
(2010) 09 PAT CK 0087
In the Patna High Court
Case No : CWJC No. 9627 of 2010

Sanjay Kumar

APPELLANT

Vs

Bihar School Examination Board and Others

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 1 PLJR 125

Hon'ble Judges : R.M. Doshit, C.J.; Jyoti Saran, J

Bench : Division Bench

Judgement

R.M. Doshit, C.J.—Heard the learned Advocates.

2. With the consent of the learned Advocates, the petition is heard and decided today.

3. The Petitioner, a resident of Village-Sirsa, Police Station-Muffasil Motihari, District-East Champaran, is a social and political worker. The Petitioner has brought this petition under Article 226 of the Constitution in public interest. It is the complaint of the Petitioner that the Respondent No. 1-the Bihar School Examination Board (hereinafter referred to as "the Board") and its Chairman, Respondent No. 2, have committed illegality in giving the Code number to the Respondent No. 5 Sri Anugrah Narain Singh College, East Champaran at Motihari (hereinafter referred to as "the College") though it was derecognized as early as in the year 2004.

4. The learned Advocate Mr. H.S. Himkar has appeared for the Petitioner. He has relied upon the communication dated 14th May, 2004 addressed by the then Bihar Intermediate Education Council, Patna to the College. Under the said communication, the College was informed that the College had failed to satisfy the terms and conditions of the temporary recognition such as, the College did not have its own land, the building of the College taken on lease for 30 years was dilapidated

5. The Petitioner has alleged that since the cancellation of the recognition, no fresh recognition has been granted to the College, nevertheless the College has been granted the Code number under communication dated 31st July, 2008, meaning thereby that the students admitted by the College are permitted to take the Board examination.

6. In answer to the notice issued by this Court, the Respondents have entered appearance and have contested the petition.

7. The Board has appeared through the learned Advocate Mr. Purnendu Singh. He has submitted that the Bihar Intermediate Education Council Act, 1992 has been repealed under the Bihar Intermediate Education Council Act, 2007 (hereinafter referred to as "the Repeal Act"). It may, however, be noted that u/s 7 of the Repeal Act, any act done or any action taken under the Bihar Intermediate Education Council Act, 1992 has been saved. Thus, in our view, the cancellation of the temporary recognition of the College continues to be in force in spite of the Repeal Act. The learned Advocate has also relied on the resolution dated 13th May, 2008 passed by the Bihar School Examination Board, Patna. He has submitted that under the said resolution the Board had decided to allow the students of the institutions to take the Board examination. It was pursuant to the said resolution that the impugned action of granting Code number to the College was taken.

8. The fallacy in the submission is apparent. The resolution in question was passed in respect of those Colleges which were recognized and which had submitted the list of their students who were to take the Board examination. Evidently, the said resolution did not apply to the institutions which were not recognized. However, taking the shelter under the said resolution, the College was granted Code number illegally under the signature of the Deputy Controller of Examination. The action was depreciable and is deprecated. The learned Advocate has conceded that the Board has failed to bring on record any material to establish that since its derecognition the College did remove the deficiencies and that it was granted recognition afresh.

9. The learned Advocate Mr. Tej Bahadur Singh has appeared for the College. He admits that since its derecognition the College has not been granted recognition afresh. He has relied upon the inspection report made by the District Education Officer on 31st March, 2009. He has submitted that though the inspection report was made as early as on 31st March, 2009, till date the Board has not taken any decision on it. Pending the decision the Board has permitted the students of the College to take examination through other institutions.

10. We may, at the outset, note that the copy of the inspection report placed before us is incomplete and hardly discloses any material fact about the College. As recorded hereinabove, it is an admitted fact that till date the College has not been given recognition nor it is affiliated to the Board. The College is thus not entitled to admit students nor the students are entitled to take the Board

examination. Nevertheless, under the guise of Code number granted to the College the students are permitted to take the examination. Thus, the illegality is perpetuated from year to year. Neither the Board nor the College has any problem with this makeshift arrangement.

11. Learned Advocate Mr. Tej Bahadur Singh has candidly admitted that the College does admit the students and charge the fees but does not inform the students or their guardians that the College is not recognized or not affiliated to the Board.

12. Illegality is writ large. No further evidence or material is required. Neither of the Respondents is in a position to controvert the aforesaid fact situation.

13. In above view of the matter, we allow this petition. The impugned communication dated 31st July, 2008 granting Code number to Shri Anugrah Narain Singh College, East Champaran at Motihari is set aside. Legal consequences shall follow. It will be the duty of the Respondent Bihar School Examination Board to give wide publicity to the fact that the above referred Shri Anugrah Narain Singh College, East Champaran at Motihari is not recognized nor it is affiliated to the Board. If at all the application made by the College for recognition/affiliation is pending before the Board, the Board will consider and decide the same in accordance with law within two months from today.

14. The writ petition is allowed to the above extent. The parties will bear their own cost.