

CASE NO.:
Appeal (civil) 4190 of 2007

PETITIONER:
Sunil Kumar Parimal & Anr

RESPONDENT:
The State of Bihar & Ors

DATE OF JUDGMENT: 11/09/2007

BENCH:
H.K. Sema & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T
[Arising out of Special Leave Petition (C) No.3145 of 2007]

Lokeshwar Singh Panta, J.

1. Special leave granted.

2. This appeal, by special leave, has been preferred by the appellants against the judgment and order dated 24.01.2007 of a Division Bench of the High Court of Judicature at Patna by which L.P.A. No. 697/2006 filed by the appellants was dismissed and thereby the order of the learned Single Judge dated 12.09.2006 dismissing the C.W.J.C. No. 8091/2006 of the appellants came to be affirmed.

3. The facts in brief giving rise to the filing of this appeal are as follows:-

Tirhut Physical Education College, Muzaffarpur\026 respondent No. 7 (hereinafter referred to as \023respondent\026 College\024) was established in the year 1938. The State of Bihar \026respondent No. 1 (for short \023respondent-State\024) by Notification No. 25 dated 6.11.1993 granted permission to the respondent\026College to enroll one hundred students in C.P. Ed. and one hundred students in D.P. Ed. Courses for the Sessions 1993-94 to 1995-96.

4. Sunil Kumar Parimal \026 appellant No. 1 herein claims to be a first class post-graduate in Geography from Mithila University. He was enrolled in the respondent\026College in C.P. Ed. Course for the academic session 1993-94. He completed his C.P. Ed course in March, 1995. His name was sent by the respondent\026College for appearing in the examination to be conducted by the Bihar School Examination Board, Bihar, Patna\026respondent No. 4 (hereinafter referred to as the \023respondent\026Board\024).

5. Shiv Shankar Roy\026appellant No. 2 is a Graduate in Commerce from Mithila University. He took admission to the D.P. Ed. course for the academic session 1995-96. He completed his course in March, 1996. The name of appellant No. 2 was also sent by the respondent\026College to the respondent\026Board for taking the examination. However, no examination was conducted by the respondent-Board who is entrusted the responsibility of holding the examination for the said courses by the respondent-State.

6. The appellants and other similarly placed candidates along with the Principal of the respondent-College, made several representations requesting the respondent-authorities to take the examinations of C.P. Ed and D.P. Ed. courses for the academic sessions 1994-95 and 1995-96. It appears that

on 26.11.1998, the Deputy Secretary (Art, Culture and Youth Department), Government of Bihar, wrote a letter to the Secretary of respondent\026Board, directing the latter to conduct the postponed examination of the students of C.P. Ed and D.P. Ed for the academic sessions 1994-95 and 1995-96. It is the case of the appellants that on 18.12.1999, the Department of Art, Culture and Youth Affairs, Government of Bihar forwarded the list of the students to the respondent\026Board who had to appear in the examination of C.P. Ed and D.P. Ed from respondent\026College for the sessions 1994-95 and 1995-96. On 26.06.2001, the respondent-Board wrote a letter to the Deputy Secretary (Art, Culture & Youth Affairs Department), Government of Bihar, in which it was stated that the list of the candidates of two colleges, namely, respondent\026College and Urs Line Women Physical Education College, Lohardugga, had been received but the list of candidates of remaining three colleges was not received which was requested to be sent so that steps to hold the examination collectively could be taken. After it was learnt that the respondent-Board was contemplating to hold the examination for the said courses in the month of November, 2002, the students made representation to the respondent\026State and a copy thereof was forwarded to the respondent-Board requesting the authorities to allow them to appear in the examination likely to be conducted in November, 2002.

7. It appears that on 5.10.2002 the Deputy Secretary (Art Culture and Youths Department) wrote one more letter to the respondent\026Board asking the Examination Committee of the Board to conduct the examination of students of C.P. Ed and D.P. Ed courses who were enrolled by the respondent\026College for sessions 1994-95 and 1995-96 along with examination of students of Government Health and Physical Training College, Bihar, Rajendra Nagar, Patna. Again on 8.10.2002, the Principal of the respondent-College wrote a letter to the Secretary of the respondent-Board bringing to his notice the sad and miserable plights of the students of C.P. Ed and D.P. Ed. courses who were to appear in the examination for the academic sessions 1994-95 and 1995-96. He also requested the Secretary to permit those students to appear in the examination with the students of Government Health and Physical Education College, Rajendra Nagar, Patna. It appears from the record that in November, 2002 the respondent-Board had conducted examinations for C.P. Ed and D.P. Ed courses for the students of Government Health and Physical Education College, Rajendra Nagar, Patna, but it did not allow the students of the respondent\026College to take the examination. In the year 2006, when the appellants again came to know that the respondent-Board was contemplating to conduct examination of C.P. Ed and D.P. Ed courses for the students of Government Health and Physical Education College, Rajendra Nagar, Patna, and also former students of Koshi Physical Education College, Madepura, they immediately approached the Principal of the respondent\026College, who informed them that the candidates of their institution were debarred by the respondent-Board from taking the examinations.

8. The appellants left with no other alternative remedy but to approach the High Court on 17.8.2006 by means of C.W.J.C. No. 8091/2006 seeking a writ of mandamus against the State of Bihar\026respondent No. 1, Joint Secretary (Art, Culture and Youth Affairs Department), Government of Bihar\026respondent No. 2, Director (Art, Culture and Youth Affairs Department), Government of Bihar\026respondent No. 3, Bihar School Examination Board\026respondent No. 4, Chairman, Bihar School Examination Board\026respondent No. 5, Secretary, Bihar School Examination Board\026respondent No. 6 and Vice

Principal, Tirhut Physical Education College\026respondent No. 7, to allow them to appear in the examination and thereafter publish their result. The appellants filed IA No. 3323/2006 praying for an interim direction to the respondent\026State to consider their applications for the posts of Physical Training Teachers during ensuing recruitment. The learned Single Judge on 19.8.2006 directed the respondent-State to consider the said request of the appellants.

9. On 12.09.2006, learned Single Judge dismissed the writ petition of the appellants primarily on the ground that on and with effect from the day of enforcement of the National Council for Teacher Education Act, 1993, the respondent\026College was de-recognised and as a result thereof the respondent\026Board is not competent to allow the students to appear in the examination, who is pursuing or has pursued the course in a non-recognised institution.

10. Being aggrieved by the order of the learned Single Judge, the appellants preferred Letters Patent Appeal No. 697/2006 before the Division Bench of the High Court. The Division Bench, as stated above, dismissed the LPA on 24.01.2007. Hence, the appellants are before this Court by way of this appeal.

11. This Court on 26.02.2007 ordered issue of notice to the respondents made returnable within two weeks. In response to the notice, Shri Janardhan Prasad Singh, Deputy Director (Youth Affairs) Department of Art, Culture and Youth Affairs, Government of Bihar\026respondent No. 4 has filed counter affidavit in which it is fairly admitted that the National Council for Teacher Education Act, 1993 (hereinafter referred to as the \023NCTE Act\024) will not be applicable to the students who had completed their courses before the enforcement of the Act, and the provisions of clause B of Section 16 of the NCTE Act will not apply with regard to examination of those candidates who have completed their courses from a recognized institution before the commencement of the Act. It is next submitted that for the purpose of conducting the timely examination for the courses of C.P. Ed and D.P. Ed, the list of students of the respondent \026 College for the sessions of 1994-95 and 1995-96 was sent to the Secretary of respondent-Board vide letter No. 386 dated 18.12.1999 followed by reminder letter no. 646 dated 05.10.2002 with clear instructions to conduct the said examination. It is also stated that vide letter No. 137 dated 24.10.2002 the Secretary to the respondent\026Board informed the Department that as the said list of the candidates was not verified, therefore, the examination could not be conducted without proper verified list. The Deputy Director in the counter affidavit has categorically stated that the Department of Art, Culture and Youth Affairs is not the verifying authority. The deponent stated that the recognitions of all Physical Training Colleges have been cancelled with retrospective effect vide Department\022s order dated 13.04.2004.

12. Shri Raghavendra Nath Tiwary, Law Officer in the respondent\026Board has filed joint counter affidavit on behalf of the Chairman and the Secretary of the respondent\026Board. The stand projected in the counter is that vide Memo No. 382 dated 13.4.2004, the Department of Art, Culture and Youth Welfare of the respondent\026State has cancelled the recognition of the respondent\026College and the respondent-Board will conduct department examinations including diploma in Physical Education/Certificate in Physical Education in terms of Rule 7 of the Bihar School Examination Board Rules, 1963 on such terms and conditions, as may be laid down by the State Government. The respondent-Board has stated that the appellants could not be permitted to take examination in the year 2004 because by that time the recognition of the

respondent\026College was cancelled.

13. It appears from the record that on 23.07.2007, this Court passed the following order:

\023After hearing learned counsel for the parties, it is seen that by a letter dated 05.10.2002 addressed to the Secretary, Bihar School Examination Committee, Patna, the State Government has requested that the examination of neglected students of C.P. Ed. and D.P. Ed. of Tirhut Physical Training College, Muzaffarpur belonging to the Sessions 1994-94 to 1995-96 be conducted with Government Health and Physical Training College, Bihar, Rajendra Nagar, Panta.

Mr. M.P. Jha, learned counsel appearing for the Board, shall receive a definite instruction as to what action has been taken pursuant to the aforesaid letter. He shall also receive a definite instruction as to any impediment in holding the examination in respect of the petitioners, namely, Sunil Kumar Parimal and Shiv Shankar Roy.

14. In pursuance to the above said order, respondent Nos. 4 to 6 have filed joint additional affidavit stating therein that the Chairman of the respondent-Board wrote a letter No. K-137 dated 24.10.2002 to the Secretary to respondent\026State requesting him to send the verified list of students but till date, no verified list of students was sent by the Department and as such, the students of the respondent-College could not appear in the examination held by the respondent-Board. It is also stated that the respondent-Board before holding the examination in the year 2006, has also requested the Department of Art, Culture and Youth, Government of Bihar, to send the details of eligible colleges, but till date, no such details of the eligible colleges have been sent by the Department.

15. The appellants in the rejoinder affidavit filed to the additional affidavit of respondent Nos. 4 to 6, have stated that the contents of the additional affidavit filed by the respondent Nos. 4 to 6 are misleading and contrary to the stand of the respondent\026State. They stated that in spite of repeated requests of the concerned Department of the respondent-State, the respondent-Board has miserably failed to discharge its function, as a result thereof, the appellants have suffered for no fault on their part.

16. We have heard learned counsel for the parties and perused the material on record.

17. In the backdrop of the pleadings of the parties and documents appearing on record, the undisputed facts emerging therefrom are that both the appellants took their admission in C.P. Ed. and D.P. Ed. courses for the sessions 1994-95 and 1995-96 in the recognised respondent-College. The examinations for the said courses were to be held by the respondent-Board. The respondent-Board has not taken any steps to discharge its obligation and responsibility of holding the examinations for the sessions 1994-95 and 1995-96. On 18.12.1999, the Department of Art, Culture and Youth Affairs, Government of Bihar, forwarded a list of the eligible students who were to appear in the examination of C.P. Ed and D.P. Ed. courses from different Colleges in the State of Bihar for the

academic sessions 1994-95 and 1995-96 to the respondent\026 Board. The Secretary to the respondent\026Board on 26.06.2001 wrote a letter to the Deputy Secretary, Department of Art, Culture and Youth Affairs, which reads as under:-
\023You have made the recommendation to hold the examination of five colleges, out of the above, list of the candidates of two colleges, namely:

1. Tirhut College of Physical Education, Muzaffarpur

2. Urs Line Women Physical Education College, Lohardugga.

List of the remaining three colleges has not been sent as yet.

Thus, it is again requested as per the directions that send the list of the candidates of remaining three colleges be sent so that steps to hold the examination collectively could be taken.\024

18. In reply to the above-said letter, the Deputy Secretary (Art, Culture and Youth Affairs Department), Government of Bihar, vide letter No. 19/12/98\026Youth dated 5.10.2002 requested the Examination Committee of the respondent-Board to conduct the examination for students of C.P. Ed. and D.P. Ed. course of the respondent\026College along with the examination proposed to be held for the students of Government Health and Physical Training College, Bihar, Rajendra Nagar, Patna. The Principal of the respondent\026 College on 8.10.2002 also wrote a letter to the Secretary of the respondent\026Board bringing to his notice the sad and miserable plight of the appellants and other students of the C.P. Ed. and D.P. Ed. courses for academic sessions 1994-95 and 1995-96 and requested the Examination Committee of the respondent\026 Board to conduct the examination of those students along with the examination likely to be conducted for the Government Health and Physical Education College, Rajendra Nagar, Patna. The respondent-Board in November, 2002 conducted the examinations for C.P. Ed. and D.P. Ed. courses for the students of Government Health and Physical Education College, Rajendra Nagar, Patna, but it refused to admit the appellants and other students to take the examinations.

19. It appears from the record that Memo No. 1172 dated 31.10.2006 was sent by Shri Rama Shankar Tiwari, Secretary (Art, Culture and Youth Affairs Department) to the Government of Bihar, to the Secretary, Bihar School Examination Board, which reads as under:-

\023With reference to your aforesaid subject letter NO. 411 dated 26.06.2001, it is to say that the list of sent-up students of C.P. Ed. and D.P.Ed. coruse of Tirhut Physical Training College, Muzaffar for the session 1994-95 to 1995-96 was sent for conducting examination vide departmental letter-386 dated 18.12.2001 of whose examination has not been conducted till date.

Therefore, it is requested that the examination of sent-up students of C.P.

Ed. and D.P. Ed. course of Tirhut Physical Training College, Muzaffar for the session 1994-95 to 1995-96 be conducted along with State Health and Physical Training College, Rajendra Nagar, Bihar, Patna.\024

20. Despite clear and categorical instructions and repeated suggestions by the Deputy Secretary (Art, Culture and Youth Affairs Department), Government of Bihar, vide letter No.19/12/98-Youth dated 5.10.2002 and also by the Secretary of the concerned Department in terms of Memo No.1172 extracted hereinabove, the respondent-Board has failed to discharge its function and responsibility of holding the examination entrusted to it by the State Government, which has resulted in irreparable loss to the appellants. The respondent-Board has not given any plausible and tenable explanation for debarring the appellants from taking examination with the students of C.P. Ed. and D.P. Ed. courses of the Government Health and Physical Training College, Bihar, Rajendra Nagar, Patna.

21. In the above-noted peculiar facts and circumstances of the case, we are of the opinion that it is a fit case where we should not hesitate to exercise our jurisdiction under Article 142 of the Constitution of India to do complete justice to the appellants to whom palpable injustice is shown to have been done because of the sheer fault and inefficiency of the respondent-Board, who, despite repeated requests of the State authorities, did not take steps to admit the appellants to appear in the examination till the respondent-College was de-recognised in terms of the provisions of the NCTE Act. It is again unfortunate that in spite of fighting a long legal battle for vindicating their genuine and legitimate claims, the appellants could not get any justice even from the court of law. Thus, in our considered view, the order of the learned Single Judge as affirmed by the Division Bench of the High Court holding that the respondent-College has since been de-recognised after the enforcement of the NCTE Act, therefore, the appellants could not be granted the permission to take examination of the C.P. Ed. and D.P. Ed. courses from the unrecognized institution, is erroneous and untenable. The NCTE Act came into force with effect from 17.08.2005 and its provisions will be applicable prospectively to those students who have undertaken examination after 17.08.2005 from recognised institution. The respondent-College has lost its recognition only with effect from 17.08.2005 when the NCTE Act was enforced and before that date, the respondent-College was duly recognised institution by the State Government. Therefore, the finding and reasoning of the High Court holding the appellants not eligible to appear in the examination of C.P. Ed. and D.P. Ed. courses from the respondent-College are not based on proper appreciation of facts of the case and principles of law.

22. We, in the interest of justice to the appellants, direct respondent Nos. 1 to 6 to permit the appellants to appear in the examination for the courses of C.P. Ed. and D.P. Ed. for the sessions 1994-95 and 1995-96 to be conducted by the respondent-Board on the next available opportunity in the near future and thereafter the result of the appellants shall be declared without loss of further time.

23. For the reasons afore-stated, the impugned judgment and order dated 24.01.2007 of the Division Bench of the High Court in LPA No. 697/2006 upholding the judgment and order

dated 12.09.2006 of the learned Single Judge passed in C.W.J.C. No. 8091/2006 is not justified and cannot be sustained in law. It is, accordingly, set aside. The appeal is allowed accordingly. The C.W.J.C. No. 8091/2006 filed by the appellants in the High Court of Judicature at Patna shall stand allowed. However, the parties are left to bear their own costs.

24. We make it clear that the observations made by us are only prima facie and tentative observations for the disposal of this appeal and the same would not be construed as an expression of opinion on the merits of any future proceedings of any nature, if any, between the parties in this appeal.

JUDIS