

(2019) 11 UK CK 0012
In the Uttarakhand High Court
Case No : Special Appeal No. 899 Of 2019

Kumaon Institute Of Education And Technology	APPELLANT
Vs	
Uttarakhand Open University And Another	RESPONDENT

Date of Decision : 02-11-2019

Acts Referred:

University Grants Commission Act, 1956 — Section 2(f), 3, 12(j), 26, 26(1), 26(1)(a), 26(1)(b), 26(1)(c), 26(1)(d), 26(1)(g), 26(1)(h), 26(1)(i), 26(1)(j), 26(2), 26(3)
University Grants Commission (Open And Distance Learning) Regulations, 2017 — Regulation 2(j), 2(k), 14, 14(1)
University Grants Commission (Establishment Of And Maintenance Of Standards In Private Universities) Regulations, 2003 — Regulation 2.4

Citation : (2019) 11 UK CK 0012

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : C.S. Rawat, Yogesh Pandey, Vikas Pande

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. C.S. Rawat, learned counsel for the appellant-writ petitioner, Mr. Yogesh Pandey, learned Standing Counsel for the first respondent-University and Mr. Vikas Pande, learned Standing Counsel for the second respondent-UGC and, with their consent, the Special Appeal is disposed of at the stage of admission.

2. This Special Appeal is preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No. 1573 of 2019 dated 21.08.2019. The appellant-writ petitioner herein filed Writ Petition (M/S) No. 1573 of 2019 seeking a writ of certiorari to quash the order passed by the first respondent dated 24.01.2019; a writ of certiorari to quash Regulation 14(1) of the University Grants Commission (Open and Distance Learning) Regulations, 2017 (the "2017 Regulations" for short) in so far as it mandates Study Centres to take affiliation from a University; and a writ of mandamus to direct the first respondent to permit the appellant-

institution to continue with the Study Centre, for distance education, for academic session 2019-20.

3. The appellant-writ petitioner claims to have entered into a Memorandum of Understanding with the first respondent-University to provide certain facilities for students undergoing distance education from the respondent-University. While the appellant-writ petitioner claims that the said MOU has been renewed periodically, no reference has been made to any such MOU in the affidavit filed in support of the Writ Petition. Be that as it may, the University Grants Commission (for short the "UGC") made the 2017 Regulations in the exercise of its powers under Section 26(1) read with Section 12(j) of the University Grants Commission Act, 1956 (for short the "UGC Act"). The 2017 Regulations came into force, on its publication in the official gazette (The Gazette of India : Extraordinary), on 23.06.2017.

4. Regulation 14 of the 2017 Regulations relates to Learner Support Centre and reads thus :-

"(1) A Higher Educational Institution offering programme in Open and Distance mode shall, within one year from the date of commencement of these regulations, ensure that a Learner Support Centre is established only in a college or institution affiliated to a University or in a government recognised Higher Educational Institution offering programmes in the same broad areas having the necessary infrastructure and human resources for offering the programme:

Provided that a Higher Educational Institution may establish a special Learner Support Centre for imparting instruction to persons referred to in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999 and other persons in difficult circumstances, including jail inmates:

Provided further that a Learner Support Centre shall not be set up under a franchisee agreement in any case.

(2) A Learner Support Centre shall be the contact point or centre managed by the Higher Educational Institution for providing academic as well as administrative support to its learners, and shall perform such other functions as specified in Annexure X.

(3) The Learner Support Centre shall be headed by a Coordinator who shall be a regular teacher not below the rank of a qualified Assistant Professor of the concerned College or Higher Educational Institution and assisted by the counselors as decided by the Higher Educational Institution.

(4) The Higher Educational Institution shall have a Standard Operating Procedure for the smooth functioning of the Learner Support Centre which shall include functions of the Learner Support Centres and its different functionaries, monitoring mechanism of different services provided by the Centre, and it shall

be mandatory for the Learner Support Centre to maintain the learner data related to conduct of counseling sessions, evaluation of assignments and grievance redressal."

5. Regulation 2(k) of the 2017 Regulations defines "Learner Support Centre" to mean a centre established, maintained or recognised by the Higher Educational Institution for advising, counselling, providing interface between the teachers and the learners, and rendering any academic and any other related service and assistance required by the learners. Prior to the coming into force of the 2017 Regulations, the University Grants Commission (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 (for short the "2003 Regulations") prevailed. Regulation 2.4 of the 2003 Regulations defined a "Study Centre" to mean a centre established and maintained, or recognized by the University, for the purpose of advising, counseling or for rendering any other assistance required by the students used in the context of distance education.

6. What was hitherto called a "Study Centre" has now been brought within the ambit of a "Learner Support Centre", as defined in Regulation 2(k) of the 2017 Regulations, and these Learner Support Centres are required to comply with the requirements of Regulation 14 of the 2017 Regulations. By the order impugned in the Writ Petition dated 24.01.2019, the appellant-writ petitioner's attention was drawn to the 2017 Regulations and they were informed that their Institution should furnish proof of their affiliation to any University. It is this order, calling upon the appellant-writ petitioner to submit proof of their having obtained affiliation of a University, which was subjected to challenge in Writ Petition (M/S) No. 1573 of 2019.

7. This Special Appeal is preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No. 1573 of 2019 dated 21.08.2019. The said Writ Petition formed a part of a batch of Writ Petitions, in Writ Petition (M/S) No. 1542 of 2019 and batch, all of which were dismissed by the learned Single Judge by his order dated 21.08.2019. In the order under appeal, the learned Single Judge held that there was no requirement for taking any previous approval of the Central Government, under Section 26 of the UGC Act, as the 2017 Regulations were framed under Section 26(1)(g) thereof; for regulating the minimum standard and co-ordination of work or facilities in the University, the UGC does not have to take the prior sanction of the Central Government; and sanction of the Government was required to be taken for other provisions i.e. for those referred to in Clauses (a), (b), (c), (d), (h), (i) or (j) of Section 26(1) of the UGC Act, which was not the case here.

8. The learned Single Judge further observed that the 2017 Regulations, and the subsequent orders passed by the first respondent-University, were for better education and learning; its purpose was to raise the standard of learning; the Study Centres, which were opened by the appellant-writ petitioner at the relevant time, were in accordance with law; they have now been asked to

improve their standards, which is the mandate of the 2017 Regulations; since these Regulations are made to improve the standards of education, they are required to be followed by the first respondent-University; it is the appellant-writ petitioner who had not followed the instructions in as much as they have not got themselves affiliated to a University as was required under the 2017 Regulations; and, if recognition is taken away from the appellant-writ petitioner by the first respondent-University, no fault can be found in it.

9. While reiterating the contentions urged before the learned Single Judge, Mr. C.S. Rawat, learned counsel appearing on behalf of the appellant-writ petitioner, would further state that Regulation 14 of the 2017 Regulations is ultra vires Section 26 of the UGC Act as it has been given retrospective effect prejudicially affecting the rights of the appellant-writ petitioner; while the 2017 Regulations may apply to Institutions which are established after the said Regulations have come into force, they cannot be applied to Institutions which were in existence prior thereto; it is not possible for the appellant-writ petitioner to provide infrastructural requirements akin to a college; and implementation of the 2017 Regulations would adversely affect the rights of students studying at these Centres who, for no fault of theirs, would now be required to travel long distances to pursue their distance education, thereby defeating the very object of creating Institutions to provide for distance education.

10. On the other hand, Mr. Yogesh Pandey, learned Standing Counsel appearing on behalf of the first respondent-University, would submit that, even in terms of the MOU entered into between the appellant-writ petitioner and the first respondent-University, the agreement between the parties can be terminated at any time after affording either party an opportunity of hearing; several notices were issued to the appellant-writ petitioner to comply with the requirement of Regulation 14 of the 2017 Regulations; and, since none of these notices elicited a reply from the appellant-writ petitioner, the first respondent-University had no other alternative but to pass the impugned order.

11. It is true that the appellant-writ petitioner has sought the relief of having Regulation 14 of the 2017 Regulations quashed. Sub-ordinate legislation can be struck down only if it is ultra vires the provisions of the parent Act or the Constitution of India. The appellant-writ petitioner claims that, since the 2017 Regulations prejudicially affects their Institution, the said Regulations, to the extent it has been applied retrospectively, are ultra vires Section 26 of the UGC Act.

12. Section 26 of the UGC Act relates to the power to make regulations and, under sub-section (1)(g), the UGC may, by notification in the official gazette, make Regulations consistent with the Act and the Rules made thereunder, regulating the maintenance of standards and the co-ordination of work or facilities in Universities. The only fetter, on the power of the UGC to make Regulations, is the requirement of its being notified in the official gazette. Section 26(2) of the UGC Act requires the previous approval of the Central

Government only in case a Regulation is made under clauses (a), (b), (c), (d), (h), (i) or (j) of Section 26(1) of the UGC Act, and not for clause (g) of Section 26(1) of the UGC Act. Section 26(2) of the UGC Act does not require permission of the Central Government to be obtained before any such Regulations are made under Section 26(1)(g) of the UGC Act.

13. Section 26(3) of the UGC Act stipulates that the power to make Regulations, conferred by Section 26, shall include the power to give retrospective effect from a date not earlier than the date of commencement of the Act, to the regulations or any of them, but no retrospective effect shall be given to any Regulation so as to prejudicially affect the interests of any person to whom such regulation may be applicable.

14. The UGC Act came into force (in terms of Section 1(2) thereof) on its publication in the Gazette of India on 05.11.1956. The power conferred on the UGC under Section 26(3), to make Regulations retrospectively, does not permit the Regulations so made to be given retrospective effect from a date anterior to 01.11.1956, when the UGC Act came into force. Admittedly the 2017 Regulations is not given any such retrospective effect. Reliance is, however, placed by Mr. C.S. Rawat, learned counsel for the appellant-writ petitioner, on the second limb of Section 26(3) of the UGC Act to contend that no retrospective effect shall be given to any Regulation so as to prejudicially affect the interest of any person on whom such regulation may be applicable; making the 2017 Regulations retrospective has prejudicially effected their interests, since these Regulations are sought to be made applicable to the appellant-writ petitioner, which established the Study Centres long before the 2017 Regulations came into force.

15. Regulation 14(1) of the 2017 Regulations places an obligation on a Higher Educational Institution offering programmes in Open and Distance mode, within one year from the date of commencement of the Regulations, to ensure that a Learner Support Centre is established only in a College or Institution affiliated to a University. The obligation cast, by Regulation 14(1) of the 2017 Regulations, is on a Higher Educational Institution which is defined, under Regulation 2(j) of the 2017 Regulations, to mean a University covered under clause (f) of Section 2, and an Institution deemed to be a University covered under Section 3 of the UGC Act, which is imparting, by means of conducting regular classes or through Open and Distance Learning systems, higher education or research therein.

16. The obligation, to ensure that a Learner Support Centre is established only in a College or Institution affiliated to a University, is cast not on the appellant-writ petitioner but on the first respondent-University which is a Higher Educational Institution. This obligation, under Regulation 14(1) of the 2017 Regulations, was required to be discharged only within one year after the commencement of the 2017 Regulations. While the 2017 Regulations would, undoubtedly, affect Institutions already in existence, the requirement of Regulation 14(1) of the 2017 Regulations, of establishing a Learner Support Centre only in a College or Institution, is to be fulfilled within one year after the 2017 Regulations came into

force and not prior thereto. It is evident, therefore, that Regulation 14 of the 2017 Regulations has only been given prospective application, and does not operate retrospectively.

17. The obligation cast on the first respondent-University, under Regulation 14(1) of the 2017 Regulations, would in turn require the appellant-writ petitioner to comply with the requirement of affiliation to a University only within one year of the 2017 Regulations having come into force, and not from a date anterior to 23.06.2017 when the 2017 Regulations were notified in the Gazette and came into force on that date.

18. While we find no merit in the submission, urged on behalf of the appellant-writ petitioner, that the 2017 Regulations have been given retrospective application, we make it clear that we have not expressed any opinion on the effect of the 2017 Regulations, on students pursuing education through distance mode, from a date anterior to 23.06.2017 when the 2017 Regulations came into force. Needless to state that any student, who is aggrieved by Regulation 14 of the 2017 Regulations, can always avail his legal remedies where his/her grievance would be examined on its merits and in accordance with law.

19. Subject to the aforesaid observations, the Special Appeal fails and is, accordingly, dismissed. No costs.