

(1997) 01 PAT CK 0046

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2094 of 1996 (R)

Shambhu Sharan

APPELLANT

Vs

Ranchi University and Others

RESPONDENT

Date of Decision : 09-01-1997

Acts Referred:

Bihar State Universities Act, 1976 — Section 2(c), 2(f)

Citation : (1997) 1 BLJR 706 : (1997) 1 PLJR 570

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner seeks declaration that B.N.S. Law College (Bhishm Narayan Singh Law College) at Daltanganj, (hereinafter referred to as the college) has since been granted temporary affiliation for a period of 5 years to run the Law college by the Bar Council of India in terms of letter dated 6.12.1993 (Annexure-4), the respondents" Ranchi University and its officials are bound to recognise the said college as affiliated college of Ranchi University for all practical purposes. Further a prayer has been made for a direction to the respondents-University to conduct special examinations for the Sessions 1989-90 and to publish result of the LL.B. Part I and Part II examination for the Sessions 1989-90 and 1990-91.

2. the writ application has been filed at the instance of the petitioner who is a student of the said college and has claimed to have filed the writ in representative capacity on behalf of other students of the said College. According to petitioner the said B.N.S. Law college, Daltanganj was given affiliation from time to time by the Ranchi University with prior approval of the State Government and on the basis that students were admitted session after session and appeared in the examination of different parts of LL.B. course. The Ranchi University took steps to hold examination of the courses of LL.B. Part I and Part II apart from Part III of the above referred sessions which was due to commence

on and from 9th March, 1992. Accordingly, various L&w Colleges including B.N.S. Law College, Daltanganj, got the examination forms etc. filled up of their respective students and on deposit of examination fee, the Ranchi University issued "admission card" to all students of LL.B. Part I and Part II for the session 1989-90 and 1990-91 of the said college like other Colleges to appear at the examination of all parts due to begin from March 9, 1992. The petitioner's further case was that on schedule the examination commenced from March 9, 1992 and in the first round examinations of all papers of LL.B. Part II for sessions 1990-91 were held at which the petitioner, like other students in general, appeared and thereafter the examination of only two Papers, i.e. papers II and Paper III of the LL.B. Part I were held where after further examination was suddenly postponed on all places of various Law colleges under the Ranchi University. The revised date was published in rescheduled programme to hold examinations of the rest of the papers of which examinations were postponed or stopped, the revised date of examinations were to begin from 17.1.1993 but in the programme so published the name of B.N.S. Law College, Daltanganj was excluded with out any rhyme or reason. The petitioner's further case was that a writ application was filed by some of the students who had appeared in the said examination praying for the relief, inter alia, to allow the said petitioners to appear at the examinations which application was numbered as C.W.J.C. No 177 of 1993 (R) which was disposed of in terms of an order dated 20.1.1993 directing the State Government to consider the grant of affiliation of the said college and to pass appropriate order. Besides the above, the further case of the petitioner was that the power to affiliate the college vested in the Ranchi University and all preliminaries inspection were done by the Ranchi University to affiliate the college and, therefore, Ranchi University was bound to perform its duty. It was further stated in the writ application that in the meantime the Bar Council of India in exercise of power conferred by Bar council of India Rules inspected the college for the purpose to examine whether continuance of affiliation of the college be disapproved. The said inspection was held by the authorities of the Bar Council of India on 4.9.1993 and a report was submitted, copy of the said report is Annexure 3 to the writ application. The said inspection report was considered by the Legal Education Committee of the Bar Council of India and recommended the Bar Council of India to give approval of temporary affiliation for a period of five years to run the Law college. The said recommendation of the Legal Education Committee was accepted by the Bar Council of India and accordingly temporary affilication was approved for a period of five years to run the law course and this was communicated to the Principal of the said College vide letter dated 6.12.1993, copy of the said letter is Annexure 4 to the writ application. A copy of the said letter was also forwarded to the Registrar, Ranchi University for information. The petitioner, therefore, contended that notwithstanding the affiliation given by the Bar Council of India the respondents-University has been insisting on for prior approval of the state Government in relation to affiliation of the college. The petitioner's further contention was that since the affiliation has been accorded by the Bar Council of

India the Ranchi University is bound to recognise and treat the said college as affiliated with the Ranchi University for all practical purposes up to the year 1998 and, consequently, the Ranchi University is bound to hold special examination and publish result without any unnecessary delay.

3. A counter affidavit has been filed on behalf of the respondents-University stating, inter alia, that no relief can be granted to the petitioner in view of the fact that the said college was not granted an affiliation by the state Government or by the University for the session for which the petitioner claims to be a student of the said college. According to the respondent?, the said college was granted temporary affiliated for three sessions with effect from 1981 to 1984 and after 1984 the college became unaffiliated. In the year 1986. the State Government informed the Principal of the College that the College does not fulfil the conditions of affiliation and, therefore, the question of extension of affiliation does not arises. It was further stated in the counter affidavit that, in connivance of some officials of the examination department of the university and with out any order from the Vice-chancellor of the University the examination fee and form of the students of the said college were wrongly accepted and admit card was issued to the students for their appearance in LL.B. Examination for the session 1989-90 and 1990-91 i.e., when the college was not affiliated. A writ application was filed in 1992 being C.W.J.C. No. 1147 of 1992 (R) by the students of the college and in that writ application a specific stand was taken by the University that the College being unaffiliated college, students cannot be allowed to appear in the examination. That writ application was disposed of on 7.5.1992 with certain direction. Ultimately University cancelled all the admit card issued to the so called students of the College for the aforesaid session when the College was unaffiliated. The University further stated in the counter affidavit that University issued a letter to the Principal of the said College for getting the college inspected but the authorities of the college are not interested in the inspection of the College as they may not be fulfilling the conditions for grant of affiliation of the college and instead, they have got this writ application filed through a so called student of the college. With regard to affiliation given by the Bar Council of India it is stated in the counter affidavit that notwithstanding affiliation by the Bar Council of India the said College is bound to get affiliation from the University and approval from the state Government and the said affiliation can be granted only after the college fulfills all the requirements.

4. Heard Mr. K.K. Sahay, learned Counsel appearing on behalf of the petitioner, Mr. M.S. Anwar, learned Counsel appearing on behalf of the respondents-University and also Mr. Raj Nandan Sahay, learned Counsel appearing on behalf of the Bar Council of India.

5. Mr. K.K. Sahay, learned Counsel appearing on behalf of the petitioner, firstly, submitted that there was no dispute that the affiliation of the said college continued from 1981 to May, 1984 and students appeared in the examination conducted by the Ranchi University. Mr. Sahay then submitted that after 1984

fresh inspection was done and recommendation was sent by the Ranchi University to the State Government for affiliation which is evident from the order (Annexure-2) passed by this Court in C.W.J.C. No. 177 of 1993 (R). Despite the above, the State Government is not passing final order. Learned Counsel then submitted that Bar council of India is the competent authority to grant affiliation to the institution which is given legal education. The Bar Council of India in exercise of power conferred by various provisions of the Bar Council of India Rules, 1975, inspected the said College and found the institution fit for affiliation which was ultimately granted for a period of five years. The submission of Mr. Sahay is that when the affiliation was granted by the Bar Council of India then respondents-University of the State Government are bound to accept the affiliation of the college and hold examination of the students of the said College. Learned Counsel referred various provisions of the Bar Council of India Rules, 1975 and submitted that the power of affiliation is vested with the authorities under the said Rules,

6. on the other hand, Mr. M.S. Anwar, learned Counsel appearing on behalf of the University submitted that the power vested under the rules have no statutory force and those provisions are mere directives. Learned Counsel further submitted that unless the said College fulfills all the requirements provided under the Bihar State Universities Act and unless affiliation is granted by the Ranchi University, the authorities of the College have no jurisdiction to run the college and take admission of any of the students. Learned Counsel referring different provisions of the rules submitted that the rules does not empower the authorities of the Bar Council of India to grant affiliation. Moreover, the directives shall not have overriding effect over the Universities Act, Regulation and the Statutes.

7. Before appreciating the rival contention of the parties it is necessary to look into the relevant provision of various Acts and Rules referred to by the learned Counsels appearing for the parties.

8. Bihar State Universities Act, 1976 (hereinafter referred to as the Act, 1976) has been enacted for the purpose of establishing various Universities in the State of Bihar. The word "affiliated college" and "college" has been defined u/s 2(c) and 2(f) of the said Act as under:-

Section 2(c);-"affiliated college" means educational institution having received privileges of the University according to the provisions of this Act and university statutes thereto;

Section 2(f);-"college" means an institution maintained or controlled by the University or maintained by the State Government in which instruction is given subject to the provisions contained in Clause (16) of Section 4 of the students of the University upto or below the postgraduate standard under conditions prescribed in the statutes:

(Provided that till separate arrangement is made or Intermediate Education, teaching of this standard also shall continue to be imparted in the same college,

under the general direction of the Intermediate Education Council and that college shall be deemed to be an institution imparting education of Intermediate standard also.)

9. Section 4 of the said Act provides the purpose and powers of the University. Relevant is Clause 19 of the said provision which reads as under:-

Section 4:-Purpose and powers of the University:-There shall be the following purposes and powers of the University:-

(1) to provide for imparting instruction in such branches of learning as the University may think fit including professional studies and technology; and...

(2)...

(19) to affiliate or disaffiliate Colleges according to statutes subject to prior approval of the State Government.

10. Section 21 of the said Act-lays down the powers and duties of the senate which reads as under:-

Section 21:- Power and duties of the Senate-

(1) Subject to the provisions of this Act and statutes, the senate shall be the supreme governing body of the University and shall exercise control over all the affairs and properties of the University and shall exercise all such powers as are not otherwise specified by this Act.

(2) In particular and with out prejudice to the generality of the foregoing powers, the senate shall exercise the following powers and perform the following duties, namely-

(a) of making the statutes and amending or repealing the same;

(b) of considering the statutes and the Regulations and amending or repealing the same;

(c) of passing resolution after having considered the annual report, the annual account, the financial estimates and audit report on such accounts;

(d) of exercising the powers for the purpose of control in colleges and Tols and of super in tendence which include affiliation and disaffiliation of olleges:

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 degree, titles, diplomas and other academic distinctions as may be prescribed by the statutes; and

(f) of exercising such other powers and of performing such other duties as are conferred or imposed upon it by this Act or the statutes.

11. From perusal of different provisions of the Universities Act and the Statutes it is clear that for affiliation of a college certain conditions laid down by the Act and the Statutes etc. had to be satisfied and the college has to comply with all the legal requirement for affiliation.

12. The interesting point raised by the petitioner in this writ application is that in view of the affiliation granted by the authorities under the Bar Council of India Rules, no further affiliation or approval is required by the University and the State Government who are bound to grant affiliation on that basis. In support of this learned Counsel appearing on behalf of the petitioner drawn my attention to different provisions of the Rules which shall be noticed herein after.

13. Before I noticed, the relevant provision of the Rules framed under the Advocates Act it may not be out of place to mention that the profession of law is one of the oldest profession and was practised in one form or the other in the past under the pre independence law. There were Mukhtars and Vakils who were permitted to practise law in moffasil courts even though not all of them were Law Graduates. Subsequently, these Mukhtars and Valiks were replaced by the pleaders who were permitted to practise at the district level after obtaining Law Degree. Those who were enrolled as an Advocate could practice in the High Court and any other subordinate courts. After independence the law in this regard was consolidated by constituting. Bar Council of India and State Bar Council and all the legal practitioners have been classified as an Advocate. The Consolidated Act was named as Advocates Act, 1961. Section 3 of the said Act provides that there shall be a Bar Council for each of the State to be known as Bar Council of that State. Section 4 of the said Act provides that a Bar Council for the territories to which this Act extends to be known as Bar council of India. The function of the Bar Council of India and the Bar Council of the State has been provided in Sections 6 and 7 of the said Act. The function of the State Bar Council include admission of person as an Advocate on its roll, preparation and maintenance of such roll, safeguarding the right, privileges and interest of an Advocate on its roll and to do act necessary for discharging all the functions.. The function of Bar Council of India include the laying down of standard of professional conduct and etiquette for Advocates and for safeguarding their right, privileges and interests. Section 49 of the said Act gives general power of the Bar Council of India to make rules. Section 49 of the Act reads as under:-

Section 49:- General power of the Bar Council of India to make rules- (1) The Bar Council of India may make rules for discharging its functions under this Act

and, in particular, such rules may prescribe-

(a) the conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council including the qualifications or disqualifications of voters and the manner in which an electoral roll of voters may be prepared and revised by a state Bar Council;

(ab) qualifications for membership of a Bar Council and the disqualifications for such membership;

(ac) "the time with in which and the manner in which effect may be given to the proviso to Sub-section (2) of Section 3;

(ad) the manner in which the name of any advocate may be prevented from being entered in more than one state roll;

(ae) the manner in which the seniority among advocates may be determined;

(af) the minimum qualifications required for admission to a course of degree in law in any recognised University;

(ag) the class or category of persons entitled to be enrolled as advocates;

(ah) the conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a court;

(b) the form in which an application shall be made for the transfer of the name of an advocate from one State roll to another;

(c) the standards of professional conduct and etiquette to be observes by advocates;

(d) the standards of legal education to be observed by Universities in India and the inspection of Universities for the purpose;

(e) the foreign qualifications in law obtained by persons other than citizens of India which shall be recognised for the purpose of admission as an advocate under this Act;

(f) the procedure to be followed by the disciplinary committee of a State Bar Council and by its own disciplinary committee;

(g) the restrictions in the matter of practice to which senior advocates shall be subject;

(gg) the form of dresses or robes to be worn by. advocates, having regard to the climatic conditions, appearing before any court or tribunal;

(h) the fees which may be levied in respect of any matter under this Act;

(i) general principles for guidance of state Bar Councils and the manner in which directions issued or orders made by the Bar council of India may be enforced;

(j) any other matter which may be prescribed provided that no rules made with reference to Clause (c) or Clause (gg) shall have effect unless they have effect unless they have been approved by the Chief Justice of India; Provided further that no rules made with reference to Clause (e) shall have effect unless they have been approved by the Central Government.

2. Not with standing anything contained in the first proviso to Sub-section (1) any rules made with reference to Clause (c) or Clause (gg) of the said sub-section and in force immediate before the commencement of the Advocates (Amendment) Act, 1973 shall continue in force until altered or repealed or amended in accordance with the provisions of this Act.

14. I have perused the Rules made by the Bar Council of India in exercise of rule making power under the said Act. Part 1 of the said Rules is a definition part. Part II of the Rules provides the procedure for election of the members of the Council, terms of office of the chairman, Vice-chairman and members of the committees of the council. This part also provides the constitution function and procedure legal Education Committee. Rule 8 of Chapter III under Part II of the Rules prescribes the power of the committee which is worth to be quoted hereunder:-

Rule 8:- The committee shall have the following power and duties:-

(a) to make its recommendations to the Council for laying down the standard of legal education for the Universities.

(b) to visit the inspect Universities and report the results to the Council;

(c) to recommend to the Council the conditions, if any, subject to which foreign qualifications in law obtained by persons other than citizens of India may be recognised for admission as Advocates under the Act;

(d) (i) to recommend to the Council for recognition of any degree in law of any University in the territory of India u/s 24 (1)(c)(iii) of the Act and

(ii) to recommend the discontinuance of any recognition already made by the Council.

15. Part III of the said Rules prescribes certain matters relating to the State Council. Part IV deals with standards of legal education and recognition of degrees in law for admission as Advocates. Section-A under Part Iv provides that there shall be a 5 years course of law after 10+2 or 11+1. It also provides that the law education shall be through whole-time law Colleges or University Department. Besides other things Rule 20 and 21 of Section-A are relevant which is quoted as under :-

Rule 20:- If the Universities located in States where the 10+2 or 11+1 school system is not yet in vogue, propose to start the 5 years LL.B. course under these rules they will be free to do so.

Rule 21:-The Bar Council of India may issue directives from time to time for maintenance of the standards of legal education. The College/University is expected to follow them as compulsory.

16. From perusal of Rule 21 it appears that the Bar Council of India may from time to time issue directives for maintenance of the standards of legal education. Under this rule certain directives have been issued which is given in schedule-I appended to the said Rules. There are some more directives provided under Section-B of the said Rule. Rule 11, 12, 13 and 14 under Section-B are reproduced here in below:-

Rule 11:- A Law college affiliated to a University shall by June 1, 1987 be an Independent Law College and shall cease to be a department attached to a college.

Rule 12:- (1) No College started after the coming in to force of these Rules shall impart instruction in a course of study in law for enrolment as an advocate unless its affiliation has been approved by the Bar Council of India.

(2) An existing Law college shall not be competent to impart instruction in a course of study in law for enrolment as an advocate if the continuance of its affiliation is disapproved by the Bar Council of India.

Rule 13:- the Bar Council of India shall cause a Law college affiliated or sought to be affiliated to a University to be inspected by a committee to be appointed by it for the purpose, when:

(a) An application for approval of affiliation of a new college is received by it, or

It suo motu decides in order to ensure that the standards of Legal Education laid down by it are being complied with.

(b) the application for approval of affiliation of new college shall be addressed to the secretary, Bar Council of India and shall be sent only through the Registrar of the University concerned with his recommendations and the application be accompanied by an inspection fee of Rs. 15, 000/-

(c) The College and/or the University concerned shall furnish all the information to the Committee of inspection and the Bar Council of India as and when required and shall co-operate with them in every possible manner in the conduct of inspection.

(d) The Committee of inspection shall submit a detailed report to the Council with as clear recommendation as to whether the affiliation of new College be approved/disapproved or that of an existing college be withdrawn/continued or that certain directions be given for improvements to be carried out within the period to be specified. The report shall incorporate the reasons for the recommendations.

(e) If an unfavourable report is received, the Secretary of the Bar Council of

India shall cause a copy of the same to be sent to the Registrar of the University concerned for his comments and explanations if any, such comments and explanations on the report shall be sent by the Registrar of the University with in a period of six weeks from the date of receipt of the communication.

(f) The secretary of the Bar Council of India shall cause the report and the comments/explanations of Registrar of the University concerned to be place before the next meeting of the Legal Education Committee of the Bar Council of India.

(g) If the legal Education committee is satisfied that the standards of Legal Education and/or the rules for affiliation or continuance of affiliation provided for in these rules by the Bar Council of India are not complied with and/or that the courses of study, teaching and/or examination are not such as to secure to persons undergoing legal education, the knowledge and training requisite for the competent practice of law. the Legal Education Committee shall recommend to the Bar Council of India the approval/disapproval of affiliation or continuance of affiliation as the case may be.

The Legal Education committee may also recommend that certain directions be given for improvement to be carried out with in the period to be specified.

(h) This recommendation of the Legal Education Committee along with accompanying papers shall be placed before the Bar Council of India for its decision. In case the Bar Council of India disagrees with or modifies the recommendation of the legal Education Committee, it shall communicate its views to the Legal Education Committee for its consideration before arriving at a final decision in the matter.

(i) If the Council is of the opinion that affiliation of a college be disapproved it shall give notice of the proposed action to the principal of the College and Registrar of the University to show cause within 30 days of the receipt of the notice and the Council shall take into consideration the reply received before making final orders.

(j) the decision of the Bar Council of India shall be communicated to the Registrar of the University.

It shall be effective from the commencement of the next academic year following the date on which it is received by the Registrar of the University.

Rule 14:- The Bar Council of India may issue directives from time to time for maintenance of the standards of Legal Education. The College /University is expected to follow them as compulsory.

17. From reading of the scheme provided under the rules framed by the Bar Council of India it appears to me that in the Rules there is nothing which empowers only the Bar Council of India to give affiliation to a Law College. There is nothing under the Act or the Rules which gives overriding effect on the State

University Act and/or of the statutes of the University. No doubt the Rules empower Bar Council of India to issue directives from time to time for maintenance of the standards of Legal Education. Rule 21 under Section-A and Rule 14 u/s B of the said rules provides that the college University is expected to follow them compulsory. I am, therefore, of a definite view that the aforesaid Rules quoted hereinbefore are not mandatory in nature and notwithstanding the affiliation given by the Bar Council of India to a College under the aforesaid Rules, the College is required to fulfill and comply all legal requirements for getting affiliated by the University and also approval from the State Government. At the same time, if an application for approval of affiliation is entertained by the committee constituted under the rules and Bar Council of India finally takes a decision for affiliation of the college then the University and the State Government are expected to give due importance and wastage of such affiliation and to take further action for affiliation and approval of the college if other requirements are fulfilled.

18. Now so far as the affiliation of the College in question is concerned, learned Counsel appearing for the University submitted by referring paragraph 16 of the counter affidavit that the University has issued a letter to the principal of the college for getting the college inspected and for contacting the inspection team for early inspection but the authorities of the college are not interested in the inspection of the College as they may not be fulfilling the conditions for grant of affiliation of the college. I am not supposed to enter into the question as to whether the authorities of the college have fulfilled all the requirements in terms of the Universities Act and the Statutes and as to whether the authorities of the College are expected to obtain the affiliation of the College from the University as neither the application has been filed by the authorities of the College nor is party to this application. However, I observe that if the authorities of the College approaches the University for getting affiliation then the University shall take up the matter and shall pass appropriate order after giving due wastage to the affiliation granted by the Bar Council of India, if the authorities of the College satisfy and comply all other legal requirements for affiliation.

19. So far the relief claimed by the petitioner in this writ application, I have already expressed my view that merely because the affiliation was granted by the Bar Council of India, the respondents-authorities are not bound to accept the college as an affiliated College of Ranchi University for all practical purposes. Consequently, the University is also not bound to hold examination of the students of the said College unless the college is also affiliated with the University with the prior approval of the State Government.

20. Having regard to the facts and circumstances of the case and the law discussed hereinabove, I am, therefore, of the opinion that no relief could be granted to the petitioner. This writ application is, therefore, dismissed.