

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1404 of 2018

In
Civil Writ Jurisdiction Case No.10532 of 2018

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Sri Ganesh Dutt Memorial College, West Bailey Road, Patna, through its Principal, namely, Sudarshan Sharma, S/o Late Mahendra Sharma, Permanent resident of Village- Sadayeah, Anchal- Dulhin Bazar, District- Patna, presently resident at Bank Colony, Lane No. 2, Gola Road, P.S.- Danapur, District- Patna.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Director, Higher Education, Govt. of Bihar, Patna.
3. The Vice Chancellor, Magadh University, Bodh Gaya.
4. The Registrar, Magadh University, Bodh Gaya.

... .. Respondent/s

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with
Letters Patent Appeal No. 1405 of 2018
In
Civil Writ Jurisdiction Case No.18868 of 2018

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R. P. S. College Harnaut, Nalanda through its Principal, namely, Dr. Upendra Kumar Sinha, S/o Sri Ram Ratan Singh, Permanent resident of Harnaut, P.S.- Harnaut, District- Nalanda.

... .. Appellant/s

Versus

1. The State Of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Higher Education, Govt. of Bihar, Patna.
4. The Vice Chancellor, Magadh University, Bodh Gaya.
5. The Registrar, Magadh University, Bodh Gaya.

... .. Respondent/s

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Appearance :

(In Letters Patent Appeal No. 1404 of 2018)

For the Appellant/s	:	Mr. P.K. Shahi, Sr. Advocate
		Mr. Shashi Bhushan Singh, Advocate
For the State	:	Mr. Ashutosh Ranjan Pandey,AAG-15
For the Magadh Univeristy:		Mr. Shivendra Kishore, Sr. Advocate
		Mr. Ritesh Kumar, Advocate

(In Letters Patent Appeal No. 1405 of 2018)

For the Appellant/s	:	Mr. Ashok Kumar Choudhary, Advocate
		Mr.Shashi Bhushan Singh, Advocate
		Mr. Akshansh Ankit, Advocate
For the State	:	Mr. Ashutosh Ranjan Pandey,AAG-15
For the Magadh University:		Mr. Shivendra Kishore, Sr. Advocate



Mr. Arabind Nath Pandey, Advocate

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 01-04-2019

The two Colleges that have preferred these two appeals are aggrieved by the observations made by the learned single Judge that no affiliation can be granted for the Session 2017-2018 after having relied upon the judgment of the same learned single Judge in the case of Dr. Ram Pramod Thakur & Anr. vs. The State of Bihar & Ors. decided on 28.11.2018 while confirming the order passed on 26.04.2018.

The two appellants have also brought on record the fact that they have been granted approval by the Government for the academic Sessions 2015-18 additionally during the pendency of these appeals on 06th of March, 2019. The said document has been filed as Annexure 4 to I.A. No. 2 of 2019 in L.P.A. No. 1404 of 2018 and Annexure 4 to I.A. No. 4 of 2019 in L.P.A. No. 1405 of 2018.

The dispute, in short, is not about affiliation or disaffiliation by the respondent-Magadh University but with regard to the approval to be given by the State Government as required under Section 21(2)(d) of the Bihar Universities Act, 1976, which is extracted herein under:-



“21. Powers and duties of the

Senate.---(1) Subject to the provisions of this Act and Statutes, the Senate shall be the supreme governing body of the University, and shall exercise control over all the affairs and properties of the University, and shall exercise all such powers as are not otherwise specified by this Act.

(2) In particular and without prejudice to the generality of the forgoing powers, the Senate shall exercise the following powers and perform the following duties, namely-

- a) of making the Statutes and amending or repealing the same;
- b) of considering the Statutes and the Regulations, and amending or repealing the same;
- c) of passing resolution after having considered the annual report, the annual account, the financial estimates and audit report on such accounts;
- d) of exercising the powers for the purpose of control in Colleges and Tols, and of superintendence which include affiliation and disaffiliation of Colleges:

Provided that affiliation or disaffiliation of Colleges or Tols shall not take effect, unless it is approved by the State Government:

Provided further that no medical college shall be affiliated except without the prior approval of the State Government.

Before granting such an approval, the State Government shall consider the financial viability of the College, the nature and form of the proposed management of the college, the viability of the academic standard and all other conditions which are



likely to have adverse effect on the interests of students admitted to such a College;”

A perusal of the said statutory provision along with Statute 29 as approved by the Chancellor dated 19th April, 1986 it appears that an application for admission of an educational institution, namely, its affiliation with the University has to be processed in accordance with the said Statute with a further rider that there should be a declaration in the application that no student has been or shall be admitted to the institution unless the admission has been granted by the University. The aforesaid provisions as contained in Clause 3(i)(e) of Statute 29 therefore has to be read along with the aforesaid statutory provision that makes it clear that the first step is of affiliation/admission by the University which affiliation cannot take effect unless it is approved by the State Government. The State Government under the proviso to Section 21(2)(d) is obliged to consider the financial viability of the College, the nature and form of the proposed management, the viability of the academic standard and all other conditions which are likely to have adverse effect on the interests of student admitted to such a college. The approval therefore is a condition precedent before admissions are taken or students are admitted to a college.

The situation in this State of Bihar regarding grant of



affiliation and approval by the Government, which is a two-tier method has seen immense delay and has witnessed a lot of litigations. This has resulted in jeopardizing the career of students who have been admitted by colleges which already have recommendations for affiliation but which have not been granted approval by the State Government for years together. It is in these circumstances that notice was taken of by a learned single Judge of this Court in the case of Dr. Ram Pramod Thakur and Others, where a detailed consideration was made on 26th of April, 2018 in CWJC No.4660 of 2017 and other analogous case, the order whereof is extracted hereinunder:

“Heard counsel for the parties.

2. The petitioners in the present writ applications claim to be working as Assistant Professors in Physics and Commerce in Maheshwar Nath Mahamaya Mahila College, Bettiah (hereinafter referred to as ‘the College’). They are aggrieved by the order dated 12.03.2017, bearing Reference No.B/122 issued by the Registrar of B.R. Ambedkar Bihar University, Muzaffarpur (hereinafter referred to as ‘the University’), whereby the Principal of the College has intimated that the recommendation made by the Selection Committee, constituted by the college, in terms of the provisions contained in Section 57A (6) of the Bihar State Universities Act, 1976, (hereinafter referred to as ‘the Act’) shall be kept in abeyance, till permanent affiliation is granted to the college. They seek a direction commanding the respondents under the University to implement the recommendation of the Selection Committee, duly constituted in terms of Section 57A (6) of the Act, keeping in view the cut-off date i.e. 31.03.2017, prescribed in the said provision itself. It is stated at the bar, which is not being disputed, that the said



cut-off date i.e. 31.03.2017 has subsequently been extended to 31.03.2018, by way of an amendment introduced through the Bihar State University (Amendment) Act, 2017 [Bihar Act 20, 2017]. They seek declaration that in terms of the provisions under Section 57A(6) of the Act, the recommendation made by the Selection Committee, constituted for the said purpose with respect to the teachers of the college, is liable to be implemented, pending grant of permanent affiliation to the College, which has not been done by the State Government.

3. There is a crucial fact which needs to be noted at this stage, at the outset. The College, in question, it is being claimed, has temporary/provisional affiliation granted by the University in terms of the decision of the Syndicate of the University. Section 21 of the Act confers upon the Senate of the respective Universities, certain powers and duties including the powers, for the purpose of control in Colleges and Tols, and of superintendence which 'includes affiliation and is affiliation of Colleges'. First proviso to Section 21(2) (d) of the Act stipulates as under:-

“Provided that affiliation or disaffiliation of Colleges or Tols shall not take effect, unless it is approved by the State Government.”

4. This is not in dispute that the approval by the State Government as contemplated under the abovenoted proviso to Section 21 (2) (d) of the Act has not been accorded by the State Government to the college, in question. This is also to be noted, at this juncture, that the Senate of the University after taking a decision to grant affiliation to the college, in question, had referred the matter to the State Government for grant of requisite approval under the first proviso to section 21 (2) (d) of the Act way back on 26.08.2009, which fact is not in dispute. This is also not in dispute that the State Government of Bihar had not taken any decision on grant of requisite approval of affiliation, as contemplated under the first proviso to Section 21(2) (d) of the Act till presentation of this writ application. In such circumstance, in view of clear language used in the said proviso to section 21 (2) (d) of the Act, the decision of the Senate to grant affiliation cannot be



said to have taken effect in respect of the college, in question. However, much after filing of the writ applications, the State Government has taken a decision by an order dated 08.03.2018, passed by the Education Department rejecting the proposal for approval of the affiliation. Apparently thus, it took the State Government 09 years to take a decision on the proposal of the University to grant approval of affiliation in terms of the first proviso to section 21(2) (d) of the Act.

5. When these cases were taken up on 17.01.2018, this Court, noticing the disturbing trend of keeping the matters pending for consideration by the State Government, on the proposal for approval of affiliation under section 21(2)(d) of the Act, following order was passed:-

“This is unfortunate that certain matters are pending with the State Government on the question of approval of grant of permanent affiliation for several years. On the basis of experience, which this Court has gathered while hearing matters of this nature, it can be said that there is no structured system available either with the University or the State Government for deciding the cases of grant of affiliation/approval of the grant of affiliation under the provisions of the Bihar State Universities Act. There is no time frame prescribed within which the University upon receiving application by a College for grant of affiliation is to decide the matters of grant of affiliation nor there appears to be any structured mechanism with the State Government, which is required to exercise its power under Section 21(2)(d) of the Bihar State Universities Act.

On the next date when the matters are taken up, this Court apart from considering the merits of these cases would like to have the view points of the State Government and the Universities in this regard for passing appropriate orders in future.

List these cases under the same heading on 29.01.2018.”

6. A subsequent order dated 27.03.2018



passed in the present proceeding may be also taken note of in which the Court noticed that there was no definite binding deadline prescribed under the Statute, governing grant of affiliation to college nor any other instructions or guideline issued by the competent authority regulating disposal of applications for grant of affiliation, at various stages. The said order dated 27.03.2018 is being reproduced hereinbelow:-

“Section 21 (2) (d) of the Bihar State Universities Act, 1976, confers upon the Senate of the Universities, governed by the Act, power for the purpose of control in colleges and of superintendence, which include affiliation and disaffiliation of colleges. The Statute relating to admission and exclusion of colleges other than those managed and maintained by the University has been framed, as approved by the Chancellor, vide letter, dated 19.04.1986. Article 2 of the said Statute prescribes Patna High Court CWJC No.4660 of 2017(8) dt.27-03-2018 the manner of making an application for admission/affiliation of a college to the privileges of a University. It provides, inter alia, that an application for admission of an educational institution, as a college, shall be submitted not later than 15th September of the year preceding the academic sessions from which such admission is sought, in the case of an education institution seeking admission for the first time or for extension or for continuation of admission of an admitted college.

The application has to be thereafter processed before the Syndicate and Senate of the University and thereafter for approval of the State Government, under Section 21 (2) (d) of the Bihar State Universities Act, 1976.

The Court has experienced on various occasions, which situation is there in the present case also, that the applications for affiliation remain pending at one stage or the other without any valid reason. There is no



binding deadline given under the Statute or any instruction issued by the competent authority for disposal of the application or grant of affiliation at various stages.

In response to the observations made by this Court, on the previous occasion, a counter affidavit has been filed on behalf of the State of Bihar. Along with the said counter affidavit, a letter, Patna High Court CWJC No.4660 of 2017(8) dt. 27-03-2018 dated 08.03.2018, has been brought on record, issued by the Education Department, Government of Bihar, addressed to the Registrars of the Universities in the State of Bihar, indicating that the State Government shall take decision on the question of grant or refusal of approval of affiliation within one month from the date of receipt of recommendation of the Senate of the University. It has further been mentioned in the said communication that in the event of any defect or deficiency discovered, notice in this regard, to the University, shall be issued for resolution within two months from the date of receipt of the recommendation. It has also been mentioned that once the Department receives proposal after removal of the defect/deficiency or otherwise, the State Government shall take a final decision on the question of approval of affiliation within one month thereafter.

The Court places on record its appreciation for a definite decision having been taken by the State of Bihar, as contained in the said letter, dated 08.03.2018, for expediting the cases for approval of affiliation within a time frame.

Learned Counsel appearing on behalf of the Chancellor has sought for a short adjournment, since, according to him, the Office of the Chancellor is also monitoring this aspect of the Patna High Court CWJC No.4660 of 2017(8) dt.27-03-2018 matter for the purpose of finalizing a calendar so that final decision in the matters



of affiliation are taken at various levels within specific time frame.

As requested by him, list this case, under the same heading.”

7. As has been noted in the above-said order dated 27.03.2018, the State Government has taken a decision, as communicated to the Registrars of the Universities in the State of Bihar, except the Patna University dated 08.03.2018, to the effect that (i) the decision at the level of the State Government on a proposal for grant of affiliation, in respect of approval of application under Section 21(2)(d) of the Act shall be taken within one month from the date of receipt of the said proposal. (ii) In case of any deficiency(ies) or non-availability of any document found, notice shall be given to concerned for removal of such deficiencies within two months. (iii) On such receipt of proposal after removal of the deficiency(ies) from the competent authority, the State Government shall take a decision within one month after the lapse of period prescribed in Clause (ii) above.

8. So far as the case of the college, in question, is concerned, since a decision has been taken, though after 09 years of the receipt of the proposal from the University by the State Government, I do not intend to enter into the merits of such decision, keeping in view the nature of controversy involved in these cases and the nature of grievance raised by the petitioners in the present proceeding.

9. Leaned counsel for the petitioners has sought liberty and such liberty is granted to assail the order of the State Government, declining grant of approval by taking recourse to appropriate provision of law.

10. In the light of the observation made by this Court, requiring the respondents to fix a definite time-frame for different stages of consideration for grant of affiliation



under the provisions of the Act and the Statutes relating to admission and exclusion of colleges other than those managed and maintained by the University, the Court has been informed by the learned counsel representing the Chancellor of the Universities of Bihar that after due consideration on recommendation of the Advisory Committee in the matter relating to grant of affiliation to the Colleges, the Chancellor of the Universities of Bihar has approved the process of affiliation of the Colleges as per the schedules prescribed. The communication, in this regard, issued by the Governor’s Secretariat, Bihar on 25.04.2018, addressed to the Vice- Chancellor of the Universities of Bihar, has been produced before this Court by learned counsel for the Chancellor, which is as under:-

“Sub:- Direction relating to affiliation of Colleges within time frame
Sir,

I am directed to invite a reference to the subject noted above and to inform that the matter relating to affiliation of the Colleges was under consideration. Hon’ble Chancellor of the Universities after due consideration on the recommendation of the Advisory Committee has been pleased to approve the process of affiliation of the Colleges as per the schedules, which are as follows:-

Submission of Application Form	On or before 15 th September
Constitution of Inspection Team	On or before 25 th September
Inspection Teach Report	On or before 8 th October
Affiliation Committee Meeting	On or before 15 th October
Academic Council	On or before 20 th October
Syndicate	On or before 30 th October
Senate	On or before 15 th November
Final report to the State Govt.	On or before 15 th January



The Hon'ble Chancellor has been pleased to direct that the above schedules regarding affiliation of the Colleges must strictly be followed by the Universities in the larger interest of the students. Any failure to the schedules will invite disciplinary action and the Universities shall fix responsibility and accordingly report to the office of His Excellency.

The Hon'ble Chancellor has further been pleased to order that no college can get Affiliation without following the procedure as stated above. In case, any application is rejected, it will be communicated to the applicant and a copy of the same will also be sent to the Raj Bhavan and the State Govt. Those applications, which are found suitable for recommendations, will be sent to the Education Department for necessary action and a copy of that will also be sent to the Raj Bhavan. The proposed provision shall be applicable from the Session 2018-19 onwards.

You are, therefore, requested to act according to the schedules and directions regarding the affiliation of the Colleges mentioned above.

Yours faithfully,

Sd/-

O.S.D. (Judl.)”

11. There is significance of the last date i.e. 15th September fixed for submission of application forms for grant of affiliation as indicated in the decision of the Chancellor. The said date is statutory which occurs in Article 2 (d) of the said Statutes and prescribes that an application for admission of an educational institution to the privileges of the University shall be submitted not later than 15th September of the preceding academic sessions. If what has been decided by the Chancellor, as quoted above, communicated through the letter dated 25.04.2018 (supra) is read with the aforementioned affidavit filed on behalf of



the State Government are to be read together, following shall be the time schedule for consideration of an application for grant of affiliation from the stage of submission of an application under Article 2(d) of the Statutes:-

Consideration of application by the University

Submission of Application Form	On or before 15 th September
Constitution of Inspection Team	On or before 25 th September
Inspection Teach Report	On or before 8 th October
Affiliation Committee Meeting	On or before 15 th October
Academic Council	On or before 20 th October
Syndicate	On or before 30 th October
Senate	On or before 15 th November
Final report to the State Govt.	On or before 15 th January

Grant of approval of proposal for affiliation as contemplated under first proviso to Section 21(2) d of the Act.”

Decision of the State Government under first proviso to Section 21(2) (d) of the Bihar State Universities Act	On or before 15 th February
In case of deficiency noticed by the State Government, notice to be given to the University and the concerned college	On or before 15 th February
Removal of deficiency by the college	On or before 15 th March
Fresh proposal by the University after removal of deficiency	On or before 16 th March
Fresh decision of the State Government on receipt of the proposal, if any, under Section 21(2)(d) of the Act	On or before 16 th April

12. I have just clubbed together the decisions of the Chancellor, Universities of



Bihar and the State Government in respect of the time-frame which they intend to maintain in the matter of grant of affiliation. The court has frequently experienced inordinate delay in taking definite decision on such matter, which has consequence of generating umpteen number of unnecessary litigations which could have been otherwise easily avoided. I, therefore, direct that all concerned shall strictly adhere to the time schedule, as noted above. Any deviation, if noticed, shall be viewed seriously by this Court

13. This, in my view, should not be the end of the matter since the Court, on the basis of the material on record, forms an impression that mandatory statutory requirements prescribed under the Statutes are not being followed in the matter of grant of affiliation. I must take note of some of the provisions which have more often been breached than followed.

14. Article 3 of the Statutes prescribes the contents which an application for affiliation must have and it provides, inter alia, that the application must contain such sufficient information so as to satisfy the Syndicate that there is genuine need of such a college in the locality, and whether the admission of college to the privileges of the University would adversely affect the existence of an already admitted college. Article 3(1) (e) of the Statutes states that the application must contain an information that no student has been admitted or shall be admitted to the institution or in the subjects for the admission of which the application is being made, unless the admission prayed for has been granted by the University. Articles 4, 5 & 6 of the Statutes provide different stages for grant of affiliation. Article 6 of the Statutes reads thus:-

“6.(1) The decision of the Senate shall be communicated to the institution concerned, specifying the courses of the instructions in which the institution is



admitted and the standard up to which admission is granted, together with the condition and limitations imposed. The institution shall duly report to the Syndicate regarding the fulfilment of the various conditions imposed.

(2) No admission shall be made in the college unless the Syndicate is satisfied that conditions necessary for starting classes have been fulfilled.

(3) No appointment of the Principal or any lecturer of the college shall be made except on the recommendation of the College Service Commission:

Provided that in case of emergency, the college may appoint a Principal/Lecturers on temporary basis only on the basis of All India Advertisement and on the recommendation of a Selection Committee consisting of at least five members of whom at least three shall be experts in the subject concerned not below the rank of Readers in the active service of the University.

Provided further that in the case of appointment of Principal these experts shall be University Professor and/or Principals not below the rank of University Professors.”

15. Evidently, Article 6(2) of the Statutes proscribes that no admission shall be made in the college unless the Syndicate is satisfied that conditions necessary for starting classes have been fulfilled. Article 6(3) of the Statutes prescribes appointment of Principal or any lecturer of the college except on recommendation of the College Service Commission. The provision clearly indicates that the admissions to the students are allowed only after a decision on grant of affiliation is finally taken or due permission is granted in accordance with the provisions of the Statutes.

16. While disposing of these applications with the observation, as above, I direct that all concerned shall strictly follow not only the time schedule, as noted above,



but also the provisions contained in the Statutes. If a college is to be granted affiliation, the University shall be obliged to fix the maximum number of students to be admitted in each class of such college depending on the facilities available in the college, as prescribed under Article 16 of the Statutes. Grant of temporary or provisional affiliation to any institution by affiliating body or authority creates situation of uncertainty. The authorities, therefore, while taking such decision shall keep this aspect in mind. Temporary or provisional affiliation, if permissible under the Statutes, can be granted if it is found to be unavoidable, in public interest.

17. So far as the present case(s) is/are concerned, learned counsel for the petitioners informs that temporary/provisional affiliation granted to the college was earlier approved by the State Government. The petitioners shall be at liberty to raise this plea in the subsequent proceeding, while assailing the recent decision of the State Government dated 08.03.2018, whereby proposal for grant of approval of affiliation has been turned down.

18. Interlocutory applications bearing I.A.Nos.1779 of 2018 and 1778 of 2018 stand disposed of.

19. The applications stand disposed of with directions and observation as above.

20. List these cases under the heading “To Be mentioned” on 17.09.2018 for the respondents to report compliance of this order.”

The writ petition was finally disposed of confirming the aforesaid order on 28.11.2018 by the following directions extracted hereinunder”

“An affidavit has been filed on behalf of the Chancellor’s office in compliance of this Court’s order dated 17.09.2018, a reading of which gives an



impression to the Court that effective measures have been taken to ensure strict compliance of this Court's order 26.04.2018, passed in this case.

In view of the averments made in the counter affidavit, no further order need to be passed in the present proceeding.

I, however, observe that all of the functionaries must ensure strict compliance of the order dated 26.04.2018 passed in this case. The Court will take a serious note of the matter, if non-compliance of the said order is noticed. In such circumstance, the persons responsible may be liable for contempt of Court.

Let this order be communicated to the Vice-Chancellors and Registrars of all the Universities in the State of Bihar through the Office of the Chancellor forthwith.

The State of Bihar is being represented by learned GA-12. She shall ensure that this order is communicated to the Principal Secretary, Education Department, Government of Bihar, Patna."

It may also be mentioned that the same learned single Judge while taking into account the admissions being made without affiliation had after taking notice of Apex Court decisions come to the conclusion that degrees obtained by students from Colleges that did not have any affiliation should be cancelled as per the observations made thereunder in C.W.J.C. No. 16553 of 2017, decided on 16.05.2018 and an L.P.A. against the same being L.P.A. No. 754 of 2018 is stated to be pending against the aforesaid judgment of the learned single Judge.

The present case involves the consideration of affiliation and approval for the Session 2017-18 only. As stated



above, the Government has granted approval for the academic session 2015-18 without any decision with regard to the academic sessions 2016-17 and 2017-18. The State Government has already granted approval to the affiliation on a permanent basis with effect from 2018-19 to both these institutions.

The question therefore is as to what would be the status of the grant of affiliation or approval for the session 2017-18. This issue also remains no longer *res integra* in view of the Division Bench judgment of this Court in the case of **Aprana Kumari and Ors. vs. the State of Bihar, decided on 01.11.2018**. The aforesaid judgment takes notice of the judgment of the learned single Judge in the case of Dr. Ram Pramod Thakur, quoted hereinabove as the appeals which had been filed against the judgment of a learned single Judge contained a recital that writ petitions were being dismissed in the light of the judgment in the case of Dr. Ram Pramod Thakur (*supra*).

In our considered opinion, the said view of the Division Bench therefore in supersession of the judgment in the case of Dr. Ram Pramod Thakur has issued directions for the Session 2017-18 specifically.

These two appeals do not appear to have been



heard simultaneously and that is how they have come up before us. The judgment of the Division Bench dated 01.11.2018 containing directions that run in six paragraphs is extracted hereinunder:

“1. As common questions of law and facts arise in all these Letters Patent Appeals, all these Letters Patent Appeals are decided and disposed of together by this common order.

1.1. Feeling aggrieved and dissatisfied with the impugned judgments and orders passed by the learned Single Judge passed in Civil Writ Jurisdiction Case Nos.13083 of 2018; 12048 of 2018; 12186 of 2018; 12127 of 2018; 12185 of 2018; 12515 of 2018; 12526 of 2018; 12112 of 2018; 12579 of 2018; 13167 of 2018; 12300 of 2018; 12840 of 2018; 13811 of 2018; 13766 of 2018; 10986 of 2018; 13929 of 2018; 13625 of 2018; 13594 of 2018; 2342 of 2018; 14065 of 2018; 19396 of 2018; and 20161 of 2018, the original writ petitioners-students as well as respective educational institutions have preferred the present Letters Patent Appeals, the particulars of which are as under:-

Letters Patent Appeal No.1288 of 2018
In



Civil Writ Jurisdiction Case No.13083 of 2018

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- 1.Arpana Kumari, D/o Vinod Prasad, Resident of Village-Shahbazpur, Fatehpur, Nepa, P.S. Tekhari, District-Gaya.
- 2.Nitu Kumari, D/o Umesh Rajak, Resident of Village-Siyadih Mathia, P.O. Siyadih, P.S. Konch, District-Gaya
- 3.Tarnnum Parbn, D/o Md. Suleman Ansari, Village-Rupaspur, P.O. Salempur, P.S. Alipur, District-Gaya.
- 4.Vandana Kumari, D/o Sri Ram Lagan Yadav, Resident of Mohalla-Titaiganj Tekari, P.O. Ketari, P.S. Tekari, District-Gaya.
- 5.Mandvi Kumari, D/o Sri Nand Lal Vaidya, Resident of Village-Badauli, P.O. Poora, P.S. Tekari, District-Gaya.
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Letters Patent Appeal No. 931 of 2018
In

Civil Writ Jurisdiction Case No.12048 of 2018

Halivant Tiwary Womens Degree College, Hardiya, Narkatiyaganj, West Champaran through its Secretary Radheshyam Tiwari, aged about 52 years, Son of Halivant Tiwari, Resident of Parishad Nagar, P.S.- Narkatiyaganj, District- West Champaran.

Letters Patent Appeal No. 932 of 2018
In

Civil Writ Jurisdiction Case No.12186 of 2018

Bishwanath Roy Degree College, Nirpur, Patepur, Vaishali through its Secretary Vishwanath Prasad Ray, aged about 75 years, Son of Judagi Ray, Resident of Village- Nirpur, P.S.- Patepur, District- Vaishali.

Letters Patent Appeal No. 928 of 2018
In

Civil Writ Jurisdiction Case No.12127 of 2018

Meena Baskit Rai Degree College, Yadav Nagar, Basara, Rajapakar, Vaishali through its Secretary Vaskit Rai @ Baskit Rai, aged about 53 years, Son of Jaykaran Rai, resident of Village- Bhathadasi, P.S.- Rajapakar, District- Vaishali.

Letters Patent Appeal No. 929 of 2018
In



Civil Writ Jurisdiction Case No.12185 of 2018

Rameshwar Mahavir Evening Degree College, Harsiddhi, East Champaran through its Secretary Krishnarjun, aged about 53 years, Son of Awadhesh Prasad Kushwaha, Resident of Village- Harsiddhi, P.S.- Harsiddhi, District- East Champaran.

Letters Patent Appeal No. 933 of 2018

In

Civil Writ Jurisdiction Case No.12515 of 2018

Raghunath Jha Degree College, Sitamarhi through its Secretary Ajit Kumar Jha aged about 56 years, Son of Raghunath Jha, Resident of Amba Ojha Tola, Amwa Kalan, Amua, P.S. - Piprahi, District - Sitamarhi.

Letters Patent Appeal No. 934 of 2018

In

Civil Writ Jurisdiction Case No.12526 of 2018

Dr. K.K.P. Roy Y.K. Jha College, Hasanpur, Mahnar (Vaishali) through its Secretary Jugal Kishore Jha aged about 78 years, Son of Siddha Nath Jha, Resident of Village- Hasapur Junaid, P.S.- Mahnar, District- Vaishali.

Letters Patent Appeal No. 935 of 2018

In

Civil Writ Jurisdiction Case No.12112 of 2018

Nirmala Devi Ajay Maskara Womens Degree Evening College, Raxaul (East Champaran) through its Secretary Ajay Kumar Maskara, aged about 58 years, Son of Basudeo Prasad Maskara, Resident of 109, Post Office Road, Raxaul, East Champaran.

Letters Patent Appeal No. 930 of 2018

In

Civil Writ Jurisdiction Case No.12579 of 2018

Dhanraj Bhagat Degree College, Mustafaganj, Meenapur, Muzaffarpur through its Secretary Ganesh Prasad, aged about 74 years, Son of Nirsan Prasad, Resident of Village- Mustafaganj, P.S.- Meenapur, District- Muzaffarpur.

Letters Patent Appeal No. 958 of 2018

In

Civil Writ Jurisdiction Case No.13167 of 2018

Ramvilas Singh Ramdayal Ray College, Saraypur



Raghopur, Vaishali through its Secretary Sanjay Kumar, aged about 64 years, Son of Ram Dayal Ray, Resident of Village- Makkanpur, Jandaha, P.S.- Mahnar, District- Vaishali.

Letters Patent Appeal No. 960 of 2018
In
Civil Writ Jurisdiction Case No.12300 of 2018

Nitesh Kumar Smarak College, Andhrawar Chowk, Paharpur Toi, Sahdev Bujurg (Vaishali) through its Secretary Dr. Rajeshwar Patel, aged about 64 years, Son of late Ram Lakhan Singh, Resident of Village- Ghazipur Garahi, P.S.- Vaishali, District- Vaishali.

Letters Patent Appeal No. 961 of 2018
In
Civil Writ Jurisdiction Case No.12840 of 2018

Ram Lagan Rai Degree College, Rajapakar, Vaishali through its Secretary Ram Lagan Rai @ Ram Lagan Ray, aged about 61 years, Son of Ramchandra Ray, Resident of Village- Rajapakar, P.S.- Rajapakar, District- Vaishali.

Letters Patent Appeal No. 1004 of 2018
In
Civil Writ Jurisdiction Case No.13811 of 2018

Santosh Kumar Pathak, aged about 39 years, S/o Late Rudra Deo Pathak Principal of Akshlal Singh Asharfi Devi Degree College, Hansi Kewal, Bhagwanpur, P.S. Bhagwan, District - Vaishali at Hajipur.

Letters Patent Appeal No. 1022 of 2018
In
Civil Writ Jurisdiction Case No.13766 of 2018

Biyoglal Chaudhary Degree College, Jandaha, Vaishali through its Secretary Ram Babu Chaudhary, aged about 60 years, son of Biyoglal Chaudhary, Resident of Village- Jandaha, P.S. Jandaha, District Vaishali.

Letters Patent Appeal No. 1019 of 2018
In
Civil Writ Jurisdiction Case No.10986 of 2017

Motihari Degree Evening College. Motihari (East Chamaparan) through its Secretary Harishchandra Singh, aged about 54 years, son of late Yamuna Singh, resident of Village- Sarean, P.S.- Govindganj, District East Champaran.

Letters Patent Appeal No. 1020 of 2018



In
Civil Writ Jurisdiction Case No.13929 of 2018

Baba Bhagwat Rai Degree College, Telhua, Nautan, West Champaran through its Secretary Vibhuti Narayan Rai, aged about 52 years, son of late Rajdeo Rai, resident of Village-Telhua, P.S. Nautan, District- West Chamaparan.

Letters Patent Appeal No. 1021 of 2018
In
Civil Writ Jurisdiction Case No.13625 of 2018

S. K. Yadav Degree College, Tejpur, Patkhauliya, Kesariya (East Champaran) through its Secretary Bipul Kumar Ray @ Vipul Kumar Ray, aged about 48 years, son of Brahmdev Narayan Ray, resident of Village- Tajpur, Patkhauliya, P.S.- Kesariya (East Champaran).

Letters Patent Appeal No. 1023 of 2018
In
Civil Writ Jurisdiction Case No.13594 of 2018

Mahesh Prasad Singh Snatak Mahavidyalay, Raghunathpur, Jagdishpur, Bela Muzaffarpur through its Prof. In-Charge Vikas Kumar, aged about 51 years, son of Hira Lal Prasad, Nai Bazar, Ward No. 44, P.S. Muzaffarpur, District Muzaffarpur.

Letters Patent Appeal No. 1112 of 2018
In
Civil Writ Jurisdiction Case No.2342 of 2018

Prof. Shailendra Kumar Sinha Son of Late Parmanand Sinha, Resident of Mohalla- Ashok Nagar, Police Station-Kankarbagh, District and Town Patna, at present working as Professor-in-Charge, Firoz Gandhi College, Karbigahiya, Patna- 800001.

Letters Patent Appeal No. 1334 of 2018
In
Civil Writ Jurisdiction Case No.14065 of 2018

1. Sumati Kumari, D/o Mahipal Singh, Resident of Village- Pachmahala Bind Toli, P.O.- Raily, P.S. N.T.P.C. Barh, District- Patna.
2. Juli Kumari, D/o Mishri Paswan, Resident of Village- Jadopur, P.O.- Gawasha Shekhpura, P.S.- Pandarak, District- Patna.
3. Laxmi Kumari, D/o Parshuram Singh, Resident of Village + P.O.- Rana Bigha, P.S.- Barh, District- Patna.
4. Sony Kumari, D/o Mahesh Singh, Resident of



Village- Laxmipur, P.O.- Raily, P.S. N.T.P.C.
Barh, District- Patna.

Letters Patent Appeal No. 1450 of 2018
In
Civil Writ Jurisdiction Case No.19396 of 2018

1.Ram Lakhan Singh Yadav College, Anisabad,
Patna- 800002, through its Prof.-in-charge Sri
Bhuneshwar Prasad Yadav.
2.Bhuneshwar Prasad Yadav, Son of Late Kripali
Prasad Yadav, Resident of at- Makhdumpur,
P.O. & P.S.- Sheikhpura, District- Sheikhpura,
at present posted as Prof.-in-charge Ram Lakhan
Singh Yadav College, Anisabad, Patna- 800002.

Letters Patent Appeal No. 1582 of 2018
In
Civil Writ Jurisdiction Case No.20161 of 2018

1. Patel Trimurti Sandhya Mahavidyalay, Ismailpur Bangra
Road Patna through its Secretary Surendra Singh, son of
Ram Sevak Singh, resident of F/139, P.C. Colony,
Kankarbag, Police Station- Kankarbag, District Patna.
2. Surendra Singh, son of Ram Sevak Singh, resident of
F/139, P.C. Colony, Kankarbag, Police Station – Kankarbag,
District Patna.

2. That the original writ petitioners approached this
Court by way of aforesaid writ petitions directing
the concerned respective Universities to accept the
examination forms and fees of the petitioners for
B.A./B.Sc. Part III examination for the academic
session 2017-18 and/or other examinations. It is not
in dispute that the applications submitted by the
concerned educational institutions to the State
Government for its approval of affiliation under
Section 21(2) (d) of the Bihar Universities Act



(hereinafter referred to as 'the Act') were pending consideration for the academic session 2017-18. Therefore, the Universities/ State Government refused to accept the examination forms and fees and therefore, the concerned institutions and/or the concerned students approached this Court for the aforesaid reliefs.

2.1. It was the case on behalf of the concerned institutions as well as the original writ petitioners-students that as the concerned University granted the affiliation and recommended to the State Government for its approval under Section 21(2) (d) of the Act and there was delay on the part of the State Government in not taking final decision which was required to be taken under Section 21(2) (d) of the Act, the students may not be made to suffer for the lapses and negligence on the part of the State Government. By the separate impugned judgments and orders and for the reasons stated in the detailed judgment and order in the case of ***Ram Pramod Thakur Vs. State of Bihar and others in Civil Writ Jurisdiction Case No.4660 of***



2017, the learned Single Judge has dismissed the respective writ petitions against which the present Letters Patent Appeals are preferred.

3. That when the present Letters Patent Appeals were heard yesterday it was pointed out that the State Government has asked for the details with respect to the institutions which applications were pending for approval under Section 21(2) (d) of the Act. It is reported that in many cases of the institutions, the applications for approval under Section 21(2) (d) of the Act are pending and in some cases only the applications for approval have been rejected.

3.1. It is admitted by learned counsel appearing on behalf of the respective writ petitioners that the applications by the concerned institutions in which the students have studied are pending for approval with the State Government and as on today there is no approval of affiliation by the State Government as required under Section 21(2) (d) of the Act for the academic session 2017-18.

3.2. Therefore, there is a broad consensus



between the learned counsel appearing on behalf of the respective parties, including the learned counsel appearing on behalf of the respective institutions, respective petitioners-students as well as the learned Advocate General appearing on behalf of the State and the learned counsel appearing on behalf of the respective Universities that as number of students are likely to be affected in the State which are thousands in number and to protect their interest, the State Government/concerned University be directed to accept the forms and fees of the respective students of the concerned institutions for the academic year 2017-18 subject to outcome of the applications pending with the State Government for approval under Section 21(2) (d) of the Act and that the concerned students shall not claim any equity by permitting them to appear in the examination and that their acceptance of forms and fees and permitting them to appear in the ensuing examination for the academic year 2017-18 shall be subject to ultimate outcome of the applications for approval pending with the State



Government and the State Government may be directed to finally decide and dispose of the applications for approval under Section 21(2) (d) of the Act at the earliest.

3.3. Learned counsel appearing on behalf of the original writ petitioners have also requested to the above observations that in case, the concerned institutions in which students have studied are granted approval by the State Government for the academic year 2017-18, in that case results be declared. It is agreed that in case, the State Government does not grant the approval in case of particular institution under Section 21(2) (d) of the Act, in that case, the results of such institutions may not be declared. However, liberty is reserved in favour of the concerned institutions to challenge the decision of refusal of the approval which may be directed to be considered in accordance with law and on its own merit.

4. Having heard learned counsel appearing for the respective parties and having given serious thought to the problem which has arisen and the



future of the number of the students which are thousands in number are at stake and thousands of students are likely to be affected, as one time measure and in the peculiar facts and circumstances, we are of the opinion that the suggestion seems to be reasonable. It is true that the concerned institutions ought not to have admitted the students without any approval of the State Government as required under Section 21(2)(d) of the Act and merely on the basis of the affiliation granted by the University and without waiting for the approval of the State Government as per Section 21(2)(d) of the Act. Even the University also ought not to have supported such institutions. However, the fact remains that the concerned institutions are running since long and they are granted approval by the State Government periodically. The fact remains that for the academic year 2017-18, the applications of the concerned institutions through the recommendation of the concerned University for approval under Section 21(2) (d) of the Act for the academic year 2017-18



are still pending with the State Government. In most of the cases, the State Government has yet to take a final call/decision of the approval to be granted to the concerned institution under Section 21(2)(d) of the Act.

4.1. Therefore, in the peculiar facts and circumstances of the case and the future of the thousands of students are at stake and the broad consensus between the learned counsel appearing on behalf of the respective parties recorded hereinabove, more particularly, learned counsel appearing on behalf of the concerned students and the respective institutions-writ petitioners, the present Letters Patent Appeals are disposed of in terms of the following:-

- (i) That as agreed, the State Government/concerned Universities to accept the examination forms and fees of the concerned students of the respective institutions for the academic year 2017-18 pending decision by the State Government with respect to the



concerned institutions in which the students have studied under Section 21(2) (d) of the Act and they may be permitted to appear in the ensuing examination for the academic year 2017-18. However, the concerned students shall not claim any equity solely on the basis of acceptance of their examination forms and fees and permitting them to appear in the examination.

(ii) That their acceptance of examination forms and fees and permitting them to appear in the ensuing examination for the academic year 2017-18 shall be subject to ultimate outcome/decision of the State Government on the application pending for approval of affiliation with respect to the concerned institutions under Section 21(2) (d) of the Act. In case, the State Government



grants approval of affiliation of the concerned institution for the academic year 2017-18, the result of the students of those institutions be declared. As agreed, in case, with respect to any of the institutions, the approval of affiliation is not granted by the State Government under Section 21(2) (d) of the Act for the academic year 2017-18, in that case, the result of those students of those institutions may not be declared. However, it will be open for the concerned institutions to challenge the same before the appropriate Court/Forum, in case they are aggrieved by any decision of the State Government not granting the approval for the academic year 2017-18.

(iii) That the State Government is directed to finally decide the applications of the concerned



institutions for approval for the academic year 2017-18 under Section 21(2) (d) of the Act at the earliest and within a period of six weeks from today and intimate the outcome of the same to the concerned institution. The State Government to take final decision in accordance with law and on its own merit and pass speaking order.

(iv) That the aforesaid order is passed in the peculiar facts and circumstances narrated hereinabove as it is reported that the applications of the concerned institutions submitted through the concerned Universities for approval under Section 21(2) (d) of the Act is pending with the State Government and the present order be not cited as a precedent in future.

5. With the aforesaid directions, the present



Letters Patent Appeals stand disposed of and the impugned judgments and orders passed by the learned Single Judge in respective writ petitions are modified to the aforesaid extent.

5.1. Before parting with the present order, we may caution the concerned institutions that in future they may not admit the students in the respective institutions without any approval by the State Government under Section 21(2) (d) of the Act and solely on the basis of the affiliation granted by the University and solely on the ground that the University has recommended to the State Government for approval. It is also further observed and directed that the State Government shall decide and dispose of the applications for approval of the concerned institutions under Section 21(2) (d) of the Act at the earliest and preferably before start of the academic year so that such an eventuality may not occur, provided the concerned institutions or the concerned University send the recommendation in the prescribed format well in time and much before the academic year



starts.

6. With the above, the present Letters Patent Appeals stand disposed of. No costs.

All the Interlocutory applications stand disposed of.”

In the above context, what we find is that the State Government was under an obligation to have taken a decision with regard to the Session 2017-2018 as well which appears to have not been taken on account of the pendency of these two appeals. The State Government therefore in the light of what has been said hereinabove will take an appropriate decision in the matter within a period of six weeks from the date of presentation of the certified copy of the orders in these two appeals in the light of the judgment of the Division Bench dated 01.11.2018 in the case of **Arpana Kumari and Ors. vs. The State of Bihar and Ors.**

We may put on record that the State Government will henceforth abide by the timeline which is required to be observed in the matter and as indicated in the judgment of the learned single Judge in the case of Dr. Ram Pramod Thakur & Ors. (supra) as per orders on 26th of April, 2018. We will further add that no admissions should be permitted in any college without compliance of the procedure prescribed in Sections



21(2)(d) of the Bihar State Universities Act, 1976 read with Statute 29 framed in this regard, but at the same time, in the event the State Government fails to take a decision in respect of the grant of approval or otherwise as indicated, then in that event the concerned college or the aggrieved person shall have to approach this Court for any directions and there will be no automatic assumption of grant of permission by the concerned authority. It shall also be open to the concerned college or the aggrieved persons to move for contempt in the event the directions are not followed by the State Government and the files are kept unnecessarily pending either by the Universities or by the State Government beyond the timeline, as indicated in the said judgment.

The appeals therefore stands disposed of with the aforesaid direction.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM/Saif

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	06.04.2019
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