

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22582 of 2018

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Wazirganj College, Wazirganj Gaya through its officiating Principal Geeta Pd. Singh S/o Kishun Singh, Resident of Village- Jagatpur, Post -Dhandhar, Dhandhar, P.S.-Atri, District-Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Chairman, Bihar School Examination Board, Patna through its Chairman, Patna.
4. The Chairman-Cum-Nodal Officer, Bihar School Examination Board, Buddha Marg, Patna.
5. The Additional Secretary Senior Secondary-Cum-Nadal Officer, Online Facilitation System For Student (OFSS), Bihar School Examination, Buddha Marg, Patna
6. The Examination Controller-Cum-Senior In-Charge Officer, Online Facilitation System for Student OFSS, Bihar School Examination, Buddha Marg, Patna
7. The Chairman, Bihar School Examination Board, Patna.
8. Secretary, Bihar School Examination Board, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Adv.
	:	Mr. Shama Sinha, Adv.
For the Respondent/s	:	Mr.Madanjeet Kumar -Gp20
For B.S.E.B.	:	Mr. Satyabir Bharti, Adv.
	:	Mr. Gyan Shankar, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 01-03-2019

1. The present writ petition has been filed on behalf of the petitioner-College for directing the respondents to consider and decide the application of the petitioner-College for extension of seats in Science stream for registration of the



students of the College for examination pertaining to the Session 2017-19 relating to Intermediate examination.

It has been further prayed to direct the respondents to allow the registration of the students for the up-coming Intermediate examination for the Science stream.

2. The brief facts of the case, as stated in the writ petition, is that the petitioner-College is an affiliated Degree College and is imparting education both in Science and Arts stream. The College is stated to be having 40 classrooms and other facilities. It is stated that the College was inspected by the respondent- Bihar School Examination Board and an inspection report dated 02.01.2013 was submitted by the District Education Officer, Gaya.

3. This Court by an order dated 15.01.2019 had permitted the petitioner-College to bring on record the order of recognition of the petitioner's College in the Science stream by filing a supplementary affidavit, however no order showing that the petitioner has either been granted recognition or affiliation or permission to admit students in the Intermediate classes in the Arts and Science faculty, has been brought on record, though, a supplementary affidavit has been filed on behalf of the petitioner-College stating therein that the applications of the



students of the petitioner's College have been regularly accepted in the past and the students of the College are regularly appearing in both the Science and Arts stream in Intermediate examination since several years. It is also stated that for the Session 2017-19, the College has admitted 966 Science stream students in Class-XI, inasmuch as on account of non-availability of sufficient College/ Schools in the area, the petitioner's College is the only option for the students of the area. It is stated that though the respondent-Board has accepted the Class-XIth result and fees of 966 students of Class-XIth but has allowed only 384 students to appear in the Intermediate examination.

4. The learned Senior counsel for the petitioner Mr. Shahi has submitted that it has been a practice that the respondent-Board had been allowing the registration of the students in both Arts and Science faculty and even for the Session 2016-18, the intake of students of the petitioner-College in the Arts and Science streams was enhanced and the registration of such students as also their examination form was accepted, whereafter they had also given examination in both the Science and the Arts stream. It is submitted that in the current Session i.e. 2017-19 also, the respondent- Board has accepted the registration/ examination fees, however, though



permission has been granted to 384 extra candidates of the Arts stream to appear in the year 2019 Intermediate examination, the respondent- Board has not allowed extension of seats for the Science stream, which is contrary to the past precedent and will result in spoiling the careers of the innocent children.

5. *Per contra*, the learned counsel for the Bihar School Examination Board has submitted that the State Government vide Memo no. 1150 dated 27.12.1987 had given approval to the petitioner-College only for two academic sessions in the Arts faculty pertaining to the Intermediate level without any financial liability. It is thus submitted that even as per the aforesaid letter dated 27.12.1987, the petitioner- Institution had the affiliation of the State Government only in Arts faculty and not in the Science faculty in the Intermediate level and that too, for two financial years. The counsel for the Board has also referred to the proceedings of the sitting of the Bihar School Examination Board dated 19.12.2018, wherein a decision has been taken not to accept the admission, registration and examination form of students of such Schools/ Colleges which do not have affiliation/ recognition from the State Government/ Bihar School Examination Board. However in the said meeting dated



19.12.2018, keeping in mind the interest of the students, a further decision was taken that those Schools/ Colleges which were having affiliation in one or two streams but were not having affiliation in any particular stream, but the candidates/ students had filled up the admission forms/ registration papers/ examination form, then such candidates would be allowed to appear in the examination from any other +2 recognized educational institution. It is submitted that as per the earlier decision, it had been resolved that those institutions which were having affiliation in one or two faculties, the same basic strength would be allowed in the unaffiliated faculty of such institution as well, hence 384 students have been permitted to appear in the Science stream belonging to the petitioner's College, as far as the Intermediate examination, 2019 is concerned.

6. I have heard the learned counsel for the parties and gone through the materials on record and I find that neither the petitioner-College has got any affiliation or recognition or permission from either the State Government or the Bihar School Examination Board for the purposes of admitting the students for Class-XIth and XIIth Intermediate level course, hence it is apparent that the petitioner has illegally inducted the students in the Arts as well as in the Science stream pertaining



to the Intermediate level and in the process has duped the innocent students. Despite opportunity having been granted to the petitioner's College to show that it is having recognition/affiliation to run Intermediate level course, no such order of recognition or affiliation could be produced by the petitioner's College. The argument of the learned Senior Counsel for the petitioner that since in the past, the students of the petitioner-College have been permitted to appear in the Intermediate level examination without affiliation/ recognition of the petitioner's College, this year also the same facility has to be extended, is fallacious, inasmuch as illegal precedents cannot become a rule and an illegality cannot be perpetuated.

It is a trite law that "*There is no equality in illegality*". This Court finds that the respondent no. 5 has been accommodative and sympathetic towards the innocent children and has thereby, allowed 384 candidates of the illegal petitioner's College to appear in the Science stream of the Intermediate examination, 2019 though the same was neither warranted nor legal and in fact permitting any candidate to appear from the petitioner-College was/is admittedly illegal, however this Court is restraining itself from cancelling the candidature of such candidates of the petitioner-College keeping



in mind the future career of the innocent students as also considering the fact that such students do not have any complicity in the matter. The learned Senior Counsel for the petitioner has infact, not been able to show any legal right vested with the petitioner-College so as to seek a direction upon the respondent- Board to permit its students to appear in the Science stream of the Intermediate examination, 2019 which ultimately shows that the petitioner is neither having recognition nor affiliation from the State Government/ Bihar School Examination Board as far as the Intermediate level is concerned, hence no positive mandamus can be issued by this Court in the present case especially in view of the fact that issuing any directions to the respondent- Board to permit the students of the petitioner's college to appear in extra seats of the Science stream pertaining to the Intermediate examination, 2019 would only result in passing of an illegal order, which this Court is obligated not to do.

7. Considering the facts and circumstances of the case as also for the reasons mentioned hereinabove in the preceeding paragraphs, I do not find any merit in the present writ petition, hence the same is dismissed, however without any order as to costs but with a direction to the State Government as also the



Bihar School Examination Board to give wide publicity to the fact that the petitioner's College neither possesses recognition nor affiliation from the State Government or the Bihar School Examination Board so that innocent children are not duped by the petitioner's college. The respondents are further directed to take appropriate action, not only against the petitioner-College but also against those functionaries/ officials of the respondent Board, after holding an enquiry, who have illegally been permitting the students of the petitioner-College to appear in the Intermediate level examination from year to year without the petitioner-College possessing any recognition or affiliation or permission to admit students. An action taken report is directed to be submitted by the respondents before this Court, immediately upon completion of 08 weeks from today.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	25.02.2019
Uploading Date	01.03.2019
Transmission Date	NA

