

(2006) 09 GAU CK 0013
In the Gauhati High Court
Case No : PIL No. 23 of 2006

Madan Hazarika

APPELLANT

Vs

Gauhati University and Others

RESPONDENT

Date of Decision : 27-09-2006

Acts Referred:

Advocates Act, 1961 — Section 24(l)

Bar Council of India Rules, 1998 — Rule 1, 12, 14, 5(1), 5(3)

Citation : (2006) 4 GLT 469

Hon'ble Judges : B. Sudershan Reddy, C.J.; Brojendra Prasad Katakey, J

Bench : Division Bench

Advocate : S.S. Dey, A.D. Choudhury, P.N. Goswami and H. Kashyap, for the Appellant; A.K. Bhattachariya, K. Agarwal, A.M. Mazumdar, U.K. Goswami, L.P. Sharma, B.D. Kowar, A. Sharma, S. Sharma, N. Laskar, S.K. Sharma and B. Goyal, for the Respondent

Judgement

B.P. Katakey, J.—This public interest litigation has been registered on the basis of the petition filed by an ex-student of Dispur Law College, which is stated to be established in the year 1993, alleging mis-management, anomalies in constitution of Governing Body, indiscriminate admission of students into the LLB Course, non fulfilment of the conditions for affiliation imposed by the Gauhati University under whom the temporary affiliation has been granted, non compliance of the requirement of the "Ordinance on Permission and Affiliation of Law Colleges, 1998" of the said University, not auditing the accounts of the College for a long period of time, there by exposing such fund to misappropriation and also admission of students without there being any recognition from the bar council since the year 2004-05 and despite refusal to extend such recognition, on the ground of non fulfillment of requisite conditions, as laid down by the bar council of India for recognition. A further allegation has also been made that the examination in the College has not been conducted properly as required under the ordinance of the Gauhati University, thereby exposing the students of that College to the risk of losing their academic year

and also non recognition of the degree by the Bar Council in India.

2. In view of such allegation regarding the mis-management and anomalies in running the Dispur Law College and admission of the students in Law Course without there being any recognition from Bar Council of India and the affiliation from Gauhati University, notices were issued to the Respondents namely Gauhati University, Bar Council of India, Bar Council of Assam etc., the Governing Body of the said Law College who claims to be managing it, as well as the State of Assam. The Registrar of Gauhati University on receipt of the notice filed a detailed affidavit stating inter alia that on coming to know about the irregularities in the matter of management of the College in question, the Vice Chancellor appointed a Committee to inquire into the alleged irregularities and such committee on the basis of the spot visit and statements taken from the various persons, submitted a report, more or less confirming the allegations leveled in the writ petition and also stating therein that due to infighting amongst the Governing Body members, teaching staff, division of students into several groups, the overall development of the College is very much hampered, thereby grossly jeopardizing the educational environment.

3. This Court vide proceeding dated 28.06.2006, by taking on record the affidavit filed by the Registrar of the Gauhati University and keeping in view the contents of the same, restrained the said Law College from admitting any students into the law course. This Court in the said proceeding has also recorded the assurance given by the learned Senior Counsel appearing on behalf of the two warring governing bodies, namely Respondent No. 4 and 5 as well as Respondent No. 6, to resolve the issue involved in the writ petition and to take proper and necessary steps in that regard. The Bar Council of India has also filed an inspection note dated 18.03.2006 submitted by the members of the Bar Council of India, after inspection of the said Law College. This Court vide order dated 10.08.2006 upon perusal of the said inspection report submitted by the Bar Council of India and upon hearing the learned Counsel for the parties as well as keeping in view the nature of controversies and involvement of public interest, appointed a three members committee consisting of three learned senior counsel for this Court to inspect the institution and submit its report. Accordingly, the said committee after inspection of the College premises on 18.08.2006 submitted its report dated 21.08.2006 which was taken on file vide order dated 29.08.2006.

4. Meanwhile a supplementary affidavit dated 03.08.2006 was also filed by the Guahati University stating that the inquiry report submitted by the committee constituted by it, for inspection of the said institution has been placed before the Executive Council and the said Council in its meeting dated 15.07.2006 adopted a resolution accepting such report of the inquiry committee and directing issuance of notice to the Principal of the said institution asking it to remove the irregularities mentioned by the inquiry committee in its report, within two months. Having taken the said affidavit on record, this Court vide proceeding dated 05.09.2006, allowed the Governing Body to file response against such

supplementary affidavit filed by the Gauhati University. According, an affidavit has been filed by the Respondent Nos. 4 and 5, Governing Body on 11.09.2006.

5. We have heard Mr. S.S. Dey, learned Counsel appearing on behalf of the writ Petitioner, Mr. A.K. Bhattacharjee, learned senior counsel for Respondent Nos. 4 and 5, Mr. Sarma, learned Counsel appearing on behalf of the Respondent No. 6, Mr. L.P. Sharma, learned Counsel appearing on behalf of the Gauhati University, Mr. B.D. Kowar, learned Counsel appearing on behalf of the Bar Council of India, Mr. A.K. Sharma, learned Counsel appearing on behalf of the Bar Council of Assam etc., Respondent No. 3 and Ms. B. Goyal, learned State Counsel appearing on behalf of the Respondent No. 7.

6. The learned Counsel appearing on behalf of all the parties, keeping in view the requirement of imparting quality legal education in different Law Colleges in the State of Assam, have in one voice submitted that unless the requirement of the rules, regulation, ordinance of Gauhati University, to which the present Law College is affiliated and also the requirement of the Bar Council of India rules framed under the Advocates Act 1961, are fulfilled and strictly complied with, the purpose for which the Law College has been established, shall not be achieved. It has further been submitted by Mr. Bhattacharjee, learned senior counsel appearing on behalf of the Respondent Nos. 4 and 5 that though the Gauhati University as well as the Bar Council of India in its report highlighted certain irregularities and shortcomings, the management of the College is making an all out effort to remove such irregularities and also the shortcomings, as noted in the said reports and shall comply with the requirements of the Bar Council of India Rules as well as the "Ordinance on Permission and Affiliation of Law Colleges, 1998" (in short the 1998 ordinance) of the Gauhati University by the end of this year. Mr. Bhattacharjee, though has disputed the contention of the Gauhati University that the Governing Body of the College has not been constituted as required under the 1998 ordinance, submits that as the term of the present Governing Body is going to expire in the month of October 2006, necessary directions may be issued for constituting a new Governing Body of the College in terms of the 1998 ordinance of the University.

7. The affidavit filed by the Secretary of the Bar Council of India, on behalf of the 2nd Respondent, reveals that the Dispur Law College which was established in the year 1994, was first inspected by the team of the Bar Council consisting of two members on 08.03.95 and on the basis of the report submitted by the said committee, the legal education committee on 16.09.95 recommended provisional approval of affiliation, subject to fulfilment of certain conditions, however, the Bar Council of India in its meeting dated 05.11.95 did not accept the recommendation of the such legal education committee and rejected the application of the College for approval of affiliation. The said College subsequently in the month of July 1996 again applied for approval of affiliation pursuant to which the College was again inspected by the Bar Council team on 28.06.97 and submitted its report, based on which it was decided to grant

temporary approval of the affiliation for the College for two years from 1996-97, on certain conditions, in its meeting held on 17.11.96. Subsequent approval of affiliation for the academic years 1998-99-2000-01 were given by the Bar Council with certain conditions and the same was further extended up to 2002-03, for imparting three year law course. The said affidavit further discloses that based on the recommendation of the legal education committee, the Bar Council of India in its meeting granted extension of the approval of affiliation for one more year i.e. for the year 2003-04. The Secretary of the Bar Council of India in its affidavit has further stated that the law college was further inspected on 18.03.2006 and the report of such inspection has been considered by the legal education committee and the Bar Council of India in its meeting dated 2/3.07.2006, has decided to extend the affiliation up to year 2006-07, subject to the conditions: (i) appointment of a full time principal (ii) full time lecturers should be paid UGC scale, (iii) the construction of the new building should be completed within one year (iv) the college authority should not admit any student unless they received NOC from the State Government and affiliation order from the concerned university.

8. From the aforesaid affidavit it, therefore, appears that the said law college does not fulfill certain conditions, which are required to be fulfilled under the Bar Council of India Rules as well as the 1998 ordinance of the University. The report submitted by the inspection team of the Bar Council of India on 18.03.2006, on the basis of which the Bar Council of India on 03.07.2006 informed the Registrar of Gauhati University regarding extension of approval of affiliation with the aforesaid conditions, also reveals that the college has only four class rooms, one Principal room, one Library room, one office room, common room for students, staff room and toilets for students and the management has started construction of the new building over the existing land after getting approval of the plan from the concerned authority, the construction of which, as assured by the management, will be completed within one year period of time. The said report also reveals that the institution has only in-charge Principal and the faculties are getting consolidated salary, though the BCI in its letter dated 09.07.2002, while extending the approval of affiliation, informed the college authority that the same was granted subject to the conditions that the salary of the full time lecturers should be raised and the library should be updated.

9. The affidavit filed on behalf of the Gauhati University also more or less supports the allegation made in the PIL, so also the stand taken by the Bar Council of India. The note dated 20.05.2006 submitted by the Gauhati University to its Executive Council, on the basis of the report of the three men committee appointed by the Vice Cancellor to inquire into the alleged irregularities of Dispur Law College, discloses the following facts:

(1) Formation of Governing Body: As regards the formation of new Governing Body vis-a-vis the election of Sri Sarat Barkataki as the President in place of Sri Dalim Ch. Pathak the procedure given in the ordinance was found to be violated.

(2) Enrolment: The College has enrolled 319 numbers of students in 1st year class during 2005-2006 which is not in accordance with the University Ordinance. Incidentally the number of students in the LL.B. Intermediate and LL.B. Final Year classes are also 225 and 232 respectively in the same year. To accommodate these large number of students, the College cannot provide proper infrastructure facilities. Compared to the number of students admitted the examination results are also below standard. Even the students were not divided into sections as required under G.U. Ordinance.

(3) Holding of Examinations: We found that the University examinations were held in temporary open sheds which is a gross violating of examination rules of the University.

(4) Appointment of Principal: Inspite of having given a condition during our last inspection the College has not yet been able to appoint a full time Principal as per norms.

(5) Financial Matters: The financial control of the College was also not found to be sound. There is no audit for several years which was evident from the fact that they could not supply us the up to date audit report.

(6) Recognition of the Bar Council of India: The College is not enjoying the recognition of the Bar Council of India at the time of inspection. Not only that, necessary efforts was also not taken in this regard.

From above, it is seen that due to fighting amongst the G.B. members, teaching staff, division of students into several groups the overall development of the College is very much hampered. The educational environment is also grossly jeopardised. It is suggested that the University authority should take some urgent steps before the situation goes beyond control including formation of the regular G.B. as per G.U. Ordinance.

The Executive Council in its meeting dated 15.07.06 adopted the resolution accepting the report of the said inquiry committee and further resolved to ask the Dispur Law College to remove the irregularities as raised by the inquiry committee within two months.

10. However, the Governing Body of the Dispur Law College, namely Respondent Nos. 4 and 5, in their rejoinder affidavit dated 11.09.2006 disputed the correctness of some of the contents of the said note, as well as, the finding of the committee constituted by the University Authority, stating that there are five permanent class rooms and the construction of the RCC building is under progress, ground floor of which is almost complete and on completion of the RCC building the college will have adequate number of rooms for holding classes as well as the examination smoothly. The management of the college in the said affidavit has also stated that for smooth conduct of the LL.B. Examination 2006, for the students of the academic session 2005-06, the college will have necessary infrastructure to accommodate all the students in the new RCC

building, which is near completion. As discussed above, the college authority has also disputed the version of the Gauhati University that the Governing Body of the college has not been constituted as required under Rules.

11. The committee constituted by this Court meanwhile submitted the report dated 18.08.2006 from where it appears that the college has an Assam type house with five class rooms including one hall, apart from library, Principal's Office, teachers' common room, girls' common room, as well as, separate toilets for girls' and boys'', over the land measuring 4 katha 19 lecha mutated in the name of Dispur Law College. Regarding the construction of the RCC building, the said inspection team has notice that such building is under construction and roof casting of ground floor is complete, which has the provision for four class rooms, Principal's room, store room as well as the toilet. The committee has also noticed the fixation of iron rods for the purpose of raising the column for first floor construction.

12. Rule 1 of Section B of Bar Council of India Rules, framed under the Advocates Act, 1961, provides that a degree of law obtained, after pursuing three years law course after graduation, from any university in the territory of India, shall not be recognized for the purpose of Section 24(l)(c)(iii) of the Advocates Act 1961, unless the following conditions are fulfilled:

(a) That at the time of joining the course of instruction in law for a degree in law, he is a graduate of a university or possesses such academic qualifications which are considered equivalent to a graduate's degree of a University by the Bar Council of India.

(b) That the law degree has been obtained after undergoing a course of study in law for a minimum period of three years as provided for in these rules;

(c) That the course of study in law has been by regular attendance at the requisite number of lectures, tutorials or moot Courts in a College recognized by a University.

Section B of the said rules also requires the students to have minimum attendance of 66% of the lecturers on each of the subjects as also at tutorials, moot Courts and practical training course, however, with the provision for relaxation of such requirement in exceptional cases. It further requires that the every law college to obtain the approval of affiliation must have in its teaching staff, in its first year, a whole time Principal and at least two other whole time teachers and by the time to open its third year, it must have two more whole-time teachers. Section B of the Rules also stipulates course of instruction for the study in law including 21 compulsory subjects as mentioned in Rule 5(1) of Section B, apart from having six months of practical training which includes compulsory papers mentioned in Sub-rule (3) of Rule 5 thereof.

13. Rule 13 of Section B of the said rule requires the Bar Council of India to cause a law college affiliated to an University to be inspected by the committee

to be appointed by it, when an application for approval of affiliation of a college is received. Such report then has to be placed before the legal education committee together with the comments of the Registrar of the University concerned, which committee then is required to scrutinize the standard of legal education as well as whether such college has complied with the rules relating to affiliation or continuation of affiliation, courses of study, teaching and/or examination, so as to secure to persons under going legal education, the knowledge and training requisite for the competent practice of law, and thereafter to recommend to the Bar Council of India, the approval/disapproval of affiliation or continuation of affiliation, as the case may be. Rule 14 of the Section B of the said rules empowers the Bar Council of India to issue directives from time to time for maintenance of the standard of legal education, which the College/University is expected to follow as compulsory. Schedule 1 contains the directives issued by the Bar Council of India under Rule 14 of Section B of the said rule. That apart, under the said rules the law colleges are required to submit the annual return in terms of the resolution No. 396 of the Bar Council of India, as contained in Schedule III of the said rules.

14. Section "C" of the Bar Council of India Rules contains the rules regarding inspection of law colleges by the State Bar Councils and also requiring such inspection team to send the report to the Bar Council of India, amongst other, on the point of, building of the College and its adequacy; qualifications, salaries, terms and conditions of service, mode of appointments of Lecturers of the college concerned; qualification, salaries, service conditions, mode of appointments of staff of the college; timings of college; number of students, attendance register whether maintained properly or not, total working days of the current academic year and also of last three years; funds of the college and annual auditing and library details. Rule 6 of the said section also requires such inspection team to send the report, on the quality of teaching, infrastructure for teaching and whether in its opinion affiliation already granted should be continued or not, and also indicating therein whether the permission for affiliation granted should be temporary or permanent.

15. The 1998 ordinance of the Gauhati University lays down the detailed procedure and the conditions for submission of an application seeking permission to start a law college, as well as the conditions to be fulfilled for the purpose of granting temporary affiliation. Clauses 9, 10 and 11 of the said ordinance stipulates conditions to be fulfilled by a law college for granting permission for first year, second year and third year classes of LLB course respectively. Clause 12 deals with renewal of temporary affiliation and Clause 13 deals with grant of permanent affiliation. The Executive Council of the University is also empowered to withdraw the affiliation, under Clause 17, on the grounds set forth therein. Clause 18 lays down the minimum staffing requirement, which requires that up to LLB first year class, there must be two whole-time lecturer, up to LLB second year class, three whole-time lecturers and up to LLB third year class, four whole-time lecturers, apart from a whole time Principal. It is also stipulated that a

section shall not ordinarily consist of more than 80 students. Clause 19 lays down minimum accommodation, which the law college must have. Clause 20 provides for having an adequate library, which must consist of law journals mentioned therein.

16. From the provisions contained in the said 1998 ordinance relating to the permission and affiliation of the law college, it is therefore, apparent that the certain stipulations have been made, for the purpose of granting the permission to open a law college, as well as, for getting such law colleges affiliated to the university. The present law college having admittedly affiliated to Gauhati University, it is bound to comply with the requirement of the 1988 ordinance, otherwise it will be exposed to withdrawal of affiliation by the Executive Council, thereby jeopardize the academic career of the students admitted therein. The Bar Council of India being the authority to ensure that the quality legal education is imparted by a law college, which it has approved for affiliation, has also a duty to inspect the law college, either by itself or through State Bar Council. Such law colleges are also duty bound to comply with the requirements of the Bar Council of India Rules as well as the directives issued there under, as contained in the schedule appended to such rule, as, in the event of failure to do so, the approval for affiliation granted by the Bar Council is liable to be withdrawn, which will have the effect of jeopardizing the interest of the students who have been admitted in the said college.

However, in the present proceeding, since it has been submitted by the learned Counsel appearing on behalf of the Respondents that the term of the present Governing Body is going to expire in the month of October, 2006 we are not entering into the dispute relating to-whether such Governing Body has duly constituted, as required under the relevant rules/ordinance.

17. To a query made by this Court relating to change of center for each law college for holding the law examinations, with a view to have impartiality in holding such examinations, the learned Counsel for the Gauhati University has submitted a written instruction dated 07.09.2006 signed by the Registrar of the University, stating that the present system allowing the students of the affiliated law college to appear in the examination in such law colleges itself, can be changed and the necessary arrangement can be made for holding such examinations, so that the students of affiliated law colleges appear in the examination in different centers, other than in their own college. The learned Counsel appearing on behalf of other Respondents also submit that such a course of action is necessary for impartial conduct of law examination.

18. In view of the aforesaid discussion and also keeping in view the different provisions of the Bar Council of India Rules as well as the 1998 ordinance and the necessity of imparting quality legal education in law colleges, and also the stand taken by the Respondents in the present proceeding, in our considered view, the interest of the students and the law colleges would be served if, the present public interest litigation is disposed of with the following directions:

(I) The Governing Body of the Dispur Law College shall be constituted by the end of November, 2006 in terms of the provision contained in 1998 ordinance, under the supervision of the Registrar of Gauhati University or any responsible officer deputed by him for that purpose.

(II) The college authority shall complete the construction of the whole RCC building, as per its undertaking, by the end of December 2006, so as to comply with the requirement of the Bar Council of India Rules as well as 1998 ordinance.

(III) The college shall strictly comply with all the requirements of Bar Council of India Rules as well as the 1998 ordinance of the Gauhati University, regarding granting of approval for affiliation as well as the affiliation by the University, including the requirement of building, class rooms, maximum numbers of students in each section of a class, moot Court room and also the appointment of the whole-time Principal and the lecturers, by the end of December 2006.

(IV) The Bar Council of India, for the purpose of granting approval of affiliation, inspect the said law college, preferably in the month of January, 2007, as the present approval of affiliation is for the year 2006-2007 and shall thereafter take appropriate decision in that regard, as per Rules. The University authority shall also on receipt of such recommendation from the Bar Council, take appropriate decision relating to such affiliation. The decision in that regard shall be taken by both the authorities, namely Bar Council and the Gauhati University by 31st March, 2007.

(V) The College authority by 31st March, 2007 shall make available computers to its students with internet facility.

(VI) The college shall not admit any fresh students into LLB course in violation of the Bar Council of India Rules as well as the 1998 ordinance of the University, however, such restriction shall not apply to the students who either have already been admitted to the first year/second year/third year of LLB course or those existing students who are required to be admitted in the next year of such course.

(VII) The College authority shall appoint a competent auditor and cause its accounts for last five financial years preceeding the financial year 2005-2006 audited by 31st March 2007 and submit the reports thereof to the competent authority.

(VIII) The University Authority as well as the State Bar Council shall under take regular inspections of the College in question, apart from other law colleges in Assam and submit such report before the Registry of this Court in every 6(six) months commencing from 1st January, 2007.

(IX) The Gauhati University shall henceforth, hold the law examinations in different centres so that students of any law college do not appear in such examination in their own college. Such direction shall be effective for all the law college in the State of Assam.

19. This PIL is ordered accordingly. The interim order passed on 28.06.2006 stands vacated. However, it is open to the writ Petitioner or any other public-spirited person to approach this Court, in the event, any of the authorities have failed to comply with the aforesaid directions or violated any such directions.