
(2016) 12 PAT CK 0035

In the Patna High Court

Case No : Letters Patent Appeal No.2190 of 2016 IN Civil Writ Jurisdiction Case No. 16045 of 2016

Shyam School of Education

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 05-12-2016

Acts Referred:

Citation : (2017) AIR(Patna) 26 : (2017) 1 PLJR 320

Hon'ble Judges : Hemant Gupta, ACJ. and Mr. Vikash Jain, J.

Bench : Division Bench

Advocate : Mr. S.N. Pathak, Advocate, for the N.C.T.E; Mr. Ashutosh Ranjan Pandey-AAG 15 and Mr. Amarendra Kumar, AC to AA15, for the State; Mr. Yugal Kishore, Sr. Advocate and Mr. Shashi Bhushan Singh, Advocates, for the Appellant; Dr. Anshuman, Advocate, for the U

Final Decision : Disposed Off

Judgement

Hemant Gupta, ACJ.(Oral) - Heard learned counsel for the appellant and learned counsel for the respondents.

2. The present Letters Patent Appeal is directed against an order passed by the learned Single Bench on 18th of November, 2016 in CWJC No. 16045 of 2016 wherein, relying upon an earlier order in CWJC No. 9230 of 2016 (Dr. B.R. Ambedkar College of Education & Ors. v. The State of Bihar & Ors.) and its analogous cases, the Court had directed on 15th of November, 2016 to carry out an early inspection of the facilities available with the College and to make recommendation for the purpose of affiliation. In CWJC No. 9230 of 2016, the Court ordered as follows:

"18. With the object of cutting down on such time, the Court directs that the team, which will be constituted by NCTE for inspection will also include a nominee from the University or the Examination Board, as the case may be. Such nominee shall be a person nominated by the Vice Chancellor of a University

or Chairman of the Examination Board. The said nominee shall not be below the rank of a senior Professor or an officer not below the rank of a Secretary of Examination Board. The nominees must have impeccable reputation and integrity.

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20. The reason for comprising of such team for inspection is also to cut down in delay which is caused between the grant of permission by NCTE and the second inspection, which is carried out by such Universities or the Board and two kinds of report are at times generated. A common team, inspection team and inspection report will help expedite matters and lend credibility.

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24. The counsel for the petitioners, the State as well as the National Council of Teachers Education submit that some kind of monitoring can also be done by the Court to ensure that the spirit and object behind passing of the order is achieved by a timeframe and the matter does not drag on indefinitely since it will not be in the interest of any of the contesting parties to the dispute. The Court is happy to note that after the deliberation is over the parties are not treating the present litigation as an adversarial litigation.

25. As agreed, the Court would like an affidavit on the progress made by the NCTE, the State and the Universities or the Board after the exercise for inspection of the existing institutions is done by 21.03.2017."

3. Before this Court, learned counsel for the appellant points out that the recognition was granted by the National Council for Teacher Education (hereinafter referred to as "NCTE") to the appellant on 1st of May, 2015 whereby the University in its communication dated 28th of June, 2016 (Annexure-7) declined continuation of the affiliation on account of lack of the recognition of the Institution by the State Government. Therefore, the issues raised and decided in CWJC No. 9230 of 2016 (Dr. B.R. Ambedkar College of Education & Ors. v. The State of Bihar & Ors.) are not the issues arising in the present writ application and/or in appeal.

4. Learned counsel for the appellant relies upon the circular of the State Government dated 16th of August, 2014 (Annexure-17) to contend that the State Government has decided that whenever, an institution has been granted recognition by NCTE then there is no purpose of having permission from the State Government.

5. In view of the said argument, learned counsel for the University sought some time on 02.12.2016 to find out the stand of the University.

6. Today learned counsel for the University relied upon an order passed by the learned Single Bench in CWJC No. 9230 of 2016 (Dr. B.R. Ambedkar College of Education & Ors. v. The State of Bihar & Ors.) which directed the inspection of the institution to find out the infrastructure.

7. We find that the issue raised in the present appeal and the writ application is not of infrastructure but to grant of affiliation which was declined by the University for the reason that the State has not given no objection for grant of affiliation. Once there is a conscious decision of the State Government that no objection from the State Government would be meaningless in case the institution has been granted recognition by the NCTE, the University has no reasonable basis to deny the affiliation for the reason that the institution has not got no objection certificate from the State Government. Thus, in view of the communication of the State Government (Annexure-17), that no objection certificate would not be required in view of the recognition granted by the NCTE, the denial of affiliation by the University is wholly illegal.

8. Thus, we find that the order passed by the learned Single Bench cannot be sustained in the present Letters Patent Appeal for the reason that the communication dated 16th of August, 2014 provides that no objection certificate from the State Government would not be necessary.

9. Consequently, the decision of the Senate of the University dated 30.06.2016 (Annexure-8) and of the Academic Council dated 28.06.2016 (Annexure-7) are set aside with a direction to the University to grant affiliation to the appellant in accordance with law expeditiously and preferably within a period of two weeks. The present appeal is accordingly, disposed of.