

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1669 of 2013

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1. Vikash Kumar (Minor) Son Of Sri Awadhesh Kumar Patel Resident Of Village & P.O. Saidsarai, P.S. - Garakha, District - Saran At Chapra
2. Awadhesh Kumar Patel Son Of Late Wakil Singh Resident Of Village & P.O. Saidsarai, P.S. - Garakha, District - Saran At Chapra

.... Petitioners

Versus

1. The State Of Bihar Through The Principal Secretary, Department Of Science Technology, Govt. Of Bihar, New Secretariat, Patna
2. The Director, Department Of Science Technology, Govt. Of Bihar, New Secretariat, Patna
3. The Bihar Combined Entrance Competitive Examination Board, Patna, Through Its Chairman, Govt. Of Bihar , Ias Association Building, Near Patna Air Port, Patna
4. The Secretary The Bihar Combined Entrance Competitive Examination Board, Patna, Govt. Of Bihar, Ias Association Building, Near Patna Air Port, Patna
5. The Special Work Officer The Bihar Combined Entrance Competitive Examination Board, Patna, Ias Association Building, Near Patna Air Port, Patna
6. The Director, P.S.P.C., Bhagwanpur, Vaishali, District- Vaishali At Hajipur
7. The Principal, P.S.P.C., Bhagwanpur, Vaishali, District-Vaishali At Hajipur
8. The Member Secretary, All India Council for Technical Education (A.I.C.T.E.), New Delhi
9. The Patna Sahib Charitable Educational Trust through its Director H.R. (Human Resources) having corporate office at House no. 10E, Road No.12, Rajendra Nagar, P.S. Kadamkuan, Patna- 800016

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Nityanand Mishra, Adv.
Mr. Balmiki Pandey Bhasker, Adv.
For the Respondent/s : Mr. Pawan Kumar, AC to GA9
For the Trust : Mr. A.B.Ojha, Sr. Adv.
Mr. Bharat Bhushan Pd. Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

4 07-09-2015 Heard learned counsel for the parties.

This writ application was filed on 23.1.2013 wherein the
petitioner had prayed for the following relief:

“ (i) For issuance of an appropriate writ/ writs, order/
orders, direction/ directions in the nature of mandamus



directing and commanding the respondents specially respondent no. 6 & 7 to take admission of the petitioner no.1 namely Vikas Kumar under reserved category in Civil Branch in course group PE (OPEN) as per Govt. Fee norms of BC category for which the respondent no.5 has already been recommended/ directed to the respondent no. 2 and 6 whereas the respondent no.7 has verbally refused to take admission of the petitioner no.1 as his allotted seat by the BCECE, Board, Patna.

(ii) For further directing/ commanding the respondent no. 6 and 7 to pay compensation and litigation cost to the petitioners for knowingly and willful harassed the petitioners mentally, physically and financially in not taking admission in the allotted Branch and also deprived the petitioner no.1 from educational/ service career.”

This Court initially had issued notice on 28.1.2013 on respondents no. 6 and 7 and has also directed officials of the State Government to file their counter affidavit. Thereafter when the pleadings were completed, a detailed interim order was passed on 2.5.2013 which for the sake of clarity and convenience is quoted hereinbelow:

“ Heard Counsel for the parties.

Learned counsel for the petitioner prays for and is allowed to implead A.I.C.T.E as respondent no. 8.

Let two copies of the writ petition and the counter affidavit filed by the respondents be served on Mr. S.N. Pathak who normally appears for AICTE (All India Council for Technical Education) in this case.

In this case the career of petitioner no. 1, a student has been virtually sacrificed either due to whims and fancies of the management of Patna Saheb Polytechnic College, Bhagwanpur, Vaishali hereinafter referred to as the College



or on account of total inept handling of matter by the officials of the State of Bihar inasmuch as it is not in doubt that the petitioner after being declared successful in competitive examination was selected and allotted a Government seat in the College by the State Government for the course of Diploma in Civil Engineering in 2012-13 session. The case of the petitioner no. 1 however is that when he went to take admission in the College he was refused such admission by the authorities of the college on the ground of nonfulfilment of demand of payment of extra money as also by taking a plea of non availability of the seats in the college. The defence of the College as put forward before this Court on the other hand is that as a matter of fact the petitioner no. 1 never went to seek his admission in the college.

While this Court will not be in a position to put a final word as with regard to the aforementioned defence of the College at present inasmuch as it proposes to direct the AICTE to hold an inquiry on this very aspect and pass an order with regard to further continuation of recognition of the College in question in the light of the findings arrived in the inquiry report.

This much however must be observed that it prima facie appears that the name of the petitioner no. 1 was recommended for admission by the officials of the State of Bihar for the College in question on 06.12.2012, whereafter when the petitioner was refused admission by the authorities of the college on 11.12.2012, he had immediately brought this fact to the notice of Officer on Special Duty of the Bihar Combined Engineering Competitive Examination Board (hereinafter referred to as the Board). As a matter of fact the Board also appears to have immediately taken up the matter and had written a letter to the Director, Science & Technology, Bihar, Patna as also to the management of the College as is evidenced by the letter of the Board dated 14.12.2012 as contained in Annexure-5.

In the counter affidavit filed today by the Director, Science & Technology, Bihar, Patna it has been stated that the letter of the Board dated 14.12.2012 was attended by the officials of the State of Bihar other more than one month, only on 16.01.2013 by issuing a direction to the Management of the College to take admission of the petitioner. There is however, no explanation as to why it consumed a period of one month for the Director, Science

& Technology, Bihar, Patna to wake up from his slumber and take up the issue with the college which had much a much wider ramification involving career of the student petitioner no. 1.

From the counter affidavit filed by the College it would transpire that on 21.12.2012, itself the College had informed the Officer of Special Duty of the Board that the petitioner had not turned up and in that letter containing issue regarding fixation of fees and the sending of the name of the student against the Government seat within the prescribed period i.e. by the month of July was also raised. Such defence of the College could have made some sense if the matter had been closed but the Director's affidavit filed today would itself bear it out that a reminder was sent to the institute only on 05.03.2013 for taking admission of the petitioner but the said letter of the Director, was never replied by the Management of the Institute.

In fact the communication made by the Director to the AICTE and the State Board for Technical Education on 30.04.2013 will itself bear it out that the Director, Science & Technology, Bihar, Patna was prima facie of the view that the college despite being directed to take admission of the petitioner no. 1, had not taken such admission of petitioner. The allegation of the petitioners in the writ application in this regard is that an amount of double of the prescribed fees was demanded by the management of the College whereas the defence of the College is that the petitioner no. 1 had actually never turned up for taking admission and thus there was no question of any demand from for payment of the double of fees from petitioner no. 1.

This Court is not aware of truth but one thing however, is clear that the petitioner no. 1 despite being successfully selected as also recommended against the Government seat in the College by the State Government was not admitted in the Polytechnic and this writ petition complaining this very aspect was filed in this Court on 23.01.2013. It would be thus difficult for this Court for the present to believe that the student petitioner no.1 himself did not approach the authorities of the College for taking admission because if the admission of the petitioner no. 1 was being taken easily in the College as is now being projected claimed and offered by the counsel for the respondent nos. 6 and 7 where was the occasion for the authorities of the College to write back to the Board on 21.12.2012 to raise the issues

relating to amount of fees and belated sponsoring of the names of the candidates to the college against government seat.

It is thus a serious matter inasmuch as the Government seats are meant for the meritorious students who otherwise cannot afford to pay the exorbitant amount of fees as demanded by the Private Management of these Colleges. Private Management which has undertaken to allot 50 per cent of seats on merit to the Government nominees as a part of condition of being given recognition are not entitled to continue with the recognition given by AICTE inasmuch that would amount to violating the terms and conditions of the recognition. It is the AICTE which on the recommendation of the State Government grants the recognition and therefore, this Court would direct the Secretary of the AICTE to get an inquiry conducted into the allegation brought to the notice of the AICTE vide the letter of the Director, Science & Technology dated 30.04.2013 and submit a report to this Court with a period of 8 weeks from today.

Pendency of this writ application, will also not stand in the way of the AICTE to take further action against the College with regard to cancellation of its recognition if the allegation made against the College regarding refusal to take admission of the petitioner no.1 is found to be true and correct in the enquiry conducted by the officials of AICTE.

List this case after 8 weeks as a tied up matter.

Let a copy of this order be served both Mr. S.N.Pathak, learned counsel for the AICTE and Mr. S.D.Sanjai, AAGXII for its strict compliance by all concerned.”

Today when this case has been taken Mr. Awadh Bihari Ojha, learned Senior counsel, has sought to press I.A.No. 4138/2013 filed on 25.6.2013, wherein a prayer has been made to implead Patna Sahib Charitable Educational Trust through its Director H.R. as respondent no.9 to this writ application.

For the reasons mentioned in I.A.No. 4138/2013 the prayer made therein is allowed and Patna Sahib Charitable Educational

Trust through its Director H.R. as specifically explained at page 84 of the brief is directed to be impleaded as respondent no.9 to this writ application.

Mr. Ojha then explains that after the order of this Court dated 2.5.2013 the petitioners were given opportunity to take admission at least on three dates, namely, 24.5.2013, 10.6.2013 and 21.6.2013 but the petitioners on the ground of pendency of this writ application did not take admission. He has also placed before this Court an application filed by the petitioner Vikash Kumar before the Special Officer of Bihar Combined Entrance Competitive Examination Board for being given the Matriculation certificate and on the basis of the same Mr. Ojha is of the view that the petitioners in fact never wanted to take admission.

Learned counsel for the petitioners, on the other hand, has submitted that the petitioners have lost two precious years on account of refusal of admission by respondents no. 6 and 7.

Once this fact becomes admitted that the petitioners were offered admission on 24.5.2013 and they chose not to take admission, the issue as to whether the petitioners will be entitled for any damages cannot be adjudicated in writ jurisdiction. This Court on 2.5.2013 had never asked the petitioners not to take admission and in fact the allegation that the petitioners were being

subjected to excessive demand of capitation was in fact made subject matter of enquiry by the AICTE. Nonetheless if the petitioners were offered admission and they themselves did not take admission this Court will not now like to keep this writ application pending only for the purposes of determining the damages being now claimed by the petitioners for wasting of their two academic years. This can be done by way of taking recourse under ordinary law of torts, where both the parties will have the opportunity to lead evidence with regard to damages claimed by the petitioners.

Faced with this situation Mr. Mishra, learned counsel for the petitioners, wants to withdraw this application.

This application is, accordingly, permitted to be withdrawn.

Before parting with, this Court, however, would make it clear that the enquiry which was entrusted to AICTE by the order dated 2.5.2013 must be completed so that in future no student enumerated on the Government seats faces a situation as was faced by the petitioners.

(Mihir Kumar Jha, J)

surendra/-

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