

(2004) 02 PAT CK 0058

In the Patna High Court

Case No : CWJC No's. 6139, 9894, 10901 and 14276 of 2003

Rakesh Kumar Miloo, Anil Kumar Singh and Governing Body of Patliputra Inter College APPELLANT

Vs

State of Bihar and Others
 Ramji Prasad Vs Bihar Intermediate Education Council and Others RESPONDENT

Date of Decision : 05-02-2004

Acts Referred:

Bihar Intermediate Education Council Act, 1992 — Section 42(2)

Citation : (2004) 1 BLJR 554 : (2004) 2 PLJR 320

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Rajendra Pd. Singh and Rajendra Prasad, P.K. Shahi, Pramod Kumar, Indra Mohan Kumar and Sunil Kumar Singh and Ashutosh Singh No. 1, for the Appellant; S.N. Jha Jay Prakash Jha and A.K. Singh, SC 3, for the Respondent

Final Decision : Dismissed

Judgement

Narayan Roy, J.—Heard counsel for the parties.

2. All these writ applications since are directed against press communique No. 40 of 2002, they have been heard together and are being disposed of by this common order.

3. The writ petitioners are aggrieved by the impugned press communique being Advertisement No. 40 of 2000, published in National Hindi daily newspaper "Hindustan" dated 24.12.2002, issued by the Secretary, Bihar Intermediate Education Council, Patna (hereinafter to be referred to as "Council"), whereby and whereunder recommendation of 14 affiliated Intermediate Colleges including the petitioners College has been withdrawn for the Sessions 2002-2004.

4. The facts of the cases briefly stated, are that the colleges of the petitioners are imparting education up to intermediate standard and according to their cases, either they have been granted permission for establishment of the college

or recommended for recognition by the Council or temporary permissions have been given to run the institutions and to admit the students for intermediate courses by the Council in exercise of its power under the provisions of the Bihar Intermediate Education Council Act, 1992 (hereinafter to be referred to as "Act") and thereafter the institutions in question were inspected by the Council to consider their cases for recognition and even the students of the College appeared in intermediate courses and the results were also published by the Council, but now by virtue of the impugned advertisement No. 40 of 2002, recommendations for recognition have been withdrawn.

5. Learned counsel for the petitioners submitted that the Chairman of the Council has no jurisdiction to withdraw the permission granted to the petitioners colleges in exercise of its power u/s 42(2) of the Act. It is also submitted that since the Council allowed the petitioners colleges to admit the students, their students should have been allowed to appear in the intermediate courses examinations.

6. Learned counsel for the respondent Council, on the other hand, submitted that since these colleges have not fulfilled the requisite conditions, as required under the Bihar Intermediate Education Council (Establishment and Examinations) Rules, 1994, the Chairman has withdrawn the recognition of the colleges for their approval. It is further stated that as per the order passed by this Court in PIL matter in C.W.J.C. No. 5511 of 2003, the Council has withdrawn its recognition of 14 colleges including the colleges of the petitioners vide communique No. 40 of 2002. It is also stated that the Council having been satisfied that there is a mushroom growth of the intermediate colleges in the State and the same are not fulfilling the conditions, as required under the Rules, issued the press communique in question in larger interest of the public. Learned counsel further submits that none of the petitioners institutions has been recognised by the Council and mere recommendations were made to the State Government for its approval and in no case, approval has been accorded by the State Government, as required under the Act, and, therefore, no question arises for withdrawal of the permission, as granted under Sections 38 and 40 of the Act.

7. Having heard counsel for the parties and considering their pleadings, the question, which arises for consideration, is as to whether the petitioners colleges were ever granted recognition by the Council in accordance with the Act.

8. The Act, 1992, provides for establishment of the Council and the manner in which it is required to carry out its function. Section 41 of the Act provides that no institution imparting intermediate education shall be established or run unless prior approval of the Council has been obtained for the purpose. Sub-section (4) of Section 41 of the Act contains that the institutions other than recognised institution imparting intermediate education shall not send up students in the examinations conducted by the Council. The Council may give approval for establishment of an institution imparting intermediate education having regard to the conditions prescribed by the Council. Sub-section (7) of Section 41 lays down the guidelines for recognition to an institution, which may be granted by the

Council with prior approval of the Government. Sub-section 7 (b) of Section 41 of the Act also provides that if the Council refuses to grant recognition to any institution imparting education of intermediate standard, any person or institution dissatisfied with the decision may appeal to the State Government within 30 days and the decision of the State Government shall be final.

9. The provisions of the Act, as noticed above, make a clear distinction between the recognition of an institution and permission to establish an institution. For establishing an institution prior approval of the Council is required to be obtained, but for grant of recognition, the Council has to take approval of the State Government before granting recognition and for grant of permission to establish an institution, guidelines have been laid down under the Rules and the Council is required to grant permission in the light of the guidelines laid down in the Rules.

10. For the facts of these cases, it would be apparent that the Council has only declared the colleges as proposed college meaning thereby that permission was granted to establish the colleges, which, in no way, would amount to grant of recognition, and once it is held that the colleges were never granted recognition by the Council, then the submissions of learned counsel for the petitioners must be rejected.

11. Now coming to other limb of the submissions that since the students have been allowed to take admission in different intermediate courses, they should be allowed to appear in their examinations is concerned, it would be pertinent to notice as to whether the students were admitted after recognition of the institutions under the provisions of the Act or on mere recommendation to establish the institutions.

12. From the facts of these cases, it is manifest that the petitioners institutions have not been recognised by the Council nor the decision of the Council has been approved by the State Government, as required under the law. The submission of learned counsel for the petitioners in this regard is not sustainable, and, therefore, no relief can be granted to the students, who have managed to get their admissions, in exercise of the power of this Court under Article 226 of the Constitution. In this connection, reference may be made to the case of Moulana Mazharul Haque Primary Teacher's Training College v. The State of Bihar and Ors. 1992 (2) BLJR 1074

13. The questions, which have fallen for consideration in these writ applications, have already been set at rest by this Court in the case of Veer Kunwar Singh College v. The State of Bihar and Ors. 1996 (1) PLJR 393.

14. Considering the facts and circumstances of the case and for the reasons aforementioned, I hold that the petitioners colleges were never recognised by the Council as intermediate colleges, and, therefore, question of withdrawing such recognition does not arise. In the instant cases, the Council has only withdrawn its proposal seeking approval of the State Government and the

Council, thus, was well within its jurisdiction to do so, and, in that view of the matter, it would not be appropriate for this Court to grant any relief to the petitioners.

15. In the result, these writ applications are dismissed.

16. No order as to costs.