IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10844 of 2018

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Dr. S. M. Ali Imam, aged about 54 years, Son of Late S.M. Zareef, Secretary S.M. Zaheer Alam Teachers Training College, At+P.O.+P.S.- Bahera, District- Darbhanga (Bihar).

... ... Petitioner/s

Versus

1. Honble Chancellor, Universities of Bihar.
2. Vice-Chancellor, Lalit Narayan Mithila University, Darbhanga, Darbhanga.
3. The Registrar, Lalit Narayan Mithila University, Darbhanga.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 10846 of 2018

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Dr. Sharique Hussain aged about 50 years, Son of Late Prof. Kashif Hussain, Secretary, Dr. Zakir Hussain Teachers Training College, P.O.- Laheria Sarai, Police Station- Laheria Sarai, District- Darbhanga (Bihar).

... ... Petitioner/s

Versus

1. Honble Chancellor, Universities of Bihar.
2. Vice-Chancellor, Lalit Narayan Mithila University, Darbhanga, Darbhanga.
3. The Registrar, Lalit Narayan Mithila University, Darbhanga.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 11698 of 2018

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Millat Teachers Training College, Stadium Road, Madhubani, Bihar through its Secretary namely Md. Aftab Alam Son of Md. Quddus Ansari Permanent Resident of Gayatri Mandir, Police Station-Rosera, District- Samastipur at Present resident of Stadium Road, Madhubani, Police Station- Sadar Madhubani, District- Madhubani.

... ... Petitioner/s

Versus

1. The Chancellor of The Universities of Bihar, Raj Bhawan, Patna.
2. The Principal Secretary, to the Chancellor, Raj Bhawan, Patna.
3. The Officer-On Special Duty (Judicial), Raj Bhawan, Patna.
4. The Vice-Chancellor, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga.
5. The Registrar, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga.

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 10844 of 2018)
For the Petitioner/s : Mr. Basant Kumar Choudhary, Sr. Advocate
Mr. Sanjay Kumar
For the Respondent/s : Mr. Md. Nadim Seraj
(In Civil Writ Jurisdiction Case No. 10846 of 2018)
For the Petitioner/s : Mr. Pushkar Narain Shahi, Sr.Adv.
Mr. Sanjay Kumar
For the Respondent/s : Mr. Rajendra Kumar Giri
(In Civil Writ Jurisdiction Case No. 11698 of 2018)
For the Petitioner/s : Mr. P. K.Shahi, Sr. Advocate
Mr. Vikas Kumar
For the Respondent/s : Mr. Rajendra Kumar Giri
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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date : 02-07-2018

For an observation in paragraph 73 of the Division Bench decision of this Court in case of ***Mirza Ghalib T.T. College & Ors. Vs. State of Bihar and ors,*** reported in ***2017 (1) PLJR 256***, to which I am a party, is at the core of the issue being raised on behalf of the petitioners in these three writ petitions filed under Article 226 of the Constitution of India, I have considered it desirable to quote the said observation at the very outset:-

> "73. Taking a cue from the observations made in paragraph 19 of Supreme Court decision in case of Islamic Academy of Education (supra), we observe that the Chancellor of the Universities of Bihar shall have power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, against which no finger has ever been raised and no complaint made regarding fairness, to adopt its

own admission procedure. It is made clear that no institute which has not been established and which has not followed its own admission procedure for the last, at least 25 years shall be permitted to apply for or be granted exemption from admitting students through CET. If any Committee has been constituted, in the light of Supreme Court decisions in case of Islamic Academy of Education (supra)/ P.A. Inamdar (supra), such Committee shall also have the power to grant such exemption, after due notice and adequate opportunity to the State of Bihar and the affiliating University of hearing."

2. This is also apt to note that in case of ***Mirza Ghalib T. T. College*** (supra), the Court had the occasion to consider the challenge to the validity of "Regulation and Ordinance for admission in two years B.Ed. (Secondary) Programme under Universities of Bihar" (Hereinafter referred to as 'the Universities/Regulations') published under the orders of the Chancellor, Universities of Bihar in exercise of power conferred under Sections 38(4) and 39(2) (ii) of the Bihar State Universities Act, 1976 (hereinafter referred to as 'the Act) to the extent it laid down the procedure for admission in unaided privately managed professional minority and non-minority institutions. The fixation of fee structure provided under the said Regulation and Ordinance was also under

challenge. For the present, the Court is not required to go into that aspect of the matter. The Division Bench relying on Supreme Court's decisions in case of ***T.M.A. Pai Foundation and others Vs. State of Karnataka***, reported in ***(2002) 8 SCC 481***, in case of ***Islamic Academy of Education & Anr. Vs. State of Karnataka & Ors***., reported in ***(2003) 6 SCC 697*** and in case of ***Modern Dental College and Research Centre and Others Vs. State of Madhya Pradesh and others***, reported in ***(2016) 7 SCC 353*** upholding Ordinance/Regulation regulating admission to unaided privately managed institutions has held in paragraph 70 as follows:-

> "70. In view of the decisions of Supreme Court, as discussed above, we do not find any illegality or unconstitutionality in prescribing for Common Entrance Test, to be held by a University, for the institutions conducting B.Ed. Programme, under the said particular University, on the basis of merit-list, so obtained, and allotment of seats through counseling. In view of the law which has been laid down by the Supreme Court in case of Modern Dental College & Research Centre (supra), a Combined Entrance Test, by an agency which enjoys credibility in the matter to

achieve fulfillment of twin objectives of transparency and merit, can be provided by the State, which is in the larger public interest. Such restriction has been held to be reasonable, satisfying the test of proportionality by the Supreme Court in case of Modern Dental College & Research Centre (supra). The principle equality applies to minority institutions cannot be distinguished for the purpose of regulating admission on the basis of Combined Entrance Test. It would, however, have been better situation, if State level CET was held instead of University-wise tests."

(emphasis supplied)

3. Since the three writ applications involve common question of law and the basic facts are almost identical, they have been heard together with the consent of the parties and are being disposed of by present common judgment and order.

4. I have heard Mr. Basant Kumar Choudhary, Mr. P.K.Shahi and Mr. P.N. Shahi, learned Senior Counsel appearing on behalf of the petitioners and Mr. Rajendra Kumar Giri, learned Counsel, appearing on behalf of the Chancellor, Universities of Bihar. I have also heard Md. Nadim Seraj,

learned Counsel, appearing on behalf of Lalit Narayan Mithila University, Darbhanga.

5. The writ petitioners, by putting to challenge letter No. BSU(Regulation)-16/2015-1460/GS(i) dated 30.05.2018, issued under the signature of the Officer on Special Duty (Judicial), Governor's Secretariat, Bihar, have sought its quashing on the ground of the same being in breach of this Court's direction and observation in paragraph 73 of the Division Bench decision in case of ***Mirza Ghalib T. T. College*** (supra). By the said communication, the exemption earlier granted by the office of the Chancellor to the said institutions from undertaking admission on the basis of Combined Entrance Test (CET) in B.Ed. Courses has been revoked.

6. The petitioners claim that they are unaided privately managed minority Teachers Training Institutions imparting, *inter alia*, B.Ed. Courses.

7. It is noticeable, as has been noted above, that this Court in case of ***Mirza Ghalib T.T. College*** (supra) has upheld the Ordinance/Regulation, which prescribed for Combined Entrance Test (CET) at the level of the University for admission to B.Ed. Courses, based on their respective merit. While holding so, the Division Bench observed in paragraph 73, in the

light of the observation made in paragraph 19 of the Supreme Court's decision in case of ***Islamic Academy of Education*** (supra) that the Chancellor of the Universities of Bihar shall have power to permit an institution established and permitted to adopt its own admission procedure for the last, at least, 25 years, against which no finger had ever been raised and no complaint made regarding fairness; to adopt its own admission procedure. In the light of the said observation in paragraph 73, these petitioners had approached the Chancellor of the Universities of Bihar seeking exemption from CET for permission to adopt their own admission procedure. What is not in dispute is that the Chancellor of the Universities of Bihar granted exemption in favour of these three institutions, who are before this Court by orders, passed on 16.03.2018 in case of Dr. Zakir Hussain Teachers' Training College, Laheriasarai, Darbhanga (CWJC No. 10846 of 2018), 19.03.2018 in case of S.M. Zaheer Alam Teachers' Training College, Bahera, Darbhanga (CWJC No. 10844 of 2018) and 02.05.2017 in case of Millat Teachers' Training College, Madhubani (CWJC No. 11698 of 2018). The said exemption granted by the Chancellor has been revoked with the issuance of the impugned letter, consequent upon which these institutions can now admit students in B.Ed. Course on the basis of merit list of State level Common Entrance Test only, to be held for admission in the said course, as contemplated under recently framed “Statute for conducting Combined Entrance Test for all B. Ed. Colleges affiliated to State Universities of Bihar” (hereinafter referred to as the Statute).

8. Mr. Basant Kumar Choudhary, learned Senior Counsel appearing on behalf of the petitioner in CWJC No. 10844 of 2018 has submitted that the impugned decision of the Chancellor amounts to defiance of observation made by a Division Bench of this Court in paragraph 73 in case of ***Mirza Ghalib T.T.College*** (supra). Taking this Court to the impugned decision of the Chancellor, he has contended that ignoring what was observed by this Court in paragraph 73 of the ***Mirza Ghalib T. T. College*** (supra), the Chancellor has contemptuously referred to a Supreme Court’s decision in case of ***T.M.A. Pai Foundation*** (supra), in order to justify the decision to revoke the exemption earlier granted. He has contended that the action of the Chancellor strikes at the root of the rule of law, which required him to act in terms of the Division Bench decision in case of ***Mirza Ghalib T. T. College*** (supra), wherein this Court has considered ***T.M.A.Pai Foundation*** (supra) before recording aforesaid observation in paragraph 73. According to him, it was

open for the Chancellor either to seek review of the Division Bench decision in case of ***Mirza Ghalib T.T.College*** (supra) in reference to the observation made in paragraph 73 or question its correctness before higher forum. He contends that the Division Bench, in said case has carved out a clear exception for such educational institutions, which were established before 25 years or more and had been permitted to adopt their own admission procedure for the last, at least, 25 years against which no finger had ever been raised and no complaint ever made regarding fairness. Once an institution could establish these two tests, the Chancellor did not have any option but to grant exemption in the light of the observation of the Division Bench of this Court, he contends.

9. Mr. P.K. Shahi, learned Senior Counsel appearing on behalf of the petitioner in CWJC No. 11698 of 2018, while adopting broadly and generally the submission advanced by Mr. Basant Kumar Choudhary, learned Senior Counsel, has submitted that once, in the light of the observation of Division Bench, the Chancellor consciously took a decision to grant exemption in favour of the College, it was not open for the Chancellor to have recalled the said decision. According to him, a right accrued to these institutions to adopt their own procedure

for admission after the decision of the Chancellor to grant exemption from Combined Entrance Test. This right, he has contended, could not be taken back with reference to decision of a Supreme Court in case of ***T.M.A.Pai Foundation*** (supra) after consideration of which the Division Bench of this Court made observation in paragraph 73 in case of ***Mirza Ghalib T. T. College*** (supra). He reiterates that the impugned decision amounts to overruling the Division Bench decision of this Court by the Chancellor, by referring to Constitution Bench decision of the Supreme Court which is legally impossible.

10. Mr. Pushkar Narain Shahi, learned Senior Counsel appearing on behalf of the petitioner in CWJC No. 10846 of 2018, while assailing the impugned decision of the Chancellor with equal vehemence, has contended that there is no apparent logic behind revoking the exemption within a short period of two months from the date when the exemption was granted. While adopting the arguments advanced by Mr. B.K. Choudhary, and Mr. P.K. Shahi, learned Senior Counsels, has drawn my attention to Article 1.1 of the recently framed Statutes prescribing Combined Entrance Test for all B.Ed. Colleges affiliated to the State Universities of Bihar as approved by the Chancellor on 30.05.2018, which reads thus:-

> "1.1 Notwithstanding anything contrary to the Bihar State Universities Act 1976 as amended upto date, Patna University Act, 1976 as amended upto date, Nalanda Open University Act, 1995 and Aryabhatt Knowledge University Act, 2008, the Statute framed here under shall apply to all State Universities (except the Colleges exempted for this purpose) for the Conduct of Entrance Test for admission to B.Ed. Programme as approved by the NCTE.
>
> This will supersede the Ordinance and Regulations of Two-Year B.Ed. Course promulgated vide BSU(Regulation)-16/2015-1283/GS (I), dated 02.09.2015."

11. Referring to the said provision, he has contended that the Statute itself provides for exception in respect of Colleges exempted from CET. He accordingly, contends that the decision of the Chancellor, which amounts to compelling the College in question to admit students based on Combined Entrance Test is in breach of Article 1.1 of the said Statute.

12. A counter affidavit has been filed on behalf of the Chancellor, Universities of Bihar. It has been stated that the decision to have Combined Entrance Test or B.Ed. Colleges including those earlier exempted has been taken in view of the

observation made in paragraph 70 of the same Division Bench decision in case of ***Mirza Ghalib T. T. College*** (supra). It has been stated that taking into account the Supreme Court's observation in case of ***T.M.A. Pai Foundation*** (supra) that if a student was required to appear in more than one entrance test, it would lead to great hardship and would impose heavy burden on the students if they were compelled to pay application fees separately for each institute and if every such institute were allowed to hold separate entrance test AND keeping in mind inconvenience which the students would have in making arrangements for transportation from one place to another, the Chancellor was of the view that such exemption granted to the Colleges should be recalled.

13. Mr. Rajendra Kumar Giri, learned Counsel appearing on behalf of the Chancellor, has submitted that the impugned decision has been taken, rather in the light of the observation of the Division Bench of this Court in case of ***Mirza Ghalib T.T. College*** (supra) and not in breach thereof. According to him, this Court, by making observation in paragraph 73 did authorize the Chancellor to take a decision for grant of exemption but had not mandated the Chancellor to grant such exemption. According to him, a discretion was given

to the Chancellor to grant exemption to class of Teachers' Training Institutions as indicated in paragraph 73 of the judgment of the Division Bench. He also contends that the decision to recall exemption has been taken after coming into force of the Statute for conducting Combined Entrance Test for all B.Ed. Colleges affiliated to State Universities of Bihar. By providing exception in Article 1.1 of the Statutes, the power of the Chancellor to grant exemption by way of discretion has been merely retained to be exercised in appropriate situation, he argues.

14. I have considered the rival submissions made on behalf of the parties. I have quoted paragraph 73 of the Division Bench decision in case of ***Mirza Ghalib T.T.College*** (supra) at the very outset. The language of the paragraph 73 is amply clear, which conferred upon the Chancellor of the Universities of Bihar a power to permit such institution, which has been established and has been permitted to adopt its own admission procedure for the last, at least, 25 years, against which no finger had ever been raised and no complaint made regarding fairness, to adopt its own admission procedure. While conferring the said power/discretion on the Chancellor to exempt an institution thus, from Combined Entrance Test based admission, restricted

it to be applied to such institutions only which fulfilled the aforesaid requirement. The observation in paragraph 73 is evidently in the light of Supreme Court's decision in case of ***Islamic Academy of Education*** (supra), where the Supreme Court had conferred such jurisdiction of permanent Committees to be appointed by respective State Government to oversee and ensure that the test conducted by the association of College was fair and transparent. This is to be noticed that the Committee was directed to be constituted in case of ***Islamic Academy of Education*** (supra) by Supreme Court to oversee the test conducted by the association of Colleges. Taking a cue from the said decision, the Division Bench in case of ***Mirza Ghalib T.T.College*** (supra) considered it appropriate to confer to vest power and discretion in the Chancellor, Universities of Bihar while considering the question of validity of Ordinance/Regulations published for Combined Entrance Test to be held by various Universities in the State of Bihar.

15. Mr. Giri has rightly relied on paragraph 70 of the Division Bench decision in case of ***Mirza Ghalib T.T. College*** (supra), wherein this count made a significant remark that it would have been rather, better situation, if State level CET was held instead of University wise tests. It is the plea on the behalf

of the Chancellor that following the said observation of the Division Bench, the recent Statute has been framed for Combined Entrance Test (CET-B.Ed.), for admission in B.Ed. Colleges affiliated to State University of Bihar. The decision of the Chancellor to prescribe for CET or State level CET, in my view is in tune with the observation made by the Division Bench and not contrary to it. When the Division Bench allowed discretion to be exercised by the Chancellor for grant of exemption, the Chancellor had discretion either to deny exemption or to recall exemption, even if granted. The submission advanced on behalf of the petitioners that the impugned decision of the Chancellor is in defiance of the observation made in paragraph 73 of this Court's order is not at all acceptable to me.

16. Further, it is manifest that the Chancellor revoked the exemption earlier granted in favour of these institutions, in view of coming into force of the Statute, which for the first time contemplated a State level CET for admission in B.Ed. Course. It also appears that exemption of this nature was earlier granted by the Chancellor in favour of five institutions, who were invited in the Chancellor's office for discussion on the point of State level Common Entrance Test.

The petitioning- institutions, however, did not participate in the meeting. Two other institutions participated in the discussion and agreed to follow the admission procedure through, CET as envisaged under the Statute.

17. The impugned decision of the Chancellor, in my view, does not in any manner dilute this Court's observation in paragraph 73 of ***Mirza Ghalib T.T. College*** (supra). The said decision in my view, is in the line of the law discussed in the said case that there should be in place, a merit based selection process for admission to professional institutions through State level Common Entrance Test conducted by the Government Agencies. The Supreme Court has repeatedly expressed the necessity of holding a Common Entrance Test for ensuring fulfillment of twin objects of 'transparency and merit' which CET should satisfy the tripple test of fair, transparent non-exploitative method of selection. The Chancellor's decision, impugned in these applications is directed to subserve larger public interest, i.e., to promote merit, achieve excellence and carve out *mal practices*, which is essentially required. The decision of the Chancellor cannot be faulted with.

18. The said decision promotes the idea and philosophy expounded by the Supreme Court in case of ***T.M.A.***

Pai Foundation, Islamic Academy of Education and Modern Dental College and others (supra). The impugned decision, therefore, does not warrant any interference by this Court.

18. These applications are, accordingly, dismissed being devoid of merit.

19. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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