
(1980) 05 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 1779 of 1979

Sri Asutosh Gupta and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 19-05-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 6

Citation : (1981) PLJR 226

Hon'ble Judges : S. Sarwar Ali, J;Brishketu Saran Sinha, J

Bench : Division Bench

Advocate : Basudeo Prasad, Anil Kumar and Chandra Shekhar, for the Appellant; Ram Suresh Roy, Sri Prakash Rai for the State, S.B. Sanyal and R.P. Singh for B.I.T., Mesra, Ranchi, for the Respondent

Final Decision : Dismissed

Judgement

S. Sarwar Ali, J.—In this writ application the petitioner prayed for quashing of Annexure 6. This annexure is a copy of an advertisement issued by the Bihar Public Service Commission (hereinafter referred to as the Commission) inviting application for the post of Drug Inspectors. The petitioners also pray that a writ in the nature of mandamus be issued directing the respondents to consider the case of the petitioners for appointment to the post of Drug Inspectors on regular basis in pursuance of the recommendation of the Commission contained in Annexure-2. The facts as set out in the writ application may be compactly stated. In pursuance of an advertisement the petitioners were appointed as Drug Inspectors for a period of six months on ad hoc basis on 10.3.1975. This appointment was extended from time to time. In the year 1977 the post of Drug Inspectors were again advertised. The Commission, after holding interview, recommended eighteen names, including those of the petitioners, for regular appointment for the post of Drug Inspectors. A copy of the letter of the Commission dated 19.9.1977, making the recommendation aforesaid, is Annexure-2. But before making the aforesaid recommendations certain events

took place which have been narrated in the writ petition. It is stated that by letter dated 26.8.1977 the Commission enquired from the Health Commissioner as to whether the degree granted by the Birla Institute of Technology, Mesra (B.I.T., Mesra) is recognised by the State Government. This query was answered by the Health Commissioner on the same day as the Commission sent its recommendation to the State Government, namely, 19.9.1977. In the letter addressed by the Health Commissioner to the Commission it was stated that the Bihar Government recognised the pharmacy degree granted by the B.I.T., Mesra and other Pharmacy Colleges mentioned in the said letter. A copy of the letter of the Health Commissioner is Annexure-G to the counter affidavit filed on behalf of the respondents 1 and 2. There was some correspondence between the State Government and the Commission in relation to the recommendation made by the Commission. The point of view of the State Government was that candidates who had obtained Pharmacy degree having completed their course in B.I.T., Mesra, were also eligible for appointment to the post of Drug Inspectors. The Commission, however, expressed its inability to reconsider its recommendation but stated in its letter dated 11.7.1978, (a copy whereof is Annexure-L to the counter affidavit aforesaid) that if the department so wants it can re-advertise the posts. After the receipt of the letter aforesaid the Commission was requested to re-advertise the post of Drug Inspectors by a letter dated 22.3.1979. It is, thereafter, that the advertisement (Annexure-6 dated 12th July, 1979) has been issued.

2. Learned counsel for the petitioners contended that the advertisement of the posts under Annexure 6 was an arbitrary action in as much as the State Government could not have asked the Commission to advertise the post. The petitioners, it is contended, were entitled to be appointed on the basis of the recommendation made in Annexure-2.

3. It is to be observed that the State Government was of the view that candidates who had obtained the degree in pharmacy having studied in B.I.T., Mesra, were also eligible to be considered for the post of Drug Inspector. It is not in dispute that while making its recommendation dated 19.9.1977, the Commission had not considered the case of such candidates. The action of the State Government and consequently of the Commission can, therefore, be said to be arbitrary only if it is held that the candidates aforesaid were not eligible for being considered for appointment to the post of Drug Inspectors. If they were eligible there is no arbitrariness in the action that had been taken. It is, therefore, necessary to consider as to whether the candidates who had not been considered by the Commission in the year 1977 were eligible candidates for the post of Drug Inspectors.

4. In the reply to the counter affidavit, filed by the petitioners, it has been stated in paragraph 2 of the counter affidavit that the candidates holding Bachelor of Pharmacy degree from B.I.T., Mesra, are not qualified to be appointed as Drug Inspectors as the said degree was not conferred by the Ranchi University but by

B.I.T., Mesra itself. It is also stated that one of the essential qualification was that the candidate must possess Bachelor of Pharmacy degree from a University recognised for the purpose by the appointing authority. In reply to this affidavit it has been stated in the supplementary counter affidavit, filed on behalf of respondents no. 1 and 2., that the Bachelor of Pharmacy degree is conferred by Ranchi University and not by "B.I.T., Mesra, itself". Although the Ranchi University is not a party to the writ application yet, in order to satisfy ourselves, we asked Sri Umesh Prasad Singh, who usually appears on behalf of the Ranchi University, to find out from the University whether the Ranchi University is conferring degree of Pharmacy on persons who have successfully pursued courses of study at Birla Institute of Technology, Mesra. Sri Umesh Prasad Singh produced before us a letter addressed to him by the Deputy Registrar, Ranchi University, where it is specifically stated that the "Ranchi University is conferring degrees of pharmacy on persons who have successfully pursued the approved courses of study of Birla Institute of Technology and passed the said examination". It is, therefore, not possible to accept the contention of the petitioners that the candidates who had been excluded from consideration did not possess degree conferred by the University but had only a degree which was conferred by B.I.T., Mesra.

5. Possibly in view of this position learned counsel for the petitioners contended before us that since the Ranchi University had not prescribed any courses of study in Pharmacy the University itself had no power or authority to confer degrees of Bachelor of Pharmacy to students who had pursued courses of study at B.I.T., Mesra. It may be stated that this contention has not been clearly raised either in the writ application or in the main counter affidavit that have been filed. Had this point been taken Ranchi University would have been a necessary party as the argument challenges the authority and power of the University. Nevertheless, since we have heard the argument at length it is appropriate that we should deal with this argument as well.

6. Bihar Ordinance 18 of 1972 came into force on 10.3.1972. A proviso to Section 2(d) of the Bihar State Universities (University of Bihar, Bhagalpur and Ranchi) Act, 1960 (hereinafter referred to as the Act) was added to the effect that Birla Institute of Technology, Mesra would continue to be an autonomous College within the Ranchi University from the date of the commencement of the Ordinance. A proviso to Section 4(17) of the Act was added to the effect that power and the purposes in respect of the Institute shall be exercised and performed in accordance with the provisions specially provided for in the Act. Section 8(8) was added whereby the Chancellor of the Ranchi University was given the power to make rules, to carry out the administration and regulate the activity of the Institute. Section 49A was inserted as a special provision in respect of the Birla Institute of Technology, Mesra, Ranchi, ceased to be an affiliated college of the Ranchi University and that the provisions of the Statutes, Ordinances, Rules and Regulation made by the Ranchi University shall not be applicable to the Institute. It clarifies that the Ranchi University shall continue to

confer degree, diplomas, certificates and other academic distinctions to and on persons, who have (a) pursued the approved courses of studies of the institute, and (b) carried out independent research under condition laid down in the rules framed by the Chancellor of the Ranchi University.

7. In exercise of the powers u/s 8(8) aforesaid the Chancellor of the Ranchi University made rules for administration of the Institutes which was duly published in the Bihar Gazette. Under rule 4(1)(a)(b) of Chapter II of the rules provided the powers of the institute which included the powers to provide for instruction and research in any branch which may be permitted by the Chancellor for advancement of learning and dissemination of knowledge in such branches and to hold examination and declare results thereof. Rule 23 confers powers upon the Institute to frame statutes with the approval of the Chancellor. In pursuance of the power aforesaid, Statutes were framed by the institute which were approved by the Chancellor effective from 1.2.1973. Clause 20 of the statute provides the faculties in which instructions will be provided by the institute. Pharmaceutical Science being one of such faculties. In view of the provisions aforesaid and in view of Section 49A(IV) it is clear that persons who pursued the approved courses of studies of the Institute, which included pharmaceutical Science, could, on their passing the examination held by the Institute be conferred the degree in pharmacy by the University.

8. On 15.3.1974 Bihar ordinance 54 of 1974 was promulgated. By this ordinance Section 49A and Section 2(d) of the Act were deleted and a new Section being Section 58(Ka) was introduced. Section 58(Ka) reads as follows:

Autonomous College or institute:--Notwithstanding any thing contained in any provision of this Act, the University may, subject, to its adequate supervision and the manner prescribed in the relevant statutes, confer upon any College or institute, having outstanding caliber and fulfilling the prescribed conditions, the powers to make changes or modifications in the courses of studies prescribed by the University for its students and the privilege to take examinations in such modified course of study and management thereof and such other powers in respect of other matter, as it may deem fit and such institute or college, as the case may be, shall be declared autonomous institute or College.

In exercise of his power the Chancellor issued a notification u/s 58(Ka) to the effect that the Birla Institute of Technology, Mesra, would be an autonomous College within the Ranchi University with effect from 15.3.1974, on terms stated in the notification. One of those was "Ranchi University shall confer degree, diplomas, certificates and other academic distinctions on persons who had successfully pursued the approved course of study of the Birla Institute of Technology and had passed their examinations". In 1976 Bihar Act XXIII of 1976 (The Bihar State Universities Act, 1976) was enacted and came into force on 16.5.1977. In this Act Section 73 is identical to Section 58(Ka) of Bihar ordinance 54 of 1974.

9. It was contended that the power conferred u/s 73 of the Act XXIII of 1976 only empowers an autonomous college or institute to make changes or modification in the courses of studies prescribed by the Universities. Thus it is only in a subject in relation where to a course of study has been prescribed by the University that an autonomous college can bring about changes. It cannot introduce a new subject which has not been prescribed by the University. This, in my opinion, is taking too narrow a view of the expressions used in this section. If a new subject is introduced that also brings about a change in courses of studies one of the meanings of the word change is "to render different, alter, transmute" (See Shorter Oxford English Dictionary). The word "change" has in my opinion, been used in the section in a wide sense.

10. It is well settled that where two interpretations are possible, one giving a narrow meaning to the expressions used, and the other by attributing wider meaning to them, such meaning should be given which fulfils the intention of the legislature. Legislative history is also permissible to be looked into. See (1) *Henritta V. Attorney General* AIR 1930 P.C. 121). Here we find that as far back as 1972 the institute could lay down courses of studies in relation to subject taught in the institute. The University was to confer degrees on students who had pursued such courses. The intention of the legislature could not be that the wide power which was subject to control as the statutes had to be approved by the Chancellor) was to be whittled down or taken away by enactment of Section 58(Ka) of Ordinance 54 of 1974 or Section 73 of Act 23 of 1978. I am, therefore, of the view that the expression changes or modifications have to be given a wide meaning. They include prescription by the institute of courses of studies in relation to subject which were not included in the courses prescribed for non-autonomous colleges or institutes. I would, consequently, hold that the students who had successfully pursued the approved course of study of B.I.T., Mesra and had passed their examination could be conferred degrees by the Ranchi University. In view of what I have stated it has to be held that degrees have, in fact, been conferred on such students. The state action in requiring the consideration of the cases of students who had been conferred the degree of Bachelor of Pharmacy by the Ranchi University, having pursued their studies at B.I.T. Mesra and having passed their examination, must be held to be legal and proper. In this view of the matter, non-acceptance of the recommendation of the Commission made in the year 1977 and the issue of notification by the Commission in 1976 cannot be held to be illegal. It has also to be held that in the circumstances, the issue of advertisement under order 6 was not illegal. In the result, this application is dismissed but without costs.

Brishketu Saran Sinha, J.

I agree.