**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**CRIMINAL MISCELLANEOUS No.19391 of 2016**

Arising Out of PS. Case No.-46 Year-2015 Thana- C.B.I CASE District- Patna

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Dr. Saryug Kumar S/o Late Narayan Prasad, R/o Bhagat Singh Chowk, P.S.- Kotwali District- Munger.

... ... Petitioner/s

Versus

The State Of Bihar Through Cabinet Vigilance, Patna

... ... Opposite Party/s

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**Appearance :**

| | | |
|---|---|---|
| For the Petitioner/s | : | Mr. Ajay Kumar Thakur, Advocate<br>Mr. Sanjay Sinha, Advocate<br>Mr. Sayed Mohammad, Advocate<br>Mr. Shabbir Alam, Advocate |
| For the Opposite Party/s | : | Mr. Anjani Kumar (L.O.,I/C Vig.)<br>Mr. Amit Kumar Jha, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR**
**CAV JUDGMENT**
**Date : 16-09-2019**

Heard learned counsel for the parties.

2. The petitioner has sought for quashment of order of cognizance dated 15.03.2016 passed by learned Special Judge, Vigilance-II, Patna, in Vigilance Police Station Case No.46 of 2015, corresponding to Special Case No.9 of 2015, whereby cognizance has been taken against the petitioner for the offences under Sections 7/13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The prosecution case is that informant Amrit

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Kumar Singh gave a written complaint to the Superintendent of Police, Vigilance Investigation Bureau, Patna, alleging therein that the informant is a regular student of the Temple of Hahnemann Homeopathic Medical College and Hospital, Munger (hereinafter referred to as 'THH College') where the petitioner was In-Charge Principal. The informant passed in theory papers for four and half years of Bachelor of Medicine and Surgery in the year 2013. Thereafter, the petitioner joined the House Surgeon-ship on 16.05.2014 and the House Surgeon-ship completed on 16.05.2015. Allegation is that the informant had to take certificate of the House Surgeon-ship as well as certificate of his character from the petitioner being Principal of the College and petitioner demanded Rs.50,000/- (Fifty thousand) to provide the certificate. The informant prayed for taking appropriate action against the Principal.

Thereafter, the Vigilance Bureau constituted a raiding team and raided the petitioner who was caught red handed while accepting bribe of Rs.30,000/-. The notes used in the trap were of Rs.1,000/- denomination. The aforesaid facts appeared in the pre-trap memo as well as post-trap memo. The trap was conducted on 12.06.2015.

4. After investigation the police submitted charge

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sheet and accordingly the impugned order of cognizance was passed. The impugned order reads as follows:

> *"Investigating officer of this case has filed charge sheet for the offence u/s. 7/13(2) read with u/s. 13(1)(d) P.C. Act against the accused person namely Dr. Saryug Kumar I.O. has also filed case diary and Sanction order for prosecution against the accused. Seen, let it be kept on the record and put up the record for hearing on the point of Cognizance.*
>
> *Sd/-*
>
> *Spl. Judge Vig-II*

*Later on:*

> *Heard, Special P.P. for the vigilance on the point of cognizance.*
>
> *It is the submission of the Spl. P.P. that Investigating Officer has submitted the Charge Sheet for the Offences u/s. 7/13(2) read with u/s. 13(1)(d) P.C. Act against the accused person namely Dr. Saryug Kumar. I.O. has also filed sanction for prosecution against the accused. Learned Special P.P. prayed that Cognizance may be taken in respect of the offence under P.C. Act as specified because a prima facie case made out against the accused person.*
>
> *Perused the police papers including the F.I.R., Charge Sheet, Sanction*

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*Order and case diary, I find that there is sufficient materials against the accused for proceeding further. Accordingly cognizance is taken for the offence u/s. 7/13(2) read with u/s. 13(1)(d) P.C. Act against the accused person namely Dr. Saryug Kumar. Put up the record on the date fixed for further hearing."*

5. The challenge is on the ground that THH College, Munger, is a charitable institution established in the year 1954 with the object of promoting and educating knowledge of Homeopathic Medicines and Medical aid to the general public, especially the poor. The College was registered on 04.11.1963 and the petitioner was appointed as In-Charge Principal of the College on 29.06.2012 by the ad hoc governing body functioning to look after the management and administration of the College. According to the petitioner, the College is a private and unaided institution. The appointment of the Principal is done by the governing body and neither the University nor the government had any control over it. According to the petitioner, in the aforesaid circumstance the petitioner cannot be said to be a "Public Servant" as defined under Section 2(c) of the Prevention of Corruption Act. Therefore, the petitioner cannot be prosecuted for any alleged offence committed under the Prevention of Corruption Act.

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Moreover, the Vice Chancellor of Baba Saheb Bhimrao Ambedkar Bihar University, Muzaffarpur, who has accorded sanction to prosecute, is not an authority much less the competent authority to accord sanction and the learned Special Judge has ignored this lacunae while taking cognizance against the mandate of requirement of Section 19(1) of the Prevention of Corruption Act. According to the petitioner, the material collected during investigation were not placed before the sanctioning authority nor the order dated 24.11.2015 according sanction, at Annexure-C, depicts that the competent authority applied its mind on the basis of material available on record to accord sanction. Hence, the entire exercise is vitiated in law.

6. Thus, the challenge of the impugned order is mainly on the ground that the petitioner is not a Public Servant, the Vice Chancellor is not a competent authority to accord sanction and the material against the petitioner collected during investigation were not placed before the sanctioning authority for consideration.

7. Mr. Ajay Kumar Thakur, learned counsel appearing for the petitioner, submits that Section 19(1) of the Prevention of Corruption Act bars cognizance of an offence punishable under the referred provisions of the Prevention of

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Corruption Act except with the previous sanction of the competent authority referred in Clause (a), (b) and (c) thereof.

8. Since the complainant was defaulter in attendance in the College which would be evident from Annexure-4, which is register of the attendance of the internees. Therefore, the petitioner was not entitle to get any certificate of completion of the course of internship and just to pressurize, the present false case was lodged. In fact, the complainant was to deposit fine as per rules and regulations of the College to allow him further course of internship and in absence of payment of fine the petitioner was not allowing him which infuriated the complainant.

Learned counsel contends that the requirement of establishment of a case of failure of justice when any error, omission and irregularity in sanction is noticed is only in respect of the matter which comes up in appeal, confirmation or revision after conclusion of the trial and is does not do away with the requirement of Section 19(1) which is a pre-trial stage matter and if the Special Judge failed to look into the matter correctly and took cognizance without verifying the fact that petitioner was not a public servant nor the Vice Chancellor was a competent authority to accord sanction and the materials

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against the petitioner were not placed before the sanctioning authority. The impugned order is vitiated in law and the appellate Court can examine this issue without any pleading or proof of failure of justice. Moreover, this one is a case of failure of justice. If the matter would have gone to the competent authority (the governing body of the college), the authority would have well visualized that any demand of money by the petitioner from the complainant was a fine to allow the complainant to complete his internship and was not a bribe. The Vice Chancellor had no such occasion to examine this aspect nor he examined it. Hence, the act of Vice Chancellor in grant of sanction has caused failure of justice.

9. Learned counsel for the petitioner has placed reliance on the judgment of Hon'ble Supreme Court in the case of **Nanjappa Vs. State of Karnataka** reported in **(2015) 14 Supreme Court Cases 186**.

10. The respondents in their counter affidavit dated 16.11.2016 asserted that Baba Saheb Bhimrao Ambedkar Bihar University, Muzaffarpur, granted affiliation to the THH College by Resolution No. B-3859 dated 19.06.1985. The Ayush Ministry of the Government of India also accorded recognition to the College on recommendation of Central Homeopathy

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Council, New Delhi. Thereafter, the college received aid of Rs.1,60,000/- from the Ministry of Health and Family Welfare vide letter No.R-14013/5982 Homeo (Vol.-II) dated 26.03.1985. The University informed through its letter dated 19.02.2016 to the Vigilance authorities that the said college deposited Rs.4,441/- as registration fee of the student, Rs.81,000/- as examination fee and again Rs.1,27,850/- as examination fee. Apart from that the college was allowed fund of Rs.46,91,000/- by the Directorate of Ayush Health Services through the District Project Officer, District Collectorate, Munger vide memo No.151 dated 27.06.2017. The Vice Chancellor had dissolved the governing body of the College and constituted an ad hoc governing body. The order of the Vice Chancellor was challenged by the then Principal Dr. Arun Kumar in CWJC No.13814 of 2012 before this Court. That writ application was disposed of with direction to the Vice Chancellor to ensure a regular governing body in terms of Section 60 of the Bihar State Universities Act, 1976.

11. In the second counter affidavit dated 22.08.2019, the respondents brought certain material on the record to substantiate that initially the Superintendent of Police, Vigilance had written a letter of request for grant of sanction to

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the District Magistrate, Munger vide Annexure-A. Annexure-A would show that details of the material against the petitioner were placed before the District Magistrate,Munger.

12. Since the District Magistrate, Munger, found himself not competent to accord sanction he transmitted the entire papers received by him to the Vice Chancellor of Baba Saheb Bhimrao Ambedkar Bihar University, Muzaffarpur, through his letter dated 09.08.2015 at Annexure-C. Therefore, according to the respondents the entire material for application of mind by the sanctioning authority was placed before the sanctioning authority.

13. Mr. Anjani Kumar, learned Senior Counsel, appearing on behalf of the Vigilance Department, submits that the petitioner is a public servant within the meaning of Section 2(c)(iii) as the College was receiving aid by the government. The definition does not controls and confines that the aid should be a regular aid. He next submits that it has been well settled by a catena of judicial pronouncement that whenever the order of the Special Judge is challenged on the ground of error, omission and irregularity in sanction, the appellate Court is bound to consider whether the error, omission or irregularity has caused a failure of justice. Section 19(1) of the Prevention of Corruption

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Act is a matter of procedure and does not go to the root of the jurisdiction and once the cognizance has been taken by the Special Judge under Cr.P.C. its validity cannot be challenged before the Superior Court unless failure of justice has been caused due to error, omission and irregularity in grant of sanction.

14. Learned senior counsel contends that whether the materials were placed before the sanctioning authority or not is the subject matter of trial because the disputed question of fact cannot be agitated or decided by this Court while exercising this extra-ordinary jurisdiction.

15. Section 19 of the Prevention of Corruption Act, 1988, is being reproduced below:

> *"19. Previous sanction necessary for prosecution. —(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014) —*
>
> *(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;*
>
> *(b) in the case of a person who is*

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*employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;*

*(c) in the case of any other person, of the authority competent to remove him from his office.*

*(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.*

*(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) —*

*(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has, in fact, been occasioned thereby;*

*(b) no Court shall stay the proceedings under this Act on the ground of*

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*any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;*

*(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any inter-locutory order passed in any inquiry, trial, appeal or other proceedings.*

*(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.*

*Explanation.- For the purposes of this section,-*

*(a) error includes competency of the authority to grant sanction;*

*(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the*

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*instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.*"

16. Under Section 19(1)(c) of the Prevention of Corruption Act, which is application in this case, the authority competent to grant sanction would be the authority who is competent to remove the petitioner from his office. The petitioner is not specific either in the writ petition as to who is the competent authority to remove him from his office. The petitioner has simply asserted that the Vice Chancellor is not a competent authority to remove him from service. Though in the third counter affidavit it is asserted that the governing body of the college is competent authority to remove from the service and to accord sanction.

17. Admittedly, the College of the petitioner was receiving occasional aid from the Government. This fact has been admitted in the writ application and no explanation or reason for such aid is acceptable in view of the definition of the 'public servant' in Section 2(c)(iii) of the Prevention of Corruption Act, which reads as follows:

*"2(c)(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State*

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*Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956)"*

18. Evidently, the petitioner is in service in a college governed and controlled by the Bihar Universities Act and the college is also receiving government aids. Therefore, it is held that the petitioner is a public servant within the meaning and explanation of the term 'public servant' in the Prevention of Corruption Act.

19. From the material brought on the record it cannot irresistibly be held that the materials, which were collected during investigation against the petitioner, were not placed before the sanctioning authority. However, the sanction order, at Annexure-C, does not in clear terms speaks that materials collected were considered.

20. In the case of **P.L. Tatwal vs. State of Madhya Pradesh** reported in **(2014) 11 Supreme Court Cases 431,** the Hon'ble Supreme Court noticed following principles laid down in an earlier judgment referred below:

*"14. After referring to subsequent decisions, the main principles governing the issue have been culled out at para 14 which reads as follows: (State of Maharashtra V.*

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*Mahesh G. Jain, (2013) 8 SCC 119)*

*14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.*

*14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.*

*14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.*

*14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.*

*14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.*

*14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.*

*14.7. The order of sanction is a*

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*prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity."*

21. From the aforesaid enunciation it is evident that the sanction order may expressly show that the sanctioning authority had perused the material placed before it and after consideration of the circumstances has granted sanction for prosecution. However, the prosecution is also at liberty to prove by adducing evidence during trial that the material was placed before the sanctioning authority and the sanctioning authority recorded its satisfaction after perusal of the material placed before it. Therefore, the issue is subject matter of the trial as to whether the materials collected against the petitioner were placed before the sanctioning authority or not. It is further evident that the sanction order may show consideration of material placed before it. But if the sanction order lacks on the point that would not vitiate the sanction because the prosecution has liberty to prove by evidence during the course of trial that material collected were placed before the sanctioning authority and the same was considered by it.

22. In **Nanjappa case (supra)** the following

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principles were stated in paragraphs 23.1 to 23.5:

> *"23.1. It was argued on behalf of the State with considerable tenacity worthy of a better cause, that in terms of Section 19(3), any error, omission or irregularity in the order sanctioning prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of Explanation to Section 4, "error includes competence of the authority to grant sanction". The argument is on the face of it attractive but does not, in our opinion, stand closer scrutiny.*
>
> *23.2 A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by the Special Judge in appeal, confirmation or revisional proceedings on*

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*the ground that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub-section(3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1).*

*23.3 Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same.*

*23.4 The language employed in sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub-section (4) according to which the appellate or the revisional Court shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have*

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*regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub- sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher Court and not before the Special Judge trying the accused.*

*23.5 The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning the prosecution under Section 19(1). Failure of justice is, what the appellate or revisional Court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of*

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*being urged in appeal or revision."*

23. Thus, it is evident that whenever the sanctity of sanction order is challenged before the higher Court and the Court finds that there is error, omission and irregularity in grant of sanction, it shall examine whether such error, omission and irregularity has caused failure of justice. The Special Judge is competent to pass necessary order when it goes to its knowledge that error, omission and irregularity has been committed while according sanction. However, once the Special Judge applied its mind inasmuch as considered the order of sanction at the time of cognizance and recorded an order of cognizance it cannot be assailed unless a failure of justice has occasioned. Thus, the issue is whether the error, i.e., competency of the authority to grant sanction, is such that it has cause failure of justice.

24. The statement of the respondents in counter affidavit that college of the petitioner was granted affiliation by Baba Saheb Bhimrao Ambedkar Bihar University, Muzaffarpur, vide Resolution No. B-3859 dated 19.06.1985 has not been controverted by the petitioner. The term 'affiliated college' has been defined under Section 2(c) of the Bihar State Universities Act, 1976 "as educational institution having received privileges of the University according to the provisions of this Act and

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University Statutes relating thereto". The term 'College' has been defined in Section 2(f) as "an institution maintained or controlled by the University ….". In this case the college of the petitioner is controlled by the University after affiliation in the manner narrated below.

Under Section 10(5) of the Act- The Vice-Chancellor shall be the principal executive and academic officer of the University, the Chairman of the Syndicate and of the Academic Council and shall be entitled to be present and speak at the meeting of any authority or other body of the University and shall in absence of the Chancellor preside over meetings of the Senate and of any convocation of the University.

Under Section 10(8) of the Act, the Vice-Chancellor shall have the power to visit and inspect the Colleges and the buildings, laboratories, workshops and equipments thereof and any other institution associated with the University and he shall have the right of making an inquiry or causing an inquiry to be made, in like manner in respect of any matter connected with such Colleges and institutions.

As per Section 10(9), the Vice-Chancellor shall address the Principal of such College and with reference to the result of such inspection or inquiry and, thereupon, it shall be

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the duty of such Principal to communicate the views of the Vice Chancellor to the governing body of the College and to report to the Vice Chancellor such action, if any, taken or proposed to be taken upon the result of such inspection or inquiry.

Under Section 59 of the Bihar State Universities Act, 1976, there is provision regarding relation of affiliated Colleges with the University, which provides that relations of the affiliated College with the University shall be governed by the the statutes to be made in that behalf, and such Statutes shall provide in particular for the exercise by the University of the of the following powers in respect of the Colleges affiliated to the University.-

(1) ……

(2) to approve the action taken by the governing bodies of such colleges in regard to creation of posts of teachers, their appointments, dismissal, discharge, removal from service, termination of service and determination of term of office and to approve the deputation of teachers to the intermediate College delinked from the affiliated College.

Vide Clause (28) of Statute No.32- The Syndicate may on its own motion or at the instance of the Vice-Chancellor suspend the Governing Body for a specific period or dissolve a

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Governing Body and order its re-constitution or cancel grant-in-aid to the college concerned in the circumstance mentioned in Clause (28). It is evident that there is pervasive administrative and economic control of the University on the affiliated College.

25. The manner of appointment of teachers in affiliated colleges after process of selection by a selection committee constituted under the provisions of Section 57(b) of the Act and power of the Vice Chancellor to nominate three experts and other persons as member of the selection committee referred under Section 57(b) of the Universities Act would reveal that the Vice Chancellor exercises control over management and appointment of teachers in the affiliated colleges. Under Section 60(4) of the Act, the Vice Chancellor have power to constitute an ad hoc committee for the management of the college so long as governing body is not constituted in terms of the provisions contained in sub-section (1) of Section 60 of the Act. In this case, the Vice Chancellor of the University had constituted an adhoc committee and the constitution was challenged by the then Principal of the College before this Court in CWJC No.13814 of 2012 and the writ application was disposed of on 03.07.2013 with a direction to the Vice Chancellor to ensure that a regular governing body in

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terms of Rule 60(1) of the Act is constituted within the time mentioned in the order. A copy of the order is at Annexure-2. In the writ petition, the then Principal admitted that the College was affiliated to the Baba Saheb Bhimrao Ambedkar Bihar University, Muzaffarpur.

26. The management and constitution of the governing body is mentioned in Statute No.32 of the Statutes made by the statutory authority, i.e., the Senate of the University. Since the constitution of governing body consists of one representative of the University nominated by the Syndicate. One government officer not below the rank of Sub-Divisional Magistrate posted in the district and nominated by the Syndicate and one member either of Parliament or State Legislature nominated by the Syndicate. It is evident that there is control of the University even on the constitution of governing body.

27. Learned counsel for the petitioner placed reliance on Statute No.24 which provides that subject to the provisions of the statutes made in that behalf, teachers of every admitted College shall be appointed within the budgetary provisions and may be suspended, dismissed or discharged by the governing body in terms of the provisions laid down in the

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ordinance and the statutes.

28. The aforesaid power of the governing body is subject to the statutory provisions in this behalf and has to follow the statutes made in this regard. Since the Act and the Statute, as referred above, itself provides that the governing body shall consist of some members nominated by the Syndicate coupled with the power of the Syndicate and the Vice-Chancellor even to suspend the governing body, which is action taking authority as well as power of the Syndicate to approve the action of dismissal and removal from the service by the governing body. It is evident that the governing body is not a supreme body to dismiss and remove from service any of its employee; rather the University is supreme body under the Act and the Statue made thereunder. The pervasive control of the University on the governing body is established by the statutory provisions discussed above.

29. Learned counsel for the respondents has placed reliance on the case of **State of Tamil Nadu Vs. T. Thulasingam and others** reported in **AIR 1995 Supreme Court 1314,** for his submission that if the sanction has been accorded by the authority superior to the authority competent to remove the petitioner from the office, it does not get invalidated.

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It could be invalid if the sanction had been granted by the authority subordinate to the authority who had to grant the sanction.

30. In the case in hand, even it is assumed for argument sake that governing body is authority competent to grant sanction, the grant of sanction by a superior authority to that of the governing body cannot be faulted with as invalid and suffering from error in grant of sanction leading to a failure of justice.

31. Therefore, I do not find any merit in this application. Accordingly, it stands dismissed.

32. However, it is made clear that the trial Court shall not be prejudiced by any observation in this order while deciding the issue of validity of sanction during the trial and the same shall be decided according to law.

**(Birendra Kumar, J)**

Mkr./-

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