Bisheshwar Dayal Sinha

Vs

University of Bihar & Ors

Civil Appeal No. 279 of 1964

(P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, K. C. Das Gupta, N. Rajgopala Ayyangar JJ)

24.04.1964

JUDGMENT

GAJENDRAGADKAR, C.J. –

The writ petition from which this appeal by special leave arises had been filed by the appellant Bisheshwar Dayal Sinha by which he challenged the validity of the order issued by the Vice-Chancellor of the Bihar University directing the reconstitution of the Governing Body of the Rajendra College, Chapra, and of the relevant new statutes framed by him under which the said order is purported to have been issued. His case was that the relevant new statutes are ultra vires the authority of the Vice-Chancellor and the impugned order passed by him in pursuance of the said relevant statutes is, therefore, illegal, inoperative and void. Along with the petition filed by the appellant, four other petitions had been filed by other persons seeking to obtain similar relief. The Patna High Court has, in substance, rejected the appellant's case and has accordingly dismissed the appellant's writ petition as well as the other petitions filed by the persons. On behalf of the appellant, Mr. Setalvad has contended that the view taken by the Patna High Court about the validity of the relevant statutes is not sustainable and that the said statues are ultra vires with the inevitable consequence that the impugned order directing the reconstitution of the Governing Body of the Rajendra College must also be held to be invalid.

The Rajendra College is an educational institution which has been admitted by the Bihar University as a College, as defined in section 2(d) of the Bihar State Universities (Patna, University of Bihar, Bhagalpur and Ranchi) Act (Bihar Act XIV of 1960) (hereinafter called 'the Act') read with Article 1 of Chapter XII of the Statutes framed under the Act. The said college is a public institution founded by public charities and is conducted under the management of a Governing Body. The first Governing Body of the College was formed by the citizens of Chapra who had assembled for that purpose in a meeting on the 31st July 1938. The Governing Body thus constituted consisted of 18 members; it continued to function until the 24th July, 1940, with additions in the personnel made from time to time by co-option. Later, in 1941, the Governing Body adopted a constitution framed by the Principal of the College at its request and that constitution governed the administration of the college. In due course, some further amendments were made in 1950. After the passing of the University of Bihar Act, 1951 (Bihar Act XXVII of 1951) and the framing of Chapter XIII of the Statutes under the said Act, the University suggested to the Governing Body to bring its constitution in line with the provisions of Chapter XIII of said Statutes. Accordingly, modifications were made in the constitution, and the constitution thus modified and amended from time to time was in operation at the relevant time.

The appellant had been elected Secretary to the Governing Body on the 3rd of June, 1961, and under the relevant rules of the constitution, his term of office was to be three academic sessions, and as such, it was to last until 31st May, 1964. Meanwhile, by the impugned order passed by the Vice-Chancellor on the 13th January, 1963, the appellant has been removed from his position as Secretary and another person has been appointed in his place. That is the reason why the appellant moved the Patna High Court for appropriate writ or order quashing the impugned order and the relevant statutes on which it purports to be based. To his writ petition, the appellant impleaded 18 persons amongst them being respondent No. 1, the University of Bihar, respondent No. 2 Mr. Srivastava, Vice-Chancellor of the University of Bihar, and respondent No. 3 the Chancellor of the University of Bihar.

Before dealing with the contentions raised by the appellant in the present appeal, it is necessary to refer briefly to the relevant statutory provisions governing the affairs of the University of Bihar and its constituent colleges. The first Act to which reference must be made is the University of Bihar Act (Bihar Act XXVII of 1951). This Act was passed in August, 1951, and the provisions enacted by it were intended to furnish a comprehensive code to establish and incorporate an affiliating-cum-teaching University in the State of Bihar at Patna. In 1960, Bihar Act XIV of 1960, which we are describing as the Act in the course of this judgment, came to be passed. This Act was intended to help the establishment and incorporation of affiliating-cum teaching Universities at Patna, Muzaffarpur, Bhagalpur and Ranchi in the State of Bihar. This Act was later amended by Acts II of 1962, XIII of 1962, and XVII of 1962. The first of these Amending Acts came into force on the 1st of March, 1962; the second on 21st April, 1962 and the third on the 16th October, 1962.

At this stage, we may conveniently mention the relevant provisions of the Act. Section 2(d) defines a "college" as meaning an institution admitted to or maintained by the University, in accordance with the provisions of the Act, in which instruction is given, subject to the provisions contained in cl. (15) of s. 4, to the students of the college up to and including a standard below the post-graduate standard under conditions prescribed in the Statutes. This definition shows that the Act applies to two categories of colleges, the first category consisting of collegiate institutions admitted to the University, and the other maintained by the University. Section 4 prescribes the purposes and powers of the University. Section 4(10) provides that one of the purposes and powers of the University is to institute, maintain and manage colleges and hostels and to recognise colleges and hostels not maintained by the University. This provision brings out the fact that two kinds of collegiate institutions would be functioning under the University-those that are instituted by the University, and those that are admitted. In regard to the first category of colleges, the power and purposes of the University would be to institute, maintain and manage the colleges and hostels, and in regard to the other, the power and purpose would be to recognise them, subject, of course, to the conditions imposed in that behalf. For the purpose of dealing with the main controversy between the parties in the present appeal, it is necessary to bear in mind this distinction between two categories of collegiate institutions functioning under the Bihar University.

Section 7 prescribes the Officers of the University who are : the Chancellor; the Vice-Chancellor; the Treasurer; the Registrar; the Deans of Faculties; the Finance Officer and such other persons as may be declared by the Statutes to be the officers of the University. Section 16 defines the authorities of the University which are six; they are : the Senate; the Syndicate; the Academic Council; the Faculties; the Examination Board; and such other authorities as may be declared by the Statutes to be the authorities of the University. Section 20 deals with powers and duties of the Senate. Under s. 20(1), the Senate shall be the supreme governing body of the University and shall have the entire management of, and superintendence over, the affairs, concerns and property of the

University; shall exercise all the powers of the University, not otherwise provided for, to give effect to the provisions of the Act. Section 20(2) prescribes in particular some of the powers and duties of the Senate; amongst them is included the power of making the Statutes, and amending or repealing the same. Section 21 deals with the Syndicate and its composition; and s. 22 prescribes the powers and duties of the Syndicate.

Section 30 deals with statutes. Section 30(d) provides that subject to the provisions of the Act, the Statutes may provide for the admission of educational institutions as colleges and the withdrawal of privileges from colleges so admitted; and s. 30(e) provides that the statutes may provide for the institution of colleges and hostels and their maintenance and management. It would thus be seen that proceeding on the basis of the broad distinction between collegiate institutions instituted by the University and those admitted or recognised by it, s. 30 makes two separate provisions in that behalf. In regard to the institutions admitted or recognised, the Statutes can provide for the admission or recognition of such institutions and the withdrawal of such recognition, whereas in regard to the institutions instituted by the University, the Statutes may provide for the institution of such colleges and their maintenance and management.

Section 49 deals with the problem of relations of affiliated colleges with the University, and it provides that the said relations shall be governed by the Statutes to be made in that behalf, and it proscribes in particular some of the matters which may be covered by the said Statutes.

Section 60 provides for the continuance of Statutes, Ordinances, Regulations and Rules which were in force in under the Bihar Acts XXV and XXVII of 1961. Section 60(ii) empowers the Vice-Chancellor to make adaptations or modifications in the said Statutes, Ordinances, Regulations and Rules with the approval of the Chancellor in so far as they are not inconsistent with the provisions of the Act, and when such adaptations or modifications are made, they would be deemed to have been made under the appropriate provisions of the Act. In other words, while continuing the operation of the pre-existing Statutes, power has been conferred on the Vice-Chancellor to make adaptations of modifications in the said Statutes, subject to the conditions which we have just indicated. This provision came into force on the 1st March, 1962 by virtue of the amending provision prescribed by Act II of 1962.

There is one more provision to which reference must be made before we part with this topic. Section 35 of Act II of 1962 provides for dissolution of the Senate, Syndicate and Academic Council functioning prior to the commencement of the said Act and constitution of new Senate, Syndicate and Academic Council in their place. It provides that notwithstanding anything contained in the Bihar Act XIV of 1960, the respective bodies established under s. 3 of the said Act in regard to the Universities covered by the Act shall stand dissolved on the commencement of this Act and thereafter, as soon as may be, they shall be reconstituted, and pending their reconstitution, the Vice-Chancellor shall exercise their powers and perform their duties under the said Act for a period not exceeding nine months from such commencement. The result of this provision is to authorise the Vice-Chancellor to exercise the powers and functions of the respective bodies which stoods dissolved, for nine months from the date of the operation of this Amending Act, or until the said bodies were duly reconstituted. It is by virtue of the power conferred on him by this section that the Vice-Chancellor has purported to frame new Statutes some of which are challenged in the present proceedings and has issued the impugned order in pursuance of the said new Statutes. That, in brief, is the position with regard to the statutory provisions in the light of which the dispute between the parties has to be settled in the present appeal.

The two statutes which have been challenged before us may now be set out. This body of new Statutes came to be promulgated on the 18th November, 1962, After they were thus promulgated, the Registrar of the University of Bihar wrote to the Secretaries and Principals of all Admitted Colleges, except Constituent and Government Colleges, enquiring from them what action had to be taken by the Vice-Chancellor or the Syndicate in regard to the constitution of the Governing Body of the respective Colleges and the appointment of Office-bearers. The new Statutes consist of 24 clauses, but for the purpose of the present appeal, were are concerned only with two of them. Clause 2, sub-clause (4) provides : "in the case of the constitution of the Governing Bodies of admitted colleges (except colleges owned and maintained by Government) framed prior to the making of these Statutes, the Vice-Chancellor shall have the power to amend or revise the constitution wherever necessary in order to bring it, as far as possible, in conformity with the provisions of these Statutes" Clause 3(1) reads thus :-

> "The Syndicate may on its motion or at the instance of the Vice-Chancellor dissolve and order constitution of Governing Body in admitted colleges or cancel its grant-in-aid to the college concerned for any one or more of the following reasons :
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> (a) that the college has failed to comply with the directions issued by the Syndicate under the laws of the University within the specified time;
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> (b) that the college has failed to observe the provisions of the laws of the University;
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> (c) improper utilisation of the various funds of the institution;
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> (d) that the affairs of the college have been grossly mismanaged.
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> Provided, however, that before ordering dissolution of the Governing Body or before passing such order against the Governing Body the Syndicate shall give a reasonable opportunity to the Governing Body to show cause against such action."

It is clear that cl. 2(4) of the new Statutes expressly confers on the Vice-Chancellor the power to amend or revise the constitution of the affiliated colleges; and cl. 3(1) empowers the Syndicate to dissolve and order constitution of their Governing Bodies either on its own motion or at the instance of the Vice-Chancellor, Clause 3(1) also empowers the Syndicate to cancel its grant-in-aid to the college concerned for one or more of the four reasons specified by it. The proviso to cl. 3(1) requires that before the dissolution of the Governing Body is ordered, or any similar order is passed under cl. 3(1), reasonable opportunity has to be given to the Governing Body to show cause why such action should not be taken.

In substance, the High Court has come to the conclusion that these two Statutes and the impugned order are valid. According to the High Court, the impugned order cannot be justified under Statute 3(1) because an opportunity had not been given to the Governing Body of the Rajendra College as required by the proviso. It has, however, held that the impugned order is valid having regard to the powers conferred on the Vice-Chancellor under Statute 2(4). It also appears that the High Court took the view that the impugned Statutes can be justified by reason of the fact that power has been conferred on the Vice-Chancellor to make adaptation or modifications in the pre-existing Statutes by s. 60(ii).

The question which arises for our decision is whether the impugned Statute 2(4) is valid, and if yea, whether the impugned order is justified. We may also have to decide whether the impugned Statute

3(1) is invalid either wholly or in part. The question as to whether the power to make adaptations or modifications it justifies the impugned order presents no difficult, because we have come to the conclusion that the impugned Statute 2(4) is itself invalid, and so, the impugned order must be struck down on that ground. If the statute on the authority of which the impugned order has been passed is itself invalid, the power to make adaptations and modifications cannot help to sustain the validity of the impugned order. The power to make adaptations and modifications conferred on the Vice-Chancellor by s. 60(ii) of the Act must be read in the light of the substantive provisions contained in s. 30(d) in regard to affiliated college, and they cannot obviously justify the impugned order if the impugned Statute 2(4) itself is invalid. This position cannot be disputed, and so, we go back to the question as to whether the impugned statute 2(4) is valid.

The decision of this question presents also no difficulty, because, on the face of it, the impugned statute is inconsistent with the relevant provisions of the Act. It will be recalled that the Act proceeds on a broad and well-recognised distinction between two categories of collegiate institutions, one instituted by the University and the other admitted to the University of affiliated to it. Section 4(10) of Act is based on this distinction, and s. 30(d) & (e) also proceed on the same distinction. Where the University instituted collegiate institutions, naturally the task of instituting is the task of the University, and so, the management and the maintenance of the said institutions is also the University's responsibility. The position is substantially different where collegiate institutions are started by other autonomous bodies and they seek admission or affiliation to the University. In regard to this class of collegiate institution, their institution as well as their management and maintenance is not the direct concern of the University; that is the concern of the autonomous educational bodies which have sponsored them and which have undertaken the task of instituting, managing and maintaining them. It is, of course, true that when admitting or affiliating such institution, the University can impose reasonable and legitimate conditions subject to the provisions of the Act, and it follows that on the failure of such college either to conform to those conditions or on their committing breach of any of those conditions, it would be competent to the University under its relevant powers to disaffiliate them and deny them the status of admitted colleges; but this power is very different from the power to constitute the Governing Bodies of such autonomous educational bodies. The University may insist upon the observance of conditions in respect of the composition of the Governing Bodies, but it cannot direct the composition of the Governing Bodies itself; the two powers are distinct and separate. Whereas in the case of institutions started by the University, the University has to decide who would constitute the Governing Bodies, in the case of affiliated institutions, the University can only lay down conditions and regulations which must be satisfied before the Governing Bodies are constituted; who should constitute the Governing Bodies is a matter for the autonomous educational bodies, which sponsor the collegiate institutions, to decide; how they should be formed, on what principle, and on what basis, are matters which may well form the subjectmatter of conditions imposed by the University while admiting such colleges or affiliating them. This position, in our opinion, is plain and has to be borne in mind in considering the validity of the impugned Statute 2(4).

Now, what does the said statute purport to do ? It purports to authorise the Vice-Chancellor to amend or revise the constitution wherever it is necessary. It would be noticed that this power is inconsistent with s. 30(d) of the Act. It is a power which can be exercised under s. 30(e), but that would have relation only to collegiate institutions started by the University itself. It can have no relevance to affiliated colleges. If Statute 2(4) had merely authorised the Vice-Chancellor to lay down conditions as to how the Governing Bodies of the affiliated colleges should be constituted, it would have been another matter. The University can effectively bring about a change in the composition of the Governing Bodies of affiliated colleges if it is thought necessary and desirable to

do so under its relevant powers, but that must inevitably take the form of prescribing general conditions in that behalf and leaving it to the affiliated colleges to comply with the said conditions. Non-compliance with the said conditions may entail the liability to be disaffiliated; but that is very different from giving the power to the Vice-Chancellor of the University to make the necessary changes in the Governing Bodies of the affiliated colleges itself. It is plain, as we have just seen, that this power is inconsistent with s. 30(d) of the Act and as such, is invalid.

How this power has been worked out is evident from the impugned order itself. This order purports to direct the reconstitution of the Governing Body of the Rajendra College with immediate effect in order to bring it in conformity with the provisions of the new Statutes. Then, it virtually purports to nominate some members of the Governing Body. It provides that two staff representative would continue on the Governing Body as at present. Then, it adds five persons to the said Governing Body. Then, it purports to make a change in regard to the three seats reserved for the Founders, Donors, Benefactors or Sponsors, and nominates three persons in that behalf. It also directs that the co-opted member Mr. Bishwanath Prasad Mishra will also continue till the fresh co-option is held; then in nominated Mr. Ganga Prasad Sinha, Advocate, Chapra, as the Secretary of the Governing Body of the College with immediate effect. Thus, it is plain that the power conferred on the Vice-Chancellor by statute 2(4) has been exercised by him by not only directing how the Governing Body should be constituted on principle, but by nominating different persons on the Governing Body. The basis on which a Governing Body should be constituted is very different from a nominating several persons on the said Governing Body. It is the latter course which has been adopted by the Vice-Chancellor and which is inconsistent with s. 30(d) of the Act. At this stage, it is necessary to add that the course adopted by the Vice-Chancellor in the present case is also inconsistent the Statute 2(4) itself. The said Statute merely authorises with the Vice-Chancellor to amend or revise the constitution of the Governing Bodies of admitted colleges whenever necessary, and as we have already held, even the conferment of this power is ultra vires the Statute. But what the Vice-Chancellor has done has gone beyond even Statute 2(4); he has not only amended or revised the constitution of the Governing Body, but has also nominated certain persons on it. Thus, this action of the Vice-Chancellor suffers from the double infirmity that it is inconsistent even with Statute 2(4) and is purported to have been issued under Statute 2(4) which itself is invalid. Unfortunately, the High Courts appears to have failed to take into account the basic difference between the two categories of collegiate institutions, and the powers conferred on the University severally in respect of them. The view taken by the High Court about the validity of Statute 2(4) completely obliterates the difference between the two kinds of collegiate institutions and treats all collegiate institutions. Whether instituted by the University, or affiliated to it, as falling completely under the management of the University itself. We accordingly hold that Statute 2(4) is invalid, and the impugned order passed under it is, therefore, invalid and inoperative.

Then, as to statute 3(1), the Syndicate may have the power to cancel its grant-in-aid to the college concerned, but in so far as 3(1)(a) seems to contemplate that if the affiliated collage refuses to submit to the order passed by the Syndicate dissolving and ordering reconstitution of its Governing Body, the penalty of the cancellation of grant-in-aid may follow, it must be held that that part of Statute 3(1) is invalid. It would be open to the University to direct that the composition of the Governing Body should conform to conditions which may be changed by the University under its relevant powers and if the said conditions are not duly complied with by the affiliated college or its Governing Body, suitable and permissible action may be taken; but in so far as Statute 3(1) provides on the basis that the Syndicate can itself dissolve the Governing Body and order its reconstitution, it suffers from the same infirmity as Statute 2(4). That is why we hold that Statute 3(1) in so far as it gives power to the Syndicate to dissolve and reconstitute the Governing Body and enables it to

cancel its grant-in-aid to an affiliated college under 3(1)(a) for the reason that the direction issued by the Syndicate in that behalf has not been complied with, is invalid.

The learned Attorney-General has relied on the fact that the Vice-Chancellor was compelled to pass the impugned order, because the affairs of the Rajendra College were mismanaged and very grave situation arose as a result of which the authorities were faced with serious law and order problem. In that connection, he invited our attention to the statements made in the impugned order in regard to the background of circumstances which compelled the issue of that order. These statements were, however, disputed by the appellant in his writ petition. The High Court has not considered the question as to whether them statements made in the impugned order are proved to be true and we propose to express no opinion on that aspect of the matter ourselves. We are, however, prepared to assume that the Vice-Chancellor felt compelled to issue the order and that he acted bonafide in the interest of the students studying in the Rajendra College. It is quite possible that the affairs of an affiliated college may be mismanaged and a situation may arise where either the University or the Vice-Chancellor may feel justified in taking drastic action to save the situation, because, afterall, in dealing with the problem of efficient management of affiliated colleges, the consideration of paramount importance must always be the interests of the students studying in such colleges; and so, theoretically, there can be no objection to the University being empowered to take suitable and reasonable action to meet emergencies arising from mismanagement of affiliated colleges which expose the students to the grave risk of interruption in their smooth academic work. But the question which we have to decide in the present appeal is not whether the University or the Vice-Chancellor should not have such power; the question is whether such a power can be claimed by the Statute under the provisions of the Act, and that question, in our opinion admits of only one answer under the Act as it now stands. The Legislature may consider behalf. That, however, is irrelevant to the point with which we are concerned.

There is another consideration which we may incidentally mention in this connection. The autonomous bodies which institute colleges and help the progress of higher education in this country, are generally run by disinterested persons, and it is of some importance that the autonomy of such bodies should not be unduly impaired. When colleges run by such autonomous bodies seek affiliation to a University, the University undoubtedly has a right to impose reasonable conditions for affiliation and normally, the supervision exercised by the University over the affairs and administration of its affiliated colleges effectively serves the purpose of requiring the said colleges to conform to the pattern of management and education in force in the Government colleges or colleges instituted by the University. In resolving a possible dispute between affiliated colleges and the University, attempt should be made to respect the autonomy of the colleges and reconcile the same with the supervisory powers of the University which are intended to be exercised in order to make functioning of the affiliated colleges efficient and progressive. Both the University and the affiliated colleges seek to serve the cause of higher education and there should really be no serious dispute as to the principles on which their mutual relation should be regulated. Unfortunately, in the present case, the Vice-Chancellor appears to have acted with some haste and he has exercised powers under Statutes which were themselves hastily framed and which are plainly inconsistent with the provisions of the parent Act.

There is one more point to which we must refer before we part with this appeal. The validity of the Statutes was challenged by the appellant on the additional ground that when they were made by the Vice-Chancellor, the power conferred on him by s. 35 of Act II of 1962 had come to an end. The said section empowered the Vice-Chancellor to exercise the powers of the appropriate Bodies of the University for a period not exceeding nine months, or until the respective Bodies were reconstituted.

The appellant's case before the High Court was that the Senate had been reconstituted in the first week of November, 1962 and in fact, notices had been issued to call for a meeting of the said Senate on the 30th November. That being so, with the reconstitution of the Senate the statutory power of the Vice-Chancellor under s. 35 came to an end, and so, the Statutes which were promulgated on the 18th November, 1962 were invalid. The High Court has rejected this contention mainly on the ground that the Senate was not duly constituted even on the 30th November, 1962 "inasmuch as the application of Mr. Baleshwar Prasad Choudhary filed in the High Court was still pending and the question had still to be decided as to whether he was entitled to be member of the Senate as being a donor of the Dalsingsarai College". The High Court thought that since an order of stay had been passed by it, there could be no meeting of the Senate even on the 30th November, 1962, and so, after address of the Chancellor, the meeting had to be adjourned. It appears that the stay order passed by the High Court was in relation to the direction issued by the Chancellor prohibiting Baleshwar Prasad Choudhary from acting as a member of the Senate and that strictly may not have a material bearing on the question as to whether the Senate had been properly constituted before the 18th November, 1962 or not. The appellant's case is that since a meeting of the new Senate had been called for the 30th November, by a notice issued in that behalf on the 8th November, it postulates that the Senate had been duly constituted before the 8th of November and for the proper reconstitution of the Senate, it was not necessary that it should actually hold its first meetings. On the other hand, the learned Attorney-General contends that the material adduced on the record of these proceedings is wholly insufficient to justify the finding that the Senate had been duly constituted before the 18th November, 1962. We are satisfied that the contention raised by the Attorney-General is sound. On the available material, we see no evidence on which it could be held that a Senate had been reconstituted on any particular date, and so, we do not propose to record any conclusion on this part of the appellant's case. All that we would like to add is that the finding of the High Court on this point should not be taken to be binding, and if in future this question arises, it may have to be decided on the merits afresh.

The result is, the appeal is allowed, the order passed by the High Court is set aside, and the writ petition filed by the appellant is allowed. An order will accordingly be issued restraining the respondents from giving effect to the impugned order (Annexure A), because the said order, and Statute 2(4) and a part of Statute 3(1) on which it is based are invalid and inoperative. The appellant would be entitled to his costs from respondent No. 1 throughout.

Appeal allowed.

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