

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.534 of 2023

In

Civil Writ Jurisdiction Case No.7588 of 2022

Sanjay Kumar, Son of Shri Baliram Sharma, Resident of Mohalla- Rikabganj,
P.S.- Tikari, District- Gaya.

... .. Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Vice Chancellor, Jai Prakash University, Chhapra.
3. The Registrar, Jai Prakash University, Chhapra.
5. Dr. Syed Raza, Associate Professor, Department of History, Jai Prakash University, Chhapra cum University Representative, Purvottar Railway College Sonpur, Saran.
6. Dr. Virendra Narayan Yadav, Honble M.L.C., Saran Graduate Assembly Constituency cum Public Representative, for Purvottar Railway College, Sonpur, Saran.
7. Shri Braj Bhushan Prasad Singh, Former Principal, Purvottar Railway College, Sonpur, Saran at present S/o Late Ram Vilash Singh, R/o Mohalla- Veer Kunwar Singh, Colony Uttari (North) Post and P.S.- Hajipur, District- Vaishali.
8. Dr. Pramod Kumar Das, Present Professor In Charge and Former Bursar of Purvottar Railway College, Sonpur, Saran.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. D.K.Sinha, Sr. Advocate Mr.Arvind Kumar Sinha, Advocate Mr. Ravish Kumar Verma, Advocate
For the State	:	Mr.Sarvesh Kr. Singh, AAG-13
For the University	:	Mr. Ritesh Kumar, Advocate
For the Resp. No. 8	:	Mr. Abhinav Srivastava, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 23-02-2024

The appeal is against the judgment in the writ
petition which refused interference to the Ad-hoc Committee



constituted for the management of an affiliated college. The appellant's contention was that under Statute 32(2)(i), the Ad-hoc Committee has to be constituted by the Syndicate and shall only be of five members. The learned Single Judge found that Section 64 of the Bihar State University Act, 1976 (For brevity the 'Act') stands in conflict with the aforesaid Statute and hence, the provision in the Act has to prevail. The provisions in the Act also speaks of an Ad-hoc Committee of seven persons, the constitution of which is by the Vice-Chancellor; who was so empowered. The constitution was held to be perfectly in order, warranting no interference.

2. When the appeal was taken up on the last day, we were not convinced about the ground raised, since it is a trite principle that the Act under which the statutes are framed, would have prevalence over the statute framed, in the event of a conflict.

3. The learned counsel appearing for the 8th respondent and the University also vehemently pointed out that the writ petition was a sponsored affair and the contention raised was against the 7th respondent, who was appointed as an educationist, who was co-opted by the Governing Body; who has already been replaced. It is also pointed out that the appellant has no *locus standi* and his contention with respect to his being



the Secretary of a Teachers Association is prevaricating, since he asserted in the writ petition that it was a state wide association, which, at the stage of appeal, is stated to be only a district-wise association. He has not even stated how he is concerned with the affairs of the College; as a student or a teacher, especially since it is not a writ petition filed as a public interest litigation. The 8th respondent laments that the protracted litigation put unnecessary hurdles in the functioning of the College; which was not even properly impleaded in the writ petition. The learned counsel appearing for the University and the 8th respondent prayed for dismissal of the appeal with exemplary costs. It was also pointed out that the appellant had thought it fit to provide for specific names to be included in the Committee; which is highly deplorable and is a pointer to the *malafide* intentions behind the litigation.

4. We were of the opinion that one opportunity should be given to the appellant to withdraw the appeal, especially considering our *prima facie* view that the judgment cannot be interfered with. The objection was also against the 7th respondent; who was replaced. We gave an opportunity to get instructions, but today when the matter was taken up, Shri D.K.Sinha, learned Senior Counsel for the petitioner wanted to argue the matter. It was also pointed out that the appellant's



contention against the 7th respondent is validated by his replacement in the Committee.

5. The learned Senior Counsel for the appellant took us to Section 60 of the Act and Section 32 of the Statute and argued that an Ad-hoc Committee can be appointed only of five persons and that too by the Syndicate. Insofar as the *locus standi* is concerned, the learned Senior Counsel relied on ***Dr. D.C.Wadhwa & Ors. v. State of Bihar & Ors.; (1987)1 SCC 378, Rajesh Awasthi v. Nand Lal Jaiswal; (2013) 1 SCC 501*** and ***Central Electricity Supply Utility of Odisha v. Dhobei Sahoo & Ors.; (2014) 1 SCC 161.***

6. Shri Abhinav Srivastava, learned counsel for the Respondent No. 8, took us through the averments in the writ petition and the memorandum of appeal, to point out that there is no specification as to the appellant's *locus standi* or the status of the Association, whether it is a registered one or not. The College in I.A.No. 1 of 2022 in the writ petition, had specifically challenged the *locus standi* and had indicated that on 08.06.2022, the 7th respondent against whom alone objection was raised, was replaced. The appellant had filed the writ petition concealing and suppressing the above facts with *malafide* intention. It was also argued that Section 60 was brought in later to the statute and the provision in the enactment prevails.



Learned counsel for the University also supported the defence set up.

7. Section 60 has been quoted in the judgment of the learned Single Judge. Section 60(1) provides for the constitution of a Governing Body for the management and administration of an affiliated college, other than a college owned and maintained by the State Government or a minority institution. The members of the Governing Body should be the Principal of the College-Ex-Officio, a member elected from amongst the teachers, a representative of the University nominated by the Vice-Chancellor, an officer of the State Government posted in the district, not below the rank of a sub-divisional magistrate; again nominated by the Vice-Chancellor, a member elected by donors from amongst themselves, one member to be nominated by the Vice-Chancellor; who is a member of the Parliament or the State Legislature residing in the district in which the College is situated and one member co-opted by the Governing Body from educationists. Sub-section (4) of Section 60 also provides that the Vice-Chancellor shall constitute an Ad-hoc Committee for the management of the College so long as Governing Body is not constituted in accordance the provisions contained in sub-section (1). This is the power invoked by the Vice-Chancellor in constituting an Ad-



hoc Committee.

8. We will now notice Statute No. 32, which again speaks of management and constitution of a Governing Body, which provision has to be read along with Section 60; as specifically indicated in the statute. Statute 32(1) provides for an identical status of the members of the Governing Body as is available in Section 60. Statute 32(2)(i) provides for the constitution of an Ad-hoc Committee of not more than five members by the Syndicate, if the Governing Body is not constituted, as per sub-statute (1). The President and the Secretary of the Ad-hoc Committee has to be nominated by Vice-Chancellor. Hence, even going by the statute, there should be seven persons in the Governing Body but, the same has to be constituted by the Syndicate. As was pointed out by the learned counsel appearing for the College, Statute 32(2) was one which was brought out on 12.02.1982, while the provision for Ad-hoc Committee to be constituted by the Vice-Chancellor in sub-section (4) of Section 60 was brought about by the amending Act 3 of 1990; later to the statutes.

9. The provision in the enactment denudes the power of the Syndicate, as per the Statute to constitute an Ad-hoc Committee and confers it on the Vice-Chancellor. We find absolutely no reason to interfere with the constitution of the Ad-



hoc Committee.

10. The compelling argument raised on the *locus standi* of the appellant has also to be considered. In the writ petition, the petitioner styled himself to be the Secretary of a Teachers Association, without specifying the name, nature or status of the Association. In I.A. No. 1 of 2022, the 8th respondent, who defended the case for the college specifically pointed out that the petitioner did not specify the Teachers Association he belongs to and that the petitioner was not working in any capacity in the services of the college. It was specifically submitted that the instant petition is at somebody's behest and is completely misconceived. It was also averred in paragraph-8 that on 08.06.2022, the 7th respondent was replaced. In fact, it is the specific contention of the learned counsel appearing for the 8th respondent that by reason of the stay order issued by this Court, there was no Governing Body existing in the College and this resulted in, even the salaries of the staff and faculty not being disbursed for a long period.

11. **Dr. D.C.Wadhwa** (supra), was a case in which the Hon'ble Supreme Court held that in a public interest litigation every citizen has the right to question a law made by the executive usurping legislative functions, which would amount to a colourable exercise of power and a fraud on the



Constitution.

12. ***Rajesh Awasthi*** (supra) dealt with the writ of *quo warranto* and held that it would lie, when an appointment is made contrary to statutory provisions. It was also held that a citizen can claim a writ of *quo warranto* in the context of statutory violation, since he stands in the position of a relater not having any special interest or personal interest in the *lis*. The real test, it was held, was to see whether the person holding the office is authorized to hold the same as per law. We have to immediately notice that this is not a public interest litigation and the petitioner claimed that he was the Secretary of a Teachers Association without specifying the name of the Association or the legal status of that Association. Despite a specific averment in one of the interlocutory applications filed by the respondent questioning his *locus*, there was no substantiation of the same.

13. ***Central Electricity Supply Utility of Odisha*** (supra) was again a case of issuance of a writ of *quo warranto* wherein it has been stated that the concept of *locus standi*/standing would be irrelevant when a *quo warranto* is sought against a person holding public office lacking eligibility or when appointment is contrary to statutory rules.

14. We have found that the contention raised of violation of the statute is inconsequential insofar as the provision



contained in the Act. We also noticed the constitution of the Governing Body by Annexure-1, which indicates the constitution having been made from categories specified in Section 60(1). In fact, the appellant had sought for appointment of another representative from the University, donors, Government, legislative body, teachers and academicians, who are stated to be ‘dry honest’(sic), without any allegation raised against anybody, but the 7th respondent in the writ petition.

15. We find the writ petition and the appeal to be an abuse of process of court and reject the appeal with costs of Rs.10,000/- each to the 3rd respondent and the 8th respondent, who contested the case on behalf of the College.

(K. Vinod Chandran, CJ)

Harish Kumar, J: I agree.

(Harish Kumar, J)

Sujit/-

AFR/NAFR	NAFR
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