the examination centre, not of their own will, but on account of the fact that some anti-social elements forced the students to come out from the examination hall. The situation was tense and police force was summoned by the University authorities to guard the examination hall. It is alleged that the students were prevented from entering the campus of the Patna College, and large number of students failed to appear in the examination. Similarly, on the 16th April the students, who were willing to take the examination were prevented by the rowdy and anti-social elements from entering the examination hall. The security arrangement was not enough to give protection to such students, and only a very small number of students could take the examination. The situation was so tense that no genuine student dared to enter the campus, and those who attempted to do so, were beaten up by the students. In the other writ applications the case of the petitioners appears to be that they were compelled to walk out of the examination hall, and those who continued to appear in the examination were assaulted when they came out of the examination hall. It will thus appear that the case of the petitioners is that the rowdy and anti-social elements either did not permit the students to enter the examination hall or compelled them to walk out of the examination hall.

7. In C.W.J.C. No. 8415 of 1993 the petitioners have annexed a copy of the letter

written by the Director of the Institute of Correspondence Courses to the Vice-Chancellor of the Patna University, as also a certificate issued by the Professor and Head of the Department of History, Patna College, Patna. The letter of the Director of the Institute of Correspondence Courses is not of much help to the petitioners because he has written that letter on the request of the students who met him from time to time, and requested him to move the University authorities, so that a re-examination may be held. The Director does not claim that he was a witness to the incidents which took place on 15th and 16th April, 1993. So far as the certificate issued by the Professor and Head of the Department of History is concerned, that gives a different picture altogether of the incidents that took place on 16th April, 1993. He claims that as a Head of the Department of History he was supposed to remain present at the time of commencement of the examination. When he reached there at about 9.30a.m. he found only about a dozen examinees standing near the gate of the building. On enquiry he learnt that a large number of examinees were standing near the main gate of the college and they were unable to take the examination owing to the threats given to them by some rowdy elements. He went to the main gate of the college and tried to persuade his students to go to the examination hall, but they appeared to be afraid of taking the examination.

It, therefore, appears that he did not witness any incident on 16th April, 1993, and saw that large number of students who had gathered near the main gate of the college did not wish to take the examination, because of threats given by some of the rowdy elements. He did not see those rowdy elements nor did he witness any incident in which any examinee was either threatened or assaulted by the so-called rowdy elements.

8. On the other hand, the respondents have produced before us a copy of the report made by the then Vice-Chancellor on 21-4-1993, which is Annexure-A to the counter-affidavit. According to the report of the then Vice-Chancellor, he had come to know of the designs of some of the students to adopt unfair means at the examinations to be held. between 15th and 20th April, 1993. Accordingly, he came to the Patna College Pariksha Bhawan on 15-4-1993 at about 10.15 a.m. He found that the students were using unfair means. He collected about two bags full of chits from them. At about 11 a.m. he proceeded towards the Administrative Block of the College. A peon came running to him and told him that the B.A. examinees of Pariksha Bhawan were indulging in breaking the furniture and glass panes in protest against the collection of chits from them. He came back to the examination centre and found that the examination control room had been completely ransacked, and that the furniture in four rooms had been overturned and some of them broken. He found most of the invigilators and examinees running away. He entered the examination rooms and announced that the examinees must take the examination and that regulation did not permit re-examination in case of walk out. When he said so, the students got infuriated and began to attack him with broken furniture. He was, however, protected by his personal body guard. He also noticed that the students had set fire to a police

jeep standing near the gate, and also damaged his car. At about 12 noon the District Magistrate and other officers arrived at the spot. He requested the District Magistrate to post police and Magistrates in sufficient strength to meet the situation from the next day onwards.

On 16th April, 1993, he again came to the gate of Patna College at about 9.45 a.m. along with police force. The gate had been locked, but the same was broken with police help. Students standing near the main gate of the Patna College were asked to take the examination, but only 15 students came to the examination room. However, the examination began around 11.15 a.m. On 19th April, 1993 the police arrangement was very satisfactory and the willing examinees turned up and took the examination gladly on 19th and 20th April, 1993.

9. It will thus appear from the report of the Vice-Chancellor that the presence of rowdy and anti-social elements is baseless. The real cause for the agitation was the collection of chits from the examinees who wanted to use them in the examination. Since they were deprived of the chits which they had got with them, they gave a call for walk out and cause damage to University property.

10. It appears that at the meeting of the Examination Board held on 14th May, 1993 it was decided to grant average marks to candidates who had taken the examination of seven papers in the Parts I, II and 111 examinations taken together, and average of six papers in case of subjects having practical paper. This" decision of the Examination Board was reiterated in its decision taken at the meeting held on 5th June, 1993. The decisions of the Examination Board are annexed as Annexures 3 and 4 to the Writ Application (C.W.J.C. No. 8415/93), It appears that some of the students who did not get the benefit of the decision of the Examination Board filed a writ application before this Court being C.W.J.C. No. 6106 of 199V This Court by its order dated 20th July, 1993 held that under the Regulations there was no provision for grant of average marks or any other marks or re-examination in cases of walk out or stay out or in case of cancellation of examination due to any disturbance created by the examinees at the centre. This Court took the view that since the Vice-Chancellor or the Chancellor or any other authority competent in this behalf under the Patna University Act or any statute dealing with the subject had not taken any decision with regard to the grievance of the petitioners, the Vice-Chancellor or the competent authority in this behalf should take a decision with regard to the grievances of the petitioners having regard to the relevant provisions and regulations in this regard, and communicate the same to the petitioners, if they ask for a copy within, two weeks.

11. In view of the order of this court aforesaid, the Examination Board reconsidered its earlier decisions taken on 14-5-1993 and 5-6-1993. In view of the legal position clarified by the order of the High Court, it felt compelled to revoke its earlier decision granting average marks, since that was not permissible under the Regulations. In its meeting held on 28th July, 1993 the Examination Board resolved that "0" marks be awarded to those students who walked out or

stayed out from the examination in view of the provision of the Regulation. The decision and advice of the Examination Board was approved by the Vice-Chancellor by his order dated 6-8-1993, which has been annexed as Annexure-B to the counter-affidavit filed on behalf of the respondents.

12. From a perusal of the order of the Vice-Chancellor it is apparent that the Vice-Chancellor considered all aspects of the matter and did not accept the recommendation of the Examination Board mechanically. Having considered the relevant material on record he came to the conclusion that the allegations of the petitioners appeared to be in the nature of wild and misconceived accusation. On the other hand, the material on record amply justified the conclusion that the examinees staged a walk out on 15-4-1993 after chits were removed from their possession. On the remaining three days of the examination many of them wilfully stayed out. The willing examinees took the examination on 15-4-1993 and after normalcy was restored on the other dates as well.

13. The Examination Board and the Vice-Chancellor are the authorities which are competent to take a decision in regard to holding of re-examination or awarding "0" marks where the examinees have failed to take the examination. The Examination Board is a responsible body and is expected to discharge its duties objectively. It is bound by the Regulations approved by the Chancellor. On facts, the authorities were satisfied that the examinees wilfully stayed out or walked out of the examination hall on account of the fact that they were not permitted to use unfair means. Some of the serious minded students did take the examination on all four dates. In these circumstances, the Regulations approved by the Chancellor full apply, and there can be no question of holding re-examination in the papers in question. The examinees who had walked out or stayed out have to wait for the next succeeding examination. The Vice-Chancellor of the University has also recorded a categorical finding of fact, that the students had staged a walk out because they were not permitted to use unfair means. In these circumstances, we fail to understand what relief can be granted to the petitioners. May be that if no reexamination is held, a few students may suffer hardship. Such consideration, however, cannot be given undue importance having regard to the larger interest. The expectation that there may be a re-examination in case the examinees stage a walk out encourages such walk outs. If the message is bold and clear that no such re-examination shall take place, perhaps, such walk outs may not be staged so frequently. In any event, serious minded students will not permit the non-serious students to disturb the examination knowing well that they will lose a full year if they did not take the examination on the dates fixed. We are firmly of the view that for once the Examination Board and the Vice-Chancellor have taken a firm decision in the right direction, judicial interference should not be an obstacle in their way to bring about some semblance of discipline in the University campus. The responsibility of maintaining discipline within the University campus is that of the Vice-Chancellor and the University authorities. Frequent judicial interference is not desirable, and except in, gross cases, in matters relating to University

discipline and the conduct of examination judicial interference should be avoided. In the instant cases since there was a walk out staged by many of the students, because they were not permitted to use unfair means at the examination, the award of "0" marks in the concerned papers is fully justified by the Regulations approved by the Chancellor. In clear terms the Regulations provide that no re-examination shall take place in such circumstances and, therefore, there can be no order directing the respondents to hold re-examination. The petitioners must take their chance in the next succeeding examination in accordance with the relevant Regulations.

14. These writ applications are, therefore, devoid of merit and are dismissed, but without any order as to costs.