IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.902 of 2018

In

Civil Writ Jurisdiction Case No.10846 of 2018

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1. Dr. Sharique Hussain son of Late Prof. Kashif Hussain Secretary, Dr. Zakir Hussain Teachers Training College, P.O.Laheria Sarai, Police Station - Laheria Sarai, District - Darbhanga (Bihar).
2. Vice-Chancellor, Lalit Narayan Mithila University, Darbhanga, Darbhanga.
3. The Registrar, Lalit Narayan Mithila University, Darbhanga.

... ... Appellant/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

Letters Patent Appeal No. 904 of 2018

In

Civil Writ Jurisdiction Case No.10844 of 2018

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

... ... Appellant/s

Versus

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

... ... Respondent/s

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with

Letters Patent Appeal No. 957 of 2018

In

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.

... ... Appellant/s

Versus

1. The Chancellor of the Universities of Bihar, Raj Bhawan, Patna.
2. The Principal Secretary, to the Chancellor, Raj Bhawan, Patna.

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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 Letters Patent Appeal No. 902 of 2018)
For the Appellants : Mr. Basant Kumar Chaudhary, Sr. Advocate
Mr. Sarvadeo Singh, Advocate
Mr. Sanjay Kumar, Advocate
For the L.N.M.U. : Mr. Md. Nadim Seraj, Advocate
Mr. Anshuma, Advocate
(In Letters Patent Appeal No. 904 of 2018)
For the Appellant/s : Mr. P. N. Shahi, Sr. Advocate
For the Respondent/s : Mr. Rajendra Kumar Giri
(In Letters Patent Appeal No. 957 of 2018)
For the Appellant/s : Mr. P. K. Shahi, Sr.Advocate
Mr. Vikas Kumar, Advocate
For the Respondent/s : Mr. Rajendra Kumar Giri, Advocate
For L.N.M.U. : Mr. Chabndra Mohan Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

4 31-07-2018 All these Letters Patent Appeals are arising out of common judgment dated 02.07.2018 passed by the learned Writ Court in Civil Writ Jurisdiction Case No. 10844 of 2018 and its analogous matters.

2. The writ petitioners moved this Court seeking indulgence of this Court in its extra ordinary writ jurisdiction to quash the communication/order as contained in Letter No. BSU (Regulation)-16/2015-1460/GS(i) dated 30.05.2018 by which the Hon'ble Chancellor was pleased to revoke the exemption granted to the colleges in question from admitting student in

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B.Ed. Course of the college during Session 2018-20 through common entrance test. The petitioners also prayed for quashing of the communication contained in Letter No. SW-1515-17/18 dated 30.05.2018 by which the University had passed order as contained in Annexure-2 to the writ application, the relevant part of which reads as under:-

> "Sir,
>
> In pursuance of Governor's Secretariat, Bihar, Raj Bhavan, Bihar, Patna letter No. BSU(Regulation)-16/2015-1460/GS(I) dated 30.05.2018 (copy enclosed) on the subject mentioned above, I am directed to inform that the Hon'ble Chancellor after due consideration has been pleased to revoke the special privilege granted earlier to your College for adopting your own admission process. It has further been directed that all the constituent and affiliated B.Ed. Colleges duly recognized by the Regulatory Authorities of Bihar would be conversed by the new Statute for CET for admission into B.Ed. Course.
>
> Accordingly, you are informed to comply with the order of the Hon'ble Chancellor as contained in the enclosed letter."

Brief History

3. It appears that earlier by a Regulation and Ordinance the procedures for admission of two years Bachelor of Education (Secondary) Programme was circulated.

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Procedures were provided for admission of students through a common entrance test for all the B.Ed College either constituent or affiliated. It was a kind of decision taken under Section 38 (4) read with Section 39 (2) of the Bihar Universities Act, 1976.

4. The said Ordinance/Regulation was challenged before this Court in C.W.J.C. No. 7851 of 2016 on several grounds including that certain special privileges have been conferred upon the minority institutions and therefore a relief was prayed for allowing these institutions to admit students by following their own procedures as have been adopted earlier. This Court passed an interim order dated 13.05.2016 allowing the writ petitioners to admit students as per their own procedures. The admission for Session 2016-18 was completed. Subsequent orders permitting the same were also passed.

5. This Court ultimately decided the issue raised in the writ application vide its common judgment dated 27.10.2016 in the case of **Mirza Ghalib T.T. College & Ors. Vs. State of Bihar and Ors.** reported in **2017 (1) PLJR 256**. Paragraph 73 of the said judgment is the foundation of the present case and therefore, we think it just and proper to quote paragraph 73 of the said judgment, which reads as under:-

> "73. Taking a cue from the observations made in paragraph 19 of Supreme Court

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> 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."

6. The contention of the petitioners in the present writ applications are that pursuant to the observations of this Court in the case of **Mirza Ghalib T.T. College** (*Supra*), once the Hon'ble Chancellor has granted exemption to the petitioners college, vide order dated 16.03.2018, allowing the petitioners college to adopt their own admission procedure and pursuant to the said decision (Annexure 11 to the writ application), when

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the petitioners college published an advertisement in the daily Hindi newspaper calling the candidate for the admission in the two years degree course for the Sessions 2018-20 and in one of the cases the date of examination was notified to be held on 20.05.2018, results were published and the date of counseling was fixed, all of a sudden the Hon'ble Chancellor has reversed the earlier decision dated 16.03.2018 by the present impugned order dated 30.05.2018 as contained in Annexure-1 to the writ application. In other two cases also advertisements were already published much before revocation of exemption and the candidates had already made applications for admission.

7. Mr. Basant Kumar Chaudhary and Mr. P. K. Shahi, learned Senior Counsel representing the appellants in these cases submit that in view of the observations of this Court in paragraph 73 of the judgment rendered in the case of **Mirza Ghalib T.T. College** (*Supra*), after due consideration and upon examination of materials available on the record once the Hon'ble Chancellor has granted exemption to the writ petitioners colleges and they have been allowed to admit students following their own procedure, all of a sudden when the petitioner(s) have already proceeded and counseling are being held, the decision impugned at Annexure-1 to the writ

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application is violative of the principle of natural justice. It is submitted that the order as contained in Annexure-1 has been sought to be made applicable with retrospective effect which is not permissible as the action of the Hon'ble Chancellor would cause much hardships not only to the colleges in question but also to the students who have already proceeded for and appeared in the examination held by these colleges. It is submitted that the principle of estoppel and fair play in action would be fully applicable in the facts and circumstances of the present case.

8. While assailing the judgment of the learned Writ Court learned Senior Counsel(s) submit that the learned Writ Court has held in the impugned judgment that the observation in paragraph 73 of the judgment in the case of **Mirza Ghalib T.T. College** (*Supra*) put a bar on the discretion of the Hon'ble Chancellor to exempt an institution from combined entrance test based admission and is restricted to be applied to such institutions only who fulfilled the prescribed requirements but the learned Writ Court instead of examining the contention of the writ petitioners that they were granted exemption by the Hon'ble Chancellor only after being fully satisfied that the petitioner(s) duly fulfill the prescribed requirements. It is

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submitted that the exemption has been withdrawn unilaterally all of a sudden. It is further submitted that while rejecting the contentions of the writ petitioners the learned Writ Court has held inter alia that "when the Division Bench allowed discretion to be exercised by the Hon'ble Chancellor for grant of exemption, the Chancellor had discretion either to deny exemption or recall exemption, even if granted….."

9. Learned Senior Counsel(s) submit that in view of the coming into force of the statute for conducting combined entrance test for all B.Ed. College affiliated to State University of Bihar, if the Hon'ble Chancellor has decided to recall the exemption granted to the institutions, the same cannot be applied with retrospective effect.

10. While opposing the Letters Patent Appeals, Mr. Rajendra Giri, learned counsel representing the Hon'ble Chancellor submits that the vires of the Regulation and Ordinance for admission in two years B.Ed. (Secondary) Programme in the Universities of Bihar has been up held by the Hon'ble Division Bench of this Court which was also got affirmed by the Hon'ble Supreme Court. Attention of this Court has been drawn towards paragraph no. 70 of the judgment of this Court in the case of **Mirza Ghalib T.T. College** (Supra)

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which reads 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

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State level CET was held instead of University-wise tests."

11. It is submitted that in view of the observations of this Court, the Hon'ble Chancellor constituted a sub-committee of the Vice Chancellors who prepared a draft statute for the State Level Combined Entrance Test and the same has been approved by the Admission Committee of the Hon'ble Chancellor and in terms of approved statute now a combined entrance test (CET) for all the B.Ed Colleges affiliated to the State Universities of Bihar is being conducted. Vide Annexure-A dated 03.05.2018 the Vice Chancellors of all the Universities of Bihar have been informed about the approval of the statute for conducting the combined entrance test for all B.Ed Colleges affiliated to the State University of Bihar and the Hon'ble Chancellor has nominated Nalanda Open University, Patna to conduct combined entrance test for the year 2018 for all the Universities of Bihar. It is submitted that vide Annexure-B to the counter affidavit the Hon'ble Supreme Court of India has been pleased to approve the schedule of examination for the academic year 2018-19.

12. It is submitted that the Hon'ble Chancellor was aware that few of the minority colleges have been exempted from holding the combined entrance test on the basis of their

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respective representations, however, in the changed circumstances following the observations of the Hon'ble Supreme Court in the case of T.M.A. Pai Foundation, the Hon'ble Chancellor took a view that allowing these institutions to conduct separate entrance test would create hardship and shall impose heavy burden on the students if they were compelled to pay application fees separately for each institute, therefore taking in view the welfare of the students, the impugned decision was taken vide letter dated 30.05.2018. It is submitted that no fault may be found in the impugned decision of the Hon'ble Chancellor and the learned Writ Court has committed no error by rejecting the writ applications.

13. Having heard learned Senior Counsel for the appellant(s) in all these Letters Patent Appeal and learned counsel representing the Universities as well as learned counsel representing Hon'ble Chancellor, we find that there is no dispute on facts that pursuant to the observation of this Court in paragraph 73 of the judgment in the case of **Mirza Ghalib T.T. College** (*Supra*), the Hon'ble Chancellor took a conscience decision on 16.03.2018 allowing these writ petitioners, who are the minority institutions, to follow their own admission procedure. It is not in dispute that the petitioners published

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advertisement immediately after the decision of the Hon'ble Chancellor was communicated to them. The petitioners invited applications from eligible candidates, the date of schedule were notified in the advertisements wherein in one of the cases the last date for submission of application was fixed on 08.05.2018. The examination was scheduled to be held on 20.05.2018, till date of holding of the examination, the Hon'ble Chancellor had not revoked the exemption granted to the petitioners. It is only after the institution had already held the examination, the impugned decision came on 30.05.2018. By this time the result was to be published and counseling dates were already fixed. In other two cases advertisements were published long back and the institutions had already accepted applications from the eligible candidates and date of examination had been notified, all preparations had been done by these colleges when the impugned decision was taken without giving any opportunity to the petitioners to explain their position. We are not saying that revocation of exemption is per se illegal or bad in law. We fully appreciate the efforts taken by the Hon'ble Chancellor wherein the statute has been drafted and now approved for holding a combined entrance test for all the B.Ed. Colleges in the State of Bihar but to us it appears that so far as these writ petitioners are

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concerned, they had proceeded to advertise under bonafide belief that they have been granted exemption by the Hon'ble Chancellor to follow their own procedures of admission. The writ petitioners had already notified last date for submission of the application by the eligible candidates, the candidates had therefore submitted their applications with requisite fees for examination and they had participated in the examination held by atleast one of the institutions, therefore the procedure for admission had already begun in these institutions on the basis of a legal and valid order of exemption granted by the Hon'ble Chancellor.

14. The principle of estoppel is a rule of evidence wherein a party is stopped from taking a plea if by virtue of his representations the other side has moved and altered his position. In the present case, we find that these writ petitioners had already moved and had moved up to holding of the examination after submission of the application forms by the eligible candidates, the institutions had collected applications and notified the dates of examinations. They were notified about revoking of exemption only on 30.05.2018. In our considered opinion, once the petitioners were given to understand that they can legally and validly proceed to adopt their own procedure for

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admission of this Session, only because subsequently the statute has been framed and approved it can not be applied against the petitioners when they have already proceeded by some significant act to conduct their admission tests. We, therefore take a view that the impugned decision by which the Hon'ble Chancellor has been pleased to revoke the exemption granted to these writ petitioners cannot be allowed to operate with retrospective effect. The order of revocation shall be applicable prospectively from the next academic sessions.

15. In the result, the impugned judgment of the learned Writ Court is set aside and the Letters Patent Appeals are allowed to the extent indicated hereinabove.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

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