

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18714 of 2017

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1. R. P. Sharma Institute of Technology through its Registrar, Brajesh Kumar Chaudhary Son of Sri Arvind Prasad Chaudhary Resident of Village - Garhiya, P.O. - Garhiya, P.S. - Chautham, District - Khagaria.
 2. Maulana Azad College of Engineering and Technology, Anisabad, Patna through its Secretary Safdar Ali Khan, S/o Late Nawab Md. Jabir Ali Khan, Resident of 69/5, T.N. Banerjee Road, Chhajubagh, P.O. GPO Patna, P.S. Kotwali, Dist - Patna.

... .. Petitioner/s

Versus

1. Magadh University, Bodh Gaya, through its Registrar.
2. The Vice Chancellor, Magadh University, Bodhgaya, Gaya.
3. The Registrar, Magadh University, Bodhgaya, Gaya.
4. The Inspector of Colleges (Science), Magadh University, Bodhgaya, Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad Singh, Sr. Adv. Mr. Brisketu Sharan Pandey Mr. Prince Kumar Mishra Mr. S. N. Pathak
For the University	:	Mr. Shivendra Kishore, Sr. Adv. Mr. Ritesh Kumar

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date : 30-04-2018

The facts, which are admitted in the present case, narrate very sordid state of affairs in connection with the approach of the Magadh University, Bodh Gaya (hereinafter referred to as 'the University'), towards dealing with cases for grant of affiliation to such privately managed technical institutions, which



have due approval of the courses by All India Council for Technical Education, 1987 (hereinafter referred to as the 'AICTE'), under the All India Council for Technical Education Act (hereinafter referred to as 'the Act').

2. The present writ application has been filed by R. P. Sharma Institute of Technology, through its Registrar and Maulana Azad College of Engineering and Technology, through its Secretary, seeking quashing of the decision, dated 05.12.2017, taken by the Affiliation Committee of the University, whereby the University has decided to inspect the petitioners' institutions upon depositing inspection fee of Rs. 5,00,000/- each, for the purpose of extending the affiliation of the courses run by the said institutions. The petitioners seek a direction to the respondents to extend affiliation of courses run by them for the academic year 2017-18, in respect of which the approval has already been granted by AICTE, vide letter, dated 30.03.2017. They have raised objection to the University's demand of a sum of Rs. 5,00,000/- each as inspection fee for inspection of the said institutions.

3. When the present matter was taken up on 20.12.2017, while allowing the University to file counter affidavit, I had directed the Vice-Chancellor of the University to ensure that a decision was taken on the question of grant of affiliation strictly in



accordance with law, keeping in mind the Supreme Court's decision, in the case of **Rungta Engineering College and Another v. Chhattisgarh Swami Vivekanand Technical University and Another**, reported in **2014 (4) PLJR (SC) 431**.

4. The affiliation has not been granted despite order of this Court, dated 20.12.2017, and there is nothing on record to show as to whether there was any consideration in accordance with this Court's order, dated 20.12.2017, for grant of affiliation in the light of the law laid down by the Supreme Court, in the case of **Rungta Engineering College** (supra). Instead the Vice-Chancellor of the University has passed following order, which has been brought on record by way of Annexure-B to the counter affidavit filed on behalf of the University.

“In compliance of the order dated 20.12.2017 passed in CWJC No. 18741 of 2017 (R. P. Sharma Institute of Technology and Another v. The Magadh University and Others) by Hon'ble Patna High Court, I have perused the records of the case, as well as the judgment reported in 2014 (4) PLJR (SC) 431 (Rungta Engineering College and Another v. Chhattisgarh Swami Vivekanand Technical University and Another). The affiliation committee of the University in its meeting dated 05.12.2017 has taken a decision vide



agenda no. 4, to take a decision on the extension of affiliation for session 2017-18 for the petitioners college, after deposit of Rs. 5 lakh and submission of application form in the prescribed proforma and then only the inspection can be done. The decision of the affiliation committee has been approved by the Syndicate of the University in its meeting dated 07.12.2017. The petitioner institution was inspected for affiliation long back and as per the judgment referred above, for affiliation of a technical institution only the AICTE is competent but the examining body (University in the present case) has not been debarred from making inspection. The University has only asked for deposit of the inspection fee and after deposit of the same, the University will make an inspection of the Institution. If any shortcomings will be found during the course of the inspection, the same will be recommended to the AICTE for taking further action as per law, since as per the above referred judgment, only AICTE is competent to take decision on the same. In view of the judgment referred above, the University will conduct an inspection of the Institution only.”



5. In the opinion of the Vice-Chancellor of the University, thus, till the institutions deposit the inspection fee, their cases for grant of affiliation could not be considered.

6. When the matter was taken up on 17.04.2018, the University was directed to file an affidavit, explaining the source of power which authorized the University to charge inspection fee. The University was also directed to explain the basis for determination of the amount of Rs. 5,00,000/- as inspection fee.

7. In compliance of the said order, the University has filed supplementary counter affidavit, stating therein that the decision to charge inspection fee has been taken on the recommendation of the Finance Committee of the University, which has been approved by the Senate and Syndicate of the University, the statutory bodies, in its meeting, dated 28.04.2017. It has also been stated that a decision to enhance the inspection fee has been taken in view of the steep increase in the cost of inspection since it includes expenses for travel, daily allowances, remunerations of the inspection team and other administrative expenses. It has further been stated that the University has formulated a policy of periodical inspection of affiliated colleges including professional and technical institutions, at least, three times a year. Though there is no statement in the said



supplementary counter affidavit that the said amount of Rs. 5,00,000/- is to be charged annually for conducting all the three inspections to be conducted by the University every year or for every inspection, the said amount is to be charged, learned Senior Counsel, Mr. Shivendra Kishore, appearing on behalf of the University, has submitted that the said amount of Rs. 5,00,000/- will cover three inspections to be conducted by the University of an institution in a year.

8. The decision of the Finance Committee of the University has been brought on record by way of Annexure-A to the supplementary counter affidavit. I have perused Annexure-A to the supplementary counter affidavit. Though, the said decision refers to charging inspection fee for conducting inspection of different kinds of institutions, namely, B. Ed., Law, Medical, Dental, Para-Medical, B.P.Ed., it does not refer to engineering colleges. The relevant portion of the decision, said to have been taken by the Finance Committee of the University, is being reproduced hereinbelow:-

“मगध विश्वविद्यालय अन्तर्गत सम्बन्ध महाविद्यालयों/विभिन्न संस्थानों में संचालित स्ववित्त पोषित व्यवसायिक/बी. एड./लॉ/मेडिकल/डेंटल/पारामेडिकल/बी.पी.एड. आदि के संबंधन/संबंधन विस्तार/प्रसंस्करण शुल्क पूर्णनिर्धारण पर विचार। पुर्ननिर्धारित दर निम्न प्रकार है:



B.P.ED	500000
M.P.ED	500000
M.ED	500000
B. ED	500000
M.B.B.S.	250000 (no change)
P.G.M.B.B.S.	30000 special paper (no change)
B.D.S	150000 (no change)
M.D.S.	25000 Special Paper (no change)
B. PHARMACY	250000
M. PHARMACY	300000
Para-Medical (bachelor)	100000
Para -medical (P.G.)	150000
LL.B. (three years)	150000
LL.B. (five years)	150000
L.L.M.	300000
Professional/Vocational Courses (bachelor)	300000
P.G. Diploma-One Year (professional/vocational)	200000
Professional/Vocational Courses (Master)	500000
Master Degree-2 Years (Professional)	200000
Processing Fee (for new)	50000
Fee for nomination of UR in the B.ED./M.ED. college	50000

9. It is, thus, evident from Annexure-A to the supplementary counter affidavit, filed on behalf of the University, that the statement made in paragraph 4 of the same is false. There is no decision of the Finance Committee or any other authority on record to suggest that there was any decision taken for enhancement of the inspection fee. The stubborn and adamant attitude of the University in declining to consider the petitioners' case for grant of affiliation despite there being approval already



granted in favour of the institutions by the AICTE on the pretext of non-payment of inspection fee is wholly arbitrary and smacks of *mala fide*.

10. This Court, at the same time, cannot loose sight of the provision under Clause 11 of sub-Section (1) of Section 4 of the Bihar State Universities Act, 1976. Section 4 (1) defines purposes and powers of a University; Clause 11 thereof empowers a University to 'demand and receive fees under the Ordinance'. A plain reading of the said provision indicates that the University can demand and receive fees, but only under the Ordinance. Sections 37 and 38 of the Bihar State Universities Act, 1976, lays down the procedure for making an Ordinance, which clearly mandates that an Ordinance shall come into force only after an order is passed by the Chancellor of the Universities on receiving the same from the Senate/Syndicate of the University for assent. Upon bare reading of Clause 11 of sub-Section (1) of Section 4 of the Bihar State Universities Act, 1976, it is evident that no fee can be demanded by a University unless the same is backed by an Ordinance. This serves dual purpose, firstly exercising control at the level of the Chancellor to ensure that the decisions of the University are not taken arbitrarily in the matter of fees etc. and, secondly, uniformity



in standard in the matter of fixation of fee by all Universities in the State of Bihar is broadly maintained.

11. This is because earlier also, the petitioner no. 1 had to approach this Court by filing a writ application, registered as CWJC No. 1963 of 2006, asserting that though the institution was granted recommendation, the University was not issuing corresponding order for affiliating the institution. The Court, by order, dated 11.12.2006, while disposing of the writ application, had passed following order:-

“In the opinion of this Court approval from the State Government is not required in view of Section 10 of the AICTE Act, which empowers the AICTE to consider and grant deemed recognition to the Technical institutions for failure of the Govt. to issue no objection certificate.”

12. Again, the petitioner no. 1 was compelled to approach this Court for similar relief in respect of the academic year 2015-16. The Court made adverse comments on the approach of the University, while allowing the writ application, in following terms:-

“The University is holding the institution at ransom now. They have issued a letter contained in Annexure-1 for inspection



and treating as if the institution has been set up for the first time and required to be inspected for grant of affiliation. Obviously, there is a disconnect between various bodies of the University itself, otherwise Annexure-1 would not have been issued.

The stand of the petitioner is that the resolution of the Affiliation Committee was approved both by the Syndicate and the Senate of the University as well as the State Government. Therefore, they cannot go behind the said resolution.

In view of the same, the University is directed to issue a letter for affiliation from the year 2011-12 till 2015-16 in terms of the approval granted by the AICTE. Such an affiliation must be granted within two weeks from to day.

Writ is allowed along with the Interlocutory Application.”

13. It appears from the above noted facts that till strict orders are passed by this Court, the University is not ready to act in accordance with the clear mandate of law laid down by the Supreme Court, in the case of **Rungta Engineering College** (supra). The Supreme Court, in the case of **Rungta Engineering College** (supra), has held, in paragraph 42 and 43, as follow:-



“42. An examination of all the objections mentioned in the said communication would reveal that each one of those objections squarely fall within the sweep of one or the other areas which only the AICTE has the exclusive jurisdiction to deal with. None of them are demonstrated before us to be matters falling within the area legally falling within the domain of the Respondents. AICTE, on inspection of the Ist Petitioner college reported that the Ist Petitioner college fulfils all the conditions prescribed by the norms and standards laid down by AICTE. The Respondents did not make any specific assertion that such a report of the AICTE is factually incorrect. Assuming for the sake of argument that, in the opinion of the Respondents, the Petitioner college has not in fact fulfilled any one of the conditions required under the norms specified by the AICTE, the only course of action available for the Respondents is to bring the shortcomings noticed by them to the notice of the AICTE and seek appropriate action against the Petitioner college.

43. We are, therefore, of the opinion that the decision of the Respondent not to grant the affiliation to the first Petitioner college is wholly untenable and is required to be set aside. The same is accordingly set aside. Since



the Respondent did not decline the affiliation to the first Petitioner college either on the ground that the Petitioner college is admitting wholly ineligible students as per the norms stipulated by the Respondent University or that the admission procedure prescribed by the Respondents is not being complied with by the Petitioners or on any other ground that the Petitioners violated any one of the stipulations made by the University which the University is legally competent to make, we have no option but to direct the Respondents to grant affiliation to the Petitioner college. The operative portion of the judgment of this Court has already been pronounced on 01.9.2014. Therefore, we are not reiterating the same.”

14. In view of the law which has been laid down by the Supreme Court, in the case of **Rungta Engineering College** (supra), the University did not have any other option, but to grant affiliation in favour of the institution in question. The Supreme Court made clear observation, in the case of **Rungta Engineering College** (supra), that affiliation can be declined by the University either on the ground that the institution is admitting wholly ineligible students as per the norms stipulated by the respondent-University or the admission procedure prescribed by the respondent is not being complied with by the petitioner or on any



other ground that the institution violated anyone of the stipulations made by the University, which the University is legally competent to make. Keeping the matter of affiliation pending for long has natural and serious consequence of denial of affiliation, which the University cannot afford to take so lightly. Taking a false plea before this Court aggravates the conduct of the University as an institution

15. It is quite evincible from the Supreme Court's decision, in the case of **Rungta Engineering College** (supra), that the Supreme Court has relied on earlier decision of the Supreme court, in the case of **Bhartia Education Society v. State of H. P.**, reported in (2011) 4 SCC 527 : 2011 (2) PLJR (SC) 94. Be it noted that the Supreme Court, in the case of **Bhartia Education Society** (supra), had the occasion to deal with the provisions of the National Council for Teacher Education Act, 1993. Following the ratio in the case of **Bhartia Education Society** (supra), while considering the provisions under the Act, the Supreme Court, in the case of **Rungta Engineering College** (supra), laid down the law under Article 141 of the Constitution of India, in paragraph 42, has already been noted above, which is binding. It is unfortunate that the Vice-Chancellor of the University, despite understanding the import of the law laid down by the Supreme Court, in the case



of **Rungta Engineering College** (supra), refused to consider the case of the petitioners' institutions, despite clear direction and observation made by this Court.

16. Mr. Rajendra Prasad Singh, learned Senior Counsel, appearing on behalf of the petitioners, has rightly drawn my attention to the decision of the Affiliation Committee of the University taken in its meeting, held on 31.01.2001, which is not in dispute. It is evident that a decision was taken by the Affiliation Committee on 30.01.2001 to grant extension of affiliation from time to time as and when the approval by the AICTE was granted to these institutions. Relevant portion of the said decision is being quoted hereinbelow:-

“यह भी निर्णय लिया गया कि अखिल भारतीय तकनीकी शिक्षा परिषद द्वारा आगामी सत्रों के लिए समय-समय पर दी जाने वाली पाठ्यक्रम एवं इंटेक की स्वीकृति एवं अवधि विस्तार होने पर अखिल भारतीय तकनीकी शिक्षा परिषद द्वारा लगाये गयी शर्तों यदि कोई हो तो के साथ यह सम्बद्धता विस्तारित होता रहेगा।”

17. The above noted facts clearly show that the stand of the University that certain decision was taken by the statutory committee of the University to charge inspection fee of Rs. 5,00,000/-, is completely false. Secondly, in view of the law laid down by the Supreme Court, in the case of **Rungta Engineering College** (supra), the University did not have any other choice than



to grant affiliation in favour of the colleges. Thirdly, the action of the University is apparently in breach of the decision already taken in the year 2001 by the Affiliation Committee, which is said to have been approved by the Senate and Syndicate of the University and subsequently the State of Bihar also. The past conduct of the University, which has been taken note of, also deserves to be strongly deprecated, which I do.

18. Mr. Shivendra Kishore, learned Senior Counsel, appearing on behalf of the University, has drawn my attention to the impugned decision of the University, dated 05.12.2017, in order to make out a case that decision earlier taken by the University in terms of decision of the Affiliation Committee, in its meeting, held on 31.01.2001, has been superseded by the subsequent decision on 05.12.2017.

19. Mr. Singh, learned Senior Counsel, appearing on behalf of the petitioners, on the other hand, has submitted that the decision of the University taken in the light of the decision of the Affiliation Committee, dated 31.01.2001, was not only approved by the Senate and Syndicate of the University, but by the State Government also, as communicated to the petitioner no. 1 institution through letter, dated 13.09.2003.



20. Mr. Shivendra Kishore, learned Senior Counsel, has, however, not been able to answer the said submission made on behalf of the petitioners that the earlier decision of the University taken in the year 2001 was approved up to the level of the State Government.

21. In view of the discussions as above, this application is allowed. The University is directed to act strictly in accordance with the decision of the Supreme Court, in the case of **Rungta Engineering College** (supra), within a period of one month from the date of receipt/production of a copy of this order.

22. Considering the manner in which the University has dealt with the case of the petitioners in considering grant of affiliation in utter disregard to the judicial pronouncements and statutory provisions, coupled with the fact that a false plea has been taken by the University to justify their action, I am constrained to impose a cost of Rs. 5,00,000/- to be paid to the petitioners (Rs. 2,50,000/- each) within a period of three months from today.

23. The exemplary cost, I have imposed, is because the University has refused to learn lessons despite repeated orders by this Court, compelling the litigant petitioners to approach this Court again and again. This may have deterrent effect too, keeping



in mind the fact that the University has consistently acted in defiance of the statutory provisions and the Supreme Court’s direction.

24. Let the order be communicated to the Office of the Chancellor, Universities of Bihar, forthwith, for the purpose of examining the question of initiation of action against the functionaries of the University, since the Court is of the *prima facie* view that their actions smack of *mala fide*.

Prabhakar Anand/-

(Chakradhari Sharan Singh, J.)

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CAV DATE	N/A
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