

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.825 of 2017
Arising out of
Civil Writ Jurisdiction Case No. 13405 of 2016**

- =====
1. Bihar Agricultural University through its Registrar having its office at Sabour, Bhagalpur.
 2. The Vice-Chancellor, Bihar Agricultural University at Sabour, Bhagalpur
 3. The Registrar, Bihar Agricultural University at Sabour, Bhagalpur
 4. The Director Administration, Bihar Agricultural University at Sabour, Bhagalpur
 5. The Principal, Bihar Veterinary College, Patna
 6. The Dean, Faculty of Veterinary Science, Bihar Veterinary College, Patna
- Appellant/s

Versus

Dr. Raj Kishore Sharma, son of Sri Arjun Prasad Sharma, resident of Village-Sohjana, Police Station- Jhajha, District- Jamui

.... Respondent/s

=====

Appearance :

For the Appellant/s : Dr. K.N. Singh, Sr. Advocate
Mr. Shailendra Kumar Singh, Advocate
For the Respondent/s : Mr. Sanjeev Kumar Mishra, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 12-05-2017

Heard on I.A. No. 3729 of 2017, an application seeking
condonation of six days' delay in filing of this appeal.

2. Keeping in view the reasons indicated in the
Interlocutory Application, the same is allowed and delay in filing of
this appeal is condoned.

3. Seeking exception of an order dated 04.04.2017
passed in C.W.J.C. No. 13405 of 2016, this appeal has been filed
under Clause 10 of the Letters Patent.



4. The respondent appellant Dr. Raj Kishore Sharma filed a writ petition and sought various reliefs primarily with regard to permitting him to prosecute a course of study for obtaining a Doctorate in Philosophy. When the matter was taken up before the Writ Court on 04.04.2017, it seems that on behalf of the appellant University, an additional affidavit was brought on record and in the additional affidavit it was indicated, that the University is ready to consider the case of the writ petitioner to pursue the Ph.D. Course in his parent University, namely, the Bihar Veterinary College as an in service candidate. Taking note of the aforesaid assertions made in the additional affidavit and based on the submission made by learned counsel for the University, in the said additional affidavit, the writ petition has been disposed of. However, according to the University and based on the documents and material produced in I.A. No. 3730 of 2017 it is pointed out that the officer who had sworn the additional affidavit was not authorized to do so and the statement made by him in the affidavit was contrary to the Statute and could not be made.

5. Even though by filing a detailed counter affidavit, learned counsel appearing for the original petitioner Dr. Raj Kishore Sharma refutes the aforesaid and challenges the same, we are informed that a review application bearing Civil Review No. 178 of 2017 has been filed before the learned Writ Court pointing out all



these factors as are detailed hereinabove and a prayer has been made in the review application for recall of the order or its modification. When these facts were brought to the notice of this Court, we were of the considered view that now as the matter is pending consideration before the Writ Court itself in a review application, this appeal need not be further proceeded with and the University should await the decision on the review application and, therefore, they should withdraw this Letters Patent Appeal and seek liberty to prosecute the review application.

6. However, it is indicated by learned senior counsel appearing for the University that the learned Writ Court has expressed its inability to hear the review application before the ensuing Summer Vacation and, therefore, left with no other alternative and facing a contempt in the matter, the Letters Patent Appeal has been filed.

7. Taking note of the totality of the situation, we are of the considered view that the grounds primarily raised in this appeal for setting aside the impugned order of the learned Writ Court being already subjudice and under considering before the Writ Court itself in Civil Review No. 178 of 2017, it is not appropriate for this Court to go into various aspects of the matter at this stage when the learned Writ Court is to consider the review application and take a decision.



However, at the same time, when the review application is pending, further proceeding with the contempt application is not appropriate. However, learned counsel for the respondent original petitioner points out that if a decision is not taken with regard to his admission before 13th of May, 2017, his right to seek admission may be adversely affected. The writ petitioner should not have any such apprehension. His right to seek admission would stand protected and the date of 13th of May, 2017 will not come in his way as this Court is already seized of the matter and the Writ Court having already granted him the benefit, can, while passing orders on the review application issue an appropriate direction to the University to permit the writ petitioner to prosecute the course even after the cut off date is over. That being the legal right available to the writ petitioner, on this count, it is not necessary to proceed further with this appeal. Interest of justice would be met in case the Writ Court is requested to proceed to decide the review application in accordance with law at an earlier date and till a decision is not taken on the review application, implementation of the order dated 04.04.2017 passed in C.W.J.C. No. 13405 of 2016 shall be kept in abeyance.

8. With the aforesaid observations and liberty to the parties, the Letters Patent Appeal stands disposed of. Parties are at liberty to raise all grounds as are permissible under law before the



Review Court.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	16.05.2017
Transmission Date	

