

(1975) 07 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1 of 1975

Babulal Sharma

APPELLANT

Vs

The Vice-Chancellor and Others

RESPONDENT

Date of Decision : 24-07-1975

Acts Referred:

Constitution of India, 1950 — Article 13, 226, 227
Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 46

Citation : AIR 1976 MP 98 : (1980) ILR (MP) 735 : (1975) JLJ 690 : (1975) 20 MPLJ 620

Hon'ble Judges : R.J. Bhawe, J; J.P. Bajpai, J

Bench : Division Bench

Advocate : B.C. Verma and S.S. Jha, for the Appellant; R.P. Pande, (for Nos. 1, 2 and 4) and L.S. Baghel, for No. 3, for the Respondent

Final Decision : Allowed

Judgement

Bajpai, J.

The petitioner in this case is a registered graduate of Awadesh Pratap Singh University, Rewa. The affairs of the University are governed by the provisions of M. P. Vishwavidyalaya Adhiniyam, 1973 (Act 22 of 1973). By this petition, the petitioner is challenging the registration of respondent No. 3, Shri Ramdhani Mishra, as a registered graduate of the University, and also his election as a member of the Court of the University on the ground that if the respondent No. 3 was not eligible for being registered as a graduate of the University, he could not be elected as a member of the Court representing registered graduates, because such members of the Court could only be from amongst the registered graduates of the University. The ground urged by the petitioner is that the respondent No. 3 is not eligible as per qualifications prescribed u/s 46 of the M. P. Vishwavidyalaya Adhiniyam, 1973 for being enrolled as a registered graduate. For the sake of convenience, Section 46 along with Sub-clauses (a) and (b) are reproduced below :--

"46. The following persons shall, on payment of such fees as may be prescribed by the statutes be entitled to have their names enrolled in the register of registered graduates to be maintained in such forms as may be prescribed by the statutes-

(a) any graduate of the University;

(b) any graduate of at least three years standing of any other University incorporated by law in India and residing within the territorial jurisdiction of the University :

"Provided that a graduate registered as a registered graduate in more than one of the Universities under the enactments repealed u/s 2, shall within a period of six months from the date appointed under Sub-section (3) of Section 1, by a declaration, in such form as may be prescribed by statutes filed before the Registrar of any of the Universities in respect of which he fulfills the conditions laid down in Clause (a) or (b) above exercise his option to be a registered graduate of such University and on exercise of such option he shall cease to be a registered graduate of all the other Universities of which he was a registered graduate before the date aforementioned;

Provided that if any such registered graduate fails to exercise the option under the preceding proviso, he shall, on the expiration of the period of six months from the date appointed under Sub-section (3) of Section 1, cease to be a registered graduate of all the Universities of which he was a registered graduate prior to such date."

The petitioner urges that the respondent No. 3 is not a graduate either of the Awadesh Pratap Singh University or of any other university incorporated by law in India, and, therefore, his registration as a graduate is absolutely illegal being in contravention of the statutory provisions of the Act and consequently, his election as a member of the University Court is also illegal. The petitioner has sought the relief of quashing the registration of the respondent No, 3 as a registered graduate and also the election as a member of the Court of the University.

On behalf of the respondent No. 1, Vice-Chancellor of the Awadesh Pratap Singh University and respondent No. 2 the Registrar thereof, it has been stated that because the University has vide its resolution dated 1-12-1973 recognised the examination of Sahityaratna held by the Hindi Sahitya Sammelan, Prayag, as equivalent to the examination of Bachelor of Arts held by this University, the petitioner could be treated as a graduate of other university incorporated by law in India and has, therefore, been validly enrolled as & registered graduate and accordingly his election as a member of the Court is also valid. The resolution passed by the University has been annexed as Annexure R-3-1 and the contents of the same are also included in Annexure R-1 filed by the University and Annexure A filed by the petitioner himself. According to the resolution, it is clear that the University has simply recognised "Sahitya Ratna Examination" held by

the Hindi Sahitya Sammelan, Prayag, equivalent to B.A. examination of the University and the same was for a limited purpose so as to admit candidates who have passed the Sahitya Ratna examination for M.A. Previous of the Awadesh Pratap Singh University in the same subject in which they have passed the said examination of the Hindi Sahitya Sammelan, Prayag.

The learned counsel for the respondents Nos. 1 and 2 and the learned counsel for the respondent No. 3 contended that degrees are offered by Hindi Sahitya Sammelan, Prayag, on persons who passed the examination of Sahitya Ratna. According to the learned counsel, conferral of such degree by the Sammelan indicates that Hindi Sahitya Sammelan, Prayag, is a University. The learned counsel for the respondents also urged that since Hindi Sahitya Sammelan Prayag is a society duly registered under the Societies Act, it can be treated as a University incorporated by law in India and thus the requirements of Section 46 (b) of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 are fulfilled.

We are unable to accept this contention. It is not possible to interpret the language of Section 46 (b) of the Adhiniyam in the manner suggested by the learned counsel for the respondents. Incorporation of university by law means establishment and incorporation of university by an enactment relating to the incorporation of the university in exercise of legislative powers in item 32 of the State List in VII Schedule of the Constitution of India. If the interpretation of the learned counsel for the respondents is to be accepted, it will mean that 5 or 10 persons, as may be required initially for forming a society can start the activity of taking examinations and issuing certificates and can claim the status of a university, with powers of conferring degree by merely getting themselves registered as a society for the purposes of imparting education under the Societies Act. This can never be the purpose and meaning of the requirements of the language used in Section 46 of the Adhiniyam when it says that a person qualified to be enrolled as a registered graduate shall be either a graduate of the Awadesh Pratap Singh University or a graduate of any other university incorporated by law in India. On behalf of the respondents, it was not disputed that Hindi Sahitya Sammelan, Prayag is merely a Society registered under the Societies Act. Nothing could be shown by the respondents so as to substantiate that Hindi Sahitya Sammelan, Prayag, has been incorporated as a university by any enactment either by the Parliament or by any State legislation in India.

The learned counsel for the respondents urged that earlier there had been enactments made by the Uttar Pradesh Legislative Assembly and thereafter by the Parliament regarding the management of the affairs of the Hindi Sahitya Sammelan, Prayag. It was also urged that the respondent No. 3 passed the examination of Sahitya Ratna during the period these enactments were not quashed by the Supreme Court and, therefore, even if their Lordships of the Supreme Court have thereafter struck down the aforesaid enactments, the status of the respondent No. 3 is not affected. This argument is not at all relevant for the main reason that the enactments made by the State Legislature or by the

Parliament did not incorporate the Hindi Sahitya Sammelan as a university. Those enactments were simply providing for the management of the properties and affairs of the Hindi Sahitya Sammelan in a particular manner and the Sammelan was being compelled to function in accordance with the provisions of the Act. These enactments were struck down by the Supreme Court and the last decision has been reported in *Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others*, . Since the aforesaid enactment does not incorporate the Hindi Sahitya Sammelan as university, there is no question of considering the effect of their being struck down later on by the Supreme Court. In any case, once a law has been struck down as void being in excess of the competence of the Legislative body, it becomes non est from its very inception and rights cannot be claimed except in the matter of penalty on the ground that during a particular period it was operative as having not been quashed by the superior courts. However, we need not go further into this discussion because in view of the substance of the enactment in question, the argument put forth is absolutely irrelevant.

The other ground urged by the learned counsel for the respondents was that the petitioner had the remedy of approaching the Vice-Chancellor for getting the enrolment of the respondent No 3 cancelled and he could also file a petition before the Vice-Chancellor for challenging the election of the respondent No. 3 as a member of the Court. The learned counsel urged that since the petitioner had not availed those alternative remedies, he is not entitled to any relief by this Court in exercise of jurisdiction under Articles 226/227 of the Constitution of India. The petitioner has made & representation to the Chancellor of this University and the same was not entertained by the Chancellor on the ground that the subject-matter could be dealt with by the Vice-Chancellor or the Executive Council. This petition was admitted for final hearing and has been heard on merits by us. The decision in the case depends upon the interpretation of the provisions of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973. It is a case of enrolment of a person as a registered graduate who is not at all a graduate of the Awadesh Pratap Singh University or any other university incorporated by law in India. Parties have been heard at length with sufficient opportunities to make submissions on the basis of documentary evidence regarding the legal position of Hindi Sahitya Sammalen, Pra-yag. It is true that ordinarily this Court could have refused to entertain this petition but since the basic question of interpretation of the provisions of the M. P. Vishwavidyalaya Adhiniyam, 1973 was involved, the petition was admitted and has been heard. Under these circumstances, the availability of alternative remedies does not come as a bar for deciding the matter .and granting necessary relief.

For the reasons stated above, the respondent No. 3 was not entitled to be enrolled as a registered graduate and accordingly he was also not entitled to be elected as a member of the Court, as a representative of Registered graduates. He contested the election as a representative of the registered graduates and persons who were registered graduates could alone be elected as a member of the Court. As such, to hold that the election of the respondent No. 3 as a

member of the Court of Awadesh Pratap Singh University, Rewa was also illegal.

We, therefore, direct that a writ be issued directing the deletion of the name of the respondent No. 3 from the registers of registered graduates of Awadesh Pratap Singh University, Rewa at serial No. 1827. We also quash the election of the respondent No. 3 as a member of the Court of the said University.

The petition is, therefore, allowed. However, there will be no order as to costs. The security amount be refunded to the petitioner.