

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8059 of 2020

=====

L.P. Shahi Mahavidyalay, Muzaffarpur through its Joint Secretary Vaidyanath Pd. Shahi (Male), aged about 72 years, Son of Ramdeo Prasad Shahi, Resident of opposite of S.K. J. Law College, Gannipur, P.S.- Muzaffarpur, District- Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Govt. of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, New Secretariat, Patna.
3. Babasaheb Bhimrao Ambedkar Bihar University, Muzaffarpur through its Registrar.
4. The Vice Chancellor, Babasaheb Bhimrao Ambedkar Bihar University, Muzaffarpur.
5. The Registrar, Babasaheb Bhimrao Ambedkar Bihar University, Muzaffarpur.
6. The Chancellor of Universities, Raj Bhawan, Bihar, Patna.

... .. Respondents

=====

Appearance :

For the Petitioner	:	Mr. P.K.Sahi, Senior Advocate
		Mr. Arun Kumar, Advocate
For the Respondent State:		Mr. Prabhakar Jha, G.P.-27
		Mr. Mukund Mohan Jha, AC to G.P.-27
For the Respondent University :		Mr. Nikhil Kumar Agrawal, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 24-08-2021

Heard Mr. P.K. Sahi, learned Senior Counsel appearing on behalf of the petitioner, Mr. Prabhakar Jha, learned G.P.-27 representing the respondent State of Bihar and Mr. Nikhil Kumar Agrawal, learned counsel for the respondent University.

2. This writ application has been filed under Article 226 of the Constitution of India by L.P. Shahi Mahavidyalaya,



Muzaffarpur, through its Joint Secretary. The petitioner had initially sought for a direction commanding the respondent Education Department, Government of Bihar, to grant approval of affiliation granted by the Baba Saheb Bhim Rao Ambedkar Bihar University, Muzaffarpur (hereinafter to be referred to as 'the University') for Academic Sessions 2020-21, 2021-22 and 2022-23. During the pendency of this application, the Education Department, through its letter dated 10.09.2020 addressed to the Registrar of the University, has communicated refusal to approve the affiliation granted by the University. The petitioner has accordingly challenged the said communication dated 10.09.2020 by seeking amendment in the writ application through I.A. No. 1 of 2020. Considering the fact that the communication dated 18.09.2020 arises out of the same transaction relating to grant of approval of affidavit, I.A. No. 1 of 2020 is allowed.

3. Consequently, the petitioner is permitted to challenge the said communication dated 10.09.2020. The averments made in I.A. No. 1 of 2020 have been treated to be part of the main writ application.

4. Before dealing with the facts of the case, it would be apt to take note of certain relevant statutory provisions regarding grant of affiliation to an institution by an University under the



provisions of the Bihar State Universities Act, 1976 (hereinafter to be referred to as 'the Act'). Section 4(19) of the Act confers upon the Universities, within the meaning of the Act, a power to affiliate or disaffiliate colleges according to the Statutes, subject to prior approval of the State Government. Section 21 of the Act deals with the power and duties of the Senate of the University. Clause (d) of sub-section (2) of Section 21 of the Act authorizes Senate of the University to exercise powers for the purpose of control in Colleges and Tols, and of superintendence, which includes affiliation and disaffiliation of Colleges. In accord with the requirement under Section 4(19) of the Act, which requires prior approval of the State Government as a condition precedent for grant of affiliation to a College by the University, the first proviso to sub-section (2) of Section 21 lays down, *inter alia*, that affiliation or disaffiliation of Colleges shall not take effect, unless it is approved by the State Government. The second proviso to sub-section (2) relates to medical colleges in respect of which also prior approval of the State Government is needed for such College to be affiliated to an University.

5. Section 21(2) further requires that before granting such an approval, the State Government shall consider : -

(i) the financial viability of the College;



(ii) nature and form of the proposed management of the College;

(iii) the viability of the Academic standard; and

(iv) all other conditions which are likely to have adverse effect on the interest of the students admitted to such College.

6. It is an admitted fact that in exercise of power under Section 4(19) and Section 21(2)(d) of the Act, the University has taken a decision to grant affiliation for the Academic Sessions 2020-21, 2021-22 and 2022-23 to the petitioner-institution. As the Act requires approval by the State Government for the said affiliation to take effect, approval was sought for. As no action was being taken by the State Government on the question of grant of approval by the State Government, this writ application was filed seeking a direction for taking a decision. However, refusal to grant approval for affiliation has been communicated by the impugned communication dated 10.09.2020. Following are the grounds mentioned in the communication dated 10.09.2020 for refusal to grant approval for affiliation :-

(I) During verification, it has been learnt that the distance between the lands possessed by the



College in question having area 87 decimal and five acres 44 decimal is not clear.

(II) A sum of Rs. 75,000/- is available in the reserve fund of the College, which does not satisfy the standard prescribed by the Statute 1098 dated 19.04.1986 and letter No. 3196 dated 14.12.2007 as well as letter No. 3074 dated 25.10.2019.

7. It is to be kept in mind that the said communication is in exercise of statutory power exercisable by the State Government under the Act. How casually the said order dated 10.09.2020 has been passed, can be gathered from a subsequent action of the State Government, which shall be referred to later.

8. While challenging the said communication by seeking amendment in the writ application through I.A. No. 1 of 2020, the petitioner asserted that both the reasons, assigned in the said communication dated 10.09.2020, were *non est* for the purpose of refusal to approve affiliation. It has been asserted that the College in question is situated in urban area on a land admeasuring 2.5 acres in the name of the College, which has come through registered lease deed for a period of 60 years and, therefore, the aforesaid piece of land qualifies the requirement of land and building as per the revised Statute dated 25.10.2019.



Therefore, refusal to approve affiliation on the ground, that the difference between two pieces of lands possessed by the petitioner-College was not clear, could, in no circumstance, be a ground for such a refusal. It has specifically been contended that only one piece of land admeasuring 2.5 acres could suffice the statutory requirement of land availability.

9. In relation to second ground of refusal to grant approval of affiliation, the petitioner stated that in terms of the existing Statute, a sum of Rs. 75,000/- was deposited by the College towards reserve fund and as on 21.03.2020, a sum of Rs.7,88,154/-, was available in the reserve fund account till 21.03.2020. There is specific statement in the interlocutory application with reference to a letter dated 05.10.2020 that a sum of Rs.7,71,775/- was up to date balance against reserve fund deposited in the University till 04.09.2019. The petitioner has also brought on record a communication dated 21.03.2020 issued under the signature of the Branch Manager of the concerned Bank where the reserve fund account is maintained to make out a case that a sum of Rs.7,88,154/- was available in the account as on 31.03.2020.

10. Seemingly, after noticing the stand taken by the petitioner in the interlocutory application, the Education



Department has issued another letter dated 12.01.2021, which has been brought on record by way of Annexure-E to the supplementary counter affidavit filed by the Director, Higher Education, Government of Bihar, in continuance of the earlier communication dated 10.09.2020 that since the College does not fulfill the requirement of possessing land, as stipulated in the Statute dated 25.10.2019, since the lease period of the land was going to expire in 2045 and, therefore, it does not fulfill the requirement of 33 years of lease of land from the effective date i.e. 25.10.2020.

11. The facts, which have not been disputed by the respondents, are that the College was established in the year 1981 and possessed land through registered lease for a period of 60 years. In the year 1990, the University had recommended to the State Government for grant of approval of the affiliation, whereafter the approval was granted. Subsequently, the University had sent recommendation to the State Government for grant of extension of approval of affiliation, but the proposal remained pending. Eight years thereafter, the State Government asked the University to send fresh proposal. In 2015, the University took steps for sending the proposal, which was approved by the Senate and the same was again sent to the State Government. The



proposal for approval of affiliation remained pending. The University again sent the proposal on 27.05.2020. On 10.09.2020, the State Government rejected the recommendation for approval of affiliation. It is the petitioner's case that the said order dated 10.09.2020 appears to be antedated, a copy of which was received by the petitioner on 05.10.2020, after filing of the writ petition on 25.09.2020.

12. Mr. P.K.Sahi, learned Senior Counsel appearing on behalf of the petitioner, has submitted that while passing the impugned order, the State Government has completely overlooked the mandatory statutory provision under Section 21(2) of the Act relating to grant of approval of affiliation by the State Government, which clearly lays down the considerations for the State Government to take a decision in this regard. The respondents have neither gone into the financial viability nor nature and form of the proposed management of the College nor viability of the academic standard and other conditions, which would likely to have adverse effect on the interest of the students, he contends. He submits that the State Government, on the other hand, overlooking its own responsibilities, went into such questions/aspects, which were within the domain of the University, upon consideration of which the University has already decided to



grant affiliation. He has submitted that power to grant affiliation lies with a University under the scheme of the Act. The State Government has a limited role for the purpose of grant of approval of such affiliation by addressing limited issues as prescribed under Section 21(2)(d) of the Act.

13. Referring to a supplementary affidavit filed on behalf of the petitioner in the light of certain observations made by this Court during the hearing of this case, he has submitted that apart from the lease-hold land, which the College is in possession, it has purchased five acres 44 decimal of land through absolute sale deed dated 11.09.2019. Further, there is separate sale-deed in favour of the College for the land admeasuring 67 decimal dated 11.09.2019. He has submitted, referring to the said supplementary affidavit, wherein it has been stated that the petitioner-College runs under Madhuri Educational Trust and the managing committee of the Trust in its meeting dated 02.07.2021 has taken a unanimous decision that a new building for running the College would be constructed over the said land purchased on 11.09.2019, whereafter steps will be taken for proposal being sent to the State Government for approval of permanent affiliation. He has further submitted with reference to the said supplementary affidavit that the College undertakes to create infrastructure, such as, building,



laboratory, library etc. in terms of statutory provisions on the land purchased by the petitioner within a period of two years.

14. He has submitted that in the aforesaid background, this Court may direct the State Government to reconsider the question of grant of approval of affiliation in larger public interest and in compliance with the relevant statutory provisions.

15. Mr. Prabhakar Jha, learned G.P.-27 representing the respondent State of Bihar has submitted that in the light of amendment introduced on 25.10.2019 in the Statute dated 19.04.1996, even possession of lease-hold land has been permitted with the condition that the same must be for a minimum period of 33 years with a minimum one time renewal clause. It further permits that if lease period is 60 years or above, renewal clause may not be required. It has been argued by him that as the lease period of the land is going to expire in the year 2045 and only 25 years of lease period remains from the effective date of Statute, i.e., 25.10.2019, the State Government has rightly refused to grant approval of affiliation. He has submitted that the said aspect of matter was not incorporated in the original letter dated 10.09.2020 and, therefore, a subsequent letter was issued on 12.01.2021 incorporating the said aspect. He has contended that subsequent



letter dated 12.01.2021 is not in supersession of previous communication dated 10.09.2020, rather in continuance of the earlier communication dated 10.09.2020.

16. On examination of pleadings and other materials on record and consideration of rival submissions made on behalf of the parties, I find force in the submission advanced by Mr. P.K.Sahi, learned Senior Counsel appearing on behalf of the petitioner, that while issuing the impugned communication on proposal for grant of approval of affiliation, the State Government has completely overlooked its jurisdiction under Section 21(2)(d) of the Act. It is not the duty of the State Government to review the decision of the University taken in respect of a privately managed institution in exercise of power under Section 4(19) of the Act. The requirement of power to grant prior approval, as stipulated under Section 4(19) of the Act is circumscribed by limitation under Section 21(2)(d) of the Act, which has been noted hereinabove, relevant portion of which reads thus : -

“Before granting such an approval, the State Government shall consider financial viability of the College, 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 interest of the students admitted to such a College.”

17. In the facts and the circumstances of the present case, as noted above, instead of going into the legal aspect as to whether even in such a case, where a college possesses land through lease-deed for a period of 60 years, shall be required to satisfy the requirements in terms of amendment in the concerned statute dated 25.10.2019 of having land through lease deed for a period of 30 years from the date with effect from which the said Statute came into force, in my opinion, the impugned communications dated 10.09.2020 and 12.01.2021 issued by the Education Department, Government of Bihar, refusing to grant approval of affiliation need interference, the same being in teeth of the statutory provisions under Section 21(2)(d) of the Act, as noted above. In my considered view, it is mandatory for the State Government, in compliance of the provisions under Section 21(2) (d) of the Act, to consider such aspects as have been clearly mentioned therein, namely, financial viability of the College, nature and form of the proposed management of the College, the viability of the academic standard and other conditions which are likely to have adverse effect on the interest of the students to such a College.



18. The impugned letter dated 10.09.2020 is accordingly set aside.

19. The matter is remanded back to respondent No.2 for taking a decision afresh strictly in terms of the statutory provisions under Section 21(2)(d) of the Act, as noted above.

20. As has been noted above, there is specific averment made in the supplementary affidavit filed on behalf of the petitioner that a new building shall be constructed by the College within two years over a piece of land, which has been recently purchased for the College. Admittedly, the College is in possession of the land on the basis of lease deed for a period of 60 years, which shall expire in 2045. In the background of these facts, the petitioner is seeking grant of approval of temporary affiliation only, proposal for which has been sent by the University for three academic sessions, namely, 2020-21, 2021-22 and 2022-23. Academic year 2020-21 is already over. It is the petitioner's own case that they will seek grant of permanent affiliation after two years, once the new College building is ready over the land, which has been acquired for the College through a registered sale deed. The State Government, while taking any decision on the point of grant of refusal of approval of affiliation, shall keep in mind this stand of the petitioner.



21. Respondent No. 2 shall ensure that a decision is taken on the point of grant of approval of affiliation within one month from the date of receipt/production of a copy of this order.

22. This application is allowed with the aforesaid observations and directions.

23. There shall, however, be no order as to cost.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	01.09.2021
Transmission Date	N/A

