

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1640 of 2017

In

Civil Writ Jurisdiction Case No.4035 of 2017

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1. The Bihar School Examination Board, through the Secretary, Budha Marg, Patna.
 2. The Secretary, Bihar School Examination Board, Budha Marg, Patna.

... .. Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Art Culture and Youth Department, Govt. of Bihar, Patna.
2. The Director, Art Culture and Youth Department, Govt. of Bihar, Patna.
3. The National Council for Teacher Education, Eastern Regional Committee, Nayapalli, Bhuneshwar, Orissa, through the Regional Director.
4. The Regional Director, National Council for Teacher Education, Eastern Regional Committee, Nayapalli, Bhuneshwar, Orissa.
5. Kula Nand Jha, son of Late Pandit Umakant Jha, r/o Village Birsair, P.S. Sakri, District Madhubani at present Director-cum- Principal of Mithila Hanumant National College of Health and Physical Education, Goi Mishra Lagma, Ghanshyampur, District Darbhanga.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Manish Kumar, Adv.
For the Respondent/s	:	Mr. Ravi Kumar, AC to AAG-13
For the Respondent-NCTE	:	Mr. Sunil Kumar Singh, Adv.
For the Respondent no.5	:	Mr. Tej Bahadur Singh, Sr. Adv. with Mr. Kripa Nand Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 09-04-2019

Heard Mr. Manish Kumar, learned counsel appearing for the appellant Bihar School Examination Board (hereinafter referred to as 'the Board'), Mr. Tej Bahadur Singh, learned senior counsel appears for the respondent-writ petitioner with due assistance of Mr. Kripa Nand Jha, the Advocate on record, Mr.



Sunil Kumar Singh, learned counsel appears for the National Council for Teacher Education and learned counsel for the State appearing for the Department of Art, Culture and Youth Affairs, Government of Bihar.

This intra court appeal is filed to question the order dated 12.10.2017 passed by a learned Single Judge of this Court in CWJC No.4035 of 2017, whereby the writ petition has been allowed with costs quantified at Rs.5,00,000/- by way of compensation for being utilised for the welfare of the students of the college in question.

The case in hand cuts a very sorry figure on the manner in which the Teachers Training Institutions who provide training to teachers for the betterment of the educational standards and consequentially the society, are being treated. The institution in question which is represented through Mr. Tej Bahadur Singh, learned senior counsel, is running within the State since 1987 with due recognition from the State Government and since thereafter by the National Council for Teacher Education ('NCTE' for the sake of brevity) on the enforcement of the NCTE Act, 1993 (hereinafter referred to as 'the Act').

It is the enforcement of 'the Act' that on completion of formalities, by order dated 03.03.2015 recognition was granted to the institution in question with stipulation that it would be



admitting students only after obtaining affiliation from the examining body i.e. the Bihar School Examination Board, Patna represented through Mr. Manish Kumar who are appellants before this Court. A copy of this order was also endorsed to the Secretary, Bihar School Examination Board obviously for taking consequential action because the provisions of Section 14(6) read alongside Section 16 of the 'Act' obliges the examining body i.e. the Bihar School Examination Board to grant affiliation to the institution whom recognition had been granted. In fact there is a command present in the provisions underlying Section 14(6) read alongside Section 16 of 'the Act' which leaves no option for the examining body to refuse affiliation which has to be as a matter of course.

It is unfortunate that an institution which was running under the permissive lawful recognition granted by the State Government in 1987 and which position was endorsed even by the 'NCTE' when they granted recognition under 'the Act' on 03.03.2015 with due intimation to the Bihar School Examination Board obviously to take consequential action yet the matter lingered, the students suffered and the respondent-writ petitioner institution kept running around the corridors of 'the Board' for grant of affiliation which should have been provided as a matter of course. This was not to be and a plea was taken by the Bihar



School Examination Board that a regulation in regard to grant of affiliation was under preparation.

We completely fail to appreciate as to the discretion in the Bihar School Examination Board to delay the affiliation in view of the mandate present in the Parliamentary Act in question which mandates a grant of affiliation by the examining body, no sooner a recognition is granted by the 'NCTE'. It is facing such harassment at the level of the Bihar School Examination Board which is the examining body in the State of Bihar that the respondent-writ petitioner had no option but to move this Court in the writ petition arising from CWJC No.4035 of 2017 but unfortunately the substantive relief for seeking a direction to the examining body to grant affiliation in view of the recognition order passed by the 'NCTE' dated 03.03.2015, went asking as no such prayer was made in the writ petition. Somewhere here the institution defaulted because all that they prayed is, to permit their students to appear in examination being fully aware of paragraph 3 of the recognition order dated 03.03.2015 issued by the 'NCTE' which precluded such institution from admitting students unless they would obtain affiliation from the Bihar School Examination Board under Regulation 8(10) of the NCTE (Recognition Norms and Procedure) Regulation, 2014.

It is with such a prayer i.e. to allow the students to



appear in the examination that the respondent-writ petitioner who claims to be the Director-cum-Principal of Mithila Hanumant National College of Health and Physical Education, Darbhanga came before this Court through the writ petition in question.

The learned Single Judge bearing note of the obstinacy of the Bihar School Examination Board in yet hiding behind the preparation of the affiliation regulation has allowed the writ petition with costs quantified at Rs. 5,00,000/-. There is apparently no infirmity found in the opinion of the learned Single Judge save and except as canvassed by Mr. Manish Kumar, learned counsel appearing for the appellant- Board that the learned Single Judge has imposed cost for a relief which was not even prayed for by the writ petitioner. According to Mr. Manish Kumar, there is no prayer in the writ petition seeking direction to the Bihar School Examination Board to grant affiliation.

Mr. Manish Kumar, while appreciating the legal position as taken note of submits that since there was no prayer for grant of affiliation, neither the learned Single Judge could have granted such relief and in case such relief could not have been granted then the imposition of costs also is not sustainable.

Despite noting the conduct of the authorities of 'the Board' in delaying affiliation to the writ petitioner which reflects lack of appreciation of the legal position, we are definitely



persuaded to note that the learned Single Judge after taking note of the sequence of events has overlooked the relief prayed by the respondent-writ petitioner which did not seek affiliation.

Bearing note of such undisputed facts and circumstances that exists in the present case and even if the submissions of Mr. Singh, learned counsel appearing for the respondent-writ petitioner as translated in the opinion of the learned Single Judge appears persuasive for unless affiliation is granted, the students of the petitioner institution cannot be permitted to appear in the examination, yet we are unable to uphold the imposition of cost for the manner in which the reliefs have been articulated in the writ petition. The legal position in this regard stands well settled and unless a prayer, even if not made in a writ petition, appears to be consequential and flowing from the main relief so prayed by the writ petitioner, the Courts exercising extraordinary jurisdiction under Article 226 of the Constitution of India are within their jurisdiction to mould the relief.

In so far as the present case is concerned, the petitioner-institution made a prayer to permit its students to appear in the Teachers Training Examination, to be conducted by 'the Board' and alongside also made a prayer for ancillary reliefs.

Now in the nature of the relief so prayed by the writ petitioner which obviously required an affiliation by 'the Board' in



the light of the recognition order dated 03.03.2015, in view of the provisions underlying Section 14(6) read alongside Section 16 of 'the Act', if the learned Single Judge was of the opinion that 'the Board' was going against the mandate of 'the Act' and was unnecessarily delaying the affiliation matter hiding behind the preparation of affiliation regulations, definitely the direction as present at paragraph 10 of the judgment was justified and forthcoming but in the nature of the contest put before the learned Single Judge, imposition of cost was unwarranted.

In the circumstances so discussed, we are in respectful disagreement with the opinion expressed by the learned Single Judge to the extent, costs have been imposed on the foundation that appellant-Board has delayed the consideration of the claim of the respondent-writ petitioner for affiliation. Unquestionably in case any such prayer was made by the writ petitioner there lay a possible situation but in the nature of the relief so prayed by the writ petitioner and even if we accept the submission of Mr. Singh, learned senior counsel appearing for the writ petitioner to uphold the direction present in paragraph 10 of the judgment which directs 'the Board' to complete the formality of grant of affiliation, which direction is in tune with the statutory prescriptions underlying Section 14(6) read alongside Section 16 of the Act, we are definitely not persuaded to uphold the judgment in so far as the



imposition of costs is concerned and to that extent we set aside the judgment and order of the learned Single Judge.

The appeal is allowed limited to the extent above and since the direction issued by the learned Single Judge at paragraph 10 simply reminds the appellant-Board to discharge its legal obligation casts under Section 14(6) read alongside Section 16 of 'the Act', let the process be completed positively within four weeks from today.

The judgment of the learned Single Judge stands modified to the extent above.

The appeal is allowed to the extent indicated above.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Anjula/skpathak

AFR/NAFR	AFR
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