

(1959) 07 CAL CK 0024
In the Calcutta High Court
Case No : Civil Revision Case No. 283 of 1956

Jatindra Nath Set	Vs	APPELLANT
Jadavpur University and Others		RESPONDENT

Date of Decision : 23-07-1959

Acts Referred:

Constitution of India, 1950 — Article 13, 19(1), 31, 31(2A)
Jadavpur University Act, 1955 — Section 1, 12, 2, 4

Citation : AIR 1960 Cal 120 : 63 CWN 915 : 63 CWN 914

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : M.B. Mullick and Rabindra Nath Mitra, S.M. Bose, General, Arun Mukherji and Somendra Chandra Bose, for the Appellant; Arun Mukherji and Santi Prosad Banerji for Opposite Parties (Nos. 1 and 3), for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This is an application by Jatindra Nath Set, who is a life member of the National Council of Education, against the Jadavpur University, the Secretary, National Council of Education and the State of West Bengal. The application is made under Article 226 of the Constitution for a writ of mandamus directing the Jadavpur University and the State of West Bengal to forbear from taking over the management and maintenance of any institution under the control of the National Council of Education or from taking over any assets covered by any deed of gift, endowment, bequest or trust in favour of such National Council of Education.

2. The National Council of Education conjures up the memory of a chapter in the history of national education in India during the period of her struggle for emancipation against foreign rule. It was founded by men inspired by patriotism and national ideals as early as 1906. The object was to impart education, literal, scientific as well as technical and professional and emphasis was on the national ideals. It was thought at the time that the than existing universities were anti-

national and were not suited to educate Indians to be true to their national genius and cultural heritage. The National Council of Education was a great example of creative achievement of the historic Swadeshi movement in the State of Bengal. More than half a century has passed and the gallery of time is packed with the relics of ideals achieved and broken. Great changes have come on the political and constitutional horizon of India. The scene has changed. The application represents a conflict and a struggle between the old atmosphere and the new atmosphere, between the old sense of struggle and the new environment of emancipation.

3. The Jadavpur University Act, 1955, is challenged as ultra vires. Mr. Mukunda Behari Mullick, the learned Advocate for the applicant first criticizes this Act as a measure of bad faith. He draws my attention to that portion of the statement of objects and reasons published in the Calcutta Gazette Extraordinary of August 31, 1955, Part IV A at page 1432, where the Minister -- Member-in-Charge, made the following statement:

"..... that the degrees of the National Council of Education should receive statutory recognition by the State Government or by the Government of India, as the ease may be. The College of Engineering and Technology (run by the National Council of Education) has been virtually functioning as a University. It is now considered necessary to give statutory recognition to the Courses of Studies and the Degrees of this Institution to enable it to function and develop as a Unitary Teaching University. The Government of India concur in the proposal."

It is argued on behalf of the applicant that instead of raising the National Council of Education to the status of a university as declared in those objects and reasons, something entirely different has been offered in the new Statute of the Jadavpur University Act. This Court is not concerned with allegations of bad faith in the sense how far promises made by legislators or Ministers in the statements of objects and reasons of a statute are ultimately formulated in the statute itself. The place to agitate them is the more colourful arcadias, intended for them. If the applicant has to succeed in this Court, he has to succeed on the prosaic and legal question that the Jadavpur University Act, 1955, is ultra vires the Constitution.

4. The Tadavpur University Act, 1955, is challenged as ultra vires the Constitution first on the ground that it deprives the National Council of Education of all its funds and assets without providing for any compensation in the Statute. It is undisputed that the Statute makes no attempt to provide for any compensation whatever. The first point, however, is whether the applicant can at all invoke Article 31 of the Constitution to support his contention, In my view, he cannot. I shall put the reasons briefly. Article 31(1) of the Constitution of India lays down the well-known provision that no person shall be deprived of his property save by authority of law. Even if there be any deprivation of properly, in this case it is done by authority of law. which is the Statute called the Jadavpur University Act, 1955, In order to succeed in his challenge to the Act under this

Article, the applicant has secondly to show that he comes under Article 31(2) of the Constitution which lays down that no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned. The reason why the applicant cannot have the benefit of Article 31(2) of the Constitution in this case is that this is not a case of compulsory acquisition or requisition within the special meaning of the Constitution. The National Council of Education as such has consented to the transfer of their assets and property. It is true that the applicant contends that the constitution even of the National Council of Education was not properly made and, therefore those in authority of the National Council of Education could not and did not really consent. But the fact remains that the applicant appears to be the solitary protagonist for his cause, and he appears to have no support. Lack of numbers, however, will not defeat his claim if it can be founded in law. The law is against him under the amended Article of the Constitution contained in Article 31(2A) of the Constitution Introduced by the Constitution (Fourth Amendment) Act, 1955 on the 27th April 1955. This constitutional amendment provides a special qualification and meaning for compulsory acquisition or requisition. That amendment provides as follows:

"Where a law does not provide for the transfer of ownership or right to possession of any property to the State or to a corporation owned or controlled by the State it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property."

Now, scanning the different sections of the Jadavpur University Act, it appears to me plain that there is no transfer of ownership or right to possession of any property to the State as such or to a corporation owned or controlled by the State. The transfer is to the Jadavpur University which is a statutory corporation u/s 3 of the Act. The constitution of that University as laid down in Section 4 shows that it is not a corporation owned or controlled by the State within the meaning of Article 31(2A) of the Constitution. Therefore, such transfer of the assets of the National Council of Education as contained in Section 12 of the Jadavpur University Act is not to be regarded as compulsory acquisition or requisition of property for which any compensation is constitutionally payable.

5. Section 12 of the Jadavpur University Act provides:

"12(1). When this Act comes into force, the maintenance and management of any Institution under the control of the National Council shall stand transferred to the University.

(2) When the maintenance and management of any Institution stands transferred to the University under Sub-section (1) or when the University takes over the maintenance and management of any existing Institution under Clause (2) of Section 5-

(a) there shall stand transferred to the University for the benefit of such Institution all assets held for the benefit thereof and covered by any deed of gift, endowment, bequest and trust and any such deed shall be construed as if it were executed in favour of the University;

(b) every person employed in that institution shall continue to be employed by the University on terms and conditions not less advantageous than those governing his employment by the Institution." It will be seen from this section that the transfer is to the University. It is not a transfer to the State or to any corporation owned or controlled by the State within the meaning of Article 31(2A) of the Constitution. It will also be seen from this section that its first sub-section transfers the maintenance and management of an institution under the control of the National Council. The first sub-section does not speak of any assets but confines itself to maintenance and management. The second sub-section transfers assets but makes it clear that such assets shall stand transferred for the benefit of such institution and all assets held for the benefit thereof and covered by any deed shall be construed as if the deed were executed in favour of the University. In other words, it does not even commit breach of trust generally, but tries to preserve the benefit of the Institution for the purpose of which the assets are utilised by the National Council of Education.

6. The provision in Section 15 of the Jadavpur University Act giving power to the State Government to issue directives to the University not inconsistent with the Statute in order to resolve any difficulty for the first two years of its life after the Act, does not make it a corporation owned or controlled by the State under Article 31(2A) of the Constitution. In any event, those two years have long since passed.

7. In that view of the matter, the argument of the learned Advocate for the applicant that this Statute is bad under Article 31(3) of the Constitution for not having received the assent of the President is no longer relevant because Sub-article (3) of Article 31 only applies to such law as is referred to in Clause (2) of Article 31, namely, of compulsory acquisition or requisition of property which, as I have said, is not the case here within the meaning of the amended Article 31(2A) of the Constitution.

8. I am therefore unable to uphold the applicant's first contention that the Jadavpur University Act 1955 is ultra vires Article 31 of the Constitution.

9. The second challenge to this Act was made on the ground that the Act violates the applicant's right to form associations under Article 19(1)(c) of the Constitution. It was contended on behalf of the applicant that the right to form the National Council of Education was interfered with by the Jadavpur University Act. I do not see the point of the objection. The Jadavpur University Act does not dissolve the National Council of Education. In fact, it recognises the National Council of Education. Such recognition is not only to be found in Section 2(c) of the Jadavpur University Act indicating "National Council" to mean the National

Council of Education, Bengal, formed and registered on the first day of June 1906 under the Societies Registration Act, 1860, but also (1) by providing in Section 4 that all persons who were members of the Executive Committee of the National Council immediately before the commencement of the Act shall, together with the persons mentioned in the First Schedule of the Act be the first members of the University and that the vacancy there was to be filled by nomination by the National Council of Education u/s 4(3) of the Act and further giving the President of the Alumni Association of the National Council as well as to eight other persons elected by the National Council seats in the composition of the membership of the University, (2) by preserving the purpose of the trust in respect of the special Institutions maintained by the National Council of Education as in Section 12 of the Act and (3) by requiring the University to consult the National Council on budget u/s 13 of the Act.

10. There is explicit and implicit recognition in the Jadavpur University Act, 1955, that the nucleus is the National Council of Education. I, therefore, see in the facts no infringement of the applicant's right to form associations under Article 19(1) (c) of the Constitution of India. The National Council still exists and the petitioner remains a life member and this Statute has not prevented him from continuing as such life member, of such association as the National Council of Education.

11. The third challenge to the Jadavpur University Act is that the Statute infringes the applicant's right to acquire, hold and dispose of property under Article 19(1)(f) of the Constitution. This contention of the applicant must also fail. The applicant is a life member of the National Council of Education. The Rules of the National Council of Education do not. give life members as such any right of property in the assets held by the National Council of Education. They have only certain rights to participate in meetings and to vote. Rule 6 provides that life members have the right to take part in the proceedings of the Council. Rule 15 gives them along with other members the right to free use of libraries, laboratories, museums etc. of the Council, But Rules 49 to 51 make it clear that these life members as such have no right to property. There are at least three trustees of the Council under these Rules. Rule 51 expressly provides that all immovable property, funds etc. being the property of the Council shall be vested in the trustees for the time being but shall be subject to the control of the Executive Committee. The applicant is not a member of the Executive Committee. Therefore, he is not only not vested with the property of the National Council of Education, but in fact also has no right of control as such, which he could have had if he were a member of the Executive Committee, It is, therefore, impossible to find that he has lost any right to hold, acquire or dispose of property. Therefore there is no basis of the applicant's claim for any fundamental right under Article 19(1)(f) of the Constitution, and hence no right of the applicant thereunder is infringed by the Jadavpur University Act 1953.

12. The fourth attack upon the Jadavpur University Act is made on the ground that the Statute commits breach of trust. The argument is based on Section 12

of the Jadavpur University Act which transferred the assets of the National Council of Education to the University. It was contended that such transfer committed breach of three trust deeds, viz. (1) the Deed of Endowment of Raja Subodh Chandra Mallik, (2) the Deed of Endowment of late Brojendra Kishore Roy Choudhury and (3) the Deed of Endowment of Maharaja Surjya Kanta Acharya Choudhury. I shall now therefore analyse the special provisions of these different trust deeds to examine breach, if any, of these trusts, and if so what is the legal consequence.

13. In Raja Subodh Chandra Mallik's Deed of Endowment, the relevant clause provides as follows:--

"In case the said National Council of Education, Bengal, should be dissolved or should cease to exercise its functions for the time being successively for one year or should the said National Council of Education, Bengal, or any Institution owned by it shall at any time submit either wholly or in part to be controlled by the Government of India or any Provincial Government then and in any such cases, the Trust hereby created shall become void and theannual sum shall thereafter be paid by the said Trustees to the said donor, his heirs, representatives or assigns for his or their absolute use or benefit."

Now, not one of these conditions has been broken so that there is no breach of trust. The Jadavpur University is not an institution wholly or in part "controlled" by the Government of India or by the State Government and it could not be said, therefore, that the Trust has ceased. It cannot also be said that the National Council of Education has been dissolved nor can it be said that it has ceased to exercise its functions. That means that the aforesaid provision in the Trust Deed cannot be invoked. It cannot be said that the Statute has committed any breach so as to result in the Trust ceasing and the money reverting to the donor and his heirs under the above clause.

14. The Deed of Endowment of Maharaja Surjya Kanta Acharya Choudhury after making similar provisions as in the Deed just quoted, goes on to provide further:--

"..... Should the said National Council of Education or the Schools and Colleges owned by it become affiliated to the existing Indian Universities then and in any of such cases, the Trust hereby created as aforesaid shall become void and inoperative and the said Trust premises shall absolutely revert to the said donor, his heirs, representatives and assigns".

Here again, it cannot be said that the National Council of Education or its schools and colleges have become affiliated to any existing University. In fact, "existing Universities" must have meant the Universities existing at the time when the Deed of Endowment was made and could not have meant another wholly new University coming in the future. The history that I have given of the National Council of Education will support that view. In any event, the Jadavpur University is a new University created by Statute and affiliation with that University even

would not have forfeited that Trust. Therefore, there is no breach of trust so far as this Endowment is concerned.

15. Lastly, it is contended that the Endowment of late Brojendra Kishore Roy Choudhury contains a provision which has been infringed by the Jadavpur University Act. The relevant provision in that Deed is:--

"Provided further that no portion of the said sum of Rs. 20,000/- shall, at any time or under any circumstances be spent or applied for starting and endowing or supporting any institution or institutions not wholly the property or not under the sole control of the said National Council of Education".

16. Now, it can certainly be very well and reasonably argued that by such transfer the money will be spent or applied in breach of this Trust because it will be supporting an institution not now wholly owned or under the sole control of the National Council of Education. Even here a possible answer to that argument may be the particular provision of Section 12(3) of the Jadavpur University Act which expressly recognises the sanctity of these special provisions but it is unnecessary to decide it because this argument is met by two other reasons. The first reason is that the applicant cannot enforce this breach, even, if any, of this trust. The second reason is that the State Legislature can alter or affect private trusts. Taking the first reason, I am of the opinion that the applicant cannot correct a breach or trust, even if any, because he is neither a trustee nor a beneficiary under such Trust Deed and he will have no locus standi to correct private breaches of trust unless such breaches are unconstitutional or ultra vires. Neither the representatives of the Trustees nor the heirs of late Brojendra Kishore Roy Choudhury are at all opposing such transfer. On the second reason, I am of the opinion that the Constitution permits State Legislatures to legislate on trusts and trustees, and such State Legislature in my view are constitutionally competent to pass a Statute like the Jadavpur University Act. The State List, List II, of the Seventh Schedule of the Constitution of India in entry 11, specifies "Education including Universities" as State Subjects, subject to certain restrictions which do not apply in this case. Now, the Jadavpur University Act, 1955, certainly comes under the subject of entry 11, "Education including Universities" in the State List, List II and as I have shown it does not come in conflict with any other Constitutional Limitation. I find also that in the Concurrent List, List III, of the Seventh Schedule of the Constitution, entry 10 specifies the subject of "Trust and Trustees". The State Legislature, therefore, has power and legislative competence to legislate for Trusts and Trustees and in doing so to modify an existing Trust. In fact recent legislative history in India contains many examples and instances where Statutes have affected many temple trusts and endowments.

17. The challenge to the Jadavpur University Act must, therefore, fail. The constitutional objections to the Statute cannot be upheld for the reasons I have mentioned. The ideals of the Swadeshi movement of 1906, which established the National Council of Education, with the passage of half a century, will naturally

have to re-adjust to the new freedom in India. Although the applicant feels that he is serving the ideals of 1906, I have no doubt in my mind that those who framed those great ideals of 1906, would see their partial realisation in the new University of Jadavpur and if they and their memories could speak, I feel they would have blessed the new University. The basic ideals of education remain the same. The founders of the National Council of Education dreamt a dream which it may not be too much to say is today slowly taking shape in the new Statute of the Jadavpur University Act.

18. For these reasons, I discharge the Rule and dismiss the petition. There will be no order as to costs. Interim order, if any, is vacated.