

(2000) 09 PAT CK 0072
In the Patna High Court
Case No : C.W.J.C. No. 10704 of 1999

Sanjay Gandhi Vidhi Mahavidyalaya

APPELLANT

Vs

Baba Sahab Bhim Rao Ambedkar University and Others

RESPONDENT

Date of Decision : 22-09-2000

Acts Referred:

Advocates Act, 1961 — Section 24, 24(1), 24(3), 3, 4
Bar Council of India Rules, 1975 — Rule 1, 1(1), 18, 18(1)
Bihar State Universities Act, 1976 — Section 21, 21(2)

Citation : (2001) 1 PLJR 137

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Chakradhari Sharan Singh, Raju Kumar Singh, Shantanu Kumar and Abhishek Singh, for the Appellant; Ram Chandra Jha, Ranjan Kumar Jha for Bar Council, Azfar Hasan, S.P. Kishore for State and L.N.M.U., Binod Kumar Jha, Subhash Chandra Jha for T.M. B.U. and S.K.U., Shivendra Kishore, for J.P.U., Indu Shekhar Prasad Sinha, Deoeshwar Prasad Singh for V.K.S.U., Sheema Ali Khan, for P.U., Prabhu Nath Roy, for M.U. and K.K. Mandal, for B.N.M.U., for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The Petitioner, Sanjay Gandhi Vidhi Mahavidyalaya, a Law College, has preferred the writ petition against the letter having Reference No. B/2588 dated 5th October 1999, whereby and whereunder, the Respondent B.R.A. Bihar University, Muzaffarpur (University for short), intimated non-entitlement to admission of students in L.L.B. course in the College with further intimation that the students of the College will not be admitted in the University to L.L.B. examination 1999, as was proposed to be conducted in November, 1999.

However, the College was asked to submit relevant papers, it claims to have received affiliation from the State Government and recognition from the Bar Council of India (B.C.I, for short).

2. The questions raised on behalf of the Petitioner relating to jurisdiction of B.C.I,

in the matter of inspection of a Law College and the other question as to whether any approval/recognition by B.C.I, is necessary or not.

3. To determine the issue, while relevant provisions of law to be noticed, certain facts are also relevant, as set out hereunder.

4. The Law College, in question, was established in the year 1979 and was granted affiliation by Bihar University on 4th July, 1984 for the Session 1984-85; 1985-86; and 1986-87, as approved by the State of Bihar. The affiliation was extended by the University on 28th March, 1988, followed by order dated 2nd August, 1995 for the subsequent Session 1987-88, extended upto the Session 1995-96, which was also approved by the State.

5. For the subsequent session 1996-97 onwards, the University recommended extension of affiliation on 6th August, 1997, followed by recommendation dated 21st December, 1998 for the Session upto 1999-2000. However, before grant of approval by the State, impugned letter dated 5th October 1999 was issued by the University.

6. Admittedly, the College earlier requested the B.C.I, to grant permission to start Law College. The B.C.I, in its meeting held on 12th/13th February, 1994 decided to grant temporary permission to the College for three years upto 30th June, 1997, vide letter No. 384 : 1994 dated February 16, 1994. The permission/recognition so granted by the B.C.I, expired on 30th June, 1997, but the College did not apply for further extension of such recognition/permission. It was in September, 1999, the College forwarded a demand chart for Rs. 15,000 to the B.C.I, for inspection of the College and consideration of its recognition/affiliation as made vide College letter No. 15/99/SGVM dated 7th September, 1999. The B.C.I, in its turn by letter No. 865/99 dated September 28, 1999 while intimated the College that its recognition/affiliation expired on 30th June, 1997, requested to deposit further sum of Rs. 35,000 by Bank draft as matter is to be considered afresh on inspection of the college of which fee was raised to Rs. 50,000.

7. By interim order, the students of the College were allowed to appear in Part-I, II and III L.L.B. Examination in the light of State of Bihar's decision, contained in letter dated June 17, 1999, whereby the University was asked to allow the students of such Institution to appear in forthcoming examination in anticipation of approval/recognition of the College for the year 1998-99 onwards, subject to the approval by Senate.

8. As the counsel for the Petitioner raised the jurisdiction of B.C.I, in the matter of inspection of a Law College and its recognition/affiliation by B.C.I, the court not only issued notice to the B.C.I., but also directed the counsel for the Petitioner to serve a copy of the order on the counsel appears on behalf of one or other University of the State, for proper adjudication of the issues.

9. In the aforesaid background, not only the counsel for the State, B.R.A. Bihar University; Bar Council were allowed, but other counsel of Patna University;

Magadh University; T.M. Bhagalpur University; Veer Kunwar Singh University; S.K. University; J.P. University; B.N. Mandal University, as also the counsel for the Chancellor assisted the court, as amicus curiae.

10. The counsel for the Petitioner submitted that a high level committee of the University having inspected the College, in recent past, on September 2nd, 1996 and the University having recommended for permanent affiliation of the college, the State of Bihar is required to act in terms with Section 21 of the Bihar State Universities Act, 1976 to grant approval to the affiliation granted by the University. It was submitted that the Bihar University, having recognised by the B.C.I., the College having affiliated by the Bihar University, again the question of its inspection by B.C.I, and/or its recognition/affiliation by B.C.I, is not required, nor permissible.

11. According to counsel for the Petitioner for recognition of a Law degree of an University for enrolment as an Advocate inspection of the University may be one of the functions of the B.C.I, under Sub-section (i) of Section 7 of the Advocates Act, 1961, but the said provision cannot be made applicable for recognition of a Law College which merely imparts teaching and does not grant any degree in Law. Reliance was also placed on Section 24 of the Advocates Act, which stipulates a condition for admission as Advocates on State roll and a rule making power of B.C.I., as stipulated u/s 49 of the Act for discharging its function.

12. It was submitted that the grant of recognition by B.C.I, by earlier letter dated 16th February, 1994 is suggestive of the fact that the College fulfils all criteria to impart legal education and there cannot be any reason for refusing further recognition in absence of any contrary finding relating to short-coming of facilities.

Specific statement made on behalf of the Petitioner is that the College has not crossed the maximum number of students to be admitted in a Session, the break up of which, year, for the Session upto 1998-99 has been shown.

13. An alternative submission was made on behalf of the Petitioner. According to counsel, even if the power is vested with the B.C.I, to inspect a College for the purpose of recognition/approval of affiliation, (sic) provision for temporary recognition/approval of affiliation having stipulated under the Act/Rule, once recognition/approval of affiliation granted, it continues like permanent affiliation, till cancelled for one or other reason like withdrawal of facility by the College; shortage of teaching and non-teaching staff etc., which can be termed to be derecognition.

14. Mr. Ram Chandra Jha, learned Counsel for the B.C.I, placed reliance on Section 7(h)(i); Section 24(c)(iii); Section 24(iii)(a); Sections 49(i)(af), (ag) and (d) and the rules framed thereunder, circulated under Part (iv). According to him, as the B.C.I, is to promote legal education and to lay down standard of such education, inspection of a College and its recognition by B.C.I, is mandatory.

15. The aforesaid stand taken on behalf of the B.C.I, was also supported by the counsel for Patna University; Magadh University; L.N. Mithila University; B.N. Mandal University; T.M. Bhagalpur University; and the counsel for the Chancellor.

16. Mr. P.N. Roy, the Senior counsel for the Bihar University indirectly supported the contention raised on behalf of the Petitioner. According to him, no law/rule laid down for control and to regulate affiliation of a College or the University. Under the rules, provisions made for affiliation of a University, but no law laid down for recognition/affiliation of a Law College by B.C.I. Such recognition of Law College by B.C.I. may be mandatory for enrolment as an Advocate under Advocates Act, 1961, but for any other purpose, a law degree granted by a recognised University, to the students of affiliated College of the University can be used for all other purposes. There can be two standards of law degrees; one recognised for the purpose of enrolment under Advocates Act, 1961; the other as an academic degree.

17. The Law College, in question, comes within the jurisdiction of the Bihar University, which is governed by the Bihar State Universities Act, 1976. The provision to affiliate or to deaffiliate a College has been laid down u/s 21(2) of 1970 Bihar Universities Act, relevant portion of which is set out hereunder:

21. Powers and duties of the Senate.?x x x x x

(2) In particular and without prejudice to the generality of the foregoing powers, the Senate shall exercise the following powers and perform the following duties, namely:

(d) of exercising the powers for the purpose of control in Colleges and Tols, and of superintendence which include affiliation and disaffiliation of Colleges:

Provided that affiliation or disaffiliation of Colleges or Tols shall not take effect, unless it is approved by the State Government:

Provided further that no medical college shall be affiliated except without the prior approval of the State Government.

Before granting such an approval, the State Government shall consider the financial viability of the College, the nature and form of the proposed management of the College, the viability of the academic standard and all other conditions which are likely to have adverse effect on the interests of students admitted to such a college:

(e) of instituting and conferring such degrees, titles, diplomas and other academic distinctions as may be prescribed by the statutes; and

(f)x x x x x.

18. The aforesaid Bihar State Universities Act, 1976 is applicable for all Colleges, and no specific provision made in respect of Law College.

19. One may now notice the other provision of law i.e. Advocates Act, 1961 and

the Rules framed thereunder (the Bihar Bar Council of India Rules) having a bearing on the question at issues before this Court. The Act was enacted which, inter alia, provides for constitution of Bar Council and an All India Bar. Section 3 provides for the constitution of State Bar Council and Section 4 for the Bar Council of India. u/s 7, while it enumerates function of the Bar Council, it includes among others (b) laying down of standards of professional conduct and etiquette for advocates, (e) to promote and support law reform; (h) to promote legal education and to lay down standards of such education in consultation with the Universities in imparting such education and the State Bar Council, and (i) recognition of Universities whose degree in law shall be qualification for enrolment as Advocates.

The relevant clauses of Section 7(i) of the Advocates Act, 1961 provides:

7(1). The function of the Bar Council of India shall be :

(b) to lay down standards of professional conduct and etiquette for advocates;

(e) to promote and support law reform;

(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(i) to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect the Universities in accordance with such directions as it may give in this behalf.

20. In one present case, this Court is not concerned with enrolment of an Advocate, but with regard to a degree of law (L.L.B.), as may be granted by one or other University.

21. In the case of Bar Council of India and another Vs. Aparna Basu Mallick and others, , while the Supreme court held that non-collegiate/private students not attending law classes are not entitled to be enrolled as Advocates held, as follows:

Now u/s 7, one of the functions of the Bar Council of India is to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect the Universities. This power of recognition of Universities is conferred where the degree of law of that University entitles the degree holder for enrolment as an advocate. u/s 24(1)(c)(iii) which is relevant for this purpose, a person shall be qualified to be admitted as an advocate on State roll if he fulfils the conditions of having undergone a three year course of study in law from any University in India which is recognised by the Bar Council of India. Sub-section (3) of Section 24 is an exception clause to Sub-section (1) as it begins with a non obstante clause which entitles a person to be enrolled as an advocate under special rule made in that behalf. No such Rule

was relied upon as having been made under Sub-section (3) of Section 24. Section 49(1)(d) empowers the Bar Council of India to make rules which may prescribe the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose. If the acquisition of a degree in law is essential for being qualified to be admitted as an advocate on a State roll, it is obvious that the Bar Council of India must have the authority to prescribe the standards of legal education to be observed by Universities in the country. On a conjoint reading of these provisions of the Act with Rule 1(i)(c) in Part-IV of the Rule which prescribe the standards for legal education and recognition of degrees in law as well as admission as advocates, it is difficult to understand how one can say that the said Rule is inconsistent with any of the provisions of the Act. What Rule 1(1)(c) requires is that the course of study in law must be completed by regular attendance at the requisite number of lectures, tutorials and moot courts in a College recognised by a University. As pointed out earlier, this Court in Baldev Raj Sharma's case pointed out that there was a substantial difference between a course of studies pursued as a regular student and the course of studies pursued as a private candidate. The policy underlying the relevant provisions of the Rules is to lay emphasis on regular attendance of the law classes. It is, therefore, clear that a candidate desiring enrolment as an advocate must fulfill the conditions set out "under the relevant clause of Section 24 read with Rule 1(1)(c) of the Rules. In the present case since both the candidates admittedly did not pursue any regular course of study at any college recognised by the University by attending the law classes, lectures, tutorials and moot courts, they cannot be said to have complied with the requirements for enrolment as an advocate. In that view of the matter we think that the view taken by the Calcutta High Court reported in *Aparna Basu Mallick Vs. Bar Council of India and Others*, is erroneous.

22. In *Baldev Raj Sharma v. Bar Council of India* AIR 1989 S.C. 1514 the Supreme Court while took into consideration a Bachelor of Law degree obtained by the candidate as a private candidate, held the same an Academic degree nor professional for enrolment as a lawyer.

23. The Bar Council of India Rules came into force in 1975. Since then no College is permitted to impart instruction in a course of study in law for enrolment as an Advocate, unless affiliation of the College is being approved by the Bar Council of India. Therefore, in absence of approval of such affiliation to a law course by Bar Council of India, no person can be enrolled as an Advocate.

Under the said Rule, a Law College which is already in existence is not allowed to impart instruction in a course of study in law or enrolment as an Advocate, if the continuance of its affiliation is disapproved by the B.C.I., as stipulated under Rule 1 of Part-IV of B.C.I. Rules.

The B.C.I. has the power to constitute a Legal Education Committee under Rule 8. The power and duties of such Committee includes recommendation for laying down the standard of legal education for the University; visit and inspect

Universities and report the result to the Bar Council; recommend for recognition of any degree in law of a University in the territory of India and also to recommend the discontinuance of recognition.

Under Rule 18 of Bar Council of India Rules, while an application for approval of affiliation of a new College is received by the Bar Council, the Bar Council is independent to take decision of its own to have a College inspected in order to ensure that the standard of legal education set out by it is being complied with as stipulated under Rule 18.

The application for approval of affiliation is required to be addressed to the Secretary of Bar Council under Rule 18(b) and the affiliated College and University is required to furnish all the information to the Committee of Inspection and B.C.I., as and when required and should cooperate with them regarding the conducting of the inspection, as stipulated under Rule 18(c). If an unfavourable report is received, the Secretary, Bar Council of India is required to send a copy of it to the Registrar of the University for comment and explanation, under Rule 18(e) and on receipt of reply, if it is found that the standard of legal education or the requirement of affiliation are not complied with or that the courses of study, teaching or examination are not adequate to train students for a competent practice at law, the Committee may recommend disapproval of the affiliation or discontinuance of affiliation and may also recommend for improvement to be carried out within a specified period in terms with Rule 18(g). On disagreement with the recommendation, the B.C.I. may modify the same and is required to forward the matter to the Committee for its reconsideration, before approval of a final decision in the matter, under Rule 18(h). However, before disapproval of affiliation of University, a notice is required to be given to the Registrar of the University and Principal of the College, before final decision, as stipulated under Rule 18(1) of the Rules.

24. In view of law laid down under Advocates Act, 1976 (sic 1961) and Rule framed thereunder, a person shall be qualified to be admitted as an Advocate on State roll only if he fulfils the conditions of having undergone requisite course of study of law from any University in India which is recognised by the Bar Council of India. Such degree of law (L.L.B.) thereby can be termed as professional. On the contrary, a degree of law granted by a University not recognised by B.C.I., can be termed to be "academic degree" having no recognition for being admitted as an Advocate on the roll.

25. For professional degree of law, the University should be recognised by B.C.I., which is granted only if follows the standard of legal education being imparted through a standard professional Law College. The standard of professional conduct; to promote and support law reforms; to promote legal education; and to lay down standard of such education is the function of B.C.I. u/s 7(1) of the Advocates' Act, 1961. It is for the said reason, power vested to it under the rule to inspect a College, if affiliated under a University recognised by B.C.I.

26. In view of the provisions of the Advocates Act and the Rule framed thereunder, the matter can be summarised, as follows:

(a) a law degree granted by a university recognised by B.C.I. is professional, the other law degrees are mere academic and the same cannot be used for being admitted as an Advocate on roll;

(b) Once the law degree of a University is recognised by B.C.I., such University cannot affiliate a Law College, nor can admit the students of such Law College to take part in examination, till the Law College is recognised by the B.C.I. and

(c) affiliation of a Law College under an University recognised by B.C.I., can only be given effect, after recognition of the College by the B.C.I. and not prior to the same.

However, other paraphernalia and approval etc. to be followed, if separate approval requires to be obtained from other authorities, like approval of the State of Bihar, as stipulated u/s 21 of the Bihar State Universities Act, 1976.

27. The College, in question, was granted temporary permission for three years upto 30th June, 1997. The University affiliated and extended the same upto Session 1995-96. In absence of sub-, sequent permission/recognition of College, in question, by the B.C.I., it was not open for the University to admit the students to appear in examination. Thereby, I find no illegality in the impugned letter dated 5th October, 1999, whereby the University refused to admit the students in the University for appearance in L.L.B. Examination, 1999. The College, in question, and its students can claim right to be admitted in the University for appearance in L.L.B. Examination, only if it obtains permission/recognition, which earlier expired on 30th June, 1997.

28. Accordingly, no relief can be granted, as sought for, nor the University can be directed to publish the results of the students who appeared in L.L.B. Part-I, II & III Examinations in view of interim order of this Court, till the College is recognised/granted permission by B.C.I.

29. The writ petition is dismissed with aforesaid observations.