
(2014) 01 AHC CK 0219

In the Allahabad High Court

Case No : Special Appeal Defective No. 81 of 2014

Deo Priyesh Gupta and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 ADJ 514 : (2014) 3 ALJ 149 : (2014) 4 AWC 3381

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : H.C. Singh, A.P. Singh and R.K. Ojha, Advocate for the Appellant;
R.A. Akhtar and Sunil Kumar Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. This special appeal arises from a judgment of the learned Single Judge dated 19 November 2013. The appellants were petitioners in one of a batch of writ petitions filed under Article 226 of the Constitution. By their petition, the appellants sought a mandamus commanding the respondents to appoint them on the post of Part Time Instructors (Anudheshak) in the subjects of Arts, Education and Physical Education. They were aggrieved by a communication dated 31 May 2013 issued by the Additional Project Director to the District Basic Education Officer. All the appellants claimed appointment on the basis of the degree of Bachelor of Arts obtained from the Chandra Mohan Jha (C.M.J.) University, Modrina Mansion, Laitumkhrah, Shillong, Meghalaya - the first seven appellants in Fine Arts and the remaining in Physical Education. The learned Single Judge, by the order impugned in these proceedings, has dismissed the petition. The C.M.J. University, Meghalaya was established under the C.M.J. University Act, 2009, a State Act. u/s 13(1) of the Act, the Governor of Meghalaya is the Visitor of the University. u/s 13(3)(b) of the Act, the Visitor is empowered to issue directions which would be binding on the University. Section 13(3)(b) of the Act reads as follows:

13.(3) The Visitor shall have the following powers namely:

(a)

(b) On the basis of the information received by the Visitor, if he is satisfied that any order, proceeding or decision taken by any authority of the University is not in conformity with the Act, Regulations or Rules, he may issue such directions as he may deem fit in the interest of the University which will be binding to all concerned.

2. On 30 April 2013, a communication was addressed by the Secretariat of the Governor to the Chairperson of the C.M.J. Foundation, pointing out several irregularities, inter alia, in regard to the grant of illegal admissions. In the circumstances, the following directives were issued u/s 13(3)(b) of the Act by the Visitor:

In view of the above, the Governor of Meghalaya, in his capacity as the Visitor of the C.M.J. University issues the following directions under the Section 13(3)(b) of the C.M.J. University Act 2009 for immediate compliance:

(1) The C.M.J. University shall recall/withdraw all the degrees awarded so far and publish this fact in national and local newspapers at their own cost.

(2) The C.M.J. Foundation shall submit a fresh proposal for appointment of the Chancellor alongwith the correct Bio-data of the candidate recommended and supporting documents.

(3) The C.M.J. University shall frame rules and procedures for admission into the M.Phil and Ph.D. degree programmes, allocation of supervisor, course work, evaluation, assessment and other related matters in accordance with the U.G.C. (Minimum Standards and Procedure for Awards of M.Phil/Ph.D. degree) Regulation, 2009.

(4) No fresh admission of students shall be undertaken by the C.M.J. University till compliance of the above instructions and till the appointment of the Chancellor in accordance with Section 14 (1) of the C.M.J. University Act 2009.

You are hereby required to comply with the above directives and submit a compliance report to the Visitor by 21st May, 2013.

3. Subsequently, by a communication dated 24 May 2013, the Governor responded to a reply received from the University and observed that the University was running several off campus centers outside Meghalaya, which was contrary to the U.G.C. (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 and the decision of the Supreme Court in Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, . Moreover, it was noted that contrary to law the University was offering distance education programmes outside the boundaries of Meghalaya. The communication referred to several instances of gross irregularities and unethical practices on the part of the University which had eroded the credibility and foundation of the University

to function and to achieve its goal of disseminating higher education. The communication notes that the violation amounts to mismanagement, maladministration and the failure of accomplishment of the objectives of the University within the meaning of Section 48 of the Act so as to warrant the dissolution of the University. In the circumstances, the following directives were issued u/s 13(3)(b):

In view of the aforesaid, the Governor of Meghalaya in his capacity as Visitor of the C.M.J. University, issues the following further Directives under the Section 13(3)(b) of the C.M.J. University Act, 2009.

(i) The C.M.J. Foundation/University shall ensure compliance of the Directives issued vide this office letter No. GSMG/C.M.J.U/82/2009/143 dated 30.4.2013.

(ii) Furnish fresh lists of PhD scholars enrolled and PhD awarded separately with full address and telephone numbers of the students and the name of guide(s) for each student.

(iii) Furnish fresh list of Guides from the start of PhD enrolment with their consent letters and full address and telephone numbers and the amount of fees paid to each.

(iv) Refrain from issuing misleading advertisement in the newspaper/electronic media in the interest of student community.

(v) Refund all the fees charged together with interest to the students who wish to withdraw from the C.M.J. University, within 15 days of intimation by the student(s) concerned.

(vi) Furnish the Annual Accounts, the Balance Sheet and the Audit Report to the Visitor in terms of Section 46 (4) of the C.M.J. University Act, 2009.

(8) You are hereby required to comply with these and earlier directives by 10th June 2013 failing which it shall be construed that the C.M.J. University has no ability to correct the deficiencies.

(9) Please also note that you can approach the police for copies of any seized records and documents for the purpose of compliance with these directives.

4. On 12 June 2013, the Visitor on the basis of the facts available concluded that the University committed, inter alia, the following irregularities:

(i) The University functioned from 17/10/2010 with the self-appointed Chancellor without the approval of the Visitor in terms of Section 14(1) of the C.M.J. University Act, 2009 on the presumption of "deemed approval" of the Visitor. This is not legally valid and the position has been affirmed by the order dated 16th May, 2013 of the Hon'ble High Court of Meghalaya which has further been upheld by the Division Bench of the Hon'ble High Court of Meghalaya in their order dated 31st May, 2013.

(ii) It awarded B.Ed. degree through Distance Mode without the requisite

approval of the regulatory bodies and without affiliation. The B.Ed. degrees awarded by the C.M.J. University were held to be invalid in the eye of Law by the order dated 24th May, 2013 of the Hon'ble High Court of Gauhati.

(v) The University furnished a list of 10 faculty members with PhD which is inaccurate. One of the faculty members is only a research scholar at NEHU. The list includes the Vice-Chancellor, Registrar and other functionaries of the University as faculty which is quite misleading. In fact the University does not have adequate teachers to introduce courses which it had been doing.

(vi) The University is running several off campus centers outside Meghalaya which is not permissible under the U.G.C. (Establishment of and Maintenance of Standards of Private University) Regulations, 2003 and the decision of the Hon'ble Supreme Court (2005) in the case of Prof. Yashpal and another v. State of Chhattisgarh and others.

(vii) It is offering distance education programme outside the boundaries of Meghalaya and outside India. These actions are in gross violation of U.G.C. Regulations and guidelines.

(viii) Total students enrolled by C.M.J. University as per information submitted by the University is 2010-11: 176, 2011-12: 469, 2012-13: 2734. All these admissions are illegal as all its actions are ab initio void in absence of a legally appointed Chancellor.

(x) The University has violated Section 45(3) and Section 46(4) of the C.M.J. University Act, 2009 by not submitting the Annual Report and the Annual Accounts/Balance Sheet and the Audit Report to the Visitor.

(xii) The University repeatedly acted in contravention of Section 52 of the C.M.J. University Act 2009 in respect of maintenance of standards and other related matters applicable to private universities.

Accordingly, the following directions were issued by the Visitor:

All these established facts clearly indicate mismanagement, mal-administration, indiscipline and failure in the accomplishment of the objectives of the University, apart from criminal liability. In the interest of maintaining proper standards of higher education it would be desirable that the C.M.J. University be wound up. The state Government is accordingly being addressed to consider dissolution of the C.M.J. University in terms of Section 48 of the C.M.J. University Act, 2009.

5. The U.G.C. also constituted an Expert Committee of six members to inspect the C.M.J. University. After making an on the spot assessment of the programmes, faculty, infrastructural facilities and financial viability of the University, the Expert Committee in its report dated 1 August 2013 observed as follows:

(i) The University appears to have functioned from a hired building being shared with several commercial agencies. The inner part of the building is shabbily

maintained.

(ii) The security, fire, hygiene in the premises are practically absent.

(iii) In view of the large number of students and faculty numbers as claimed by the University (which could not even be verified), the space used by the University is grossly inadequate.

(iv) No academic ambience was visible.

(v) No students' amenities in the form of recreation rooms, canteen health centre and so forth were found.

(vi) Since no interaction was possible with any of the stakeholders and also since no academic ambience was discernible, the Committee has serious doubts regarding the claims made by the university on running the different academic programs. Consequent upon the observations made above, it appears to the committee that the complaints received by the U.G.C. are likely to be correct.

6. In view of these findings that the C.M.J. University does not have the requisite infrastructure for running all its academic programmes and having due regard to the complaints received by the U.G.C. highlighting deviations from its norms and standards, the Expert Committee recommended that appropriate action may be taken by U.G.C. The U.G.C., in its 495th meeting held on 1 October 2013, approved the report of the Expert Committee. On 21 October 2013, the U.G.C. submitted a copy of the report of the Expert Committee together with its recommendations to the Secretariat of the Governor and the Government of Meghalaya for appropriate action under the Act and other legislation. The communication also called upon the Governor to take a decision on the validity of the degrees already awarded by the C.M.J. University in the past, keeping in view that only those degrees should be termed as valid for which courses were conducted by the University in a regular mode in its main campus with the prior approval of the Statutory Council(s) concerned, wherever required.

7. The order passed on 30 April 2013 by the Governor of Meghalaya u/s 13(3)(b) of the Act was unsuccessfully challenged before the Meghalaya High Court. A SLP [Petition(s) for Special Leave to Appeal (Civil) No(s). 19617 of 2013, C.M.J. Foundation and others v. State of Meghalaya] was filed before the Supreme Court. The Supreme Court taking note of the recommendations made by the Governor on 12 June 2013 for dissolution of the University passed an order on 13 September 2013. While disposing of the special leave petition, the Supreme Court observed that "in terms of the recommendations made by the Visitor-cum-Governor, the State Government is required to take action u/s 48 of the 2009 Act". A direction was, accordingly, issued to the State Government to pass a speaking order u/s 48 of the Act. Permission was also granted to the students whose admissions and degrees were declared to be illegal to make representation to the State Government for sympathetic consideration.

8. In this Court, a learned Single Judge in a judgment dated 15 January 2014,

dismissed a petition which had been instituted to permit the petitioners in that petition to continue with the B.T.C. Course 2012 and to appear in the examinations until the matter in regard to the validity of the degrees awarded by the C.M.J. University between 2009 to 2013 was finally settled. The order of dismissal was confirmed by a Division Bench of this Court on 22 January 2014 in *Rahul and another v. State of U.P. and 3 others* (Special Appeal No. 94 of 2014). While dismissing the special appeal, the Division Bench observed as follows:

11. From the facts and circumstances, it is apparent that the persons incharge of the University have played a fraud of which the petitioners are the willing beneficiaries. They are running the University from a commercial complex in which large number of other commercial activities are running. The petitioners had taken admissions in the University in which there was no infrastructure. The observations of the Committee, which inspected the premises, shows that there is no space even for the staff to sit in the commercial complex. The question of taking admission, running classes and holding examinations, therefore, does not arise at all. It is apparent that the entire set up was a fraud played upon the students of which they cannot get any advantage as they are the beneficiaries of such fraud. The office of the University has been sealed and the persons in charge of its affairs were arrested and are in jail."

12. We do not find any good ground to interfere or to grant any relief on equity as the equity and fraud do not dwell together.

9. The Division Bench has taken note of the directives issued by the Governor of Meghalaya in his capacity as Visitor of the University and to the order passed by the Supreme Court noted above.

10. In the present case, the submission which was urged before the learned Single Judge is that the appellants were regular students of the University which was established under a State enactment and was duly recognised by the U.G.C. Moreover, it was submitted that so long as the degrees awarded were not cancelled, they must be regarded as being equivalent to a degree granted by University established by law. The learned Single Judge, while rejecting the submission, observed that the petitioners had a heavy burden to establish, inter alia, the manner in which they were admitted, whether receipts were issued by the University or by a study centre situated outside the territorial jurisdiction of Meghalaya, the holding of courses, the training imparted, the attendance of the petitioners, the holding of examinations and finally the issuance of the degrees. In the absence of any such material on the record, the learned Single Judge held, particularly in the background of the decisions taken by the Visitor of the University and the U.G.C., that no relief could be granted at that stage. However, if the degrees were validated by the U.G.C., liberty was granted to the appellants to approach the Court.

11. We are not inclined to differ with the view of the learned Single Judge for a number of reasons. First and foremost, in the exercise of powers conferred on

the Visitor by Section 13(3)(b) of the Act which mandates that the directions of the Visitor shall be binding on the University, extensive directions were issued to the University based on the serious doubt and cloud cast on the credibility of the University relating to the unavailability of infrastructure, the grant of illegal admissions and the absence of faculty. Independently, the U.G.C. also verified the existing infrastructure by an on the spot assessment and the report of its Expert Committee is indicative of the fact that the University functions from a hired building which is shared by certain commercial agencies, infrastructural facilities are practically absent and virtually no academic ambience exists. The Visitor has, in terms of the provisions of Section 48 of the Act, recommended the dissolution of the University following which the Supreme Court has, by its order passed in the SLP of the C.M.J. Foundation, observed that the State Government is required to take action u/s 48 of the Act.

12. In this background, in a petition under Article 226 of the Constitution, no fault can be found with the order of the learned Single Judge declining to grant the relief as prayed for commanding the State to appoint the appellants on the post of Anudeshak in the subjects of Arts and Physical Education. The appellants have no vested right to claim such an appointment and the writ Court while considering such a plea must, above all, be guided by the grave danger in imposing on the whole body of students, teachers who claim to be recipients of degrees of a University which is under a serious cloud, both in regard to its credibility and integrity. The jurisdiction under Article 226 of the Constitution has to be guided by the need to render substantial justice and the claim of the appellants in this case was seriously outweighed by the public interest in ensuring that the students whom the appellants claim an entitlement to teach are not left in the lurch by persons who have obtained degrees ostensibly in pursuit of courses granted by such a University.

13. We are in respectful agreement with the earlier judgment of the Division Bench of this Court. However, we have indicated our own reasons for declining to interfere with the judgment of the learned Single Judge.

14. Before concluding, we may also reiterate, as was also observed by the learned Single Judge in the concluding part of the judgment, that the appellants would be at liberty to approach the Court at a subsequent stage, if ultimately it is found that the degrees which were granted by the University are found to be valid. The special appeal is, accordingly, dismissed. There shall be no order as to costs.