

(2022) 07 PAT CK 0040

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 86, 3365, 3516 Of 2021

Sambadh Degree Mahavidyalaya Seva Sangh

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 12-07-2022

Acts Referred:

Bihar Intermediate Education Council Act, 1992 — Section 2(j), 15(14), 39, 39(2)
Bihar School Examination Board Act, 2019 — Section 19, 19(2) 19(3)

Citation : (2022) 07 PAT CK 0040

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : P.K. Shahi, Shashibhushan Singh, Mrigendera Kumar, Satyavir Bharti, Abhinav Srivastava, Ram Vinay Pd. Singh, Gyan Shankar, Satyam Shivam Sundaram

Final Decision : Allowed

Judgement

1. Heard the parties.

2. All the three writ petitions raised common questions of law and was affirming, however heard together.

In CWJC No. 3516 of 2021, petitioner is a registered trust. In C.W.J.C. No. 3365 of 2021, 15 colleges have jointly filed the petition. In C.W.J.C. No. 86 of 21, another Trust Society Union of the teachers and employees are before the Court.

3. The grievances raised are with regard to the Intermediate Colleges which are affiliated to the Universities. It is admitted position that the petitioners are colleges which were established between the period from 1978 to 1992. Earlier, the Bihar Intermediate Education Council Ordinance, 1980 was promulgated and the said Ordinance continued to remain in force till it took a shape of enactment by the name of Bihar Intermediate Education Council Act, 1992.

4. Learned Senior Advocate appearing for the petitioners has submitted that the Inter classes were being part of the College as an integrated course of studies

and on coming into force of the Ordinance of 1980, Intermediate Education Council recognized these Colleges as Inter Colleges. On coming into force of the Bihar Intermediate Education Council w.e.f. 9.9.1992, the Inter Colleges were in a separate recognition for imparting education of Intermediate standard namely +2. The Act provided for establishment, recognition and management of the Inter Colleges as a separate entity. However, those Institutions, which were imparting education of Intermediate standard were treated separately under the Act of 1992.

5. It would be apposite to quote Section 39 of the Act of 1992 as under:-

"39. Institutions imparting education of intermediate (+2) standard. - (1) Notwithstanding anything contained in Patna University Act, 1976 (Bihar Act 24 of 1976) and Bihar State Universities Act, 1976 (Bihar Act 23 of 1976) for the purpose of this Act, the following Institutions shall be deemed to be Institutions imparting education of Intermediate (+2) standard. -

(a) Constituent College of any University of the State of Bihar or College maintained by the State Government in which there is arrangement for Intermediate (+2) teaching:

(b) Degree College admitted to the privilege by any University of the State of Bihar before promulgation of this Act in which there is arrangement for teaching of Intermediate (+2) standard;

(c) College admitted to the privilege by any University of the State of Bihar affiliated up to the Intermediate (+2) standard before promulgation of this Act;

(d) Institutions imparting education up to Intermediate (+2) standard recognised by the Council under this Act.

(2) Institutions imparting education of Intermediate (+2) standard of the category of clauses (a), (b) and (c) of sub-section (1) the Intermediate (+2) part of such Institutions shall with the promulgation of this Act be deemed to be duly recognised by the Council."

6. Learned Senior Counsel referring to the aforesaid Section submitted that the petitioner members of the Union and the other Colleges and other petitioners are those who are falling in category 39 (I) (b) namely those which are affiliated to the University of the state and have an arrangement of teaching of Intermediate +2 standard. Referring to Sub-clause 2 of Section 39, he submits that the petitioners Institution would be deemed to be duly recognized by the Bihar intermediate Education Council as found under the Act of 1992.

7. Learned counsel submits that accordingly, the petitioners were continuing as recognized Institutions and have been imparting +2 level education in the State of Bihar. Students have been admitted accordingly, who have been all registered by the Council, which has accepted their fees and forms, conducted the examinations and certificates were issued to such students.

8. Learned counsel submitted that by repealing Act of Bihar namely Bihar Intermediate Education Council (Repeal Act, 2007), the act of 1992 was repealed and the Intermediate Council was merged with the Bihar School Examination Board. However, as per the stipulation of the Repeal act, the said Colleges continued to be deemed to be recognized.

It would be apposite to quote the provisions of the Repealing Act under:-

"Notwithstanding such repeal, anything done or any action taken in exercise of any powers conferred by or under the said Act shall be deemed to have been done or taken in exercise of the powers conferred by or under this Act as if this act were enforce on the date on which such things or action was done or taken."

9. Learned counsel submits that the State Government vide resolution dated 19.05.2009 introduced grants to the recognized Institutions and the grants were released to the Member Colleges of the union where Intermediate studies were attached to the Degree College based on the number of students pursuing the Inter exam from the College in first, second and third division.

10. Learned counsel submits that in the aforesaid backdrop, the petitioners were receiving grant from the College. However, a resolution has been passed on 4th July, 2020, wherein it has been stated that policy for release of grant was issued on 19.05.2009 to the 599 Inter Colleges based on the students passing standard ratio. The resolution of 2020 however mentioned that the 599 Inter level Colleges which included the petitioners had not been granted permanent recognition on account of not having fulfilled the requisite norms and, therefore, it was directed that the grant shall be released only, if they are able to fulfill the requisite norms for recognition of +2 Colleges and submit their application for recognition and fill up the same and complete the norms by 31st December, 2020.

11. Learned counsel has challenged the said resolution and by way of an I.A, the petitioners have also challenged the order dated 03.10.2021 passed by the Bihar School examination Board, Patna, whereby it has notified the list of Colleges and Schools for complying with the norms for recognition by 31st December, 2021 and obtained the recognition by registering themselves with the Bihar School Examination Board, failing which thereof concerned Colleges have been restrained from allowing registration of students for admission for the Sessions 2022-2024 and also from releasing of grant from Sessions 2014-2016 onwards. It is submitted by learned Senior counsel that the orders have been passed wrongfully and in contravention of the provisions of the Act of 1992 and the Bihar School Examination Board (Amendment Act, 2007).

12. Learned counsel submits that three tier Inspection Committee was constituted for conducting three tier inspection before releasing the funds, which was based on performance of the students. It is stated that Bihar School examination Board, Senior Secondary Affiliation Bye-laws, 2011 have been framed for affiliation with the Board, but the same would have no application to

already existing and recognized Inter Colleges and the same shall apply to the newly formed Institutions which have come into force after the Bihar Education Council Act, 1992. It is, therefore, submitted that the directions issued by the respondents for fresh application for directing petitioners to apply afresh for recognition and a pre condition for release of grant was unjustified and arbitrary. The condition of the Bihar School Examination Board in restraining the Colleges from registering students for admission for the Sessions 2020-2024 would amount to de-recognising (10+2) Inter Classes in the colleges. It is also pointed out that the orders have been made applicable only to the affiliated Colleges providing Inter level education and it has not been applied to the constituent Colleges of the Universities. Once the petitioners were deemed to be recognized under the Bihar Intermediate Education Council Act, 1992 and also under the Act of 2007 and thereafter, there is no purpose of asking them to apply afresh under the Rules of 2011. Learned counsel also referred to the new Rules 2020 to show that all the petitioners colleges were duly recognized and allowed to be affiliated.

13. The similar arguments have been adopted by the other respective counsels.

14. Learned counsel Mr. Abhinav Srivastava, appearing in the connected writ petitions C.W.J.C. No. 3365 of 2021 has pointed out that an I.A. has been filed, wherein a resolution dated 22.06.2022 has been placed on record, whereby the Education Department has published a list of Inter Level Colleges along with their courses for allowing admission to students during the academic Sessions 2022-2024. It has been indicated that the Colleges who do not fulfill the requirements in accordance with the provisions contained under Bihar School Examination Board and affiliation regulations, 2011, would not be allowed to take admission from academic Sessions 2023-2025 and the petitioner nos. 2, 4, 10, 12, 14 and 16 have not been included in the said resolution, whereas they were already deemed to be recognized and affiliated under the Act of 1992. Thus he submits that such Colleges are wrongly disallowed to take admission for academic Sessions 2022-2024 also.

15. Learned counsel submits that the Colleges being already recognized could not have been excluded resulting in the students not being admitted in the said College. He prays, therefore, to allow the amendment and also set aside the communication dated 22.06.2022 and direct the respondents to allow the petitioners Colleges to take admission of the students during the Sessions 2022-2024 and onwards. The said I.A. was taken on record and the arguments were heard on merit on the said aspect also. The I.A was thus allowed.

16. Per contra, learned counsel Shri Satyabir Bharti, appearing for the Bihar School examination Board submits that while the Bihar Intermediate Education Council Act, 1992 came into force w.e.f. 9.9.1992, the Council was empowered to even conduct inspection, withhold, reduce or stop maintenance grant if any recognized Institution had failed to implement the conditions of recognition or the Institutions is being run in such a way as may be prejudicial to the interests of education or fails to comply with any order issued by the Council for

maintenance of the prescribed teaching standard for the said purpose. Learned counsel invited attention to Clause 14 of Section 15 of the Act of 1992.

17. Learned counsel further submitted that after the Bihar School Examination Board Amendment Act, 2007 came into force, the Bihar Intermediate Education Council Act, 1992 was repealed and the Board came into existence. As per Section 2(j), Senior Secondary School being defined as under 2(J):-

"2 (j) "Senior Secondary School" means a school imparting education of courses up to grade 12 as prescribed by the Board, and includes institutions of Intermediate (+2) Education, duly recognised under Section 39 of the Bihar Intermediate Education Council Act, 1992."

18. Accordingly, the already recognized Institutions under Section 39 of the Act of 1992 also came to be governed by the Bihar School Examination Board. It is submitted that the Bihar School Examination Board (Senior Secondary Affiliation Regulation), 2011 were enacted w.e.f. 8th July, 2011. As per the said regulations, 2011 (3) Sub-Rule (4) (C) proviso, those Colleges which were already affiliated were essentially required to fulfill the specified standards within three years.

It would be apposite to quote the said proviso as under:-

" (4) Access

(a) Senior Secondary Schools should be provided within five kilometers of every habitation.

(b) The section and the number of students in each section of Class IXth and Xth in secondary schools shall be determined by the Bihar School Examination Board with the permission of the Department.

(c) The section and the number of students in each section of Class 11th and 12th in High Secondary schools shall be determined by the Bihar School Examination Board with the permission of the Department;

Provided that those Secondary/High Secondary (+2 College) affiliated with Bihar School Examination Board in case of not fulfilling the standards specified in Regulation 3 of these Regulations, 2011 shall have to fulfill the specified standards within 3 years essentially."

19. The said proviso was substituted by following. It would be apposite to quote provided that amended by 2013:-

"4. Clause (b) and (c) of Sub-Regulation (4) of Regulation 3 of the said Regulations, 2011 shall be substituted by following:- (b) The section and the number of students in each section of Class IXth and Xth in secondary schools shall be determined by the Bihar School Examination Board with the permission of the Department.

(c) The section and the number of students in each section of Class 11th and

12th in High Secondary schools shall be determined by the Bihar School Examination Board with the permission of the Department. Provided that those Secondary/High Secondary (+2 College) affiliated with Bihar School Examination Board in case of not fulfilling the standards specified in Regulation 3 of these Regulations, 2011 shall have to fulfill the specified standards within 3 years essentially."

20. In view of the above, learned counsel submits that the petitioners Colleges were required to maintain the same standard and norms as laid down by the Board from time to time and they were given a three years breathing period to fulfill the standard specified in regulations and if they do not fulfill, the Institutions could be de-recognized.

21. I have considered the submissions, the Bihar School Examination Board Act, 1952 was formed to conduct examinations up to Secondary School Education Level. As pointed out by the learned counsels by the Amendment Act of 2007, the Intermediate Education Council was repealed and the powers were vested with the Bihar School Examination Board with respect to recognition, examination, management of the Inter Colleges and Schools providing education up to Inter level viz (10 +2) Senior Secondary level as commonly understood.

22. It is to be noticed that the said Bihar School Examination Board Act of 1952 was replaced and its Amendment Acts were repealed and the Bihar School Examination Board Act, 2019 came into force by notification dated 30th July, 2019, as published in the Bihar Gazette (hereinafter referred to as the Act of 2019). Thus, as on today, the Act of 2019 will hold the field with regard to the Institutions imparting education up to Inter standard whether in the School or Colleges affiliated to the University or with the Constituent Colleges.

23. As per the Act of 2019, Senior Secondary School is defined as a School imparting education courses up to Intermediate +2 grade as prescribed by the Board and includes Institutions of Intermediate +2 education which are duly affiliated by the Board. Thus, the deeming clause as provided in Section 39 (2) Act of 1992, will have the effect of bringing the said Institutions already recognized and affiliated prior to 30th July, 2019 within the ambit of the Act of 2019 and would be designates as Senior Secondary Schools. Section 19 of the Act of 2019 is requires to be noticed for the purpose as under:-

" 19. Power to grant and withdraw affiliation. - (1) The Board shall have the power to grant affiliation of Secondary and Senior Secondary Schools or any other school established or to be established by the non-governmental organizations or private persons on the basis of recommendation of the Committee of Affiliation constituted under section 20 of the Act and it shall have power to make regulations in this regard with the approval of the Department;

Provided that the Institutions of imparting education of intermediate (+2) standard deemed to have been recognized under Section 39 of the institutions established and recognized or granted permission for establishment under

Section 41 of the Bihar Intermediate Education Council Act, 1992 shall be deemed to have been affiliated with Board for the senior secondary examination.

Provided further that all such institutions of Intermediate (+2) Education shall reorganize and rename themselves as Senior Secondary Schools with facilities and teachers for imparting education at secondary stage and senior secondary stage as prescribed by the Regulations to be made by the Board in this regard, and within the time frame indicated in it:

(2) The Board shall have the power to withdraw/cancel/suspend affiliation of Secondary and Senior Secondary Schools which have been granted affiliation under subsection (1) of Section 19 or deemed to have been affiliated with the Board under first proviso to Section 19 (1) of the Act, if in the opinion of the Board, the affiliated institutions have failed to maintain the requisite standards for grant of affiliation or have in any manner acted in the detriment or prejudicial to the interest of the students, Board or the education system in general.

Provided also that before withdrawing/cancelling affiliation, the Board shall give to the schools or the institutions concerned a reasonable opportunity of being heard, and the students admitted into such schools or institutions shall be allowed to complete their academic sessions and appear at the next examination conducted by the Board.

(3) When affiliation of Secondary and Senior Secondary Schools which have been granted affiliation under subsection (1) of Section 19 or deemed to have been affiliated with the Board under first proviso to Section 19 (1) of the Act, is liable to be cancelled, pending final decision regarding withdrawn/cancellation of affiliation, the affiliation, may, at the discretion of the Board, be suspended after recording reasons for the same. No prior show cause notice shall be required to be served upon such institutions, before suspending affiliation.

24. From perusal of Section 19, it is apparent that the Bihar School Examination Board would not demand a fresh application for affiliation or recognition of those Institutions which already stand recognized. However, as per the said Act, the said Intermediate +2 Education Institutions would re-organise and re-name themselves as Senior Secondary Schools with facilities and teachers for imparting education at secondary stage and Senior Secondary stage as prescribed by the regulations to be made by the Board in this regard and within the time frame indicated in it. If the said Institutions fail to maintain the requisite standards for grant of affiliation or have in any manner acted in contravention thereto, their affiliation would be withdrawn.

25. Thus, as per Section 19 (3) read with (1) proviso of Section 19 (I), the present member Institutions of petitioner in C.W.J.C. No. 3516 of 2021 as well as petitioners in the other two writ petitions would be deemed to have been affiliated with the Board and the Board would have the power to suspend their affiliation after recording reasons for the same and for the said purpose no prior show cause notice is required to be issued. However, if the affiliation is to be

withdrawn as per proviso to Section 2 of Section 19, they would be entitled to a reasonable opportunity of being heard.

26. While, this Court is of firm view that all Institutions imparting education are required to meet with all the requisite standards laid down by the Board, a general order could not have been passed directing the Institutions to apply for fresh recognition/affiliation. The provisions do not envisage a fresh application from the said Institutions. However, if the Board necessarily has reason to believe with cogent information/ report by way of inspection that a particular Institution is not confirming to the standards laid down by it, it could always suspend the affiliation of the said Institutions or give reasonable opportunity to meet up to the standards within a stipulated period, and take action thereafter.

27. Learned counsels for the Board has submitted that the period of three years was prescribed under the Rules of 2011. However, this Court finds that after coming into force of the Act, of 2019, which provides that all the existing Institutions shall be deemed to be recognized up to the coming into force of 2019, the time period of three years can at best be calculated from the date of coming into force of the Act of 2019 and not prior to it. The order passed by the Board and the State Government, therefore, would be vitiated.

28. However, there is no such document placed by respondents to show that the individual institutions are found lacking and have any deficiency. No inspection report of any institution has been placed. The natural corollary of Section 19 (supra) is that the respondents were required to follow its provisions and could not be allowed to press a blanket order. Thus in view of the aforesaid comprehensive provision laid down in Section 19, the action taken by the respondents State and the Board in issuing notification is found to be not in accordance with the provisions of the Act of 2019.

29. This Court finds that both the impugned orders have by a sweeping order taken into its ambit of all the Institutions which were recognized and affiliated with the Board and were affiliated to the University as aided Colleges. The grant has also been stopped on the premises that the Institutions have not applied for affiliation. The purpose may be for a public cause, but the approach is not in accordance with the laid down legal principles. The respondents Board is free to conduct individual inspections, if so required for the purpose of examining that the Institutions are in conformity with the laid down norms.

30. Thus, the orders of disallowing the registration for admission of students in the member Colleges of the petitioners Union and the other petitioners in found to be dehor of the Act of 2019.

31. Accordingly, the notification dated 03.10.2021 issued by the Bihar School Examination Board and subsequent notification dated 22.06.2022 are quashed and set aside. The order of the Bihar Government with regard to refusal of grant on account of non affiliation dated 4th July, 2020 is set aside. All the Institutions should be deemed to be affiliated with the Board and the petitioners would be

allowed to admit and register students for the +2 Classes in their Institutions.

32. It is however, made clear that this order has been passed generally for all the Institutions, but would not come in way for the Board to take action against any individual Institutions, if it is found to be lacking and wanting in terms of Section 19 of the Act of 2019.

33. The respondents shall allow the petitioners to register students for admission to the +2 Classes for the Sessions July, 2022 onwards and for the purpose the last date fixed by them shall not come in their way.

34. All the writ petitions are allowed accordingly with no costs.