

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19473 of 2011

=====

Vijay Kumar Rai, Son of Late Ram Bharosh Rai, Resident of Village - Magardahi
Kharidabad, P.O.- Samastipur, P.S. Samastipur (Muffasil), District- Samastipur
.... Petitioner/s

Versus

1. L. N. Mithila University , Kameshwarnagar, Darbhanga through its Registrar
 2. The Vice Chancellor, L.N. Mithila University, Kameshwar Nagar, Darbhanga
 3. The Registrar, L.N. Mithila University, Kameshwar Nagar, Darbhanga
 4. The In-Charge Principal, Sant Kabir College, Samastipur
 5. Rajesh Kumar, Son of Sri Jang Bahadur Rai, resident of Village - Jittwarpur
Nizamat, P.O. - Samastipur College, P.S. - Muffasil, District - Samastipur
 6. Ramesh Rai, Son of Sri Jang Bahadur Rai, residing of Village - Jittawarpur
Nizamat, P.O. Samastipur College, P.S. Muffasil, District Samastipur
 7. Dharam Sheela Devi, Wife of Ramesh Rai, resident of Village - Jittawarpur
Nizamat , P.O. - Samastipur College, P.S. Muffasil, District - Samastipur
.... Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Prabhat Kumar Singh, Advocate
For the Resp. nos. 1 to 3 : Mrs. Binita Singh, Advocate
For the Resp. nos. 5 to 7 : Mr. Suraj Narayan Yadav, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 13-07-2018

Heard learned counsel for the petitioner, University
and the private respondents.

2. The dispute in the present writ application is
legality and validity of the notification dated 05.10.2011, contained in
Annexure-5.

3. Mr. Prabhat Kumar Singh, learned counsel for the
petitioner submits that the notification as contained in Annexure-5 is
fraud and colourable exercise of power inasmuch as the notification
proceeds on the premise that this communication was issued pursuant



to the decision of the Syndicate dated 09.09.2011, Item no.4. He submits that there was no such agenda in the meeting dated 09.09.2011 and it is fraudulent reference in the notification dated 05.10.2011.

4. Neither the counsel appearing for the University nor the counsel appearing for the private respondents has been able to substantiate that in the meeting of the Syndicate allegedly held on 09.09.2011, in Item no.4, such decision was taken by the Syndicate, which was the basis of issuance of the notification dated 05.10.2011.

5. In view of the aforesaid, the Court has no option, but to quash the notification dated 05.10.2011, as such the order, which is passed on fraudulent reference is fraud upon the power and colourable exercise of power in view of the judgment of the Apex Court in the case of **Dr. D.C. Wadhwa & Ors vs State Of Bihar & Ors**, reported in **AIR 1987 SC 579**, notification is nullity in the eye of law. It is accordingly quashed.

6. However, quashing of the notification dated 05.10.2011 will not disentitle the University to take a fresh decision as to the donor of the college in question and while taking afresh decision, the University will consider the case of the petitioner, private respondents and other, who claims to be the donor of the college in question. Final decision in this regard must be taken by the



by the collection in question within a maximum period of 60 days from the date of receipt/production of a copy of this order.

7. With the aforesaid, the writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.07.2018
Transmission Date	

