

(2017) 05 CAL CK 0055
In the Calcutta High Court
Case No : 13987 (W) of 2016

Ashoke Kumar Nandy

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 19-05-2017

Acts Referred:

[University Grants Commissions Act, 1956](#), Section 26

Citation : (2017) 05 CAL CK 0055

Hon'ble Judges : Nishita Mhatre, Tapabrata Chakraborty

Bench : DIVISION BENCH

Advocate : P.R. Mitra, Ashim Kumar Roy, Arunava Ghosh, Supriyo Chattopadhyay, Paromita Malauar (Dutta), Priyankar Saha, Ankita Upadhyay, Siddhartha Lahiri, Anil Kumar Gupta, Sougata Bhattacharya

Final Decision : Dismissed

Judgement

1. The grievance sought to be ventilated through the instant public interest litigation is that various colleges and institutions in the State of West Bengal are admitting students to impart lessons in various disciplines though the said colleges and institutions are not affiliated to universities recognised by the University Grants Commission (hereinafter referred to as UGC) and the courses offered are not approved by UGC and that in spite of having full knowledge about such illegal functioning of the said institutions, the State authorities have maintained a deceptive silence and have taken no steps against the said institutions and taking advantage of such inaction, the said institutions, including the respondent nos.5 to 9 herein, are publishing advertisements seeking applications for admission in three years degree programmes in Hotel Management and other disciplines claiming to be approved by UGC (Government of India, Ministry of HRD) and recognised by State Universities.

2. Mr. Ashim Kumar Roy, learned advocate appearing for the petitioner submits that the University Grants Commissions Act, 1956 (hereinafter referred to as the UGC Act) is a Parliamentary legislation enacted under Entry No.66 List I of the

seventh schedule to the Constitution of India. In exercise of the authority under Section 26, UGC has framed the University Grants Commission (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003. The said regulations have been made with the object of providing for a regulatory mechanism for establishment and operation of private universities and for safeguarding the interest of the student community with adequate emphasis on the quality of education and to avoid commercialization of higher education and also to maintain standards of teaching, research and examination. Regulation 3.3.1 categorically provides that "the off campus centres and/or study centres shall be set up with the prior approval of the UGC and that of the State Government(s) where the centres is/are proposed to be opened".

3. He further submits that the question as to whether a university established in a State can operate beyond the territorial jurisdiction of the State came up for consideration before the Hon''ble Apex Court in the case Prof. Yashpal and Another -vs- State of Chhattisgarh & Ors., reported in (2005) 5 SCC 420 and Hon''ble Apex Court held that no university is authorised to open study centres/ off campus centres beyond the territorial jurisdiction of the State. The UGC has taken a serious view of misleading advertisements appearing in various regional newspapers as well as national daily newspapers offering opportunities for university degree beyond territorial jurisdiction and the general public, students and other stakeholders have been cautioned about such activities by issuing public notices on 4th June, 2015, 25th January, 2016 and 28th April, 2016. By public notice, UGC also declared that the Annamalai University and the Periyar University are illegally continuing to offer various programmes through distance learning mode in blatant violation of the norms, guidelines and directives of the UGC.

4. Records reveal that by an order dated 12th August, 2016 petitioners were directed to implead the Annamalai University and the Periyar University. Such order was duly complied with and the said universities were impleaded and notices were served upon them, however, no one appeared on their behalf. This Court by an order dated 13th January, 2017 restrained respondent nos.5 to 13 from starting the admission process for the year 2017-18 and from admitting students in distance learning programmes in the academic year 2016-17, unless they have obtained recognition from the UGC and are functioning within the territorial jurisdiction as mentioned in the case of Prof. Yashpal and Another Vs. State of Chhattisgarh and Another, reported in (2005) 5 SCC 420. By the said order the UGC authorities and the State were also directed to submit reports as regards the issue raised in the writ petition and pursuant to such direction only UGC has filed an affidavit. Aggrieved by the said interim order, the respondent nos.5 to 9 have filed vacating applications being CAN 968 of 2017, CAN 970 of 2017, CAN 978 of 2017 and CAN 2787 of 2017.

5. Placing reliance upon the said affidavit, Mr. Gupta, learned advocate appearing for UGC submits that the University Grants Commission (Distance Education

Bureau) in short UGC (DEB) conducted an enquiry in respect of the Universities, namely, Annamalai University and Periyar University and the institutes being respondent nos.5 to 9. The Distance Education Council, IGNOU did accord post-facto approval to the Annamalai University, Annamalainagar, Tamil Nadu for offering programmes through distance mode. To consider the extension of recognition for the year 2015-16, UGC by a letter dated 29th May, 2015 requested all the universities including Annamalai University to send an affidavit in a standard format which was provided by UGC specifically incorporating clause (XIV) to the effect that "the territorial jurisdiction in respect of Universities for offering programmes through distance mode will be as per the policy of UGC on territorial jurisdiction and opening of off campuses/centres/study centres as mentioned in the UGC notification No. F. 27-1/2012(CPP-II), dated 27th June 2013, a copy of which is posted on the UGC website www.ugc.ac.in/deb". Annamalai University submitted an affidavit but it did not agree to the condition of territorial jurisdiction stating that "The University will not consent clause (XIV) since the territorial jurisdiction issue is pending before the Hon"ble High Court of Madras in MP No.1 of 2005 in WA. 606/2015". UGC, therefore, did not accord recognition for distance education programme to the said university for the year 2015-16 and by a letter 14th August, 2015, the Registrar of Annamalai University was also informed about such decision and the university was directed that it shall not admit any student for open and distance learning programmes during the academic year 2015-16 and that the university shall be held liable/responsible if any student is admitted without getting the requisite prior approval from UGC. Despite such intimation and direction, Annamalai University issued the admission notification for 2015-16 in the national daily indicating that student of any State can apply. The Periyar University also did not abide by the territorial jurisdiction policy of UGC and as such the Annamalai University and the Periyar University were denied recognition for academic year 2016-17 and onwards for distance education learning as would be explicit from the memorandum dated 16th September, 2016. In spite of repeated reminders, the State authorities have taken no steps against the respondent nos.5 to 9 though the said institutes are admitting students without having any authority to conduct the distance education courses and having no affiliation to universities recognised by UGC.

6. Mr. Arunabha Ghosh, learned senior counsel appearing for the respondent no.9 submits that the said institute has been imparting education in the category of Hotel Management and other related commercial courses for a considerable period of time. From the very inception, the said institute has been granted recognition by the respondent no.10 in the form of letter of provisional authorisation and the same has been renewed in every academic year. Such authorisation is renewed upon inspection and upon ascertaining that the recognition standards are fulfilled. UGC abruptly issued a notice to the various Universities including Annamalai University restraining them from enrolling students under it on distance education programme. The said notice was

challenged by the University by preferring a writ petition before the Hon''ble High Court at Madras which was registered as W.P. No.27185 (W) of 2015. The said writ petition was filed on the issue as to whether the admission can be made under the distance education programme for the centres situated outside the territorial jurisdiction of Annamalai University. The said writ petition was heard on 31st August, 2015 when the Hon''ble High Court passed an interim order of stay on the order of UGC. Being oblivious of the said order, UGC issued the circular dated 28th August, 2016 and the same being restricted to the Periyar University and being derogatory to the order of the Court cannot stand in the way towards admission of students by the respondent no.9. The operation of the interim order would delay the admission of the students and completion of the respective courses which would severely affect the students at large.

7. The respondent no.6 has filed a vacating application being CAN 972 of 2017 stating, inter alia, that upon a detailed enquiry, the said institute was granted recognition by the Annamalai University and in support of such contention reliance has been placed upon a letter of authorisation similar to the one annexed by the respondent no.9 in its application being CAN 968 of 2017. In the said application it has also been averred that the said Annamalai University stands recognised by UGC. In the said application reliance has also been placed upon the judgment delivered by the High Court at Madras. The respondent no.7 has filed a vacating application being CAN 2787 of 2017 stating, inter alia, that the writ petition has been filed at the instance of NIMAS which imparts training to students in Hospitality Management and is a trade rival of the private respondents and that the petitioner has no locus standi to prefer the public interest litigation and that the entire pleadings in the writ petition are based on personal grievances. Similar averments as made by the respondent no.6 in the vacating application being CAN 972 of 2017 have been reiterated in the vacating application being CAN 971 of 2017 filed by the respondent no.8. The learned advocates appearing for the respondent nos.5 to 8 have adopted the arguments advanced by Mr. Ghosh.

8. In reply, Mr. Roy submits that the orders passed in the writ petition preferred before the Hon''ble Madras High Court was considered in a writ petition being WP(C) No.04 of 2013 (Sikkim Manipal University -vs- Indira Gandhi National Open University & Others) preferred by the Sikkim Manipal University before the Hon''ble Sikkim High Court and in the judgment delivered on 26th June, 2015 it was observed, inter alia, that the question of territorial jurisdiction of Universities in respect of distance education programme having been settled by the Apex Court in the case of Prof. Yashpal & Anr. and other judgements, the proceedings in the Hon''ble Madras High Court will be of no consequence. Such finding of the Hon''ble Sikkim High Court has not been interfered with by the Hon''ble Supreme Court in the Special Leave Petition preferred against the said judgment and as such the arguments advanced on behalf of the respondent nos.5 to 9 cannot be accepted.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record. The respondent no.9 claims to be an institute approved and recognised by the Annamalai University and in support of such contention reliance has been placed upon a letter of authorisation dated May, 2015. A close scrutiny of the said letter reveals that the same has been issued by a Technical Collaborator of the Annamalai University and not by the Registrar or any other competent authority of the Annamalai University. The Annamalai University has already been delisted from the list of Universities recognised by UGC to conduct distance education programme in the academic year 2016-17 and no document had been produced by the private respondents to show that such delisting has been challenged by the Annamalai University and as such on the basis of the said authorisation letter the private respondents cannot admit students in distance education programmes pertaining to various disciplines. The respondent no.9 had thus illegally published advertisement seeking admission by making an untrue declaration that "all courses are approved by UGC-Dec, Ministry of HRD, Govt. of India". Save and except the said authorisation letter annexed to the application filed by the respondent no.9, no other document has been produced by the respondent nos.5 to 8 to establish that they are affiliated to any university recognised by UGC to conduct distance education programme.

10. It has been argued on behalf of the private respondent nos.5 to 9 that the decision of the Distance Education Council limiting the territorial jurisdiction of a State University was challenged by the Annamalai University in the case of Annamalai University vs The Union of India and the said decision was quashed by the Madras High Court and as such there exists no bar towards recognition of an off-campus centre of a University outside the State. Similar argument was advanced in the case of Sikkim Manipal University vs Indira Gandhi Open University & others and as regards the said issue it was observed "in any case, the question of territorial jurisdiction of Universities in respect of DEP having now been settled by the Apex Court in the decisions discussed earlier, the proceedings in the Hon"ble Madras High Court will be of no consequence". Such finding was not interfered with by the Hon"ble Supreme Court in the Special Leave Petition preferred by UGC challenging the direction of the Sikkim High Court towards protection of the degrees of the students who intervened and others similarly placed who passed out degree course from the Sikkim Manipal University through their study centre in Nepal. While dismissing the special leave petition the Hon"ble Supreme Court observed "insofar as the questions of law raised by the petitioner-University Grants Commission before the High Court were concerned, they have been decided in favour of the petitioner".

11. The supremacy of UGC, an authority created under the UGC Act, 1956, passed by Parliament under Entry 66 List I of the Seventh Schedule to the Constitution of India, in the matter of coordination and determination of standards of education in the country, stands settled. The validity of Regulations 2003 has been upheld in Prof. Yashpal case (supra) and, therefore, there can be no doubt that the universities offering distance education programme are

mandatorily required to follow the same.

12. As the said respondent nos.5 to 9 do not have the jurisdiction and authority to conduct distance education programme and courses, the students admitted in the academic year 2016-17 cannot complete their respective courses in the said institutes. However, the said students of the academic year 2016-17 admitted in the respondent nos.5 to 9 cannot suffer for the fault on the part of the respondents and their interest needs to be protected.

13. For having invited applications stating that the institutes are recognised and approved by UGC and for having admitted the students in the academic year 2016-17 illegally and for the consequential inconvenience caused to the students of the said academic year, the respondent nos.5 to 9 are also liable to compensate the students.

14. For the reasons discussed above, we pass the following directions : (i) Within a period of four weeks from date, the respondent nos.5 to 9 are directed to refund the fees, if any collected from the students for any period beyond the 1st year of the courses which had commenced from the academic year 2016-17;

(ii) Within a period of four weeks from date, the State respondents are directed to accommodate and admit the said students in any other institute/institutes within the State of West Bengal affiliated to State Universities or those approved and recognised by UGC to conduct distance education programme and courses so that they can continue and complete their courses in the respective disciplines without any interruption;

(iii) Within a period of six weeks from date, the said respondent nos.5 to 9 are directed to pay compensation of an amount of Rs. 1 lakh to each of the students admitted in the academic year 2016-17 if they are unable to secure admission to other institutions for the academic year 2017-18 for completing their course;

(iv) The respondent nos.5 to 9 are further restrained from starting the admission process for the year 2017-18 and from admitting students in distance learning mode programmes in the academic year 2017-18;

(v) The respondent nos.5 to 9 are restrained from admitting students for distance learning programmes in the State of West Bengal any further without approval for such courses from the UGC;

(vi) The State respondents are also directed to publish a declaration that the respondent nos.5 to 9 did not have the recognition and approval to conduct distance education programme in the year 2016-17 and do not have the same for the year 2017-18 in any discipline in West Bengal and such publication should be made prominently in English, in Bengali and in Hindi in three newspapers published in the respective languages within a period of two weeks from date;

(vii) The State respondents are directed to intimate the costs incurred for such publication to the respondent nos.5 to 9 and the said respondents shall be bound

to repay the costs to the State authorities within a period of two weeks from the date of such intimation.

15. With the above observations and directions, the writ petition is allowed and all the connected applications are dismissed.

16. There shall, however, be no order as to costs.

17. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.