

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11113 of 2017

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1. Arcade Business College, Arya Kumar Road, Rajendra Nagar, Patna affiliated to Magadh University represented through its Director, Ashish Kumar @ Aashish Aadarsh son of Late Sitaram Motani Resident of 201 Kanika Maihar Apartment, P.S. - Kadam Kuan, District - Patna.
 2. Ashish Kumar @ Aashish Aadarsh Son of Late Sitaram Motani Director, Arcade Business College, Arya Kumar Road, Rajendra Nagar, Patna, Resident of 201, Kanika Maihar Apartment, P.S. - Kadam Kuan, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Higher Education, Department of Education, Government of Bihar, Patna.
4. The Joint Director, Department of Education, Government of Bihar, Patna. null null
5. The Vice-Chancellor, Magadh University, Bodh Gaya, Bihar.
6. The Registrar, Magadh University, Bodh Gaya, Bihar.
7. The Examination Controller, Magadh University, Bodh Gaya, Bihar.
8. The Inspector of Colleges, Magadh University, Bodh Gaya, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Krishna Chandra Mr. Rajendra Pd.Singh, Sr. Adv. Mr.Ajit Kumar, Advocate with him.
For the Respondent/s	:	Mr. MADANJEET KUMAR- GP20
For the University	:	Mr.Shivendra Kishore, Sr. Adv. Mr. Ritesh Kumar, Advocate with him.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date: 04-05-2018

1. Heard Mr. Rajendra Prasad Singh, appearing on behalf of the petitioner, and learned counsel, Mr. Shivendra Kishore, appearing on behalf of the Magadh University.

2. The matter was heard at considerable long time. The learned counsel for the State is present, he has placed reliance on the counter affidavit in paragraph 7 to 10. Mr. Shivendra Kishore



extensively referred to para 14 to 17 and 20 to 24 of the counter affidavit to justify the action of the University.

3. Mr. Singh appearing on behalf of the petitioner has drawn the attention of this Court to various Annexures to indicate that University has granted affiliation approving the decision of the Academic Council and syndicate of the University which appears from Annexure-1 and to other documents. He submits with reference to Annexure-4 that the proposal of affiliation was considered by the State Government and vide order dated 08.07.2006 the Director, Higher Education has intimated the Registrar, Magadh University that the State Government has no objection in the matter of grant of affiliation as there is no financial liability. Mr. Singh referring to various documents and inspection report has contended that the institution has infrastructure for grant of affiliation and intake strength granted by the respondent University and after the State Government granted no objection to affiliation to the institution is worthy Institution. The institution has admitted students based on the inspection report, the intake capacity was subsequently increased by the University as evident from different annexures including Annexure-8 the intake capacity of the institution was increased 150 to 250. Mr. Singh has submitted that in the instant case vide letter dated 18.02.2014 a communication was issued to the Vice-Chancellor of all the Universities except Patna University wherein it was indicated that



University has to grant to permission to start professional course keeping in view the infrastructure facilities available for imparting quality of education. The letter dated 18.06.2014 was circulated to all the Universities with guidelines to the University for approving professional course. Mr. Singh submitted that in terms of the guidelines, the University was required to consider the case and in fact at the relevant time, the University has taken decision based on the inspection report, the affiliation was granted and intake determined and in that view of the matter, the action of the respondent initially to keep the admission in abeyance vide Annexure-10 & 11 until final decision taken by the University in terms of the rules and regulation, was arbitrary decision as the decision to stop admission in the institution which was in existence for the last several years amounts to arbitrarily, depriving the institution having the infrastructure for taking admission. Mr. Singh has drawn the attention of the Court to Annexure-18 which was placed on record by way of I.A. No.6737 of 2017, the Notification was issued by the University on 08.09.2017 whereby the affiliation of the petitioner institution was cancelled with immediate effect. On behalf of the respondent, the following stand was taken as indicated hereinabove in para 7 to 10. Para 7 to 10 of the counter affidavit of the respondent No.2 to 4 are quoted hereinbelow :-

“7. That it is stated that Section 4(19) of the Act prescribes that the University is to affiliate or disaffiliate colleges, according to



statutes, subject to prior approval of the State Government.

8. That it is stated that the power and duties of the Senate is prescribed in Section 21 of the Act. Section 21(2)(d), which is relevant in the present context reads as follows :-

For the purpose of control in college and Tols, and superintendence which included affiliation and disaffiliation of colleges;

Provides that affiliation or disaffiliation of colleges or Tols shall not take effect unless it is approved by the State Government; Before granting such an approval, the State Government shall consider the financial viability of the college, the nature and form of the proposed management of the college, the viability of the academic standard and all other conditions which are likely to have adverse effect on the interest of students admitted to such a college.

9. That it is stated that Section 34 of the Act provides that subject to the provisions of the Act, the Statutes may provide for all or any of the following matters. Sub Section (d) of the said Section provides that the admission of educational institutions as colleges and the withdrawal of privileges from colleges so admitted.

10. That from the aforesaid facts and statutory provisions the University has to make formal proposal in prescribed format along with requisite documents in support of the same, to the State Government for grant/extension of affiliation for a college of institution.”

4. On similar line, the Magadh University has taken stand as per averments in paragraph 14 to 17, 20 to 22 which is quoted below for ready reference :-

14. That it is respectfully stated and submitted that the State Govt. has not approved the proposal for affiliation of the institution under Section 21(2) (d) of the BSU Act, 1976. The University has also not sent any proposal to the State Govt. for consideration of its affiliation beyond the year 2012. The State Govt. has also not approved the number of seats for the petitioner institutions which is mandatory condition under Section 61(2) of the BSU Act, 1976.



15. That it is further stated and submitted that the petitioner institution also does not fulfils the conditions as laid down by the statute carved out of the Bihar State University Act, 1976 or in any of the Executive institutions issued by the State Govt., most importantly the letter No.1741 dated 19.09.03.

16. That it is pertinent to mention here that the Governor Secretariat vide its letter No.MU-50/2016/1248 dated 08.04.2017 directed the Magadh University to take necessary and legal action against 4 private professional colleges namely (i) Cimage College, Patna, (ii) Catelyst Evening College, Patna (iii) Vijyam Evening College, Patna and (iv) Sawatantrata Senani Management and Technical college, Patna, as the enquiry committee constituted by the Governors secretariat had found that these colleges were taking high fee from the students and admission were being taken more than intake capacity and they were also running disapproved course.

17. That it is further stated and submitted here that based on the enquiry committee constituted by the Governors Secretariat and its report, the Registrar of the University vide his letter No.R/167/17 dated 31.07.2017 has been pleased to issue show cause notice to the petitioner institution by providing the relevant documents along with the same.

20. That it is respectfully stated and submitted that the University is now trying its best to stop the malpractices prevailing in the higher education and steps have been taken to streamline the functioning of the University in the larger interest of the students and the society.

21. That on the basis of above mentioned facts the Vice Chancellor has been pleased to restrain from taking admission of the students from session 2017-18 in private self financing institutions till completion of the enquiry under rules and regulations of the University and state Govt. The order of the governors secretariat had a rational to the extent that all the self-financing institutions involved in teaching of vocational / professional course applies more and less similar modus operandi.

22. That it is further stated and submitted that the petitioners were served notice through the registered post and email which was received by them. IN response thereof, a reply was sent that the email is not visible and hard copy be supplied on which the university gave a reply and hardcopy of the notice which was received by the petitioner institution.”



5. After going through the counter affidavit, it appears that they are raising issue of non-approval of the State Government in the matter of grant of affiliation. Mr. Shievendra kishore, learned senior counsel, submitted that as per the statute for grant of affiliation approval of the State Government is a condition precedent which was not followed in the present case and as such the affiliation granted to the institution was contrary to law and was not sustainable. He submits with reference to the counter affidavit that the Hon'ble Chancellor has constituted a Committee to examine afresh the status of institution and the report of that Committee was taken into consideration while passing the order as contained in Annexure-18.

6. Mr. Rajendra Prasad, learned counsel appearing on behalf of the petitioner submitted that the said decision suffers from the voice of total non-application of mind and there is total denial of principle of natural justice. He referred to the explanation furnished by the institution contained in Annexure-I/25 series to indicate that the explanation of the Director of the institution not taken note by the University while passing the order. He submitted that the response furnished by the institution was not taken note by the University while taking decision and in this regard referred to Annexure 24 and Annexure 25 series. After going through the entire materials on record and the submission advanced by the parties, the Court is of the



view that the Notification dated 08.09.2017 is non-speaking order.

7. The Constituent Bench of the Apex Court in the case of *S. N. Mukherjee Vs. Union of India AIR 1990 SC 1984* has categorically held out that reasoned order is third principal of natural justice and every authority is required to assign reason in the decision making process. The Notification dated 08.09.2017 does not refer to any consideration of the explanation furnished by the petitioner institution in Annexure-24 and 25 series. There is absolutely no reason assigned for cancelling the affiliation. It is well settled that order which is publicly made cannot be supplemented by way of counter affidavit. In this regard, reference may be made to the Judgment of the Constitution Bench of the Apex Court in the case of *Mahendra Singh Gill's Case AIR 1978 SC 851*, the Apex Court in that case also discussed the effect of violation of principal of natural justice. More appropriately, the Apex Court has discussed the requirement of natural justice as an integral part of procedural fairness. The larger Bench Judgment in the case of *Maneka Gandhi AIR 1978 SC* was followed by series of judgment. Judgment of the Apex Court in *H.L. Trehan* is settler as the point where the Apex Court has held out that before passing any order which affects any right advantage compliance of natural justice is a *sine qua non*. The judgment in *H.L. Trehan's* is reported in *AIR 1989 SC 568 H.L.*



Trehan Vs. Union of India.

8. Considering the totality of the facts situation, the Court finds substance in the submission of Mr. Rajendra Prasad Singh, so far as cancellation of affiliation is concerned and the order of cancellation of affiliation in the aforesaid background cannot sustain. Accordingly, the same is quashed.

9. Adverting to the issue of intake, the Court has genuine difficulty in determining the issue raised in the writ application. Intake is always referable to infrastructural and other facilities for the purpose of imparting qualities education. Unfortunately, during the course of hearing, neither the petitioner nor the respondent has brought to the notice of the Court any statutory norms prescribing minimum infrastructure for determination of intake and in the absence of statutory standard prescribing infrastructure approving or disapproving the action of the University or the State is difficult. The Court is of the considered view that intake is always referable to infrastructure and other teaching facilities and, therefore, the State Govt. and the University is required to first work out the minimum infrastructure for the purpose of determining the intake capacity in any institution including the petitioner's institution otherwise it would be unguided and arbitrarily power exercised by either the State or the University in the matter of determining intake and in that situation for



the same infrastructure and teaching facilities, institution may get different intake order as there is no objective criterion. In the aforesaid background of the fact, the office of the Hon’ble Chancellor, the University and the State Govt. is required to address the issue of prescribing minimum infrastructural and other teaching facilities for determination of intake of the institution imparting instruction in BBA, BCA course. Since Chancellor is not party in this case but Chancellor is the Chancellor of the university and this issue is not only confined to this situation but apply to all institution and such prescribing standard for all institution regarding instruction, the Hon’ble Chancellor is required to address this issue so that in future, litigation may not crop up on the ground of arbitrariness in the matter of grant of intake.

10. With the aforesaid, this writ petition stand allowed to the extent indicated above.

(Anil Kumar Upadhyay, J)

Sanjeev/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	
Transmission Date	

