

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1171 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 10816 of 2014
Alongwith
Interlocutory Application No. 4782 of 2016.**

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1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
 2. The Principal Secretary, Department of Science and Technology, Government of Bihar, Patna.

.... Respondent Nos. 1 & 2-Appellants
Versus

1. Manish Mishra, Son of Dr. Jagannath Mishra, resident of 113/70B, L.B.S. Nagar, Patna-23, P.S.- Shastri Nagar, District- Patna.
.....Petitioner-Respondent 1 set.
2. All India Council of Technical Education, 7th Floor, Chander Lok Building, Janpath, New Delhi, through its Member Secretary.
.....Respondent No. 3..Respondent 2nd set.
3. Aryabhatt Knowledge University, Mithapur, Patna through its Registrar.

.... Respondent No. 4-Respondent 3rd set.

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Appearance :

For the Appellants : Mr. P.N. Sahi, Sr. Advocate and Mr. Dhirendra Kumar, A.C. to A.A.G.
For the Respondents : Mr. Y.V. Giri, Sr. Advocate.
Mr. Alok Kumar and Mr. Binodanand Mishra, Advocates.

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)
Date: 19-01-2017**

Re.: Interlocutory Application No. 4782 of 2016.

The application is for condonation of delay of 137 days in filing of the present Letters Patent Appeal.

For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.



Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No. 1171 of 2016.

This Letters Patent Appeal has been filed by the State of Bihar and is directed against the order dated 01.12.2015 passed by the Learned Single Bench in CWJC No. 10816 of 2014, whereby the Learned Single Bench has quashed the orders contained in Annexure-7 dated 17.11.2008 and Annexure-11 dated 24.05.2013 and consequently allowed the writ petition.

The brief facts leading to the present Letters Patent Appeal are as under:-

The respondent no.1 filed CWJC No. 10816 of 2014, seeking quashing of the order contained in Memo No. 1392 dated 24.05.2013 issued under the signature of the Principal Secretary, Department of Science & Technology, Government of Bihar, Patna, by which the representation of the respondent no.1 against the decision of the appellants regarding change of the name of the Institution i.e. Dr. Jagarnath Mishra Institute of Technology, Darbhanga, as 'Darbhanga College of Engineering', had been rejected, in view of power conferred under Section 3(3) of Bihar Private Engineering College (Taking Over) Act, 1991. The contention of the respondent no.1 was that way back in the year 1975 Mithila Vikash Sansthan, a society registered under Societies Registration



Act, 1960, established Dr. Jagarnath Mishra Institute of Technology, Darbhanga, under the guidance of Dr. Jagarnath Mishra. In the said College, teaching started since 1980-81 and the said Institution was affiliated with L.N. Mishra University, Darbhanga.

The said Institution namely, Dr. Jagarnath Mishra Institute of Technology, Darbhanga, was taken over by the State Government in the year 1986 under The Bihar Private Engineering College (Taking Over) Ordinance, 1986 dated December, 08, 1986 with two others Engineering College i.e. Indian College of Engineering, Motihari, and Magadh Engineering College, Gaya. The further contention of the respondent no.1 was that the said Ordinance of 1986 was repealed by Bihar Private Engineering College (Taking over) Act 1991. In the said Act, a new provision under Section 3 (3) was inserted, enabling the State Government to change the Private Engineering College in any other Technical Institution. Exercising power under Section 3 (3) of the Act, the State Government vide notification dated 03.01.1991 changed the aforesaid three taken over Private Engineering Colleges as Polytechnic College.

After a long gap, the State Government made an application before the All India Council for Technical Education, New Delhi, on 20th February, 2008 for establishment of Dr. Jagarnath Mishra Institute of Technology, Mabbi, Darbhanga (Bihar) and thereafter,



necessary formalities were done and lastly the Syndicate of the respondent University in its meeting dated 27.09.2008 granted permission to Dr. Jagarnath Mishra Institute of Technology, Mabbi, Darbhanga, for admission of 60 (sixty) students per Session, since 2008-09. On 17.11.2008, Dr. Jagarnath Mishra Institute of Technology, Mabbi, Darbhanga, was granted provisional affiliation, in anticipation of the approval of the Senate for conducting B.Tech course with effect from the Session 2008-09.

The grievance of the respondent no.1 is that at the time of inauguration of said Engineering College, the State Government changed the name of the Institution as 'Darbhanga College of Engineering', Darbhanga, which was not permissible and it was arbitrary exercise of power to take over the management and control of the Private Engineering College and the said decision regarding change of name is not in tune with Section 3 (3) of the Act.

The Learned Counsel for the appellants submits that Section 3 (i)&(ii) of the 1991 Act provides about handing over and vesting of concerned Private Engineering College, in the State Government free from all encumbrances from the date of enforcement of the Act, which is in pari-materia with the provisions of 1986 Ordinance and in that view of the matter the State was free and competent to alter the name of the Institution also. The counsel for the appellants further submits



that change in name, of any Government owned Institution is under the administrative power of the State Government, which does not require legislative formalities and in the present case, the respondent no.1 and his family member had never donated any land or any other contribution to the Institution, therefore, he had no occasion to challenge the decision with regard to change of name of Dr. Jagannath Mishra Institute of Technology, Darbhanga. The Government took an uniform decision to change the name of all the three taken over Private Engineering Colleges including the college in question, in the name of it's respective places, where the Institution is situated. Therefore, there is no infirmity in the decision of the authority to change the name.

The Learned Counsel for the respondents submits that the Institution was established many decades ago as a Private Engineering College by his father namely, Dr. Jagannath Mishra, and the State authority after many-many years has decided to change the name by a executive decision, which is not sustainable. It is further submitted that Section 3(3) of the Bihar Private Engineering College (Taking Over) Act, 1991 does not confer such power to the State authority to change the name of the Institution.

From the bare reading of Section 3 (i) of the Bihar Private Engineering College (Taking Over) Act 1991, it appears that after



enforcement of the Act of 1991, the three Private Engineering Colleges, have been vested absolutely in the State Government and became the property of the State Government. Section 3(3) of the Act, says that the State Government is empowered to make change the taken over Institution, into any other Technical Institution, therefore, the power of the State Government only to change the name of the Institution is not under any prohibition. Apart that the respondent no.1, or any other family member was not the donor even of the land of the Institution, therefore, has no locus to challenge the decision of the Government with regard to the change of name of the Institution, which has absolutely vested in the State Government, way back in the year 1986, by virtue of Bihar Ordinance No. 37 of 1986.

We are of the view that the order of the Learned Single Bench is not sustainable, therefore, set aside.

This Letters Patent Appeal is, accordingly allowed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

U.K./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.02.2017.
Transmission Date	

