

CASE NO.:
Appeal (civil) 3125 of 1997

PETITIONER:
MUZAFFARPUR HOMOEOPATHIC COLLEGE & HOSPITAL, KHABRA & ANR.

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT: 17/09/2001

BENCH:
S. Rajendra Babu & Doraiswamy Raju.

JUDGMENT:

J U D G M E N T
RAJENDRA BABU, J. :

The appellant-College before us was granted recognition/affiliation to give training in or imparting courses in homeopathic system of medicine leading to grant of diploma, graded degree and degree by a notification issued by the Bihar University on 19.6.1985. Pursuant to this notification on 16.8.1985 the appellant-College deposited a sum of Rs. 50,000/- only with the Bihar University towards Reserve Fund of the College. A communication was also sent by the Bihar University to the Secretary, Central Council of Homoeopathy, New Delhi (for short the Council] to recognise the BHMS, that is, Direct Degree Course and BHMS, that is, Graded Degree Course of the Bihar University and to enter the same in the IIInd Schedule to the Homoeopathy Central Council Act, 1973 so that the degree obtained from the Bihar University is valid throughout the country which was acceded to by the Council on 6.2.1986.

A batch of cases was filed before the High Court in C.W.J.C. 4343 of 1993 and 4169 of 1993. The appellant-College, it appears, was impleaded as respondent in those proceedings but no notice was served upon them. However, while disposing of these writ petitions on 18.11.1993 the High Court observed that since 1973 no institution can claim to have either been affiliated or granted recognition by the University in the Faculty of Homoeopathy either under the University Act or the State Board Act. It is not in dispute that the State Government has not granted any permission to any Institution so far permitting those to undertake imparting of any course of study in Homoeopathy or to admit students to any such course. By no stretch of imagination, it can be said that on the date of enforcement of the State Regulation Act, any institution was having any order of affiliation or recognition with the respondent Bihar University in its favour in exercise of any of the statutory provisions. The High Court directed the State Government, the University and the Council should finally dispose of the matter relating to grant of affiliation to Homoeopathy Institutions, which claim to be pre-existing within a time frame fixed by it. Pursuant to which an order was made by the respondent-University stating that the University has a legal difficulty to publish the results or issue any certificate or mark-sheet against the aforesaid directions of the High Court of Patna.

Special Leave Petitions were filed before this Court in Special Leave

Petition Nos. 6571 of 1994 and 7389 of 1994. This Court by an order made on 18.4.1994 disposed of the matter as follows :

In these matters the question urged by counsel was that the High Court committed a factual error in assuming that the College was not affiliated to any University nor had it received the permission of the State Government and, therefore, the petitioners were not entitled to any relief. An attempt was made by counsel to show that the factual position was just otherwise. In exercise of jurisdiction under Article 136 of the Constitution, this Court is loathe to go into disputed questions of fact. If the High Court has based its judgment on an erroneous premises the proper course is to have that corrected by way of Review Petition. We would, therefore, permit the petitioners to move a Review Petition within 15 days from today and if that is done the High Court will, without raising the question of limitation, determine and decide the Review Petition on merits. In so far as the request of the 3rd party Dr. Arjune Pandey is concerned, it would be open to him to move the High Court when the Review Petition is filed. The High Court would decide whether or not to entertain his plea. So far as Mazaffarpur Homeopathic Medical College & Hospital is concerned, it may also follow the same procedure and move the High Court for permission to seek review of the order. All these petitions will stand disposed of accordingly. I.A. Nos. 1 & 2 will stand so disposed of.

Subsequently, before the High Court review petitions are filed by specifically making an averment that directions have been issued by the Government of Bihar to have inspection of all the Colleges imparting education in Homoeopathy Science before granting affiliation or recognition and the University constituted a Committee under notification dated 17.7.1982. This Committee inspected 29 Homoeopathy Colleges, including that of the appellant, and submitted a report on 16.8.1983 and recommended affiliation of the appellant-College as well as of certain others Colleges. As a result of the recommendations made by the aforesaid Committee, Bihar University issued a notification on 19.6.1985 granting affiliation to the appellant-College and accordingly the appellant-College deposited a sum of Rs. 50,000/- with the Registrar of Bihar University on 16.8.1985. Both the notification and the receipt thereto were produced before the High Court.

The High Court, however, did not examine this aspect of the question at all. While disposing of the writ petitions, the High Court adverted to certain features of the case arising in the facts prior to the grant of recognition or affiliation which was cancelled by an order made by the State Government on 30.4.1983. It is thereafter the affiliation has been granted to the appellant-College in terms of the provisions of the Bihar Development of Homoeopathy System of Medicine Act, 1953 [hereinafter referred to as the 1953 Act] under Section 36-A which enabled the University to recognise educational institutions giving training in and lay down a course of training in homeopathic system of medicine, prescribe qualification for admission to such a course, hold examinations and confer, grant or issue degrees, diploma or certificates in the homoeopathic system of medicine and frame rules and do such other ancillary acts. While disposing of the writ petitions from which the Review Petitions arose the High Court had relied upon the Bihar Homoeopathic Medical Educational Institutions (Regulation & Control) Act, 1987 [hereinafter referred to as the 1987 Act] which came into force on March 31, 1987 which provides that no educational institution relating to Homoeopathy System of Medicines shall be organised, maintained, managed or promoted or any admission to be taken to a course of study of any University relating to conferment of any degree, diploma or certificate in the said learning without prior permission of the

State Government under Section 2 of the said Act. The High Court has lost sight of the fact that affiliation or recognition had been granted to the appellant-College on 19.6.1985 which is long prior to the 1987 Act which came into force on March 31, 1987. Therefore, the question of such a College obtaining recognition or affiliation from the Bihar University with prior permission of the State Government in terms of the 1987 Act would not arise at all. At the relevant time, the provisions in force were Section 36-A of the 1953 Act. It is on this basis this Court had given directions on 18.4.1994 while disposing of the special leave petition Nos. 6571 of 1994 and 7389 of 1994.

However, Shri H.L. Aggarwal, the learned Senior Advocate for the first respondent, submitted that in view of the fact that the High Court had dismissed the Review Petitions, it is not appropriate for this Court to interfere with the order made by the High Court on two grounds, firstly, that the point urged before this Court was not raised before the High Court at all and secondly, that in any event, the recognition obtained at the hands of the Bihar University without prior permission of the State Government is of no use.

On both these contentions, we think, the learned counsel is wrong. Firstly, the matter cannot be looked at or examined without bearing in mind the aspects considered by this Court to which we have already adverted to while asking the High Court to review the matter. Further the pleadings raised in the case clearly indicate that the appellant-College did have recognition as early as in 1985 which had been issued under the provisions of the 1953 Act which is the relevant Act in force at the time which did not require any permission being obtained from the Government before grant of recognition. Thus we find that the High Court clearly erred in not reviewing its order earlier made.

It is now brought to our notice that the appellant-College has since been closed after the orders issued by the University on 18.11.1994, we direct that the order made by us shall be effective only in the event the appellant-College reopens from the next academic year which is stated to commence from July 2002 with all the necessary infrastructure and fulfil all the conditions thereto under the relevant provisions of the enactments in force.

Subject to aforesaid directions, we allow this appeal and set aside the order made by the High Court in Civil Review No. 91 of 1994 and allow the review by setting aside the order made in C.W.J.C. No. 4169 of 1993 in so far as the appellant-College is concerned. However, in the circumstances of the case, there shall be no order as to costs.

.J.
[S. RAJENDRA BABU]

....J.
[DORAISWAMY RAJU]

SEPTEMBER 17, 2001.