

(2015) 08 AHC CK 0022

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 60876 of 2013

Akhtar Ali Ansari and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

University Grants Commission Act, 1956 — Section 22, 3

Citation : (2015) 8 ADJ 182 : (2015) 5 ALJ 645 : (2015) 4 ESC 2354 : (2016) 1 SCT 358

Hon'ble Judges : D.Y. Chandrachud, C.J.; Dilip Gupta, J.; Yashwant Varma, J

Bench : Full Bench

Advocate : Rahul Agarwal, for the Appellant; C.B. Yadav, Additional Advocate General, Shashank Shekhar Singh, Additional Chief SC, H.P. Mishra, Rizwan Ali Akhtar, V.P. Mathur and V.P. Varshney, Advocates for the Respondent

Judgement

Dr. D.Y. Chandrachud, C.J.—While dealing with a writ petition filed by two Junior Engineers in the Rural Engineering Department at Aligarh, a Division Bench of this Court, finding itself not to be in agreement with an earlier decision rendered on 10 May 2013 in Raj Kishore Pandey and another v. State of U.P., Writ-A No. 29640 of 2012, referred the following questions for resolution by the Full Bench:

"(i) Whether the Division Bench in its judgment dated 10.5.2013 has rightly proceeded to observe that the degrees through off-campus centres in relation to the disputed Universities referred to hereinabove have been validated as per the Government Order dated 4.3.2013 and are duly recognized in law, and if not, then whether the Division Bench was correct in upholding the degrees as recognized on the basis of the said Government Order?

(ii) Whether the Government Order dated 4.3.2013 amounts to validating such degrees that are otherwise invalid in view of the communications of the University Grants Commission and All India Council for Technical Education?

(iii) Whether the view taken by the Division Bench without assessing the validity

of such degrees can be said to be justified only on the mere recital contained in the Government Order dated 4.3.2013?

(iv) Whether the Government Order by itself is a valid executive instruction proceeding to cancel an administrative communication with one of the contenders on 1.1.2010, and if not then whether the view expressed by the Division Bench upholding the same can be said to be valid in law?"

Raj Kishore Pandey, in whose writ petition the judgment of the earlier Division Bench was rendered on 10 May 2013 is, in fact, impleaded as the fourth respondent to these proceedings. In order to appreciate the background in which the reference has been made, a brief statement of the material facts would be necessary.

2. The petitioners are Junior Engineers who claim to have obtained their Bachelor of Engineering degrees from the Aligarh Muslim University. The petitioners were employed as Junior Engineers in the Rural Engineering Department at Aligarh. Under the Service Rules as they prevailed at the material time, 8.33 percent of the promotional posts were reserved for those Junior Engineers who had obtained valid degrees from a recognized institution on the first day of the recruitment year. The petitioners claimed to be qualified for promotion on the post of Assistant Engineers against the aforesaid 8.33 percent quota. By a letter dated 29 May 2012, a list of names was forwarded to the Special Secretary in the Rural Engineering Department including the names of the petitioners as being eligible for promotion on the post of Assistant Engineers. The fourth respondent filed a writ petition claiming that he was eligible for promotion on the post of Assistant Engineer but his case was not considered on the basis of an order dated 1 January 2010 of the State Government. The order dated 1 January 2010 was issued by the Joint Secretary in the Minor Irrigation and Rural Engineering Service in the form of a communication to the General Secretary of the Diploma Engineering Sangh in pursuance of a letter dated 30 June 2009. The subject-matter of the communication related to the legality of degrees obtained from two Universities namely (i) JRN Rajasthan Vidyapeeth; and (ii) IASE Deemed University, Rajasthan. The communication dated 1 January 2010 indicated that the All India Council for Technical Education (AICTE) had clarified that it had not granted any permission to the two Universities for conducting the B Tech Degree Course. Subsequently, on 4 March 2013, the Principal Secretary to the State Government addressed a communication to the Director and Chief Engineer of the Rural Engineering Department. By the communication, it was stated that AICTE by a letter dated 17 May 2010 had clarified and subsequently reiterated in a disclosure of information under the Right to Information Act 2005 that there was no necessity for AICTE to grant its approval to Universities in respect of faculties/courses. On this foundation, the Principal Secretary stated that the earlier communication dated 1 January 2010 was being withdrawn and that consequential service benefits should not be withheld from the Junior Engineers who had B Tech Degrees from the aforesaid two institutions.

3. When the writ petition filed by the fourth respondent came up for hearing before the Division Bench, the Court was informed in a counter-affidavit that the State Government by its letter dated 4 March 2013 had cancelled its earlier communication dated 1 January 2010 as a result of which there was no legal impediment in the inclusion of the name of the fourth respondent in the eligibility list under the degree quota in order of seniority. The Division Bench accordingly disposed of the writ petition in terms of the following directions:

"In such view of the matter, since after the issuance of the Government Order dated 4.3.2013 the degrees of the petitioners are duly recognized by the State Government, the case of the petitioners deserves to be considered for promotion by the said authorities.

Accordingly, this writ petition stands allowed to the extent that the names of the petitioner shall be included in the list of eligible candidates for promotion as Assistant Engineer under the degree quota and shall be considered for such promotion in the order of seniority. Since the petitioner No. 2 is due to retire shortly the respondents may expedite the process of promotion and make every effort that the grant of promotion is finalized as expeditiously as possible. No other prayer has been pressed by the learned counsel for the petitioner.

This writ petition is allowed to the extent as indicated above."

4. In the writ petition which has given rise to the reference before the Full Bench, the grievance of the petitioners was that in the list which was annexed to the letter dated 18 March 2013 forwarded to the Secretary of the Public Service Commission by the Principal Secretary in the Rural Engineering Department, the names of various persons who had obtained B Tech degrees from various off-campus centres including that of JRN Rajasthan Vidyapeeth and IASE deemed University had been included. The contention was that these off-campus centres were not recognized by the University Grants Commission (UGC). In that context, reliance was sought to be placed on a Circular of the UGC dated 9 August 2005 and on a communication dated 13 June 2009 issued by the UGC to all the Vice Chancellors of Deemed Universities stipulating that no Deemed University would be entitled to commence or conduct an off-campus study centre or impart degree courses through a distance mode without the prior approval of the UGC or, as the case may be, the Distance Education Council. The relief which was sought in the petition was the setting aside of the list forwarded under cover of the letter dated 18 March 2013 (and a further letter dated 15 October 2013) and the setting aside of a Government Order dated 4 March 2013 recalling its earlier communication dated 1 January 2010. The petitioners had also sought a mandamus for considering their case for promotion on the post of Assistant Engineer in the Rural Engineering Department. When the writ petition came up for hearing, the Division Bench found itself unable to agree with the view of the earlier Division Bench in the judgment dated 10 May 2013 which, on the basis of the Government Order of 4 March 2013, directed that the name of the fourth respondent be included in the list of eligible candidates for promotion as

Assistant Engineer under the degree quota. Accordingly a reference was made, as we have noted earlier, to the Full Bench by an order dated 13 August 2014.

5. During the pendency of the reference, two material developments have taken place to which it would be necessary to advert. The first development is that the Service Rules have been amended as a result of which the 8.33 percent quota for degree holders in service has been taken away and appointments to the post of Assistant Engineer is to be made 50 percent by way of direct recruitment and 50 percent by way of promotion. At the outset, we may clarify that we are not concerned in these proceedings with the amended rules or the precise contents thereof. The second development which has taken place, is that the fourth respondent, whose writ petition resulted in the order of the Division Bench dated 10 May 2013, has since been promoted in the regular course with effect from 9 July 2015. In that sense, the controversy which arose before the Division Bench which decided the earlier writ petition on 10 May 2013 would cease to have any practical implication since the fourth respondent, it is common ground, has been promoted without availing of the quota which was set apart for degree holders in the ordinary course and not on the basis that he holds a degree from the institution concerned. On this aspect, there is no dispute before the Court.

6. The difficulty which was expressed by the Division Bench in its referring order, however, requires some clarification in view of the observation which is contained in the earlier judgment to the effect that after the issuance of the Government Order dated 4 March 2013, degrees of the nature obtained by the fourth respondent would be treated as having been duly recognized by the State Government. The first issue that, hence, falls for consideration is whether, as a matter of fact, there was any such recognition by the State Government of the validity of degrees obtained from JRN Rajasthan Vidyapeeth and IASE Deemed University, Rajasthan, as held by the Division Bench in its judgment dated 10 May 2013.

7. Plainly, reading the communication of the State Government dated 4 March 2013, we do not find any evaluation of the issue as to whether degrees obtained from off-campus centres of the aforesaid two institutions are recognized by the UGC under the University Grants Commission Act, 1956 (UGC Act). All that the letter dated 4 March 2013 indicated was that the AICTE in a communication dated 31 October 2012 in a disclosure under the Right to Information Act 2005, and in an earlier letter dated 17 May 2010 had taken a particular view in regard to the need for its approval in relation to faculties/courses of Universities. This letter does not, in any event, contain an evaluation by the State Government or the statement of a legal position whether a degree obtained from an off-campus centre of the two Deemed Universities is validly recognized by UGC. In fact, at this stage, we may note that on 9 August 2005, UGC issued the following circular:

"It is hereby informed that (I) Janardan Rai Nagar Rajasthan Vidyapeeth (Deemed University), Udaipur (II) Allahabad Agricultural Institute (Deemed University), Allahabad (III) Institute of Advanced Studies in Education of Gandhi

Vidya Mandir (IASE) (Deemed University), Sardarshahr, Rajasthan have been declared as Deemed to be Universities by the Government of India under Section 3 of the UGC Act 1956. These Institutions are empowered to award degrees as specified by the UGC under Section 22 of the UGC Act, 1956.

However above three Deemed Universities have not been permitted to affiliate any College/Institute. These Institutions have also not been allowed to conduct any course through Distance Education Study Centre so far, by the Distance Education Council/UGC.

Needless to mention that prior approval of Distance Education Council, IGNOU Campus, New Delhi-110 067 is also required for starting courses offered under Distance Education mode.

It is for the information of all concerned that no Deemed to be University can start study centres/franchises without the prior approval of UGC and that of State Government where the Centre(s) is/are proposed to be opened. Private franchising is not allowed. Moreover, for starting any UGC approved degree course through Distance mode prior approval of the Distance Education Council is mandatory.

Students are advised to keep these things in mind while getting admission in Deemed to be Universities."

8. This was followed by a communication dated 13 June 2009 of UGC to Vice Chancellors of all Deemed Universities stating specifically that off-campus centres and courses through the distance mode would require the prior approval of the UGC-AICTE-DEC Joint Committee. UGC in its communication stated as follows:

"1. The Deemed to be University shall not open and run the Off-Campus Centre(s)/Off-Shore Campus Centre(s)/establish new department(s)/start new course (s) without obtaining the specific prior approval of the UGC/Government of India by sending the requisite information/documents in the prescribed proforma. The requisite official approval of the proposed Off-Campus Centre(s)/Off-Shore Campus Centre(s)/new departments/new course (s) will take only a prospective effect, and would thereby cover only those students who will be admitted to the proposed centre(s) after issue of formal approval in this regard. Mere submission of proposals in this regard does not in any way guarantee the approval of UGC and the Government of India.

2. The Deemed to be University shall refrain itself from giving misleading advertisements in the newspapers about the constituent units which are not approved. The advertisements should clearly mention about the constituent units approved by the Government of India under the ambit of the Deemed to be University.

3. Under any circumstances, the deemed universities shall not conduct any course(s) under distance mode without the specific prior approval of UGC-AICTE-DEC Joint Committee. The degrees awarded without the prior approval of the

Joint Committee will be treated as unauthorized and invalid. Study Centre(s) established and maintained by the Deemed to be University are only for the purpose of advising, counseling or for rendering any other assistance required by the students used in the context of distance education and no student shall be admitted at these centres.

4. The Deemed to be Universities being unitary institutions are not allowed to affiliate any College(s)/Institution(s), Degrees awarded through such College(s)/Institution(s) against the UGC guidelines will be treated as fake."

9. On 7 May 2014, UGC has, in fact, issued a specific clarification to the Special Secretary in the Rural Engineering Department of the State Government stating that the JRN Rajasthan Vidyapeeth is a Deemed University within the meaning of the UGC Act but that this is confined to regular courses of studies at the main campus and would not authorize the University to conduct any off-campus centre.

10. In an affidavit filed before the Full Bench by UGC, it has been stated that as a Deemed University, JRN Rajasthan Vidyapeeth can award degrees from its main campus through the regular mode. However, the UGC has not granted any approval for running courses through study centres. Moreover, it has been stated that the UGC has not granted any permission either to JRN Rajasthan Vidyapeeth or IASE Deemed University, Rajasthan to conduct courses in the field of Engineering and Technology under the regular mode. Paragraphs 5 to 9 of the affidavit which has been filed in these proceedings by UGC read as follows:

"5. That similarly, the Government of India, Ministry of Human Resource Development on the advice of UGC under Section 3 of UGC Act, 1956 had earlier declared the JRN Rajasthan Vidyapeeth Udaipur, Rajasthan as deemed to be university vide Notification No. F. 9-5/84-U-3 dated 12th January, 1987. The Deemed to be University can award degrees from its main campus in UGC approved courses in regular mode. The Deemed to be University can also conduct the courses allied to its approved courses. The UGC has not granted any approval to this deemed to be university to run the courses through Study Centre(s).

6. That the UGC vide letter No. F. 6-7/2003 (CPP-I) dated 16.3.2004 circulated UGC guidelines for establishing new departments within the campus, setting up of off-campus centre(s)/institution(s)/off shore campus and starting distance education programmes by the deemed universities. The said guidelines have a provision for the deemed to be universities for establishing off-campus centre by the deemed to be universities. Clause 2.2 of the guidelines is reproduced as under:

The new department, new off-campus centre/institution shall be set up only after obtaining approval of the UGC and that of the concerned State Government where such a centre is proposed to be established. The UGC shall cause spot visit/verification of the proposed new departments, new off-campus centre/institutions to verify its infrastructure facilities, programmes, faculty, financial

viability, etc. before giving permission to start the centre. The report of the committee shall be considered by the Commission for its approval.

Similarly, for starting distance education programmes by Deemed to be Universities Clause 4 of these guidelines is reproduced as under:

The Deemed to be University could offer the distance education programmes only with the specific approval of the Distance Education Council (DEC) and the University Grants Commission (UGC). As such any study centre(s) can be opened only with the specific approval of Distance Education Council and UGC.

7. That as per UGC record, the JRN Rajasthan Vidyapeeth and IASE (Deemed to be University), Rajasthan have no off-campus centre.

8. That the UGC has not granted any permission to JRN Rajasthan Vidyapeeth and IASE (Deemed to be University), Rajasthan to conduct courses in the field of Engineering & Technology under regular mode.

9. That the UGC has also not granted any permission to JRN Rajasthan Vidyapeeth and IASE (Deemed to be University), Rajasthan to establish any study centre and/or to conduct courses under distance mode through franchisee."

Evidently, the communication dated 4 March 2013 which was issued by the State Government, was without reference to the stand of UGC and the communication does not also deal with the issue of degrees obtained through off-campus centres in any event. Hence, in our view, it would not be appropriate to read the communication of the State Government dated 4 March 2013 as indicating, as was assumed by the Division Bench in its judgment dated 10 May 2013, that the degrees of the petitioners in that case are duly recognized by the State Government. The communication of the State Government dated 4 March 2013 does not deal with the issue of off-campus centres in any event nor should it be, in our view, treated as having accepted the validity of the degrees obtained from such centres. Any interpretation to that effect in the judgment of the Division Bench dated 10 May 2013 would be, with respect, incorrect and would stand overruled.

11. In view of the aforesaid view which we have taken, we answer the questions referred to the Full Bench by holding that the Division Bench in its judgment dated 10 May 2013 would not be construed to have laid down any principle of law in regard to the validity of degrees obtained through off-campus centres of the Deemed Universities referred to nor does the communication of the State Government dated 4 March 2013 amount to any recognition or acceptance of the validity of such degrees. Since the validity of such degrees obtained through off-campus centres has not been the subject-matter of any decision or analysis in the judgment dated 10 May 2013, we expressly clarify that that judgment would not stand in the way of the Division Bench either in the writ petition to which the present reference relates or any other appropriate case in deciding the issue independently and without being bound by the expression of any opinion in the

judgment dated 10 May 2013. We are also of the view that the State Government should revisit its communication dated 4 March 2013 and take a fresh decision consistent with the position of the UGC on the subject as borne out by the communications which have been placed on the record. In doing this, the State Government shall have due regard to the principles of law laid down in the judgments of the Supreme Court in Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, AIR 2005 SC 2026 : (2005) 2 ESC 129 : (2005) 2 JT 165 : (2005) 5 SCC 420 : (2005) 3 SCR 23 : (2005) AIRSCW 1168 : (2005) 2 Supreme 322 and Kurmanchal Inst. of Degree and Diploma and Others Vs. Chancellor, M.J.P. Rohilkhand Univ. and Others, AIR 2007 SC 2253 : (2007) 8 JT 24 : (2007) 8 SCALE 178 : (2007) 6 SCC 35 : (2007) 7 SCR 191 : (2007) AIRSCW 3931 : (2007) 5 Supreme 376 .

12. Dealing with the provisions of Section 22 of the UGC Act, the Supreme Court in Professor Yashpal (supra) has observed that the right of conferring or granting a degree can be exercised only by a University or an institution deemed to be a University under Section 3 of the UGC Act or an institution especially empowered by an Act of Parliament to confer or grant degrees. The Supreme Court observed as follows:

"Mere conferment of degree is not enough. What is necessary is that the degree should be recognized. It is for this purpose that the right to confer degree has been given under Section 22 of the UGC Act only to a University established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this section provides that "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette. The value and importance of such degrees which are recognized by the Government was pointed out by a Constitution Bench in S. Azeez Basha and Another Vs. Union of India (UOI), AIR 1968 SC 662 : (1968) 1 SCR 833 ."

13. In a subsequent decision in Kurmanchal Institute of Degree & Diploma (supra), the Supreme Court held, while construing the provisions of the UGC Act and the Uttar Pradesh Universities Act 1973, that each University in the country, though recognized by UGC, must have its own territorial jurisdiction, save and except for Central Universities or those specified in legislative enactments. In that context, the Supreme Court observed as follows:

"The submission of the learned counsel that for the purpose of running a distance education course, extra-territorial activities must be carried out may not be entirely correct. It is one thing to say that the University takes recourse to the correspondence courses for conferring degrees or diplomas but it would be another thing to say that study centres would be permitted to operate which requires close supervision of the University. In a study centre, teachers are appointed, practical classes are held and all other amenities which are required

to be provided for running a full-fledged institution or college are provided. Such an establishment, in our opinion, although named as a study centre, and despite the fact that the course of study and other study materials are supplied by the University cannot be permitted to be established beyond the territorial jurisdiction of the university."

14. In the circumstances, we now direct the State Government to consider the entire matter afresh and to take a fresh decision in accordance with the judgments of the Supreme Court explaining the legal position, as noted above while clarifying its stand on the legality of the B Tech degree obtained through off-campus centres of Deemed Universities. The reference before the Full Bench shall, accordingly, stand answered. The writ petition shall now be placed before the regular Bench according to the roster of work for disposal in terms of the present judgment within a period of two months.