

(2014) 09 GUJ CK 0093
In the Gujarat High Court
Case No : Writ Petition (Pil) No. 209 of 2014

Chirag Shailesh Shastri

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

Citation : (2014) 09 GUJ CK 0093

Hon'ble Judges : J.B. Pardiwala, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Dakshesh Mehta and Rushang D. Mehta, Advocate for the Appellant;
Vandan K. Baxi, AGP and Mitul K. Shelat, Advocate for the Respondent

Judgement

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Akil Abdul Hamid Kureshi, J.—The petitioner, is an ex-student of the Centre for Environment Planning and Technology University ("CEPT" for short). He has filed this public interest litigation challenging the decision of the University of discontinuing the Master Program in Sustainable Development and Climate Change which was being run under the faculty of Sustainable Environment and Climate Change. In particular, the petitioner has questioned the legality of the decision of the Executive Council of the University dated 25.10.2012 where the said decision was taken.

2. The petitioner himself was admitted in the said course in the year 2011. It was a two years course. The decision of the University thus came midway through the course which the petitioner was pursuing. As pointed out by the counsel for the University, the students who were already admitted were given the same degree under the same course, of-course, under a different faculty. In any case, the counsel for the petitioner clarified that the petitioner having completed the course and also having received the degree, insofar as the effect of the impugned decision on the petitioner is concerned, the issue is no longer relevant. He however, submitted that in the larger public interest, the petitioner questions

the decision of the University to discontinue such course which according to the petitioner was extremely important and had the potential of drawing large number of students in future also.

3. In the nutshell, counsel for the petitioner raised the following contentions in support of the challenge:

1) That the consultation with the DEAN of the faculties, as recorded in the Executive Council meeting dated 25.10.2012, had not actually taken place. In this respect, the counsel drew our attention to the e-mail of Dr. Shrawan Kumar Acharya, DEAN of the faculty of Environment and Climate Change, dated 23.10.2012 in which he had expressed his opinion about the proposed changes.

2) That the Executive Council did not have sufficient material to effect such change. It was contended that sufficient number of students were available. The course in question was important and relevant and could not have been discontinued by the Executive Council. The Executive Council did not have the authority in law to take such a decision. It was only the Board of Management under the CEPT University Act, 2010, who could have taken such a decision.

4. On the other hand, learned senior counsel Shri Soparkar for the CEPT university strongly opposed the petition raising the following contentions:

1) The petition is not filed bona fide. The petitioner himself was the student of the university in the same course. He himself was aggrieved by the changes made by the management. He had personal grudge and grievance about such a decision. He had sent large number of emails tarnishing the image of members of the Executive Council and the Board of Management. All these personalities enjoy the highest reputation in the field of education or public life. He had damaged their image through the materials circulated through his e-mails making personal allegations against such persons.

2) In the meeting dated 25.9.2012, it was decided to take a re-look of all the courses offered by the university and to lay down constructive policies on the academic and non academic issues. Pursuant to such decision, the Executive Council after full deliberation in its meeting dated 25.10.2012 took the decision that the faculty of Sustainable Environment and Climate Change would be discontinued and the present batch will be with the Faculty of Planning and Public Policy. Such decision was approved by the Board of Management in its meeting dated 16.2.2013.

3) He lastly contended that in the field of education, the Court would not and should not ordinarily interfere in the decisions taken by the expert governing body. In this context, he relied on the decision of the Supreme Court in case of P.M. Bhargava and Others Vs. University Grants Commission and Another, .

5. Insofar as the impugned decision of the University is concerned, we see absolutely no reason to interfere. To begin with, as correctly pointed out by the counsel for the University, in the field of education, the role of the Court in

exercise of writ jurisdiction is always kept to the minimal. When the expert statutory bodies who are entrusted with the task of running a University, designing different courses, imparting education, the decision taken by such bodies hold considerable respect. The Court would not ordinarily interfere in such decisions unless the decision is shown to be either mala fide in law or facts or wholly arbitrary. In the field of education, the Court does not claim any expertise. It is therefore, that the decision of the statutory bodies like University Grants Commission, University, etc., in respect of their fields of expertise are always given due respect. There are series of judgments of this Court as well as of the Supreme Court advocating circumspection while testing such decisions of specialized bodies. Particularly, in the field of education in case of P.M. Bhargava and others v. University Grants Commission and another(supra), the Apex Court held and observed as under:

"13. The Counter-affidavit filed on behalf of the UGC shows that the UGC constituted a nine-member Committee which after discussion and deliberations recommended opening of the departments of "Jyotir Vigyan" in universities for award of degrees. The Committee has recommended to create such courses only in 20 out of 41 universities which had applied for the same and the degree which would be awarded will be B.A./B.A. (Hons.)/M.A./Ph. D. The decision to start the course has been taken by an expert body constituted by the UGC. The courts are not expert in academic matters and it is not for them to decide as what course should be taught in university and what should be their curriculum. This caution was sounded in The University of Mysore and Another Vs. C.D. Govinda Rao and Another, wherein Gajendragadkar, J. (as His Lordship then was) speaking for the Constitution Bench held that it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. In this case challenge was made to certain appointments and the Bench held that what the High Court should consider is whether the appointment made by the Chancellor on the recommendation of the Board had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should show due regard to the opinion expressed by the Board and its recommendations on which the Chancellor has acted. This principle was reiterated in Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others, wherein it was held as under:

"While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies. But university organs, for that matter any authority in our system are bound by the rule of law and cannot be law unto themselves. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the court keeps its hands off; but where a provision of law has to be read and understood, it is not fair to keep the court out."

6. Even otherwise, nothing has been pointed out to us to convince us to hold that the decision was either arbitrary, mala fide or without the authority. The Board of

Management of the CEPT University in its meeting dated 12.9.2012 took several decisions, one of those being the vision of the University which would require best faculty members, good and quality research work with incentives to students and faculty members to engage in research work. In light of such vision, the Board of Management also decided to take a re-look of all the courses offered by the University. In furtherance of such decision of the Board of Management, the Executive Council in its meeting dated 25.9.2012, took several decisions. From the minutes of the meeting, it can be seen that the President and Acting Director of CEPT University, informed the members of the Council that he had discussed with the concerned DEANs, following which few suggestions had come up. One of those was that the "Faculty of Sustainable Environment & Climate change can be divided and merged with Sustainable Architecture and Environment Planning." The minutes further record that after taking comprehensive view, the members took several decisions. One of those was that the "Faculty of Sustainable Environment & Climate change will be discontinued and the present batches will be with the Faculty of Planning and Public policy."

7. Whatever be the power of the Executive Council in terms of the said Act to take a decision in this respect, such decision was placed before the Board of Management in its general meeting dated 16.2.2013. In such meeting, the Board of Management approved such decision.

8. It can thus be seen that the decision was taken after due deliberations. After that the DEANs of the faculty were not consulted is not correct. Most of the DEANs were thus present in the Executive Council meeting. In case of Dr. Shrawan Kumar Acharya, his e-mail of 23.10.2012 itself conveyed his view point on the question. It is not necessary that consultation must be oral or personal. The consultation can as well be in the form of a written communication as in the present case through e-mail. The Acting Director did not convey that every DEAN had agreed to the proposed change. If Dr. Shrawan Kumar Acharya therefore, in his e-mail presented his point that such change could not be made, same was neither binding on the Executive Council nor on the University. If the Executive Council finally as it appears unanimously took a decision to effect such a change, merely because one of the DEANs of the faculty had a different opinion, would not vitiate the decision. Section 17 provides for powers and functions of Board of Management. Sub-section(1) provides that subject to the provisions of the Act, the Board shall be responsible for the general superintendence, direction and control of the affairs of the University and shall exercise all the powers of the University. Such provision also permits the Board to delegate such power to the Executive Council and the Registrar for efficient management of the University. Section 19 of the Act pertains to constitution of Executive Council and its powers and duties. Sub-section(3) thereof provides that subject to the provision of the Act and the regulations, the Executive Council shall have the powers and duties specified in clauses (i) to (vii) of the said sub-section. Clause (vii) refers to any other powers delegated by the Board. In this context, though no specific delegation of the powers have been pointed out to us which would permit the

Executive Council to unilaterally effect any such change in the course structure. Nevertheless, when the decision of Executive Council was duly ratified by the Board of Management, the question of power of Executive Council becomes redundant.

9. The question of non availability of materials to enable the University to effect such change, in our opinion, needs to be recorded for summary rejection. In the field of so highly technical, particularly pertaining to field of education, unless there is strong material on record to suggest to the contrary, Court would not venture into wisdom of the empowered body to make appropriate changes in its academic structure. In the decision in case of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , the Supreme Court while recognising the important role that the public interest jurisdiction has to play and also the role of the Courts in encouraging genuine public interest petition, sounded a warning about the misuse and abuse of the forum of public interest litigation. The Court held and observed as under:

"181. We have carefully considered the facts of the present case. We have also examined the law declared by this court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

(1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the

public interest litigation.

(8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

10. In the present case, the petitioner himself was an ex-student of the same university. He was himself aggrieved by the change effected by the University. Despite all this, had he taken a bona fide interest in the issue which though was of general public importance, we would have rested with considering the issues and giving our decisions on the points raised. He however, went far beyond taking genuine interest in the litigation. He, as noted earlier and would presently record, took undue interest and also tried to tarnish the image of several members of the Executive Council as well as the Board of Management. He sent innumerable e-mails making allegations about their involvement and the propriety of the decision which they had taken. In this context in an affidavit in reply filed by Smt. Anita M. Hiranandani, Registrar of the University dated 25.8.2014, she averred as under:

"10. At this stage it would be relevant to bring to the notice of this Honourable Court the petitioner no. 1 has been harassing individuals who have been associated with the University and are advising the University on different aspects. Shri Kartikeya Sarabhai is a member of the Board of Management of the University. He is an expert in Environment and Conservation, and the Government of India has conferred him with the Padma Shri in recognition of his services. Shri Prem Pangotra is a senior faculty at the Indian Institute of Management. He is an invited member in the Committee constituted for restructuring of the Doctoral Programmes. Shri Barjor Mehta is the lead Urban Specialist at the World Bank 9 India office). He was an invited member in the Committee constituted for reviewing the BPLAN programme. Dr. Kaivan Munshi, Frank Ramsey Professor of Economics at Cambridge University, was invited as a chief guest at 2014 Convocation of the University. The petitioner has been flooding them, their colleagues, officer bearers in institutions with which the above-referred individuals are associated as well as to the Government agencies and maligning them and their association with the University. Such conduct of the petitioner reflects his intention and establishes his motives beyond doubt. It is submitted that the petitioners are therefore, not fit persons to be entrusted the writ of this Honourable Court. A specimen copies of the communication being addressed by the petitioner are annexed herewith and marked as Anneuxure-R-1/5/ to R-1/5/8."

11. In addition to taking note of the above affidavit, we have also perused some of the e-mails, copies of which are produced on record along with the said affidavit. We are convinced that the petitioner used the tool of public interest petition to target individual members of the Executive Council and the Board of Management. The suggestion of the counsel for the petitioner that the event of

sending e-mails was completely unconnected, cannot be accepted. Had the petitioner without filing the public interest petition taken such steps, it would have been an issue entirely between the author of the e-mail and the persons against whom such e-mails were aimed. However, when the petitioner has combined such propaganda machinery along with public interest petition, he must be held answerable for the same.

12. In the result, the petition is dismissed with costs of Rs. 25,000/- to be deposited before the Gujarat State Legal Services Authority.