

(2016) 04 CAL CK 0126
In the Calcutta High Court
Case No : W.P. No. 8292 (W) of 2015

Chayanika Bhattacharya

APPELLANT

Vs

University of Calcutta

RESPONDENT

Date of Decision : 29-04-2016

Acts Referred:

Kavikulaguru Kalidas Sanskrit Vishwavidyalaya (University) Act, 1997 — Section 4(1)
University Grants Commission Act, 1956 — Section 12, Section 25, Section 26

Citation : (2016) 4 CalHCN 332

Hon'ble Judges : Debangsu Basak, J.

Bench : Single Bench

Advocate : Mr. Biswarup Biswas and Mr. Debasish Kundu, Advocates, for the Petitioner; Mrs. Sampa Sarkar, Advocate, for the Respondent No. 2; Mr. Anil Kumar Gupta, Advocate, for the UGC; Mr. S. Banerjee and Mr. S. Ghosh, Advocates, for the Respondent No. 3; Mr. Anjan

Final Decision : Dismissed

Judgement

Debangsu Basak, J.—The petitioner has challenged an order passed by the Registrar, University of Calcutta dated January 9, 2015 by which the University of Calcutta has taken a stand for the degree of M.A. in Sanskrit from Kavikulaguru Kalidas Sanskrit Vishwavidyalaya, Sanskrit University cannot be considered for undertaking a B.Ed. programme under Calcutta University in view of the reasons concerning territorial jurisdiction of such institute.

2. Learned Advocate for the petitioner has submitted that, the petitioner was admitted to the B.Ed. Course in the respondent no. 4. The first semester examination was held in the month of December 2014 and the University of Calcutta being the respondent no. 1 had issued an Admit Card in favour of the petitioner. The petitioner participated in the first semester examination. The results were, however, withheld. Various correspondence ensued and ultimately the respondent no. 1 by the impugned letter dated January 9, 2015 has taken the stand that the petitioner cannot undertake a B.Ed. programme under

respondent no. 1 as the M.A. degree obtained by the petitioner is not valid.

3. Learned Advocate for the petitioner has contended, the petitioner is not guilty of suppression of any fact at the time of admission for the B.Ed. programme with the respondent no. 4. The respondent no. 1 having allowed the petitioner to take the first semester examination is estopped from contending that the petitioner is not entitled to undertake the B.Ed. programme. In support of such contention learned Advocate for the petitioner has relied upon 1990 Volume 3 Supreme Court Cases 23 (Sanatan Gauda v. Berhampur University and others) as well as 2009 Volume 1 Supreme Court Cases page 610 (Guru Nanak Dev University v. Sanjay Kumar Katwal and another).

Referring to 2006 Volume 0 Supreme (P&H) 2310 (Sandeep Kaur and others v. Kurukshetra University, Kurukshetra and others) learned Advocate for the petitioner has submitted that, even if the initial admission to the B.Ed. course is considered to be an irregular admission, then also the authority should declare the results of the petitioner as the petitioner had been permitted to appear in the examination.

4. Learned Advocate for the petitioner has submitted that, the regulations of University Grants Commission (UGC) must be construed to be prospective in nature. The regulations of UGC relied upon by the respondent no. 1 in the affidavit of the respondent no. 1 relates to period subsequent to the petitioner having taken admission in the B.Ed. course. Therefore, the candidature of the petitioner for the B.Ed. course cannot be considered on the basis of the UGC regulations sought to be relied upon by the respondent No. 1. The regulation of UGC has prospective effect. In support of such contention learned Advocate for the petitioner has relied upon All India Reporter 2012 Madras page 170 (Government of India, Ministry of Human Resource Development v. SRM University and others) and 2014 Volume 0 Supreme (Gau) page 247 (Punal Kumar Das and 5 Ors. v. The State of Assam and 11 Ors.). Learned Advocate for the petitioner has relied upon Sections 12, 25 and 26 of the University Grants Commission Act, 1956 in support of the contentions that although the Act of 1956 permits UGC to make regulations, such regulations have prospective effect.

5. Learned Advocate for the petitioner has submitted that, the petitioner having obtained an M.A. degree in Sanskrit through regular mode from the respondent no. 5 under the respondent no. 6, the degree conferred by the respondent no. 6 in respect of the M.A. course is valid. On the basis of the marks obtained in such M.A. course the petitioner is entitled to an admission to a B.Ed. course under the respondent no. 1. The degree conferred by the respondent no. 6 in M.A. course should be considered as valid. The respondent no. 1 should be directed to treat the petitioner as a regular candidate and the results of the examinations withheld by the respondent no. 1 should be directed to be published.

6. The cause of the petitioner has been supported by the respondent nos. 5 and 6.

7. Learned Advocate for the respondent no. 5 has submitted that, the respondent no. 5 had entered into a memorandum of understanding dated April 16, 2012 with the respondent no. 6 for the purpose of imparting the degrees as enumerated in the memorandum of understanding. The petitioner had participated in an M.A. Sanskrit course and was awarded the marks appearing in the Mark Sheet of the petitioner in such course. The degree of M.A. conferred by the respondent no. 6 is valid. The respondent no. 5 under the memorandum of understanding dated April 16, 2012 was empowered by the respondent no. 6 to undertake a course for an M.A. degree through the off campus Distant Learning Mode.

8. Learned Advocate for the respondent nos. 6 and 7 has submitted that the respondent no. 6 had been established under the provisions of the Kavikulaguru Kalidas Sanskrit Vishwavidyalaya (University) Act, 1997. He has sought to interpret Section 4 of the Act of 1997 so as to permit the respondent no. 6 to impart degrees through Distant Learning Mode through various franchises. He has, however, submitted that the State Government under the Act of 1996 did not give approval to the respondent no. 6 to undertake such a course of action.

9. The petitioner has been opposed by the respondent nos. 1 to 3. Learned Advocate for the respondent nos. 1 to 3 has submitted that, the respondent no. 1 is bound by the regulations of the UGC. In support of the contention that the regulations of UGC are binding upon the respondent no. 1 reliance have been placed on All India Reporter 2005 Supreme Court page 2026 (Prof. Yashpal and another v. State of Chhattisgarh and others) and 2009 Volume 4 Supreme Court Cases page 590 (Annamalai University v. Secretary to Government, Information and Tourism Department and others). The respondent no. 6 did not have the relevant sanction from the appropriate State Government to undertake an off campus distant education course in M.A. Sanskrit under the provisions of the Kavikulaguru Kalidas Sanskrit Vishwavidyalaya (University) Act, 1997. Even if there is a subsequent sanction the same would not validate the degree issued by the respondent no. 6 through the respondent no. 5 in favour of the petitioner. In support of such contentions reliance has been placed on All India Reporter 2013 Supreme Court page 941 (National Council for Teacher Education and another v. Venus Public Education Society and others) and 2008 Volume 17 Supreme Court Cases page 611 (Mahatma Gandhi University and another v. Gis Jose and others).

10. Referring to various pleadings in the affidavit of the respondent no. 1, Learned Advocate has submitted that the respondent no. 4 had forwarded the documents relating to the petitioner to the respondent no. 1 in the month of November 2015. The respondent no. 1 requires time to go through the documents submitted in respect of every student taking the examination. In view of the forthcoming examination in December 2015, a provisional Admit Card was issued to the petitioner in order to prevent any prejudice being caused to the petitioner by reason of the time consumed to scrutinise the documents

submitted. The respondent no. 1 had never accepted the documents submitted by the petitioner unconditionally. It had therefore issued a conditional Admit Card to the petitioner to take the first semester examination. Subsequent to the scrutiny of the documents submitted by the petitioner through the respondent no. 4, the respondent no. 1 had found that the petitioner not to be entitled to get an admission to the B.Ed. course on the basis of the degree of the respondent no. 6. The respondent no. 1 had immediately informed the petitioner as well as the respondent no. 4 that the petitioner is not entitled to undertake the B.Ed. course. In such circumstances, the ratio laid down in *Sanatan Gauda (supra)* and *Sanjay Kumar Katwal and another (supra)* are not attracted to the facts of this case.

11. I have considered the rival contentions of the parties and the materials made available on record.

12. The validity of the degree conferred by the respondent no. 6 through the respondent no. 5 will decide the fate of the petitioner. The petitioner has sought admission in a B.Ed. course with the respondent no. 4. The eligibility criteria to undertake such course prescribed by the respondent no. 1 is as follows:-

"(2) Eligibility

(a) Candidates with at least fifty percent marks either in the Bachelor's Degree and/or in the Master's degree or any others qualification equivalent thereto are eligible for admission to the programme."

13. The petitioner does not come within the first limb of the qualification. He qualifies as a master degree holder provided the Master degree held by him is valid. The respondent no. 6 is a university established by the Kavikulaguru Kalidas Sanskrit Vishwavidyala (University) Act, 1997. Section 4 of such Act deals with the jurisdiction and admission to privileges of the respondent no. 6. Section 4(1) of the Act of 1997 is as follows:-

"4(1). The territorial limits, within which the powers conferred upon the University by this Act shall be exercised, shall comprise the State of Maharashtra:

Provided that, the university may, subject to such conditions and restrictions as it and the State Government may think fit to impose, admit any college, institution or research centre established beyond the territorial limits within or without India, to the privileges of the university, with the approval of the State Government and wherever necessary, the Central Government :

Provided further that if a university, the jurisdiction of which is not restricted to any State or area, wishes to establish a centre or others unit of research in the university area, it may do so with the sanction of the university and the State Government."

14. The first proviso to Section 4(1) of the Act of 1997 requires approval of the State Government, and wherever necessary approval of the Central Government,

for the respondent no. 6 to admit any college, institution or research centre established beyond the territorial limits of the State. The State Government has not issued any approval for the respondent no. 6 to undertake grant of degree through off campus distant education mode through the respondent no. 5. The memorandum of understanding entered into between the respondent nos. 5 and 6 in this regard is of no assistance. Such memorandum of understanding is a private arrangement between the respondent nos. 5 and 6. It does not clothe the respondent no. 6 with authority to undertake grant of degree through off campus distant education mode from outside the State of Maharashtra.

15. In *Sanatan Gauda (supra)* the principles of promissory estoppel has been applied for the purpose of holding that a University after admitting a student is estopped from refusing to declare the results of such student or from preventing him from perusing his course. In the facts of this case *Sanatan Gauda (supra)* is not applicable. The respondent no. 1 did not admit the petitioner unconditionally. It had issued a provisional Admit Card since the respondent no 5 had submitted the relevant papers in November 2015. The examinations were scheduled to be held in December 2015. The respondent no. 1 required some time to consider the papers submitted in respect of the students including the petitioner. In order to tide over the situation and in order to prevent any prejudice being caused to the petitioner, the respondent no. 1 had issued a provisional Admit Card in favour of the petitioner. The issuance of the provisional Admit Card in favour of the petitioner cannot be construed to mean that the respondent no. 1 had unconditionally accepted the petitioner as a bona fide student and, therefore, is estopped from contending to the contrary. In the factual matrix of the present case, that the respondent no. 1 had retained the authority to look into the papers submitted on behalf of the petitioner through the respondent no. 4 till an appropriate decision being taken thereon. The respondent no. 1 had in fact subsequent to the scrutiny of the papers submitted in respect of the petitioner has come to a finding that the petitioner is not eligible to take admission in the B.Ed. course as the degree of M.A. granted by the respondent no. 6 is not valid.

16. In *Sanjay Kumar Katwal and another (supra)* considering the peculiar facts of the case, the Supreme Court had granted relief to the petitioner. However, it has been held that, the treatment of correspondence course and distant education course being a policy matter of the University concerned the Courts will not interfere with the policy relating to an academic matter. The peculiar facts of *Sanjay Kumar Katwal and another (supra)* are not obtaining in the present case to permit grant of a similar relief to the petitioner. Moreover, in the instant case the University authorities have acted in terms of the UGC regulations in not considering the degree issued by the respondent no. 6 for the petitioner to be valid.

17. *Sandeep Kaur and others (supra)* does not assist the petitioner inasmuch as in the instant case the petitioner is not entitled to get admission in the B.Ed. course in the first place. The petitioner does not have the requisite qualification

for the admission. It is not a question of irregular admission but a question of admission which is void ab initio. The admission of the petitioner to the B.Ed. Course by the respondent no. 4 is void ab initio due to lack of qualification of the petitioner to undertake such course.

18. SRM University and others (supra) and Punal Kumar Das and 5 Ors. (supra) are of the view that the regulations of UGC applies prospectively. In the present case, no regulation of the UGC has been shown to have been applied retrospectively so far as the petitioner is concerned. The question is whether the petitioner has the requisite qualification to undertake the B.Ed course or not. Since the petitioner does not have the requisite qualifications the question of applying any of the regulations of UGC retrospectively does not arise.

19. In Prof. Yashpal and another (supra) and Annamalai University (supra) the Supreme Court of the view that, the regulations of UGC are binding on the universities.

20. In Venus Public Education Society and others (supra) it has been held that, the recognition to an institution granted cannot be treated to have effect retrospectively.

21. In Gis Jose and others (supra) it has been held that, the sympathy of a Court is unwarranted where the admission had been granted by the University on an irregular basis.

22. In such circumstances, the present writ petition is without any merit. W.P. No. 8292 (W) of 2015 is dismissed. No order as to costs.

23. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.