

A KUMARI RANJANA MISHRA AND ANR.

v.

THE STATE OF BIHAR AND ORS.

(Civil Appeal No. 2416 of 2011)

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MARCH 10, 2011

**[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]**

*Education/Educational Institutions – Bihar School Examination Board Rules, 1963 – Rule 7 –Entitlement of students to appear in examination after de-recognition of educational institution – Physical Training College in question was recognized by the State Government during the years when the appellants undertook C.P.Ed. (Certificate of Physical Education) course from the said College – Subsequently, NCTE Act came into force and Regional Committee of the NCTE was vested with the power to grant recognition – Much later, the State Government revoked the recognition of the said College – Appellants filed writ petition for direction to the Examination Board to allow them to appear in C.P.Ed. examination – Writ petition dismissed by the High Court – On appeal, held: The Examination Board was under a duty to hold C.P.Ed. examination for students of the college and this duty could be enforced by the Court by an appropriate writ or direction by the High Court u/Article 226 of the Constitution – The High Court was not right in taking the view that without a direction of the State Government to the Examination Board to allow the appellants to take the examinations, no relief could be granted by the High Court to the appellants – The College in question was duly recognized by the State Government during the year 1989-1990 when the appellants were admitted to the C.P.Ed. course and when the NCTE Act had neither been enacted nor come into force – Also, recognition of all non-Government Physical Training Colleges including the College in question was revoked presumably*

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*because the State Government no longer had the power to grant recognition and non-Government Physical Training Colleges in the State were required to obtain recognition from the Regional Committee of the NCTE – Order of the High Court accordingly set aside and Examination Board directed to conduct C.P.Ed. examination for the appellants – National Council for Teacher Education Act, 1993 – s.14 – Constitution of India, 1950 – Art. 226.*

**The Government of Bihar granted temporary recognition to the Physical Training College in question for C.P.Ed. (Certificate of Physical Education) course from July, 1986 alongwith permission to the students of the College to appear in the examinations subject to certain conditions stipulated in the order dated 09.08.1988. The two appellants took admission in the C.P.Ed. course in the said College in the academic session 1989-1990. Several other students also took admission in the C.P.Ed. course in the College in different academic years 1989-1990 to 1995-1996. With effect from 01.07.1995, the National Council for Teacher Education Act, 1993 came into force and under Section 14 of the NCTE Act, the power to grant recognition was vested in the Regional Committee of the National Council for Teacher Education (NCTE) with effect from 17.08.1995. On 13.04.2004, the State revoked the recognition of the College and all other Non-Government Physical Training Colleges in the State.**

**The two appellants and five other candidates, who had undergone the C.P.Ed. course in the said College during the academic years 1989-1990 to 1995-1996, moved the High Court under Article 226 of the Constitution for a direction to the Bihar School Examination Board to release the forms and accept the fees and forms of the appellants and the five other**

A candidates on the basis of the training courses  
 completed in the academic sessions 1989-1990 to 1995-  
 1996 from the College and to allow them to appear in the  
 examination to be conducted in 2007. A Single Judge of  
 the High Court dismissed the Writ Petition. The order was  
 B upheld by the Division Bench of the High Court.

The appellants contended before this Court that their  
 College was recognized by the State Government during  
 the years 1989-1990 to 1995-1996 when the appellants  
 C and five other candidates undertook the C.P.Ed. course  
 and that the Regional Committee of NCTE was vested  
 with the power to grant recognition only after the NCTE  
 Act came into force on 01.07.1995 and, therefore, the  
 Bihar School Examination Board should be directed to  
 D allow the appellants to take the C.P.Ed. examination.

Allowing the appeal, the Court

HELD: 1. The word "shall" in sub-rule (1) of the Rule  
 7 of the Bihar School Examination Board Rules, 1963  
 E indicates that a duty is cast duty on the Bihar School  
 Examination Board to conduct the Certificate in Physical  
 Education (C.P.Ed.) examinations on such terms and  
 conditions as may be laid down by the State  
 Government. In the order dated 09.08.1988 of the State  
 F Government granting recognition to the College, there  
 were ten conditions. It is clear from the terms and  
 conditions of the order dated 09.08.1988 that the students  
 of the College were to appear in the C.P.Ed. and D.P.Ed.  
 examinations conducted by the Bihar School  
 Examination Board. Hence, the Bihar School  
 G Examination Board was under a duty to hold the C.P.Ed.  
 and D.P.Ed. examinations for the students of the college  
 and this duty could be enforced by the Court by an  
 appropriate writ or direction by the High Court under  
 Article 226 of the Constitution. The High Court was not  
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right in taking the view in the impugned order that without a direction of the State Government to the Bihar School Examination Board to allow the appellants to take the examinations, no relief could be granted by the High Court to the appellants. [Para 7] [580-E-H; 581-A-C]

2.1. The High Court was also not right in distinguishing the present case from the case of Sunil Kumar Parimal. In the case of Sunil Kumar Parimal, this Court having found that the College in question in that case was recognized by the State Government prior to the date when the NCTE Act came into force and the NCTE came into existence, directed that the students of the College would be permitted to appear in the examination for the courses of C.P.Ed and D.P. Ed. for the Sessions 1994-1995 and 1995-1996 to be conducted by the Bihar School Examination Board on the next available opportunity. The decision of this Court in Sunil Kumar Parimal squarely applies to the facts of this case also, as the College in question herein was duly recognized by the State Government during the year 1989-1990 when the appellants were admitted to the C.P.Ed. course and when the NCTE Act had neither been enacted nor come into force. The order of the State Government granting recognition to the College in which the appellants studied in the year 1989-1990 was issued on 09.08.1988, several years before the NCTE Act came into force. The recognition of the College had not been revoked by the State Government until 13.04.2004 and on 13.04.2004 the recognition of all non-Government Physical Training Colleges including that of the College in the present case were revoked presumably because the State Government no longer had the power to grant recognition and the non-Government Physical Training Colleges in the State were required to obtain recognition from the Regional Committee of the NCTE under the NCTE Act. [Paras 8, 9, 10] [581-D-H; 582-B-D; 583-C-D]

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A 2.2. The impugned order of the High Court is accordingly set aside and the Bihar School Examination Board is directed to conduct the C.P.Ed. examination for the appellants as soon as possible. [Para 12] [584-B]

B *Sunil Kumar Parimal & Anr. v. State of Bihar & Ors.* (2007) 10 SCC 150 – held applicable.

*Bhagwan Budha Prathmik Technical Training College Nirmali v. The State of Bihar & Ors.* 2010 (12) SCALE 364 – held inapplicable.

C *L. Muthukumar & Anr. v. State of T. N. & Ors.* (2000) 7 SCC 618; *St. John's Teachers Training Institute (for Women), Madurai & Ors. v. State of Tamil Nadu & Ors.* (1993) 3 SCC 595; *State of Maharashtra v. Vikas Sahebrao Roundale & Ors.* (1992) 4 SCC 435 and *N. M. Nageshwaramma, etc. v. State of Andhra Pradesh & Anr., etc.* 1986 (Supp.) SCC 166 – distinguished.

D *P.M. Joseph v. State of T. N.* (1993) Writ LR 604 – referred to.

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Case Law Reference:

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|---|----------------------|-------------------|------------|
|   | (2007) 10 SCC 150    | held applicable   | Para 4, 8  |
|   | 2010 (12) SCALE 364  | held inapplicable | Para 5, 9  |
| F | (2000) 7 SCC 618     | distinguished     | Para 5, 10 |
|   | (1993) 3 SCC 595     | distinguished     | Para 5, 11 |
|   | (1992) 4 SCC 435     | distinguished     | Para 5, 10 |
| G | 1986 (Supp.) SCC 166 | distinguished     | Para 5     |
|   | (1993) Writ LR 604   | referred to       | Para 10    |

^ CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2416 of 2011.

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From the Judgment & Order dated 23.05.2008 of the High Court of Judicature at Patna in L.P.A. No. 972 of 2007. A

Sunil Kumar, Shree Pakash Sinha and Shekhar Kumar for the Appellants.

Gopal Singh, Manish Kumar, Lakshmi Raman Singh, Amitesh Kumar, Dr. Amaresh Kumar, Mrinal Amaresh and Shuvodeep Roy for the Respondents. B

The Judgment of the Court was delivered by

**A. K. PATNAIK, J.** 1. Leave granted. C

2. This is an appeal against the order dated 23.05.2008 of the Division Bench of the High Court of Patna in Letters Patent Appeal No.972 of 2007. D

3. The facts very briefly are that the Government of Bihar in the Department of Human Resource Development granted temporary recognition to the Champaran Physical Training College (for short 'the College') for C.P.Ed. (Certificate of Physical Education) and D.P. Ed. (Diploma in Physical Education) courses from July, 1986 alongwith permission to the students of the College to appear in the examinations subject to certain conditions stipulated in the order dated 09.08.1988. The two appellants took admission in the C.P.Ed. course in the College in the academic session 1989-1990. Several other students also took admission in the C.P.Ed. course in the College in different academic years 1989-1990 to 1995-1996. With effect from 01.07.1995, the National Council for Teacher Education Act, 1993 (for short 'the NCTE Act') came into force and under Section 14 of the NCTE Act, the power to grant recognition was vested in the Regional Committee of the National Council for Teacher Education (NCTE) with effect from 17.08.1995. On 13.04.2004, the State revoked the recognition of the College and all other Non-Government Physical Training Colleges in the State. The two E F G

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A appellants and five other candidates, who had undergone the  
 C.P.Ed. course in the College during the academic years  
 1989-1990 to 1995-1996, moved the High Court under Article  
 226 of the Constitution in C.W.J.C. No. 11413 of 2007 for a  
 direction to the Bihar School Examination Board to release  
 B the form and accept the fees and forms of the appellants and  
 the five other candidates on the basis of the training courses  
 completed in the academic sessions 1989-1990 to 1995-  
 1996 from the College and to allow them to appear in the  
 examination to be conducted in 2007. By order dated  
 C 07.11.2007, a learned Single Judge of the High Court  
 dismissed the Writ Petition. The two appellants and the five  
 other candidates then filed Letters Patent Appeal No. 972 of  
 2007 before the Division Bench of the High Court. By the  
 impugned order dated 23.05.2008, the Division Bench of the  
 D High Court dismissed the Letters Patent Appeal. Aggrieved,  
 the appellants have filed this appeal.

4. Mr. Sunil Kumar, learned senior counsel appearing for  
 the appellants, submitted that before the Division Bench of  
 the High Court, the appellants contended that the College  
 E was recognized by the State Government during the years  
 1989-1990 to 1995-1996 when the appellants and five other  
 candidates undertook the C.P.Ed. course and that the Regional  
 Committee of NCTE was vested with the power to grant  
 recognition only after the NCTE Act came into force on  
 F 01.07.1995 and, therefore, the Bihar School Examination  
 Board should be directed to allow the appellants to take the  
 C.P.Ed. examination. He submitted that before the High Court  
 the appellants relied on the decision in *Sunil Kumar Parimal*  
 & Anr. v. *State of Bihar & Ors.* [(2007) 10 SCC 150] in which  
 G this Court has held that the Tirhut Physical Education College,  
 Muzaffarpur, was duly recognized by the State Government  
 and lost its recognition only with effect from the date the NCTE  
 Act came into force, and hence the candidates, who had  
 undertaken the course in the aforesaid College recognized by

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the State Government before the NCTE Act came into force, were eligible to appear in the examination of C.P.Ed. course. He submitted that the High Court did not accept the contention of the appellants and instead held that Tirhut Physical Education College, Muzaffarpur, was a recognized institution and despite repeated requests of the State to allow the students to appear in the examination, the Bihar School Examination Board did not follow the request of the State Government, but in the facts of the present case no such request had been made by the State Government and no direction was issued by the State Government to the Bihar School Examination Board to allow the students of the College to take the C.P. Ed. examination. He submitted that the High Court further held that the order passed by this Court in Sunil Kumar Parimal's case was in exercise of this Court's jurisdiction under Article 142 of the Constitution to do complete justice between the parties and the High Court had no such power to do complete justice under Article 226 of the Constitution. Mr. Sunil Kumar further submitted that the High Court also held that after the NCTE Act had come into force the College had also not applied for recognition and in fact the recognition of the College had been cancelled in the year 2004 and that it was only after the College was derecognized that the appellants sought to appear in the examination to be conducted by the Bihar School Examination Board in the year 2007, to which the appellants were not entitled. He argued that the case of the appellants is squarely covered by the decision of this Court in *Sunil Kumar Parimal's* case (supra) and this Court should direct the Bihar School Examination Board to allow the appellants to take the C.P.Ed. examination. Learned counsel for the respondents nos. 8 and 9, namely, the Secretary and the Principal of the College, adopted the aforesaid arguments of Mr. Sunil Kumar.

5. In reply, Mr. Gopal Singh, learned counsel appearing for respondent Nos. 1 to 5, namely, the State of Bihar and the Bihar School Examination Board and their officers, submitted

A that the Bihar School Examination Board has conducted examinations on several occasions during the years 1989-90 onwards, but the appellants did not make any request to sit in the examination in all the years till 2007 and it is only after the State Government started recruitment of teachers in large numbers and appointed Panchayat Teachers that the appellants were anxious to take a chance in the examination. He further submitted that the recognition of the College in which the appellants had studied was in fact withdrawn by the State Government in 2004, and after the NCTE Act came into force, the College had not been granted recognition by the Regional Committee of the NCTE. He submitted that Section 16 of the NCTE Act is very clear that no examining body shall hold examination for a course or training conducted by a recognized institution unless the institution concerned has obtained recognition from the Regional Committee of the NCTE under Section 14 or permission for a course or training under Section 15 of the NCTE Act. He argued that since the College had not obtained recognition of the Regional Committee of the NCTE under Section 14 or permission for the course or training under Section 15 of the NCTE Act, the Bihar School Examination Board was clearly prohibited under Section 16 of the NCTE Act from holding the examination for the appellants. Mr. Gopal Singh submitted that considering the judicial pronouncements in *L. Muthukumar & Anr. v. State of T. N. & Ors.* [(2000) 7 SCC 618], *St. John's Teachers Training Institute (for Women), Madurai & Ors. v. State of Tamil Nadu & Ors.* [(1993) 3 SCC 595], *State of Maharashtra v. Vikas Sahebrao Roundale & Ors.* [(1992) 4 SCC 435] and *N. M. Nageshwaramma, etc. v. State of Andhra Pradesh & Anr., etc.* [1986 (Supp.) SCC 166] the appellants are not entitled to take the examination after derecognition of the College. He also cited a recent decision of this Court in *Bhagwan Budha Prathmik Technical Training College Nirmali v. The State of Bihar & Ors.* [2010 (12) SCALE 364] in which it has been held that after the NCTE Act came into force in July, 1995 the

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State Government had no authority to issue the order dated 16.03.2007 granting recognition to an institution for the period 1987-1995.

6. We have considered the submissions of the learned counsel for the parties and we find from the record of this case that the College was established after permission was granted by the State Government to open the College and the College started C.P.Ed. and D.P. Ed. courses from July 1986. Thereafter, a spot inspection of the College was carried out pursuant to the orders of the State Government in the Department of Youth Affairs, Games and Culture, and the Inspection Committee comprising the Director-cum-Deputy Secretary, Student and Youth Welfare, Deputy Director, Youth Welfare-Bihar and Principal, Government-cum-Teaching College, Patna, submitted a report dated 04.12.1987 stating that the College had a building over 10 acres 30 decimals of land, seven Lecturers, two Instructors, one Library and other non-teaching staff and all the Teachers were eligible and experienced and that the College was running properly. On the basis of the said report dated 04.12.1987, the Government of Bihar in the Department of Human Resource Development by order dated 09.08.1988 granted temporary recognition to the College from July 1986 for the C.P.Ed. and D.P.Ed. courses till further orders "along with permission to the students to appear in the examination".

7. Rule 7 of the Bihar School Examination Board Rules, 1963 which has been referred to in paragraph 6 of the reply of the Bihar School Examination Board reads as follows:

**"7. Departmental Examinations to be conducted by the Board:** (1) The Board shall on, such terms and conditions as may be laid down by the State Government, conduct the following departmental Examinations, namely:-

(a) Certificate in Social Education;

- A (b) Diploma in Physical Education;  
 (c) Certificate in Physical Education;  
 (d) Short Training Course in Physical Education;
- B (e) Primary Training Course in Physical Education; and  
 (f) Training School Examinations:

C Provided that the State Government may, by notification in the official gazette, authorize the Board to conduct such other departmental examinations not specified or withdraw the authority given to the Board to conduct any of the examinations mentioned, in this sub-rule.

- D (2) The State Government may give instructions to the Board about the content as well as the academic and vocational standards of these examinations, and may modify these instructions, as and when necessary."

- E The word "shall" in sub-rule (1) of the Rule 7 indicates that a duty is cast duty on the Bihar School Examination Board to conduct the Certificate in Physical Education (C.P.Ed.) examinations on such terms and conditions as may be laid down by the State Government. In the order dated 09.08.1988 of the State Government granting recognition to the College,  
 F there were ten conditions and condition no.6 was to the following effect:-

- G "Students will be compulsorily required to perform successfully as per the standard of one star, in the test conducted by Government Health and Physical Training College, Rajendranagar, Patna, before appearing in the examination conducted by the Bihar School Examination Board."

- H It is thus clear from the terms and conditions of the order dated

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09.08.1988 of the State Government granting recognition that the students of the College were to appear in the C.P.Ed. and D.P.Ed. examinations conducted by the Bihar School Examination Board. Hence, the Bihar School Examination Board was under a duty to hold the C.P.Ed. and D.P.Ed. examinations for the students of the college and this duty could be enforced by the Court by an appropriate writ or direction by the High Court under Article 226 of the Constitution. The High Court was not right in taking the view in the impugned order that without a direction of the State Government to the Bihar School Examination Board to allow the appellants to take the examinations, no relief could be granted by the High Court to the appellants.

8. The High Court was also not right in distinguishing the present case from the case of *Sunil Kumar Parimal* (supra). In the case of *Sunil Kumar Parimal* (supra), this Court had found that the Tirhut Physical Education College, Muzaffarpur, had been granted permission to enroll the students in C.P.Ed. and D.P. Ed. courses for the Sessions 1994-1995 to 1995-1996 and was duly recognized by the State Government and this Court held that the NCTE Act will be applicable prospectively to those students who have to undertake the examination after the Act came into force. This Court having found that the aforesaid College was recognized by the State Government prior to the date when the NCTE Act came into force and the NCTE came into existence, directed that the students of the College would be permitted to appear in the examination for the courses of C.P.Ed and D.P. Ed. for the Sessions 1994-1995 and 1995-1996 to be conducted by the Bihar School Examination Board on the next available opportunity. In our considered view, the decision of this Court in *Sunil Kumar Parimal* (supra) squarely applies to the facts of this case also as the College was duly recognized by the State Government during the year 1989-1990 when the appellants were admitted to the C.P.Ed. course and when the NCTE Act had neither been enacted nor come into force.

A 9. The decision of this Court in *Bhagwan Budha Prathmik*  
*Technical Training College Nirmali v. The State of Bihar &*  
*Ors.* (supra), cited by learned counsel for respondent nos. 1 to  
 5, is not applicable to the facts of the present case. In that case,  
 B after the appointed date (17.08.1995) when the NCTE had  
 been established under the NCTE Act, the State Government  
 passed an order dated 16.03.2007 granting recognition to the  
 Teachers' Training College at Nirmali, District Supaul (Bihar)  
 for 1987-1989 onwards and this Court held that after the  
 appointed date the State Government cannot exercise the  
 C power of recognition nor can the examining body hold  
 examination of the students of a teacher training institute unless  
 the institution was recognized by the Regional Committee of  
 the NCTE as laid down in Section 16 of the NCTE Act. In the  
 facts of the present case, on the other hand, we find that the  
 D order of the State Government granting recognition to the  
 College in which the appellants studied in the year 1989-1990  
 was issued on 09.08.1988, several years before the NCTE Act  
 came into force.

E 10. In *L. Muthukumar & Anr. v. State of T. N. & Ors.*  
 (supra) on which great reliance has been placed by learned  
 counsel for the respondent nos. 1 to 5, some students had filed  
 writ petitions contending that they had undergone secondary  
 grade teachers' training in different training institutes between  
 the period 1989 to 1991 and that they had taken public  
 F examination in May 1992, but their results were not published  
 and certificates were not awarded. The Court found that the  
 institutes, in which they had undergone training, had recognition  
 but the same was withdrawn subsequently by virtue of the  
 judgment in *P.M. Joseph v. State of T. N.* (1993 Writ LR 604)  
 G holding that the orders of recognition had been granted only on  
 extraneous considerations. On these facts, this Court held that  
 as the students had undergone the training in the institutes  
 which were derecognized by virtue of the judgment in *P. M.*  
*Joseph's* case, the prayers of the students for writ of mandamus

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for issuing of mark-sheets and/or diplomas/certificates contrary to the judgment in *P.M. Joseph's* case could not be granted by the High Court. In the facts of the present case, however, the recognition to the College that was granted by the State Government for the years 1989-1990 during which the appellants were admitted in the course had not been withdrawn on the ground that the recognition was granted for extraneous considerations. On the contrary, we find from the record of this case that until 13.04.2004 the recognition of the College had not been revoked by the State Government and on 13.04.2004 the recognition of all non-Government Physical Training Colleges including that of the College in the present case were revoked presumably because the State Government no longer had the power to grant recognition and the non-Government Physical Training Colleges in the State were required to obtain recognition from the Regional Committee of the NCTE under the NCTE Act.

11. We have also perused the decisions of this Court in *St. John's Teachers Training Institute (for Women), Madurai & Ors. v. State of Tamil Nadu & Ors.* (supra), *State of Maharashtra v. Vikas Sahebrao Roundale & Ors.* (supra) and *N. M. Nageshwaramma, etc. v. State of Andhra Pradesh & Anr., etc.* (supra) cited by learned counsel for respondent nos. 1 to 5 and we find that in these decisions this Court has held that the students studying in the unrecognized institutions are not entitled to any relief, interim or final, from the Court for taking examinations. The main reason given by this Court for refusing such relief is that standards of education, sports, administration and maintenance of the Teachers Training Institutes should not be compromised by granting such reliefs. These decisions have no relevance to the facts in the present case in which we find that after inspection of the College the Inspection Committee had submitted a report stating that the College had the required facilities and the teaching and other staff and on the basis of such report the State Government had, in fact,

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A granted temporary recognition to the College by order dated 09.08.1988 and the appellants were admitted in the College during the year 1989-1990 when the recognition granted by the State was in force.

B 12. In the result, we allow this appeal, set aside the impugned order of the High Court and direct the Bihar School Examination Board to conduct the C.P.Ed. examination for the appellants as soon as possible. No costs.

B.B.B.

Appeal allowed.