

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1959 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 21565 of 2014

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1. Jag Jivan Abhyuday Sanskrit Mahavidalaya, Abhyudaya Nagar, Post-Abhyuday Ashram Via Amarpur, District- Banka (new District- Bhagalpur) through its Principal namely Dr. Sachinda Nand Sharma, Son of Shri Yadu Nandan Sharma, Resident of Village- Gopalpur, P.O.- Abhyuday Ashram, P.S.- Amarpur, District- Banka.
 2. Mithila Sanskrit Mahavidalaya, Sasaula Sabha, P.O.- Sasula Sabha via Baraharwa, District- Sitamarhi through its Principal namely Uma Shankar Mishra, Son of Late Nitya Nand Mishra, Resident of Village + P.S.- Rosera, District- Samastipur.

.... Writ Petitioners- Appellant/s

Versus

1. Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga through its Registrar.
2. The Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
3. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.

... .. Respondents 1st Set.

4. The State of Bihar through its Principal Secretary, Higher Education, Government of Bihar, Vikas Bhawan, New Secretariat, Patna-800001.
5. The Principal Secretary, Higher Education, Government of Bihar, Vikas Bhawan New Secretariat, Patna-800001.
6. The Joint Secretary, Higher Education, Government of Bihar, Vikas Bhawan New Secretariat, Patna-800001.
7. The Director, Higher Education Directorate, Government of Bihar, New Secretariat, Patna- 800001.

.... Respondents 2nd Set.

8. The Secretary, Governor Secretariat, Bihar, Patna- 800001.

.... Respondent 3rd Set.

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Appearance :

For the Appellants : Mr. Y. V. Giri, Senior Advocate
Mr. Pranav Kumar, Advocate

For the Respondents-State : Mr. Lalit Kishore, P.A.A.G.
Mr. Prashant Pratap, G. P.-2
Mr. Dev Kr. Pandey, A.C. to G.P.-2
Mr. Gyan Shankar, A.C. to G.P.-2

For the University : Mr. Awadhesh Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 29-09-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 25th August, 2015 whereby, the writ application filed by the appellants was disposed of with a direction to carry out exercise of inspection afresh for the purpose of recognition/affiliation.

Learned counsel for the appellants vehemently argued that the question, which was raised before the learned Single Bench as to what are the norms which have to be kept in view before granting recognition/affiliation, requires to be adjudicated upon as it is on the said basis alone, the question of recognition/affiliation can be examined.

The challenge in the writ application is to the communication dated 6th January, 2014 whereby, the claim of the appellants for affiliation has been declined on the basis of the Statute

framed by the University on 19th of April, 1986 under Section 21(2) (d) of the Bihar State Universities Act, 1976 (for short, 'the Act').

Learned counsel for the appellants argued that norms for affiliation were circulated on 18th of October, 1976. It is the said norms which will govern the institution seeking recognition or affiliation in existence at that time. It is contended that the subsequent enactment of the Act or the Statute framed there under will not be applicable to the appellants when institution was established in the year 1976 and has been granted temporary affiliation from year to year till 1984. In support of such an argument, learned counsel for the appellants relies upon an order passed by this Court in CWJC No.9085 of 1999 (Saraswati Vilas Sanskrit Mahavidyalaya, Shokhara, Barauni & Ors. Versus Kameshwar Singh Darbhanga Sanskrit University & Ors.) including one of the appellants on 22nd of January, 2001. In the said case, the learned Single Judge has set aside the decision of the State Government communicated on 24th June, 2000 giving reference to the Circular dated 18th of October, 1976 and the Act to decline the affiliation to the institutions, such as the present appellants. It is the said decision which was struck down by the learned Single Bench. The findings recorded by the learned Single Bench, inter alia, reads as under:-

“17. It may at first be pointed out that letter No. 3276 dated 21.9.76 the existence of which led to the so-called deletion/repeal

of resolution dated 18.10.76 did not contain any provision regarding the student strength. It laid down standards for affiliation of Sanskrit Colleges, such as, the College should have sufficient land (As mentioned in the letter), pucca building, requisite liquidity i.e. cash reserve, library, grounds, etc. It is the own case of the Government that the student strength is a relevant consideration to decide the viability of an institution, and as I have already said above, there is substance in the stand. The point is if letter dated 21.9.76 did not contain any provision as to student strength which is a relevant consideration for deciding recognition/affiliation matter, whether the very basis or reason for deletion of the relevant part of resolution No. 2261 dated 18.10.76 had any substance. Answer, in my opinion, must be in the negative. So far as other conditions, such as, land, building, etc. are concerned, may be, there was conflict in the two Government orders, but there was no such conflict with respect to the student strength. As a matter of fact, there being no such conditions laid down in the letter dated 21.9.76 the question of conflict did not arise at all, but under an apparent and misconceived notion, the whole of paragraph 5 of resolution dated 18.10.76 dealing with Sanskrit Colleges was deleted which apparently resulted in deletion of the condition regarding the student strength also. In my opinion, as the object of deletion by resolution dated 22.6.76 was to do away with the conflict, there being no conflict as such regarding standard strength, the provision relating to student strength contained in condition No. 7 in paragraph 5, did not stand deleted. If the resolution dated 22.6.77 is interpreted as deleting that provision as well, it would follow that there was no Government order fixing the student strength in Sanskrit Colleges. In this connection, it would not be out of place to point out that while letter No. 3276 dated 22.9.76 was a mere circular of the Education Department meant for the Kameshwar Singh Sanskrit University, the one dated 18.10.76 is a resolution of the Government which prima facie means that it was the communication of the decision at the

Government level, may be, by the Council of Ministers.

20. In the result, these writ petitions are allowed. The decision as contained in letter dated 24.6.2000 is set aside. The State Government is directed to reconsider the affiliation matter keeping in view the findings and observations made hereinabove within three months of receipt/production of a copy of this judgment, and pending such consideration to release adequate fund to facilitate payment of current salary to teachers and non-teaching staff of the College for the present, from January 2001. There will be no order as to costs.”

Letters Patent Appeal No.318 of 2001 (The State of Bihar & Ors. Versus Saraswati Vilas Sanskrit Mahavidyalaya, Shokhara, Barauni, Begusarai & Others) against such judgment was dismissed on 22nd June, 2006. In the said case, this Court has considered the Resolution dated 18th of October, 1976 and the subsequent Resolution dated 22nd of June, 1977 (at certain places mentioned as 21st September, 1976; 22nd June, 1976 or 22nd September, 1976) to return a finding that the Resolution dated 18th of October, 1976 will continue to be applicable as against the Resolution dated 22nd June, 1977.

Learned counsel for the appellants has further pointed out that in terms of the direction of this Court, the grant-in-aid was ordered to be paid to 16 colleges and out of such list, 10 institutions have been granted permanent recognition, but the institutions of the appellants are the ones which are excluded for wholly untenable

grounds and without any good and sufficient reason.

Mr. Lalit Kishore, learned Principal Additional Advocate General, on the other hand, contends that the Resolution dated 18th of October, 1976 has lost its effect after the Act was enacted and came into force on 17th of May, 1977. After the enactment of the Act, the provision of the said Act and the Statute made there under alone will be applicable and not the earlier Resolution dated 18th of October, 1976 taken by the State Government in exercise of the executive power of the State at an earlier point of time.

We have heard learned counsel for the parties and find that the decision of the State Government taken on 18th of October, 1976 continues to be valid and enforceable as such decision does not run counter to any of the provisions of the Act and the Rules framed there under in respect of the institutions which were established when such decision was in force. The Statute dated 19th April, 1986 would be applicable to those institutions which come into existence after the issuance of the said Circular. Such Statute will not have retrospective effect to the institutions which were in existence prior thereto. The revised norms will not be applicable to existing institutions, such as the appellants.

Still further, the decision of the State Government dated 24th of June, 2000 stands set aside by this Court in Saraswati Vilas

Sanskrit Mahavidyalaya, Shokhara, Barauni's case (supra). The said decision was taken in the light of the provisions of Section 21 of the Bihar State Universities Act, 1976 and the decision dated 18th of October, 1976. Once the said Circular has been set aside, therefore, as a necessary consequence, the appellants would be governed by the Circular dated 18th October, 1976.

Consequently, the communication dated 6th of January, 2014 is set aside. The respondents are directed to consider the claim of the appellants for grant of recognition and/or of affiliation in accordance with the Circular dated 18th of October, 1976 expeditiously following the order passed Saraswati Vilas Sanskrit Mahavidyalaya, Shokhara, Barauni's case (supra) in which the appellants were the parties.

The Letters Patent Appeal is, accordingly, allowed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	A. F. R.
CAV DATE	N. A.
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