
(1995) 07 PAT CK 0025
In the Patna High Court
Case No : C.W.J.C. No. 803 of 1995 (R)

Shambhu Nath Roy

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-07-1995

Acts Referred:

Bihar State Universities Act, 1976 — Section 59, 60, 60(4)

Citation : (1995) 2 BLJR 1042

Hon'ble Judges : S.K. Chattopadhyaya, J;P.K. Deb, J

Bench : Division Bench

Judgement

S.K. Chattopadhyaya and P.K. Deb, JJ.—Heard Mr. A.K. Sinha, counsel appearing on behalf of the Respondent No. 7, Shri Basant Kumar Lal, who pose himself to be the Secretary of the Ranchi Law College and Mr. M.S. Anwar, counsel appearing on behalf of the Respondent Nos. 4 to 6.

2. Mr. Sinha by filing a petition has prayed for vacating the order dated 24.5.1995 passed by a Division Bench of this Court giving liberty to the Ranchi University to constitute an Adhoc Committee in exercise of the powers conferred u/s 60(4) of the Bihar State Universities Act.

Mr. Sinha has taken several grounds, the main being that the said order was passed behind the back of the respondent No. 7 causing the stay order granted earlier by the Court in CWJC No. 1139 of 1995(R) in favour of the respondent No. 7 against the Ranchi University infructuous.

3. In order to bring out the point in clear perspective, it may be useful to set out some facts of the case.

Ranchi Law College is running in the name and style of Chotanagpur Law College since before and many students had come out successful from this College and some of them had adorned as Judges of this High Court, but this College was running through many ups and downs in the recent past. There was no affiliation to this College by Ranchi University since May, 1992 and the students were

suffering as they were not allowed to appear for the University examination as regular candidate as there was no affiliation. Some students moved this Court in CWJC No. 1896 of 1994 (R) and in that case Mr. Anwar, counsel for the University appeared and contended on behalf of the University that the authorities of Chotanagpur Law College moved for affiliation long before and Ranchi University had also, after proper enquiry, was of the opinion of granting affiliation in favour of the College and moved as such to the State Government. On hearing the parties including the State, the said writ petition was disposed of by order dated 14.2.1995 directing the State, "to take final decision in regard to the extension of affiliation of L.L.B Part-I, II and III course to Chotanagpur Law College, pursuant to the recommendations of the Ranchi University within two weeks from the date of receipt of a copy of the Order, failing which serious view of the matter shall be taken against it.

Learned Counsel for the University assures that immediately after the receipt of the final decision from the State Government, the University will hold examination of L.L.B Part-I, II and III for the Sessions 1992-1993 and 1993-1994."

4. However, before grant of such affiliation, Registrar of Ranchi University passed an order taking away the financial power of the Secretary and Principal of Chotanagpur Law College on the ground that the Principal had already crossed the age of superannuation and had no authority to serve as such and that there were huge embezzlement and financial irregularities being committed by the respondent No. 7 i.e. Mr. Basant Lal. Against such order, the respondent No. 7, alongwith the Principal filed a writ challenging the order of the Registrar in CWJC No. 717 of 1995 (R) inter alia on the grounds that such order has been passed by the Registrar without any authority whatsoever as at the relevant time, the Chotanagpur Law College having not been affiliated with the University, the Registrar of the University acted without jurisdiction.

An interim order was passed by a learned Single Bench of this Court putting some restrain on the financial dealings of the Secretary regarding Chotanagpur Law College. But, before the matter came up for hearing at the admission stage, the affiliation was granted to the College by order dated 24.5.1995 giving retrospective effect of affiliation since May, 1992.

5. But, in the affiliation order some orders/directions were passed regarding Constitution of a governing body of the College as well as matters regarding the financial dealing of the Management of the Law College. In that writ petition, an amendment petition was filed by the petitioner of that writ i.e. the respondent No. 7 challenging those orders of constitution of Governing Body and the consequential orders/directions made by the Ranchi University stating the same to be nonest as those were against the provisions of Sections 59 and 60 of the Bihar State Universities Act and Rule 28 of the Statutes regarding the Governing Body as framed under the Act.

6. The amendment sought for by the petitioner (respondent No. 7 of this writ petition) was fought tooth and nail by Ranchi University. A learned Single Bench of this Court (in which one of us was a member) disposed of that writ petition by order dated 12.5.1995 rejecting the amendment petition holding that the writ petition related to the position and situation prevalent before the affiliation of Chotanagpur Law College and after the same has been affiliated with the University the writ application had already become infructuous. But, liberty was given to the petitioner (respondent No. 7 of this Writ petition) by making some observation in the order passed as contained in Annexure-P of the petition filed by the respondent No. 7 in this case to the effect that "the . amendment petition is hereby rejected with observation that the petitioner may agitate his grievances before an appropriate forum".

Subsequently, it appears that respondent No. 7 challenged the said directions/orders of the University, after affiliation, in CWJC No. 1139 of 1995 (R), uncontrovertedly after disposal of CWJC No. 717 of 1995 (R) as noticed above. A Single Bench of this Court by order dated 16.5.1995 after admitting the writ application fixed 26.7.1995 for final hearing of the matter and passed an interim order in the following manner :

In the meantime, operation of the order as contained in Annexure-19 shall remain stayed and respondent Nos. 4 to 7 shall not function as the Governing Body of the College pursuant thereto.

7. From the order aforesaid it reveals that the Members of the Governing Body constituted by the Vice Chancellor were permitted to be added as respondent Nos. 4 to 7.

It should be mentioned here that Mr. Anwar accepted the notice on behalf of the Ranchi University and its Officers by filing power in that case and undertook to file counter-affidavit within a week.

8. On the backdrop and aforesaid facts, let us now turn to the facts of the present case. This writ petition was filed on 3.4.1995 by one Mr. Shanbhu Nath Roy claiming himself to be a student of Chotanagpur Law College. Admittedly at that time, the Chotanagpur Law College was not affiliated with the Ranchi University. Subject of the writ application suggests that it is in the nature of public Interest Litigation" and various prayers have been made for the betterment of the Chotanagpur Law College. The main prayer is that the College being an oldest Law College in the State of Bihar, should be made and given status of a Constituent College under the Ranchi University. There were also other contentions regarding financial irregularities and mismanagement of the Law College during the period of non affiliation of the Law College with the Ranchi University.

9. In this writ application also Mr. Anwar accepted notice on behalf of the Ranchi University and its Office bearers namely, respondent Nos. 4 to 6 and State also was represented by the Government Advocate on acceptance of notice on behalf

of the respondent Nos. 1 to 3. However notice was directed to be issued on respondent No. 7 by registered post. This order is dated 4.4. 1995. It was ordered to be put up after three weeks and pleadings were directed to be completed by that time. Office note dated 5.4.1995 shows issuance of notice on Respondent No. 7. On 27.4.1995 the case was listed for "Orders" with office note dated 7.4.1995 indicating that as notice issued on respondent No. 7 by registered post with A.D. was not received the date of hearing in admission matter may be extended. On that date (27.4.1995), the petitioner's counsel was asked/directed to serve a copy of the writ petition on the lawyer appearing on behalf of the respondent No. 7 personally and to file an affidavit relating to the service at the notice on him and the matter was again directed to be put up after three weeks under the same heading. On 18.5.1995 when the case was listed before the Bench. Mr. Anwar submitted before the Court that the University is going to make recommendation to the State Government for making the College in question as constituent one and that Auditor had been appointed by the University to examine the accounts of the College, but the authorities of the College were not co-operating in the matter. On such submissions being made the Division Bench directed the Principal including all concerned authorities of the Chotanagpur Law College, Ranchi to co-operate with the Auditor appointed by the University so that the Auditor may submit a report to the University at the earliest. Further, direction was given to the University to take steps for making the College a constituent one as per submissions of Mr. Anwar as early as possible and to submit a report to the Court. It was made clear by the Bench that, if the College authorities do not co-operate with the Auditor in any way or obstruct in discharging of his duty, the authorities would be liable to be held up for contempt.

At this juncture, it is to be noted that except respondent No. 7, none of the concerned authorities of the College in this writ application i.e. members of the Management of Chotanagpur Law College or the Principal has been made party-respondent. Even respondent No. 7 has not been made party as having any official status or as office bearers of Chotanagpur law College. He has simply been made a party by name without any designation as office bearers of the College.

10. Mr. A.K. Sinha, appearing for the respondent No. 7 has strenuously argued that the order dated 24.5.1995 is bad as the same was passed on some, wrong notion inasmuch as relevant documents were not provided before the Bench and the matter was not argued in its right perspective. His submission is that the C.W.J.C. No. 717 of 1995 (R) was not dismissed on merit but it was dismissed as being infructuous and liberty was given to the respondent No. 7 to agitate his grievance in proper forum and on the basis of the liberty, he had moved again in CWJC No. 1139 of 1995 (R) challenging the formation of governing body by the Ranchi University of Chotanagpur Law College superseding the existing governing body of which the respondent No. 7 was the Secretary. The procedure followed was not as per Bihar Universities Act and the learned Single Judge being

satisfied, granted an interim stay order dated 16.5.1995 regarding formation of the governing body by Ranchi University. According to him, the authorities of Ranchi Universities finding it difficult to challenge the said interim order of stay granted in that writ petition, via media has taken the chance of getting the purposes served by moving a petition in the present writ application where both the Ranchi University and Basant Kumar Lal are respondents and taking advantage of absence of the respondent No. 7. Mr. Sinha further urged that serving of copy of the writ application on him for and on behalf of the respondent No. 7 by the petitioner does not give any liberty to respondent Nos. 4 to 6 to obtain an order by filing a petition, a copy which was not even served on the respondent No. 7, this order being highly prejudicial to the respondent No. 7 and as such an opportunity should have been given to him before passing the order dated 24.5.1995. Various submissions have been made regarding the maintainability of the P.I.L. petition and the scope of the High Court in entertaining such writ petitions in the form of P.I.L. According to him, the petitioner in this writ petition is only a set up candidate by the Ranchi University for getting relief by bye-passing the restrain order passed by this Court itself in C.W.J.C. No. 1139 of 1995 (R) dated 16.5.1995.

11. Mr. M.S. Anwar, counsel appearing for the Ranchi University strongly countering the argument of Mr. Sinha contained that the respondent No. 7 had no authority to represent Chotanagpur Law Colleges as he was neither the Secretary at the relevant time nor legally he was entitled to make himself involved with the affairs of the Law College. Only because of financial dealings he had involved himself and is going to demolish the Institution itself and in such circumstances, it is urged that the University has got full authority to form Adhoc Governing Body u/s 60(4) of the Bihar State Universities Act even without obtaining any order to that effect from the Court. The power lies inherently with the University authorities. His submission regarding non moving of such petition in CWJC No. 1139 of 1995 (R) itself is that the Vice Chancellor and the Registrar of Ranchi University felt very much irritated when various personal allegations were made against them by respondent No. 7 by way of character assassination in that writ petition and as such no application was filed in that writ petition.

12. From perusal of relevant records connected with the application one fact which comes to light is that the order of University regarding formation of a Governing Body was challenged by the respondent No. 7 in CWJC No. 1139 of 1995 (R) and this Court by its order dated 16.5.1995, while admitting writ application, passed an interim order staying operation of Annexure-19 and further restrained respondent Nos. 4 to 7 of that application from functioning as the Governing Body. Secondly, Mr. Anwar very rightly not submitted that no petition for vacating the said interim order could have been filed in that writ application itself but on the other hand has contended that as because the Vice Chancellor and the Registrar of the University were so irritated that instead of filing such petition in CWJC No. 1139 of 1995 (R), they preferred to file a petition in the instant application with a prayer to allow the University to constitute an

Adhoc Committee u/s 60(4) of the Act till any Governing Body is constituted u/s 60 (1). Alternatively, it was prayed that the University may be permitted to directly manage and control the affairs of the College. The first part of the prayer has been allowed by the Division Bench on 24.5.1995 and Mr. Sinha's grievance is that the said order was passed without appreciating the import of order dated 16.5.1995 passed in CWJC No. 1139 of 1995 (R). His submission is that in effect the order dated 24.5.1995 has made the CWJC No. 1139 of 1995 (R), filed by the Respondent No. 7, infructuous.

13. Although, lengthy arguments have been placed by the learned Counsel of both the parties, who happened to be the respondents in the present case and as it appears that the petitioner of the instant writ application also supported the cause of Ranchi University in defending the order dated 24.5.1995, in our considered opinion, we should not go into the merits of the matter at this stage. We can only consider the technicality and the circumstances in which the order dated 24.5.1995 was passed. It appears on the face of it that there is some ethical impropriety on the part of the authorities of the Ranchi University when they filed the petition dated 23.5.1995 with a prayer for permitting the University to form a Governing Body on Adhoc basis in this writ petition. There should not have been such prayer in this writ petition, when this matter was very much subjudice in CWJC No. 1139 of 1995 (R) and in our view proper forum for moving the petition was definitely in that writ petition. Service of notice of this writ petition on Mr. AK Sinha for and on behalf of the respondent No. 7 does not give liberty to another set of respondent to move a petition against the co-respondent (respondent No. 7) without giving him proper notice or by serving a copy of the petition itself. Moreover when an order of stay was already there then such order which affected an earlier order of a learned Single Judge is not warranted when admittedly the Division Bench was not sitting in L.P.A. over the said order. We do not appreciate the stand of Mr. Anwar that as because the Vice Chancellor and Registrar were irritated no such application was filed in CWJC No. 1139 of 1995 (R).

The submission of Mr. Anwar that this order of formation of Adhoc Governing Body does not in any way make any adverse effect on the stay order passed in CWJC No. 1139 of 1995 (R) has got no force as this Order definitely affects the stay order passed earlier by the Single Bench and practically it makes the whole case of C.W.J.C. No. 1139 of 1995 (R) ineffective and infructuous. When position in law is clear that the University has got inherent power to act u/s 60(4) of the Act and which position is admitted by Mr. Anwar, we fail to understand as to why the respondent Nos. 4, 5 and 6 were required to have a Court's stamp for exercising such power u/s 60(4) of the Act by the University? Secondly, if such stamp was really necessary, why they did not file such application in CWJC No. 1139 of 1995 (R) itself? they, after the stay order was passed on 16.5.1993 by a Single Judge could have prayed before him stating that even if some restrained order was passed by him, but University should be given liberty to exercise its power u/s 60(4) on the facts and circumstances of the case. It does not stand to

any reason as to why hurriedly a petition with the said prayer was filed by respondents No. 4, 5 and 6 in the writ application. We feel that if the order dated 24.5.1995 is allowed to continue then it will create obstacle in proper adjudication of CWJC No. 1139 of 1995 (R) where the stay order dated 16.5.1994 is still in force. Though, we have been informed during the course of arguments that counter-affidavit has been filed in CWJC No. 1139 of 1995 (R) by the University authorities and the same can be heard at any date, we cannot direct this writ petition also to be heard alongwith CWJC No. 1139 of 1995 (R) as this application has not been admitted as yet.

14. Under such circumstances, we direct that the implementation of order dated 24.5.1995 passed in the writ petition be kept in abeyance till any appropriate order is passed by a Division Bench in the instant writ application at the Admission stage.