

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.14368 of 2018**

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1. Dhirendra Kumar Son of Shivjee Singh, resident of Village- Narayanpur, P.S.- Dumra, District- Sitamarhi.
2. Ankita Kumari, D/o Laliteshwar Kumar, resident of Village- Talkhapur, P.S. Dumra, District- Sitamarhi.
3. Murli Kumar, Son of Brahmdeo Prasad Vimal, Resident of Village- Sahsoul, P.S. B.Kothi, District- Purnea.
4. Vikash Kumar, Son of Satya Narayan Shahi, Resident of Village- Dumra, P.S.- Dumra, District- Sitamarhi.
5. Sanjay Kumar, Son of Shiv Narayan Prasad, resident of Village- Laxmipur, P.S.- Laxmipur, District- Jamui.
6. Kaushal Kumar, Son of Madhusudan Prasad Singh, Resident of Village- Narayanpur, P.S.- Dumra, District- Sitamarhi.
7. Samir Kumar Singh, Son of Tribhuwan Singh, resident of Village- Binodpur, P.S.- Begusarai, District- Begusarai.
8. Md. Sadab Ali, Son of Md. Ali, Resident of Village- Dasai, P.S.- Runni Saidpur, District- Sitamarhi.
9. Saheb Singh, Son of Chandrika Singh, Resident of Village- Marar Anhari Ujjari Barar, P.S.- Riga, District- Sitamarhi.
10. Abhishek Kumar, Son of Sanjay Kumar Jha, Resident of Village Near Telephone Exchange, Rajopatti, Rampatti, P.S.- Sitamarhi, District- Sitamarhi.
11. Satyendra Prasad Sinha, Son of Gaurishankar Prasad Sinha, Resident of Village- Shakti Sadan, Balhapatti, Kailashpuri, P.S.- Dumra, District- Sitamarhi.
12. Dilip Kumar, Son of Shambhu Narayan Singh, Resident of Village- Rasalpur, Nanakpur Road, P.S.- Bajpatti, District- Sitamarhi.
13. Rima Kumari, D/o Bindeshwar Prasad, resident of Village- Chakmahila, P.S.- Sitamarhi, District- Sitamarhi.
14. Md. Mashud Reza, Son of Md. Massom Alam, Resident of Village- Gorar, P.S.- Bajpatti, District- Sitamarhi.
15. Abhinandan Kumar, Son of Naval Kishore Singh, Resident of Village- Raudi Pokhar, P.S. Lalganj, District- Vaishali.
16. Sanjeev Kumar Pandey, Son of Umesh Pandey, Resident of Village- Azamgarh Nagwan Tola, Jagdishpur, P.S.- Dumra, District- Sitamarhi.
17. Ashutosh Chandan, Son of Kaushal Kishor Shahi, Resident of Village- Suhai Malikana, Suhai, P.S.- Sitamarhi, District- Sitamarhi.
18. Lata Kumari, D/o Late Sadanand Yadav, Resident of Village- Paik Tola, P.S.- Araria, District- Araria.
19. Md. Nayeemuddin, Son of Shamshul Hoda, Resident of Village- Dr. Yadav Path Bari Bazar, P.S.- Dumra, District- Sitamarhi.

... .. Petitioner/s



Versus

1. The State Of Bihar through Principal Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Vice-Chancellor, Babasaheb Bhimrao Ambedkar BRA, Bihar University, Muzaffarpur.
4. The Registrar, Babasaheb Bhimrao Ambedkar BRA, Bihar University, Muzaffarpur.
5. The Administrative Officer, Directorate of Distance Education, Babasaheb Bhimrao Ambedkar BRA, Bih
6. The Chairman University Grant Commission, New Delhi.
7. The Chancellor Bihar State University.
8. The Director of Distance Education BRA, Bihar University, Muzaffarpur.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 11734 of 2017**

Anugrah Narayan Institute Of Technology Son of Brij Shyam Sharma,  
Resident of Village P.O.- Bhor, P.S.- Tekari, District- Gaya.

... .. Petitioner/s

Versus

1. Babasaheb Bhim Rao Ambedkar Bihar University, Muzaffarpur through its Vice Chancellor
2. The Vice Chancellor, Baba Saheb Bhim Rao Ambedkar, Bihar University, Muzaffarpur.
3. The Registrar, Baba Saheb Bhim Rao Ambedkar, Bihar University, Muzaffarpur.
4. The Examination Controller, Baba Saheb Bhim Rao Ambedkar, Bihar University, Muzaffarpur.
5. The Director, Directorate of Distance Education, Baba Saheb Bhim Rao Ambedkar, Bihar University, Mu
6. The Administrative Officer-cum Programme Officer, Directorate of Distance Education, Baba Saheb Bhi
7. The Chancellor, Universities of Bihar, Raj Bhawan, Patna.
8. The Principal Secretary of Chancellor, Universities of Bihar, Raj Bhawan, Patna.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 11836 of 2017**

Vinayaka Vidyapeeth, Belaganj, Gaya through its Programme Co-Ordinator,  
OM Prakash, Son of Brij Shyam Sharma, Resident of Village P.O.- Bhor, P.S.- Tekari, District- Gaya.



... .. Petitioner/s

Versus

1. Babasaheb Bhim Rao Ambedkar Bihar University, Muzaffarpur through its Vice Chancellor
2. The Vice Chancellor, Baba Saheb Bhim Rao Ambedkar, Bihar University, Muzaffarpur.
3. The Registrar, Baba Saheb Bhim Rao Ambedkar, Bihar University, Muzaffarpur.
4. The Examination Controller, Baba Saheb Bhim Rao Ambedkar, Bihar University, Muzaffarpur.
5. The Director, Directorate of Distance Education, Baba Saheb Bhim Rao Ambedkar, Bihar University, Mu
6. The Administrative Officer-cum Programme Officer, Directorate of Distance Education, Baba Saheb Bhi null null
7. The Chancellor, Universities of Bihar, Raj Bhawan, Patna.
8. The Principal Secretary of Chancellor, Universities of Bihar, Raj Bhawan, Patna.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 11848 of 2017**

Gautam Buddha Para Medical College, Ramshila More, Gaya, Bihar Through its Programme Co-ordinator namely Manoj Kumar, son of Shri Ashok Kumar Roy, Resident of Mohalla- Bageshwari Colony, P.S.- Delha, District- Gaya.

... .. Petitioner/s

Versus

1. Babasaheb Bhim Rao Ambedkar Bihar University, Muzaffarpur through its Vice Chancellor
2. The Vice Chancellor, Babasaheb Bhim Rao Ambedkar Bihar University, Muzaffarpur.
3. The Registrar, Babasaheb Bhim Rao Ambedkar Bihar University, Muzaffarpur.
4. The Examination Controller, Babasaheb Bhim Rao Ambedkar Bihar University, Muzaffarpur. null null
5. The Director, Directorate of Distance Education, Babasaheb Bhim Rao Ambedkar Bihar University, Muza
6. The Administrative Officer-cum-Programme Officer, Directorate of Distance Education, Babasaheb Bhim
7. The Chancellor, Universities of Bihar, Raj Bhawan, Patna.
8. The Principal Secretary of Chancellor, Universities of Bihar, Raj Bhawan, Patna. null null

... .. Respondent/s



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**Appearance :**

(In Civil Writ Jurisdiction Case No. 14368 of 2018)

For the Petitioner/s : Ms. Aditi Hansaria, Advocate  
Mr. Vikas Kumar, Advocate  
For the University : Mr. Zaki Haider, Advocate  
For the State : Mr. Amit Bhushan, AC to GP-17  
For the UGC : Mr. Amrendra Nath Verma, Advocate  
For the Hon'ble Chanellor: Mr. Rana Vikram Singh, Advocate

(In Civil Writ Jurisdiction Case No. 11734 of 2017)

For the Petitioner/s : Mr. Arun Kumar, Advocate  
For the Hon'ble Chanellor: Mr. Rana Vikram Singh, Advocate  
For the University : Mr. Mritunjay Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 11836 of 2017)

For the Petitioner/s : Mr. Arun Kumar, Advocate  
For the Hon'ble Chanellor: Mr. Rana Vikram Singh, Advocate  
For the University : Mr. Mritunjay Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 11848 of 2017)

For the Petitioner/s : Mr. Arun Kumar, Advocate  
For the Hon'ble Chanellor: Mr. Rana Vikram Singh, Advocate  
For the University : Mr. Zaki Haider, Advocate

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

**Date : 01-08-2023**

Heard learned counsel for the petitioners, learned counsel for the University, learned counsel for the State and learned counsel for the Chancellor, Universities of Bihar, Raj Bhavan, Patna.

2. In all these writ applications, the petitioners have challenged the communication as contained in letter no.BU-50/2017-2360 GS(1) dated 14.09.2018 (Annexure- '10') issued under the signature of the O.S.D. (Judicial), Governor's Secretariat, Bihar whereby and whereunder the petitioners have been informed that the proposals for approval of draft Ordinance and Regulations of Distance and Online Distance Learning (ODL) mode including B.Ed. Course (ODL mode) of



B.R.A. Bihar University, Muzaffarpur submitted by its letter dated 27.09.2017 has been rejected.

3. Learned counsel for the petitioners submits that in respect of B.Ed. Course the matter had travelled to this Court earlier in CWJC No.23014 of 2018 (Vijay Kumar Vs. the State of Bihar). This Court allowed the said writ application vide its judgment dated 23.12.2020. The reasoning and rationale provided in the said judgment of learned coordinate Bench would equally apply in respect of the courses, the list of which may be found with the first supplementary affidavit filed on behalf of the petitioners in the present writ application.

4. On the request of learned counsel for the petitioners, this Court has taken CWJC No.14368 of 2018 as the lead case and has heard Ms. Aditi Hansaria, learned counsel for the petitioners. In other writ applications, Mr. Arun Kumar, learned counsel for the petitioners has made submissions but for the reference the lead case is being taken for discussion.

5. Challenge in this writ application is to the communication as mentioned above contained in Annexure- '10' to the writ application whereunder the proposal in respect of these petitioners has been rejected for the solitary reason that prior assent for Ordinance and Regulations to run the course



was not taken by the University. Although, Annexure- '10' refers another reason also with respect to the conditional order of NCTE but learned counsel for the petitioners submits that the said reason is in respect of B.Ed. Course, as such, this Court would not be dealing with said condition no.(b) in the operative part of the impugned order.

6. Learned counsel for the petitioners submits that while rejecting the proposal on the ground of there being no prior assent, it has been further stated that "Raj Bhavan is of the consistent view that no Ordinance & Regulations shall be approved ex-post-facto under the provisions contained in Article-36(5) and Article-38(3) of the Statute. The Raj Bhavan cannot obliterate the original Statute."

7. Learned counsel submits that on a bare perusal of the impugned order it would appear that it wrongly refers Article of the Statute because the Statute number and in respect of which matter the Statutes are made have not been mentioned in the impugned order. It is submitted that the impugned order is in fact referring to Section 36(5) and Section 38(3) of the Bihar State University Act, 1976 (hereinafter referred to as the 'Act of 1976'). It is submitted that so far as sub-section (5) of Section 36 is concerned, it is in respect of a 'Statute' which is to be



made by the senate of the university in accordance with Section 36 of the Act of 1976. Sub-section (5) of Section 36 says that a Statute passed by the Senate shall have no validity until it has been assented to by the Chancellor.

**8.** It is further submitted that Section 37 deals with the Ordinances and it lays down the matters which are to be provided under an Ordinance. The Ordinances are to be made by the syndicate subject to the provisions of the Act of 1976 and the Statute. According to Section 38, an ordinance made by the syndicate under Section 37 is to be submitted as soon as may be to the senate and thereupon it shall be the duty of the senate to consider the Ordinance at its next meeting and the senate may by resolution passed by a majority of the members present and voting at such meeting, either reject the Ordinance or approve it with such modifications, if any, and from such date, as it may direct.

**9.** It is submitted that under sub-section(2) of Section 38 such an Ordinance approved by the senate shall be submitted to the Chancellor who shall declare that he assents to the Ordinance. At this stage, it is further submitted that sub-section(2) of Section 38 is mandatory in nature which would be evident from the language of the sub-section(2) the word 'shall'



at two places. Sub-section(3) of Section 38 further says that an Ordinance shall have no validity until it has been assented to by the Chancellor under sub-section(2). Proviso to sub-section(3) of Section 38 further says that any ordinance having financial implication shall not be enforceable unless prior approval of State Government has been obtained.

**10.** Section 39 deals with the Regulations and clause (ii) of sub-section(2) of Section 39 of the Act of 1976 lays down that a regulation shall have effect from the date on which it has been assented to by the Chancellor on being passed by the senate with or without amendment. A Regulation is to be made by an Academic Council under sub-section(1) of Section 39 and is to be forwarded to the syndicate for transmission to the senate with such recommendations as the syndicate wish to make.

**11.** Learned counsel submits that from the scheme of the Act of 1976 it nowhere appears that there is any bar in approval of the Ordinances and Regulations post-facto.

**12.** By filing an interlocutory application, the petitioners have prayed for amendment of the reliefs prayed in paragraph '1' of the writ application. It is only by filing this amendment application that the communication as contained in Annexure-'10' has been challenged.



**Stand of Chancellor, Bihar State Universities**

**13.** Mr. Rana Vikram Singh, learned counsel for the Chancellor submits with reference to the counter affidavit on behalf of the Chancellor of the Universities of Bihar to the interlocutory application of the petitioners that under Section 39(1)(ii) of the Act of 1976 the Chancellor of the Universities is vested with the power to give assent and it would include the power to refuse also. In this case, it is submitted that the Chancellor after due consideration of the recommendations of the University Advisory Committee of the Chancellor as well as of the regulations as sent by the University has been pleased to reject the same with detailed reasoning as contained in Annexure- '10' to the writ application.

**14.** As regards the B.Ed. Course also, it is submitted that the proposal submitted by the Vice-Chancellor of the University vide letter no.B/1792 dated 18.12.2018 has been refused. The University was running its B.Ed. Course in distance mode without approval of the Chancellor. The rejection was communicated vide letter dated 11.01.2019 (Annexure- 'F' to the counter affidavit).

**15.** It is further submitted that one of the submissions on behalf of the petitioners that Diploma courses do not require any



Ordinance and Regulation and only certificate courses required an Ordinance and Regulation is a misconception on the part of the petitioners. It is submitted that as a matter of fact no course can be run by any University unless its regulation is assented to by the Chancellor of the Universities.

**16.** In course of argument, however, it is not denied by learned counsel for the Chancellor that after the judgment of this Court in CWJC No.23014 of 2018, the University has conducted the B.Ed. Examination for the session 2015-17 and students who had earlier passed the said course have been given their certificates. No reason has been shown to this Court as to why the same principles would not apply in case of these petitioners.

**Stand of the University**

**17.** Learned counsel for the University has also admitted with reference to the statements made in paragraph '14' of the counter affidavit filed on behalf of the University that in compliance of the judgment of this Court, the Directorate of Distance Education of B.R.A. Bihar University, Muzaffarpur issued the final marksheet/certificates/degrees to the students who have successfully completed the B.Ed. Course for the session 2014-16. Thereafter the examination for the academic



session 2015-17 was also conducted and accordingly final marksheet/certificates/degrees were issued to the students who have successfully completed the B.Ed. Course for the session 2015-17. The examination of the session 2016-18 was postponed in view of the unprecedented covid-19 situation and examination of this session will be conducted after 06.08.2021. As regards the present case, the stand of the University is (refer paragraph 17) that the University is ready to conduct the examination subject to the order and direction passed in this case. It has been submitted that the University may conduct the examination if directed or order by this Court as per the Regulation 2020 (University Grant Commission Open and Distance Learning Programmes and Online Programmes) Regulation 2020. It is not in dispute that so far as the UGC is concerned, it has granted recognition to these courses and the University was allowed to run the courses.

### **Consideration**

**18.** Having heard learned counsel for the petitioners, the University, the Chancellor, Bihar State Universities and the State of Bihar as also having gone through the materials available on the record, this Court finds at the first instance that the impugned order as contained in Annexure- '10' in so far as it



relates to the present batch of writ applications contains solitary reason for rejection of the Ordinance and Regulation. Article 36(5) and Article 38(3) of the Statute have been referred to but what has transpired in course of hearing is that it is Section 36(5) and Section 38(3) of the Act of 1976. This Court has not been shown any Article 36(5) or Article 38(3) of any Statute which prohibits ex-post-facto approval of the Ordinance and Regulations.

**19.** Section 36(5) and Section 38(3) of the Act of 1976 have been referred to briefly while taking note of the submissions of learned counsel for the petitioners. In fact, in course of hearing, while going through those provisions Mr. Rana Vikram Singh, learned counsel for the Chancellor accepts the legal position to the extent that while Section 36(5) applies to grant of assent to Statute which is not involved in the present case, Section 38(3) does not say that there cannot be any ex-post-facto approval of the Ordinance and Regulation. In fact, sub-section (2) of Section 38 is very categorical that once the Ordinance is sent by senate to the Chancellor, the Chancellor shall give his assent. This Court has no hesitation in recording that the language of sub-section (2) of Section 38 is mandatory in nature and to this Court it appears that once the syndicate and



senate have done their job and if proposal is duly approved by the syndicate and senate in appropriate proforma containing all the required informations, there would be no scope of interference and sub-section(2) of Section 38 of the Act of 1976 has to be followed in its words and spirit. While it is true that sub-section (3) of Section 38 says that until the Ordinances are approved it would not be valid but sub-section(3) has to be read in the light of sub-section(2) and a combined reading of both the provisions would in fact make it mandatory for the Hon'ble Chancellor to consider the Ordinances immediately after its receipt from the senate because non-approval of the same for a long time and delay caused for that reason would only result in hardships to the students and the University.

**20.** This Court further finds that the ratio of the judgment of the learned coordinate Bench of this Court in the case of Vijay Kumar (supra) would equally apply to the facts of the present case. This Court has noticed from the facts narrated in the writ application that the proposal for approval of Ordinances and Regulation was sent after due approval from the syndicate and senate to the office of the Chancellor as back as on 23.09.2014 vide letter no. DTE/250 of the University. The said proposal was considered by the Advisory Committee and



several observations were made. The observations were communicated to the Vice-Chancellor of the University and it was said that all the examinations shall be conducted by the University, both at first degree level and the Master degree programmes in accordance with the regulations notified by the UGC in this regard. The Vice-Chancellor of the University was requested to make necessary changes in the light of the observations of the Advisory Committee and submit a modified proposals for further action by the Secretariat. Thereafter the Registrar of the University vide letter no. DDE/374 dated 30.07.2015 made a detail correspondence with Governor's Secretariat, Raj Bhavan, Patna. All the observations made by the Advisory Committee were also dealt with in detail and the required changes were also done. A request was made to take necessary steps to get the admission ordinance and examination regulations approved at the earliest in the best interest of the Directorate of Distance Education of the University. Annexure- '4' to the writ application is the copy of the letter of the University which has not been denied by Raj Bhavan Secretariat in its counter affidavit.

**21.** The fact is that in the year 2017, the University issued dates of programmes for P.G. 1<sup>st</sup> Semester examination



for the session 2016-18, 2016-19 and 2016-17 for different courses, however, on 27.01.2017 a notice was published by the University that all the examinations were stayed without assigning any reason. This examination has not been conducted till now.

**22.** From the narration of facts mentioned hereinabove, it is crystal clear that in this case the Ordinances and Regulations were sent to the Raj Bhavan Secretariat as back as in the year 2014, the courses were approved by the UGC and the University allowed admission of the students and conducted the courses during the pendency of the proposal, therefore, in the opinion of this Court, rejection of such kind of proposal vide Annexure- '10' which has been issued on 14.09.2018 on the ground that no ex-post-facto approval may be given is neither in accordance with law nor it is otherwise justified. Since no provision has been brought to the notice of this Court to support the view taken in the impugned order (Annexure-10), this Court sets aside the communication dated 14.09.2018 (Annexure-10 attached to I.A. No.9165 of 2018). The matter is remitted to the Raj Bhavan Secretariat for a fresh consideration of the proposal keeping in view the discussions made hereinabove and the judgment of the learned coordinate Bench of this Court in the



case of Vijay Kumar (supra).

**23.** Considering the urgency as the students are waiting for their examination, this Court is of the considered view and accordingly directs the concerned respondents to consider the proposal for approval of Ordinances and Regulations within a period of three months from the date of receipt/communication of a copy of this order. If no decision is taken within the aforesaid period, the University would proceed to conduct the examinations and would further take the consequential steps as has been taken in case of B.Ed. Course by virtue of the judicial order of this Court.

**24.** These writ applications are allowed to the extent indicated hereinabove.

**(Rajeev Ranjan Prasad, J)**

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