

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5801 of 2023

1. Dharmendra Kumar Son of Shyam Sundar Sharma Resident of Ward No. 10. Phatehpur, P.O.- Jamalpur, District- Khagaria.
2. Bambam Kumar Son of Naresh Sharma Resident of Sauraidih, Ward No. 01, P.O.- Bhadas, District- Khagaria.
3. Sumit Kumar Son of Vijay Thakur Resident of Ward No.- 11, P.O.- Rasalpur, District- Saharsa.
4. Chandan Kumar Son of Jawahar Kumar Resident of Village- Bhawanipur, P.S.- Bhawanipur, District- Purnea, Bihar.

... .. **Petitioners**

Versus

1. The Bihar State Education Finance Corporation Ltd., Patna (A Govt. of Bihar Undertaking), Block No. 3, Secretariat Annexe, Old Secretariat, Rajbansi Nagar, Patna, Bihar through its Chief Executive Officer Cum Managing Director.
2. The Chief Executive Officer Cum Managing Director, Bihar State Education Finance Corporation Ltd. Patna.
3. The Manager, Bihar State Education Finance Corporation Ltd., Patna.
4. The In-charge Officer, District Regulation and Counseling Centre, Patna.
5. The Millia Polytechnic, Rambagh, Purnia, Bihar through its Principal.
6. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
7. The Director, Secondary Education, Education Department, Education Department, Govt. of Bihar, Patna.
8. The District Magistrate, Purnea.

... .. **Respondents**

With

Civil Writ Jurisdiction Case No. 7491 of 2023

1. Millia Polytechnic, Rambagh, District-Purnea through its Principal Dr. Arvind Kumar, Male aged about 54 Years, Son of Sri Mathura Pd. Singh, Resident of Village-Pipra Khurd, P.O.-Sursalpatti, P.S.-Parihar, District-Sitamarhi.
2. Millia Institute of Technology, Rambagh, District-Purnea through its Principal Dr. Saquib Shakil Male, aged about 36 Years, Son of Md. Shakil Ahmad, Resident of Village-Molnadih, P.O.-Molnadih, P.S.-Rajgir, District-Nalanda.

... .. **Petitioners**

Versus

1. The State of Bihar through Additional Chief Secretary, Education Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Education Department, Government of



Bihar, Patna.

3. The Director, Secondary Education, Education Department, Government of Bihar, Patna.
4. The Bihar State Education Finance Corporation Ltd., Patna (A Govt. of Bihar Undertaking), Block No. 3, Old Secretariat, Rajbansi Nagar, Patna, Bihar through its Chief Executive Officer Cum Managing Director.
5. The Chief Executive Officer Cum Managing Director, Bihar State Education Finance Corporation Ltd., Patna.
6. The Manager, Bihar State Education Finance Corporation Ltd., Patna.
7. The Officer In-charge, State Project Management Unit, Bihar Student Credit Card Scheme, Patna.
8. The Assistant Manager, District Registration and Counseling Centre, Rohtas.
9. The Assistant Manager, Bihar State Education Finance Corporation Ltd., Rohtas (Sasaram).
10. The District Magistrate, Purnea.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 5801 of 2023)

For the Petitioners : Mr.Prince Kumar Mishra, Advocate
For the State : Mr.Mrigendra Kumar, AC to GP-20
For the Corporation : Mr.Kumar Ravish, Advocate

(In Civil Writ Jurisdiction Case No. 7491 of 2023)

For the Petitioners : Mr.Prince Kumar Mishra, Advocate
For the State : Mr.Mrigendra Kumar, AC to GP-20
For the Corporation : Mr.Kumar Ravish, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT**

Date : 02-08-2023

Heard learned counsel for the petitioners in both the writ applications as well as learned counsel for the State.

2. On the request of learned counsel for the parties, these writ applications have been heard together and are being disposed of by this common order.

3. C.W.J.C. No. 7491 of 2023 has been taken as the lead case.

4. This writ application was heard earlier on



23.06.2023. The order dated 23.06.2023 contains the facts of the case and the issues involved in the writ application which were required to be answered by the State respondents, therefore this Court would reproduce the order dated 23.06.2023 hereunder:-

“Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the Bihar State Education Finance Corporation Ltd., Patna (hereinafter referred to as the ‘Corporation’).

This writ application has been filed seeking issuance of writ in the nature of a writ of certiorari to quash and cancel the letter as contained in memo no.353 dated 06.10.2021 (Annexure- ‘P/6’) issued by the Department of Education, Government of Bihar under the signature of the Director, Secondary Education, Patna. By the impugned order, the Director, Secondary Education has rejected the review application preferred by the petitioners against the letter/memo no.325 dated 31.07.2020 (Annexure- ‘P/4’) issued by the Additional Secretary, Secondary Education, Patna. By the impugned orders what have been ultimately done is that the names of the petitioners’ institutions have been removed from the list of the institutions students of which would be entitled to get the benefits of the scheme of Bihar Student Credit Card upto a limit of Rs.4 lacs.

Learned counsel for the petitioners has drawn the attention of this Court towards Annexure- ‘P/2’ from which the whole issue emanates. Learned counsel submits that under the Student Credit Card Scheme a student pursuing B.Tech course and Polytechnic course in the college would have been entitled for a loan of Rs. 4 lacs during the entire period of his academic session at the rate of Rs.1 lac per year. Earlier the



institutions were very much listed in the list of the institutes for which the student credit card facility was available. At the relevant time, the hostel charge was Rs.2500/- per month, later on with the increase in price index and inflation rate as also the other charges and upon improvement of the hostel facilities, the hostel charge was raised to Rs.6,000/- per month. The students never complained about it but the respondent authorities on their own read something wrong in this fee structure.

Learned counsel further points out from Annexure- '4' which is a letter of the Additional Secretary of the Department that the structuring of fee and hostel charges have been done in such a manner that it gives rise to a doubt that it has been prepared with sole intention to get benefit of the scheme. Learned counsel submits that based on this "doubt" the authorities decided to remove the names of the institutions from the list of the institutions recognized for grant of benefit of the scheme to the students as a result of this the admission in these institutions has gone down. The review preferred by the petitioners has been rejected without considering the grounds raised by the petitioners in their review application. It is further stated that prior to issuing the orders which are detrimental to the students of the institutions and the institutions also, no notice to show cause was issued to the petitioners' institutions.

Learned counsel for the State as well as the Corporation have though tried to defend grant of an interim relief to the petitioners at this stage, but they have candidly stated that the reason for removing the names of the institutions from the list is not getting correlated with the object to be achieved, however, learned counsel submits that they would file a detail



counter affidavit showing as to on what basis such doubts were raised.

Having heard learned counsel for the parties and while granting time to the respondent State and the Corporation, this Court is of the considered opinion that the petitioners have been able to make out a prima-facie case for grant of interim relief. From the impugned orders/communications itself it appears that these orders are based on certain doubts but at no stage the petitioners' institutions was given any opportunity to appear and show cause.

In such circumstance, let till further order, the operation of the impugned orders/communications contained in memo no.325 dated 31.07.2020 (Annexure- 'P/4') and memo no. 353 dated 06.10.2021 (Annexure-'P/6') be remain stayed.

The names of the petitioners' institutions shall be restored during the pendency of the writ application subject to result of the writ. The students of the institutions shall be entitled for the benefits of the scheme which was being provided to them prior to issuance of the impugned orders/communications.

As prayed, list after four weeks i.e. on 24.07.2023 under the same heading maintaining it's position."

Stand of Respondent Nos. 3 & 7

5. A counter affidavit has been filed on behalf of respondent nos. 3 & 7. It is stated that education loan is disbursed under the Bihar Student Credit Card Scheme (hereinafter referred to as the "Scheme") through the Bihar State Education Finance Corporation Limited (hereinafter referred to



as the “Corporation”). It is specifically stated in paragraph ‘13’ of the counter affidavit that the Corporation acts as an agency of the State and the facilitator of the Finance Department which disburses the education loan to the students and to the beneficiary. It is stated that the Chief Executive Officer/ Managing Director under Letter No. 602 dated 18th October, 2019 forwarded a Letter No. 47 dated 17th October, 2019 issued by the Assistant Manager (Scheme) of the Corporation, Rohtas at Sasaram which was addressed to the Incharge of the Bihar Student Credit Card Scheme, State Project Management Unit, Bihar, Patna with a copy enclosed to the Chief Executive Officer-cum-Managing Director of the Corporation in which it was pointed out that Millia Institute of Technology, Rambagh, Purnea has been charging hostel charge for Bachelor of Technology Course at Rs. 2500/- per month whereas for the Polytechnic course of the same Institute hostel charge has been shown at Rs. 6000/-. It is stated that the Assistant Manager of the Scheme doubted and suspected that there has been huge variation in the hostel charges and the fee structure of the Institute in order to avail the benefit under the Scheme which is maximum to Rs. 4,00,000/- (Four Lakhs).

6. It is stated that in view of what transpired from the



correspondences and the documents enclosed therewith, the Education Department through its Additional Secretary constituted a Two Member's Committee comprising of two Deputy Directors, Secondary Education, Bihar, Patna for holding an enquiry. Correspondences were also made with the District Magistrate and an enquiry report was finally forwarded by the Managing Director of the Corporation to the Additional Secretary of the Education Department. According to this report, the variation in the hostel fee was made by the Institute in order to avail the benefit of the Scheme.

7. It is, in the aforementioned background that the Education Department through its Additional Secretary took a decision that the applications with respect to this Institute under the Scheme are to be rejected with further order that those applicants who have already availed the benefits under the Scheme only will get further disbursement of installments. The counter affidavit reveals that some representations were also submitted on behalf of the Institute but those were rejected.

8. A counter affidavit has also been filed on behalf of the Respondent Nos. 4 to 6. The stand of the respondents are on the same and similar lines with the State respondents.



Consideration

9. Having heard learned counsel for the parties and upon perusal of the records, before this Court proceeds to deal with the facts of the present case, it would be appropriate to take note of the order dated 24.07.2023 passed by this Court in C.W.J.C. No. 5343/2023 (**Champaran College of Pharmacy, Gulariya, Motihari, East Champaran Versus The State of Bihar through the Chief Secretary, Govt. of Bihar and Ors.**) with analogous cases, wherein this Court has examined the provisions of the Scheme and has taken a view which has been summarized in paragraph '13' of the order, which reads as under:-

“13. Be that as it may, the relevant fact is that the institutions have been allowed to take admission of the students and they have been admitted in the institute in the recognized courses. This being the position, this Court is of the considered opinion that the students of these institutions who have taken admission in the courses approved by the regulatory authority and pursuant to the provisional affiliation granted by the University cannot be deprived of the benefit of the scheme. The stand of the State in paragraph '15' of the counter affidavit has no leg to stand. The said stand is, therefore, rejected.”

10. In the present case, the only reason provided by the State respondents for not allowing the students of the Institutions to get benefit of the Scheme is that the State doubted



the fee structure of the Institutions. It is their case that these Institutions seem to have reduced the tuition fee and enhanced the hostel charges but how the structuring of fee in respect of the tuition and the hostel charges would in any way confer any unlawful benefit to the student or the Institution has not been explained in the counter affidavit.

11. Learned counsel for the State as well as the Corporation do not dispute that till date there is no statutory regulation of the tuition fee and the hostel charges of these Institutions. They do not dispute that so far as the Scheme is concerned, it nowhere refers any connection between the fee structure or hostel charges on the one hand and the level of financial assistance which the students will be getting under the Scheme on the other hand. Learned counsel are very clear that this Scheme is meant for each and every student irrespective of the fact as to how much amount a student is required to pay on account of tuition fee or hostel charges. After all, it is only a 'loan' which is liable to be refunded with interest @ 4% as informed to this Court.

12. From the submissions made on behalf of the State and the Corporation, it is crystal clear to this Court that the student as well as his/her guardian/parents are made the borrower and co-borrower of the loan and they are signing agreement with the



Corporation whereunder they bind themselves to pay the loan amount with interest @ 4% per annum, failing which there is a provision for recovery of the same through the certificate proceeding under the Bihar and Orissa Public Demand and Recovery Act, 1914 (hereinafter referred to as the “Act of 1914”). This Court, therefore, finds that the State is unable to show any relevance and reason behind the plea taken by them in the counter affidavit with the grant of benefit under the Scheme.

13. In the opinion of this Court, in absence of any statutory regulation of the fees chargeable by an Institution and there being no provision co-relating the benefit of the Scheme with the fee structure and the hostel charges of an Institution, the petitioners’ Institutions and the student admitted in these Institutions cannot be deprived of the benefits of the Scheme.

14. Since this Court has been informed that the name of these Institutions have been uploaded on the portal, this Court makes the interim order absolute and allows the writ applications. There will be no order as to cost.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	03.08.2023
Transmission Date	

