

(2022) 05 PAT CK 0050

In the Patna High Court

Case No : Letters Patent Appeal No. 26 Of 2021

State Of Bihar

APPELLANT

Vs

Mahanth Shatanand Giri Harihar Sanskrit College

RESPONDENT

Date of Decision : 17-05-2022

Acts Referred:

Bihar State Universities Act, 1976 — Section 21(2)(d), 35, 79

Citation : (2022) 05 PAT CK 0050

Hon'ble Judges : Ashutosh Kumar, J;Anjani Kumar Sharan, J

Bench : Division Bench

Advocate : Shashi Shekhar Tiwary, Satyam Shivam Sundaram, Gyanand Roy, Ambarish Kumar

Final Decision : Dismissed

Judgement

1. Heard the learned counsel for the parties.
2. An application has been filed on behalf of an intervenor, namely, Mahant Ramesh Giri @ Ramesh Giri, who professes to be the present Mahant of Bodh-Gaya Math, Bodh-Gaya, which is the parent body and under whose aegis, the college in question was established.
3. Mr. Ambarish Kumar, the learned Advocate moving the intervention application has simply submitted that he is required to be heard as he supports the case of the respondent/college.
4. For the reason that the prayer made in the intervention application is not in contrast with the case of the respondent/college, we do not consider it necessary to get the response of the parties with respect to the averments made in the intervention application.
5. The intervenor/petitioner is permitted to participate in the proceedings, which he has.
6. The State has preferred this appeal against the order dated 23.08.2019

passed by the learned Single Judge in C.W.J.C. No. 17283 of 2019, directing the State to grant temporary affiliation to the respondent/college so that in the meantime, the vacant position with respect to the sanctioned strength of teachers would be filled up and the Institution/College in question, which is about ninety years old, is not prevented from being run properly.

7. From the perusal of the order impugned, it appears that notwithstanding the fact that the college in question was listed in the Bihar Gazette on 09.10.1963, the affiliation to the college was refused. The respondent/college could get temporary affiliation only with the intervention of this Court in the past.

8. The Deputy Director, Department of Education vide his communication dated 11.07.2019, rejected the claim of the respondent/college for its entitlement for affiliation on the ground that the land on which the college is situated is not registered in the name of the college but is registered in the name of Harihar Sanskrit Pathshala, Bodh-Gaya and that out of the sanctioned strength of ten teachers, only six had been working.

9. The aforesaid decision of the Government was put to challenge in the aforesaid writ petition (C.W.J.C. No. 17283 of 2019), wherein it was urged that the name of the Institution had been changed in recent past which was known to the University and the State and that could not have been the reason for withholding grant of affiliation when the Institution had been running for the last nine decades.

10. It was also urged before the learned Single Judge that because of the Institution not being affiliated, no selection committee was constituted by the University for recommending the appointment of teachers on the vacant posts.

11. The learned Single Judge acceded to the aforesaid reasoning and rightly so by holding that it is a conundrum and because of the inaction of the State in granting affiliation, necessary number of teachers against the sanctioned strength were not being appointed.

12. The learned Single Judge also took note of the fact that no Educational Institution in the present days are running with full strength and the aforesaid ground which is not solely attributable to the respondent/college, could not be used against the Institution for denying affiliation.

13. It appears that the learned Single Judge was conscious of the decision of the Full Bench of this Court in Braj Kishore and the provisions contained in Sections 35 and 21 (2) (d) of the Bihar State Universities Act, 1976, but the case of the respondent/college was absolutely different.

14. The learned counsel for the appellants has submitted that without necessary infrastructure and the Institution having conformed to other requirements, the learned Single Judge was not correct in directing for granting temporary affiliation for which there is no provision under the Bihar Universities Act, 1976.

15. It has also been submitted that the State Government had re-visited the parameters of Resolution No. 2291 of 18.10.1976 meant for Sanskrit Colleges, established prior to the said resolution.

16. In the case of the respondent/college, it was found that the land stood in the name of Harihar Sanskrit Pathsala, Bodh-Gaya in which name, all the receipts were being granted.

17. With respect to taking a different stand regarding different colleges especially Goswami Laxminath Madhusudan Sanskrit College, where temporary affiliation was given pursuant to an order of this Court, it has been argued on behalf of the appellants that the aforesaid college did not meet the requirement of sufficient number of teachers only and taking into account that such vacant positions could be filled only when affiliation is granted, it was granted temporary affiliation.

18. It has, thus, been urged on behalf of the appellants that the case of the respondent/college and of Goswami Laxminath Madhusudan Sanskrit College is different.

19. As opposed to the aforesaid contention, Mr. Satyam Shivam Sundaram, the learned counsel for the respondent/college has submitted that in view of Section 79 of the Bihar State Universities Act, 1976, all Sanskrit colleges and Institutions which were being run before the commencement of the Kameshwar Singh Darbhanga Sanskrit University Act, 1962 and was recognized by the Bihar Sanskrit Association, would be deemed to have been admitted to the University on the commencement of the Act.

20. It has further been submitted that the Syndicate and the Senate of the University vide its decision dated 17.12.2021 and 18.12.2021 agreed that the college in question deserved to be given the affiliation as it was established in the year 1930 and had been affiliated to Bihar & Orissa Sanskrit Association for imparting education upto the level of Shastri and Acharya in the year 1934.

21. Taking all these facts into account, the University sent a recommendation on 13.04.2022 to the Principal Secretary, Education Department for taking a decision with respect to affiliation of the respondent/college.

22. It has also been brought to the notice of this Court by the learned counsel for the respondent/college that the name of this college finds mention in the list of Sanskrit Institutions which were in existence up-till 31st of March, 1952, which list was published by Sanskrit Association, Bihar, Patna. The Institution is also listed in the Gazette Notification of 1963.

23. In view of the aforesaid facts and Section 79 of the Universities Act, the learned counsel for the respondent/college has submitted that the State has not performed its statutory function and has also not followed the directions of this Court and has raised an illusory distinction for refusing affiliation to the respondent/college.

24. We find the refrain of the learned counsel for the respondent/college to be absolutely justified.

25. The last of the affidavits filed on behalf of the appellants merely indicates that because the land is not registered in the name of the Institution, therefore, affiliation cannot be granted to the respondent/college for it not fulfilling all the parameters of infrastructure.

26. We must say, this is only a repetition of the earlier ground which has got no basis.

27. The State appears to be cherry-picking between Institutions or else, such a distinction would not have been spelt out in the case of the respondent/college.

28. We have also taken notice of the assurance given by Mr. Sundaram before the predecessor Division Bench that he shall be furnishing an undertaking that no third party rights shall be created on the land and that necessary measures shall be taken for getting the name of the college mutated over the land on which it stands.

29. There ought not to be any difficulty for the State to accept this undertaking and not be captious in not following the direction of the learned Single Judge.

30. We do not find any reason to interfere with the order of the learned Single Judge, directing for grant of temporary affiliation and the University to constitute a committee for recommending the appointment on the vacant position and, thereafter, take a final decision with respect to permanent affiliation.

31. The entire exercise ought to be completed within a period of three months.

32. The appeal is dismissed with the aforesaid directions.

33. I.A., if any, also stands disposed off.