

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 5291 of 2016

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Dr. Basant Singh, Son of Late Raghubir Singh, Resident of Mohalla-Golghar, P.S.-
Gandhi Maidan, P.O.-G.P.O. District-Patna

.... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Education, Department, Vikash Bhawan, New Secretariat, Patna
2. The Vice Chancellor, B.N. Mandal University Lalu Nagar Madhepura
3. B.N. Mandal University through its Registrar-Cum-Returning Officer, Lalu Nagar, Madhepura
4. The Medical Council of India Through its Secretary, Sector-8, Pocket-14, Dwarika Phase-1, New Delhi-110077

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Advocate Mr. Pranav Kumar, Advocate
For the Private-respondent :		Mr. P. K. Shahi, Sr. Advocate Mr. Sanjeet Kumar, Advocate Mr. Raj Kamal
For the State	:	Mr. Kumar Alok, SC-7 Mr. Satyeshwar Prsaad, AC to SC-7 Mr. Neeraj Kumar AC to SC-7
For the Union of India:		Mr. S. D. Sanjay, ASG Mr. Abhishek Kumar, Advocate Mr. Alok Kumar Jha, CGC
For the University	:	Mr. Mithilesh Kumar Rai, Advocate Ms. Vandana Kishore, Advocate
For the MCI	:	Mr. Kumar Brijnandan, Advocate Mr. Tarees Hameed, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 01-12-2016

Heard learned counsels for all the parties
extensively.

2. By virtue of Annexure – 13, dated 25th of



January, 2016, the election petition filed by the petitioner against nomination of private-respondent no. 6, namely Dr. Arun Kumar Agrawal, as a member of Medical Council of India (hereafter referred to as “MCI” for short) under section 3 (1) (b) of the Indian Medical Council Act, 1956, has been rejected under the signature of the Secretary of Government of India, Ministry of Health and Family Welfare. It is this order of rejection, contained in Annexure-13, whose quashing the petitioner wants through this writ application.

3. The background facts leading to the present writ application is that in terms of the provision, contained in Indian Medical Council Act, 1956, especially section 3 (1) (b), one member from each university is required to be elected from amongst the members of the “medical faculty” of the university, by the members of the Senate of the university or in case the university has no Senate by members of the Court. The petitioner and the private-respondent no. 6 became candidates for the said election and they filed their nomination. The nomination of both the candidates were objected to, but those objections were rejected or brushed aside and election was held between the two contesting parties, i.e., between the petitioner and the private-respondent no. 6.



Private-respondent no. 6 came to be returned by securing 64 votes and the petitioner, namely, Dr. Basant Singh lost the electoral battle and, therefore, he approached the High Court first by filing a writ application. The order passed in the previous writ application is Annexure – 12. The Learned Single Judge directed the petitioner to first exhaust the statutory remedy of appeal and thus the appeal was moved and Annexure – 13 was passed.

4. Besides the various deliberations, by the Secretary, Health, Government of India in the discussion while rejecting election petition of the petitioner, the main thrust of the argument, which has been advanced on behalf of the learned senior counsel for the petitioner is that grave mistake has been committed by the Election Tribunal by coming to a conclusion that since the private-respondent no. 6 has been shown to be a “medical faculty” of B. N. Mandal University by the university, therefore, the Election Tribunal will not go behind such a declaration or notification. It is for the university to take a call. But since the petitioner lost decisively in the election, the election of the private-respondent no. 6 cannot be set aside.

5. Certain preliminary objection was raised



on behalf of private-respondent no. 6, which included the fact that since the petitioner cannot get any relief by way of a direction and cannot be declared as a returned candidate, the impugned decision, contained in Annexure-13, ought not to be interfered with. The present writ application is a challenge to Annexure – 13 and not a writ of quo warranto, which is required to be entertained and adjudication made.

6. The Court allowed all the parties to the dispute to place their point of view extensively. During the course of submissions the Court came to a considered opinion that there is a legal question which emerges for serious consideration emerging from the statutory provisions, which are the Indian Medical Council Act, 1956 and the Bihar State Universities Act, 1976, from where the right of the parties to be elected as a member of the “medical faculty”, emerges.

7. The Court is tempted to reproduce section 3 (1) (b) of the Indian Medical Council Act, 1956 for the reason that it is under this provision that election was held for returning a candidate as a medical faculty of a university.

**“3 (1) (b) one member from each University,
to be elected from amongst the members of the
medical faculty of the University by members of**



the Senate of the University or in case the University has no Senate by members of the court.”

8. Some further facts are required to be taken note of as to how private-respondent no. 6 came to be notified as a member of medical faculty of B. N. Mandal University. On 31.10.2013, the Registrar of B. N. Mandal University issued a letter to the Director / Principal of three private medical colleges. The colleges are Katihar Medical College, Katihar; M.G.M. Medical College, Kishanganj; and Lord Buddha Medical College at Saharsa. This was a joint letter addressed to all the three private medical colleges. The subject indicated in the said letter is ***“Regarding visits of Dr. Arun Kumar Agrawal, Professor of Neurosurgery as Visiting Professor in Neurosurgery in the faculty of medicine.”*** The letter forwarded the bio-data of private-respondent no. 6 to the three medical colleges with a request to arrange for his visits as a Visiting Professor, for requirement from the administration for benefit of students community and the institution as well.

9. Dr. Agrawal is a Professor of Neurosurgery at Patna Medical College and Hospital in a substantive capacity and he still continues to hold that post. He is a permanent government servant under the



State of Bihar. What was the occasion for the B. N. Mandal University to recommend his case to private medical colleges is not satisfactorily explained.

10. From Annexure – R 6/9, which forms part of the counter affidavit of the private-respondent, it seems the Katihar Medical College, Katihar obliged the university as well as the private-respondent no. 6 by quickly taking cognizance of Annexure – 1 of the writ, dated 31.10.2013 by issuing a letter to the private-respondent no. 6, Dr. Agrawal on 05.11.2013 in following terms: -

**“To,
Dr. Arun Kumar Agrawal,
Professor & Head,
Department of Neurosurgery,
Patna Medical College,
Patna**

**Sub: Appointment to the post of Professor
in the department of General Surgery on Honorary
basis.**

Sir,

**The undersigned takes pleasure to inform
you that considering your academic excellence, you
have been appointed to the post of Professor in the
department of General Surgery in this college on
honorary basis. Your appointment on honorary
basis is purely in the academic interest of the
college with a view to enhance academic knowledge
of the students undergoing various UG and PG
courses in this institution. Emphasis mine.**

Necessary arrangement for your stay



during your visit to this college will be made by us. In addition, admissible T. A. / D. A. will be also payable / reimbursed to you.

You are requested to intimate us about your visit programme to this college at least one week in advance to facilitate timely preparation of teaching schedule and availability of suitable patient for clinical teaching.

Kindly confirm your acceptance.

Thanking your,

Yours faithfully

B. Mukherjee / 05.11.2013

Principal"

11. Based on the engagement / appointment of private-respondent no. 6 in Katihar Medical College as a Visiting Professor of General Surgery and not Neurosurgery, the B. N. Mandal University notified him to be a medical faculty under B. N. Mandal University. Under what principle of law when the medical college and not the university had notified him as a visiting Professor.

12. There is no dispute that the terminology used with regard to private-respondent no. 6 in the letter of appointment by Katihar Medical College, Katihar was that of a Visiting Professor of General Surgery, therefore, there is no confusion as to in what capacity and position private-respondent no. 6 was made a Visiting Professor. Then, why and how could he be shown as a "Medical Faculty" by B. N. Mandal University, when it did not



appoint him but only sponsored him.

13. Learned senior counsel for the petitioner submits that there is no “medical faculty” under B. N. Mandal University, therefore, B. N. Mandal University showing the private-respondent no. 6 as a medical faculty is a misnomer and playing fraud with the statutory provision. Any appointment or arrangement made by a private medical college and that too having minority status and only affiliated with the university is not an appointment or engagement under B. N. Mandal University. Therefore, showing the private-respondent no. 6 as a medical faculty under B. N. Mandal University is a sham and farce and the B. N. Mandal University has basically tried to lend itself to be used as a platform for facilitating election of a person, who is not a faculty under the university.

14. It is also urged that in fact the B. N. Mandal University is playing a game of surrogacy with regard to such election. It had no business or occasion to elect and return a candidate as a member of the university under section 3 (1) (b) of the Indian Medical Council of India Act as a ‘medical faculty of the university’.

15. Let us understand as to what the word



“Visiting Scholar” or a “Visiting Professor” means or is understood in the academic world. A “Visiting Scholar” or “Visiting Professor” is a scholar which belongs to a particular institution and is a regular faculty of the institution where he has been appointed. He only visits the host university or the institution and is expected to either teach, lecture or perform research on a topic the Visitor is valued for. Typically the visiting scholar is invited by the host institution. The invitation to such Scholar or Professor is regarded as a significant accolade and recognition not only to the institution but also to the Scholar, who has certain prominence in his field. He cannot become a faculty of the host institution or university.

16. In other words, a Visiting Professor is a full time employee of the parent university or institution where he is a Professor and by fact of his eminence and reputation in the academic world he is invited to enrich the faculty as well as the academic environment of another university or an institution from where invitation is sent. Such invitation does make him a faculty under the host.

17. In the present case, the Court finds it fishy that the bio-data of private-respondent no. 6 was



sponsored and forwarded, and marked to three private medical colleges to sponsor private-respondent no. 6 as a Visiting Professor. Where was the occasion for the university to do so, is not appreciated, especially when there is no medical faculty under the B. N. Mandal University, a fact not a matter of dispute. What arrangement the private medical colleges would like to make to enrich their faculty is not the business of B. N. Mandal University. They should be more concerned about the different departments and faculty which is being run by the university and under the university not some non-existent faculty. The very essence of the nature of such engagement or appointment of private-respondent no. 6 by the private medical college by no interpretation or inference can make such an engagement made by Katihar Medical College, Katihar as a "Medical Faculty" under B. N. Mandal University. In other words a game of farce in teeth of section 3 (1) (b) of MCI Act is being played by B. N. Mandal University. The university is being used by people, who are in a position to manipulate things to their advantage to become a member of Central Council of Medical Council of India.

18. The object of the Statute is not to create representation in a sham way. The representative must



be of a faculty of the university and not by adoption or manipulation of such kind, which is reflected from the facts noted in the earlier part of the order.

19. The Bihar State Universities Act, 1976 also has certain definition clauses and the word “Faculty” has been defined under section 2 (a) (f) **“Faculty” means a faculty of the university.**

20. The definition of a teacher has also been provided under section 2 (v) which reads as under:

“(v) “Teacher” means person holding the post of only University Professor / Professor, Reader, and Lecturer and such sanctioned posts in the teacher’s grade on the basis of regulations issued by the U.G.C. from time to time:

Provided, that notwithstanding the said substitution in section 2 (v), the action taken in respect of working Demonstrators appointed before 18.09.1975 on the post sanctioned before 1.1.1973 with the concurrence of Bihar Public Service Commission or Bihar State University Service Commission shall not be affected by this substitution.”

21. If the facts are what they are and there is no serious dispute with regard to the engagement of private-respondent no. 6 as a “Visiting Professor” by a private medical college and not by the university then the private-respondent no. 6 remains a Professor in PMCH in substantive capacity. His obtaining a no objection from



the Principal of PMCH that he can make visits so long the work of premium hospital in the State of Bihar is not affected, is of no avail or consequence. It is absolutely clear that a person cannot have two masters and he cannot serve two institutions simultaneously, even if there was a no objection given, but that no objection only relates to his visit and not for his appointment as such as a “Faculty” under the university.

22. The engagement of the private-respondent no. 6 even otherwise is by Katihar Medical College, Katihar, which is a minority institution, having its independent managing committee and why and how the B. N. Mandal University and its authorities have decided to adopt private-respondent no. 6 by first sponsoring his name by forwarding his bio-data, is not required to be really investigated. But according to the Court the cat is out of the bag and such an action of university is not only reprehensible but the university is further barred from sending any person as a “Medical Faculty” for any future vacancy, which may arise. The B. N. Mandal University does not have a medical faculty under it and it cannot further by surrogacy adopt a Visiting Professor of a private medical college as a faculty of the university. The present arrangement of returning candidates under



section 3 (1) (b) cannot be used or utilized by B. N. Mandal University.

23. The Court is further reinforced in observing as above after reading the definition of the word “Faculty”, “Teacher” and what constitute a faculty under section 26 of the Bihar State Universities Act, 1976, which too is reproduced hereinbelow.

“26. The Faculties. – (1) The University, other than the Kameshwar Singh Darbhanga Sanskrit University, may include the Faculties of Arts, Science, Commerce, Medicine, Law, Education, Engineering and such other Faculties as may be prescribed by the Statutes:

Provided that no Faculty shall be created by the Senate in respect of any branch of learning for the instruction of which no provision exists in any department of the University or any of its colleges. Emphasis mine.

(2) Each Faculty shall, subject to the control of the Academic Council, have charge of the courses of studies, teaching and research work in such subjects as may be assigned to such Faculty by the [Statutes].

(3) The total number of members of each Faculty shall not exceed such as may, from time to time, be prescribed by the Statutes.

(4) Subject to the provisions of sub-section (3) each Faculty shall consist of –

(a) Such number of members of the Senate as are teachers and as may be assigned to each Faculty by the Senate keeping in view the qualifications of such teacher members.

(b) such members of the Senate as are not teachers, their number in any faculty not



exceeding one-fifth of the total number of members of that Faculty, other than the Faculty of Agriculture, Engineering, Law, Medicine, Commerce or Veterinary Science and as may be elected from amongst and by the Senate in the manner prescribed by the Statutes:

Provided that in the case of the Faculty of Agriculture, Engineering, Law, Medicine, Commerce or Veterinary Science, the number of members of the Senate who are not teachers shall be such as may be prescribed by the Statutes; and

(c) such number of members, to be co-opted as experts by the Academic Council from amongst persons who are not members of the Senate, as may be prescribed by the Statutes:

Provided that no person shall be a member of more than two Faculties.”

24. The position of law being what it is, the election of the private-respondent no. 6 as a medical faculty elected by the Senate of B. N. Mandal University, therefore, is not supported by law. He cannot be the true representative under the statutory provision of the Indian Medical Council Act, especially section 3 (1) (b) and, therefore, the Election Tribunal made a serious error by not examining the objection of the petitioner whether the private-respondent no. 6 was actually a medical faculty under B. N. Mandal University or not. By ignoring such objection and putting the onus on the university, the Election Tribunal, in the opinion of the Court, has committed a serious error of law, which goes to the root



of the election of the private-respondent no. 6.

25. In view of the above, the impugned order, contained in Annexure-13, is quashed. The writ application is allowed. The election of private-respondent no. 6 is declared null and void forthwith.

As a corollary, it does not mean that the petitioner gets any relief of being returned as a candidate in lieu of the private-respondent no. 6, because even he seems to be hit by the rational and reasoning provided by this Court for setting aside the election of private-respondent no. 6.

(Ajay Kumar Tripathi, J)

SKM/-

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CAV DATE	
Uploading Date	05.12.2016
Transmission Date	

