

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9940 of 2019

Vijay Shankar Rai
D.O. and D. Shankar

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Principal Secretary cum Additional Chief Secretary Education Department, Government of Bihar, Patna
3. The Additional Secretary Education Department, Government of Bihar, Patna
4. The Director Higher Education, Government of Bihar, Patna
5. Magadh University Bodh Gaya, through Registrar
6. The Vice Chancellor Magadh University, Bodh Gaya
7. The Registrar Magadh University, Bodh Gaya
8. The Inspector of Colleges Magadh University, Bodh Gaya

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sarvadeo Singh, Adv.
Mr. Shailendra Kumar Singh, Adv.
For the Respondent/s : Mr. Prabhakar Jha (Gp27)

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT

Date : 01-06-2023

The petitioner, who is Secretary of Prof. Vijay Shankar Rai Mahila College, Sherghati, Gaya has filed the present writ application for quashing the Memo No. 15/M-1-41/2012-205 dated: 22.01.2019 (Annexure – 6) issued by the Principal Secretary – cum - Additional Chief Secretary, Education Department, Government of Bihar, Patna / Respondent No. 2 by which affiliation of the College has been refused. However, during pendency of the writ application, affiliation to the College has been



granted by the State Government vide Memo No. 2525 dt-23.11.2021 starting from the academic year 2021-22. The petitioner in the circumstances has prayed that affiliation should be granted starting from the Session 2020-2021.

2. I.A. No. 2 / 2021 has also been filed by the petitioner for a direction to the respondent- Magadh University (for short “the University”) to hold special examination for B.A. / B.Sc. / B.Com Part-I (Hons) for the session 2019-20 for the students of the College. The petitioner has claimed that the College was earlier granted affiliation by the University which was duly approved by the State Government for the academic session 2009-10 to 2013-14 in respect of Arts & Commerce Pass Course and Honors Course and 2009-10 to 2011-12 in respect of B.Sc. Pass Course and Honors Course.

3. The affiliation to this College was further granted in Science, Arts and Commerce faculty up to the session 2015-2016 vide Annexure – 3 dated: 28.06.2016. After the session 2015-2016 affiliation to the college was not granted and / or was pending for approval before the competent authority and the petitioner in the circumstances filed a writ application bearing CWJC No. 11236 / 2018 before this Court seeking direction to the respondents to accept examination forms and fees for stu-



dents of the College for B.Sc., B.Com Part-III examination for the session 2017-18. This Court refused to direct the respondents to accept fees and forms of the students of the College on the ground that it does not have affiliation with the University within the meaning of various provisions under the Bihar State Universities Act, 1976 in the light of law as discussed by this Court in the case of National Institute of Health Education and Research Vs. State of Bihar & Ors. (C.W.J.C. No. 16553 of 2017 disposed of on 16.05.2018) and in the case of Dr. Ram Pramod Thakur and another Vs. State of Bihar & Ors. (C.W.J.C. No. 4660 of 2017 and analogous cases disposed of on 26.04.2018). This Court however directed the Principal Secretary, Higher Education Department, Govt. of Bihar, Patna to take final decision on grant of approval for affiliation in respect of the petitioner's College. Pursuant to the aforesaid order the respondent no. 2 vide Memo No. 15 / M1-41/2012-205 dated: 22.01.2019 rejected the proposal of affiliation to the College on the ground that it did not fulfill the requisite criteria for affiliation.

4.On the basis of representation of the petitioner before the Hon'ble Chancellor, the Chancellor vide letter dt-27/01/2020 bearing Memo No. MU 05 / 2020 / 218 directed the University



to make inspection and submit report and in compliance thereof inspection team submitted its report to the University and made recommendation for permanent affiliation and accordingly the respondent- University sent the said report to the Joint Secretary, Governor's Secretariat, Patna vide letter no. 121/ GIII A dt. 05.08.2020. In these circumstances the State Government vide Memo No. 2525 dt: 23.11.2021 has granted approval for affiliation to the College in question from the academic session 2021–22 (Annexure –A to the supplementary counter affidavit filed by the respondent nos. 2 to 4).

5. Learned counsel for the petitioner submits that proposal for grant of affiliation to the College was pending since long and pursuant to the order passed by this Court in CWJC No. 11236 / 2018 the proposal for grant of affiliation was rejected on 22-01-2019 but subsequently on the basis of fresh inspection done by Three Member Committee of the University affiliation to the College was granted from the Session 2021-22 on 23-11-2021.

6. From perusal of the order granting approval dt- 23/11/2021 it would be evident that the Government has directed the University to fix accountability/responsibility upon the Members of the 1st inspecting team finding apparent defects / discrepancy in the inspection report of the 1st inspect-



ing team as such it is evident that the College was entitled for affiliation at least for the session 2020-21 which was wrongly denied due to faulty inspection report submitted by the 1st inspecting team.

7. Learned counsel further submits that second inspection was done in July, 2020 and admission for the session 2020-21 started in May-June session. Accordingly, petitioner on the basis of legitimate expectation that the College would be granted affiliation at least from the session 2020-21 took admission of 2000 students for the session 2020-21. Since affiliation to the college for the session 2021-22 has been granted on the basis of second inspection done in July, 2020 and the petitioner's College has already admitted students for the session 2020-21 as such interest of justice demands that in the interest of girl students the College should be granted retrospective affiliation at least for the session 2020-21. He further submits that previously the State Govt. has granted affiliation from retrospective effect for the session 2009-10 vide letter dt. 12/06/2012 (Annexure-1 to the writ application). In support of his argument he relies upon the judgment of Division Bench of this Court reported in 2013 (4) PLJR 361 State of Bihar Vs. St. Xavier's College of Education & Ors.



8. On the other hand, learned counsel for the respondent-State submits that retrospective affiliation is not permissible in view of law laid down by the Division Bench of this Court in L.P.A. No. 1404 / 2018 (Sir Ganesh Dutt Memorial College Vs The State of Bihar & Ors.) and another analogous appeal. He also relies upon a judgment of the Hon'ble Supreme Court reported in (2012) 2 SCC 425.

9. I have heard learned counsel for the parties and have gone through the materials available on record. The issue which requires consideration before this Court is as to whether the petitioner's College was entitled to admit students prior to recognition / affiliation granted to the College by the competent authority and further in view of the plea allowing the students of the session 2017-18 having been rejected earlier by a Co-ordinate Bench of this Court in CWJC No. 11236 / 2018 the respondent-University can be directed to hold special examination for B.A. / B.Sc. / B.Com Part-I (Hons.) for the session 2019-20 for the students of the college.

10. Admittedly recognition / affiliation to the college has been granted from the session 2021-22 and if at all the petitioner's College has taken admission of the student for the session 2020-21 the same was taken during the period the college



was not affiliated / recognized by the competent authority.

11. The doctrine of legitimate expectation as argued by the petitioner is not applicable in the facts of the case inasmuch as there is no representation on part of the State that the petitioner's college can admit students pending proposal of affiliation / recognition and further recognition / affiliation was not there for the session 2016-17, 2017-18, 2018-19, 2019-20 and of -course 2020-21 as such the plea of legitimate expectation of the petitioner cannot be accepted. The prime consideration in the doctrine of legitimate expectation is reasonableness and fairness of the state action. In the present case the proposal of recognition / affiliation was pending before the State Government as per Section 21 (2)(d) of the Bihar State Universities Act 1976 [hereinafter referred to as "the Act"] as such doctrine of legitimate expectation cannot be invoked on the facts of the case where the decision of the State authority is founded under the provision of law. Besides the equity cannot be claimed against statutory provision of law.

12. The judgment relied upon by the petitioner in St. Xavier's College of Education (supra) reported in 2013 (4) PLJR 361 is not applicable in the facts of the present case inasmuch as in the aforesaid case provisional recognition was



granted to the respondent's institution and based on such recognition the students were admitted by the institution. In the present case no provisional recognition was granted to the petitioner's college. A Division Bench of this Court in LPA No. 1404 / 2018 Sri Ganesh Dutt Memorial College (Supra) by its judgment dated: 01-04-2009 has held and has cautioned the concerned institutions that in future they should not admit the students in their institutions without approval of the State Government under Section 21(2)(d) of the Act on the ground that University has recommended to the State Government for grant of affiliation. Paragraph- 5.1 of the aforesaid judgment is quoted below:-

“Before parting with the present order, we may caution the concerned institutions that in future they may not admit the students in the respective institutions without any approval by the State Government under Section 21(2)(d) of the Act and solely on the basis of the affiliation granted by the University and solely on the ground that the University has recommended to the State Government for approval. It is also further observed and directed that the State Government shall



decide and dispose of the applications for approval of the concerned institutions under Section 21(2) (d) of the Act at the earliest and preferably before start of the academic year so that such an eventuality may not occur, provided the concerned institutions or the concerned University send the recommendation in the prescribed format well in time and much before the academic year starts.”

13. Despite the caution given by Division Bench of this Court on 01/04/2019 the petitioner claimed to have taken admission of the students for the session 2020-21 without any approval of the State Government as required under Section 21 (2) (d) of the Act.

14. The Hon’ble Supreme Court in Adarsh Shiksha Mahavidyalaya and others versus Subhash Rahangdale and others reported in (2012) 2 SCC 425 in paragraph 87 (xii) has reiterated and held that no institution shall admit any student to a teacher training course or programme unless it has obtained recognition under Section 14 or permission under Section 15 of the National Council For Teacher Education Act, 1993, as the case may be.

15. In view of clear cut law laid down by Hon’ble Supreme



Court and Division Bench , in my opinion the petitioner's College ought not to have admitted the students for the session 2020-21 without any approval of the State Government as required under Section 21(2)(d) of the Act merely on the basis of recommendation made by the University to the State for affiliation / recognition. The relief claimed by the petitioner in I.A. No. 2 / 2021 for a direction to the University to hold special examination for B.A. / B.Sc. / B.Com Part- I (Hons.) for the students of the college for the session 2019-20 can also not be granted in view of the fact that similar relief sought by the petitioner's college for student of B.Sc. / B.Com Part – III examination for the session 2017- 18 in writ application bearing CWJC No. 11236 / 2018 was rejected by a Co-ordinate Bench of this Court in the light of law discussed by this Court in the case of National Institute of Health Education and Research Vs. State of Bihar & Ors. (CWJC No. 16553 / 2017 disposed of on 16-05-2018) and in the case of Dr. Ram Pramod Thakur and another Vs. State of Bihar & Ors. (CWJC No. 4660 / 2017 and analogous cases disposed of on 26-04-2018).

16. In view of the aforesaid discussions held on facts as well as on law, I come to the conclusion that affiliation / recognition to the college cannot be granted with retrospective effect



for the session 2020-21 and further no direction can be issued to the University to hold special examination of students of B.A. / B.Sc / B.Com. Part-I (Hons.) for the session 2019-20.

17. In the result the present writ application as well as I.A. No. 2 / 2021 is dismissed.

18. There shall be no order as to cost.

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	AFR
CAV DATE	08-05-2023
Uploading Date	01-06-2023
Transmission Date	NA

