

(2023) 07 UK CK 0080

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1789 Of 2018

Guru Ram Rai University & Another

APPELLANT

Vs

State Of Uttarakhand Through Secretary (Medical Education),
Uttarakhand Shashan, Dehradun, District Dehradun & Others

RESPONDENT

Date of Decision : 12-07-2023

Acts Referred:

Sri Guru Ram Rai University Act, 2016 — Section 27, 28, 29, 30, 31, 31(1), 31(2), 32

Citation : (2023) 07 UK CK 0080

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : Rajendra Dobhal, Jitendra Chaudhary, Shubhang Dobhal, Sagar Gaur, S.N. Babulkar, Menka Tripathi, S.K. Mishra, Shailendra Nauriyal, Dharmendra Barthwal, Himanshu Yadav, Siddhant Manral, Arvind Vashishta, Shubham Saharawat, Nidhi Thapa, Vivek Pathak, T.A. Khan, Mohd. Shafy

Final Decision : Allowed

Judgement

Manoj Kumar Tiwari, J

1. Heard learned counsel for the parties on impleadment application (I.A. No.8828 of 2023).
2. Having regard to the relief sought in the writ petition, applicants cannot be said to be necessary or proper party, therefore, their application for impleadment cannot be allowed, however, in the interest of justice, they shall be given right of hearing while deciding the writ petition, by treating their application as intervention application. Accordingly, IA No. 8828 of 2023 is disposed of.
3. Also heard on Intervention Application Nos. 8827 of 2023 and 8829 of 2023. For the reasons indicated in the said applications, intervention applications stand allowed.
4. This writ petition has been filed by Sri Guru Ram Rai University, Dehradun, through its Registrar. Sri Guru Ram Rai Institute of Medical and Health Sciences

College, Dehradun, which is constituent college of the aforesaid university, is also added as petitioner no. 2.

5. It is not in dispute that Sri Guru Ram Rai University, Dehradun (petitioner no. 1) was established by Sri Guru Ram Rai University Act, 2016, which was enforced on 07.04.2017. Thus, it is a statutory authority.

6. According to petitioners, in exercise of power under Section 31 of the said Act, university submitted Rules for approval to the State Government, and the State Government failed to take any decision in the matter for more than six months, and then one fine morning, State Government granted approval to the Rules with certain modifications.

7. Petitioners contended that in view of deeming provision contained in Section 31(2) of the Act, State Government lost its power to approve the Rules with modifications. In other words, it is the contention of petitioners that upon expiry of two months from date of submission of Rules before State Government, the Rules will be deemed to have been approved, therefore, after two months, State Government loses its power to modify Rules submitted by the University for approval.

8. By means of this writ petition, petitioners have sought the following reliefs:

“(i) Issue a writ, order or direction in the nature of certiorari, calling for the original record and please to quash the impugned Adhishochna/ notification no. 314/XXXIV (3)/2018-13 (15) 2018, Dehradun dated 06 -06-2018 issued by the Respondent no. 2 i.e., the Additional Chief Secretary, Uttarakhand Shashan, High education Anubag- 3, Dehradun alongwith amended/ modified Sri Guru Ram Rai University rule 2018(ANNEXURE 2).

(ii) Issue a Writ, order or direction in the nature of Mandamus, and further be pleased to declare that earlier un-amended Sri Guru Ram Rai University Rules 2017 called as “first rules 2017” (Annexure-7) which were submitted before the state government on 10-11-2017 are the approved rules of the Petitioner No.1 University in view of the provision of “Deemed Approval” provided under section 31 (2) of Sri Guru Ram Rai university Act 2016 (Uttarakhand Act No. 03 of 2017)”.

(iii) Issue a writ, order or direction in the nature of mandamus, directing and commanding the respondent no.4 i.e. HNB Uttarakhand Medical Education University Dehradun/NEET- UG-2018, Uttarakhand State Centralized Counselling Board to the effect that it shall complete counselling as per notified schedule and direct the enrolled finally selected candidates to pay “tuition fee” for state quota seats as well as All India Management quota seats as per the fee structure provided by the petitioner medical college to the respondent no.4 prior to starting counselling which is annexed as annexure no. 11 to this writ petition.”

9. As stated earlier, Sri Guru Ram Rai University was established by a Legislative Act, Namely, Sri Guru Ram Rai University Act, 2016, which was enforced on

07.04.2017. Sections 27, 28 & 29 of the said Act deal with Statutes of the University; while Sections 30, 31 & 32 deal with Rules of the University. Provisions contained in Sections 27 to 32 of the said Act, are reproduced below for ready reference:

"27. Statutes. - Subject to the provisions of this Act, the Status may provide for all or any matter relating to the University and Staff, as Follows:-

(a) Transaction of business of the Authorities of the University and the Composition of bodies not specified in this Act;

(b) The Operation of the permanent endowment fund, the general fund and the development fund;

(c) Appointment of the Chancellor, his powers and functions;

(d) Terms and conditions of appointment of the Vice-Chancellor, the Registrar and the Finance Officer and their powers and functions;

(e) Mode of Recruitment and the conditions of service of the other officers, faculty members and employees of the University;

(f) Resolving of disputes between the University and its Officers, faculty members and employees and students;

(g) Disciplinary action against employees of the University;

(h) Disciplinary action against students of the University;

(i) Creation, abolition or restructuring of departments and faculties;

(j) Manner of co-operation with other Universities or institutions of higher education;

(k) Conferment of honorary degrees;

(l) Grant of free ships and scholarships;

(m) Number of seats in different courses of studies and the procedure for admission of students to such courses including reservation of seats for students of Uttarakhand;

(n) Institution of fellowships, scholarships, studentships, free ships, medals and prizes;

(o) Creation and abolition of posts; and

(p) Other matters which may be prescribed.

28. Statutes how made. - (1) The first Statutes framed by the Board of Governors shall be submitted to the State Government for its approved, which may, within three months from the date of receipt of the Statutes give its approval with or without modification.

(2) Where the State Government fails to take any decision with respect to the approval of the Statutes within the period specified under Sub-section (1) it shall be deemed to have been approval by the State Government.

29. Power to amend the Statutes. - The Board of Governors may, with the prior approval of the State Government, make new or additional Statutes or amend or repeal the Statutes.

30. Rules. - Subject to the provisions of this Act, the Rules may provide for all or any of the following matters:-

(a) Admission of students to the University and their enrolment and continuance as such;

(b) Laying down the courses of study for all degrees and other academic institutions of the University;

(c) The award of degrees and other academic distinctions;

(d) The conditions of the award of fellowships, scholarships, studentships, medals and prizes;

(e) The conduct of examinations and the conditions and mode of appointment and duties of examining bodies, examiners, invigilators tabulators and moderators;

(f) Fee chargeable from students for various courses;

(g) The fee to be charged for admission to the examinations, degrees and other academic distinctions of the University;

(h) The conditions of residence of the students at the University or a Constituent College;

(i) Maintenance of discipline among the students of the University or a Constituent College;

(j) All other matters as may be provided in the Statutes and rules under this Act.

31. Rules how made. - (1) The Rules shall be made by the Board of Governors and the rules so made shall be submitted to the State Government for its approval, which may, within two months from the date of receipt of the rules, give its approval with or without modification.

(2) Where the State Government fails to take any decision with respect to the approval of the rules within the period specified under sub-section (1), shall be deemed to have been approved by the State Government.

32. Power to amend Rules. - The Board of Governors may, with the prior approval of the State Government, make new or additional rules or amend or repeal the rules."

10. According to petitioners, in exercise of power Under Section 31 of the Act, University framed Rules and submitted for approval before the State Government, on 10.11.2017. Copy of covering letter dated 06.11.2017, which was allegedly served in the office of Joint Secretary, Higher Education, Government of Uttarakhand is annexed as Annexure No.6 to the writ petition. The Draft Rules, which are referred as "First Rules 2017" submitted with the said covering letter, are on record as Annexure No.7 to the writ petition. Dispute is with regard to Clause 7 of the Draft Rules, which appears to have been modified by the State Government. Clause 7 of the Draft Rules provided that Board of Management of the University shall determine the fee chargeable from students, on the recommendation of a Fee Committee. While granting approval, State Government provided that fee shall be determined by Admission and Fee Regulatory Committee constituted under Uttarakhand Unaided Private Professional Education Institutions (Regulation of Admission and fixation of Fee) Act, 2006.

11. According to petitioners, due to delay of more than two months caused by the State Government in taking decision regarding approval to the Draft Rules, the State Government lost its right to modify the Rules in view of provision contained in Section 31 of the Act.

12. Thus, the short point, which falls for consideration in this writ petition is whether, upon expiry of two months from the date of submission of Draft Rules for approval before the State Government, State Government can invoke power available to it under Section 31(1), to grant approval to the Rules with certain modifications.

13. No doubt, Section 31(1) of the Act enables the State Government to grant approval to the Rules made by Board of Governors of the University with or without modification, if decision in the matter of approval is taken within two months. Section 31(2) deals with a situation, where State Government is not able to take decision regarding approval to the Rules within two months, and provides that the Rules made by Board of Governors, shall be deemed to have been approved by State Government. Thus, from Section 31(2), it is apparent that upon expiry of two months from the date of submission of the Rules, if no decision is taken by the State Government, then it shall be deemed that Rules have been duly approved by the State Government. This legal fiction, created by Section 31(2), will come into play immediately upon expiry of two months from the date of submission of Draft Rules to the State Government.

14. According to petitioners, Rules framed by the Competent Authority in the University were sent for approval to the State Government, along with covering letter dated 06.11.2017, and the said covering letter was served upon the State Government on 10.11.2017. The Draft Rules, which are referred as 'First Rules 2017', are also placed on record by petitioners. Thus, according to petitioners, upon expiry of two months, to be reckoned from 10.11.2017, State Government lost its right to grant approval with modification to the Rules. Thus, it is

contended that the order dated 06.06.2018, impugned in this writ petition, whereby approval was granted with modification to the Rules, is unsustainable in the eyes of law.

15. Additional Chief Secretary, Higher Education, Government of Uttarakhand (respondent no. 2) has filed a counter affidavit, wherein factum of submission of First Rules by University in the Office of Additional Chief Secretary, Higher Education is admitted, in paragraph nos. 5, 7 & 12 of the counter affidavit, however, it is contended that the covering letter dated 06.11.2017 could not have been received in the office of Additional Chief Secretary, as it was addressed to Joint Secretary, Higher Education. Reliance has been placed upon Secretariat Manual for contending that a letter addressed to Joint Secretary could not have been received by the office of Additional Chief Secretary. Reliance has also been placed upon paragraph no. 3 of the Secretariat Manual, which provides that letters addressed to an officer, shall be received either by the concerned Officer or by his Personal Assistant and during temporary absence of an Officer due to leave or inspection, he shall authorise someone to receive letters on his behalf and if no such arrangement is made, then the letter shall be received by the Section Officer of the concerned section.

16. Respondent no. 2 has nowhere denied receipt of the Draft Rules with covering letter dated 06.11.2017. The only defence taken is that Draft Rules were not submitted before the appropriate authority.

17. Learned Counsel for petitioners contends that it was the Joint Secretary, who was communicating with petitioner on behalf of the State Government, and in support of this contention, he has referred to Annexure No.8 to the writ petition, which is a letter issued by Joint Secretary, asking petitioner to provide the Draft Rules for approval to the State Government. Thus, he submits that the covering letter dated 06.11.2017 was addressed to Joint Secretary and not to Additional Chief Secretary. He further contends that since petitioner-University had submitted Draft Rules in Higher Education Department of the State Government, therefore, it makes no difference whether it was served in the office of Additional Chief Secretary or Joint Secretary. He further contends that the Secretariat Manual is compilation of executive instructions and moreover part 3 of chapter 4 of Secretariat Manual cannot be pressed into service for defeating the claim of petitioner.

18. Learned Advocate General contended that covering letter dated 06.11.2017 submitted by petitioners refers to Sections 27 & 28 of Sri Guru Ram Rai University Act, 2016, and these provisions deal with first Statute and not the Rules. By referring to Section 32 of the Act, learned Advocate General contended that it was not competent for the University to frame Rules, without prior approval of the State Government.

19. Mr. D.S. Patni, learned Senior Advocate for the interveners adopted the aforesaid contention, as made by learned Advocate General.

20. Per contra, learned counsel for petitioners contended that reference to Sections 27 & 28 of the Act in the covering letter dated 06.11.2017 was due to mistake, which is apparent from the Rules sent along with said covering letter, which are on record as Annexure No.-7 to the writ petition.

21. Learned counsel for petitioners further contended that Section 32 of the Act deals with new or additional Rules, and it is also applicable in case of amendment or repeal of earlier Rules, which is not the case here, as the University had submitted the Rules first time for approval, which is covered by Section 31 of the Act.

22. Mr. T.A. Khan, learned Senior Advocate appearing for some of the interveners referred to communication dated 17.04.2018 issued by Joint Secretary, Higher Education, whereby the University was asked to furnish Draft Rules for approval of the State Government.

23. In reply, learned Senior Counsel for petitioner refers to letter dated 03.05.2018, issued by Registrar of the University to Joint Secretary (Annexure No-9 to the writ petition), wherein it is stated that the Draft Rules were served upon the State Government on 10.11.2017. He has also referred to the averment made in paragraph no. 19 of the writ petition regarding University's reply dated 03.05.2018 and the consequence of not granting approval to the Draft Rules within two months. He further submits that the averment made in paragraph no. 19 of the writ petition is not denied by respondent no. 2, in his counter affidavit.

24. This Court finds substance in the submission made on behalf of the petitioners that from material on record, it reveals that the Draft Rules were presented before the State Government for approval on 10.11.2017. As per counter affidavit filed on behalf of respondent no. 2, said Rules were served in the office of Additional Chief Secretary and not the Joint Secretary, to whom covering letter was addressed.

25. Since respondent no. 2 admits receipt of Draft Rules with covering letter dated 06.11.2017, therefore, contention based on Secretariat Manual raised on behalf of the State Government, cannot be accepted.

26. Additional Chief Secretary in the concerned department is the final authority to take decision in the matter of approval, therefore, benefit of Section 31(2) of the Act cannot be denied to petitioners merely because Draft Rules were addressed to Joint Secretary.

27. State Government has hierarchy of officers and there is nothing on record to indicate that Draft Rules could be submitted only in the office of Joint Secretary and not in the office of Additional Chief Secretary. Petitioner-University, submitted the Draft Rules in the concerned department of the State Government, therefore, in the absence of any provision, which prescribes service of Draft Rules upon a particular officer, service of Draft Rules by petitioner on 10.11.2017 shall be treated as sufficient. Thus, the period of two months provided under

Section 31(2) of the Act would be reckoned from date of service of Draft Rules by petitioner in the concerned department of the State Government.

28. This Court finds substance in the contention raised on behalf of petitioner-University that the State Government could have granted approval to the Draft Rules with certain modifications, if decision was taken by the State Government within two months from date of submission of Draft Rules, however, upon expiry of two months, the Draft Rules would be deemed to have been approved by operation of law, and thus, the State Government would loose the power to grant approval with modification.

29. Even though, the covering letter issued by the University on 06.11.2017 refers to a wrong provision of law dealing with first Statute, however, Annexure-9 to the writ petition reveals that the Rules were submitted for approval and not the first Statute. Thus, merely because wrong provision of law has been cited, will not be a valid justification for denying benefit of Section 31(2) of the Act to petitioners. The State Government never pointed out this discrepancy in the covering letter to petitioners, therefore, it is now stopped from taking benefit of the mistake in the covering letter.

30. The contention raised by learned Advocate General on the strength of Section 32 of the Act is unacceptable, as the said provision deals with new or additional Rules and is also applicable in the case of amendment or repeal of existing Rules. While, in the present case, University was framing Rules for the first time, therefore, requirement of prior approval, contained in Section 32 cannot be read in respect of Rules, which were framed for the first time under Section 31.

31. Ms. Menka Tripathi, learned Deputy Advocate General, lastly contended that the covering letter dated 06.11.2017, alleged to have been served by petitioners upon State Government, does not bear the seal of the officer receiving the said letter, however, the said contention cannot be accepted for the simple reason that respondent nos. 1 & 2 have nowhere denied receipt of the said letter.

32. From the aforesaid discussion, it is apparent that petitioner-University served copy of the Draft Rules with covering letter upon State Government, on 10.11.2017. In view of Section 31(1) of the Act, State Government was required to take decision in the matter within two months from the date of receipt of the Draft Rules. Section 31(2) provides the consequence of not taking decision in the matter of approval within the period specified under sub-section (1) and ordains that the Rules as submitted by the University shall be deemed to have been approved by the State Government. In view of the express provision contained in sub-section (2) of Section 31 of the Act, the State Government cannot exercise power of modifying Rules, which is available to it under Section 31(1), upon expiry of the period prescribed in the said provision.

33. Thus, this Court has no hesitation in holding that due to the delay caused by State Government in taking decision on Rules submitted by University, it lost the right to grant approval with modification to the Rules. In other words, Draft Rules

as submitted by the University to the State Government, acquired the status of approved Rules, by virtue of Section 31(2), upon expiry of two months from 10.11.2017, and any modification made by the State Government to the said Rules, upon expiry of two months, is incompetent.

34. In such view of the matter, the writ petition deserves to be allowed and is hereby allowed. Accordingly, the modification effected by the State Government vide order dated 06.06.2018, while granting approval to the Rules submitted by the University, is hereby quashed.