
(2014) 12 UK CK 0021

In the Uttarakhand High Court

Case No : Writ Petition Nos. 2550, 2551 and 2552 etc. etc. of 2014 (M/S)

Neelam Bangwal and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Central Universities Act, 2009 — Section 4, 4(f)

Citation : AIR 2015 UC 21 : (2015) 2 UC 1579

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : Sharad Sharma, Senior Advocate, assisted by Bhupesh Kandpal, for the Appellant; Shailendra Singh Chauhan, Deputy Advocate General and Paresh Tripathi, for the Respondent

Final Decision : Allowed

Judgement

Alok Singh, J. All these writ petitions are interconnected and involve identical question of facts and law, therefore, with the consent of learned counsel for the parties, all these writ petitions are heard together and are being disposed of by this common judgment. Undisputedly, petitioners of Writ Petition (M/S) No. 2552 of 2014 are students of Dolphin (P.G.) Institute of Biomedical and Natural Science, Manduwala, Dehradun studying B.Sc. Medical Microbiology and Bachelor of Physiotherapy respectively; Dolphin (P.G.) Institute of Biomedical and Natural Science, Manduwala, Dehradun is the writ petitioner in WPMS No. 2583 of 2014 while petitioners of other connected writ petitions are also paramedical institutes. To understand the controversy, facts of Writ Petition (M/S) No. 2583 of 2014 are being narrated.

2. Petitioner is a paramedical institute; on 26.2.2004, to run different paramedical courses, affiliation was granted to the petitioner/institute by the HNB Garwhal University (State University) under Section 37 of the U.P. State Universities Act, 1973; affiliation was granted initially only for one year; vide order dated 29.4.2008, again affiliation was granted for one year to run

paramedical courses; HNB Garhwal University (State University) was conferred status of Central University w.e.f. 15.1.2009 in view of Central Universities Act, 2009; thereafter, under the administrative orders of the State Government, HNB Garhwal University (Central University) conducted the examinations of paramedical courses and permitted the students of the petitioners institutes to appear in the examination and results thereof were declared by the Central University till 2012-2013; this year HNB Garhwal (Central University) refused to process the applications of the students pursuing paramedical courses in the institutes and to permit them to appear in the examination scheduled to be commenced from 5.12.2014, therefore, petitioners/institutes as well as two students of Writ Petition (M/S) No. 2552 of 2014 have preferred present writ petitions.

3. Mr. Sharad Sharma, learned Senior Counsel assisted by Mr. Bhupesh Kandpal, learned counsel for the petitioners/institutes, has vehemently argued that in view of Section 4(f) of the Central Universities Act, affiliation and privileges granted by the State University under Section 37 of the State Universities Act shall stand affiliated to or admitted to the privileges with the Central University with effect from 15.1.2009, therefore, Central University is duty bound to process the applications of the students pursuing their studies in different paramedical courses being conducted by the petitioners/institutes and to hold their examinations. Further contends that although affiliation was initially granted for one year under Section 37 of the State Universities Act, however, fact remains that affiliation was never withdrawn or revoked, rather every year petitioners/institutes were permitted to admit the students in different courses and students were permitted to appear in the every year examinations conducted by State University, therefore, affiliation earlier granted shall stand affiliated with the Central University with effect from 15.1.2009.

4. On the other hand, Mr. Paresh Tripathi, learned counsel appearing for the Central University, has vehemently argued that as per Section 4(f) of the Central Universities Act, only those affiliation shall stand transferred with effect from 15.1.2009 which were in existence on 14.1.2009. Further contends that in view of UGC Regulations dated 29.4.2010, paragraph No. 4.10 read with paragraph No. 5.2 of the Regulation, affiliation can be granted by the State University only for one year. In the present case too affiliation was granted only for one year and it was never got renewed, therefore, petitioners/institutes were not affiliated with the State University on 14.1.2009, therefore, they did not stand affiliated with the Central University in view of Section 4(f) of the Central Universities Act. Consequently, Central University is not duty bound to process the applications of the students pursuing the studies with the petitioners/institutes and to hold their examination.

5. Mr. Paresh Tripathi further contends that since State Medical University has also been established, therefore, petitioners, if so advised, may seek affiliation with the State Medical University for the different paramedical courses and State

Medical University, if so wish, can grant them affiliation.

6. Mr. Paresh Tripathi further contends that merely because State Government has issued wrong direction to the Central University to hold the examinations of the students of petitioners/institutes after 2009 till 2013, it does not mean that in 2014 too the Central University shall hold the examinations for the students of the institutes who are not affiliated with the Central University.

7. Let me now examine as to whether affiliation granted by the State University under section 37 of the State Universities Act would have expired on expiry of one year or should be deemed having been continued since, no order was ever passed for revocation/cancellation of the affiliation?

And

As to whether different courses earlier affiliated with the State University shall stand affiliated with Central University w.e.f. 15.01.2009 in view of Section 4(f) of the Central University Act?

8. Section 4 of the Central Universities Act reads as under:

"Section 4 - Effect of establishment of Universities

On and from the date of commencement of this Act,-

(a) any reference to Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya or Hemvati Nandan Bahuguna Garhwal University, in any contract or other instrument shall be deemed as a reference to Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya, and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Act;

(b) all properties, movable and immovable, of or belonging to Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, shall vest in Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya or Hemvati Nandan Bahuguna Garhwal University, as the case may be, established under this Act;

(c) all rights and liabilities of Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, shall be transferred to, and be the rights and liabilities of, Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Act;

(d) every person employed by Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, immediately before the commencement of this Act shall hold his office or service in Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Act by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave,

gratuity, provident fund and other matters as he would have held the same if this Act had not been enacted and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes:

Provided that if the alteration so made is not acceptable to such employee, his employment may be terminated by the University in accordance with the terms of the contract with the employee or, if no provision is made therein in this behalf, on payment, to him by the University, of compensation equivalent to three months' remuneration in case of permanent employees and one month's remuneration in the case of other employees:

Provided further that every person employed before the commencement of this Act, pending the execution of a contract under section 33, shall be deemed to have been appointed in accordance with the provisions of a contract consistent with the provisions of this Act and the Statutes:

Provided also that any reference, by whatever form of words, to the Vice-Chancellor and Pro-Vice-Chancellor of Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya or Hemvati Nandan Bahuguna Garhwal University, in any law for the time being in force, or in any instrument or other document, shall be construed as a reference to the Vice-Chancellor and the Pro-Vice-Chancellor of Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya or Hemvati Nandan Bahuguna Garhwal University, as the case may be, established under this Act;

(e) the Vice-Chancellors of Guru Ghasidas Vishwavidyalaya and Doctor Harisingh Gour Vishwavidyalaya, appointed under the provisions of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973, and the Vice-Chancellor of Hemvati Nandan Bahuguna Garhwal University, appointed under the provisions of the Uttar Pradesh State Universities Act, 1973, shall be deemed to have been appointed as the Vice-Chancellors under this Act, and shall hold office for a period of three months or till such time the first Vice-Chancellor is appointed under section 44 of the Act, whichever is earlier; and

(f) all Colleges, Institutions, Schools or Faculties, and Departments affiliated to, or admitted to the privileges of, or maintained by, Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University shall stand affiliated to, or admitted to the privileges of, or maintained by, Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Act."

9. A bare perusal of sub-section (f) of Section 4 of the Central Universities Act would demonstrate that if any institute was affiliated or extended privileges by the different State Universities mentioning therein those affiliation and privileges on the creation of the Central University shall stand transferred or merged with the Central University.

10. Section 37 of the State Universities Act reads as under:

"37. Affiliated Colleges.--[(1) This section shall apply to the Universities of Doctor Bhimrao Ambedkar University, Agra, Deen Dayal Upadhyaya Gorakhpur University, Gorakhpur, Chatrapati Shahu Ji Maharaj University, Kanpur, Chaudhary Charan Singh University, Meerut, Mahatma Jyotiba Phule Rohilkhand University, Bareilly, Vir Bahadur Singh Purvanchal University, Jaunpur, University of Bundelkhand, Jhansi, Mahatma Gandhi Kashi Vidyapith, Varanasi, Doctor Ram Manohar Lohia Avadh University, Faizabad, and such other Universities (not being the University of Lucknow) as the State Government may by notification in the Gazette, specify.]

(2) The Executive Council may, with the previous sanction of the State Government admit any college which fulfils such conditions of affiliation, as may be prescribed, to the privileges of affiliation or enlarge the privileges of any college already affiliated or subject to the provisions of sub-section (8), withdraw or curtail such privilege:

[Provided that if in the opinion of the State Government a college substantially fulfils the conditions of affiliation, the State Government may sanction grant of affiliation to that college or enlarge the privileges thereof in specific subjects for one term of a course of study on such term and conditions as he may deem fit:

Provided further that unless all the prescribed conditions of affiliation are fulfilled by a college, it shall not admit any students in the first year of the course of study for which affiliation is granted under the foregoing proviso after one year from the date of commencement of such affiliation.]

(3) It shall be lawful for an affiliated college to make arrangement with any other affiliated college situated in the same local area, or with the University, for co-operation in the work of teaching or research.

(4) Except as provided by this Act, the management of an affiliated college shall be free to manage and control the affairs of the college and be responsible for its maintenance and upkeep, and its Principal shall be responsible for the discipline of its students and for the superintendence and control over its staff.

(5) Every affiliated college shall furnish such reports, returns and other particulars as the Executive Council or the Vice-Chancellor may call for.

(6) The Executive Council shall cause every affiliated college to be inspected from time to time at intervals not exceeding five years by one or more persons authorised by it in that behalf, and a report of the inspection shall be made to the Executive Council.

(7) The Executive Council may direct an affiliated college so inspected to take such action as may appear to it to be necessary within such period as may be specified.

(8) The privileges of affiliation of a college which fails to comply with any

direction of the Executive Council under sub-section (7) or to fulfil the conditions of affiliation may, after obtaining a report from the Management of the college and with the previous sanction of the Chancellor, be withdrawn or curtailed by the Executive Council in accordance with the provisions of the Statutes.

(9) Notwithstanding anything contained in sub-sections (2) and (8), if the Management of an affiliated college has failed to fulfil the conditions of affiliation, the State Government may, after obtaining a report from the Management and the Vice-Chancellor, withdraw or curtail the privileges of affiliation.

(10) Notwithstanding anything to the contrary contained in any other provisions of this Act, a college, which has already been given affiliation to a University before the commencement of the Uttar Pradesh State Universities (Amendment) Act, 2003 in specific subjects for a specified period shall be entitled to continue the course of study for which admissions have already taken place but it shall not admit any student in the first year of such course of study without obtaining affiliation under sub-section (2)."

11. A bare perusal of Section 37 of the State Universities Act would reveal that there is absolutely no provision to grant temporary affiliation for one year. Sub-sections (5), (6) and (7) authorizes the Executive Council and different authorities of the University to call for different reports and to inspect the affiliated institutes from time to time at interval not exceeding five years to find out as to whether affiliation should be withdrawn/cancelled for the reasons of non-fulfilling of faculty requirements and other lapses.

12. If all sub-sections of Section 37 are read together, it would demonstrate that affiliation once granted shall continue till it is withdrawn and if on the inspection or having perused the different reports, returns and other particulars, University comes to the conclusion that institute is lacking basic facilities or infrastructure or faculties, affiliation so granted can be withdrawn.

13. Undisputedly, in the present cases, no such lacuna was ever observed and no action was ever taken by the State University for withdrawing or cancelling the affiliation so granted prior to 14.1.2009. Not only this, although initially affiliation so granted in 2004 was only for one year, however, fact remains that considering the same affiliation in force State University permitted the petitioners/institutes to admit the students and such students were permitted to appear in the examinations held every year prior to 2009 i.e. creation of Central University. Therefore, it can very well be said that had there been no continuous affiliation, there would have been no occasion for the State University prior to the creation of the Central University, to permit the petitioners/institutes to admit the students and to allow such students to appear in the examinations held by the State University prior to creation of Central University. Therefore, I have no hesitation to hold that affiliation so granted shall be deemed having been continued till 15.1.2009 when Central University came into force. Therefore, in view of section 4(f) of the Central University Act, affiliation and privileges by the

State University stood transferred and affiliated with the Central University.

14. Let me now examine the UGC Regulations dated 29.4.2010, as relied upon by Mr. Paresh Tripathi, Advocate for the Central University.

15. Undisputedly, UGC Regulations came into force with effect from 29.4.2010. I have carefully perused the UGC Regulations and I find that these Regulations of 29.4.2010 are prospective in nature and should not be pressed in service with retrospective effect to say that affiliation granted to the petitioners/institutes for one year would have expired on expiry of one year.

16. There is another important aspect of the matter. Under the Central Universities Act, undisputedly, as on date there is no provision of affiliation and de-affiliation or withdrawal of the affiliation except Section 4(f) of the Act which talk about the transfer of the affiliation with the Central University. Therefore, Central University has absolutely no jurisdiction to compel the petitioner institutes who stood affiliated with the Central University in view of Section 4(f) with effect from 15.1.2009, either to seek renewal of affiliation or new affiliation.

17. In the result, all the writ petitions are allowed. Central University is directed to process the applications of the students pursuing their studies in different paramedical courses, which were duly affiliated by the State University prior to creation of the Central University and to hold their examinations and to permit the students to appear in the examinations to be held from 5.12.2014 and to declare their results. No order as to costs.