

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7437 of 2020

Sai Dev Charitable Trust Plot No. 4th Mile Stone, Street/Road- Mairwa Darauli Road, Village- Shyamvedi, Post Office- Karom, Via- Mairwa, Police Station- Darauli, District- Siwan, through its Chairman Arvind Kumar Singh, Aged about- 63 Years, Gender- Male, Son of Late Jamuna Prasad Singh, Resident of Village- SE- 72, Shastri Nagar, Near Nehru World School, Ghaziabad, Kavi Nagar, Uttar Pradesh- 201002.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Government of Bihar, New Secretariat, Vikash Bhawan, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, New Secretariat, Vikash Bhawan, Patna.
3. The Director, Higher Education, Government of Bihar, New Secretariat, Vikash Bhawan, Patna.
4. The Principal Secretary, Health Medical Education and Family Welfare Department, Government of Bihar, New Secretariat, Vikash Bhawan, Patna.
5. The Director in Chief, Health Medical Education and Family Welfare Department, Government of Bihar, New Secretariat, Vikash Bhawan, Patna.
6. The Director Science and Technology Department, Government of Bihar, New Secretariat, Vikash Bhawan, Patna.
7. The Pharmacy Council of India, NBCC Centre, 3rd Floor, Plot No.- 2, Community Centre, Maa Ananda Marg, Okhla Phase-1, New Delhi- 110020.
8. The Registrar-Cum-Secretary, Pharmacy Council of India, NBCC Centre, 3rd Floor, Plot No.- 2, Community Centre, Maa Ananda Marg, Okhla Phase-1, New Delhi- 110020.
9. The Aryabhatta Knowledge University, Chanakya Law University Campus, Mithapur, Patna through its Vice Chancellor.
10. The Vice Chancellor, the Aryabhatta Knowledge University, Chanakya Law University Campus, Mithapur, Patna.
11. The Registrar (Admin), the Aryabhatta Knowledge University, Chanakya Law University Campus, Mithapur, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 7599 of 2020

1. Rajendra Kishori Pharmacy College Sai Baba Educational Trust, Vill-Sughari, Post-Sughari, Dist-Siwan, Bihar-841406 through the Chairman Arun Kumar Singh, male, aged about 51 years, s/o Late Rama Shankar Singh, R/o LF/38, Boring Road, Sri Krishna Puri, P.S.-S.K. Puri, Patna, Bihar-800001.
2. Sai College of Pharmacy, Nav Nirman Education Trust, Vill-Onama, Post-



Onama, Dist-Shekhpora, Bihar-811101 through the Chairman-cum-M.D. Anjesh Kumar, male, aged about 46 years, S/o Vinay Singh, R/o Flat No. 301, Bhagwati Vaishno Apartment, West Boring Canal Road, Buddha Colony, P.S.-Buddha Colony, Patna, Bihar-800001.

3. Shakuni Choudhary College of Health and Sciences, Samrat Educational Welfare Trust, Tarapur, SH-22, Parvati Nagar, P.O.-Lakhanpur, Dist-Munger, Bihar-813201 through the Secretary Dharmendra Kumar, male, aged about 36 years, S/o Shakuni Choudhary, R/o 47, Kautilya Nagar, B.M.P. Road, Near Police Nirman Vibhag, B.P. College, P.S.-Airport, Patna, Bihar-800014.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Health Medical Education and Family Welfare, Patna.
2. The Director-in-Chief, Health Services, Bihar, Patna.
3. The Secretary, Health and Family Welfare Ministry, Government of India, Room No. 348, A Wing, AHS Section, NIRMAN Bhawan, New Delhi-11.
4. The Controller of Examination, Diploma in Pharmacy, Department of Health Medical Education, Patna.
5. The Vice Chancellor, Aryabhatta Knowledge University, Gyan Parishar, Mithapur, Patna.
6. The Registrar, Aryabhatta Knowledge University, Gyan Parishar, Mithapur, Patna.
7. The Chancellor of Universities, Bihar Raj Bhawan, Patna.
8. Pharmacy Council of India through its Registrar-cum-Secretary, NBCC Centre, 3rd Floor, Plot No. 2, Community Centre, Maa Anandmai Marg Okhla Phase I, New Delhi-110020.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 8222 of 2020

1. Kusum Raj Institute of Pharmacy Moriyawan, Datiyana, Bikram, P.O.-Bikram, District- Patna, Pin-801104 through its Chairman, Dr. Amrendra Kumar, Male, aged about 51 years, son of Rajdeo Sharma, resident of A/9, Kusum Raj, Kasturbanagar, Near Bazar Samiti, Mahendru, Sampatchak, P.O.- Mahendru, District- Patna, Pin-800006
2. Kurma Sanskriti Institute of Pharmaceutical Science, Kurma, P.O.- Kurma, District- Jehanabad, Pin- 804408 through its Secretary, Shri Shankar Kumar, Male, aged about 54 years, son of Bangali Singh, resident of J-189, P.C. Colony, P.O.- Lohiya Nagar, P.s.- Kankarbagh, District- Patna, Pin-800020
3. Sundaram Institute of Medical Science, Gaurichak, P.O.- Gaurichak, District- Patna, Pin-800007 through its Secretary, Shri Shankar Kumar, Male, aged about 54 years, Son of Bangali Singh, resident of J-189, P.C. Colony, P.O.- Lohiya Nagar, P.s.- Kankarbagh, District- Patna, Pin-800020



4. Magadh Institute of Pharmacy, Nasriganj, Danapur, P.s.- Danapur, District- Patna, Pin-801503, through its Secretary, Shri Dinesh Kumar, Male, aged about 48 years, son of Basant Lal, resident of Kabarsthan Road, Nasriganj, Digha, P.s.- Danapur, District- Patna, Pin-800012
5. Vivekanand Institute of Pharmacy, Mukrera, NH-85, VIP Golambar, District- Saran, Pin-841301 through its Director, Shri Rahul Raj, Male, aged about 31 yesrs, son of Shri Bipin Kumar Singh , resident of V.I.P. Golambar, V.I.P. School, Mukrera, District- Saran, Pin-841301
6. J.P.College of Pharmacy, NH-31, At-Biyabani, Maghra, Biharsharif, Near Golapur Airport, Village- Biyabani, Post- Maghra, District- Nalanda-803101 Secretary, Shri Shailesh Kumar, son of Late Yugeshwar Prasad, resident of Main Road, Rana Pratap Nagar, Chas, District- Bokaro, Jharkhand

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Bihar, patna
2. Pharmacy Council of India, New Delhi through its Sec
3. Chairman, Pharmacy Council of India, New Delhi
4. Registrar-cum-Secretary, Pharmacy Council of India, New Delhi
5. Aryabhatta Knowledge University, Patna through its Registrar
6. Vice Chancellor, Aryabhatta Knowledge University, Patna
7. Registrar, Aryabhatta Knowledge University, Patna

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 7437 of 2020)

For the Petitioner/s	:	Mr. P.K.Shahi, Sr. Advocate Mr.Sanjeet Kumar, Advocate
For the State	:	Mrs. Binita Singh, SC 28 Mr. Nishant Kumar Jha, AC to SC 28
For PCI	:	Dr. K.N.Singh, ASG Mr. Abhijeet Gautam, JC to ASG
For AK University	:	Mr. Anand Kumar Ojha, Advocate
(In Civil Writ Jurisdiction Case No. 7599 of 2020)		
For the Petitioner/s	:	Mr.Suman Kumar, Advocate
For the State	:	Mr.Ajay Bihari Sinha, GA 8 Mr. Suryakant Kumar, AC to GA 8
For PCI	:	Dr. K.N.Singh, ASG Ms. Prakritika, JC to ASG

(In Civil Writ Jurisdiction Case No. 8222 of 2020)

For the Petitioner/s	:	Mr.Abhinav Srivastava, Advocate
For the Respondent/s	:	Mr.Ajay Bihari Sinha, Ga 8 Mr. A. Srivastava, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER



9 05-04-2021 Heard Mr. P.K.Shahi, learned senior counsel appearing on behalf of the petitioners, Mr. Ajay Bihari Sinha, learned G.A. 8 for the State and Mr. K.N.Singh, learned counsel appearing on behalf of the Pharmacy Council of India and Mr. Anand Kumar Ojha, for the Aryabhatta Knowledge University.

This batch of three writ petitions is a sad commentary on the bureaucratic system of this State. On 27.11.2020 the Court noted the submissions of the counsel for the petitioners, Aryabhatta Knowledge University (hereinafter referred to as the 'University'), State of Bihar and the Pharmacy Council of India (hereinafter referred to as the PCI). The Court was constrained to note that notwithstanding the grant of recognition to these institutions by PCI, the institutions were not granted 'no objection certificate' by the University not because there was any shortcoming in the teaching and other facilities in the institutions in question but because of the lack of infrastructural facilities in the Aryabhatta University. The order dated 27.11.2020 is self-explanatory which is quoted below, for ready reference:-

“Heard Mr. P.K.Shahi, learned senior counsel for the petitioners, Mr. Sanjeet Kumar, learned counsel for the petitioners, Mr. Anand Kumar Ojha assisted by Mr. Rakesh Kumar,



counsel for the Bihar University, Mr. K.N.Singh, Union of India and Mr. Ajay Bihari Sinha, learned counsel for the State.

Both the writ applications involve the issue of grant of affiliation Aryabhatta Knowledge University. Institutions are recognized by Pharmacy Council of India and for conducting examination. Aryabhatta Knowledge University is the only competent authority. It is submitted that there is no shortcomings in infrastructure so far as two institutions are concerned and only after satisfying as to infrastructure and other facilities the apex body the Pharmacy Council of India granted permission. After granting permission, the Aryabhatta Knowledge University is not issuing no objection certificate for grant of affiliation.

In the present writ applications filed by the petitioners and there is no dispute that in the matter of imparting instruction in Pharmacy course. Pharmacy Council of India is final and binding. Aryabhatta Knowledge University has limited role to the extent that it facilitate conduct of examination. The role of University has been discussed by the Apex Court in the case of Medwin Educational Trust.

In order to decide the writ application, the Aryabhatta Knowledge University as well as Pharmacy Council of India is hereby directed to file their response on the following issues:- (i) Whether the institutions are confirms to



the standard for grant of affiliation or not ?

(ii) The difficulty in issue of no objection by Aryabhatta Knowledge University and requirement of no objection in a situation where the institution has all necessary infrastructural facilities for imparting instructions as per requirement of Pharmacy Council of India.

Put up these cases for further hearing on 05.01.2021 along with CWJC No.8222 of 2020.

Respondents Pharmacy Council of India as well as Aryabhatta Knowledge University are required to file proper affidavit in this regard.”

The matter was again heard on 13.01.2021.

The Court noted the callus attitude of the University regarding technical education in the State of Bihar and after quoting various paragraphs of the counter affidavit reflecting the stand of the University, directed the Chief Secretary, Government of Bihar to look into the matter and salvage the situation. The Court expected the Chief Secretary for taking initiative to ensure that the career of the students is not jeopardized because of technicality and administrative difficulty shown by the University. On 11.2.2021 the Court directed the Chief Secretary to file personal affidavit and thereafter the then Chief Secretary filed his personal counter affidavit, paras 4 to 6 of the said



affidavit have been quoted in the order dated 18.2.2021. For the sake of brevity, the order dated 18.02.2021 is quoted below:-

“In CWJC No. 7599 of 2020, I. A. No. 01 of 2021 is for impleadment of the intervenor-institution as party. The same is allowed to avoid multiplicity of the litigation.

Pursuant to the order of this Court dated 11.02.2021, Chief Secretary, Government of Bihar, Patna has filed personal affidavit. Paragraph 4 to 6 of the counter affidavit is quoted hereinbelow:-

“4. That it is humbly submitted that for ensuring compliance of order dated 13.01.2021 passed by this Hon'ble Court, a meeting has been convened on 03.02.2021 through video conferencing under the Chairmanship of Chief Secretary, Bihar consisting of Principal Secretary, Education Department, Govt. of Bihar, Principal Secretary, Health Department, Govt. of Bihar, Secretary, Science & Technology Department, Govt. of Bihar and Vice Chancellor, Aryabhatta Knowledge University, Patna.

5. That it is humbly submitted that during course of proceeding of meeting, the issue of affiliation of the institutions for imparting B. Pharma & D. Pharma Course was also discussed at length and after due deliberations, the following decisions have been taken.

(i) During course of proceeding of meeting,



the Aryabhatta Knowledge University raised/pointed out some difficulties and in this regard, the Principal Secretary, Education Department, Govt. of Bihar has been directed to consider authorizing other Universities established in the State of Bihar for granting affiliation to Technical Education Institutions apart from the Aryabhatta Knowledge University. The Technical Education Institutions may also take affiliation from nearby University in view of geographical perspective. Simultaneously the Education Department has also been directed to examine feasibility of affiliation to all technical institutions from one university or to take affiliation from nearby university in view of geographical perspective. He has also been asked to obtain approval/direction of the competent authority on this.

(ii) It was unanimously decided that it is major policy decision involving immense public importance and hence, some more time is required for discussions and due deliberations on all aspects of this issue.

6. That in view of the aforesaid facts and circumstances, the deponent seeks kind indulgence of this Hon'ble Court to grant one month time for filing appropriate supplementary affidavit in this matter.”



The Chief Secretary in so many words admitted that the technical institutions should not be left at the mercy of Aryabhata Knowledge University. On principle, they have decided that all the concerned Universities, on whose territorial jurisdiction institutions are set up by the petitioners, have to take steps for affiliation for imparting not only D. Pharma Course but also other technical course. Not only policy decision but also corresponding law in this regard is required suitably to be amended and as such, State is granted time to take steps for suitable amendment in the existing law so that the institutions may not be required to approach Aryabhata Knowledge University for obtaining no objection in the matter of imparting the said technical course.

As prayed on behalf of the University, put up these cases on 18th of March, 2021.”

The then Chief Secretary in his affidavit assured the Court that the State is taking step and examining the feasibility of streamlining technical education and the State is contemplating authorizing notified University in the respective geogographical area the then Chief Secretary prayed for one month time for filing supplementary affidavit.

It is to be noted here that the institution set up to impart education in pharmacy were inspected by the PCI and



on being satisfied about the infrastructural and other facilities, the PCI granted recognition/permission subject to condition that the institution in question will obtain no objection of the University. In the aforesaid background the institutions in question approached the University as the University is vested with the power to grant necessary no objection to set up institution to impart technical education (Pharmacy education) in the State of Bihar. As indicated in the previous order, the institutions were satisfying all the tests and requirement for grant of affiliation but due to the lack of infrastructural and other facilities of the University itself, which has been vested with the jurisdiction to examine the feasibility of technical education and authorized to granting no objection, the institutions were not granted no objection due to default of the University and as a result thereof the students could not be allowed to take admission and permission granted by the Pharmacy Council has been frustrated because of the attitude adopted by the University.

Mr. K.N.Singh, learned senior counsel appearing for the PCI on the previous occasion informed the Court that due to non-grant of no objection by the University, the PCI was constrained to withdraw the recognition granted



to these institutions and as a result of which the valuable academic session lapsed without any actual academic activity. Those people who are affluent can afford sending their wards to outside the State of Bihar for technical education but those who cannot not afford to send their wards outside the State have to suffer immensely due to failure of the university University in discharge of its obligation as their failure has resulted into loss of academic session.

Today the new Chief Secretary has filed supplementary affidavit, in para-6 he has quoted the order dated 13.01.2021, in para-7 the Chief Secretary has submitted that on 3.2.2021 the meeting of the different stakeholders was held for deliberating the issue and for the components of the course, the minutes of the course dated 3.2.2021 has been placed as Annexure R/1. In the supplementary counter affidavit it has been categorically mentioned that following directions have been issued to the Education Department, para-9, 1,2,3 are quoted below:-

(I) To consider authorizing other Universities, in addition to the Aryabhatta Knowledge University, to grant affiliation to the institutes imparting technical education in the State of Bihar.

(II) Institutes may get affiliation from the Universities situated nearby.



(III) Get the approval from the competent authority for authorizing the different Universities to grant affiliation to the institute imparting technical education, as per their geographical location.

It has been stated in the supplementary counter affidavit that in the aforesaid backdrop the Education Department has filed the affidavit for grant of one month time as the matter has been referred to the Law Department for its opinion.

Instead of resolving the crisis, one or the other plea has been taken in the supplementary affidavit to justify their unethical, anti-public, and anti-poor approach. In view of the order dated 13.12.2012 passed in Civil Appeal No. 9048 of 2012, and it has been mentioned that in view of the order dated 13.12.2012 whereby 15th August has been fixed as last date for filling up all seats, no admission is now permissible in these institutions. It is to be noted here that the academic activities frustrated only because of the lapse of the University and the State. In fact, in the previous order the Court has noted the loss of academic year for the recalcitrant attitude adopted by the respondents. Instead of salvaging the situation stand has been taken by the Chief Secretary clear stand has been taken by the Chief Secretary in paras 18 and 19 of the supplementary



affidavit filed by the Chief Secretary, Government of Bihar are quoted below for ready reference to understand the approach of the Government of Bihar towards technical education:-

“18. That it is humbly stated that allowing traditional universities to grant affiliation to the institutions in question will apply by implication to all such institutions imparting conventional as well as new frontiers of professional education, for example, Engineering & Technology including Information Technology, Nanotechnology and Biotechnology, Management, Medicine, Health, Technology, Public Health, Pharmacy, Optometry, Nursing, Education, Law, etc., which will render the enactment of Aryabhatta Knowledge University Act, 2008 meaningless.

19. That it is pertinent to mention here that Aryabhatta Knowledge University has informed the department vide letter no. 1360 dated 01.04.2021 that they will issue no objection certificate (NOC) for conducting B.Pharm Course for academic session 2021-22. It has further been informed that different institutions have submitted



application before the University for grant of no objection certificate (NOC) for conducting B.Pharma Course for the academic session 2021-22 and the same is under consideration as per law.”

Any sensible man holding high office of Chief Secretary is expected to reconcile the stand taken by the University for its failure in the backdrop of the facts that the institutions were granted permission by the Pharmacy Council of India. The Chief Secretary, State of Bihar before filing supplementary counter affidavit in the present proceeding, as noted in the previous order, was required to adopt pragmatic approach. In the present proceeding as noted in the previous order shown its helplessness in the matter of regulating the technical education for want of infrastructure and other facilities. Now the Chief Secretary instead of respecting the plea of his predecessor allowing technical education regulated by the other University in whose territorial jurisdiction the technical institution stands, Now the Chief Secretary took the plea that allowing other university to regulate technical education will render the University Act meaningless has totally ignored the fact that the University by its conduct and on affidavit has admitted that it is no more in a position to regulate



the technical education. It is a matter of common knowledge that the University has not utilized its huge building but it is now contemplating letting out the building for collecting rent. The Court is not expected in hearing the history and geography of University and the idea behind notifying the Aryabhata Knowledge University Act. The fact remains the petitioners institution was recognized by the apex body like Pharmacy council of India and it has all the teaching and other infrastructure facility but they were not allowed academic activities for the default of the University as a result of which the poor people of the State of Bihar who cannot afford sending their wards outside the State suffer immensely.

This Court has granted enough indulgences at the cost of academic session which has lapsed because of the red-tapism, the Court in the compelling circumstances directs all concerned to appropriately decide the case of the institutions within a period of two month from the date of submission of their application along with a copy of this order for grant of no objection certificate failing which it will be deemed that they have been granted no objection from the affiliating institution. The petitioners are directed to submit application to the Chief Secretary, Government of Bihar, who shall be under obligation



to forward the application to the appropriate University whether Aryabhatta Knowledge University or any other University in whose territorial jurisdiction the institution has been established for the needful. The period of two months will reckon from the date of application received in the office of the Chief Secretary, Government of Bihar.

With the aforesaid direction, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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