

(2019) 08 PAT CK 0001

In the Patna High Court

Case No : Letters Patent Appeal No. 1184 Of 2017 In Civil Writ Jurisdiction Case No. 7972 Of 2017

Surendra B. Ed. Teachers Training College And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 22-08-2019

Acts Referred:

National Counsel For Teacher Education Act, 1993 — Section 14(6), 14(6)(a)

Citation : (2019) 08 PAT CK 0001

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Anjana Mishra, J

Bench : Division Bench

Advocate : Yogesh Chandra Verma, Anuj Kumar, Anand Kumar Ojha, Shilpa Singh

Final Decision : Disposed Off

Judgement

1. We have heard Sri Yogesh Chandra Verma, learned Senior Counsel for the appellant and Sri Anand Kumar Ojha, learned Counsel for the University.
2. The appellant-institution aggrieved by the refusal of the respondent-Aryabhatta Knowledge University, Patna to grant affiliation vide order dated 28th October, 2016 which was the basic challenge in the writ petition that has given rise to the present controversy. The second relief claimed by the institution was with regard to the permission to the students admitted to the B.Ed. Course of 2016-17 academic session for appearing in the examinations.
3. The first relief was granted by the learned Single Judge and the order refusing to grant affiliation was quashed with a direction to the University to consider grant of affiliation in terms of Section 14(6) of the National Counsel for Teacher Education Act, 1993. The second relief with regard to grant of permission to the students of academic session 2016-17 to appear in the examination was declined and costs were imposed on the appellant-institution with a direction to refund all fees to the students who were thus admitted.

4. Aggrieved by the judgment of the learned Single Judge, the present appeal was preferred questioning the correctness of the same and simultaneously the University aggrieved by the quashing of the order refusing affiliation filed LPA No. 1217 of 2017. Both the appeals were taken up and the following interim order was passed on 04.09.2017:-

"In both the appeals, the N.C.T.E. be impleaded as a party by amending the cause title within one week. Notice be issued to the counsel representing the N.C.T.E.

List the matters after three weeks.

In the meanwhile, in L.P.A. No.1184 of 2017, there shall be stay of the order dated 11.8.2017 passed by the learned Writ Court so far as it pertains to the students represented and who were parties in C.W.J.C. No.7972 of 2017. Their admission shall not be cancelled and they shall be permitted to take examination subject to the final decision of this appeal."

5. It appears that in this appeal, i.e., LPA No. 1184 of 2017, a request was made on behalf of the Advocate-on-Record that the matter be adjourned for engaging another counsel for assistance on 7th of May, 2018. This appeal came up before the Division Bench on 15th of May, 2018 on which date it was dismissed for want of prosecution by the following order:-

"This matter is being adjourned and passed over in absence of assistance from counsel for the appellant. The Court is left with no option but to dismiss the Letters Patent Appeal as well as vacate the order of stay which has been passed earlier."

6. The appellant thereafter filed IA No. 6852 of 2018 in LPA No. 1217 of 2017 that had been preferred by the University and remained pending. The appellant was respondent No. 3 in the said appeal. IA No. 6852 of 2018 filed by the appellant was for permission in respect of the examinations of first year B.Ed. programme students for the Session 2017-18. Thus, the IA was filed seeking permission to allow the students for admission in 2017-18 to appear in the examinations. This was obviously in view of the fact that the appeal filed by the appellant had already been dismissed for want of prosecution and the interim order dated 04.09.2017 had already been discharged. The said interim order was applicable for the Session 2016-17 batch of students.

7. In the IA No. 6852 of 2018, no prayer was made for admitting the students of 2016-17 and to allow them to appear in the second year examination. The said IA No. 6852 of 2018 was dismissed refusing to grant permission and simultaneously the Letters Patent Appeal filed by the University, i.e., LPA No. 1217 of 2017 was dismissed upholding the order of the learned Single Judge. The order dated 06.09.2018 is extracted hereinafter:-

"I.A. No. 6852 of 2018

1. Present interlocutory application has been preferred by the original writ petitioner, Respondent No. 3 in Letters Patent Appeal, for an appropriate interim order permitting/allowing the students of the Respondent No. 3 institution to appear in the examination of 1st year of B.Ed. programme of 2 years, academic session 2017-18, scheduled to be held from 07.09.2018 as per the programme of B.Ed.1st year examination 2018 vide examination ID No. 185102, dated 02.08.2018 for the academic session 2017-19 or, alternatively, to extend the date of the aforesaid examination, to be conducted by the University, of the students of the petitioner college. It is also prayed to vacate the ad interim order dated 15.05.2018 passed in the main Letters Patent Appeal.

2. We have heard Sri Bindhyachal Singh, learned counsel appearing for Respondent No. 3, original writ petitioner, and Sri Lalit Kishore, learned Advocate General appearing on behalf of the appellant University and another.

3. At the outset, it is required to be noted that as such the Letters Patent Appeal has been preferred by the University and not by the Respondent No. 3. The Letters Patent Appeal preferred by the Respondent No. 3, who has filed the interlocutory application, is reported to be dismissed for non-prosecution. Apart from the fact that whether in an appeal preferred by the original Respondent University, the question is as to whether the Respondent in the appeal can pray for and/or get any substantive relief or not, we have heard the learned counsel appearing on behalf of the respondents before us on merits.

4. It is required to be noted that, admittedly, the institution is not affiliated with the University for the academic year 2017-18. Without even getting the affiliation and/or affiliated with the University for academic year 2017-18, once again the college admitted the students and played with the future of the students. Same thing happened in the earlier year also, i.e., for academic session 2016-17.

5. From the counter, it appears that by communication dated 16th February, 2018, the college was intimated that there is no affiliation for the academic session 2017-18 and in the communication dated 16th February, 2018, it was specifically mentioned that for academic session 2017-18 they have not received any application for affiliation. Still nothing happened and no further steps were taken by the original writ applicant-the institution which has preferred the present interlocutory application. They continued to give admission to the students for academic session 2017-18. 6. Under the circumstances, when there is no affiliation at all for the academic session 2017-18, there is no question of making any interim order allowing the students to appear in the examination. It is also required to be noted that even though the programme was published for examination as far back as on 2nd August, 2018, the present application has been preferred at the last moment on 30.08.2018 seeking equitable relief. It is also required to be noted that even process for filling up the forms for appearing in examination commenced in February, 2018 and still nothing was done by the institution. At the cost of repetition, it is required to be observed that even in the earlier year - academic session 2016-17 also, the students lost their valuable

year and they were not permitted to appear in the examination and even the learned Single Judge heavily criticized the conduct on the part of the institution. Still they have continued with such conduct and played with the future of the students.

7.Considering the aforesaid facts and circumstances, the present interlocutory application deserves to be dismissed and is accordingly dismissed. No costs.

L.P.A. 1217 of 2017

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge on 11.08.2017 passed in C.W.J.C. No. 7972 of 2017, original respondents 3 and 4- Aryabhatta Knowledge University through its Vice Chancellor and the Registrar, has preferred the present Letters Patent Appeal.

2. The facts leading to the present Letters Patent Appeal in nutshell are as under:-That the original writ petitioner, the Respondent No.3 herein, applied for permission by the N.C.T.E. for running the B.Ed. college. Though the N.C.T.E granted recognition for the academic session 2016-17, the appellants herein, Aryabhatta Knowledge University, refused to grant affiliation.

Consequently, the students, who had already been admitted in B.Ed. course for the academic session 2016-17, were not allowed to appear in the final examination meant for 2016-17. Therefore, the original writ petitioner-B.Ed. College, preferred the present C.W.J.C. No. 7972 of 2017 challenging the action of the University in not granting affiliation for the academic session 2016-17. The original writ petitioner also prayed that the students, who have already been admitted in B.Ed. course for the academic session 2016-17 be allowed to appear for the final examination meant for 2016-17. 3. That by the impugned judgment and order, the learned Single Judge has partly allowed the said petition after following the decision of the Hon'ble Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of Uttar Pradesh and Others, reported in (2013) 2 SCC 617 and directed to grant affiliation to the original writ petitioner for academic session 2016-17. However, the learned Single Judge refused the prayer to allow the students to appear in the examination on the ground that original writ petitioner institution admitted the students though there was no affiliation granted. 4. While passing the impugned judgment and order, the learned Single Judge did not accept the submission on behalf of the University that the University can refuse affiliation on the ground that an institution does not fulfil the requisite conditions.

5. Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, insofar as not accepting the submission on behalf of the University that independently they can refuse affiliation on the ground that an institution does not fulfil the requisite conditions, the University has preferred the present Letters Patent Appeal. At this stage, it is required to be noted that, so far as the affiliation is concerned, subsequently, the University has already granted

affiliation to the original writ petitioner for academic session 2016-17.

6. Challenging the impugned judgment and order passed by the learned Single Judge to the aforesaid extent, Shri Lalit Kishore, learned Sr. Counsel appearing on behalf of the appellant University, has submitted that the observations made by the learned Single Judge in paragraph 18 that the University would not have any authority to refuse affiliation on having found breach of any of the conditions by the institution, is contrary to the observations made by the Hon'ble Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya (Supra), more particularly paragraph 71 of the said decision.

7. Having heard learned counsel appearing for the respective parties and considering the impugned judgment and order passed by the learned Single Judge, more particularly paragraph 18, we are of the opinion that the observations made by the learned Single Judge are absolutely as per the decision of the Hon'ble Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya (Supra).⁸As rightly observed, once the recognition has been granted by the N.C.T.E., thereafter, the University has to grant affiliation. However, it will always be open for the University to take up the matter with the N.C.T.E., in case the University is of the view, on the basis of any inspection carried out and/or information received, that the concerned institution does not fulfil the conditions for grant of recognition/affiliation. Paragraph 18 of the impugned order reads as under: -

"18. If what is being contended on behalf of the University is accepted and the universities are allowed to refuse affiliation, on the ground that an institution does not fulfil the requisite conditions, despite there being recognition by the N.C.T.E, this will amount to giving them jurisdiction to tinker with the decision of the N.C.T.E. of granting recognition under Section 14(6)(a) of the Act and thereby diluting the clear legislative intent. This, in my view, cannot be allowed. If the University, on the basis of any inspection carried out and other information received, is of the view that the concerned institution does not fulfil the conditions for grant of recognition/affiliation, it can take up the matter with the N.C.T.E. and in that circumstance, N.C.T.E. only can take a final decision. In any event, refusal by the University to grant affiliation or to extend affiliation, during the currency of recognition by the N.C.T.E., will be in breach of Section 14(6)of the Act."

9. If the observations made in paragraph 18 are read along with the observations made by the Hon'ble Supreme Court in paragraphs 70 and 71 in the case of Maa Vaishno Devi Mahila Mahavidyalaya (Supra), we are of the opinion that no interference by this Court is called for. Still it is observed and clarified that whatever observations are made by the learned Single Judge are with respect to the affiliation and, so far as the recognition is concerned, once the N.C.T.E. has granted the recognition, the University virtually has to grant affiliation, subject to the observations made by the Hon'ble Supreme Court in para 71 in the case of Maa Vaishno Devi Mahila Mahavidyalaya which reads asunder: - "71. The

examining body can impose conditions in relating to its own requirements. These aspects are:(a) eligibility of students for admission;(b) conduct of examinations; (c) the manner in which the prescribed course should be completed; and(d) to see that the conditions imposed by N.C.T.E. are complied with. Despite the fact that recognition itself covers the larger precepts of affiliation, still the affiliating body is not to grant affiliation automatically but must exercise its discretion fairly and transparently while ensuring that conditions of the law of the university and the functions of the affiliating body should be complementary to the recognition of N.C.T.E. and ought not to be in derogation thereto."10.With the above observations, the present Letters Patent Appeal stands dismissed/disposed of."

8. It may be mentioned that the restoration application MJC No. 2084 of 2018 had been preferred by the appellant in LPA No. 1184 of 2017 that had been dismissed for want of prosecution on 15.05.2018 itself but came up for removal of defects on 20.02.2019. The defects were removed and reported on 14th May, 2019 and on 15th May, 2019, an adjournment was sought in the said restoration matter.

9. The restoration application came to be allowed by us yesterday only and, therefore, the status of the present appeal remained that of dismissed for want of prosecution till yesterday.

10. As indicated above, the IA filed by the appellant in respect of the students of 2017-18 had been dismissed and the appeal filed by the University had also been dismissed on 06.09.2018. The appellant-institution filed Special Leave to Appeal (C) No. 28177 of 2018 challenging that part of the order of the Division Bench in LPA No. 1217 of 2017 whereby IA No. 6852 of 2018 seeking permission of the students of 2017-18 to appear in the examination had been rejected. This Special Leave to Appeal came to be dismissed on 12th November, 2018 by the following order:-

"We are not inclined to interfere in the matter. The special leave petition is, accordingly, dismissed.

Pending applications stand disposed of."

11. From the chronological orders of facts referred to above, it is evident that the writ petition giving rise to the present appeal had claimed two reliefs. The first with regard to grant of affiliation and the second with regard to the permission for the students of 2016-17 to appear in the examinations. The learned Single Judge granted the first relief on the issue of affiliation and issued a direction to the University to grant affiliation. The second relief for permission to appear in the examination was refused. Two appeals were filed. One by the appellant-institution against the refusal of permission to students of Session 2016-17 to appear in the examinations and the University filed an appeal against that part of the judgment whereby directions were issued to grant affiliation. Both the matters were taken up simultaneously and an interim order was passed on 04.09.2017 which is extracted hereinabove. It is, however, on record that

present appeal came to be dismissed for want of prosecution on 15.05.2018 and the interim order was vacated. This order was not challenged in any higher forum and the MJC (Restoration) No. 2084 of 2018 was filed in June, 2018 but the appeal was not restored. The appeal filed by the University was also dismissed along with the IA No. 6852 of 2018 filed by the appellant-Institution for permission in respect of the examination of first year B.Ed. Programme students for the Session 2017-18. As noted above, the appellant did not make any prayer in the said I.A. The appeal in their respect has already been dismissed and interim order had been vacated. The SLP filed against the order dated 06.09.2018 at the instance of the appellant was dismissed and it is admitted to the appellant that no prayer was made even before the Apex Court with regard to the fact for allowing the students to appear in the examinations of 2016-17.

12. It is thus evident that no relief had been extended to the appellant-institution during this entire period for allowing the students of 2016-17 to appear in the examinations and the interim order dated 04.09.2017 had already been vacated.

13. In the background above and with the passage of time, now, we see no reason to grant any relief for the students of 2016-17 to appear in the examination. Firstly, because the college was not affiliated to the University and secondly, the learned Single Judge has given cogent reasons for not extending this relief with which we entirely agree keeping in view the background aforesaid. If the students of the year 2017-18 have not been granted permission to appear in the examinations, we see no reason to issue a direction for the students of 2016-17. We are also sailing in the same boat, inasmuch, they had already been admitted without the affiliation of the college.

14. Consequently, for all the reasons aforesaid and in view of the fact that the Co-ordinate Bench has already upheld the impugned judgment, while dismissing Appeal No. 1217 of 2017, we see no reason to interfere with the same, which is upheld except to the extent that the costs payments imposed against the appellant are set aside. The appeal stands disposed off accordingly.