

(2024) 04 PAT CK 0088

In the Patna High Court

Case No : Letters Patent Appeal No. 770 Of 2018 In Civil Writ Jurisdiction Case No. 16553 Of 2017, Letters Patent Appeal No. 754 Of 2018 In Civil Writ Jurisdiction Case No. 16553 Of 2017

Ratan Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 24-04-2024

Acts Referred:

Constitution of India, 1950 — Article 12, 162
Patna High Court Rules, 1916 — Rule 5
All India Council for Technical Education Act, 1987 — Section 2(g), 10, 11
Bihar State Universities Act, 1976 — Section 21(2)(d)

Citation : (2024) 04 PAT CK 0088

Hon'ble Judges : K. Vinod Chandran, CJ; Harish Kumar, J

Bench : Division Bench

Advocate : Rajeev Kumar Singh, Ritesh Kumar, Dr. Anand Kumar, Om Prakash Kumar

Final Decision : Dismissed

Judgement

1. Heard the parties.
2. Seeking exception to the order of this Court dated 16.05.2018, passed by the learned Single Judge in C.W.J.C. No. 16553 of 2017, both the Letters Patent Appeals have been preferred, one by the National Institute of Health Education and Research (hereinafter referred to as 'the Institute') and another by the students of the said Institute.
3. The grounds inter alia put forth by the appellants to assail the order/judgment under appeal are that the learned Single Judge has failed to appreciate that in the year 1996, the Institute was established with an object to provide professional degree and diploma courses in Para-medical and certificate courses, i.e., Dresser, Diploma in Lab Technician, ECG, Diploma in Physiotherapy, Bachelor of Physiotherapy, X-ray Technician etc. after fulfilling all the criteria prescribed in

law for granting a permanent recognition and accordingly, the Health Department, Government of Bihar vide notification no. 1065(1) dated 29.10.2009 granted permanent recognition to the Institute.

4. Dr. Anand Kumar, learned counsel representing the Institute submitted with all vehemence that the Health Department has granted permanent recognition with regard to Diploma and Certificate courses, duly mentioned in the notification dated 29.10.2009 and also accorded 'No Objection' with regard to the Degree course as well with certain conditions. However, the learned Single Judge failed to appreciate the aforementioned facts and held that with the collusion of the functionaries of the University and the Management of the Institute, examinations appear to have been held and thus, such examinations cannot be said to be having any sanctity in the eye of law. The degrees awarded by the University in such manner, are also held to be illegal.

5. Learned counsel for the appellant Institute further contended that while the Institute was running, a notification as contained in Memo No. 146(1) dated 02.02.2015 was issued by the Health Department granting permanent recognition and also 'No Objection Certificate' in favour of the institution, in question. But, it was cancelled with immediate effect.

6. Being aggrieved, the Institute preferred C.W.J.C. No. 3898 of 2015, which was disposed of with a direction to the respondents to issue fresh show-cause notice and take an appropriate decision in the matter, with the caveat that till such decision the order dated 02.02.2015 shall be kept in abeyance. Besides the observations noted hereinabove, the learned Single Judge also made it clear vide order dated 11.09.2015 that so far the present batch is concerned, the State Authority will surely consider as to what to be done with them. If they have completed their studies then the mode or modalities for holding their examination will have to be worked out, because the students, who have finished their course of studies, should not suffer because of the present dispute. The Health Department vide its Letter No. 68(1) dated 15.01.2016 has restored the temporary recognition of the Institute and subsequent thereto vide letter as contained in Memo no. 481 dated 26.04.2017 has restored the permanent recognition granted to the Institute, in question, and also withdrawn the rider with regard to not taking any action, in the light of the observations of the learned Single Judge in C.W.J.C. No. 3898 of 2015.

7. The learned Counsel for the appellant also contended that the learned Single Judge has failed to appreciate that once the University has granted permission to the Institute to take admission and pursuant thereto the Institute had taken admission and after successful completion of the course, mark-sheet and certificate of respective courses were issued by the University, then in such a situation directing the University to cancel the certificates issued in favour of the students and other similarly situated persons is totally unwarranted.

8. It would be worth to note that C.W.J.C. No. 16553 of 2017 was preferred by

the Institute seeking a direction upon the respondent authorities to grant extension of affiliation to the Institute for the different courses such as Bachelor of Physiotherapy, Bachelor of Medical Lab Technology and Bachelor of Radiograph X-ray Technology all with bridge course. During the pendency of the writ petition an intervention application under Rule 5, Chapter XXI-C of the Patna High Court Rules was filed, bearing I.A. No. 2410 of 2018, in support of the writ petition, asserting therein that any adverse decision, would affect their career. In the aforesaid premise the interlocutory application was allowed and the students were also heard. Subsequent to the order of the learned Single judge students have also preferred Letters Patent Appeal No.770 of 2018. Thus, both the Letters Patent Appeals were heard together with the consent of the parties and are being disposed of by this common order/judgment.

9. The contention of the students was represented by the learned Advocate Mr. Rajeev Kumar Singh. While adopting the arguments submitted by the learned counsel for the Institute, further contention has been made that the learned Single Judge failed to appreciate the fact that before issuance of notification dated 02.02.2015, cancelling permanent recognition and 'No Objection Certificate' granted to the Institute by the Health Department, the appellants-students have already completed their respective courses. Consequently, the registration of the students by University had also been done and the University also accepted the examination fees and thereafter issued Admit card to appear in the examination. After the examination, the University has also issued mark-sheet, provisional certificates and original certificates to the appellants students and other similarly situated students. On the basis of the said mark-sheet and degree issued by the University, they have also obtained employment in different organization and earning their bread and butter on the basis of these degrees. Thus, at this stage any declaration made by the learned Single Judge holding the degrees obtained by the students to be illegal is not justifiable and permissible in law.

10. Mr. Rajeev Kumar Singh, learned Advocate also placed reliance upon a Division Bench decision dated 21.08.2008 passed in LPA No. 1145 of 2001 that even though in order to appear at such examinations, a candidate is required to get himself enrolled with a college which has got the privilege of the University by way of affiliation, however the candidate enrolled himself with a College, which did not have the privilege of the University, the University being a State within the meaning of Article 12 of the Constitution of India, cannot, withhold the certificates, as the Division Bench in the said case held that there cannot be any dispute that educational qualification is an instrument for improvement of life, which too, stands protected and thus directed the University to hand over the original pass certificate as well as the migration certificate.

11. On the other hand, learned counsel for the State as well as University reiterated the submissions made before the learned Single Judge based upon their respective counter affidavits in support of the order/judgment under appeal.

12. Having heard the submissions of the learned Advocates for the respective parties and after careful consideration of the materials available on record, first of all this Court would highlight the statutory provisions and the Rules regulating grant of recognition and the affiliation of an Institute seeking recognition of the Technical courses.

13. All India Council for Technical Education Act, 1987 (hereinafter referred to as the AICTE Act, 1987') was enacted for establishment of an All India Council for Technical Education (hereinafter referred to as 'the AICTE') with a view to properly plan and co-ordinate development of the technical education system throughout the country.

14. The AICTE is vested with statutory authority for planning, formulation, and maintenance of norms and standards, accreditation, funding in priority areas, monitoring and evaluation, maintaining parity of certification and awards and ensuring coordinated and integrated development and management of Technical Education in the country. Section 2(g) of the AICTE Act, 1987 defines "technical education" which means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare.

15. The question concerning the pre-dominant Rule of the AICTE constituted under the Central Act, now stands settled by the decision of the Hon'ble Supreme Court in State of T.N. & Anr. Vs. Adhiyaman Educational & Research Institute & Ors., (1995) 4 SCC 104. The State Government and the University as per binding declaration cannot lay down the norms and guidelines, which may be in conflict or inconsistent with or higher than those laid down by the Council constituted under the Central Act. It would be worth observing that affiliation/recognition is a pre-condition for allowing the students to appear at examination. Unless a College or educational Institute is recognized or affiliated in accordance with law, there can be no question of allowing its students to take the examination conducted by the University. The powers and functions of the Council have been duly described in Section 10 of the AICTE Act, 1987. Further Section 11 deals with the modes and manner of inspection of the Institutions.

"11. Inspection.—(1) For the purposes of ascertaining the financial needs of technical institution or a University or its standards of teaching, examination and research, the Council may cause an inspection of any department or departments of such technical institution or University to be made in such manner as may be prescribed and by such person or persons as it may direct.

(2) The Council shall communicate to the technical institution or University the date on which any inspection under sub-section (1) is to be made and the technical institution or University shall be entitled to be associated with the inspection in such manner as may be prescribed.

(3) The Council shall communicate to the technical institution or the University, its views in regard to the results of any such inspection and may, after ascertaining the opinion of that technical institution or University, recommend to that institution or University the action to be taken as a result of such inspection.

(4) All communications to a technical institution or University under this section shall be made to the executive authority thereof and the executive authority of the technical institution or University shall report to the Council the action, if any, which is proposed to be taken for the purposes of implementing any such recommendation as is referred to in sub-section (3)."

16. So far the affiliation of the College with the University other than those managed and maintained by the University is concerned, it would be worth observing that the Statute approved by the Chancellor by letter No. BSU-16/86-1089-G.S.(1), dated 19.04.1986 regulates affiliation of colleges. Article 3 of the said Statute prescribes the procedure for admitting an educational institution to the privileges of affiliation from the University. The same has been explicitly dealt with by the learned Single Judge in para. 20 of the judgment and as such this Court deems it proper to quote the said paragraph:

"20. There is no gainsaying that the Statute approved by the Chancellor by letter No. BSU-16/86-1089-G.S.(1), dated 19.04.1986 regulates affiliation of colleges with the University other than those managed and maintained by the University. Article 3 of the said Statute prescribes the procedure for making an application for admission by an educational institution as a college to the privileges of the University. Article 3(1)(e) of the Statute specifically mandates an educational institution to declare that 'no student has been, or shall be admitted to the institution, or in the subjects for the admission of which the application is being made, unless the admission prayed for has been granted by the University.' The expression 'admission prayed for' as occurring in Article 3(1) (e) of the Statute refers to admission of an educational institution as a college to the privileges of the University which is nothing but the affiliation which is granted by the University to an educational institution under the provisions of the said Statute. The language of Article 3(1) (e) is unambiguous and clear and it proscribes admission of students in an institution which seeks affiliation with a University and it also makes clear that the students can be admitted only after affiliation/admission is granted by the University. The expression 'admission of an institution' occurring in the Statute has the same connotation which the expression 'affiliation of an educational institution with a University has. Article 4 of the Statute authorizes the Syndicate that, on receipt of an application for admission by an educational institution a local inquiry is to be made as regards the matter specified in Article 3 of the Statute, if the Syndicate is satisfied on the basis of materials supplied in the application or otherwise that the college proposed to be established has nearly fulfilled, or is likely to fulfill all the conditions required by the law of the University and is likely to be run efficiently. The Syndicate, if not satisfied, may reject the application for admission/affiliation

recording the reasons thereof. Sub-Article (2) of Article 4 prescribes that on completion of the inquiry as contemplated under sub-Article (1) of Article 4, the Syndicate shall forward a copy of its resolution to the Academic Council for suggestions, concerning the academic aspects. The Academic Council of the University, in turn, under the scheme of the Statute, is required to make a recommendation to the Senate of the University as to whether the application should be allowed with, or without, modifications on a permanent basis, or provisionally for a limited period or should be rejected. Sub Article 5 confers upon the Senate the jurisdiction either to allow the application, with or without modification, either on permanent basis or provisionally for a limited period. The Senate may reject the application for admission recording ground for such rejection. The decision of the Senate is to be communicated to the institution concerned specifying the courses of instruction in which the institution is admitted and the standard upto which the admission is granted. Under Article 6 (1) of the Statute, the institution is thereafter required to duly report to the Syndicate regarding the fulfillment of various conditions imposed. Sub Article 2 of Article 6 of the Statute mandates the institution not to allow admission of students for the course unless the Syndicate is satisfied that the conditions necessary for starting classes has been fulfilled. (emphasis added)”

17. The Government of Bihar in exercise of powers conferred under Article 162 of the Constitution of India, in the public interest to frame rules for the establishment of Para Medical/Para Dental institutes has framed Bihar Para Medical and Para Dental educational (Permission for establishment of institution) Rule 2005. The aim and objective of prescribing rules and norms for Para Medical/ Para Dental courses was to ensure the high quality and uniformity in Para Medical/Para Dental courses, conduct examination, publication of results and uniformity in issuance of certificates.

18. The aforementioned Rule published vide notification no. 1029(1) dated 31.12.2005 wherein the courses of Physiotherapy, Medical Laboratory Technician, X-ray Technician, Dresser, ECG Technician fallen within the definition of Para Medical courses. Any person/Institution/ Society desirous of opening a new para Medical/Para Dental Institute is required to follow the norms prescribed in the Rule. Rule 6 thereof prescribed the mandatory requirement of inspection before the recognition through an expert committee. The State Government was to take a decision on the point of recognition of the institute after review of the inspection report submitted by the expert committee. The Rule also dealt with the requirement of fulfilling of minimum norms by the Para Medical / Para Dental Institutions.

Detailed norms in respect to land, infrastructure, qualification of teaching and non-teaching employees, eligibility criteria of candidate, laboratory equipment, infrastructure including fittings for the office and other requirements have been explicitly deal with in Rule, 2005.

19. However, despite the mandatory prescription in the AICTE Act, 1987, Bihar

Universities Act, 1976 and Rules, 2005, it is the admitted position that the Institute for the first time was subjected to inspection only in the year 2017 by the University.

20. Now coming to the facts of the case in hand, the sheet anchor of the appellants is said to be the notification issued by the Health Department dated 29.10.2009, the copy of which is produced as Annexure-2 to the writ petition, contemplating permanent recognition granted to the Institute by the State Government.

21. Having carefully perused the notification, there is no doubt that the recognition of the Institute for conducting Diploma courses was granted, but conditionally, that the courses shall be conducted in the newly constructed Institution building and the shortcomings must be removed within a period of one year. The notification explicitly made it clear that for conducting such courses the institution must get approval of AICTE. Neither it is the case of the appellants nor the material suggests that at any point of time, the institute, in question, has obtained approval from AICTE or even filed any application before the AICTE for inspection of the Institute in order to get approval nor is there any compliance of the prescription contemplated under the Universities Act or the Rules, 2005.

22. Further the reliance of the appellants on a letter No. 129 dated 30.08.2011 issued by the Registrar, Magadh University, Bodh Gaya intimating the petitioner to grant provisional permission by the Vice Chancellor, Magadh University for taking admission in Physiotherapy, BMLT, Occupational therapy, Radiography with Degree of Bridge courses for the academic sessions 2011-12, apart from being conditional, it was also held by the learned Single Judge, in no circumstances, can be treated to be grant of affiliation. The University has time to time made recommendation for affiliation of the College with the University, to the State for its approval. But the same does not appear to have been done, rather it is the case of the appellant that vide Memo No. 146(1) dated 02.02.2015 the permanent recognition and 'No Objection Certificate' granted to the Institute by the State Government was cancelled, which led to filing of C.W.J.C. No. 3898 of 2015 by the Institute. Further in the light of the order of this Court dated 11.09.2015 in C.W.J.C. No. 3898 of 2015, the claim of the Institute was said to be considered afresh by issuing fresh show-cause notice, leading to restoration of recognition and subsequently withdrawing the rider with regard to not taking any new admission.

23. Irrespective of the aforesaid claim of the appellants, the materials available on record speaks volume that at no point of time the Institute has got permanent affiliation from the Magadh University, Bodh Gaya. In fact, the matter of permanent affiliation of the Institute was placed before the Senate, however the Senate in its meeting resolved that affiliation of the College conducting para-medical courses could not be considered, as the University has no machinery to evaluate the teaching standard and thus sought a direction from the State Government making it clear that the University is unable to take any decision in

the matter vide letter dated 05.07.2017 issued by the Vice-chancellor, Magadh University, Bodh Gaya.

24. Thus, this Court has no hesitation to re-affirm the finding of the learned Single Judge that till the issuance of aforementioned letter dated 31.08.2017 by the Vice-Chancellor of the University, the Institute was not granted permanent affiliation with the Magadh University. Nonetheless, the Institute, having had no affiliation with the University, has been conducting examination of its students in the said courses, which are apparently para medical/technical courses requiring recognition of the State under the Rule, 2005, or AICTE, but the same has never been done.

25. The case of the appellant that the Institute has been granted permanent affiliation by the Health Department, Government of Bihar for teaching different degree/courses, as per the syllabus approved by the Chancellor of the University through notification dated 19.09.2014 and 27.01.2016 has rightly been rejected by the learned Single Judge in CWJC No. 16553 of 2017 as the writ petition itself is filed for seeking direction to grant extension of affiliation without there being any actual affiliation of the Institute and approval of the courses.

26. Thus it is apparent that the Institute never got any valid affiliation and this fact is also fortified for the simple reason that for the first time the University inspected the College on 03.06.2017 and recommended for grant of permanent affiliation to the course of Bachelor of Physiotherapy Technology, Bachelor of Medical Laboratory Technology and Bachelor of Medical Radiology Imaging Technology; from academic session 2012-13. However, when the matter was placed before the Senate, it was unanimously decided that since no parameter was available with the University to evaluate the quality of teaching standard in respect of technical courses, necessary guidelines was sought for from the State Government.

27. Having gone through the relevant provisions dealing with the affiliation of a College indisputably, the mandate of First proviso to Section 21(2) (d) of the Bihar State Universities Act, 1976 specifies clearly that grant of affiliation to a technical education Institute, even if accorded by the University, such affiliation cannot take effect unless the approval is granted by the State.

28. Now coming to the contention raised on behalf of the students of the Institute, learned Single Judge, in the opinion of this Court, has rightly taken a decision in conformity with the provisions of the Act. The students apparently, did not pursue the course of study in the University nor did they pass the examination of the University in terms of the conditions laid down in the Statute, Ordinance or Regulation. They cannot be said to be the bona fide students, as the Institute, in question, was never accorded permanent affiliation. The learned Single Judge has rightly taken note of the decision of the Hon'ble Supreme Court in the case of Annamalai University Vs. Secretary to Government, Information and Tourism Department & Ors., (2009) 4 SCC 590 on the point that no

relaxation can be granted in regard to basic things necessary for conferment of a degree and if mandatory provisions are not complied with by an administrative authority, the action shall be termed as void. Such issue has also been highlighted in Orissa Lift Irrigation Corporation Ltd. Vs. Rabi Sakar Patro & Ors., (2018) 1 SCC 468, wherein the Hon'ble Supreme Court having found that the University flagrantly violated and entered into areas where they had no experience and started conducting courses through distance education system illegally, directed all the degree of Engineering granted to students, who are enrolled during the academic year where the fault was found, to stand suspended till they pass such examination under the joint supervision of AICTE/UGC in the manner indicated therein.

29. So far as reliance of the appellant on a decision in L.P.A. No. 1145 of 2001 is concerned, this Court finds that the ratio laid down therein supported the mandate of the learned Single Judge holding that unless a college has the privilege of the University by way of affiliation, the college cannot forward or sponsor a candidate to the University for the purpose of enabling the candidate to appear in any of such examinations conducted by the University. The learned Division Bench was of the firm view that "A college which does not have the privilege of the University, no doubt cannot ask the University to do anything far less ask the University to examine a candidate, who has been imparted education by the college. Therefore, on the principles of law, the learned Judge found, there is no scope of interference."

30. In L.P.A. No. 1145 of 2001, the sole candidate had been continuing his graduation from a college, having no affiliation, despite the University having opened a tabulation register and issued mark-sheet for all the three successive examinations, holding him successful. Despite this the student was denied passing certificate as well as Migration certificate, in which circumstances, the Court directed for issuance of the same.

31. In the case in hand, the courses conducted by the Institute were Diploma and Degree in Para Medical courses; requiring strict compliance of standards of teaching, infrastructure and training. The period over which the said course was conducted, the Institute did not have affiliation. There was also no Regulation framed by the University for conduct of the course nor did they have any kind of experience in the field, in which the Institute was imparting education. Only in such circumstances, the learned Single Judge held the degree accorded by the University illegal.

32. That the Institute did not have affiliation is admitted. The request for affiliation was declined specifically on the ground that the University did not have the experience or expertise in the specific fields in which courses were conducted; so as to decide on the very question of affiliation. In the teeth of the above facts coming out from the records, we fail to understand how the University conducted examination in the courses and awarded certificates. We cannot but express our anguish, especially since the certificates were granted in

Para Medical courses, were the certified students would often be dealing with the life and limb of their fellow human beings.

33. We may also observe that the finding of the learned Single Judge is based upon the materials on record wherein the respondent University has, in clear terms, said that the Institute was never granted affiliation under Section 21(2) (d) of the Bihar State Universities Act, 1976. The Institute also does not fulfill the norms and criteria as per the Act. It was the stand of the University that taking admission of students was not justified without the approval of the State Government, as per the mandate of Section 21(2)(d) of the Bihar State Universities Act, 1976. Admitting students in the Institute, without affiliation granted by the University and without approval of the Statutory body is invalid and illegal. Moreover, the Institute has never informed the University regarding the method of admitting the students in different courses. On such reasoning, the learned Single Judge has concluded that the degree accorded by the University was per se illegal; which we fully agree with.

34. Having carefully gone through the decision of the learned Single Judge, this Court also finds that it was appropriate that having found the glaring facts of illegality in conducting courses and imparting education without any valid affiliation by the University and recognition by the State, appropriate directions were issued to be followed by all the Universities in the State of Bihar, governed by the provisions of the Bihar State Universities Act, 1976, which too do not require any interference. We put our stamp of approval to the directions so issued.

35. In such view of the matter, taking note of the aforesaid facts, circumstances and the position obtaining in law, this Court does not find any infirmity in the order/judgment and thus both the Letters Patent Appeals stand dismissed. The parties shall bear their own costs.