

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3765 of 2023

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Z.A. Islamia College, Siwan through its Secretary, Zafar Ahmad Ghani, Male, aged about 72 years, son of Late M.N.A. Ghani, resident of Purana Quila, P.S.- Town, District- Siwan, Pin Code- 841226.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Bihar, Patna.
2. Director, Higher Education, Education Department, Bihar, Patna.
3. Jai Prakash University, Chapra through its Registrar.
4. Vice Chancellor, Jai Prakash University, Chapra.
5. Registrar, Jai Prakash University, Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Abhinav Srivastava, Advocate
For the State	:	Mr.Sanjay Kumar, AC to GP-23
For the University	:	Mr. Ritesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 25-07-2023 Heard learned counsel for the petitioner, learned counsel for the University and learned AC to GP-23 for the State.

2. Petitioner in the present case is seeking the following reliefs:-

“(i) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the letter dated 24.12.2021 bearing memo no.2846 issued by the concerned authorities under the Education Department of the State Government, by which the Registrar of Jai Prakash University, Chapra (hereinafter referred to as “the University”) was informed that the proposal for grant of permanent affiliation for offering under-graduate courses by



the petitioner College in the subjects of Sanskrit, Persian (Hons.), Sociology (Hons.) and Home Science had been rejected;

(ii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the Education Department of the State Government and also the University to take steps towards granting permanent affiliation in favour of the petitioner college to offer under-graduate courses in the subjects of Sanskrit, Persian, Sociology and Home Science;

(iii) Issuance of a declaration holding that in terms of the provisions contained under Section 21(2)(d) of the Bihar State Universities Act, 1976, the petitioner college is entitled for grant of permanent affiliation to offer under-graduate courses in the aforesaid subjects of Sanskrit, Persian (Hons.), Sociology (Hons.) and Home Science;

(iv) Any other relief that the petitioner may be found to be entitled to in the facts and circumstances of the present case.”

3. Learned counsel for the petitioner has assailed the communication as contained in memo no.2846 dated 24.12.2021 issued under the signature of the Deputy Secretary to the Government, Department of Education, Government of Bihar (Annexure- ‘10’ to the writ application) whereby and whereunder the proposal for grant of permanent affiliation to the petitioner-college has been turned down for the reason that the



said proposal sent by the University does not meet the required parameters under Section 21(2)(d) of the Bihar State Universities Act, 1976 (hereinafter referred to as the 'Act of 1976').

4. Learned counsel for the petitioner submits that in the second paragraph of the impugned communication it is stated that in course of consideration of the proposal for grant of affiliation in respect of the four courses at graduation level, the State Government did not find approval of the competent authority (syndicate and senate).

5. Learned counsel submits that in the impugned communication the only ground for rejection of the proposal is that it was not having the approval of the syndicate and senate and that no proposal has been given at present after the approval of the syndicate and senate afresh.

Brief facts & submission on behalf of the petitioner

6. While taking this Court through the records, learned counsel submits that the petitioner-college is a recognized minority educational institution in terms of Article 30(2) of the Constitution of India and is permanently affiliated to the University. On the basis of the decisions taken by the competent authority of the college, it was decided to start under-



graduate courses in the subjects of Sanskrit, Persian (Hons.), Sociology (Hons.) and Home Science at the college. The college submitted the requisite fees before the concerned authorities for grant of permission to offer the said courses. It is submitted that pursuant to the directions issued by the University, an inspection committee was constituted to submit a report with respect to the proposal for the aforementioned graduation courses. The inspection was conducted and a report dated 01.12.2010 stood submitted by the said committee. The committee recommended for grant of permanent affiliation in favour of the college for offering under graduate courses in four subjects from the current session 2010-11. It is stated that during the meeting of the Affiliation and New Teaching Programme Committee held on 13.01.2011 the inspection report was placed and taking note of the same the committee made a positive recommendation on the basis of the said report. The senate of the University in its meeting held on 15.02.2012 approved the recommendation made by the Affiliation and New Teaching Programme Committee.

7. Learned counsel submits that under Section 21(2) (d) of the Act of 1976 the senate of the University shall have the powers for the purposes of control in colleges, control and



superintendence which included affiliation and disaffiliation of colleges provided that the affiliation and disaffiliation of the colleges would not take effect unless it is approved by the State Government. The provisions have also been made under Section 21(2)(d) with respect to grant of affiliation in favour of colleges. In this view of the matter, the senate of the University during its meeting held on 15.02.2012 had duly approved the positive recommendation made by the Affiliation and New Teaching Programme Committee for grant of affiliation to the college to offer aforementioned four subjects under graduate courses.

8. It is further submitted that the Registrar of the University vide his letter dated 28.02.2013 had submitted the report of the inspection committee, the decision of the Affiliation and New Teaching Programme Committee, proceedings of the senate and syndicate of the University to the Education Department, Government of Bihar for taking necessary action with respect to granting permanent affiliation. The college vide its letter dated 23.12.2014 (Annexure- '5') requested the department to take necessary decision in this respect. Later on the department called for a copy of the letter dated 28.02.2013 (Annexure- '4') along with enclosures before the concerned authorities under the Education Department of the



State Government which was accordingly complied with vide Annexure- '8' to the writ application.

9. Learned counsel submits that despite availability of the minutes of the meeting of the senate and the minutes of the academic council of the University available with the Education Department, extracts of which are available as Annexure- '9' to the writ application, instead of considering the materials available with them the department has made a wrong statement in Annexure- '10' that the proposal for permanent affiliation has no approval of syndicate and senate.

10. Learned counsel submits that instead of considering the entire materials which are available with the department, they have come out with a convenient statement that if fresh proposal is submitted with the department the same will be considered. Learned counsel has taken this Court through Annexure- '9' particularly agenda item no.3 of the minute of the meeting dated 25.01.2021 of the Academic Council to show that the Academic Council has specifically approved the proposal for permanent affiliation.

Submissions of the State

11. A counter affidavit has been filed on behalf of the State. Learned counsel for the State has taken a plea in support



of Annexure- '10' to the writ application. It is submitted that the proposal of the University dated 03.08.2019 was without approval of the senate and syndicate. It is further stated that the request of the University vide letter dated 25.08.2021 was also not proper in view of the fact that the same was made on the basis of inspection report of the year 2010. Learned counsel for the State, however, agrees that the plea that the request of the petitioner was not proper for the reason that it was based on inspection report of the year 2010 is being taken for the first time in the counter affidavit and the same does not form basis for rejection of the proposal in Annexure- '10' to the writ application.

Consideration

12. Having heard learned counsel for the parties and upon perusal of the records, this Court finds from the records that with the counter affidavit itself the State has enclosed the proceedings of the affiliation committee, syndicate and senate as Annexure- 'B'. A specific statement has been made in paragraph '14' of the counter affidavit that the University in continuation of earlier proposal dated 03.08.2019, vide letter no.4846 dated 25.08.2021 requested for grant of permanent affiliation in four subjects. The statement made in paragraph '15' is that from



perusal of the proceeding of the senate it is evident that the senate did not approve for grant of permanent affiliation in four subjects rather permission was granted to the college to start teaching in such subjects.

13. This Court finds from Annexure- 'B' to the counter affidavit that vide letter no.4846 dated 25.08.2021 the University had communicated to the Director, Higher Education, Government of Bihar that the resolution of the Academic Council vide agenda item no.3 in its meeting held on 25.01.2021 and in view of the approval of the syndicate in its meeting on 27.01.2021 and approval of the senate in its meeting held on 28.01.2021, permanent affiliation may be granted to the college in the four subjects. Annexure- 'B' is the communication from the University to the State Government, together with the letter are the enclosures which are minutes of the meeting of the senate and syndicate. The agenda item no.5 clearly refers the recommendations of the affiliation and new education research programme committee as also the recommendations of the academic council in its meeting held on 25.01.2021 and the same having been approved by the syndicate in its meeting held on 27.01.2021. This Court, therefore, finds that despite Annexure- 'B' being in possession of the Department of



Education, the Department did not go into the same and failed to consider. Annexure- '10' contains a reason which is contrary to the materials available on the record. At the same time, in the counter affidavit the Department of Education has taken an attempt to improve upon its case by offering another reason and according to which the recommendation of the University is based on the inspection report of the year 2010.

14. This Court is of the opinion that the Department of Education cannot be allowed to improve upon its case. Law is well settled. Reference in this regard may be made to the judgments of the Hon'ble Supreme Court in the case of **Commissioner of Police, Bombay Vs. Gordhandas Bhanji** reported in **AIR 1952 SC 16** and **Mohinder Singh Gill & Anr. Vs. Chief Election Commissioner, Delhi and Ors.** reported in **AIR 1978 SC 851**.

15. This Court is also of the considered opinion that in this case the inspection report is, though, of the year 2010 but the same has been subject matter of consideration before the Department. If such consideration has been kept pending for years together, it would not be a correct approach on the part of the Department to say that now the proposal of the University cannot be considered because the inspection report is of the year



2010. That cannot be a valid consideration.

16. In result, this Court finds that the decision of the Department of Education, Government of Bihar as contained in memo no. 2846 dated 24.12.2021 (Annexure- '10' to the writ application) cannot sustain the test of law. It suffers from the vice of non-consideration of the materials available on the record. This Court, therefore, quash and cancels the impugned communication as contained in Annexure- '10' to the writ application and directs the Director, Higher Education, Education Department, Government of Bihar to consider the proposal for grant of permanent affiliation to the college in respect of the four courses on the basis of the entire materials and take an appropriate decision within a period of two months from the date of receipt/production of a copy of this order. The Department has already delayed the consideration for over a decade, therefore, at this stage, the proposal would not be rejected on the ground that the inspection report is of the year 2010.

17. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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