

**(1954) 05 PAT CK 0003**

**In the Patna High Court**

**Case No :** Misc. Judl. Case No. 140 of 1954

Prasun Kumar Chatterjee and Another

APPELLANT

Vs

Governing Body of Raja Sivaprasad College and Others

RESPONDENT

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**Date of Decision :** 14-05-1954

**Acts Referred:**

Bihar University Act, 1951 — Section 10(5), 12, 20(2), 22(1), 58  
Constitution of India, 1950 — Article 226  
Evidence Act, 1872 — Section 115

**Citation :** AIR 1954 Patna 486 : (1954) 2 BLJR 369

**Hon'ble Judges :** Narayan, J; Das, J

**Bench :** Division Bench

**Advocate :** B.C. Ghose, Arun Chandra Mitra and Tara Kumar Das, for the Appellant; Govt. Advocate Govt. Pleader and A.K. Mitter, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Narayan, J.—In this case the petitioners, who are two of the students of the Intermediate Science class in the Raja Siva Prasad College, Jharia, have moved this Court for an appropriate writ directing the opposite party No. 2 (the Bihar University) to hold an Intermediate examination in Science for them and the other students of the college.

2. The material facts are not in dispute, and they are as follows: Both the petitioners joined the 1st year Science class of the college in July 1952 and attended the lectures for about two years. In 1953 they were registered as University students on payment of the registration fees. After they had studied for about two years they appeared at the Test examination of the college and were sent up for the University examination which was to be held in the year 1954. They paid the examination fees, and in the second week of February 1954, got their Admit Cards. On the basis of the Admit Cards they appeared at the examination, and on 16-2-1954 they sat at the examination held in English, Papers I, and II. On 17-2-1954 they and the other students of their college who

were sitting for the examination were informed that they would not be allowed to sit, and later on they learnt that the University had not granted to their college an affiliation in Intermediate Science with, effect from 1952 so as to enable the Intermediate Science students of this college to sit at the examination to be held in February 1954.

3. The contention of Mr. B.C. Ghose who has appeared before us on behalf of the petitioners is that the circumstances of the case amply justify the issue of a writ, inasmuch as the University could not prevent the petitioners from sitting at the examination after Admit Cards had been issued to them, and the learned Counsel has also pointed to us in this connection that these petitioners had already been registered as University students. Mr. Ramesh Chandra Bhattacharjee, the ex-Principal of the college, has been made opposite party No. 3 in this case, and the learned Counsel for the petitioners has called to our attention the facts mentioned in his affidavit.

4. It could not be disputed before us that the college had not been affiliated up to the I. Sc. standard with effect from the year 1952 so as to enable the petitioners to appear at the annual examination which was going to be held in February 1954. The minutes of the Senate have been placed before us, and they go to show that it was on 1-4-1953 that a member of the Senate moved on behalf of the Syndicate that the Senate

"do grant affiliation to Raja Shib Prasad College, Jharia, up to the I. Sc. standard for a period of two years with effect from the session 1953-54"

subject to the fulfilment of certain conditions. "The motion as moved was put and carried", and to the affidavit of the opposite party No. 3 is attached the Bihar University communique dated 20-6-1953, which shows that though this college had been affiliated up to the I. Sc. standard the college authorities had not yet got permission to admit students.

Thus, it is manifest that there was no affiliation of this college so far as the I. Sc. standard is concerned with effect from the session 1952-53. But the affidavit sworn by the ex-Principal shows that the Vice-chancellor of the University had given Mm and the staff to understand that affiliation would be granted to the college for I. Sc. with effect from July 1952. And it appears that on 29-9-1952, the Vice-Chancellor, Mr. S.N. Sahay, wrote to one Mr. P.C. Bose, M.P., that he was asking the Registrar to take necessary action about the opening of the Science classes. This letter says that the Principal should be asked to remind the Vice-Chancellor October 1952 when the office will open. This letter was sent by the Vice-Chancellor in reply to a letter of Mr. P.C. Bose dated 12-9-1952, in which Mr. Bose had requested the Vice-Chancellor to grant recognition to the Science section of the college as early as possible.

In paragraph 17 of the affidavit the Principal says that when he read the communique in the Indian Nation of 22-6-1953 he gathered from it that affiliation had already been granted to the college but future admissions were not

permitted. This, however, is an incorrect reading of the communique which clearly shows an absolute affiliation of the I. A. standard but a partial or an imperfect affiliation of the 1. Sc. standard. The Principal of the college could not be unaware of the fact that it is not the Vice-Chancellor but it is the Senate which could grant the affiliation.

Section 20 of the University of Bihar Act, 1951, lays down that subject to the provisions of this Act and the Statutes, the Senate shall be the supreme governing body of the University, and shall have the entire management of, and the superintendence over, the affairs, concerns and property of the University, in Sub-section (2) the powers and the duties of the Senate are indicated, and the power of affiliation is mentioned in Clause (e). The relevant Clause (e) is in these terms:

"of exercising the powers of control and superintendence over colleges including the power of affiliating or disaffiliating such colleges."

The powers and the duties of the Syndicate are mentioned in Section 22, and Clause (i) of Section 22 says that the Syndicate shall have power to recommend to the Senate all proposals "received by it for the affiliation or disaffiliation of educational institutions. Besides the Syndicate and the Senate there is an Academic Council which determines and regulates all academic matters concerning the University in accordance with Act, Statutes and Ordinances. Section 10 (5) says that the Vice-Chancellor shall be the principal executive and academic officer of the University and shall, in the absence of the Chancellor, preside at meetings of the Senate and at any convocation of the University. The powers mentioned in Sub-section (12) of Section 10 have to be exercised by the Vice-Chancellor only in times of emergency. As reliance has been placed on this sub-section, I should quote it in extenso:

"If at any time, except when the Syndicate or the Academic Council is in session, the Vice-Chancellor is satisfied that an emergency has arisen requiring him to take immediate action involving the exercise of any power vested in the Syndicate or the Academic Council by or under this Act, the Vice-Chancellor shall take such action as he deems fit and shall as soon as may be thereafter, report the action so taken by him to the Syndicate or, as the case may be, to the Academic Council, which may either confirm the action so taken by the Vice-Chancellor or disapprove of it".

It is absolutely plain that this power has to be exercised only when an emergency arises, and it is not the case of any party that the Vice-Chancellor when he gave the Principal to understand that the college will be affiliated for the I. Sc. standard, was exercising the emergency powers as contemplated by Sub-section (12). Except this sub-section, there is no other provision in the Act or the statutes from which one can infer that the Vice-Chancellor had the power of affiliating the college. The Senate is the only body which could grant affiliation, and in fact the resolution dated 1-4-1953, to which I have already referred, is

the resolution which, is relevant for our present purpose and which shows that affiliation was granted to this institution up to the I. Sc. standard with effect from the session 1953-54.

Undoubtedly, the rules and the regulations framed in accordance with the Act would be deemed to be included within the Act, but under no regulation or rule could the Vice-Chancellor exercise the power of affiliation which stands vested only in the Senate. The conversation which the Principal had with the Vice-Chancellor is, therefore, of no consequence, and an understanding given by the Vice-Chancellor for the affiliation of the college to the Principal would be no step-in-aid of the affiliation. The affidavit sworn by the ex-Principal does not, therefore, advance the petitioners' case in the least, and on the materials disclosed by this affidavit, we will not be able to grant the writ asked for. In fact, the letter of Mr. P. C. Bosc to which the reply dated 29-9-1952, was sent by the Vice-Chancellor itself shows that the students could not be sure that an affiliation would be granted. This letter says that the boys who have joined the I. Sc. class have become nervous and a great discontent prevails amongst them.

Curiously enough, the ex-Principal attaches some importance to the registration of these petitioners as University students. According to Section 53 of the University of Bihar Act, 1951,

"until statutes, Ordinances, Regulations and Rules are made under the appropriate provisions of this Act, any Regulations made under the Patna University Act, 1917, which were in force immediately before the commencement of this Act, shall continue to be in force, so far as they are not inconsistent with this Act",

subject to necessary modifications and adaptations. It is an admitted position that the registration of these students was made according to Chapter XXVII of Part IV of the Patna University Regulations. According to those Regulations which were in force at the time when these petitioners were registered, any registered student of the University could be admitted to the Intermediate examination in Arts, Science or Commerce, if he had completed, in one or more colleges admitted for the purposes of such examination in the subjects which the candidate had offered, a regular course of study for not less than two academical years after passing the Matriculation examination. The students have, therefore, to undergo a regular course of study for not less than two academical years, and these petitioners, because they were registered students, could not be exempted from undergoing the necessary training for a period of two years. The fact that the petitioners were registered University students has, therefore, got no relevance so far as the present case is concerned. I am surprised to find that even the ex-Principal of the college had attached so much importance to it. My conclusion, therefore, is that any correspondence which might have taken place between the Principal the residents of Jharia and the Vice-Chancellor, and any understanding that might have been given by the Vice-Chancellor to the Principal and the residents of Jharia would not entitle these petitioners to sit at the

examination which was to be held in February, 1954.

5. The next point that has been raised by the learned Counsel is the point of estoppel, and the basis for this contention is the issue of the Admit Cards by the University. The learned Counsel has contended that the University is now estopped from contending that the petitioners were not entitled to sit at the examination because they had issued Admit Cards to them, and he has further submitted that this Court should grant the writ "ex debito justitiae", because the principles of natural justice have been violated. It is, however, to be noted that the issue of Admit Cards was only a ministerial act of an officer of the University. There could be no presumption that the college had been granted affiliation up to the I. Sc. standard, and nobody could act on such assumption, without ascertaining the true facts, the true facts being that no affiliation had been granted or announced. The issue of the Admit Cards could, therefore, create no estoppel against the University. If there had been no affiliation according to law, then acts done in ignorance of or on account of carelessness or inadvertence could create no estoppel. A representation or admission on matters of law cannot constitute any basis for estoppel. When the statute says that it is only the Senate which can grant affiliation, recommendation by Inspectors & Correspondence, and personal talks with the Vice-Chancellor and even the careless issue of Admit Cards cannot be taken into consideration for the purpose of granting a writ under Article 226, of the Constitution of India. It was to the knowledge of all concerned that the Senate had not affiliated the college up to the I. Sc. standard, and the issue of Admit Cards cannot establish that the students were made to understand for all practical purposes that affiliation had been granted by the Senate.

6. I do not understand how the principles of natural justice can be held to have been violated in this case. The University never acted without jurisdiction or in excess of jurisdiction. Neither the wrong issue of Admit Cards nor the obliging letters of the Vice-Chancellor could create a right in favour of the petitioners. It may be a very high degree of administrative inefficiency if the University authorities issued the Admit Cards to the students of this college though there had been no affiliation but the mere issue of the cards cannot be a ground for contending that the principles of natural justice have been violated in this case. To the knowledge of all concerned there had been no affiliation of the college up to the I. Sc. standard with effect from the year 1952, and the question of the violation of natural justice does not, therefore, arise in this case. Certainly, if a body of persons having legal authority to determine questions affecting the rights of subjects, act in excess of their legal authority, they are subject to the controlling jurisdiction of the Courts. This is what Atkin L. J. says in -- "Rex v. Electricity Commrs." 1924 1 KB 171 (A), his observation having been quoted in -- "R. v. Manchester Legal Aid Committee" 1952 2 QB 413 (B) a decision cited by Mr. B.C. Ghose. But the facts of that case can have no resemblance to the facts of this case before us. Similarly, the decision in -- "Young v. Ladies' Imperial Club, Ltd." 1920 2 KB 523 (C) can have no relevance in this case. The question

in that case was whether the plaintiff was still a member of the club, and it was held that the removal of the plaintiff from the membership was not valid, inasmuch as, one of the members had not been summoned in the meeting and the notice for the meeting had not stated the object of the meeting with sufficient particularity.

The case of -- "The King v. Chancellor, Masters and Scholars of the University of Cambridge" (1909) 93 ER 698 (D) can be cited as an authority only in support of the proposition that a mandamus can be issued to the University, Nobody asserts that we could not issue a mandamus to the Univer, sity even it" circumstances justified it. The] two Calcutta decisions reported in -- "Dipa Pal v. University of Calcutta" AIR 1952 Cal 394 (Ej and -- Assistant Collector of Customs for appraisement and Another Vs. Soorajmull Nagarmull and Another, are also irrelevant for our present purpose. In the first case a candidate had admittedly obtained pass-marks in all tne subjects and had qualified for the degree of Bachelor of Arts, but she was disqualified from obtaining the degree because the University had decided that she had been guilty of misconduct, in such circumstances, it was held that the decision of the University was in violation of the Principles of natural justice.

The second case was a case in which it has been found that the Customs authorities had adjudged a person guilty without giving him the opportunity of being heard. This was a violation of natural justice and the Court can and must interfere, if a tribunal which is called upon to exercise judicial or quasi-judicial functions discards all rules of natural justice and arrives at a decision which is contrary to all accepted principles. Because much importance has been attached to certain acts of the Vice-Chancellor, I should like to quote the following passage from, a decision of the Supreme Court in --- The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others, :

"Though an incorporated body like an University is a legal entity it has neither a living mind nor voice. It can only express its will in a formal way by a formal resolution and so can only act in its corporate capacity by resolutions properly considered, carried and duly recorded in the manner laid down by its constitution. If its rules require such resolutions to be moved and passed in a meeting called for the purpose, then every member of the body entitled to take part in the meeting must be given notice so that he can attend and express his views. Individual assents given separately cannot be regarded as equivalent to the assent of a meeting because the incorporated body is different from the persons of which it is composed."

In the result, therefore, I must dismiss this application. But, in the circumstances of the case, there will be no order for costs.

Das, J.

7. I agree.