
(2013) 12 KAR CK 0223

In the Karnataka High Court

Case No : Writ Petition No. 31391 of 2009 (EDN-RES)

Manipal University

APPELLANT

Vs

Union of India and The University Grants Commission

RESPONDENT

Date of Decision : 02-12-2013

Acts Referred:

Dentists Act, 1948 — Section 3(d)

University Grants Commission Act, 1956 — Section 23, 24, 3

Citation : (2014) 1 AKR 769 : (2014) 1 KCCR 201

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Ashok Haranahalli, for Shri. N. Ravindranath Kamath, for the Appellant; P.S. Dinesh Kumar, Advocate for Respondent No. 2 and Shri. Kalyan Basavaraj, ASG., for the Respondent

Judgement

Anand Byrareddy, J.—The petitioner is said to be a "Deemed University" as declared by the Central Government u/s 3 of the University Grants Commission Act, 1956 (Hereinafter referred to as the "UGC Act", for brevity). It was said to have been so declared vide notification dated 13.9.2006. The petitioner was known and identified itself as the Manipal Academy of Higher Education, or MAHE. Consequent on being declared as a deemed University, the Board of Management of the institution, by a resolution dated 9.12.2006, resolved to identify itself as "Manipal University". It transpires that during August 2009, the petitioner had learnt, through a newspaper report, of the Central Government having issued a communication to the University Grants Commission (Hereinafter referred to as the "UGC", for brevity) that a deemed to be University shall not use the word "University" in its name. The petitioner had thereafter received a communication from the UGC, on 19.8.2009, intimating that the use of the word "University", with its name which was expressly allowed as per notification dated 13.9.2006 of the UGC, was withdrawn and the petitioner was advised not to use the word "University" with its name. It this which is under challenge in the present writ petition.

2. The learned Senior Advocate, Shri Ashok Haranahalli, appearing for the counsel for the petitioner, contends as follows:-

That MAHE was founded by Dr. T.M.A. Pai, a resident of Manipal, - a banker and a philanthropist. He had established numerous educational institutions in the backward and rural areas of the region. The first medical college in the country, Kasturba Medical College (KMC) was said to have been established at Manipal, in the year 1953. The KMC at Mangalore was said to have been established in the year 1955.

In course of time, having regard to the high quality and standard of education imparted at the aforesaid institutions, national and international recognition of their excellence followed. The National Assessment and Accreditation Council (NAAC), had graded the above two medical colleges as B+. Incidentally, NAAC is a constituent of UGC. The New York State Medical Board had also recognized both the said Institutions.

It is stated that the above colleges though were not Universities, were yet pursuing standards in specialized academic fields - surpassing comparable standards of any of the better Universities. It was in this situation that it was strongly felt that the conferment of a deemed University status would enable the institution to further contribute to the cause of superior higher education. In this regard, the then affiliating University, namely, the University of Mysore and also the State government had recommended the conferment of a Deemed University status on the petitioner. It is stated that even a Committee constituted by the UGC to examine the infrastructural facilities and the expertise of the faculty had reported complete satisfaction of the same and had recommended the conferment of a deemed University status. It was in the above background that the UGC had resolved to recommend to the Central Government that MAHE, consisting of its colleges in Medical and Engineering Sciences be declared as Institutions deemed to be a University under the UGC Act. However, it transpires that the Central government had, as per its letter dated 8.2.1978, expressed its inability to accede to the request on account of paucity of funds and its inability to provide financial assistance.

However, on the further recommendation of the UGC, the Government of India had, by its notification dated 1.6.1993, conferred the "Deemed University" status on MAHE, consisting of,

1. Kasturba Medical College, Manipal
- ii. Kasturba Medical College, Mangalore
- iii. College of Dental Surgery, Manipal
- iv. College of Dental Surgery, Mangalore
- v. College of Nursing, Manipal

Further in the year 2000, the following were brought under the ambit of MAHE

vi. The Manipal Institute of Technology

vii. College of Pharmaceutical Sciences, Manipal.

It is stated that the petitioner has over 20 constituent institutions that provide over 180 courses of study, across 13 streams of education. The petitioner has an yearly enrollment of over 25000 students, with the largest concentration of students from abroad in any university in India, with students from over 52 countries pursuing their studies in professional and other courses at the petitioner University.

It is further stated that it was in the year 2006, that the UGC had constituted a Committee, consisting of the Secretary, Ministry of Human Resources Development, the Chairman, UGC, amongst other high ranking officials to address the issue whether a deemed to be University should be permitted to be allowed the word "University" in its name. And it is after obtaining approval, of a decision to permit the same, from the Central Government that the UGC had, by a notification dated 13.9.2006, indicated that there would be no objection to the use of the word "University" by institutions deemed to be Universities. But it was felt necessary, for the information of the general public, that there be a demarcation between Universities established by law and Universities created under an executive charter. It was hence directed that the Universities, whether Central, State or Deemed - would compulsorily distinguish themselves by incorporating the appropriate information under their name. Namely, in respect of any institution deemed to be a University, as corrected vide Corrigendum issued in February, 2008, thus:

(Declared as Deemed-to-be-University, u/s 3 of the UGC Act, 1956, vide Notification No. F. 6-1(II)/2006 (CPP-I).

And in respect of a Central or a State University, thus:

(Established by the State Legislature/Parliament vide Notification No. F. 6-1(II)/2006 (CPP-I)

It is pursuant to the UGC and the Central Government expressly having indicated their approval that the petitioner had adopted the term "University" in its name, which was rechristened as "Manipal University".

3. The learned Senior Advocate, Shri Haranahalli, would thus contend that the petitioner was totally clueless as to the reason for the sudden intimation that the petitioner was required to discontinue the use of the word "University", as part of its name. On a further enquiry, it is stated, that it was found that one Prof. Kapil Kumar was said to have approached the High Court of Delhi, with a writ petition espousing a purported public cause, challenging the notification dated 13.9.2006, whereby the UGC had, with the approval of the Central Government, permitted the deemed to be Universities, to use the word "University" in describing themselves. Even though there were no directions or orders issued in the said petition, by the Court, the UGC and the Central government had appeared before

the court and had conceded that the notification would be reversed, prompting the court to record thus and to dispose of the petition:

Learned Counsel appearing for respondent No. 1 UGC informed us that the Government of India, vide letter dated 10.08.2009 has directed the UGC to withdraw the impugned notification dated 13.9.2006 and the UGC is issuing the necessary consequential directions whereby the notification dated 13.9.2006 as well as the Corrigendum dated 20.2.2008 would be withdrawn. In view of this statement made by the learned counsel, appearing for the respondent No. 1 UGC, nothing survives in this PIL. The petition stands disposed of.

The learned Senior Advocate would thus contend, that given the circumstances and the manner in which the respondents have issued the impugned notification, is clearly violative of Article 14 of the Constitution of India and the respondents were clearly estopped from issuing any such direction. The direct consequence of the impugned direction is that the petitioner's reputation suffers an uncalled for and unjustified beating as the deletion of the word "University" from its name, after having put itself out as "Manipal University" to the entire world, and to revert to its earlier nomenclature or some other name - as if there was a change in its organization or a fall in standards, apart from indication of a fickle and unwanted change, unbecoming of a world class institution with an established permanence.

It is contended that the petitioner being declared as a deemed to be University u/s 3 of the UGC Act cannot be denied the status on a par with a University established under law and the present prohibition of the usage of nomenclature would amount to rank discrimination offending Article 14 of the Constitution of India. It is therefore contended that the petition be allowed

4. Per contra, the learned Counsel Shri P.S. Dinesh Kumar appearing on behalf of the UGC, while drawing attention to the counter affidavit filed on behalf of the UGC, which has furnished the details as to the manner in which the petitioner as well as other similar institutions came to be permitted to use the nomenclature "University", to describe themselves, would also state that the immediate reason for the UGC to form an opinion that it may not be permissible for the deemed to be Universities to associate the word "University" with their name, was the writ petition in WP 8892/2009 filed by one Prof. Kapil Kumar before the High Court of Delhi, claiming that such usage, as aforesaid, is in contravention of the express bar u/s 23 of the UGC Act and hence attracted penal action u/s 24 of the said Act. It is stated that without reference to any further debate or a direction issued by the Court, the Central Government vide its letter dated 10.8.2009 is said to have directed the UGC to the following effect:

Please refer to the aforesaid writ petition which came up for hearing before the Honourable Court on 29.7.2009. The hearing had been adjourned to 19.8.2009. However, with reference to the above case, I am directed to say that--

i) We should accept the petitioner's stand as section 23 of the UGC Act, 1956

has still not been amended. It is, therefore, requested that the UGC should ask its Counsel to convey the same to the Honourable Court on the date of hearing i.e., 19.08.2009.

ii) The UGC should withdraw its notification dated 13.09.2006 and communicate the same to all institutions "deemed-to-be universities" so that the latter refrain from using the word "university" with their names, and

iii) The UGC should file its affidavit in the Honourable Court in the present form, as prepared by them or their Counsel.

It is pursuant to this that the High Court of Delhi had disposed of the writ petition in terms as already cited herein above. Shri Dinesh Kumar would seek to justify the action of the respondents on an interpretation of the provisions of the UGC Act and several authorities.

5. The point that arises for consideration in the present writ petition is, whether the petitioner, which is declared as a deemed to be University, in terms of Section 3 of the UGC Act, would yet not be enabled to associate the word "University" as against its name, in view of the language of Section 23 of the said Act. And if the impugned direction is justified.

The following provisions of the UGC Act are reproduced, as the same are relevant in addressing the point at issue:

The expression "University" is defined u/s 2(f) of the UGC Act as follows:

(f) "University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act.

Section 3 provides for the application of the Act to institutions for higher studies, other than Universities. It reads thus:-

3. The Central Government may, on the advice of the Commission, declare by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of section 2.

The exclusive right to confer degrees being available only with a University is provided for u/s 22 of the Act:

22. (1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University u/s 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or

grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the official. Gazette.

There is a prohibition against the use of the word "University", except as provided u/s 23 of the Act:

23. No institution, whether a corporate body or not, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word "University" associated with its name in any manner whatsoever;

Provided that nothing in this section shall, for a period of two years from the commencement of this Act, apply to an institution which, immediately before such commencement, had the word "University" associated with its name.

Contravention of Section 22 or 23 of the Act would attract the penalties prescribed u/s 24, which reads thus:

24. Whoever contravenes the provisions of section 22 or section 23 shall be punishable with fine which may extend to one thousand rupees, and if the person contravening is an association or other body of individuals, every member of such association or other body who knowingly or willfully authorizes or permits the contravention shall be punishable with fine which may extend to one thousand rupees.

6. Given the rather cryptic definition of a "University" to be found in the Act, it is useful to refer to the summation by the Apex Court as to what a University means, as expressed in the case of Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, :

... a university is a whole body of teachers and scholars engaged at a particular place in giving and receiving instruction in higher branches of learning; and as such persons associated together as a society or corporate body, with definite organization and acknowledged powers and privileges and forming an institution for promotion of education in higher or more important branches of learning and also the colleges, building and other property belonging to such body. Other necessary attributes of a university are plurality of teachers teaching more than one higher faculties and other facilities for imparting instruction and research, provision for residence and must have certain standard of instruction providing for graduate and postgraduate levels of study. It presupposes existence of a campus, classrooms, lecture theatres, libraries, laboratories, offices, besides some playgrounds and also sports facility for overall development of personality of the students.

In the instant case, the petitioner being declared as a deemed to be University, was contemplated by the respondents in much earlier to the date on which it was

so declared. It was admittedly delayed, in that, the UGC had recommended to the Central Government, the established suitability of the petitioner to be declared as a deemed to be University, even as early as in the year 1978. But the Central Government failed to oblige, as evident from the letter of the Central Government dated 8-2-1978, citing financial constraints and its inability to provide financial assistance. There is hence no room for doubt that the petitioner had been found more than eligible to be declared a deemed to be University many decades ago and as on date, it has only grown from strength to strength on all fronts, as pointed out by the learned Senior Advocate. Therefore, there is no indication that there are any circumstances which would warrant the petitioner to desist from calling itself a University, which was expressly permitted by the respondents.

It is evident from the material on record, that the respondents were also not proceeding on the basis that the petitioner had in any manner rendered itself unfit to be known as a University. The sole provocation to issue the impugned directive, was the acceptance by the respondents of a contention, in the writ petition referred to herein above, before the High Court of Delhi - that the language of Section 23 of the UGC Act would not entitle a deemed to be University to have the word "University" associated with its name in any manner. This is an interpretation, apparently without reference to the effect of the words and intent thereof, as found in Section 3 of the Act. On a declaration being made of any Institution, that it shall be deemed to be a University for the purposes of the Act, Section 3 of the Act mandates that all the provisions of the Act shall apply to such institution as if it were a University within the meaning of the definition contained in clause(f) of Section 2. The absence of a specific reference to a deemed to be University, u/s 23, is therefore not material, it would by virtue of the language of Section 3 be implied that a Deemed University is excepted, along with a University established by law, from the rigour of Section 23.

In interpreting a provision creating a legal fiction the Court is to ascertain for what purpose the fiction is created and after ascertaining this, the Court is to assume all those facts and consequences, which are incidental or inevitable corollaries to the giving effect to the fiction. And it should be carried to its logical conclusion. To that end, it would be proper and necessary to assume all those facts on which alone the fiction can operate. In an oft-quoted passage, per Lord Asquith (*East End Dwelling Co. Ltd. v. Finsbury Borough Council*, (1951) 2 All ER 587, it is put thus:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative, state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

Thus if A is deemed to be B, compliance with A is in law compliance with B and contravention of A is in law contravention of B.

(See: Principles of Statutory Interpretation G.P. Singh, Seventh Edition)

"Deemed" is the equivalent of "considered" or "adjudged" and whenever an act requires to be deemed or taken as true of any person or thing, must in law be considered as having been duly considered or adjudged, and have full force and effect accordingly. (Leonard v. Grant, 5 F. 11, 16. - Words & Phrases, Permanent Edition Vol. 11 A, 183)

In the light of the above, the opinion formed by the respondents that Section 23 would not entitle the petitioner to have the word "University" associated with its name, is true only if the Section is read in isolation. This shall not be, for the declaration u/s 3 would make all the provisions of the Act apply to the Institution, as if it were a University. If construed otherwise, Section 3 would be redundant.

The learned counsel, Shri Dinesh Kumar, seeks to justify the action of the respondents with reference to the decision in Dental Council of India and Another Vs. Hari Parkash and Others, to contend that the petitioner is not in a position to claim as a University established by law. Seeking to draw inspiration from the finding of the apex court in that decision to the effect that the All India Institute of Medical Sciences (AIIMS) was not a University established by law, as contemplated u/s 3(d) of The Dentist Act, 1948. The said decision was rendered in a different context altogether and would not apply to the present case on hand.

Reliance is placed on the decision of a learned Single judge of this court in the case of Indian Dental Association and Another Vs. Union of India (UOI) and Others, . In the said case, the facts were as follows:

The fifth respondent therein was a Professor, Head of the Department and Dean in the College of Dental Surgery, belonging to the fourth respondent therein. The fifth respondent contested the election to the Dental Council of India, a body constituted under the Dentists Act, 1948, and won the election as representing a University established by law. As the fourth respondent was a deemed University, the election of the fourth respondent as a representative of a deemed University was questioned on the ground that a deemed University cannot be construed as a University established by law as contemplated u/s 3(d) of the Dentists Act. In that, it was contended that a deemed University could not field a candidate from a constituency for a University established by law.

The point framed for consideration in that case was:

Whether a "deemed University" u/s 3 of the University Grants Commission Act, 1956 falls within the phrase "University established by law" used in Section 3(d) of the Dentists Act, 1948

While answering the above in the negative, certain incidental observations are

made - which are extracted hereunder, which are sought to be pressed into service by Shri Dinesh Kumar:

In the above decision, the learned single judge has interpreted Section 3 of the UGC Act thus:

A reading of the definition of "University" under the UGC Act makes it clear it encompasses within its meaning a University established or incorporated by or under a Central Act, a Provincial Act or a State, Act, and includes any such institution as may, in consultation with the University concerned, be a recognized by the Commission in accordance with the regulations made in this behalf under the Act. In this regard it is useful to remember the object with which the UGC Act came to be passed. It is passed with the intention of establishing a University Grants Commission as a corporate body which will inquire into the financial needs of Universities and allocate and disburse grants to Universities for any general or specified purpose. The Commission will also have the power to recommend to any University the measures necessary for the reform and improvement of University education and to advise the University concerned upon the action to be taken for the purpose of implementing such recommendation. The Commission will act as an expert body to advise the Central Government on problems connected with the coordination of facilities and maintenance of standards in Universities the commission, in consultation with the University concerned, will also have the power to cause an inspection or inquiry to be made of any University established by law in India and to advise the University on any matter which has been the subject of an inquiry or inspection. The Commission shall also advice, whenever such advise is sought, on the establishment of new Universities. While the provisions of the Act do not apply to institutions of higher education which are not Universities, power is vested in the Central Government to declare any institution for higher education to be a University for the purposes of this Act by issuing a notification in the official gazette. It is in this background if we look at the aforesaid definition of the word "University" in the said Act, it is clear the University Grants Commission has power to deal not only with the constituent colleges but also other colleges affiliated to the University. At the same time it was realized that the number of affiliated colleges being very large, it would not be possible within the limited resources of the Commission to deal with all of them. Therefore, the Commission, was empowered to recognize such institutions as it thinks proper on the recommendation of the University concerned and in accordance with the regulations to be made in this behalf. Therefore, Section 3 empowers the Central Government on the advise of the Commission to declare by notification in the official Gazette that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a university within the meaning of Clause (f) of Section 2 for the purpose of the Act only and not for any other purpose. In this regard it is also necessary to have a look at Section 22 of the UGC Act which reads as under:

22. Right to confer degrees:

(1) The right of conferring or granting degree shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University u/s 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in Sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.

Section 22 and 23 are interpreted as follows:

9. A reading of the aforesaid Section makes it very clear that right of conferring or granting degrees by virtue of this provision has been conferred on three types of institutions: (a) A University established or incorporated by or under a Central Act, a Provincial Act or a State Act; (b) A University deemed to be a University u/s 3; (c) An institution specially empowered by an Act of Parliament to confer or grant degrees. Therefore, this Section maintains the distinction between a University established by law and a deemed University u/s 3.

10. Further Section 23 of the UGC Act makes the intention of the legislature very clear which reads as under:

23. Prohibition of the use of the word "University" in certain cases. - No institution, whether a corporate body or not, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word "University" associated with its name in any manner whatsoever:

Provided that nothing in this section shall, for a period of two years from the commencement of this Act, apply to an institution which immediately before such commencement had the word "University" associated with its name.

It is then opined as follows:

13. Therefore, a "deemed University" is admittedly in fact and truth not a University. It is deemed University for the purpose of the Act which confers such status. Wherever the word "University" has been used under the said Act we should treat this deemed University as a University. When the very same Act which confers the status of a deemed University on an institution categorically states that no institution other than a University established or incorporated by or under a Central Act, a Provincial or a State Act shall be entitled to have the word "University" associated with its name in any manner whatsoever then the said intention of the legislature has to be given full effect. In other words even though that Act declares a particular institution as a University the said Act further makes it very clear that deemed University cannot use the word

"University" in its name. When the Act uses the word "University established by law", when the legal fiction declares an institution only as a "University" it cannot be stretched to include a University established by law. They are not synonymous.

In the opinion of this bench, the above reasoning in concluding that the language of Section 23 of the UGC Act laying down that "no institution other than a University established or incorporated by or under a Central Act, a Provincial or a State Act shall be entitled to have the word "University" associated with its name in any manner whatsoever" - should be given full effect, and hence a deemed University could not be construed as a University established by law, may indeed be tenable in so far as it concerns the interpretation of Section 3(d) of the Dentists Act is concerned. But in so far as the UGC Act is concerned, in the opinion of this bench, Section 23 of the UGC Act will necessarily have to be read in the light of and subject to Section 3 of the same Act.

Section 3 of the UGC Act, is reproduced hereunder for ready reference:

3. The Central Government may, on the advice of the Commission, declare by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of section 2.

It is evident from the highlighted portion above, that Section 23 of the UGC Act would equally apply to a deemed University, even in the absence of a reference to it therein, for otherwise we are stopping short of applying the settled principles relating to a deeming provision, the application of which is left in no doubt - when it is held to apply to "all the provisions of the Act".

Further, notwithstanding the above referred decision of this court, the respondents had chosen to permit the petitioner to use the word "University" in its name, by Notification dated 13.9.2006.

Hence, in the opinion of this bench the present petition deserves to be allowed as there was no reason in law or on facts for the respondents to have issued the impugned directive.

However, in view of the different opinion expressed by a co-ordinate bench, as stated above, it is appropriate that the matter be placed before a larger bench for consideration. The registry is directed to place the matter before the Honourable Chief Justice for appropriate orders.

The interim order of stay granted shall continue pending consideration of the matter by a larger bench.