

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1145 of 2018

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Dev Saran Mahila Evening College, Sohsarai, Nalanda through its President
College Teachers Association namely Sushila Kumari, Wife of Late Surendra
Nath Singh, R/o Magadh Colony, P.S.- Sohsarai, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Human Resources Development, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Human Resources Development, Govt. of Bihar, Patna.
3. The Chancellor, Bihar State Universities, Raj Bhawan, Patna.
4. Magadh University through its Vice Chancellor, Bodh Gaya, Town, Gaya.
5. Vice-Chancellor, Magadh University, Bodh Gaya, Gaya.
6. Registrar, Magadh University, Bodh Gaya, Gaya.
7. Krishna Prasad, Son of Late Karoo Mahto, Resident of Village- Paharpura, P.S.- Biharsharif, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Lalan Kumar Mrs. Nivedita Nirvikar
For the Respondent/s	:	Mr. Kumar Kamal Nayan, AC to SC-28
For the University	:	Mr. Shivendra Kishore, Sr. Advocate Mr. Ritesh Kumar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 02-08-2018

Before coming to the relief prayed for in the present Writ Application, it must be noted, at the very outset, that there are certain facts, which are not at all in dispute in respect of the petitioning Dev Saran Mahila Evening College, Sohsarai, Nalanda. The college has been treated to be affiliated to Magadh University, Bodh Gaya since 1990. The petitioner is aggrieved by the decision of the University as communicated through letter no. 558 of 2017



dated 18.10.2017 under the signature of the Registrar of the University, whereby the University has sought approval of the State Government for cancellation of the affiliation. Section 21 (2) (d) of the Bihar State Universities Act, 1976 stipulates that affiliation or dis-affiliation of a college shall not take effect, unless it is approved by the State Government. It is in this background that the impugned communication has been sent to the State Government.

It transpires that on the basis of a complaint received against the college, the University had caused an enquiry by an Inspecting Team, which submitted its report on 21.08.2017, based on an inspection held on 22.07.2017. The said report, which pointed out certain deficiencies in the college, was placed before the Affiliation Committee of the University on 29.08.2017, the Academic Council and the Syndicate on 31.08.2017. Apparently, the Affiliation Committee, Academic Council, Syndicate and Senate of the University decided to cancel the affiliation in favour of the petitioner. It is in this background that the impugned communication has been made to the State Government of Bihar for approval.

The impugned decision of the University including decision of the Affiliation Committee has been put to challenge on



the ground, inter alia, that the decision of the University to cancel the affiliation is not based on cogent reasons and materials.

Mrs. Nivedita Nirvikar, learned Counsel, appearing on behalf of the petitioner, drawing this Court's attention to the impugned decision, has submitted that the findings of Inspecting Team that there is deficiency in terms of land possessed by the college, requisite for maintaining the status of affiliation is palpably. She has further submitted that before the University took this decision to cancel affiliation, no explanation was sought from the college and no notice was ever given to show cause by the competent authority against the findings of the Inspecting Team. She accordingly submits that the impugned decision is illegal and deserves to be quashed by this Court.

Mr. Shivendra Kishore, learned Senior Counsel, appearing on behalf of the University, has made three fold submissions. He has submitted that this writ application is premature inasmuch as what has been communicated to the State Government is mere recommendation by the University for cancellation of affiliation. The decision in respect of cancellation of affiliation, according to him, is yet to be taken by the State Government. He, next, submits that the University had never granted affiliation to the college rather the State Government had



granted affiliation in 1990, though there is no such provision under the Act. He has lastly submitted that the question of violation of principles of natural justice does not arise in the present case since the inspection was conducted by the Inspecting Committee in presence of the representatives of the college, who had adequate opportunity to satisfy the team that the college fulfilled the requisite conditions for continuing with its affiliation.

The submission advanced on behalf of the University, that this application is pre-mature on the ground that the impugned communication is mere recommendation to the State Government, can not be accepted. The power of granting affiliation or cancelling affiliation vests in the University. It is a different matter that such decision of the University to grant affiliation or cancel affiliation requires approval by the State Government to become effective in view of Section 21 (2) (d) of the Universities Act. It is, thus, the decision of the University to cancel the affiliation of the petitioner, which is under challenge in the present writ application, which, in the Court's opinion, is maintainable and not pre-mature.

On the question of breach of principles of natural justice, as asserted on behalf of the petitioner, it is evident and not in dispute that some enquiry was conducted on the basis of a



complain received by the University through an inspection. It is not being disputed that in course of inspection, representatives of the petitioner had participated. This is also not in dispute that after completion of inspection, its outcome or findings was not communicated to the petitioner nor any explanation was sought in the background of the report of the Inspecting Team by the University on the point of cancellation of affiliation. In my opinion, it was incumbent upon the University to have informed the petitioner about the deficiencies as pointed out by the Inspecting Team, based on which the University proposed to proceed for cancellation of affiliation. Only after having given the petitioner a reasonable opportunity to explain and/or of being heard, the University could have taken decision to cancel affiliation of the college.

In my view, therefore, the impugned communication dated 18.10.2017 as well as the decision of the Senate dated 31.08.2017 to cancel the affiliation cannot be sustained being illegal and violative of principles of natural justice. The impugned decisions are accordingly quashed. This writ application is allowed.

The University shall, however, be at liberty to proceed against the petitioner for cancellation of affiliation, but only after



giving the petitioner due opportunity of being heard and supplying
the copy of the report of the Inspecting Team.

There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/Ragini

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
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