

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24314 of 2018

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Jitendra Kumar Son of Late Krishna Chandra Jha, Resident of Village-Naya Bazar Sahu Tola, Ward No. 3, P.S.-Sharsa, District-Saharsa.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Joint Secretary Education Department, Government of Bihar, Patna.
3. The Director (Higher Education) Education Department, Government of Bihar, Patna.
4. The Vice Chancellor, Bhupendra Narain Mandal University, Laloo Nagar at P.S. and District-Madhepura.
5. The Bhupendra Narayan Mandal University through its Registrar, Lalu Nagar, Madhepura

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Alok Kumar Sinha, Sr. Advocate Mr. Bholu Kumar, Advocate Mr. Rajiv Ranjan, Advocate Mr. Ravi Shankar, Advocate
For the State	:	Mr. S.S. Tiwary, AC to AAG-13
For the University	:	Mr. Vivekanand Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 14-09-2023 Heard Mr. Alok Kumar Sinha, learned senior counsel assisted by Mr. Rajiv Ranjan, learned counsel for the petitioner and Mr. S.S. Tiwary, learned counsel for the State and Mr. Vivekanand Prasad Singh, learned counsel for the Bhupendra Narayan Mandal University (hereinafter referred to as the ‘University’).

2. Initially, this writ application was filed by the original petitioner (since deceased) claiming that he was the Secretary of the Evening College, Udakishanganj, Madhepura with a prayer seeking a writ in the nature of a writ of Certiorari to quash and cancel the Memo No. 14 / AF-03 / 2013-890/ Patna dated 05.07.2016 as



contained in Annexure '4' to the writ application whereby and whereunder the Respondent No. 2 communicated the petitioner that a proposal of the petitioner for grant of affiliation has been rejected for the reason that the three-member Committee did not find the approval of Senate, Syndicate and the Academic Council of the University and there was no mention of the source of income of the College. The petitioner also prayed for a direction to the respondents to grant permanent approval/recognition to the college in question.

3. It is the specific case of the petitioner that the Syndicate and Senate of the University had already approved the affiliation of the College and the University had forwarded Memo No. G.S.(I.C.-071/12)-275/16 dated 14.03.2016 to the Director (Higher Education) recommending for grant of permanent approval in terms of Section 21(2)(d) of the Bihar State Universities Act, 1976 (hereinafter referred to as the 'Act of 1976').

4. Learned counsel submits that during pendency of the writ application, the University vide its Letter dated 22.06.2020 (Annexure '2' to I.A. No. 03 of 2020) made available all the required documents to the Director (Higher Education). In its letter, the University specifically stated that in



the light of the CWJC No. 24314 of 2018, the justifications with regard to the establishment of the College and relevant affidavit has already been submitted in the University Head Office. It was certified that the college fulfills the conditions of land, building, reserve fund, the playing field and it also made available the audit report.

5. It is submitted that despite submission of all the required documents being mentioned in Annexure '2' to the I.A. No. 03 of 2020, the State respondent has rejected the proposal for affiliation of the college in question vide Memo No. 14/AF-28/2020-940 dated 10.09.2020 (Annexure '1' to the I.A. No. 03 of 2020). The submission is that in case the respondent was looking for any other document in terms of Clause '15(1)' of the Statute, instead of rejecting the proposal of the petitioner, the State respondents should have pointed out that particular document which was required to be submitted.

6. The grievance of the petitioner is that the State respondent has rejected the proposal for approval of affiliation of the College in question on a completely flimsy ground without looking into the materials which were already on the record and this amounts to complete non-application of mind on the part of the State Respondents.



7. Learned counsel for the State has though opposed this writ application which has been amended vide I.A. No. 03 of 2020, however, it is not denied that prior to passing of the rejection order as contained in Annexure '1' to the I.A. No. 03 of 2020, no opportunity was afforded to the petitioner to place any other document, if any, required by the State respondents. Annexure '2' to the I.A. No. 03 of 2020 has not been denied. A statement has been made that if a fresh proposal in terms of the Act of 1976 and the Statute framed thereunder is made by the University, the same will be considered by the State Government in accordance with law.

8. Learned counsel for the University submits that the University had already made available the required documents of the State Government vide Annexure '2' to the I.A. No. 03 of 2020.

9. Having regard to the materials available on the record, this Court finds that Annexure '2' to the I.A. No. 03 of 2020 has been written by the Registrar of the University to the Director (Higher Education), Department of Education, Government of Bihar. This contains a specific statement with regard to fulfillment of the conditions with regard to land, building, reserve funds etc. by the college in question and



Annexure '2' together with its enclosures were sent vide Memo No. GS(I/C-32/11P)-549/2020 dated 22.06.2020 to the Government.

10. It appears that by the impugned order contained in Memo No. 14/AF-28/2020-940 dated 10.09.2020 even though the letter of the University as contained in Memo No. GS(I/C-32/11P)-549/2020 has been referred to but then the proposal has been rejected on the ground that there was no proof on the record with regard to the choice of land selected through the Syndicate in terms of the Clause '15(1)' of a circular letter no. BSU-16/86-1098-G.S.(1) dated 19.04.1986 issued by the Governor Secretariat.

11. A perusal of Clause '15' of the statute reads as under:-

"15. (1) An Evening College may be started for the benefit of office employees and other wages earners at such places as may be defined by the Syndicate.

(2) The provisions of the above articles regarding grant of affiliation may be relaxed in the following matters in the case of the Evening College :—

(a) The security deposit may be reduced up to 50%.

(b) An Evening College may be allowed to function in the buildings of an existing college or a Secondary School or any other suitable building.

(c) An Evening College should be given affiliation in a subject requiring attendance at practical classes only if it arranges for the use of



the laboratory of the institution in which it is functioning, provided that adequate requisite facilities exist.

(d) No additional provision for library need be made if the institution in which the college is functioning has a suitable library, the use of which is permitted to the staff and students of the Evening College.

(e) An Evening college may be allowed to have part-time teachers including retired hands, provided they are otherwise qualified.”

12. While going through the Clause ‘15’ of the Statute in the garb of which the impugned letter (Annexure ‘1’ to the I.A. No. 03 of 2020) has been written, this Court is astonished to find that Clause ‘15(1)’ of the Statute nowhere mentions about the requirement of selection of the piece of land on which the college is situated through the Syndicate.

13. If for this reason alone, Annexure ‘1’ has been issued, this Court would have no hesitation in recording that it is a case of complete non-application of mind on the part of the authorities who were responsible to consider the proposal of the University. This Court finds that by issuing such kind of flimsy communication rejecting the proposal of the University, the State has only indulged in multiplying the litigation causing not only harassment to the petitioner but has also indulged this Court in adjudication of a matter which cropped up because of the non-application of mind on the part of the authorities of the department. For this reason, while setting aside the



communication contained in Memo No. 14/AF-28/2020-940 dated 10.09.2020 with a direction to the respondent authorities to consider the proposal submitted by the University afresh, this Court imposes a cost of Rs.15,000/- (Rupees Fifteen Thousand Only/-) upon the Department of Education, Government of Bihar and the same shall be realised from the erring officials in accordance with law. The cost shall be deposited with the Bihar State Legal Services Authority within a period of four weeks from today.

14. It goes without saying that while considering the proposal of the University, in case any clarity or requirement to submit any document is found, the competent authority of the State shall provide an opportunity to the University/College to make available such requirements.

15. Let the entire exercise be completed within a period of three months from the date of receipt/communication of a copy of this order.

16. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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