

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1217 of 2017

In

Civil Writ Jurisdiction Case No.7972 of 2017

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1. The Vice Chancellor, Aryabhatta Knowledge University , Chanakya National Law University Campus, Near Bus Stand, Mithapur, Patna.
 2. The Registrar, Aryabhatta Knowledge University , Chanakya National Law University Campus, Near Bus Stand, Mithapur, Patna.

... .. Appellant/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Human Resources Development Department, Bihar, Patna.
3. Surendra B. Ed Teachers Training College, Surendra Nagar, Shivala More, Neora, Khagaul, Patna, P.S. - Bihta, District - Patna running under Surendra Hemant Education & Social Welfare Society through its Secretary Nagar Dr. Shashi Bhushan Singh, Son of Shri Surendra Prasad Singh, Resident of Village - Surendra Nagar, P.S. - Neora Bihta, District - Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Lalit Kishore, Advocate General Mr. Anand Kumar Ojha, Advocate
For the Respondent/s	:	Mr. Ashutosh Ranjan Pandey – AAG 15
For N.C.T.E.	:	Mr. Sunil Kumar Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-09-2018

I.A. No. 6852 of 2018

1. Present interlocutory application has been preferred by the original writ petitioner, Respondent No. 3 in Letters Patent Appeal, for an appropriate interim order permitting/allowing the students of the Respondent No. 3 institution to appear in the examination of 1st year of B.Ed.programme of 2 years, academic



session 2017-18, scheduled to be held from 07.09.2018 as per the programme of B.Ed.1st year examination 2018 vide examination ID No. 185102, dated 02.08.2018 for the academic session 2017-19 or, alternatively, to extend the date of the aforesaid examination, to be conducted by the University, of the students of the petitioner college. It is also prayed to vacate the ad interim order dated 15.05.2018 passed in the main Letters Patent Appeal.

2. We have heard Sri Bindhyachal Singh, learned counsel appearing for Respondent No. 3, original writ petitioner, and Sri Lalit Kishore, learned Advocate General appearing on behalf of the appellant University and another.

3. At the outset, it is required to be noted that as such the Letters Patent Appeal has been preferred by the University and not by the Respondent No. 3. The Letters Patent Appeal preferred by the Respondent No. 3, who has filed the interlocutory application, is reported to be dismissed for non-prosecution. Apart from the fact that whether in an appeal preferred by the original Respondent University, the question is as to whether the Respondent in the appeal can pray for and/or get any substantive relief or not, we have heard the learned counsel appearing on behalf of the respondents before us on merits.



4. It is required to be noted that, admittedly, the institution is not affiliated with the University for the academic year 2017-18. Without even getting the affiliation and/or affiliated with the University for academic year 2017-18, once again the college admitted the students and played with the future of the students. Same thing happened in the earlier year also, i.e., for academic session 2016-17.

5. From the counter, it appears that by communication dated 16th February, 2018, the college was intimated that there is no affiliation for the academic session 2017-18 and in the communication dated 16th February, 2018, it was specifically mentioned that for academic session 2017-18 they have not received any application for affiliation. Still nothing happened and no further steps were taken by the original writ applicant—the institution which has preferred the present interlocutory application. They continued to give admission to the students for academic session 2017-18.

6. Under the circumstances, when there is no affiliation at all for the academic session 2017-18, there is no question of making any interim order allowing the students to appear in the examination. It is also required to be noted that even though the programme was published for examination as far back as on



2nd August, 2018, the present application has been preferred at the last moment on 30.08.2018 seeking equitable relief. It is also required to be noted that even process for filling up the forms for appearing in examination commenced in February, 2018 and still nothing was done by the institution. At the cost of repetition, it is required to be observed that even in the earlier year – academic session 2016-17 also, the students lost their valuable year and they were not permitted to appear in the examination and even the learned Single Judge heavily criticized the conduct on the part of the institution. Still they have continued with such conduct and played with the future of the students.

7. Considering the aforesaid facts and circumstances, the present interlocutory application deserves to be dismissed and is accordingly dismissed. No costs.

L.P.A. 1217 of 2017

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge on 11.08.2017 passed in C.W.J.C. No. 7972 of 2017, original respondents 3 and 4–Aryabhatta Knowledge University through its Vice Chancellor and the Registrar, has preferred the present Letters Patent Appeal.



2. The facts leading to the present Letters Patent Appeal in nutshell are as under:-

That the original writ petitioner, the Respondent No. 3 herein, applied for permission by the N.C.T.E. for running the B.Ed.college. Though the N.C.T.E granted recognition for the academic session 2016-17, the appellants herein, Aryabhata Knowledge University, refused to grant affiliation.

Consequently, the students, who had already been admitted in B.Ed.course for the academic session 2016-17, were not allowed to appear in the final examination meant for 2016-17. Therefore, the original writ petitioner-B.Ed. College, preferred the present C.W.J.C. No. 7972 of 2017 challenging the action of the University in not granting affiliation for the academic session 2016-17. The original writ petitioner also prayed that the students, who have already been admitted in B.Ed. course for the academic session 2016-17 be allowed to appear for the final examination meant for 2016-17.

3. That by the impugned judgment and order, the learned Single Judge has partly allowed the said petition after following the decision of the Hon'ble Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of Uttar Pradesh and Others, reported in (2013) 2 SCC 617 and directed to



grant affiliation to the original writ petitioner for academic session 2016-17. However, the learned Single Judge refused the prayer to allow the students to appear in the examination on the ground that original writ petitioner institution admitted the students though there was no affiliation granted.

4. While passing the impugned judgment and order, the learned Single Judge did not accept the submission on behalf of the University that the University can refuse affiliation on the ground that an institution does not fulfil the requisite conditions.

5. Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, insofar as not accepting the submission on behalf of the University that independently they can refuse affiliation on the ground that an institution does not fulfil the requisite conditions, the University has preferred the present Letters Patent Appeal. At this stage, it is required to be noted that, so far as the affiliation is concerned, subsequently, the University has already granted affiliation to the original writ petitioner for academic session 2016-17.

6. Challenging the impugned judgment and order passed by the learned Single Judge to the aforesaid extent, Shri Lalit Kishore, learned Sr. Counsel appearing on behalf of the appellant University, has submitted that the observations made by



the learned Single Judge in paragraph 18 that the University would not have any authority to refuse affiliation on having found breach of any of the conditions by the institution, is contrary to the observations made by the Hon'ble Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya (Supra), more particularly paragraph 71 of the said decision.

7. Having heard learned counsel appearing for the respective parties and considering the impugned judgment and order passed by the learned Single Judge, more particularly paragraph 18, we are of the opinion that the observations made by the learned Single Judge are absolutely as per the decision of the Hon'ble Supreme Court in the case of Maa Vaishno Devi Mahila Mahavidyalaya (Supra).

8. As rightly observed, once the recognition has been granted by the N.C.T.E., thereafter, the University has to grant affiliation. However, it will always be open for the University to take up the matter with the N.C.T.E., in case the University is of the view, on the basis of any inspection carried out and/or information received, that the concerned institution does not fulfil the conditions for grant of recognition/affiliation. Paragraph 18 of the impugned order reads as under: -

“18. If what is being contended on behalf of the University is accepted and the universities are allowed to



refuse affiliation, on the ground that an institution does not fulfil the requisite conditions, despite there being recognition by the N.C.T.E, this will amount to giving them jurisdiction to tinker with the decision of the N.C.T.E. of granting recognition under Section 14(6)(a) of the Act and thereby diluting the clear legislative intent. This, in my view, cannot be allowed. If the University, on the basis of any inspection carried out and other information received, is of the view that the concerned institution does not fulfil the conditions for grant of recognition/affiliation, it can take up the matter with the N.C.T.E. and in that circumstance, N.C.T.E. only can take a final decision. In any event, refusal by the University to grant affiliation or to extend affiliation, during the currency of recognition by the N.C.T.E., will be in breach of Section 14(6) of the Act.”

9. If the observations made in paragraph 18 are read along with the observations made by the Hon’ble Supreme Court in paragraphs 70 and 71 in the case of Maa Vaishno Devi Mahila Mahavidyalaya (Supra), we are of the opinion that no interference by this Court is called for. Still it is observed and clarified that whatever observations are made by the learned Single Judge are with respect to the affiliation and, so far as the recognition is concerned, once the N.C.T.E. has granted the recognition, the University virtually has to grant affiliation, subject to the observations made by the Hon’ble Supreme Court in para 71 in the case of Maa Vaishno Devi Mahila Mahavidyalaya which reads as under: -



“71. The examining body can impose conditions in relating to its own requirements. These aspects are:

- (a) eligibility of students for admission;
- (b) conduct of examinations;
- (c) the manner in which the prescribed course should be completed; and
- (d) to see that the conditions imposed by N.C.T.E. are complied with.

Despite the fact that recognition itself covers the larger precepts of affiliation, still the affiliating body is not to grant affiliation automatically but must exercise its discretion fairly and transparently while ensuring that conditions of the law of the university and the functions of the affiliating body should be complementary to the recognition of N.C.T.E. and ought not to be in derogation thereto.”

10. With the above observations, the present Letters Patent Appeal stands dismissed/disposed of.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

K.C.Jha/-

AFR/NAFR	NAFR
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