

(2001) 01 PAT CK 0041

In the Patna High Court

Case No : C.W.J.C. Nos. 9085 and 9154 of 1999

Saraswati Vilas Sanskrit Mahavidyalaya and Others and Kirti
Narayan Kamakhya Sanskrit Mahavidyalaya and Others

APPELLANT

Vs

Kameshwar Singh Darbhanga Sanskrit University and Others

RESPONDENT

Date of Decision : 22-01-2001

Acts Referred:

Citation : (2001) 01 PAT CK 0041

Final Decision : Allowed

Judgement

S.N. Jha, J.—The dispute in these writ petitions relate to affiliation of Sanskrit Colleges in the State of Bihar and payment of salary to the teachers and non-teaching staff working therein.

2. The petitions have been filed on behalf of 12 Sanskrit Colleges in representative capacity. Since the issues involved are the same and the facts also are somewhat similar, "it may suffice to mention the facts from C.W.J.C. No. 9085 of 1999, particularly with reference to petitioner No. 1 College, namely, Saraswati Vilas Sanskrit Mahavidyalaya, Shokhara, Barauni, district Begusarai. It may be mentioned here that besides the main writ petitions the petitioners have filed two supplementary affidavits, another affidavit in reply to the one of the supplementary counter-affidavit of the Department and three petitions challenging the validity of the decision of the Government rejecting the proposal regarding permanent affiliation of the Colleges concerned. The State also has filed as many as four supplementary counter-affidavits, besides the main affidavit and reply to the second supplementary affidavit of the petitioners. Likewise, the University also has filed counter-affidavit followed by supplementary counter-affidavit.

3. Before mentioning the facts of the case, it would be proper to notice the reliefs originally sought in the writ Petitions. The petitioners seek quashing of the Government order contained in letter No. 714 dated 14.7.1999 of the Higher Education Department directing that the salary and other emoluments shall be

paid to the teachers and non-teaching staff of the Sanskrit Colleges for the period of their affiliation vide Annexure-1, the consequential decision of the Syndicate of the Kameshwar Singh Sanskrit University dated 24.8.99 vide Annexure-2, and the resultant order contained in memo No. 8566/99 dated 30.8.99 of the Registrar of the said University stopping payment of salary, etc. to the teachers and non-teaching staff of 17 Sanskrit Colleges mentioned therein vide Annexure-3. The petitioners also seek a direction to the State of Bihar to release the fund for payment of salary etc., to the teachers and non-teaching staff of the petitioner-Colleges withheld from July 1989 and to approve the proposal of the Senate of the University, i.e., Kameshwar Singh Sanskrit University, for permanent affiliation of the Colleges.

4. The case of the petitioners as regards petitioner No. 1 Saraswati Vilas Sanskrit Mahavidyalaya, Shokhara is that the College was established as far back as in the year 1919 as a Sanskrit Vidyalaya (school). It imparted teaching up to Acharya level up to 1976 when it was categorised as a Sanskrit Mahavidyalaya (Degree College). It was granted temporary affiliation for the sessions 1980-81 and 1981-82 vide decision of the senate of the University dated 3.8.78 and approval order of the Government dated 21.2.81 as contained in Annexure-5. The affiliation matter was placed before the Syndicate in its meeting on 27.7.82. Vide decision No. 178 on Agenda No. 13(5) the Syndicate on the basis of inspection report submitted by the Pro-Vice Chancellor recommended permanent affiliation from the session 1982-83. Thereafter, the matter was placed before the Senate in its meeting on 28.2.83 which decided to grant permanent affiliation. Proposal was sent to the Director, Higher Education, Government of Bihar on 28.2.84. The matter is pending with the State Government ever since. Neither the approval of permanent affiliation has been communicated nor the affiliation granted by the University has been cancelled even though the fund for payment of salary, etc. to the working teachers and non-teaching staff was released up to August 1999. Payments were accordingly made up to June 1999.

5. On 25.1.2000 these cases were taken up for preliminary hearing. This Court directed the Secretary, Higher Education, to take a final decision in the matter of affiliation within two months. The petitioner-Colleges were directed to file representation before him enclosing therewith documents in support of their claim. As no decision was taken by the Secretary in the meantime, on 3.4.2000 when the hearing was taken up, order was passed directing the Secretary to explain why decision had not been taken. It appears from the first counter-affidavit filed by the Deputy Director, Higher Education that in the light of the said order dated 25.1.2000 communication was sent to the Registrar of the University on 28.2.2000 to submit detailed report along with the supporting materials with respect to the petitioner-Colleges within 15 days. As desired report was not submitted, while issuing reminder on 25.3.2000 the Registrar of the University was directed to come in person along with the Principal of the Colleges concerned on 1.4.2000. The Registrar along with the Principal of the Colleges appeared on the date fixed but without relevant information and

supporting records. The matter was adjourned to 19.4.2000. In the meantime, the Principals of the Colleges were directed to submit the relevant information/documents by 11.4.2000. Copy of an earlier letter dated 31.12.99 and the prescribed format were also made available. The University in its first counter-affidavit has explained circumstances in which the report, etc. could not be submitted within time allowed by letter date 28.2.2000. According to it, the earlier letter dated 31.12.99 (supra) was not available until 1.4.2000. The format in which the prescribed information/particulars were to be furnished was also made available only on that day. However, the Principals submitted the duly filled formats by the extended date, i.e. 11.4.2000 which were sent to the Government on 18.4.2000. On 19.4.2000, a meeting took place before the Secretary but on account of paucity of time, no progress was made. On 29.5.2000, the University sent its report after verification of the information furnished by the Colleges. On 24.6.2000, the Government communicated its decision vide letter No. 393 of Higher Education Department rejecting the proposal/recommendation for permanent affiliation/extension of 16 Sanskrit Colleges including petitioner-Colleges. The said order was brought on record by the Department as Annexure-H to the second supplementary counter-affidavit. The petitioners on their part filed reply to the said counter-affidavit and also filed amendment petition(I.A. No. 3982/2000) challenging the validity of the said decision dated 24.6.2000 enclosing the same as Annexure-22 to the amendment petition.

6. The decision dated 26.4.2000 and the affidavits, etc. filed by the parties thereafter have brought to the fore the real dispute involved in the cases. The sum and substance of the stand of the Government so far as relevant for the purpose of these cases is that the number of enrolled and passed students of the Colleges during the last five years was less than the prescribed minimum and therefore, the petitioner Colleges warmest considered to be viable institutions and the Government decided to refuse extension/grant of affiliation to them. It is said that though u/s 21 of the Bihar State Universities Act, 1976, the Senate of the University is empowered to grant affiliation, by virtue of proviso to Sub-section (2) thereof, such affiliation does not take effect unless it is approved by the State Government. The State Government has laid down conditions for recognition of the Colleges including Sanskrit Colleges. The laid down conditions, inter alia envisage that the College must have land, building, etc. But existence of these physical conditions by themselves is not sufficient for deciding the viability of the institution. The College may have land, building as well as adequate teachers and non-teaching staff, but unless the students are available, the institution cannot be said to be viable and in such a case Government can refuse the concurrence.

7. In view of the first proviso to Section 21 of the State Universities Act, there can be no doubt that unless, the State Government concurs in the decision of the Senate to grant affiliation, the College cannot be treated as affiliated and allowed the benefits available to affiliated Colleges under the Act and/or Government

orders, etc. The only objection of the State Government being that the student strength of the Colleges was less than the prescribed minimum, the dispute seems to lie in a narrow compass.

8. In Course of hearing, in view of conflicting stand in the counter-affidavits, a question arose as to what is the minimum student strength of the Sanskrit Colleges fixed by the Government. Whereas in the second supplementary counter-affidavit sworn by Shri Khagendra Kumar, Deputy Director, Higher Education, it was stated in paragraph 8 that "for general Colleges minimum number of students is 250 for viability of affiliation but for Sanskrit Colleges it is only 60". in the third supplementary counter-affidavit sworn by same Shri Khagendra Kumar in paragraph 6, it was stated that "in absence of any such guideline for Sanskrit College, minimum number of students for general College will be applicable which is 250. Government resolution No. 756 dated 9.8.83 prescribes minimum number of students at Graduate level should not be less than 250". There does not seem to be any justification or basis for taking that stand. As a matter of fact, even in the impugned letter dated 24.6.2000 by which the Government communicated its refusal to grant/extend affiliation, the prescribed number of minimum students was mentioned as 60. In resolution No. 2261 dated 18.10.76, Annexure-19, also the minimum number of students at Shastri level, i.e. Graduate level was mentioned as 60. It may be mentioned here that there is dispute as to whether the relevant part of the said resolution No. 2261 dated 18.10.76 stands repealed, and the consequence of such repeal, which aspect of the case I shall deal with later in this judgment. To cut short the dispute regarding prescribed student strength, Shri Azfar Hasan, learned Standing Counsel appearing for the State, fairly stated that as per the laid down norms the minimum number of students in Sanskrit College of Shastri/Degree level is 60, It will not be out of place to point out that in paragraph 6 of the third supplementary counter-affidavit itself reference was made to minimum number of students of Sanskrit College at Shastri level as being 60, as laid down in resolution No. 2261 (wrongly mentioned as 2291) dated 18.10.76. The statement occurring in the latter part of the said paragraph that the same student strength prescribed for general Colleges will be applicable to Sanskrit Colleges seems to have been made while dealing with the petitioners' case that by virtue of the repeal of the relevant part of resolution No. 2261 dated 18.10.76 by resolution No. 857 dated 22.6.77, there is no minimum number of students prescribed by the Government. I therefore, hold that the number of minimum students in Sanskrit Colleges of Shastri/Degree level is 60.

9. The question which I now propose to take up is whether the number, i.e., 60 refers to appearing students or students on roll of the College. Though the impugned order dated 24.6.2000 does not state in so many words that the decision has been arrived at on the basis of number of students, it merely states that the average number of students during the last five academic sessions was less than the prescribed minimum, the second supplementary counter-affidavit makes it clear that the number/decision has been worked out on the basis of the

number of appearing students and not enrolled students.

10. Resolution No. 2261 dated 18.12.76 contains the conditions for recognition of non-Government Sanskrit teaching institutions of various levels separately. The conditions with respect to primary schools (from class I to class VI) have been mentioned in Part I, while conditions for the Middle schools (Classes VII and VIII) have been mentioned in Part II, for the Secondary schools (Classes IX and X) in Part III, for Higher Secondary Schools (Classes XI and XII) in Part IV and for the Colleges of Shastri standard (3 years course) in Part v. The conditions inter alia refer to the student strength for all categories of schools/College Whereas for the primary standard schools, the minimum number of students prescribed is 20, for the Middle standard schools the number is 40, for the Secondary standard schools, Higher Secondary Schools and Shastri standard Colleges the number of students has been fixed as 60. In other words, except Primary Schools and Middle Schools for which the student strength is 20 and 40 respectively/for other categories of schools/College the prescribed student strength is 60. What is significant is that the strength or number refers to the strength or number of the students in the schools/College. In Parts I and II, with respect to the Primary Schools, the exact words are "Vidyalaya men chhatron ki nyuntam sankhya 20/40 hogi"; in Parts III and IV with respect to Secondary schools and Higher Secondary Schools, the words are "Vidyalaya men padhne wale chhatron ki nyuntam sankhya 60 hogi". In the case of Sanskrit College of Shastri standard, the words used are "chhatron ki nyuntam sankhya 60 hogi".

11. From conjoint reading of the abovementioned condition relating to the minimum number of students in different categories of schools/College, I have no manner of doubt that the number refers to the students on rolls of the schools/College, as the case may be, in the particular class, and not the number of students actually appearing at the examination. There is no ambiguity in the aforesaid resolution of the Government that the basis of student strength is the number of students on rolls of the schools/College, I fail to understand as to how any stand which is not in conformity with the resolution, can be taken or made basis of the impugned decision.

12. Shri Azfar Hasan submitted that the number of students appearing at the examination should be treated as the true index of the number of the bona fide students. He urged that if the number of students who actually appeared at the examination is far less than the number of students enrolled there may be possibility of the students being fake and not bona fide. As a piece of argument the submission has substance. This, however, may be true of a particular College or Colleges. The authorities are not precluded from making inquiry about the bona fide of the admission of the students to find out whether they are fake or genuine ones. But, on ipse dixit or hypotheses and conjectures it cannot be said as a general proposition or policy that the number of appearing students should be treated as the basis for determining the actual student strength and not the number of students on rolls specially when there is no decision contrary to the

one contained in resolution No. 2261 dated 18.10.76. I, therefore, hold that the number of students fixed by the Government as a condition for recognition or as a parameter for deciding the viability of Sanskrit Colleges refers to the number of students on rolls of the College and not the number of students actually appearing at the examination.

13. Before I move to the next question as to whether resolution No. 2261 dated 18.10.76 at all survives, I may deal with the submission of the Counsel for the State regarding the financial burden on the exchequer on account of payment of salary, etc. to teachers and non-teaching staff of Sanskrit Colleges as a consequence of their affiliation. In the impugned decision dated 24.6.2000, it has been stated that the Government has spent amounts of Rs. 50 thousand to 6.50 lakhs per successful student by way of payment of salary, etc. to the teachers and non-teaching employees, and considering the amount involved and the resultant financial burden, the College cannot be considered to be viable. Though there is force in the logic I am unable to agree that the plea of financial constraints should justify taking a course which would virtually result in closure of the institutions imparting education in Sanskrit. The financial difficulties of the State may be the result of bad management or wrong priorities, but it does not mean that it should occasion destruction of a cultural heritage. In *Santosh Kumar and others etc., Vs. The Secretary, Ministry of Human Resources Development and another*, this aspect of the matter has been dealt with at length while considering the question of inclusion of Sanskrit in the syllabus of the Central Board of Secondary Education (CBSE). The Court noticed the observations in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, that education is a social and political necessity, "victories are gained, peace is preserved, progress is achieved, civilization is built up and history is made, not in the battle fields but in educational institutions which are seed-beds of culture. Education is enlightenment that lends dignity to a man." As regards the importance of Sanskrit as a subject, the Court noticed the education policy of the Central Government formulated in 1968 and 1986 and extracted the following portions therefrom.

Considering the special importance of Sanskrit to the growth and development of Indian languages and its unique contribution to the cultural unity of the country facilities for its teaching at the School and University stages should be offered on more liberal basis. Development of new methods of teaching the language should be encouraged, and the possibility explored of including the study of Sanskrit in those courses (such as modern Indian Philosophy) at the first and second degree stages, where such knowledge is useful.

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Research in Indology, the Humanities, and Social Sciences will receive adequate support. To fulfil the need for the synthesis of knowledge, interdisciplinary research will be encouraged. Efforts will be made to delve into India's ancient funds of knowledge and to relate it to contemporary reality. This effort will imply

the development of facilities for the intensive study of Sanskrit.

It appears, as noted in the judgment, that the Government of India had set up Sanskrit Commission which submitted its report in 1957. Their Lordships referring to the said report observed,

We do not propose to burden this Judgment with all that was said by the Commission in this regard. I would be enough for our purpose. If we take note of some passages finding place in the report which highlight the quality, substance, content and strength of Sanskrit. At page 71 of the report, it has been mentioned that Sanskrit is one of the greatest languages of the world and it is a classical language par excellence not only of India but of a good part of Asia as well. At page 73, the report states that the Indian people and the Indian civilization were bom, so to say, in the lap of Sanskrit and it went "hand in hand with the historical development of the Indian people and gave the noblest expression to their mind and cure ire which has come down to our day as an inheritance of priceless order for India, nay, for the entire world" The report further speaks at page 74 about the "great mental and spiritual like" of Sanskrit and of it being the elder sister of Greek and Latin, and cousin of English, French and Russian.

Their Lordships finally observed,

Learning of Sanskrit is undoubtedly necessary for protection of this heritage. The stream of our culture would get dried if we were to discourage the study of Sanskrit.

14. In view of the judicial approval of the importance of Sanskrit as a subject of study, I venture to observe that even if it were to add to the financial burden, as it always does whenever the Government decides to grant recognition or approve affiliation of educational institutions and institutions imparting education in Sanskrit language are not the only institutions with respect to which affiliation is being allowed by the Government, it would be in the larger interest of the society and the nation that the Government continues to share the burden as it has been doing with respect to other categories of educational institutions. The plea of financial" constraints, therefore, does not appeal to me.

15. It will not be out of place to mention that if the number of students taking admission in Sanskrit class/Colleges has been going down over the years it is largely because of the lackadaisical attitude of the Government. The constraints of job prospects are natural and unless an atmosphere is created by the Government in this regard lesser number of persons will find themselves inclined to take up Sanskrit as subject of learning or source of livelihood.

16. Now I would consider the question as to whether resolution No. 2261 dated 18.10.76 still survives or stands deleted/repealed by reason of resolution No. 857 dated 22.6.77. From perusal of the said resolution, copy whereof has been enclosed as Annexure-24 to the amendment petition, it appears that the decision

to delete the relevant part of resolution dated 18.10.76 with respect to Sanskrit Colleges as contained in Part 5 was taken on the premise that two inconsistent resolutions with respect to non-Government Sanskrit Colleges had been issued one as contained in resolution No. 2261 dated 19.10.76 and the other contained in letter No. 3276 dated 21.9.76. The Government by resolution dated 22.6.77 decided to delete the latter i.e. resolution dated 18.10.76. The point for consideration is as to what is the effect of resolution dated 22.6.77.

17. It may at first be pointed out that letter No. 3276 dated 21.9.76 the existence of which led to the so-called deletion/repeal of resolution dated 18.10.76 did not contain any provision regarding the student strength. It laid down standards for affiliation of Sanskrit Colleges, such as, the College should have sufficient land (As mentioned in the letter), pucca building, requisite liquidity i.e. case reserve, library, grounds, etc. It is the own case of the Government that the student strength is a relevant consideration to decide the viability of an institution, and as I have already said above, there is substance in the stand. The point is if letter dated 21.9.76 did not contain any provision as to student strength which is a relevant consideration for deciding recognition/affiliation matter, whether the very basis or reason for deletion of the relevant part of resolution No. 2261 dated 18.10.76 had any substance. Answer, in my opinion, must be in the negative. So far as other conditions, such as, land, building, etc. are concerned, may be, there was conflict in the two Government orders, but there was no such conflict with respect to the student strength. As a matter of fact, there being no such conditions laid down in the letter dated 21.9.76 the question of conflict did not arise at all, but under an apparent and misconceived notion, the whole of paragraph 5 of resolution dated 18.10.76 dealing with Sanskrit Colleges was deleted which apparently resulted in deletion of the condition regarding the student strength also. In my opinion, as the object of deletion by resolution dated 22.6.76 was to do away with the conflict, there being no conflict as such regarding standard strength, the provision relating to student strength contained in condition No. 7 in paragraph 5, did not stand deleted. If the resolution dated 22.6.77 is interpreted as deleting that provision as well, it would follow that there was no Government order fixing the student strength in Sanskrit Colleges. In this connection, it would not be out of place to point out that while letter No. 3276 dated 22.9.76 was a mere circular of the Education Department meant for the Kameshwar Singh Sanskrit University, the one dated 18.10.76 is a resolution of the Government which prima facie means that it was the communication of the decision at the Government level, may be, by the Council of Ministers.

18. Counsel for the University was at pains to point out that though resolution dated 18.10.76 was purportedly deleted by resolution dated 22.9.76, the State Government seems to have treated the same as being still in force. In this connection, he referred to a letter of the Special Secretary, Education Department, bearing No. 204 dated 2.3.81, Annexure E/1 to the supplementary counter-affidavit of the University, in paragraph 4 of which reference was made

to the prescribed number of students. It was pointed out that if the plea of deletion be accepted, as on 2.3.81 there was no prescribed number of students under any Government order for the purpose of recognition of the Sanskrit schools/Colleges. Reference was next made to letter of the Additional Secretary, Higher Education Department bearing memo No. 377 dated 15.11.94, Annexure F/1, enclosing therewith the notes of written arguments submitted by the Government in connection with C.W.J.C. No. 45/92 Bihar Sanskrit Mahavidyalaya v. State of Bihar, in paragraphs 5, 7 and 8 whereof resolution dated 18.10.76 was specifically referred to as laying down the guidelines for recognition of the Sanskrit colleges.

19. Counsel for the petitioner as well as the University submitted that in coming to the conclusion that the number of appearing students was less than the prescribed minimum during the preceding five academic sessions, the Government failed to take into consideration that no Madhyama examination which is the feeder examination for admission to the Shastri/Degree course, from 1993 to 1996 was held. In 1997, the Government decided to merge all due examinations and hold a common examination in that year, I find substance in the argument. If the examinations at Madhyama level are not held, as a consequence, the admission to the Shastri level course in the Sanskrit colleges must fall down. Coupled with the decline in the attitude towards Sanskrit because of not-so-conducive policy of the Government, it was thus natural that fewer students than before took admission, I do not think, the decision to reject the affiliation on the ground of the strength of the appearing students during last five academic sessions was a correct decision. In any case, in view of my conclusion, that the determining factor as regards the student strength is the number of the students on rolls of the College, in the particular class, and not the number of the students actually appearing in the examination, the impugned decision of the Government contained in letter dated 24.6.2000 cannot be said to be in accordance with law.

20. In the result, these writ petitions are allowed. The decision as contained in letter dated 24.6.2000 is set aside. The State Government is directed to reconsider the affiliation matter keeping in view the findings and observations made hereinabove within three months of receipt/production of a copy of this judgment, and pending such consideration to release adequate fund to facilitate payment of current salary to teachers and non-teaching staff of the College for the present, from January 2001. There will be no order as to costs.