

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.518 of 2018

Dr. Jagarnath Mishra Degree Mahavidyalaya, Mau, Tekari, Gaya through its Principal, Dr. Braj Raj Mishra S/o Late Keshav Mishra R/o New Godown, Gaya, P.S. Kotwali, Dist - Gaya.

... .. Petitioner/s

Versus

1. The Vice Chancellor, Magadh University, Bodhgaya, Gaya.
2. The Registrar, Magadh University, Bodhgaya, Gaya.
3. The Examination Controller, Magadh University, Bodhgaya, Gaya.
4. The State of Bihar through its Chief Secretary.
5. The Principal Secretary, Higher Education Deptt. Govt. of Bihar, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 1461 of 2018

Magadh Evening College, Gaya through its Secretary, Rajesh Ranjan Sahay, Son of Shri Girish Lal, resident of Mohalla- Bahuwar Chaura, Police Station- Vishnu Pd., District- Gaya (Bihar).

... .. Petitioner/s

Versus

1. The Magadh University through its Registrar, Bodh Gaya (Gaya).
2. The Vice Chancellor, Magadh University, Bodh Gaya (Gaya).
3. The Registrar, Magadh University, Bodh Gaya (Gaya).
4. The Controller of Examinations, Magadh University, Bodh Gaya (Gaya).
5. The State of Bihar through Secretary, Department of Education, Govt. of Bihar, Patna

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 518 of 2018)

For the Petitioner/s : Mr. Prem Kr. Jha

Mr. Rajesh Kumar

For the Respondent/s : Mr. Shivendra Kishore, Sr. Advocate

Mr. Ritesh Kumar

(In Civil Writ Jurisdiction Case No. 1461 of 2018)

For the Petitioner/s : Mr. Surendra Pandey

Mr. Rajesh Kumar Mishra

For the Respondent/s : Mr. Shivendra Kishore, Sr. Advocate

Mr. Ritesh Kumar

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 20-06-2018

Heard the parties.

2. Since the two writ applications filed under Article



226 of the Constitution of India involve common issues, they have been heard together, with the consent of the parties and are being disposed of by the present common judgment and order.

3. A crucial fact which goes to the root of the controversy is not at all in dispute and is being noted at the very outset. None of the two colleges are affiliated to the Magadh University, Bodhgaya (hereinafter referred to as 'the University') within the meaning of Section 2(c) of the Bihar State Universities Act, 1976 (hereinafter referred to as 'the Act').

Facts of CWJC No. 518 of 2018

4. The petitioner in CWJC No. 518 of 2018, is a college which has approached this Court through its Principal, seeking direction to the respondent-Magadh University, Bodhgaya, to accept the examination forms and fees of the students of B.A. Part-I examination of the students of the college and allow them to appear in the examination scheduled from 15.01.2018. The writ application was filed on 08.01.2018.

5. It is the case of the petitioner that the local citizens had decided to establish a college in the year 1982 at *Mau* under Tekari Sub-Division of Gaya District to meet the requirement of a college in the area. Certain land was donated to the Chancellor of the Universities of Bihar for establishing the



college over which a building was constructed. In 1986, the Managing Committee of the petitioner approached the University for grant of affiliation and an inquiry was conducted on receipt of the application. The Syndicate of the University resolved to grant affiliation, whereafter the said resolution was placed before the academic council of the University which, in turn, upon approval, recommended for grant of affiliation in favour of the college to the Senate. The Senate also granted approval, whereafter the University sent a letter to the State Government for grant of approval of affiliation.

6. It is the case of the petitioners that students were enrolled in the college and they were registered with Magadh University and they had participated in the examinations conducted by the Magadh University. The college undertook the teaching work.

7. This is to be noted here itself that grant of affiliation is governed by the Statute relating to admission and exclusion of the colleges other than those maintained by the University, as approved by the Chancellor vide letter dated 19.04.1996 (hereinafter referred to as 'Statute'). The said Statute has been framed in accordance with the provisions under the Act. Article 3 of the Statute prescribes the contents which an application for



affiliation must have and it provides, *inter alia*, that the application must contain an information to the effect that no student has been admitted or shall be admitted to the institution or in the subjects for the admission (affiliation) of which the application is made unless the application/affiliation has been granted by the University. The petitioner on the other hand is claiming that students were admitted in the college without even grant of affiliation and were allowed to be registered with the Magadh University. It is also the case of the petitioner that the college had been granted affiliation by the University temporarily which was extended from time to time. No document has, however, been shown to this Court which would suggest that affiliation of any nature was ever granted by the University. More than 25 years after the college was established, it is stated that the college was directed to deposit inspection cost of Rs. 37,000/-, which the college deposited. Thereafter, an inspection was conducted and a report was submitted by the Inspection Committee, recommending for grant of temporary affiliation in anticipation of fulfilment of conditions before the next inspection. This statement of the petitioner suggest that till 12.12.2011/12.01.2012, the college was not affiliated with the Magadh University and there was a recommendation, according



to petitioner, made by the Inspection Committee to grant temporary affiliation. Even before the submission of the report of the Inspection Committee, the Controller of examination, under the direction of the Vice-Chancellor of the University, through his letter dated 15.09.2012 (Annexure-P/2) had communicated to the petitioner the allotment of a college code. It is the case of the petitioner that the college code is issued to a college, which enjoys affiliated status. A subsequent letter dated 15.12.2014, has been brought on record by way of Annexure P/3 to the writ application, by which the petitioner was asked to deposit sum of Rs. 90,000/- for inspection for grant of extension of affiliation in B.A. Pass and Honours course(s). It is the case of the petitioner that since the college was already having an affiliated status, it was being asked to deposit inspection fee for extension of affiliation. The petitioner thereafter deposited the amount. The students admitted in the college were registered for the session 2016-17 and registration chart was also issued to the college, a copy of which has been brought on record by way of Annexure P/5 to the writ application.

8. This is also to be noted that Section 21(1)(d) of the Act, requires approval of affiliation by the State Government for affiliation granted to a college to take effect, which was pending



before the State Government. Through letter dated 30.03.2017, the State Government rejected the recommendation for grant of affiliation to the college. The petitioner had challenged the said communication, dated 30.03.2017, which was set aside by order, dated 09.11.2017, on the ground that the said communication did not reflect application of mind and the matter was, accordingly, remanded back to the Principal Secretary, Education Department, to take a decision afresh. The operative portion of the order of this Court, dated 09.11.2017 reads thus:-

“5. The Principal Secretary, Education Department, Government of Bihar, is directed to take a decision afresh on the question of grant of extension of affiliation in exercise of power under Section 21(2) (d) of the Act.

6. Learned counsel for the petitioner has attempted to submit that the College fulfills all the requirements of standard as statutorily laid down. He will be at liberty to file the details before the Principal Secretary, Education Department, Government of Bihar to satisfy that the College fulfills required standard and deserves extension of affiliation under Section 21(2) (d) of the Act.

7. Once such facts are presented by the petitioner by way of representation along with a copy of this order before the Principal



Secretary, Education Department,
Government of Bihar, a decision shall be
taken thereafter by the competent authority
under Section 21(2) (d) of the Act within
three months from the date of receipt of
representation by the petitioner.

This disposes of the application.”

9. It is the case of the petitioner that the University is not accepting examination forms and fees for B.A. Part-I (Honours) Examination, 2018, and in the background of the facts already narrated, the petitioner is seeking the relief as noted above.

10. The petitioner has filed supplementary affidavit and second supplementary affidavit. In the supplementary affidavit, it has been stated that after passing of the order, dated 09.11.2017, by this Court, the petitioner had approached the concerned authorities on 05.12.2017 and 22.12.2017. The petitioner also approached the University for submission of forms etc., but there being a strike call given by the Union of the Staff of the University, since third week of November, 2017, the University was not properly functioning. In the meanwhile, the University issued the programme of B.A., B.A.(Honours) Part-I, examination. It has also been asserted that immediately after the strike was called off, the petitioner approached the



University along with fees and forms and the University refused to accept the same. Great reliance has been placed on a communication dated 06.01.2018, issued to all Principals of the affiliated colleges, intimating them to submit the examination forms of BA/BA(Honours) examination, with late fee of Rs. 800/- per student by 09.01.2018. It was also indicated in the said letter that demand drafts in such cases must have been issued on prior date(s). It is the case of the petitioner, with reference to said letter dated 06.01.2018, that the University was apparently not willing to accept the examination forms of registered students of the college. Attention of this court has also been drawn to orders of this Court, dated 08.09.2017 and 24.11.2017, passed in CWJC No. 1308 of 2017, to contend that the University was unreasonably asking the students to submit their Aadhar Card(s) for filling up their examination forms.

11. Through the second supplementary affidavit, a fresh Communique dated 20.06.2017, issued by the Vice-Chancellor of the University, has been brought on record to the effect that the University had taken a decision to allow all such students who had been registered with the University, to appear for the respective examinations. Specific plea has been taken that students of many colleges which do not have affiliation of the



University have been allowed to appear and are being allowed to appear for the examination.

12. There is a third supplementary affidavit also filed on behalf of the petitioner, bringing on record a letter dated 02.11.2017, issued by the Education Department, Government of Bihar, which suggests a decision has been taken in the larger interest of the students of such colleges, affiliation in respect of which had been cancelled, to tag such students, as students of any other affiliated college, whereafter they shall be allowed to appear for the examination.

13. A counter affidavit and a supplementary counter affidavit have been filed on behalf of the Magadh University. In the counter affidavit the following statement has been made on behalf of the University in paragraph 5.

“ 5. That it is respectfully stated and submitted that the some affiliated college, including the petitioner college could not submit the fees and examination forms of the students of B.A. part-1 within the time specified by the university, for the reasons known to them. For these colleges and keepign in view the carrer of the students of these colleges, University vide its letter no. CE/Spl./720/18 dated 6.1.18 directed them to deposit the fee and form with special late fee



of Rs. 800/- per student till 9.1.18 in the University headquarter and the demand draft to be submitted along with the form must be prepared prior to the date of notification. The said notification was also available on the website of the university. It is stated and submitted here that the rationale behind the date of demand draft was that if such college had approached the university along with the fee and form earlier, then they must be having the demand draft prepared prior to the date of notification. It is submitted here that the petitioner college has never approached the University with the fee and form along with the demand draft and they only annexed the letters addressed to the Registrar and the Vice-Chancellor of the University to show their bonafide.”

14. In the supplementary counter affidavit, however, it has been stated in paragraph 5 to 8 as follows:-

“5. That at the outset it is respectfully stated and submitted that the results of the students of all such colleges which do not have the affiliated status under the provisions of the Universities Act have been withheld.

6. That it is respectfully stated and submitted that the admission taken by all such colleges which do not have affiliated



status, cannot be justified and is/was a wrong practice on the part of the college administration, if their admission is not legally valid and even then the enrollment has been made by the colleges. The University cannot find it to be justified.

7. That it is further stated and submitted that in the light of University communicate vide no.01/Gen/17 dated 20.6.17, it is clear that the University had decided to conduct the examination of only those students, who were students of colleges whose affiliation was rejected by tagging with the colleges which are technically affiliated. The above referred communicate was issued in the interest of the students as per the decision of the Syndicate. The decision was taken in the interest of the students, since the colleges whose affiliation was cancelled/rejected, neither fulfill the criteria of affiliation nor tried to comply the above communicate of the University within the stipulated time.

8. That it is respectfully stated and submitted that it is not legally permissible to enroll students of non-affiliate colleges and the University has taken a decision to not allow any such enrollment from the next session.

9. That it is further stated and submitted that with regard to clause 6(2) of Article 3 of



the Statute it is pointed out that the decision of the Syndicate dated 19.7.17 was notified by the University vide letter no.GIIIA/376/17 dated 12.8.17 in which it was directed that no admission will be taken for the session 2017-18 in colleges whose affiliation has been rejected. A press communique was also published in the newspaper regarding the advertisement issued by the University on 18.7.187 that no admission will be taken in any subject until approval is granted by the State Government. The same thing was again notified in the newspaper but despite the same the colleges took admission at their own risk.”

Facts of CWJC no. 1461 of 2018

15. The petitioner is CWJC No. 1461 of 2018, on the other hand, has questioned the letter dated 06.01.2018, issued by the Controller of the Examination, Magadh University, Bodhgaya (supra), whereby the University had directed the colleges to deposit examination forms of B.A. Part-I examination, with late fee of Rs. 800/- per students. The petitioner claims that no late fee for submission of examination form could legally be levied, in the facts of the case.

16. I.A. No. 546 of 2018, was subsequently filed on



24.01.2018, seeking amendment in the relief portion of the writ application, in view of the development that forms of the students of the college were not accepted and, in the meanwhile, the examination had already commenced. In this background the petitioner has sought for a direction for holding special examination of the students of the college.

17. Counter affidavits have been filed on behalf of the State of Bihar and the University.

18. The University has taken same stand in the case which has been taken in CWJC No. 518 of 2018.

19. A detailed counter affidavit has been filed on behalf of the State of Bihar, stating therein that the State Government had refused to approve the proposal of the University for grant of affiliation of several colleges including the present one. It has been stated that some of the colleges had approached the department for a direction to the University to conduct the examination of the students admitted therein. The Government, after having considered the matter sympathetically, in order to, protect the interest of the students, vide letter No. 1845, dated 02.11.2017, had directed the authorities of the University to allow the students admitted in such colleges to appear in the examination by tagging the other colleges. The University was



also directed to ensure that no college was allowed to admit students, unless the proposal is approved by the State Government under Section 21(2)(d) of the the Act.

20. When the matter was heard at some length on 26.02.2018, on the basis of rival submissions made on behalf of the parties, the Court was of the view that there were following certain basic questions which were required to be considered:-

“Whether a College without having affiliated status should be permitted to give admission in various courses?

2. Whether it is legally permissible for the University to enroll students of non-affiliated colleges in view of the provisions under Section 61 of the Act?

3. Sub-section (2) of Section 61 of the Act prescribes that the State Government may determine a maximum number of seats of students in the Faculties and Departments of the University and the ‘*College under its jurisdiction*’. The question, therefore, would be as to whether the students of non-affiliated Colleges were beyond the maximum number of seats for enrollment of students.”

21. The Court was of the tentative view that the students of non-affiliated colleges could not be enrolled with the



University and non-affiliated colleges ought not to have given admissions. Apart from the above, following order was passed on that date:-

“Learned Counsel appearing on behalf of the petitioners have submitted that in similar circumstances, students of other non-affiliated colleges, who have been enrolled with the University, have been allowed to fill up their forms and appear for the examination.

Since I am of the *prima facie* view that the students of non-affiliated colleges could not be enrolled with the University and the non-affiliated colleges ought not to have given admissions, I would like to have the views of the State Government and the University, on the aforesaid three issues, by filing their respective affidavits.

The Court would like to know from the State Government as to how it can justify issuance of letter, dated 02.07.2017, issued by the Education Department, Government of Bihar, allowing students of non-affiliated colleges, but registered with the University to appear for the degree examinations, with reference to the statutory provisions.

My attention has been drawn to Clause 6 (2) of Article 3 of the Statute relating to admissions and exclusion of the colleges



other than those maintained and managed by the University to submit that the said provision prescribes that no admission shall be made in the colleges unless a syndicate is satisfied with the conditions necessary for starting classes have been fulfilled.

The Court would also like to know from the University as to whether any decision was communicated to the college in question of the syndicate that conditions necessary for starting the classes had been fulfilled enabling the Colleges to give admissions.

Four weeks' time is allowed to the University and the State of Bihar to file their affidavits in both the cases.

In the mean while, it is directed that the University shall not publish the result of such students, who have been allowed to appear from colleges which do not have the affiliated status under the provisions of the Act, since the Court is of the view that the illegality cannot be allowed to perpetuate.

List these matters, under the same heading, on 02nd April, 2018.”

22. There is no gainsaying that the petitioning colleges do not have affiliated status. As a matter of fact, these colleges did not have the status of an affiliated colleges at any point of time. An affiliated college is an educational institution, having



received privileges of a University, according to provisions of the Act, and Statute relating thereto, within the meaning of Section 2(c) of the Act. Clause 19 of sub-Section (1) of Section 4 of the Act confers upon the University a power to affiliate or disaffiliate the colleges according to the Statute, subject to prior approval of the State Government. Section 21 of the Act deals with the power and duties of the Senate. Clause (d) of sub-Section (2) of Section 21 of the Act confers upon the Senate, powers to be exercised for the purpose of control in colleges and ‘superintendence which include affiliation and disaffiliation of colleges’.

23. The proviso to Clause (d) of sub-Section 2 of Section 21 of the Act mandates that affiliation or disaffiliation of the colleges shall not take effect, unless it is approved by the State Government. The Statute has been framed relating to admission and exclusion of colleges to and from the privileges of the University, which are other than those managed and maintained by the University. Article 10 of the Statute, which deals with the exclusion of the colleges from the privileges of the University reads thus:-

“10. Exclusion of Colleges from privileges.-An admitted college may, at any time, on the motion of the Syndicate, be



deprived by the Senate, in whole or in part, of the privileges granted to it under Statute of this Chapter, if the conditions of admission are not fulfilled or observed, or for gross mismanagement of it or for any other reason the Syndicate is of opinion that the college should be deprived of such privileges either in whole or in part.”

24. I have already noticed the provision under Article 3 of the Statute which requires college seeking affiliation to disclose that no student has been admitted nor shall be admitted in the institution, or in the subject, for which, the affiliation is being sought, unless the affiliation has been granted by the University. Language of the first proviso to Section 21(2)(d) is clear and unambiguous and provides that affiliation of a college shall not take effect unless it is approved by the State Government. Articles 4, 5 & 6 of the Statute provide different stages for grant of affiliation. Article 6 of the Statute reads thus:-

“6.(1) The decision of the Senate shall be communicated to the institution concerned, specifying the courses of the instructions in which the institution is admitted and the standard up to which admission is granted, together with the



condition and limitations imposed. The institution shall duly report to the Syndicate regarding the fulfilment of the various conditions imposed.

(2) No admission shall be made in the college unless the Syndicate is satisfied that conditions necessary for starting classes have been fulfilled.

(3) No appointment of the Principal or any lecturer of the college shall be made except on the recommendation of the College Service Commission:

Provided that in case of emergency, the college may appoint a Principal/Lecturers on temporary basis only on the basis of All India Advertisement and on the recommendation of a Selection Committee consisting of at least five members of whom at least three shall be experts in the subject concerned not below the rank of Readers in the active service of the University.

Provided further that in the case of appointment of Principal these experts shall be University Professor and/or Principals not below the rank of University Professors.”

25. Article 6(2) of the Statute puts clear bar on admission



in the colleges unless the Syndicate, after grant of 'affiliation' is satisfied that conditions necessary for starting classes have been fulfilled.

26. Facts in the present cases are very disturbing. The colleges did not have the affiliated status and that colleges were not affiliated with the University. Despite that, the colleges allowed admission of students despite there being clear bar under the Act and the Statute as noticed above. It is being claimed that the students of the colleges got registered with the University. This fact shocks the Court's conscience inasmuch as apparently the functionaries of the University became a party to the gross illegality being committed by the colleges and their managements. The manner in which the things progressed is clear indicative of collusion between the management of the colleges and the authorities of the University.

27. An unaffiliated college has no status at all under the Act. Such college does not have any relationship with a University. As a matter of fact in the absence of affiliation in favour of such colleges, the University cannot exercise any control in respect of maintaining academic standards in a college.

28. I am of the considered view that admissions allowed



by unaffiliated colleges, seeking affiliation is in teeth of statutory bar under Article 6(2) of the Statute r/w Article 3 thereof. Such admissions cannot be held to be legally sustainable. The registration of such students with the University is wholly illegal and is a fraud on law.

29. These writ applications, in my view, are frivolous. The Court exercising power under Article 226 of the Constitution of India, in no circumstance, can issue directions against the provisions of law, which shall have the effect of perpetuating illegality and encouraging fraud.

30. By the order, dated 26.02.2018, the University was restrained from publishing result of such students who had been allowed to appear in the examination, in question, as the students of the colleges did not have the affiliated status under the provisions of the Act. The University shall now take a decision in respect of such colleges in view of the law as discussed above in the present judgment and order.

31. These writ applications are, accordingly, dismissed.

32. Interlocutory application stands disposed of.

33. The students of the two colleges shall be at liberty to seek compensation from the colleges in accordance with law before appropriate forum.



34. Parties shall bear their own costs.

35. Let a copy of this order be sent to the Chancellor,
Universities of Bihar forthwith.

(Chakradhari Sharan Singh, J)

HR/Ashish

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

