

(1989) 10 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 8271 of 1989

The Governing Body of P.T. Usha Physical Training College,
Motihari and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-10-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1990 Patna 193 : (1990) 1 PLJR 443

Hon'ble Judges : S.B. Sanyal, J; R.N. Lal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The main thrust of the argument of learned counsel for the petitioners is that the application for recognition of the college is pending since 12-11-86. It is said that inspection has already been made for the purposes of according recognition but that has not yet been completed. It is further submitted that the District Magistrate has provided accommodation for the institution also. The inspection report has been marked as Annexure-7 and also the recommendation of the District Magistrate is marked Annexure-8. It is a fact that the recognition matter is pending before the respondents-authorities since 1986 and we see no reason that the matter cannot be disposed of within three months from the date of the receipt of the order of this Court. The petitioners are also directed to co-operate in every way for the disposal of the recognition matter within the aforesaid time.

2. The prayer of the petitioners that the students of 1986-87 and 1987-88 batches should be allowed to appear in the examination does not appeal to us because of a large number of decisions rendered by this Court.

3. We reiterate the same reasons which persuaded us not to permit the students to take examination which are as follows:--

"Mr. Tara Kant Jha, learned counsel for the petitioners, strenuously argued on the

basis of the interim order of the Supreme Court in some cases to allow the students of unrecognised institute to appear at the ensuing examination. He has also drawn our attention to some interim orders passed by S. S. Hasan, J. to the same effect. We are, however, of the opinion that the attention of the Hon"ble Judge had not been drawn to the recent decision of the Supreme Court in Writ Petn. (Civil) 28 of 1988 disposed of on 28-7-1988, reported in 1988 Pat LJR (SC) 90, where the Supreme Court while rejecting the prayer of the petitioner of that case to allow the students of such an unrecognised institution to appear at the examination, observed in the following words:--

"Learned counsel for the petitioners placed before us a copy of the direction made by the Court in Civil Misc. Petn. No. 30340 of 1987 (in SLP No. 12014 of 1987) dated November 25, 1987 and prayed for a similar direction being issued in favour of the petitioners in this case also. We do not feel persuaded to issue any direction as prayed for, because of the fact that in several cases of a similar nature which had come up subsequently for orders the Court declined to interfere or to make any directions. The reason for the Court's refusal to interfere or issue directions is on account of the mushroom growth of unrecognised schools and other educational institutions of an alarming rate in various States, including the State of Bihar due to constant efforts systematically taken by interested agencies to bring about such institutions by openly and deliberately flouting the Rules and Regulations and making the schools and institutions "a fait accompli" in order to wrest recognition from the authorities concerned for such institutions without complying with the formalities or fulfilling the prescribed conditions and requirements.

To achieve their objective, it has become part of the modus operandi of the promoters of such institutions to wait till the fag-end of the academic year and then approach the High Court under Article 226 of the Constitution either by themselves or through the students, to project the plight of the misguided (sic) students and seek directions of the Court to permit the students to appear at the University or the Board examination in order to thereby indirectly achieve their objective of running of the institutions without obtaining the requisite permission from the authorities concerned....."

In the case of A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, , the Supreme Court observed as hereunder:--

"Shri K. K. Venugopal, learned counsel for the students who have been admitted into the MBBS course of the Institution, pleaded that the interests of the students should not be sacrificed because of the conduct or folly of the management and that they should be permitted to appear at the University examination notwithstanding the circumstances that permission and affiliation had not been granted to the Institution Shri Venugopal suggested that we might issue appropriate direction to the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear

transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law a direction by the Court to disobey the laws."

4. In this connection we may also refer to a decision of the Supreme Court in *N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another*, , wherein the Supreme Court rejected the prayer of the students of unrecognised institution to appear by observing as follows (at p. 1191 of AIR):--

"If by a fiat of the Court we direct the Government to permit them to appear at the examinations we will practically be encouraging and condoning the establishment of unauthorised institutions..... True they will be required to pass the examination but that may not be enough. Training for a certain minimum period in a properly organised and equipped training institute_ is probably essential before a _teacher may_ be duly launched."

This view has been reiterated by the Supreme Court in the case of *Faridi Primary Teachers' Training College v. State of Bihar* in Writ Petn. (Civil) No. 28 of 1988 disposed of on 28-7-1988, reported in (1988 Pat LJR 90 (SC)), where the modus operandi of the promoters of such institutions to wait the fag end of the academic year and then approach the High Court under Article 226 of the Constitution, either by themselves or through the students, to project the plight of the misguided students and seek directions of the Court to permit them to appear at the University or the Board examination, has been decried and the writ petition before the Supreme Court was dismissed.

5. We have come across a short order of the Supreme Court in the case of *Amarendra Pratap Singh v. L. N. Mithila University, Darbhanga* (1989 Pat LJR 18 (SC)). The order reads as hereunder:

"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 examinations.

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."

Thus the order of the Full Bench decision of this Court reported in *Amarendra Pratap Singh and Others Vs. Lalit Narain Mithila University and Others*, was set aside. In this case, the results of certain students were withheld from publication, who appeared at the same examination in identical situation. The majority view in the said case was of opinion that the principles of estoppel would not apply against the University merely because other students were permitted to appear at the examination. The minority judgment of L. M. Sharma, J. (as he then was), refusal to publish the result of the petitioners while

announcing that of others appearing at the same examination in identical situation amounted to discrimination and that the University was estopped from reviewing its decision to the disadvantage of the petitioners. It also held that cancellation of candidature of an examinee cannot be done without holding an inquiry and affording opportunity to be heard. This case, therefore, is clearly distinguishable from the instant case.

6. A Bench of this Court in the case of the The Managing Committee of Maulana Abul Kalam Azad Primary Teachers Education College Vs. State of Bihar and Others, , has taken note of all the previous Supreme Court decisions and the same Bench was also confronted with some interim order of the Supreme Court in some cases issuing direction in respect of the students of that institution to allow them to appear at the examination to be held by the Bihar School Examination Board. The Bench held that interim orders passed even by the Supreme Court in respect of a particular case cannot be used as a precedent for other cases, specially when the Supreme Court has authoritatively decided the question. Such interim orders are in the facts and circumstances of these particular cases. We feel bound by the aforesaid Division Bench of this Court as also we respectfully agree with the view taken therein as the said case has taken note of all the authoritative decisions of the Supreme Court in this regard.

7. This application is dismissed with the observations and directions contained in first paragraph of the order.