

(2023) 07 PAT CK 0035

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5347 Of 2023

Syed Nehal Ahsan College

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 13-07-2023

Acts Referred:

Bihar Intermediate Education Council Act, 1992 — Section 39
Bihar School Examination Board Act, 2019 — Section 19

Citation : (2023) 07 PAT CK 0035

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Tej Bahadur Singh, Syed Hussain Majeed, Narendra Kumar, Gyan Shankar

Final Decision : Allowed

Judgement

1. Let the counter affidavit be taken on the record.
2. Heard Mr. Tej Bahadur Singh, learned senior counsel assisted by Mr. Syed Hussain Majeed, learned Advocate for the petitioner and Mr. Gyan Shankar, learned counsel for the Bihar School Examination Board as also Mr. Narendra Kumar, learned counsel for the State.
3. The petitioner in the present case is admittedly an intermediate minority college. By filing the present writ application, the petitioner is seeking the following reliefs:-

“(a) For quashing Letter No. 1610 dated 23.06.2022 issued by Director, Academic of Bihar School Examination Board (In short BSEB) to Principal, Syed Nehal Ahsan College (in short SNA college), Barh, whereby and whereunder, the petitioner college was stopped from taking admission in intermediate classes for Session 2022-24.

(b) For quashing of Letter No. 4173 dated 31.12.2022 issued by Director, Academic of BSEB to District Education Officer, Patna directing him to tag SNA

College, Barh to any nearby college for the annual intermediate examination, 2023 till the petitioner college regains its affiliation.

(c) For quashing Letter No. 568 dated 17.01.2023 issued by District Education Officer, Patna to Principal of A.N.S. Higher Secondary School, Barh, Patna whereby students of petitioner college were tagged with the said school for the purposes of annual intermediate examination, 2023.

(d) For any other relief/reliefs for which petitioner is found entitled in the facts and circumstances of this case.”

Case of the Petitioner

4. Learned senior counsel for the petitioner submits that the college was established by the Council for Education and Development of Muslim Trust as a minority institution. It was granted recognition by the Bihar Intermediate Education Council (hereinafter referred to as the 'Council') which was constituted by the Bihar Intermediate Education Council Act, 1992 (hereinafter referred to as the 'Act of 1992'). Under Section 39 of the Act of 1992, the intermediate colleges which existed prior to coming into force of the enactment were also deemed to be duly recognised institution by the Council.

5. It is stated that by virtue of Bihar Intermediate Education Council Act, 2007 (hereinafter referred to as the 'Repeal Act'), the Act of 1992 was repealed and the Council was merged with the Bihar School Examination Board (hereinafter referred to as the 'Board'). The case of the petitioner is that the Repeal of the Act of 1992 did not in any manner affect the deemed recognition of the intermediate colleges under the Act of 1992.

Submissions on behalf of the Petitioner

6. Learned senior counsel further submits that by a resolution dated 19.05.2009, the State Government decided to provide financial assistance by way of grants to the recognised institutions and the same was allowed to the colleges even where intermediate studies were attached to the degree colleges. A resolution was passed on 04.07.2020 whereby the parameters for release of grants were changed in respect of the intermediate colleges and it was made applicable based on the pass standard ratio of students. For purpose of release of grants, the institutions were required to fulfill the requisite norms on or before 31.12.2020. It is submitted that consequent upon issuance of the resolution dated 04.07.2020 and a further order dated 03.10.2021 issued by the Board notifying the list of colleges and schools which were to comply with the norms for recognition by 31.12.2021 failing which those colleges were restrained from allowing registration of the students for academic session 2022-23, series of writ applications were filed, the lead case being CWJC No. 3516 of 2021 in which those Government resolutions by which a sweeping decision was taken to restrain the institutions from allowing registration of students for academic year 2022-23 were challenged.

7. In the aforementioned background, it is submitted that so far as the present writ application is concerned, in this case, the fact is that the petitioner institution being a minority institution had admitted altogether 768 students in intermediate class for the session 2022-24 and during the period 09.11.2022 and 22.11.2022, the petitioner institution was allowed to upload details of its students on the portal run by the Board.

8. It is further case of the petitioner that after 22.11.2022, the petitioner was abruptly stopped midway and it was not allowed to proceed further with the registration of the students on the ground that the petitioner college has/had been restrained from taking admission at +2 level during session 2022-24 vide Memo No. 1610 dated 23.06.2022 (Annexure 'P/1').

9. Learned senior counsel submits that Annexure 'P/1' is completely illegal, arbitrary and bad in law inasmuch as what could not have been done directly by the Board has been done indirectly. Prior to issuance of Annexure 'P/1', the Board had not taken any action to de-recognise the institution under the Bihar School Examination Board (Senior Secondary) Affiliation Regulation, 2011 (hereinafter referred to as the 'Affiliation Regulation, 2011'). It is submitted that Regulation 15 which fall under Chapter IV of the Affiliation Regulation, 2011 provides the manner in which affiliation of an institution may be withdrawn by the Board either in a particular subject or in all subjects. No process for withdrawal of affiliation was initiated by the Board in this case at any stage and straightway a communication as contained in Annexure 'P/1' was issued.

10. Learned senior counsel for the petitioner submits that the batch of writ applications, the lead case being CWJC No. 3516 of 2021 were allowed by the learned Writ Court by a common judgment dated 12.07.2022. The learned Writ Court found that the impugned orders were blanket orders which were sweeping in nature and had an effect of taking within its ambit all the institutions recognised and affiliated with the Board and affiliated to the University as aided colleges. The learned Writ Court held that the manner in which the Board acted was not in accordance with the procedures laid down under Section 19 of the Bihar School Examination Board Act, 2019 (hereinafter referred to as the 'Act of 2019') which came into effect from 30.07.2019.

11. It is submitted that the judgment of the learned Writ Court was under challenge in LPA No. 405 of 2022, LPA No. 409 of 2022, LPA No. 537 of 2022, LPA No. 538 of 2022 and LPA No. 539 of 2022. The Hon'ble Division Bench did not interfere with the views expressed by the learned Writ Court, however, in the changed circumstances when it was found that it was the fag end of the academic session 2022-23 and admittedly no admissions had occurred in course of pendency of the writ appeals, the Hon'ble Division Bench decided to mould the reliefs in accordance with and reckoning the factual realities that exist.

12. Learned senior counsel submits that in the present case the fact is that 768 students were already admitted and the portal was open for the petitioner

college during which the petitioner had uploaded the details of about 398 students, therefore, in view of the earlier adjudication of the learned Writ Court which has been approved by the Hon'ble Division Bench in LPA No. 405 of 2022 and other analogous appeals, the communication as contained in Annexure 'P/1' and the consequential orders impugned in the writ application are fit to be set aside and the Board be directed to complete the registration of all the students and conduct their examination as early as possible to save them from losing their studies.

Stand of the Board

13. Mr. Gyan Shankar, learned counsel for the Board has opposed this writ application. It is his submission that the petitioner was a minority college/institution and being a minority college, it was not required to access OFSS Portal. The petitioner college was competent to take admission on its own, however, because it was restrained from taking admission vide the communication contained in Annexure 'P/1', the petitioner college could not have admitted the students.

14. Learned counsel for the Board admits at the Bar that in this case, no proceeding for withdrawal of affiliation of the petitioner college was initiated in terms of Regulation 15 of the Affiliation Regulation, 2011. In the counter affidavit, a stand has been taken that the minority colleges/institutions who did not apply to the Board for physical inspection within the stipulated time i.e. up to 31.12.2021, were sent letters stopping them from taking admission in the intermediate for the session 2022-24. A further stand has been taken that now in view of the order dated 11.04.2023 passed in LPA No. 405 of 2022 and LPA No. 409 of 2022, the petitioner college has been allowed to take admissions in intermediate as per faculty strength as has been earlier done and at the same time, it has been clarified that on the basis of the reports submitted by Three-Member District Level Committee, it will be examined as to whether the petitioner college is fulfilling the criteria for affiliation in terms of the Affiliation Regulation, 2011.

Consideration

15. This Court has heard learned senior counsel for the petitioner and learned counsel for the Board at length as also perused the materials available on the record.

16. To this Court, it appears that the judgment rendered by the learned Writ Court in the batch of writ applications being CWJC No. 3516 of 2021 and its analogous matters and then the judgment of the Hon'ble Division Bench of this Court in LPA No. 405 of 2022 and other analogous appeals have disapproved the action taken by the Board in issuing a sweeping kind of communication to all the colleges and institutions vide order dated 03.10.2021 issued by the Board notifying the list of colleges and the schools calling upon them to apply with the norms for recognition by 31.12.2021 failing which those colleges were restrained

from allowing registration of students for the academic year 2022-23. Before this Court applies the judgments of the learned Writ Court and the Hon'ble Division Bench in the facts of the present case, it would be important to take note of the conclusion reached by the Hon'ble Division Bench in paragraph '11' of the judgment in LPA No. 405 of 2022 and other analogous matters. Paragraph '11' is being quoted hereinbelow for a ready reference:-

"11. We perfectly agree with the interpretation given to Section 19 of the Act of 2019, which we have referred to in the earlier paragraphs. Section 19 specifically requires a finding by the Board with respect to the standards provided in an individual institution and there cannot be a sweeping withdrawal of recognition of institutions deemed to have been recognized under the Act of 1992; which recognition also stood continued in the subsequent years and the successive enactments. They cannot also be coerced into seeking fresh recognition under the new enactment as long as their deemed recognition stands continued."

17. In the facts of the present case, this Court finds that admittedly the college had a deemed recognition under the Act of 1992 which continued even after the Repeal Act, 2007 came and the Council was merged with the Board. The Hon'ble Division Bench has categorically held that these institutions cannot be coerced into seeking fresh recognition under the new enactment as long as their deemed recognition stands continued. Section 19 of the Act of 2019 requires a finding by the Board with respect to the standards provided by an individual institution, as on date it is not the case of the Board that there is any finding with respect to the standards of the petitioner college and/or the communication as contained in Annexure 'P/1' to the writ application is based on any such finding. The fact remains that the Board has not taken action under Regulation 15 of the Affiliation Regulation, 2011.

18. The Hon'ble Division Bench has already observed in paragraph '12' of the judgment that ".... The Board, if required to act under Section 19, would proceed to inspect the individual institutions and after due verification, issue orders either continuing affiliation on finding the Regulations of 2011 being adhered to or withdraw, cancel or suspend affiliation of such institutions which have failed to raise the standards in accordance with the Regulation of 2011.....". In view of such observations, the Board has already constituted a committee for inspection and this Court has been informed that the Three-Member District Level Committee is looking into the matter. At this stage, thus, this Court need not go into that aspect of the matter.

19. Having arrived at a conclusion that the Board has not acted in accordance with the Affiliation Regulation, 2011 and its action in issuing sweeping order having been disapproved by this Court, this Court would have no hesitation in holding that the communication as contained in Annexure 'P/1' restraining the petitioner college from taking admission at intermediate level during the Session 2022-24 is wholly illegal and the same is liable to be set aside. This Court accordingly sets aside the impugned order as contained in Memo No. 1610 dated

23.06.2022. As a consequence of the setting aside of Annexure 'P/1' and the consequential orders impugned in the writ application, since in the present case, 768 students were already admitted by the petitioner college and the information of at least 398 were already uploaded, the facts being different from the earlier cases, in order to save the career of the students from being ruined and to save them from losing their studies, this Court deems it just and proper to direct the Board to allow the petitioner college to complete the process of registration of the admitted students as early as possible and preferably within a period of four weeks from today whereafter the college shall take steps towards promotion of those students to second year of intermediate and they shall be allowed to take Board examination of the year 2024, subject, however, to their fulfilling the requirements for appearance in the examination.

20. This writ application is allowed.