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**(2023) 08 PAT CK 0052**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 22809 Of 2018

Ram Sharan Singh Evening College

APPELLANT

Vs

Magadh University

RESPONDENT

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**Date of Decision :** 17-08-2023

**Acts Referred:**

**Citation :** (2023) 08 PAT CK 0052

**Hon'ble Judges :** Rajeev Ranjan Prasad, J

**Bench :** Single Bench

**Advocate :** Gyanand Roy, Shailendra Kumar Singh, Harsh Singh

**Final Decision :** Disposed Of

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## **Judgement**

I.A. No. 01 of 2019

1. Learned counsel for the petitioner submits that this interlocutory application has become infructuous.

2. In the aforesaid view of the matter, this interlocutory application is disposed of as having become infructuous.

3. Heard learned counsel for the petitioner and learned counsel for the Magadh University, Bodh Gaya and it's authorities.

Reliefs prayed

4. Petitioner, in the present writ application, is seeking the following reliefs:-

"I. For quashing of the letter no. 158/Gr. III-B/18 dated 19.7.18 issued under the signature of Inspector of Colleges (Science) Magadh University, P.O. & P.S. Bodh Gaya, as contained in Annexure – P/1 by which the petitioner's Colleges has been directed to deposit Rs. 3,20,000/- (Three Lakhs Twenty Thousand) through Bank Draft in the name of Registrar of the Magadh University, as Inspection fee in addition to the amount of Rs. 1,35,000/- (One Lakh Thirty Five Thousand) deposited earlier by the petitioner's Colleges for the said purpose.

II. For holding that the direction to deposit Rs. 3,20,000/- (Three Lakhs Twenty Thousand) as an additional amount as inspection fee for the inspection of the college of the petitioner, in addition to the amount of Rs. 1,35,000/- is illegal, arbitrary and unjust.

III. For commanding respondent Magadh University and its authorities to inspect the petitioner college for the purpose of extension of the affiliation of the college in Art, Science and Commerce faculty in accordance to the order dated 14.08.2018 passed by this Hon'ble High Court in C.W.J.C. No. 10174/2018.

IV. For any other relief or reliefs to which the petitioner College is found to be entitled in the facts and circumstances of the present case."

A true copy of the impugned letter No. 158/G III B/18 dated 19.07.2018 is being annexed herewith and marked as Annexure P/1 to this application."

Brief facts and submissions on behalf of the Petitioner

5. Learned counsel for the petitioner submits that the petitioner college was established in the year 2009. The college was inspected on 17.11.2010 to evaluate the infrastructure of the college for granting affiliation in Science faculty upto B.Sc. Pass and Honours Courses. The inspection committee of the University submitted its report to the University on 29.11.2010 making recommendation for temporary affiliation for the science subjects upon fulfillment of the conditions mentioned in the report for the next session.

6. Learned counsel submits that the college was granted temporary affiliation for three academic sessions i.e. 2010-2011, 2011-2012 and 2012-2013 vide Annexure 'P/3' to the writ application. It is stated that before the affiliation could have lapsed, the petitioner being Principal of the college submitted an application for extension of affiliation to the Inspector of Colleges, Arts and Commerce as well as to the Registrar, Magadh University vide letter no. 94/12 dated 24.12.2012 (Annexure 'P/4' to the writ application). The Magadh University vide its letter dated 25.04.2013 submitted proposal for the affiliation of the petitioner college to the State Government and upon consideration the State Government solicited certain information in respect of the petitioner colleges.

7. It is further stated that by Memo No. 87 dated 13.01.2014 the proposal for granting affiliation was rejected by the State Government on the ground that the college was not fulfilling the conditions laid down in the letter no. 1098 dated 19.04.1986. Under these circumstances and upon the advice received by the Universities from the concerned department to send fresh recommendations, the petitioner submitted a fresh proposal for inspection of the colleges claiming that the college now fulfills the deficiency which were pointed out earlier. In this regard, specific statements have been made in paragraph '12' and '13' of the writ application saying that the petitioner college had deposited a sum of Rs. 4 Lakhs in account of the Magadh University as security deposit. It was in excess by Rs. 1,25,000/-, therefore, the University directed to refund the said amount to the

college.

8. It is the case of the petitioner that after submission of the documents, the Inspector of colleges Arts and Commerce, Magadh University by its letter dated 14.01.2015 (wrongly typed as 14.12.2015) directed the Principal of the petitioner college to deposit an amount of Rs. 95,000/- through Bank Draft in the name of the Registrar, Magadh University. The petitioner complied with the said direction. Again, the petitioner was directed to deposit an additional amount of Rs. 35,000/- for the Inspection of the college which was also complied with by the petitioner. The specific statements in this regard have been made in paragraph '17', '18' and '19' of the writ application.

9. It is stated that the University constituted an inspection team earlier vide letter dated 23.03.2015 (Annexure 'P/12') but again another inspection team was constituted vide letter dated 16.06.2015 (Annexure 'P/13'). Despite constitution of inspection team twice, the college was not inspected, therefore, the college filed a writ petition being C.W.J.C. No. 10174/2018 for a direction to the respondent Magadh University to conduct inspection for purpose of granting affiliation to the petitioner college. The said writ application was disposed of vide order dated 14.08.2018 (Annexure 'P/14') with a direction to the respondent University to ensure that the application of the petitioner is dealt with according to the time frame fixed in the case of Dr. Ram Pramod Thakur and another Vs. The State of Bihar and Ors. (CWJC No. 4660/2017). Learned counsel submits that the order of this Court passed in CWJC No. 10174/2018 was not complied with. The petitioner has filed a contempt application which is still pending in this Court.

10. It is submitted that during pendency of the C.W.J.C. No. 10174/2018 the Inspector of College (Science) directed the petitioner vide impugned letter No. 158 dated 19.07.2018 to deposit an additional amount of Rs. 3,20,000/- as inspection fee in addition to the amount of Rs. 1,35,000/- already deposited by the petitioner college.

11. It is submitted that in course of hearing of C.W.J.C. No. 10174/2018, a counter affidavit was filed on behalf of the University but in the said affidavit there was no whisper about the requirement to deposit the additional amount of Rs. 3,20,000/- as amount of inspection fee rather a statement was made that the inspection team constituted for inspection of Arts, Commerce and Science faculty and the report of the inspection committee is awaited till date.

12. In the aforementioned background, the demand of additional amount of Rs. 3,20,000/- has been challenged by the petitioner college.

13. Let it be recorded that in course of hearing of the present writ application, for sake of consideration of an interim relief the petitioner was ready to deposit the amount of Rs. 3,20,000/- subject to result of the writ application for purpose of conduct of inspection of the Institution.

## Stand of the University

14. Mr. Harsh Singh, learned counsel for the Magadh University submits that the demand of Rs. 3,20,000/- was made because during the intervening period from the year 2015 to 2018 the inspection fee was enhanced to Rs. 1,50,000/- per stream w.e.f. 09.02.2017. The petitioner college has applied for affiliation in streams of Arts, Science and Commerce, therefore, it was required to deposit an additional amount of Rs. 3,20,000/-.

## No explanation for not carrying the Inspection

15. The counter affidavit of the University is completely silent as to why despite deposit of the required document with the requisite fee at the relevant time and constitution of two inspection teams, the college of the petitioner was not inspected. It is not denied that the specific direction of this Court issued in C.W.J.C. No. 10174/2018 vide order dated 14.08.2018 has not been complied with. The only stand of the University is that the petitioner did not deposit an additional amount as per the impugned letter, hence, the college was not inspected.

16. Mr. Harsh Singh, learned counsel for the University admits at the Bar that he has no explanation as to why the college was not inspected for about two years prior to enhancement of the inspection fee by the University. Learned counsel has rather taken a plea that there is a delay on the part of the petitioner in moving this Court in the year 2018 as during the intervening period of 2015-2018, the petitioner did not make any representation.

17. Today, learned counsel has placed before this Court a copy of the letter No. 1962 dated 15.09.2021 issued by the Education Department, Government of Bihar addressed to all the Registrars of the Universities (except Patna University) wherein it is stated that in compliance of the judgment of this Court passed in C.W.J.C. No. 4660/2017 (Dr. Ram Pramod Thakur and another Vs. The State of Bihar and Others) the Universities shall analyze all the proposals received from the degree colleges and will receive online applications till 18.10.2021 and send the same to the competent authority with their approval by 15.01.2022 online. It is submitted that now in view of this letter the entire procedure is to be done online and no other mode of proposal shall be accepted. Learned counsel submits that in view of the aforesaid requirement now the petitioner college be directed to make fresh proposal online with requisite fee.

## Consideration

18. Having heard learned counsel for the petitioner and the University as also on perusal of the records, this Court is of the considered opinion that the respondent University has not at all offered any explanation for not conducting the inspection of the college in the year 2015, even as the University constituted inspection teams twice vide Annexure 'P/12' and 'P/13' to the writ application. There is also no denial of the fact that in C.W.J.C. No. 10174/2018 the University

had made a statement that inspection team has been constituted for purpose of carrying inspection of Arts, Commerce and Science faculty and the report of the inspection team is awaited. It is evident that the University had enhanced the rate of inspection fee with effect from 07.09.2017, but when the said writ application was being considered, the University did not raise any plea of non-deposit of additional amount of Rs. 3,20,000/- by the petitioner as a reason for not carrying the inspection of the Institution. Contrary to the plea which is being taken in this writ application, the plea in the earlier case was that an inspection team has been constituted and the report of the inspection team is awaited.

19. This Court has already taken on record the submission of learned counsel for the University wherein he does not offer any explanation for not conducting the inspection of the college. This Court is, therefore, unable to comprehend as to how the University may be allowed to take a plea that the petitioner came in writ application after a substantial delay of three years. This argument is not open to the University because there is an admitted fault on their part and inaction writs large on the face of there being no explanation from them. The fact is that there is a direction of this Court to the University to abide by the time frame fixed in the case of Dr. Ram Pramod Thakur and Another and to apply the same in the case of the petitioner also.

20. This Court, therefore, finds that the impugned demand raised by the University vide letter no. 158/GIII B/18 dated 19.07.2018 as contained in Annexure 'P/1', if allowed to exist it will only confer premium over the own negligence and inaction on the part of the University. This Court would, therefore, not allow the impugned demand to exist, the same being hit by the principle of estoppel and contrary to it's stand in C.W.J.C. No. 10174 of 2018 is liable to be held arbitrary. The University cannot insist for payment of an additional amount of Rs. 3,20,000/- by the petitioner.

21. The impugned letter as contained in Annexure 'P/1' is hereby set-aside.

22. As regards the submission of Mr. Singh, learned counsel for the University that by virtue of government's letter no. 1962 dated 15.09.2021 now all proposals are to be taken on the portal of the department online, this Court finds that it is only a matter of procedure and there should not be any difficulty on the part of the petitioner as well as the University in putting the pending proposal on the portal of the State Government, however, in case such application online requires deposit of additional fee or a fee as existing today, that will be a difficulty on the part of the petitioner in making online application.

23. In the given facts and circumstances of the case, since this writ application is of the year 2018 and it remained pending consideration, the right which has accrued to the petitioner cannot be taken away by citing the new procedures which has been brought in force in the year 2021. The procedural technicality cannot be allowed to come in the way in the facts of this case. The procedures as laid down by letter dated 15.09.2021 would not apply in case of the petitioner

and the application of petitioner which is lying with the University is to be treated in accordance with the procedures which were in existence at the relevant time.

24. This Writ Application is, therefore, allowed with a direction to the University to ensure that the inspection of the college be conducted within a period of six weeks from today and further needful action be taken in accordance with the requirements of law for grant of affiliation to the petitioner college within another six weeks.

25. Since this Court has noticed the un-explained delay on the part of the University and the circumstances compelling the petitioner to move this Court, this Court deems it just and proper to direct the University to pay a cost of litigation of Rs. 15,000/- to the petitioner payable within four weeks from today.

26. This Writ Application stands disposed of accordingly.