

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19742 of 2016

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Khairuddin Ahmad, son of Late Md. Azizi Ahmad, resident of
Bharat Milap Chowk, Bhagwan Bazar, P.S.- Bhagwan Bazar,
District- Chapra (Saran).

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. Jai Prakash University, Chapra through its Registrar.
3. Vice Chancellor, Jai Prakash University, Chapra.
4. Registrar, Jai Prakash University, Chapra.
5. Dr. P.N. Singh Degree College, Sant Ganga Das Nagar, Brahampur, District- Chapra through its Principal.
6. Secretary, Governing Body, Dr. P.N. Singh Degree College, Sant Ganga Das Nagar, Brahampur, District- Chapra.
7. Shri Janardan Singh Sigriwal, Public Representative Member, Governing Body, Dr. P.N. Singh Degree College, Sant Ganga Das Nagar, Brahampur, District- Chapra.
8. Shri Kumar Pashupati Singh, son of not known to the petitioner, President, Governing Body, Dr. P.N. Singh Degree College, Sant Ganga Das Nagar, Brahampur, District- Chapra.
9. Shri Rajiv Ranjan, son of not known to the petitioner, Donor Member, Governing Body, Dr. P.N. Singh Degree College, Sant Ganga Das Nagar, Brahampur, District- Chapra.
10. Shri Dhurv Narayan Singh, son of not known to the petitioner, Teachers' Representative Member, Governing Body, Dr. P.N. Singh Degree College, Sant Ganga Das Nagar, Brahampur, District- Chapra.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava, Adv.

For the J.P. University : Mr. Anjani Kumar, Sr. Adv.

Mr. Nagendra Kumar Singh, Adv.

For the Respondent No.5 : Mr. Sarvadeo Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 30-06-2017

The petitioner puts to challenge the notification, dated 02.02.2016, issued by the Jai Prakash University, Chapra (*hereinafter referred to as the "University"*), whereby, constitution of Governing Body of the Dr. P.N. Singh Degree College, Chapra (*hereinafter referred to as the "College"*) has been notified, under Section 60 of the Bihar State Universities Act, 1976 (*hereinafter referred to as the "Act"*). The said College is a permanently affiliated College, under the University. The petitioner's claim is that he has made donations to the said College of a sum, more than Rs. 25,000/-, and, therefore, he is one of Donors of the College, within the meaning of the "Statutes Regarding Governing Body".

2. By the impugned notification, respondent No. 7 has been nominated as Public Representative Member,



under Clause (vi) of Article 1 of the Statutes, regarding Governing Body (*hereinafter referred to as the "Statutes"*), framed under the provisions of the Act. Respondent No. 8 has been co-opted as Educationist Member, under Clause (vii) of Article 1 of the Statutes, whereas, respondent No. 9 as Donor Member, under Clause (v) of Article 1 of the Statutes, and respondent No. 10 as Teachers' Representative Member under Clause (ii) of Article 1 of the Statutes.

3. In the order, dated 29.06.2017, passed in this case, let 'Part-II of Clause 2' be read in place of 'Part-II of Clause 32'.

4. From the order, dated 22.06.2017, it appears that it has been inadvertently mentioned that all the private respondents have entered appearance, rather only private respondent No. 5 has entered appearance. Rest of the private respondents, despite valid service of notice, have chosen not to appear.

5. I have heard Mr. Abhinav Srivastava, learned Counsel, appearing on behalf of the petitioner, Mr. Anjani Kumar, learned Senior Advocate, appearing on behalf of the University, and learned Counsel representing respondent No. 5.

6. At the very outset, learned counsel, appearing on behalf of respondent No. 5-the Principal of the



College, has raised preliminary objection over the maintainability of the writ application, on the ground of availability of alternative remedy under Clause (ii) of Article 2 of the said Statutes and Section 9 of the Act. Article 2 of the Statutes reads thus:-

"(2) (i) If for any reason the Governing Body of an admitted college is not constituted, the Syndicate shall constitute an Ad-hoc committee of not more than five members until the Governing Body is constituted. The President and the Secretary of the Ad-hoc committee shall be nominated by the Vice-Chancellor.

(ii) If any difficulty arises in the formation or the filling up of any seat in the Governing Body of any admitted college for any reason what-so-ever, the Syndicate shall on its own initiative or on reference to it shall decide the issue. If anybody, however, is dissatisfied with the decision of the Syndicate, he shall have the right of appeal to the Chancellor within thirty days of the decision whose decision thereon shall be final and binding on the persons concerned."



7. It is contended on behalf of respondent No. 5 that since the petitioner is challenging the constitution of the Governing Body, it amounts to difficulty in formation of filling up of any seat in the Governing Body within the meaning of Clause (ii) of Article 2 of the Statutes and, therefore, the petitioner has remedy of approaching with the decision of the Syndicate of the University and if dissatisfied with the decision of the Syndicate, he shall have remedy of appeal before the Chancellor of the Universities of Bihar.

8. I do not find any merit in such preliminary objection, since, in my view, the said Clause (ii) of Article 2 of the Statutes, shall have application, if there arises any difficulty in formation of Governing Body or in filling up of any seat in the Governing Body of any admitted college. Here, the Governing Body has already been formed and notified by the University, which is under challenge in the present writ application. In my view, therefore, Clause (ii) of Article 2 of the Statutes will have no application for the purpose of challenging the notification issued in the present writ application.

9. With reference to Section 9 (4) of the Act, it has been submitted that since the Chancellor is vested with the power to quash/set-aside any order passed by the University or annul any proceeding of the University, the



petitioner has alternative remedy of approaching the Chancellor against constitution of the Governing Body.

Section 9 (4) of the Act reads thus:-

"9. The Chancellor.-(4)

The Chancellor may, by order in writing, annul any proceeding or order of the University which is not in conformity with this Act, the Statutes, the Ordinance or the Regulation or for which adequate reason is lacking :

Provided that before making any such order or direction he shall call upon the University to show cause within the time specified why such order or direction should not be made, and if any cause is shown within the said time limit, he shall consider the same."

10. Considering the nature of dispute involved and since all the points have been addressed and argued at length, I do not consider it apt to refuse to entertain this application, relegating the parties to remedy under Section 9(4) of the Universities Act.

11. Coming first to the challenge to nomination of respondent No. 9, as Donor Member of the Governing



Body, Clause (v) of Article 1 of the Statutes is relevant, which is being reproduced hereinbelow, as the said provisions shall be referred to while dealing with the rival contention of the parties:-

"1. (v) One member elected from amongst themselves by Donors who have donated not less than Rs. 25,000/- to the college."

12. It is evident from the provisions, as quoted above, that a Donor Member is to be elected, under Clause (v) of Article 1 of the Statutes, from amongst the Donors, who have donated not less than Rs. 25,000/- to the college. This is not in dispute that there was no election held among the Donors of the College, who had donated more than Rs. 25,000/- to the College. The method for nominating respondent No. 9 as Donor Member, which the University has adopted, has been disclosed in paragraph 8 of the counter affidavit filed on behalf of the University, which reads thus:-

"8. That with regard to the nomination of donor representative in Governing body of the College namely Dr. Rajiv Ranjan Singh it is stated that on the basis of the report dated 31.10.2012 of the Principal of the College the University had nominated the



petitioner as donor representative in Governing body of the College but later on the basis of report dated 07.01.2016 submitted by the Principal of the College (Annexure-15) the name of Dr. Rajiv Ranjan Singh has been included in the Governing Body of the College as a donor member.

It is further stated that the petitioner is donor of Rs. 25,400/- whereas Dr. Rajiv Ranjan Singh is the donor of Rs. 50,500/-. Thus due to the donor of highest amount and on the basis of report of Principal of the College the University has nominated Dr. Rajiv Ranjan Singh as donor representative in Governing Body of the College."

13. It is, thus, the case of the University that respondent No. 9 has been nominated as Donor Member of the Governing Body, since he has been found to be the highest Donor. The criteria adopted by the University is in clear violation of statutory provisions, which requires that a Donor Member is to be elected from among the Donors, who have donated a sum more than Rs. 25,000/-.

14. Learned Senior Counsel, appearing on



behalf of the University, has drawn my attention to Annexure-15 of the writ application, which has been referred to in the counter affidavit also, as the ground for nominating respondent No. 9 as Donor Member. Annexure-15 is a letter, dated 07.01.2016, written by the Principal of the College, addressed to the Registrar of the University, mentioning therein that since there was no evidence available as regards Donors of the College; based on evidence made available by respondent No. 9, respondent No. 9 was being confirmed as Donor. He, accordingly, recommended for nomination of respondent No. 9 as Donor Member of the Governing Body by the said communication.

15. From the averment, which has been made in the counter affidavit, it is evident that, based on comparison of the amount donated by various Donors, respondent No. 9 has been held to be the highest Donor and on that basis he has been nominated as Donor Member, which is in clear breach of Clause (V) of Article (1) of the Statues. Inclusion of respondent No. 9 as Donor Member in the Governing Body, therefore, cannot be sustained and is, accordingly, held to be illegal.

16. Questioning the co-option of respondent No. 8, as Educationist Member of the Governing Body, it has been submitted by learned Counsel, appearing on behalf of the



petitioner, that respondent No. 8 has no contribution in the filed of academics and education. He has submitted that earlier he was found to be having no qualification, fit for co-option as Educationist Member. There is nothing on record to show any achievement of respondent No. 8 in the filed of academics or education, he contends.

17. In my view, co-option of respondent No. 8 cannot be held to be completely illegal, on the ground that he does not have any achievements in the field of academics. What Clause (vii) of Article 1 of the Statutes requires is that a person who is reputed for his 'academic interest' or 'is an educationist' can be co-opted. At the same time, in the absence of any supporting material to show that respondent No. 8 is a person who is reputed for his academic interest and on that ground he could be co-opted as Member of the Governing Body, under Clause (vii) of Article 1 of the Statutes, it cannot be held that he was duly co-opted.

18. My attention has also been drawn to Clause (ii) of Article 3 of the Statutes, which mandates that for the purpose of co-option of a Member, as required under Clause (vii) of Article 1 of the Statutes, the Principal has to convene a meeting of Members, elected/nominated, as per the said Statutes, and co-option has to be done thereafter. This is not in dispute that said procedure has not been followed in the



present case. Co-option of respondent No. 8 is, therefore, held to be illegal.

19. Coming to nomination of Public Representative Member, under Clause (vi) of Article 1 of the Statutes, it is the case of the petitioner that respondent No. 7, who is a Member of Parliament, resides in the district, but does not reside in the locality, where the College, in question, is situated. Learned Senior Counsel, appearing on behalf of the University and learned Counsel, appearing on behalf of respondent No. 5, the Principal of the College, have submitted that there is no specific pleading on record that respondent No. 7 does not reside near the locality, where the College, in question, is situated.

20. Upon reading of Clause (vi) of Article 1 of the Statutes, it is easily evincible that one member, either of Parliament or the State Legislature, residing in the district can be nominated as Public Representative Member, but preference is to be given to a person residing in the locality where the college is situated. If the Statutes require preference to be given to a person residing within the locality, in my opinion, the said provision cannot be completely overlooked. It may not be mandatory for the University to nominate a Member of Parliament or State Legislature, who resides within the locality of the college. The University may



nominate a Member of Parliament or State Legislature residing in the district, but not residing within the locality, where the college is situated. There must, however, be reason, as to why the University will not prefer a Member, who is residing within the locality, where the College, in question, is situated. The reasons must exist for the said purpose.

21. In view of the fact that there is clear violation of requirement, under Clause (v) of Article 1 of the Statutes, in relation to nomination of respondent No. 9 as the Donor Member, his nomination is held to be illegal.

22. The Governing Body consists of seven Members, including Principal, as its *Ex-officio* Member. There is no dispute over election of Teachers' Representative and Representative of University, nominated by the Syndicate of the University. One Member is to be nominated, under Clause (iv) of Article 1 of the Statutes, by the State Government. With respect to two other Members, namely, Mr. Kumar Pashupati Singh (respondent Nos. 8) and Mr. Rajiv Ranjan (respondent No. 9), since I find their nominations to be illegal, in my view, it would be proper for the University to reconstitute the Governing Body after strictly adhering to the requirements under the Statutes. The Governing Body must be reconstituted three (3) months after strictly following the



procedure prescribed.

23. The impugned notification, dated 02.02.2016, is, hereby, quashed.

24. However, in the meanwhile, the present Governing Body shall function for a period of three (3) months from today without respondent Nos. 8 and 9, as Members, since their nomination/co-option has been found to be contrary to the mandatory statutory provisions. As a result of quashing of co-option of respondent No. 8, the Principal of the College, in question, is directed to convene a meeting of the remaining Members of the Governing Body, within a period of two (2) months from today, for the purpose of election of President of the Governing Body, since it has been pointed out that respondent No. 8 is the elected President of the Governing Body.

25. This application is, accordingly, allowed to the extent indicated above.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03/08/2017
Transmission Date	N/A

