

(2013) 02 CAL CK 0090
In the Calcutta High Court
Case No : Writ Petition No. 18075 (W) of 2012

Anath Nath Naskar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Aligarh Muslim University Act, 1920 — Section 12, 12(1), 12(2), 5, 5(1)
Constitution of India, 1950 — Article 30

Citation : (2013) 2 CHN 213

Hon'ble Judges : Arun Mishra, C.J.;Joymalya Bagchi, J

Bench : Division Bench

Advocate : Kaushik Chanda, Debamitra Bhardwaj and Sumitra Das, for the Appellant;Joydeep Kar and Somnath Bose for the Respondent No. 5, for the Respondent

Judgement

1. The question involved in the writ petition is whether the Aligarh Muslim University can set up educational colleges affiliated to it in the State of West Bengal within the purview of the provisions contained in the Aligarh Muslim University Act, 1920 (hereinafter referred to as the said Act). It is averred in the writ petition that the authorities have identified surplus land of Farakka Barrage Project at Rosanpur and Ghora Pakhia Gangin under Jangipur sub-division in the district of Murshidabad for setting up of a college under the affiliation of Aligarh Muslim University. The Ministry of Water Resources conveyed their no objection for transfer of 259.75 acres of land in the aforesaid two mouzas for the purpose of setting up of the said college of Aligarh Muslim University.

2. Under the Right to Information Act, 2005, the petitioner came to know that the land measuring about 288.39 acres has been transferred at a shockingly low price of Rs. 8,30,644/- (Rupees eight lakh thirty thousand six hundred forty four) only. The valuation of the said land has been made at the rate prevailing in the year 1964-65, when the land was acquired in favour of Farakka Barrage Project. It was intimated by the respondent authorities that rule 279(2) of the General Financial Rule framed by the Government of India was followed in valuing the

said land. According to the petitioner, the government has not acted prudently in the transaction, the same is against the public interest. It is contended that the government could not have allotted its property at a paltry sum. The distribution of largesse like allotment of land by the State agencies and/or instrumentalities should always be done in a fair and equitable manner.

3. Earlier, a public interest litigation was filed in the Allahabad High Court, which was dismissed on the ground that the petitioner had no locus standi to move the public interest litigation. The said order of the Allahabad High Court was questioned by filing a SLP before the Hon'ble Supreme Court and the Apex Court allowed the SLP and remanded the matter to the Allahabad High Court for decision on merits.

4. It is submitted on behalf of the petitioner that as per section 5(9A) of the said Act, the University can establish special centres, specialised laboratories or other units for research and instruction within the radius of twenty five (25) kms. of the University Mosque. Thus, it is submitted that a centre beyond 25 kms. of the University Mosque cannot be opened by the university.

5. Section 12(2) of the said Act and the provisions contained in section 5(2)(c) of the said Act is to be read harmoniously so as to mean that area of territorial operation is confined to an area of 25 kms of the University Mosque. Section 5(2) of the said Act cannot authorise the university to open centres everywhere in India.

6. An affidavit-in-opposition has been filed on behalf of the Aligarh Muslim University contending, inter alia, that the writ petitioner is a resident of Howrah district, which is far away from the district of Murshidabad. As such, the writ petitioner cannot file and maintain the writ petition in the public interest.

7. It is contended on behalf of the university that the land in question was acquired in the year 1964 as surplus land and has been rightly allotted to it. There is no illegality in the allotment. In support of such contention, reliance has been placed on the provisions contained in sections 5(1) and 12(2) of the said Act.

8. It is submitted on behalf of the University that after amendment of section 12(2) of the said Act, the university is no longer bound by the restriction of 25 kms. to establish and maintain centres subject to the approval of the Hon'ble President of India, who is the Visitor according to the said Act. The university can establish or set up a centre beyond 25 kms. of the University Mosque. The provision of section 5(9A) of the said Act does not deal with the power of the Visitor. Section 5(1) cannot be said to be redundant, it is to be read along with section 12. In section 12, there is no restriction as to the territorial limit. The said section empowers the university to establish specialised centres and laboratories and other units for research and instruction for furtherance of the object of the University and to promote the educational and cultural advancement of the Muslims of India. According to the University, no case is

made out for judicial review.

9. Mr. Kaushik Chanda, learned advocate appearing on behalf of the petitioner, has urged that the provisions contained in section 5(9A) of the said Act have to be given full effect. It is not open to the Court to add or subtract any provision. In support of his contention, he has placed reliance on the decision of the Hon'ble Supreme Court in the case of Union of India (UOI) and Another Vs. Hansoli Devi and Others,

10. Mr. Chanda has also submitted that Aligarh Muslim University cannot be said to be a minority institution within the meaning of Article 30 of the Constitution of India. In support of such contention, he has relied upon a decision in the case of Dr. Naresh Agarwal Vs. Union of India (UOI) and Others,

11. Mr. Jaydeep Kar, learned advocate appearing on behalf of the Aligarh Muslim University, has submitted that the powers of the University have been dealt with in section 5 of the said Act and the power of it with the sanction of the Visitor has been provided in section 12(2) of the said Act. By way of amendment incorporated in 1972, there is no restriction with respect to the geographical area, when Visitor grants permission for establishment of special centres as contemplated in section 12(2).

12. He submitted that section 5(9A) of the said Act has to be read in the context of power of the University, without sanction of the Visitor, to establish special centres, specialised laboratories or other units, within 25 kms. radius of the University Mosque, for research and instruction.

13. It was also submitted that section 12(1) of the said Act provides that the high schools cannot be established and maintained within the radius of fifteen (15) miles of the University Mosque. However, section 12(2) of the said Act does not contain any geographical restriction, which requires sanction of the Visitor. The Visitor may grant permission to establish and maintain special centres, specialised laboratories or such other institutions for research or instruction as are necessary for furtherance of the objects of the University. The objectives of the said Act find reflection in section 5. No case for interference is made out. The writ petition cannot be said to be sub-serving the interest of public.

14. It is apparent that section 5(1) of the said Act deals with powers of the University to provide for instruction in such branches of learning as the University may think fit, and to make provision for research and for advancement and dissemination of knowledge. Section 5(2)(a) confers power to the University to promote Oriental and Islamic studies and to give instruction in Muslim theology and religion and to impart moral and physical training. Section 5(2)(b) of the said Act confers power to the University to promote study of the religions, civilisation and culture of India, whereas section 5(2)(c) confers power to promote especially the educational and cultural advancement of the Muslims of India. Thus, the powers conferred u/s 5(2) of the said Act are very much clear for the purpose for which the institution is to be established and very wide. In

our opinion, the centres can be opened at some other places also.

15. Section 5(1) and 5(2) of the said Act are reproduced hereunder:-

5. Powers of the University.--The University shall have the following powers, namely:-

(1) to provide for instruction in such branches of learning as the university may think fit, and to make provision for research and for the advancement and dissemination of knowledge;

(2) (a) to promote Oriental and Islamic studies and give instruction in Muslim theology and religion and to impart moral and physical training; (b) to promote the study of the religions, civilisation and culture of India; (c) to promote especially the educational and cultural advancement of the Muslims of India.

16. Section 5(9A) of the said Act deals with the power of the University to establish special centres, specialised laboratories or other units for research and instruction, within a radius of 25 kms. of the University Mosque. Section 5(9A) is reproduced hereunder:-

(9A). to establish within a radius of twenty-five kilometres of the University Mosque such Special Centres, Specialised Laboratories or other units for research and instruction as are, in the opinion of the University, necessary for the furtherance of its objects.

17. A bare reading of the aforesaid provisions makes it clear that the provision contained in section 5(9A) gives the university an independent right to establish its centres within 25 kms. radius of the University Mosque without rider of section 12(2) of the Act. This provision cannot be read so as to curtail the powers of the university conferred u/s 12 of the said Act. Section 12 of the said Act deals with the power to establish and maintain high schools and other institutions, which not contemplated u/s 5(9A) of the Act.

18. Section 12 is independent provision. The provisions contained in section 5(9A) do not confer power to the university with respect to the high schools. There is another difference that in terms of provisions of section 5(9A) the university has power to establish centres, etc. within 25 kms. radius of the University Mosque, whereas section 12(1) confers power to establish high schools, etc. within 15 miles of the University Mosque. The purpose and area mentioned in section 12(1) is not the same as the area mentioned in section 5(9A). With respect to establish other institutions, the provisions contained in section 12(2) of the said Act comes into play. The University has power without territorial fetter to establish centres, specialised laboratories or such institution u/s 12(2) subject to prior sanction of the Visitor as also subject to the Statutes and Ordinances. Section 12 of the said Act is reproduced hereunder:-

12. Power to establish and maintain High Schools and other institutions.--(1) The University shall, subject to the Statutes, have power to establish and maintain

High Schools within a radius of fifteen miles from the University Mosque.

(2) The University may also, with the sanction of the Visitor and subject to the Statutes and the Ordinances, [establish and maintain such Special Centres, Specialised Laboratories or such other institutions for research or instruction as are necessary for the furtherance of its objects either on its own or in cooperation or collaboration with any other institution].

19. The pre-amended provisions of section 12(2) provided the territorial limits of any other institution, whose objects fall within the power of the university as described in section 5 of the said Act. Unamended provision of section 12(2) was an under:-

establish and maintain within the aforementioned limits any other institution whose objects fall within the powers of the University as described in section 5" by the Aligarh Muslim University (Amendment) in Act (34 of 1972), section 8(17-6-1972).

20. In our opinion, the provisions of section 12(2) were amended in the manner so as to remove territorial embargo the visitor can sanction centre anywhere in India. The same cannot be subjected to rider of the provisions of section 5(9A), which would be defeating objective of amendment made in section 12(2) of the Act. There is no dispute with the proposition laid down by the Hon"ble Supreme Court in Union of India vs. Hansoli Devi (supra) that Court cannot add or subtract words in a statute, we are not venturing to do add or subtract words. We are giving plain meaning to the provisions of section 12(2) as amended. We, therefore, hold that decision counter the submissions, which have fallen from the side of the petitioner. It would be in fact adding rider to section 12(2), if we make it subject to section 5(9A) and would defeat objective of amendment made to section 12(2) of the said Act by the Aligarh Muslim University (Amendment) Act, 1972.

21. Consequently, in our considered opinion, it is open to the university u/s 12(2) of the Act with prior sanction of the Visitor and subject to the compliance of the Statutes and Ordinances to establish and maintain any special centre, specialised laboratory or any other institution for research work or instruction without territorial factor of section 5(9A) of the Act, which the university may think it necessary for furtherance of its objects either on its own motion or in co-operation or collaboration with any other institution.

22. In our opinion, the university has the power to establish its institution in the State of West Bengal and for such purpose requisite permission/sanction of the Visitor has been obtained. We find no violation of any of the provisions contained in section 12(2) of the said Act has been made by the university while establishing the institution.

23. Thus, it is permissible to the university to open its institution in the State of West Bengal for furtherance of its objects and for the purpose as mentioned in

section 5(2) of the said Act.

24. We find the writ petition devoid of substance even if the petitioner is given locus to file public interest litigation.

25. The writ petition is merit less and the same is, therefore, dismissed.

26. The parties shall, however, bear their respective costs. Xerox certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.