
(2002) 10 PAT CK 0114

In the Patna High Court

Case No : C.W.J.C. No's. 14103 of 2001 and 9332 of 2002

Surendra Singh

APPELLANT

Vs

Tilka Manjhi Bhagalpur University and Others

RESPONDENT

Date of Decision : 30-10-2002

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 32

Citation : (2003) 1 PLJR 128

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Tara Kant Jha, Kaushal Kumar Jha, in C.W.J.C. Nos. 14103 of 2001 and 4368 of 2002 and Prakash Srivastav, in C.W.J.C. No. 9332 of 2002, for the Appellant; B.P. Pandey, Ashok Kumar Keshri for University, Azfar Hassan, for State and Birendra K. Srivastava, for BCI (Respondent No. 8), for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—In all the three writ applications, common questions of law and fact arise and as such, they are being disposed of together.

2. Surendra Singh, Petitioner in C.W.J.C. No. 14103 of 2001 and C.W.J.C. No. 4368 of 2002 is the Principal of Bishwanath Singh Institute of Legal Studies, Lal Darwaza, Munger (hereinafter referred to as "the Institute") and his prayer is for quashing the order dated 5/6.10.2001, Whereby the aforesaid Petitioner has been communicated that the Institute having no affiliation from Tilka Manji Bhagalpur University ("University" for short), its students shall not be allowed to appear in the 1st and 2nd part of the LL.B. Examination. His further prayer is to quash the Examination Notice No. 18 of 2002 dated 14.2.2002 by which the examination programme of LL.B. Part-I, Part-II and Part-III has been published. He further seeks a writ in the nature of mandamus to the Respondent University to take the examination of the students of the Institute and to publish their result.

3. Keshav Kumar Daruka Petitioner in C.W.J.C. No. 9332 of 2002 is the student

of the said Institute and his prayer is to declare his result of LL.B. Part-III.

4. Bereft of unnecessary details facts giving rise to the present application are that the Institute in question was granted affiliation by order dated 20th of September, 1985 for the Session 1984-85 and by letter dated 19.12.1988, the period of affiliation was extended for a further period of three years. After the expiry of the aforesaid period, the Institute has not been granted further affiliation but the matter of affiliation is pending before the State Government. By letter dated 3rd of April, 1999 (Annexure-A) to the counter affidavit filed on behalf of Respondent Nos. 6 and 7 the Director (Higher Education) addressed to the Registrar of the Respondent-University, the latter has been informed that for extension of affiliation, the resolution of the Senate and Syndicate is necessary and accordingly, the Respondent-University has been asked by the Director to send the resolution so that the question of extension of affiliation is considered by the State Government.

5. Notwithstanding the fact that the Institute in question is not affiliated to the Respondent-University, still the Principal as also the students of the Institute have prayed for quashing the order of the Respondent-University by which the students were not allowed to appear in the examination and to publish the result.

6. Mr. Tara Kant Jha, learned Senior Advocate as also Mr. Shiv Prakash Srivastava, appearing on behalf of the Petitioners submit that the matter of grant of affiliation to the Institute is pending consideration and for failure on the part of the State Government as also the Respondent-University in taking decision on this question, the students of the said Institute cannot be allowed to suffer. It is highlighted that the students have taken admission in the Institute as the matter of grant of affiliation is till pending, hence, equity demands that the students of the Institute be allowed to appear in the examination and the decision taken to the contrary by the University, be quashed. In addition thereto, Mr. Srivastava submits that Keshav Kumar Daruka (Petitioner in C.W.J.C. No. 9332 of 2002) was allowed to appear in the examination and as such, the Respondent-University cannot legally withhold his result.

7. Mr. B.P. Pandey, as also Mr. Ashok Kumar Keshri appearing on behalf of the Respondent-University submit that the affiliation of the Institute have come to an end from the year 1990, the students ought not to have been admitted in the Institute and in case some students had ventured to take admission in an unaffiliated Institute, they have done so at their own risk and the Respondent-University cannot be forced to take examination of the students of unaffiliated Institute.

8. It is not in dispute that the Institute in question has lost its affiliation after 1990 and in that view of the master, the students who have taken admission, has done so at their own risk. The appeal of Mr. Jha that the students be treated with sympathy and compassion invoking the principles of equity, do not appeal to me at all. It is no doubt true that justice has to be tempered with mercy but the said

principle cannot be elevated to a position in which the students of an unaffiliated Institute can be permitted to appear in the examination. The equity operates in a field when the law is silent but in a case in which the conduct of examination is governed by statute and the statute having conferred right only to the students of an affiliated Institute to appear in the examination, those students who have taken admission in an unaffiliated Institute cannot be permitted to appear in the examination on the ground of equity and the decision of the Respondent-University not to permit the students, cannot be faulted on that Court. In my opinion, direction sought for by the Petitioner shall be in breach of law and that shall be destructive to the rule of law.

9. Referring to the decision of the Supreme Court in the case of Amrendra Pratap Singh and Ors. v. L.N. Mithila University, Darbhanga and Ors., reported in 1989 P.L.J.R. 18, Mr. Jha contends that the students be allowed to appear in the examination and their result be published. Said case arose from a Full Bench decision of this Court and this Court declined to issue direction to publish the result of the students of an unaffiliated and unrecognised educational Institution but the decision of this Court was set aside by the Supreme Court in the following words:

Special leave granted.

2. Having heard learned Counsel for both the parties we direct the University to declare the results of B.Ed. Examination held in 1980 in respect of the Petitioners and others who appeared in the said examination.

3. The appeal is accordingly allowed and the judgment of the High Court is set aside. A direction shall issue to publish the result as early as possible.

4. There will be no order as to costs.

10. Mr. Jha highlights that the power of the High Court under Article 226 is wider than the power of the Supreme Court under Article 136 of the Constitution of India or for that matter, Article 32 of the Constitution of India and notwithstanding the fact that the Institute is unaffiliated, the students may be allowed to appear in the examination and to publish their result. I am not at all impressed by this submission of the learned Counsel.

11. The question in the present case is not in relation to the power of this Court vis-a-vis the Supreme Court but the right of a student of an unaffiliated Institute to appear in the examination. True it is that the Supreme Court had directed for publishing the result of students of unrecognised educational Institute but has not laid down as a proposition of law that the students of an unaffiliated Institute has right to appear in the examination. It is well settled that the decision in a case is binding for what it decides and not what logically follows from it. Further direction given in the facts of a particular case is not a binding precedent. What is binding is ratio and from the order of the Supreme Court referred to above, it cannot be culled out that the Supreme Court as a proposition of law, has laid

down that the students of an unaffiliated Institute have right to appear in the examination.

12. In order to put the record straight it may be mentioned that Mr. Srivastava, in support of his submission, has placed reliance on a judgment of the Supreme Court in the case of Shri Krishan v. The Kurukshetra University, Kurukshetra, reported in AIR 1076 SC 376 and my particular attention has been drawn to the following passage from para-6 of the said judgment which reads as follows:

6. xxx It is, therefore, manifest that once the Appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appeal.
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13. The authority relied on, in no way, supports the case of the Petitioner and is Clearly distinguishable on facts. In the said case, a student was allowed to appear in the examination although did not attend the requisite number of lectures and was involved in a criminal case. Here, in the present case, the very Institute in question is not affiliated and hence, the students of such Institute have no right to appear in the examination and to get their result published.

14. For the reasons stated above, the prayer of the Petitioners cannot be granted and the orders impugned cannot be faulted.

15. In the result, I do not find any merit in any of the writ applications and they are dismissed accordingly.