

(2019) 09 CHH CK 0008

In the Chhattisgarh High Court

Case No : Writ Petition (C) No. 3135, 3136, 3137, 3138, 3150, 3169, 3170, 3177, 3195, 3201, 3203, 3204, 3205, 3208, 3210, 3215, 3221, 3225, 3229, 3230, 3232, 3237, 3238, 3240, 3244, 3249, 3250, 3251, 3252, 3253, 3264, 3269, 3270, 3271, 3276, 3280, 3292, 3309, 3310,

Dr. Deepak Sharma And Ors

APPELLANT

Vs

State Of Chhattisgarh Through And Ors

RESPONDENT

Date of Decision : 05-09-2019

Acts Referred:

Pandit Sundarlal Sharma Open University Adhiniyam, 2004 — Section 8, 8(2), 8(3), 8(4), 27

Representative Of People Act, 1951 — Section 81

Constitution Of India, 1950 — Article 166

Citation : (2019) 09 CHH CK 0008

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Anurag Dayal Shrivastava, Mateen Siddiqui, B. Gopa Kumar, Anish Tiwari, Meena Shastri, Shantam Awasthi, Harish Khuntiya, Prateek Sharma, Khushbhoo Dua, Chandra Kumar, Amit Kumar Chaki, Navin Shukla, C.J.K. Rao, Alok Bakshi, Chandresh Shrivastava, Rahul Jh

Final Decision : Dismissed

Judgement

1. In all the bunch of the petitions, the primary challenge is to the show cause notice dated 22.10.2018 addressed to respective petitioners. According to the format of notice, the default clause(s) subject to its application is/are marked and response was sought from each of the individual petitioners.

2. Since the facts and issue involved in all the petitions are almost similar, they are decided by this common order.

3. The facts of the cases are that all the petitioners have obtained Ph.D., degree from Pt. Sunderlal Sharma Open University over a different period of time and the convocation was scheduled for distribution of the degree. Before such programme, certain complaints were made to the Chancellor. The Chancellor

thereafter on the basis of complaints had ordered for an enquiry and a special team of experts was constituted. They examined the grant of Ph.D., degrees to different petitioners and thereafter reported back certain shortcomings to the Chancellor after examination of individual cases of the petitioner. The Chancellor in turn made the correspondence with the University and the State. Subsequently the University after examination of the cases, issued show cause notice to different petitioners.

4. The common show cause notice(s) was served to the petitioners and in respect of each petitioner, separate right mark was made against each clause for the shortcomings noticed in respect of the individual petitioners. The format of such notice is reproduced herein below :

पण्डित सुन्दरलाल शर्मा (मुक्त) विश्वविद्यालय छत्तीसगढ़, बिलासपुर

(छ.ग.शासन के अधिनियम क्रमांक 26 सन् 2004 द्वारा स्थापित)

कोनी-बिरकोना मार्ग, बिलासपुर (छ.ग.) 495009

दूरभाष क्रमांक: (07752) 210312

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क्र./1573/कुल./2018

बिलासपुर, दिनांक 22/10/2018

प्रति,

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विषय:- पंडित सुन्दरलाल शर्मा (मुक्त) विश्वविद्यालय छत्तीसगढ़, बिलासपुर से आप द्वारा की गई पी-एच.डी. के सम्बन्ध में।

कुलाधिपति सचिवालय के निर्देश पर राज्य शासन द्वारा गठित समिति की रिपोर्ट के अनुसार आपके शोध कार्य में निम्नलिखित बिन्दुओं में से सही (□) का निशान लगाये गए बिन्दुओं में कमी पाई गई है -

1. आप द्वारा विश्वविद्यालय के अध्यादेश क्रमांक 2 के नियम 2.9 के अनुसार छः माह के अन्तराल में तीन सेमिनार देना नहीं पाया गया।
2. विश्वविद्यालय अध्यादेश की कंडिका 2.2 / 2.2.4 के अनुसार शैक्षणिक योग्यता में आपको दी गई छूट विश्वविद्यालय अनुदान आयोग रेगुलेशन (चतुर्थ संशोधन) 2016 में प्रावधानित न होने के कारण मान्य नहीं है।
3. शोध छात्र के रूप में आपके पंजीयन में विश्वविद्यालय अध्यादेश क्रमांक 2 की कंडिका 2. 3 एवं /या 2.4 में वर्णित पूर्णकालिक / अंशकालिक शोध छात्र सम्बंधित नियम का पालन नहीं किया गया।
4. विश्वविद्यालय अध्यादेश क्रमांक 2 की कंडिका 4.2 (9) के अनुसार आप द्वारा शोध पत्र का प्रकाशन स्टैंडर्ड रिसर्च जर्नल में नहीं किया गया है।
5. आप की थीसिस का च्छहपंतपेउ परीक्षण प्रतिवेदन नहीं पाया गया।

अतः इस पत्र की प्राप्ति के 15 दिनों के भीतर अपना सप्रमाण पक्ष रखे / स्पष्ट करे, अन्यथा क्यों नहीं आपकी पी-एच.डी. हेतु पात्रता की विश्वविद्यालय की अधिसूचना क्रमांक 690 दिनांक 22/11/2012 को निरस्त कर दिया जाए।

सही/-

कुलसचिव

क्र./1573/कुल./2018

बिलासपुर, दिनांक 22/10/2018

प्रतिलिपि:-

निज सचिव कुलपति को कुलपति महोदय के सूचनार्थ।

सही/-

कुलसचिव

5. According to the petitioners, they have undertaken the Ph.D., course through the respondent Pt. Sunderlal Sharma Open University. The degrees of Ph.D., were awarded to the petitioners on different dates. It is also the common case of the petitioners that the grant of Ph.D., is governed by Ordinance No. 2 framed u/s 27 of the Pt. Sunderlal Sharma Open University Adhiniyam, 2004 (hereinafter referred to as the Act, 2004). It is further case of the petitioners that after the grant of degree of Ph.D., they have received the show cause notice by the University calling explanation as to why the notification awarding Ph.D., may not be cancelled. The show cause notice purports that within a stipulated period of time, the reply must be filed otherwise, degree of Ph.D., would be cancelled. Few of the petitioners have filed reply to show cause and few of them have not yet filed. It is at this stage, all the petitioners have moved this Court by filing different petitions.

6. It is the further case of the petitioners that on 03.05.2016 the convocation has commenced and on 06.05.2016 the University received a letter. On 12.07.2016, the direction was issued not to distribute the degrees. It is stated that once the degree of Ph.D., is granted, the denotification could not be done and the University cannot revert back to the genuineness of the grant of degree.

7. Commencing the arguments Shri Anurag Dayal Shrivastava, learned counsel for the petitioners would submit that as per section 8 of the Adhiniyam 2004, the powers were exercised by the Governor (Kuladhipati) and the powers of enquiry was delegated to the State. It is contended that the State has no power to enquire into the affairs of the University as the power of inspection or enquiry is only vested with the Chancellor i.e., Kuladhipathi. Learned counsel would further submit that after the enquiry, the decision has been taken by the State Authority and shortcomings were pointed out, which the State does not have the power. It is stated that the Chancellor cannot delegate his power of advice to the State which has been done in the instant cases. It is contended that because of want of power the entire act of the State and the finding of enquiry report by the State is without jurisdiction and cannot be acted upon. It is further stated that the letter was issued by the Governor in the capacity of Chancellor and since the Governor

has delegated the power to take decision, it was without jurisdiction and was against the object of section 8 of the Act, 2004.

8. Learned counsel would further submit that the State after delegation of power, initiated the enquiry proceedings and by order dated 09.05.2018 (Annexure P-3) the Committee was constituted in the name of Governor of Chhattisgarh, which cannot be done as the role of the State is completely foreign to the Act of 2004. It is further submitted that after the enquiry was conducted, the report was forwarded to Commissioner Higher Education, therefore, the State has come to a conclusion which is evident from the note sheet that they have taken decision, which they were not permitted to do so. It is further submitted that the letter dated 05.10.2018 issued by the State (Annexure P-4) is a direction to the Registrar of Pt. Sunderlal Sharma Open University which the State is not empowered as according to Section 8 sub-section(4) it is only the Chancellor (Kuladhipati) who may address to Vice-Chancellor (Kulpathi) of the University , as such, the direction is against the statute and the provisions of section 8 sub-section (4) of the Adhiniyam 2004. It is further submitted that the Committee of the University has already taken a decision, which would be evident from the show cause notice. So a post decisional hearing was given to the petitioner (s) besides the Committee of the State has already reached to a conclusion that deficiency exists. It is stated that the direction issued by the Governor to the Chief Secretary dated 15.11.2017 to take a decision would amount to over reaching the Executive Committee of University and therefore the same need to be quashed. It is further stated that the Ph.D., was notified in favour of the petitioners, therefore, once the Ph.D., is notified and it is later sought to be cancelled then in such case, the petitioners were required to be heard and if any adverse finding has been rendered without opportunity of hearing, the same would be void.

9. Learned counsel placed reliance in AIR 1989 SC 1582, Para 19 The Marathwada University v. Seshrao Balwant Rao Chawan and would submit that since the power to take decision has not been delegated under the Act of 2004, the direction given by the Governor to the State by letter dated 15.11.2017 is without authority. Further reliance was placed in AIR 1982 M.P 73 Para 9 Uday Pratap Singh v. State of M.P to contend that since the letter was issued by the State in the name of Governor under Article 166 of the Constitution, the power of the Governor and power of Chancellor are distinct as such the same cannot be delegated.

10. Another submission has also been made by Mr. Mateen Siddiqui, learned counsel for the petitioners that all the enquiries have been made by the State on the basis of Regulation of UGC dated 04th May, 2016. It is stated that the regulation of UGC carves out an explanation to the candidates registered for M.Phil/Ph.D., programme prior to July 11, 2009 and would be governed by the provisions of the then existing Ordinance/By-laws/Regulations of the Institutions awarding the degree. It is stated that the Ph.D., candidates were exempted from

requirement of minimal eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professors or equivalent positions in Universities or Colleges or institutions. It is therefore stated that since the ordinance of UGC itself has carved out the exception, the petitioners who have been awarded Ph.D prior to 2009 cannot be subjected to such enquiry. It is stated that since the enquiry was made under the UGC Notification, as such, the notification of UGC was not applicable.

11. Referring to Ordinance No. 2 of the Sunderlal Sharma Open University, it is stated that the research candidates who have been given 3 seminars with a gap of six months would be considered for Ph.D., which does not mean that simultaneously after the gap of six months, the seminar could not be given. It is stated that requirement of publication of papers in the standard research journal was optional and was not mandatory and with respect to plagiarism, the ordinance was silent on it, therefore, that cannot be made basis of the enquiry finding and submits that the entire show cause is without jurisdiction and deserves to be quashed.

12. Shri Vivek Ranjan Tiwari, learned Counsel for the respondent University submitted that the main controversy has arisen because of the UGC Notification of 2016. It is submitted on behalf of the University that the University has followed the directions as and when issued by the Chancellor and therefore, no fault can be attributed to the University. It is stated that when the report of the State was received that certain norms/direction in ordinance have not been followed then the University thought it proper to make an enquiry into the matter as such according to the shortcomings which were pointed out, different show cause notices were issued.

13. Mr. Chandresh Shrivastava, learned counsel for the Respondent/ Chancellor of the University would submit that the petitioners have based their cause of action on issuance of show cause notice dated 22.10.2018 after the degree of Ph.D., was conferred. It is stated that the Chancellor by letter dated 06.05.2016 which is filed as Annexure R-2(1) addressed to the Vice Chancellor of Pt. Sunderlal Sharma University has sought point-wise information in detail wherein the entire requisition was made making a query as to whether the compliance of ordinance to grant Ph.D., was followed or not. It is stated that thereafter the reply was given but the chancellor found it not satisfactory, as such, again information was sought vide Annexure R-2. Thereafter the reply having not been given, the Chancellor by different letters dated 11.07.2016, 03.12.2016, 25.5.2017, 17.08.2017 & 27.10.2017 sought for clarification. The Vice-Chancellor of the University having not given any specific reply, eventually a letter was issued to the Government on 15.11.2017 vide R-2(3) for enquiry. It is stated that all the enquiry was related to the Ordinance and as per section 8 of the Act of 2004, the Chancellor (Kuladhipati) was empowered to direct enquiry as the administration will include the incident relating to academic part. It is further stated that the report having been received, an opinion was given and

not a decision by the Government. Thereafter, the State Government sent it to the University, so the opinion was forwarded. Later on, the Kuladipati (Chancellor) has sent it back to the Executive Council. It is further submitted that no decision was taken by the Committee constituted by the State and only opinion was forwarded, therefore, at this stage, the petitions are premature and cannot be entertained.

14. Mr. Alok Bakshi, learned Addl. Advocate General would submit that the Ph.D., is covered under the examination since it relates to academic course. So when the State was directed by the Chancellor to make an enquiry, then the Higher Education Department was asked to conduct the same. It is further stated that when the orders were issued in the name of Chancellor and the Governor being Chancellor, the petitioners cannot be given the benefit on such hyper technical ground. It is further contended that the letter 15.11.2017 (Annexure R-2/3) received by the State from the office of Chancellor would show that due care was taken with respect to the applicability of the notification of 2016 i.e., Regulation of UGC and the enquiry on 11 points was conducted. It is further stated that reading of section 27 of the Act, 2004 purports that the Ordinance may provide for administration of students, courses of study, qualifications pertaining to degree etc., and as per the ordinance which is framed under the Act, certain parameters have been prescribed to obtain a Ph.D. degree.

15. It is further stated that clause 2.9 of the Ordinance mandates that research candidates have to give 3 seminars within a gap of six months and when it is tested in the light of reply filed by the University, it shows that this requirement was not followed. He further submits that the other requirement of Ordinance for publication of research papers in standard research journal has also not been fulfilled. Therefore, the non-compliance of ordinance which is admitted by the University in their letter dated 05.12.2018 cannot be given a go-bye. It is further submitted that the notification of the University Grants Commission dated 04.05.2016 only relaxes certain conditions for appointment of Assistant Professors and not otherwise, therefore, when few of the petitioners entered into stream of employment, the same cannot be ensured by collecting data. It is further stated that the State is also empowered to look into the matter of education and monitor the same so that the standard of education is maintained. It is stated that to make an enquiry, no mechanism can be adopted except on direction of Chancellor to test the veracity of Ph.D. Therefore, he submits that the arguments of the petitioners are completely misconceived and the petitions are liable to be dismissed.

16. Heard learned counsel for the parties at length. Also perused various documents and internal correspondence made inter-se between the University, the State and the Office of the Vice Chancellor. The show cause notice dated 22.10.2018 issued by Pt. Sunderlal Sharma Open University is predominantly under challenge by the petitioners. That apart, the report/finding of the Enquiry Committee of the State is also under challenge. In the show cause notice dated

22.10.2018, 5 different points were shortlisted in respect of different petitioners which were separately applicable to them and markings were made according to its applicability to the respective petitioners. This was issued by the Registrar of the University.

17. A reading of Section 27 of the Pt. Sunderlal Sharma (Open) University Chhattisgarh Act, 2004 shows that it gives the power to frame Ordinance concerning with academic matters, administration of students, etc. Section 27 would be relevant and quoted herein below :

"27. Ordinance.- (1) Subject to provisions of this Act and the Statute the ordinance may provide for all or any of the following matters, namely :-

(a) administration of students, courses of study and fees thereof, qualifications pertaining to degree, diploma, certificates and other courses, conditions for the grant of fellowships, awards and the like;

(b) conduct examinations, including the terms and conditions and appoint examiners and moderators;

(c) any other matter which by this Act or the State is to be or may be provided for by the Ordinance.

(2) The first Ordinance shall be made by Kulpati with the previous approval of the State Government and the Ordinance so made may be amended, repealed or added to at any time by the Executive Council in the manner prescribed by the Statute."

18. Pursuant to such power, the Ordinance No.2 has been framed for the "Research Degree Programme Leading to Doctor of Philosophy (Ph.D)". Clause 5.3 of the Ordinance No.2 gives power to the University that on detection of any irregularity, the University shall take suitable steps to withdraw the degree as per the provisions of Adhiniyam. Therefore, if the show cause notice dated 22.10.2018 is read in isolation with Clause 5.3 of the Ordinance shelving all other inter-se communication made between the Kuladhipati (Chancellor), State and the University, it shows that the University has the sovereign power to withdraw a degree on detection of any irregularity and the power is absolute. For the sake of convenience, clause 5.3 of the Ordinance No.2 is reproduced herein below:

"5.3 On detection of any irregularity, the University shall take suitable steps to withdraw the degree as per the provisions of the Adhiniyam."

19. Now the vehement arguments have been advanced with reference to section 8 of the Act of 2004 on delegation of power by the Chancellor (Kuladhipati), which provides for the Power of Kuladhipati. For the sake of ready reference, Section 8 would be relevant here and quoted below:

"8. The Kuladhipati.- (1) The Governor of Chhattisgarh shall be the Kuladhipati of the University.

(2) Subject to the provisions of sub-sections

(3) and (4), the Kuladhipati shall have the right to cause an inspection to be made, by such person or persons as he may direct, to the University, its buildings, laboratories and equipment and of any Regional Centre, a Study Centre and also of the examination, instruction and other work conducted or done by the University, and to cause an inquiry to be made in like manner in respect of any matter connected with the administration and finances of the University.

(3) Where an inspection or inquiry has been ordered by the Kuladhipati, the University may depute representative to represent the University in such inspection or inquiry.

(4) The Kuladhipati may address the Kulpati with reference to the results of such inspection or inquiry together with views and advice with regard to the action to be taken thereon as the Kuladhipati may be pleased to offer and on receipt of the address made by the Kuladhipati, the Kulpati shall communicate forthwith to the Executive Council the results of the inspection or inquiry and the views of the Kuladhipati and the advice rendered by him upon the action to be taken thereon.

(5) Where the Executive Council does not within a reasonable time, take action to the satisfaction of the Kuladhipati, the Kuladhipati may, after considering any explanation furnished or representation made by the Executive Council, issued such directions as he may think fit and the Executive Council shall be bound to comply with such directions.

(6) Without prejudice to the foregoing provisions of this section the Kuladhipati may, by an order in writing, annul any proceedings of the University which is not in conformity with this Act, Statute or Ordinance :

Provided that before making any such order, he shall call upon the University to show cause why such an order should not be made and if any cause is shown within a reasonable time, he shall consider the same.

(7) The Kuladhipati shall have such other powers as may be specified by the statute."

20. Reading of sub-section (2) of Section 8 purports that Kuladhipati shall have right to cause an inspection to be made by such person or the persons as he may direct to the University, which includes examination part also and other works conducted or done by the University and further it gives a power to cause an enquiry to be made in respect of any matter connected with the administration and finances of the University

21. Therefore, if sub-section (2) of section 8 is read together with the words 'administration' and 'examination', it would lead to a conclusion that the Chancellor has power to direct enquiry in the like manner meaning thereby the enquiry may be done to the wisdom of the Chancellor. Once it is established that

the Chancellor has sovereign powers within certain sphere, it must follow as a corollary that the Chancellor is free to act within that sphere in any way which appears to be the best way to give effect the intention and policy for which the statute was made. For such purpose, the Kuladhipati may utilize any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds out inconvenient to do so. This fact cannot be lost sight that the issue was pertaining to grant of Ph.D., degree to the petitioners. The subject of enquiry is hyper technical and involves expertise of the subject. expertise in nature. It could have been done only with the delegated authority and it can only project the broad principle and leave the details to be worked out by those who are most familiar with the subject. The chancellor cannot be expected to order for complex scheme of enquiry to bring out self-contained and complete enquiry straight-away as it is not possible to foresee the contingencies and envisage the requirement. The advantage of such course is that it enables the delegated authority to evaluate the facts which are likely to be effected and make actual experiment and evaluation, which are necessary for just and proper finding.

22. Subsection (2) of Section 8 gives the power to the Chancellor to get an enquiry conducted in the like manner he wants. In the cases of high academic degrees and the complexities involved any such grant of degree when put to a question can only be settled at rest by expert. The appointment of high level enquiry committee which was slated by the Chancellor vide its order dated 15.11.2017 (Annexure P-2) shows that on 11 points the enquiry was directed to be made which pertains to grant of degree of Ph.D. Though the last part of such letter dated 15.11.2017 speaks that proper decision be taken after conducting a separate enquiry in respect of each Ph.D., on the basis of 11 points, however, at the same time it was requested that such decision to be so taken may be forwarded to the Chancellor of University.

23. It would be important to quote the 11 points for which the enquiry was sought by letter dated 15.11.2017 which reads as under:

(1) दिनांक 11 जुलाई, 2009 के पूर्व पं. सुन्दरलाल शर्मा मुक्त विश्वविद्यालय, बिलासपुर में पीएच.डी. हेतु पंजीकृत किन-किन शोधार्थियों द्वारा यू.जी.सी. के संशोधित नियम 2016 एवं पंडित सुन्दरलाल शर्मा मुक्त विश्वविद्यालय, बिलासपुर के अध्यादेश क्रमांक 2 के अनुसार पीएच.डी. किया गया है ?

(2) दिनांक 11 जुलाई, 2009 से पूर्व जिन शोधार्थियों द्वारा पीएच.डी. हेतु पंजीयन कराया गया था उनमें से कितने शोधार्थियों का पंजीयन निरस्त किया गया ?

(3) कुल कितने शोधार्थियों द्वारा अध्यादेश क्रमांक 2 के नियम 2.9 के अनुसार छः माह के अन्तराल में तीन सेमीनार दिया गया है और कितने शोधार्थियों द्वारा नहीं दिया गया है । सेमीनार नहीं देने वाले शोधार्थियों का पंजीयन निरस्त किया गया है अथवा नहीं ?

(4) जिन 15 शोधार्थियों को पीएच.डी. हेतु पंजीयन हेतु शैक्षणिक योग्यता में छूट दी गई है, वह छूट रिसर्च बोर्ड द्वारा नियमानुसार दी गई है अथवा नहीं।

(5) (ए) कुल कितने शोधार्थियों द्वारा अपने शोध का प्रकाशन स्टैंडर्ड रिसर्च जर्नल में किया गया है (बी) कितने

शोधार्थियों द्वारा अपने शोध पत्र को स्टैण्डर्ड रिसर्च जर्नल में प्रकाशित कराने का प्रयास किया गया है एवं कितने शोधार्थियों द्वारा कोई प्रयास नहीं किया गया है।

(सी) क्या अध्यादेश क्रमांक 2 के नियम 4.2ए का पालन करना आवश्यक नहीं है तथा उसके पालन के बिना पीएच.डी. की डिग्री दी जा सकती है।

(डी) स्टूडेंट्स द्वारा स्वयं के शोध से थिसिस लिखा गया है या चसंहपंतपेउ किया गया है।

(6) किन-किन शोधार्थियों का फूल-टाइम स्टूडेंट्स के रूप में तथा किन-किन का पार्ट-टाइम स्टूडेंट्स के रूप में पंजीयन किया गया था।

(7) क्या फूल-टाइम स्टूडेंट्स के रूप में पंजीकृत शोधार्थियों का पंजीयन अध्यादेश क्रमांक 2 के नियम 2.3 के अनुसार किया जाकर पीएच.डी. कराया गया है।

(8) क्या पार्ट-टाइम स्टूडेंट्स के रूप में पंजीकृत शोधार्थियों का पंजीयन अध्यादेश क्रमांक 2 के नियम 2.4 के अनुसार किया जाकर पीएच.डी. कराया गया है।

(9) कौन-कौन से शोधार्थी यू.जी.सी. रेग्यूलेशन 2016 के संशोधन की शर्तों और पं. सुन्दरलाल शर्मा (मुक्त) विश्वविद्यालय, बिलासपुर के तत्कालीन अध्यादेश/उपबंधों/विनियमों का पालन करते हुए पीएच.डी.किये हैं।

(10) कौन-कौन से शोधार्थी यू.जी.सी. रेग्यूलेशन 2016 के संशोधन की शर्तों की पूर्ति नहीं करते, लेकिन उक्त विश्वविद्यालय के तत्कालीन अध्यादेश/उपबंधों/विनियमों का पालन करते हुए पीएच.डी. किये हैं।

(11) कौन-कौन से शोधार्थी यू.जी.सी. रेग्यूलेशन 2016 के संशोधन की शर्तों की पूर्ति करते हैं लेकिन पं.सुन्दरलाल शर्मा (मुक्त) विश्वविद्यालय, बिलासपुर के तत्कालीन अध्यादेश/उपबंधों और विनियमों का पालन किये बिना पीएच.डी. किये हैं।

24. Sub-section (3) of section 8 of the Act purports that when an enquiry has been ordered by the Chancellor, the University may depute the representative(s) to represent the University. Sub-section (3) is in two parts. One part absolutely remains with the Chancellor for directing inspection or enquiry and the other is with the University to depute the representative on behalf of the University. The fact would suggest that the chancellor has ordered for an enquiry and there has been delegation of non-administrative/legislative powers as it only pertains to an enquiry. The Supreme Court in a case law reported in (2014) 16 SCC 248 Sidhartha Sarawgi V. Board of Trustees for the Ports of Kolkota has held that the delegation of non-legislative or administrative power to a person or body can be made on certain things.

25. In the instant case, it would reflect that pursuant to the direction of enquiry by the Chancellor, the Committee comprising of 3 members was constituted by the State namely Dr. S.K. Jadhav who is Head of the Department, professor of Micro Biology, Pt. Ravi Shankar University, Raipur; Dr. Anil Shrivastava, Professor of Zoology, VYT PG Arts and Science College, Durg and Shri Gupteshwar Gupta, Joint Director, Higher Education, New Raipur. The said constitution of team was made through Higher Education Department vide letter dated 9th May 2018 with a direction to the Committee to conduct the enquiry in accordance with the Rules of Ph.D., as also on the basis of the points mentioned in the Letter of Governor's Secretariat dated 15.11.2017. There was also further direction that after

conducting separate enquiry into each degree of Ph.D., the opinion along-with report be made available to the State within 15 days. Thereafter, the Committee submitted the report on 07.09.2018 vide Annexure P-1 and the said committee report was further forwarded by the State to the Vice Chancellor of the University vide letter dated 05.10.2018 for further follow-up action. Thereafter, the State did not take any decision on the report of the Committee. The body of experts came out with an unambiguous finding in respect of grant of each Ph.D. degree and no decision was given to encroach upon the power of Chancellor to cause enquiry under Section 8 of the Act.

26. It is also noteworthy here that the documents filed by Respondent No.2/ Chancellor would show that initially the Chancellor sought information from the Vice Chancellor of Pt. Sunder Lal Sharma University on 06.05.2016 with respect to compliance of Ordinance No. 2 of the Ph.D., Degree and thereafter various letters were sent by the Chancellor on 11.07.2016, 03.12.2016, 25.05.2017, 17.08.2017 & 27.10.2017 but no communication was replied by the Vice Chancellor. In such a situation, the power of enquiry was delegated by Letter dated 15.11.2017 asking the State to make an enquiry on the particular issue. The documents, therefore, suggest that despite the information was sought for by the Chancellor, the University did not reply to the same and eventually, the power of enquiry was delegated to the State Government by the Chancellor as per Section 8(2) of the Act of 2014.

27. The State Government thereafter formed a committee of experts as stated above and after an enquiry, sent communication to the Vice Chancellor of the University by letter dated 05.10.2018. The said act would show that no decision was taken by the State and it is on the delegated power, the enquiry was conducted and like a ministerial act, after the enquiry was over, it was forwarded to the University for the necessary action.

28. The Supreme Court in case of Sidhartha Sarawgi v. Board of Trustees for the port of Kolkotta (Supra) has considered the nature of delegation. Paras 5 & 6 would be relevant here and quoted below :

"5. Regarding delegation of non-legislative/ administrative powers on a person or a body to do certain things, whether the delegate himself is to perform such functions or whether after taking decision as per the terms of the delegation, the said agency can authorise the implementation of the same on somebody else, is the question to be considered. Once the power is conferred, after exercising the said power, how to implement the decision taken in the process, is a matter of procedure. The legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of that policy. So long as the essential function of decision making is performed by the delegate, the burden of performing the ancillary and clerical task need not be shouldered by the primary delegate. It is not necessary that the primary delegate himself should perform the ministerial acts as well. In furtherance of implementation of

the decision already taken by the primary delegate as per the delegation, ministerial or clerical tasks may be performed by authorised officers. The complexity of modern day administration and the expansion of functions of the State to the economic and social spheres have made it necessary that the legislature gives wide powers to various authorities when the situation requires it. Today's governmental functions are a lot more complex and the need for delegation of powers has become more compelling. It cannot be expected that the head of the administrative body performs each and every task himself.

6. The issue was considered by this Court in *Jamal Uddin Ahmad v. Abu Saleh Najmuddin* (2003) 4 SCC 257 in the context of procedure for filing of the election petitions under Section 81 of the Representative of People Act, 1951. It was held that the ministerial or administrative functions of the authority on whom the powers are conferred by the statute can be exercised by the authorised officers. It was held that : (SCC pp. 269-70, Para 13)

"13. The functions discharged by a High Court can be divided broadly into judicial and administrative functions. The judicial functions are to be discharged essentially by the Judges as per the Rules of the Court and cannot be delegated. However, administrative functions need not necessarily be discharged by the Judges by themselves, whether individually or collectively or in a group of two or more, and may be delegated or entrusted by authorisation to subordinate unless there be some rule of law restraining such delegation or authorisation. Every High Court consists of some administrative and ministerial staff which is as much a part of the High Court as an institution and is meant to be entrusted with the responsibility of discharging administrative and ministerial functions. There can be 'delegation' as also there can be 'authorisation' in favour of the Registry and the officials therein by empowering or entrusting them with authority or by permitting a few things to be done by them for and on behalf of the Court so as to aid the Judges in discharge of their judicial functioning. Authorisation may take the form of formal conferral or sanction or may be by way of approval or countenance. Such delegation or authorisation is not a matter of mere convenience but a necessity at times. The judges are already overburdened with the task of performing judicial functions and the constraints on their time and energy are so demanding that it is in public interest to allow them to devote time and energy as much as possible in discharging their judicial functions, relieving them of the need for diverting their limited resources of time and energy to such administrative or ministerial functions, which, on any principle of propriety, logic, or necessity are not required necessarily to be performed by the Judges. Receiving a cause or a document and making it presentable to a Judge for the purpose of hearing or trial and many a functions post-decision, which functions are administrative and ministerial in nature, can be and are generally entrusted or made over to be discharged by the staff of the High Court, often by making a provision in the Rules or under the orders of the Chief Justice or by issuing practice directions, and at times, in the absence of rules, by sheer practice. The practice gathers the strength of law and the older the practice the greater is the

strength."

29. The letter of the State would show that the State has not taken any decision on the enquiry report instead it was forwarded to the University in a ministerial act. Therefore, applying the aforesaid principles to the facts of the case, the State acted within a delegated power by the Chancellor and it was only ministerial act performed by the State. Sub-section (4) of section 8 of the Act 2004 shows that after certain enquiry report is received, the Chancellor (Kuladhipati) may address to the Vice Chancellor with reference to such inspection or enquiry together with views and advise and the action to be taken. Before the stage happened in the case, the petitioners have preferred these petitions. The show cause notice was issued by the University pursuant to such letter forwarded by the Chancellor. Even otherwise the University under Clause 5.3 of Ordinance 2 can enquire into any irregularity and take steps. The documents would show that the State has not taken any decision whereas when the enquiry report was forwarded to the University, the University itself has issued the show cause to the different persons. Therefore, the contention of the petitioners that the State has taken a decision for which the Kuladhipati was only empowered, is not supported in the facts of the case.

30. The stage of act under sub-section (4) of section 8 was yet to be arrived. Before such act happened, the petitioners have rushed to this Court challenging the show cause notice issued by the University and have placed different documents and correspondence as also the communication made by the University vide letter Annexure R-1(f) dated 05.12.2018 which was in response to the enquiry report of the State. The University has given certain explanation to the State and in response to such letter, the State Government again wrote back to the University by letter dated 08.04.2019 and advised that according to the enquiry report and as per the Ordinance No.2, proper course of action may be adopted, therefore, no decision was taken by the State and the opinion of the enquiry committee was forwarded to the University. Therefore, virtually no action was taken till date by the Kuladhipati.

31. It is a settled law that writ petition against show cause notice is not maintainable unless it is proved as premeditated in view of the decision of the Supreme Court rendered in Siemens Ltd. v. State of Maharashtra (2006) 12 SCC 33. The ratio which is laid down in the said case is that the show cause notice can be struck down only when the issuing authority made up their mind. Perusal of various various documents which are filed by the petitioners in this case read with Ordinance would point out that the University is within their right to ask for explanation. If the ordinance has not been followed which is with respect to grant of degree in higher academic courses especially the Ph.D., the University is within their domain under the Ordinance to touch upon the veracity of grant of degree. The correctness and legality are yet to be decided for which the show cause notice was issued. The Chancellor and the Act of the University therefore cannot be put to a dummy mode to hold that once the Ph.D., has been issued,

they cannot test the veracity of it. In the facts and circumstances of the case, the show cause notice cannot be said to be premeditated so as to quash the same at the threshold.

32. Further perusal of the documents relating to correspondence made between the Chancellor, Vice Chancellor and the State would show that on receipt of complaints in respect of grant of Ph.D., degrees, the Chancellor wrote letter on 06.05.2016 to the University to enquire into the matter and thereafter sent many reminders to the university on 11.07.2016, 03.12.2016, 25.05.2017, 17.08.2017 & 27.10.2017 and when no reply has been received till long from the Vice Chancellor of the University, eventually the Chancellor has delegated the power of enquiry to the State. Upon such delegation, the State has constituted a team of 3 experts through Higher Education Department to conduct enquiry as per 11 points mentioned in the Chancellor's letter. The said Committee after conducting enquiry into each grant of Ph.D., degree submitted the report and after completing such long exercise the show cause notice was issued to the petitioners. Therefore, considering these circumstances also, it cannot be said that the show cause notice was premeditated.

33. The petitioners, however, can very well present their stand before the University to justify the award of the Ph.D. Degree and that the requirements of Ordinance No.2, which govern Ph.D., were fulfilled in its object and spirit. Subsequently if any adverse decision is taken, the petitioners shall be at liberty to challenge the same. At this stage, this Court restrains itself to adjudicate or comment upon the fact as to whether a particular part of Ordinance has been duly complied or not ? It would be a matter of consideration for the University and the Chancellor in furtherance.

34. In the result, the petitions are premature and no relief can be granted at this stage. Accordingly, the petitions are dismissed.