
(2019) 03 MP CK 0106
In the Madhya Pradesh High Court
Case No : Writ Petition No.795 Of 2018 (PIL)

Lalit Kumar Khare

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 26-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 32, 226
Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 2(ii), 4(xvii)
Commission Of Inquiry Act, 1952 — Section 4, 5

Citation : (2019) 03 MP CK 0106

Hon'ble Judges : Sanjay Yadav, J; Vivek Agarwal, J

Bench : Division Bench

Advocate : Nitin Agrawal, F.A. Shah, Anuradha Singh, Prashant Sharma

Judgement

1. Petitioner, Pro Bono, has raised the issue of grant of Ph.D. by the Jiwaji University in contravention to Ordinance No.11, 7 & 8.
2. It is urged that the Jiwaji University is deemed to establish under Section 2 (ii) and Section 4 (xvii) (i) of Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973. It is urged that under section 6, the University besides conferring degrees has the power to withdraw such degrees for good and sufficient reasons. It is urged that the Executive Council of the University constituted under section 23 of the Adhiniyam, 1973 is empowered to make Ordinance under section 38 on the subjects provided under section 37, which includes the Admission of students to College, Teaching Departments, School of Studies and Laboratories & levy of fees and their enrollment (Section 37 (i)); the degrees, diplomas, certificates and other academic distinctions to be amended by the University, and the qualification for the same (section 37 (ii)). It is urged that under section 37 (xxii), the University has the plenary powers to make Ordinance on all other matters provided by the Adhiniyam or the Statute (made under section 35). It is urged that the University has framed Ordinance No.7 which makes provisions for admission of students to a College, University Teaching Department or School of

Studies. Ordinance 8 is framed making provision as to enrolment of students and their admission to Course of study. Whereas Ordinance No.11 relates to Doctor of Philosophy.

3. It is urged that in contravention to these statutory provisions respondent no.6 has been awarded the Doctor of Philosophy. It is urged that besides respondent no.6, residents of Jammu and Kashmir who though registered as resident student, but they never appear in person nor are found staying at Gwalior. It is urged that the lackadaisical approach of the University and its functionaries has unabatedly led the illegality continue which has not only disturbed the petitioner of the consequence which may occur in future which will not be in larger public interest. As per petitioner the present writ petition is filed to get such practice quelled.

4. At the outset it needs a mention that in respect of candidates of Ph.D. course by the resident of Jammu & Kashmir, the respondent University in its reply to rejoinder filed on 30.11.2018 has stated that on receiving complaint regarding candidate of Ph.D. course resident of Jammu & Kashmir the University has constituted a committee to enquire into said complaint. The Committee recommended to segregate the candidates from the Ph.D. course work till the time enquiry is conducted. It is further stated that vide letter No.F/Acadamy/Shodh/2018/11640 dated 25.11.2018, F/Acadamy/Shodh/2018/11640 dated 25.11.2018, F/Acadamy/Shodh/2018/11641 dated 25.11.2018, F/Acadamy/Shodh/2018/11642 dated 25.11.2018, F/Acadamy/Shodh/2018/11643 dated 25.11.2018, F/Acadamy/Shodh/2018/11644 dated 25.11.2018, F/Acadamy/Shodh/2018/11645 dated 25.11.2018, F/Acadamy/Shodh/2018/11646 dated 25.11.2018 to furnish the information against the aforesaid candidates. When the matter was being heard it was informed by learned counsel for the University, who also filed certain documents that the action against the students who hail from Jammu & Kashmir is undertaken. In view whereof we are not inclined to carry further the issue as required to the students from Jammu & Kashmir and expects that the University shall reach to its logical end.

5. Now coming back to the issue as regard to grant of Ph.D. to respondent no.6, it is urged on behalf of the petitioner that respondent no.6 is presently Additional Director in Tribal Welfare Department with his headquarter at Bhopal. That he passed his Master Degree from University of Garhwal with 51.3% marks, while he belongs to General Category and as such was not entitled to be registered as Ph.D. candidate. It is further contended that he even does not have to his credit 5 papers published in Standard Research Journals. It is urged that while as an officer of Tribal Department, the article published in the official magazine from time to time cannot be treated to be a publication in Standard Research Journal. It is further contended that even 200 days attendance as is required at the Research Centre has been marked by respondent and the certificate which has been issued by his guide is not genuine. It is contended that as per Ordinance 11, 200 days attendance was required at Research Centre and when the question

regarding leave was raised before the Assembly, therein the Tribal Department intimated that from May 2008 to August 2011, the respondent no.6 got total 29 days leave including Saturdays and Sundays and application under RTI was also made to the Research Centre, which supplied copy of the attendance register. It is urged that while there was no provision earlier for maintaining the register for Ph.D. candidates and perusal to the register as contained in Annexure P/6, clearly shows that all the signatures have been made at one and the same time and the respondent no.6 as well as his supervisor also furnished certificate regarding 200 days attendance. It is contended from perusal of the attendance register, it clearly shows that the respondent no.6 worked at Research Centre on Independence Day, Republic Day, Gandhi Jayanti and Holidays of Holi, Deewali, Eid etc., while it is not possible as on these days.

6. It is further contended that respondent no.6 is a Class I Officer and as per the reply in the Assembly, he has got 29 days leave and without intimation/permission of Headquarter leave, he cannot do research work at Morena. In this behalf, it is also submitted that the research centre of respondent No.6 was at Govt. P.G. College, Morena, posting of his guide is at Govt. P.G. College, Sheopur, while respondent No.6 was posted at Bhopal. As such, it is apprehended that such attendance and register are forged in nature. It is contended that despite those ineligibilities the respondent no.6 got himself registered as Ph.D. candidate on 8.8.2007. That Research Degree Committee (RDC) held its meeting on 9.3.2008. The thesis was submitted on 7.8.2011; viva voce was held on 12.12.2011 and Ph.D. was notified on 25.12.2011. It is urged that respondent no.6 has not even enrolled with the Jiwaji University on 8.8.2007. That he was enrolled with Jamia Milia Islamia, New Delhi and got enrolled with Jiwaji University only after 13.2.2017 on the basis of migration certificate by Jamia Milia Islamia.

7. On these contentions petitioner seeks direction for constituting High Level Committee to enquire into the matter and a direction to punish all such officers found responsible. Further direction to the University is sought that henceforth they shall strictly adhere to the stipulation contained in Ordinance 7, 8 & 11.

8. Respective respondents i.e. the State of Madhya Pradesh, Jiwaji University and respondent no.6 have filed separate return.

9. On behalf of University it is not disputed that the Ordinance 7, 8 & 11 are in vogue. The date of registration by respondent no.6 for Ph.D. course, the meeting of RDC, the date of submission of Ph.D. and its notification is not disputed. Even the date of enrollment is not disputed. It is contended that the University takes care that no degree is issued prior to issuance of the enrollment number; therefore, the respondent has not issued the Ph.D. degree to respondent no.6. It is further contended that the University constituted a Committee in the matter of respondent no.6. The Committee furnished its report on 8.8.2018. The report is brought on record as Annexure R/4 wherein the following aspects has been found:

"शोधार्थी सुरेन्द्र सिंह भण्डारी द्वारा की गई पीएच.डी. की बिन्दुवार जानकारी निम्नानुसार है:-

1. श्री सुरेन्द्र सिंह भण्डारी द्वारा पीएच.डी. आवेदन पत्र दिनांक 08.08.2007 को जमा कराया गया।
2. शोध उपाधि समिति की बैठक दिनांक 08.03.2008 को आयोजित हुई।
3. संशोधित रूपरेखा प्रस्तुत करने हेतु पत्र दिनांक 13.05. 2008 को जारी किया गया।
4. संशोधित रूपरेखा दिनांक 07.06.2008 को प्रस्तुत की गई।
5. श्री भण्डारी के स्नातकोत्तर में 55 प्रतिशत अंक नहीं थे, तथापि उनके शोध अनुभव को दृष्टिगत रखते हुये उन्हें शोध उपाधि समिति द्वारा अंकों में छूट का लाभ प्रदान किया गया तथा उनका शोध प्रकरण मान्य किया गया।
6. नामांकन सामान्यतः पाठ्यक्रम प्रारम्भ होने के समय कराना होता है, तथापि विश्वविद्यालय के पूर्व स्थापित प्रावधानानुसार कोई भी छात्र पाठ्यक्रम अवधि में नामांकन करा सकता है। श्री भण्डारी द्वारा दिनांक 14.02.2017 को नामांकन क्रमांक I-14-782 कराया गया।
7. श्री भण्डारी द्वारा अभी तक उपाधि प्राप्त नहीं की गई है तथा उन्हें पीएच.डी. प्रदान की गई है।
8. यद्यपि श्री सुरेन्द्र सिंह भण्डारी का पीएच.डी. उपाधि अध्यादेश में विहित समस्त औपचारिकताएँ पूर्ण करने के उपरान्त प्रदान की गई है, तथापि विभाग/सीट से सम्बन्धित प्रभारी का यह दायित्व होता है कि वे प्रकरण से सम्बन्धित, समस्त औपचारिकताएँ तथा समय तथा अध्यादेश में उल्लेखित व्यवस्था के अनुपालन में अक्षरशः सुनिश्चित करावे, चूँकि तत्कालीन पीएच.डी. सीट प्रभारी श्री प्रदीप चिटनीश द्वारा बिना नामांकन कराये श्री भण्डारी की पीएच.डी. का शोध प्रबंध मूल्यांकन हेतु गोपनीय विभाग की ओर अग्रेषित किया गया अतः समिति उन्हें अपने दायित्वों को गम्भीरता पूर्वक ना लेकर कार्य सम्पादित करने का दोषी मानती है तथा उनके विरुद्ध परिनियम 31(57) में उल्लेखित प्रावधानानुसार कार्यवाही करने की अनुशंसा करती है।

इसके अतिरिक्त उपरोक्त अभिलेखों एवं टिप्पणी के प्रकाश में समिति प्रतिवेदित करती है कि श्री भण्डारी को पीएच.डी. उपाधि अध्यादेश क्रमांक-11 में विहित प्रावधान के प्रकाश में नियमानुसार प्रदान की गई है। तदनुसार उनका प्रकरण समिति की दृष्टि में आपत्तिहीन होकर ठीक है।

10. We will advert on the findings by the Committee little later.

11. It is further contended that as per recommendation of the Committee concerned clerk has been punished. We further noticed from the return that very strange plea has been taken by the University in its return in paragraph 4, wherein it is stated "As far as the migration certificate is concerned it is submitted at the time of admission in the Ph.D. course respondent no.6 submitted the documents but the record of the said document was not found in the department therefore respondent no.6 again obtained and submitted the migration certificate from Jamia Milia Islamia for issuance of the enrollment thereafter the respondent no.6 was issued the eligibility certificate on 14.2.2017." We are however not commend at to any cogent material, not even a reference to the fact that before getting himself registered for Ph.D. course, the respondent no.6 had applied for enrollments. If that be correct then there was no necessity for respondent no.6 to have applied for migration certificate from Jamia Milia Islamia in 2017. It appears the University is trying to shield the respondent no.6 and also their own illegality. Ordinance 8 (3) (i) mandates that "No student

shall be deemed to have been admitted to any course of study as a regular student of the University unless his name is borne on the register of enrolled students." Evidently, the Committee constituted by the University which submitted its report on 8.8.2018 has glossed over this mandatory requirement of being first enrolled and then get registered for the cause, otherwise it could not have observed in its report that:

"6. नामांकन सामान्यतः पाठ्यक्रम प्रारम्भ होने के समय कराना होता है, तथापि विश्वविद्यालय के पूर्व स्थापित प्रावधानुसार कोई भी छात्र पाठ्यक्रम अवधि में नामांकन करा सकता है। श्री भण्डारी द्वारा दिनांक 14.02.2017 को नामांकन क्रमांक I-14-782 कराया गया।"

12. The observations that anyone can get enrolled during course is thus without any authority of law and cannot be given the stamp of approval. As regard of 200 days attendance, the University has relied upon the enquiry report furnished by the Additional Director, Administration, Commissioner, Higher Education which was in furtherance to Legislative Assembly question No.2886 dated 23.2.2018. The University has not conducted an independent enquiry. Furthermore, as regard to the contention that respondent no.6 does not possess 55% marks in Master Degree, it is stated on behalf of the respondent University that because the incumbent i.e. respondent no.6 had 20 years of work experience and number of research paper published were 12 (though no material is commended at to establish that these research papers were published in Standard Research Journal), he was registered for Ph.D. course.

Ordinance 11.1 mandates that "A candidate for the degree of Doctor of Philosophy must, at the time of application, hold Master's degree with at least 55 % marks or an equivalent grade of M.Phil. degree of the University a deemed university or any other university incorporated by any law for the time being infonce and recognised by the University.

Provided that a candidate who has at least 7 years experience of research/ teachin with atleast 5 papers published in standard research journal, may be permitted to get registered for Ph.D. degree even if he does not possess 55% marks at master's degree."

13. Thus as per proviso if an incumbent is having less than 55% marks in Post Graduate Degree, but if he was to his credit at least 5 papers published in Standard Research Journal, he may be permitted to get registered for Ph.D. degree. However, no material is produced by the University to establish that there has been deliberation over relaxation to the respondent no.6 who admittedly was having less than 55% marks in Post Graduation. The minutes of meeting of RDC held on 9.3.2008, produced at the time of hearing only records thus:

(6) सुरेन्द्र सिंह भण्डारी:-म.प्र. की भारिया जनजाति के सामाजिक आर्थिक विकास का एक भौगोलिक अध्ययन। संशोधित शीर्षक मान्य। संशोधित रूपरेखा अध्यक्ष, अध्ययन मण्डल के माध्यम से प्रस्तुत करें। अध्यादेश 11.1 के पैरा 2 अन्तर्गत मान्य।

14. When called upon to state whether the said deliberation would be sufficient to establish that the respondent no.6 had to his credit more than 5 papers published in Standard Research Journal, learned counsel for the University preferred to maintain sphinx like silence.

15. The State of Madhya Pradesh in its return has taken the similar stand as the University.

16. Respondent No.6 also in its return has taken the similar stand as the University and the State; with an additional contention as regard to the antecedent of the petitioner that he is an ex-employee of the Tribal Welfare Department and is facing criminal prosecution launched by the Economic Offence Wing which was on the basis of the complaint by respondent no.6. It is further contended that earlier on the complaint made by the petitioner a departmental enquiry was conducted against respondent No.6 wherein complaints were found to be baseless. It is contended that earlier one Vijay Singh had filed a Public Interest Litigation W.P.No.2771/2015. However, the said petition as borne out from the pleadings was in respect of alleged corruption forming subject matter of proceedings, before Lok Ayukta. It is urged on behalf of respondent that the petition is not in public interest but in personal interest; therefore, deserves to be dismissed.

17. True it may be that the petitioner has been proceeded against in a criminal case. But in our opinion it cannot prevent him from prosecuting a public cause of the present nature, wherein the activities of the Universities in conducting Ph.D. course is being questioned. And the cogent material which we have adverted with. Coupled with the fact that students from different State are enrolled without adhering to the stationary norms contained in Ordinances viz. 7, 8 and 11, we are of the considered opinion that the matter deserves to be equired into by an independent agency to bring out correct facts and the involvement of the official of Jiwaji University.

18. In "Bandhua Mukti Morcha Vs. Union of India and others, 1984 (3) SCC 161" while dwelling upon the preliminary objections raised by the respondents Union of India that the Court is not empowered to appoint any commission or an investigating body to inquire into the allegations made and make a report to the Court on the basis of inquiry to enable the Court to exercise its power and jurisdiction under Article 32 of the Constitution. It was held:

"Now it is obvious that the poor and the disadvantaged cannot possible produce relevant material before the Court in support of their case and equally where an action is brought on their behalf by a citizen acting pro bono publico, it would be almost impossible for him to gather the relevant material and place it before the Court. What is the Supreme Court to do in such a case? Would the Supreme Court not be failing in discharge of its constitutional duty of enforcing, fundamental right if it refuses to intervene because the petitioner belonging to the underprivileged segment of sociey or a public spirited citizen espousing his

cause is unable to produce the relevant material before the Court. If the Supreme Court were to adopt a passive approach and decline to intervene in such a case because relevant material has not been produced before it by the party seeking intervention, the fundamental rights would remain merely a teasing illusion so far as the poor and disadvantaged sections of the community are concerned. It is for this reason that the Supreme Court has evolved the practice of appointing commissions for the purpose of gathering facts and data in regard to a complaint of breach of a fundamental right made on behalf of the weaker sections of the society."

19. Relying on the said judgment the Division Bench of this Court in "Narmada Bacho Andolan Vs. State of M.P. and others, I.L.R. [2009] M.P., 112" held that the observations in *Bandhua Mukti Morcha* (supra) equally apply to the exercise of jurisdiction of the High Court under Article 226 of the Constitution for appointing commission for the purpose of gathering facts and data in regard to complaint.

20. We, therefore, appoint Shri Justice D.K. Paliwal, a retired Judge of the High Court of Madhya Pradesh, as a Commission to inquire into and submit a report on the following matters:

(i) Whether while awarding Ph.D. to respondent No.6 norms laid down in Ordinance 7, 8 and 11 have been adhered to?

(ii) Whether the Jiwaji University is strictly adhering to the norms laid down in Ordinance 7, 8 & 11 while granting Ph.D. to the incumbents?

21. The Commission will afford opportunity of hearing to all persons against whom the Commission is likely to record a finding including an opportunity to produce any evidence in his defence. The Commission may allow witnesses to be examined before it and will afford an opportunity for cross-examination of such witnesses to persons against whom the witnesses make statement. The Commission may regulate the procedure of inquiry on all other matters consistent with the principles of natural justice. The Commission shall further be guided by the provisions contained in Section 4 and Section 5 of the Commission of Inquiry Act, 1952. All logistic support shall be provided by the Jiwaji University. The Commission shall have its place of inquiry at Jiwaji University, Gwalior. The Commission shall be entitled for the honorarium of Rs.7,500/- (Rupees Seven Thousand Five Hundred Only) per hearing. The Commission shall submit the report within four weeks from the date it enters the reference.

22. Office is directed to forward the copy of petition along with documents annexed therewith, copy of rejoinder along with the annexures annexed therewith, copy of return and additional return with documents annexed therewith, along with copy of this order to the Commission.

23. Let the matter be set out for directions in the week commencing 06th May, 2019.