

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4670 of 2017

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S. M. Zafar Imam, Son of late S.M. Zareef, Resident At + P.S. + P.O.- Bahera, District- Darbhanga (Bihar) at present President Rauf Muslim Jamia (Reg.)-cum-Chairman S.M. Zaheer Alam Teacher Trailing College, Bahera, District-Darbhangha.

.... Petitioner/s

Versus

1. The Hon'ble Chancellor of Universities of Bihar, Patna.
2. The Officer on Special Duty (Judicial), Hon'ble Chancellor Secretariat, Universities of Bihar, Patna.
3. The State of Bihar through the Principal Secretary Human Resources Development Department, Govt. of Bihar, Patna.
4. The Lalit Narayan Mithila University, Darbhanga through its Registrar.
5. National Commission for Minority Education Institution through its Secretary Gate No. 4, Ist Floor, Jeevan Tara Building-5, Sansad Marg, Patel Chowk, New Delhi- 110001.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Advocate
For the Respondent/s	:	Mr. Lalit Kishore PAAG-1

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 03-07-2017

Heard learned counsel for the petitioner, learned counsel for the Hon'ble Chancellor, learned counsel for the university and learned counsel appearing on behalf of the State.

2. I. A. No. 3534 of 2017 has been filed for permitting intervention on behalf of the Intervener, who is ably assisted by



learned senior counsel for the Intervener.

3. Looking at the nature of challenge thrown in the present writ application, which is to test the validity of an Ordinance, made by the Hon'ble Chancellor, regulating admissions into B.Ed. course with regard to aided, non-aided or minority institutions, the Intervention Application stands rejected.

4. At the very outset, counsel for the Hon'ble Chancellor, the university as well as the State in unison rose in protest by raising a preliminary objection that this writ application is not maintainable and should be dismissed in limine or at the threshold.

5. The reason for making such a submission on behalf of the respondents is that the challenge, which has been thrown to the Ordinance, a copy of which is Annexure – 1 to the writ application, was promulgated by the Hon'ble Chancellor, which became a subject matter of challenge in a large number of writ applications, challenging the legality of such Ordinance. Batch of writ applications were clubbed and heard by a Division Bench, which was the case of ***Mirza Ghalib T. T. College & others Versus the State of Bihar & others and analogous cases***. The decision, dated 27.10.2016, rendered by the Division Bench, now, stands ***reported in 2017 (1) PLJR 256***. The Division Bench rejected all the writ applications in following terms:

“70. In view of the decisions of Supreme Court, as discussed above, we do not find any



illegality or unconstitutionality in prescribing for Common Entrance Test, to be held by a University, for the institutions conducting B.Ed. programme, under the said particular University, on the basis of merit-list, so obtained, and allotment of seats through counseling. In view of the law which has been laid down by the Supreme Court in case of Modern Dental College & Research Centre (supra), a Combined Entrance Test, by an agency which enjoys credibility in the matter to achieve fulfillment of twin objectives of transparency and merit, can be provided by the State, which is in the larger public interest. Such restriction has been held to be reasonable, satisfying the test of proportionality by the Supreme Court in case of Modern Dental College & Research Centre (supra). The principle equally applies to minority institutions and minority and non-minority institutions cannot be distinguished for the purpose of regulating admission on the basis of Combined Entrance Test. It would, however, have been better situation, if State level CET was held instead of University wise tests.

71. We, therefore, do not find any merit in the plea made on behalf of the appellants that the provisions, laid down in the Ordinance, to the extent they relate to laying down the procedure for admission through Combined Entrance Test to be held by the respective Universities, are violative of any constitutional provision or other statutory enactment.

72. From the pleadings on record, we have noticed that the institutions have claimed to have taken admission on the basis of tests, separately held by the individual institutions. No Combined Entrance Test was held by the Association of institutions for the purpose of admissions in unaided institutions, imparting B.Ed. programme, in the State of Bihar. Such admissions, which have been taken, are, apparently, in violation of the law declared by the Constitution Bench of Supreme



Court in case of Modern Dental College & Research Centre (supra), as has been discussed above, which is in the light of previous Supreme Court decisions in case of T.M.A. Pai Foundation (supra), Islamic Academy of Education (supra) and P.A. Inamdar (supra).

73. Taking a cue from the observations made in paragraph 19 of Supreme Court decision in case of Islamic Academy of Education (supra), we observe that the Chancellor of the Universities of Bihar shall have power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, against which no finger has ever been raised and no complaint made regarding fairness, to adopt its own admission procedure. It is made clear that no institute which has not been established and which has not followed its own admission procedure for the last, at least 25 years shall be permitted to apply for or be granted exemption from admitting students through CET. If any Committee has been constituted, in the light of Supreme Court decisions in case of Islamic Academy of Education (supra)/P.A. Inamdar (supra), such Committee shall also have the power to grant such exemption, after due notice and adequate opportunity to the State of Bihar and the affiliating University of hearing.

74. The interim orders, allowing the institutions to admit students, accordingly, stand vacated. The institutions shall be required to abide by the provisions under the Ordinance in this regard.

75. In the facts and circumstances of the case, we direct the Universities to hold a Combined Entrance Test for admission to B.Ed. courses in unaided education institutions, if not already held, within a period of one month from today, in accordance with the provisions of the Ordinance.

CHALLENGE TO FEE STRUCTURE :-

76. Coming to the challenge to fee structure,



prescribed in the Ordinance, chargeable from the students, we notice that total fee for two years B.Ed. course has been fixed as Rs. 95,000/-. In letter No. BSU (Regulation)- 16/2015-1283/GS(I), dated 02.09.2015, through which the said Ordinance is sought to be implemented, it has been mentioned that the said fee has been fixed provisionally and the State Government shall constitute a State Level Committee, in future, for deciding the fees for the said course, as per the guidelines of UGC Regulations, 1997, within three months and the decision of the State Level Committee in respect of fees shall be binding for such professional institutions affiliated to the Universities in the State.

77. In order to find out the basis for fixation of fee structure, prescribed in the Ordinance, we had called for the original records dealing with such fixation. On perusal of such records, we do not find any material available which can be said to be the basis for arriving at the said fee structure. It appears that NCTE has laid down Norms and Standards for Bachelor of education programme leading to Bachelor of Education (B.Ed.) Degree, which contains, inter alia, the admission procedure and the fees, which can be charged by unaided teachers' educational institutions. Clause 3.3 of the said Norms, which prescribes admission procedure, reads thus:-

"3.3 Admission Procedure: Admission shall be made on merit on the basis of marks obtained in the qualifying examination and/or in the entrance examination or any other selection process as per the policy of the State Government/U.T. Administration and the University."

78. Clause 3.4 of the said Norms, which deals with fees, reads thus:-

"3.4 Fees: The institution shall charge only such fee as prescribed by the affiliating body / state government concerned in accordance with provisions of National Council for Teachers



Education (NCTE) (Guidelines for regulations of tuition fees and other fees chargeable by unaided teacher education institutions) Regulations, 2002, as amended from time to time and shall not charge donations, capitation fee etc. from the students.”

79. We, however, from the original records have not been able to make out as to whether while fixing fee of Rs. 95,000/-, for two years B.Ed. programme, the factors, as prescribed in Clause 3.4 of the norms and standards, laid down by the NCTE, had been taken into account. As has been indicated above, the Supreme Court, in case of Modern Dental College (supra), has held that for fixing the fee structure, factors, like infrastructure and facilities, investment made, salaries paid to the teachers and staff and future plans for expansion and/or betterment for institution, are to be kept in mind, subject to two restrictions, namely, non-profiteering and non-charging of capitation fee.

80. We do not find any material on record, which can demonstrate that these considerations had been kept in mind while deciding the fee structure and any adequate exercise was at all done in this direction.

81. We are mindful of the fact and it has been mentioned in the letter, dated 02.09.2015, through which the Regulation/Ordinance is being sought to be implemented that the said fee structure has been fixed provisionally and a State Level Committee is proposed to be constituted for deciding the fee structure. Since we do not find any material basis on record for arriving at the fee structure, as prescribed, we intend to hold the said fixation of fee, which has been made a part of the Ordinance itself, to be without any basis and, therefore, unsustainable.

6. The Court is informed that a serious effort made by the petitioners of the said writ application to throw out the Ordinance was also made at the level of the Hon'ble Supreme Court by a batch



of ***Special Leave to Appeal (C) No. 32583-32584 of 2016***. The batch of SLA stood dismissed on 30th of June, 2017, a copy of which has been fairly annexed by the counsel for the petitioner as Annexure – 9.

7. Counsel for the petitioner submits that despite dismissal of the writ application by the Division Bench as well as by the Hon'ble Apex Court, some serious questions could not be raised at the time the adjudication was made, when the Ordinance in question was challenged before the High Court or even the Hon'ble Apex Court. One of them being that the procedure laid down under section 36, 38 and 39 of the Bihar State Universities Act, 1976 was not followed. Besides, the issue of the Ordinance seems to be in conflict with the decision rendered in case of ***TMA PAI Foundation and others versus State of Karnataka and others, reported in [(2002)8SCC481]***.

8. Such submissions and articulations of the counsel for the petitioner in no way helps his case in overcoming the binding precedents as well as the principles of adjudication as well as finality which is required to be given to issues raised and adjudicated earlier. If such a wide play is permitted in such litigation then no litigation can attain finality whatever be the level of adjudication, because every counsel will have freedom to urge that such question or point was not pressed which had implication or could have turned the table in their favour.

9. In the above-stated circumstances the writ application is dismissed in limine on the ground that a second round



of challenge to an Ordinance whose validity has not only been held to be good by the Division Bench of this High Court but is affirmed even by the Hon'ble Apex Court cannot be permitted.

In view of the same, writ application stands dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

SKM/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	06.07.2017
Transmission Date	

