
(1997) 01 CAL CK 0021
In the Calcutta High Court

Case No : G.A. No's. 207, 475, 1783 of 1996 and Matter No. 2135 of 1995

Pinaki Ranjan Bharati

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 28-01-1997

Acts Referred:

Calcutta University Act, 1966 — Section 4(4)
Constitution of India, 1950 — Article 226

Citation : AIR 1997 Cal 155

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Judgement

1. The petitioner claiming himself to be the recognised Founder-Principal and ex-officio Secretary of the Kabitirtha College (at Subhas Nagar, Bangaon) affili-tated to the Rabindra Bharati University, has filed the writ petition praying for various directions including the direction upon the respondents State and University authorities to act in terms of the order dated 11-1-1995 of a Division Bench of this Court comprising M.G. Mukherjee and Vidya Nand, JJ. in P.M.AT. No. 49 of 1995 and also for recognising the Kabitirtha College and for supplying registration and examination forms and making arrangement for salary of the petitioner and other teaching and non-teaching staff of the college from the University Grants Commission and also for direction upon the Scheduled Castes Welfare Authorities to grant Scheduled Castes stipends to the Scheduled Castes students of the College, etc. Subsequently, during the pendency of this writ petition the petitioner also filed another application for directing the Scheduled Castes and Tribes Welfare Authorities not to make any grant of Scheduled Castes stipends to the "so called self-styled Kabitirtha College at Bakshipally". It may be noted here that during the pendency of the writ petition the authorities of the Kabitirtha College at Bakshipally were also added as respondents in this writ petition.

2. Initially Rabindra Bharati University granted affiliation to the Institution "Kabitirtha" situated at Subhaspally for Two Years Junior Diploma Course in Vocal

Music, Dance and Drama from the Session 1976-77 subject to fulfilment of certain conditions mentioned in the letter of affiliation. The writ petitioner Pinaki Ranjan Bharati was the founder-Principal and ex-officio Secretary of the said Institution at that time. Subsequently in 1984 a breakaway group of persons of that Institution, started running the institution Kabilirtha at a different location, namely, at Bakshipally of the same town Bangaon. Both groups, namely, the one headed by Pinaki Ranjan Bharati running the college at Subhaspally and the other running the college at Bakshipally in the same name Kabitirtha claimed their respective colleges as the one affiliated to the Rabindra Bharati University in view of the affiliation earlier granted by the said University in 1976. As a sequel to such dispute between the rival claimants Pinaki Ranjan Bharati instituted a civil suit being Title Suit No. 32/1985 of the Second Court of Assistant District Judge, Alipore against Siddheswar Biswas and others who were running the college at Bakshipally. In that suit the plaintiffs Pinaki Ranjan Bharati and others mainly challenged the authority of the defendants to run the college at Bakshipally in the name of Kabitirtha and prayed for declaration that the college Kabitirtha run by the plaintiffs (at Subhaspally) was the college affiliated with the Rabindra Bharati University and the plaintiffs were entitled to run the same and that the defendants had no right or authority to represent the said college or to run any college under the name and style of Kabitirtha. Further declaration was also prayed for in the suit that the meeting held in January, 1984 was void and the Governing Body formed by the defendants in the said meeting was not a legally constituted Governing Body and as such the said Governing Body had no right to represent the said College Kabitirtha. The suit was contested by the defendants, namely, the authorities of the college Kabitirtha run at Bakshipally. During the pendency of the said T.S. No. 32/1985 the Registrar of Rabindra Bharati University wrote a letter dated the 9th April, 1985 to Pinaki Ranjan Bharati and Siddheswar Biswas stating that in view of the pendency of T.S. No. 32/1985 they were to bring proper order of the court as to who was authorised to control and manage the affairs of Kabitirtha. It was also stated in the said letter that the University would provide all necessary reliefs to such person having legal entity. After a contested hearing the decision of the trial Court in said Title Suit No. 32/1985 however went against the plaintiff Pinaki Rajan Bharati and the suit was dismissed. After elaborate discussion the trial Court held that the defendants had been able to prove that the college was actually shifted from Subhaspally to Bakshipally. The trial Court also held that the plaintiffs failed to prove that they formed any Governing Body properly on 18-10-1984 and that any such Committee of the plaintiffs worked for the college. The Court however found that the Governing Body constituted in January 1984 (by the defendants) was defective inasmuch as two nominees of the Rabindra Bharati University were not included. The trial Court had also noted that it could not be said that the defendants had taken all necessary steps for the proper constitution of the Governing Body but yet the fact remained that the University allowed the students of the college to sit for the examination and to enjoy all the amenities given by the Rabindra Bharati University. Accordingly the trial Court observed

that the matter was absolutely left with the university authorities to take a decision on the point of approval of the Governing Body formed in January, f 984 by the defendants. The suit was however, as already noted, dismissed as the court concluded that the plaintiffs had no case in the suit. It may be noted here that the suit was dismissed by the Court of Assistant District Judge, Alipore on 11-7-1986. P.R. Bharati and others then preferred an appeal against the dismissal of the suit and the learned Additional District Judge, 12th Court, Alipore allowed the appeal in part being Title Appeal No. 13/1986 by judgment dated 17-12-1987. The defendants of the suit then preferred a Second Appeal before the High Court being S. Appeal No. 520 of 1988 and a Division Bench of this Court comprising S. Ahamed and A.M. Sinha, JJ. disposed of the said second appeal by allowing the same and by setting aside the judgment of the first appeal court, and restored and affirmed the judgment and the decree of the trial court, namely, the judgment and decree passed by the Assistant District Judge, Second Court, Alipore, in T.S. No. 32/1985.

3. The decision of the Division Bench in the said second appeal No. 520 of 1988 clinched the issue and in view of such decision there is no escape from the effect and consequences of the judicial conclusion already reached that the college Kabitirtha was shifted from Subhaspally to Bakshipally. The only defect found in the Governing Body formed by the defendants in January 1984 was that the Rabindra Bharati University was yet to nominate two members to that Committee. In respect of that matter the trial Court in its judgment in T.S. No. 32/1985 left the matter absolutely with the university authorities to take a decision on the point of approval of the Governing Body formed in January 1984 by the defendants. Therefore what was left for the decision of the University was the question of approval of the Governing Body formed in January 1984 by the defendants. But the fact that the institution at Subhaspally which received the affiliation of the Rabindra Bharati University in 1976 was shifted to Bakshipally in 1984 was settled by the judicial decision in the said Title Suit No. 32/1985 as affirmed by the High Court in the second appeal. Naturally, the decision of the High Court in the second appeal, having gone against P.R. Bharati, he moved a SLP before the Supreme Court but the Supreme Court was pleased to dismiss the same on 29-1-1992. It may be mentioned here that the Division Bench of this Court in the said second appeal while upholding and affirming the decision of the trial Court that the college at Subhaspally had been shifted to Bakshipally also observed that before the cancellation of affiliation of any institution the management of the institution should be given opportunity of making representation before the Council of the University but since no such steps had been taken by Rabindra Bharati University it might be presumed that the affiliation had been continuing so far as the college Kabitirtha was concerned. The result was that it was judicially held and affirmed upto that stage that the college which was initially established at Subhaspally and obtained the affiliation of the University was subsequently shifted to Bakshipally and was enjoying the affiliation of the Rabindra Bharati University which was originally granted to that

institution. This position rather became affirmed further by reason of the dismissal of the SLP filed by P.R. Bharati in the Supreme Court. We have also seen that the University authorities also committed themselves to go by the decision of the Court regarding the question as to which was the real college Kabitirtha and which of the rival claimants was in the control and management of the college. Since the decision of the Civil Court on the question went squarely against P.R. Bharati in the civil suit the institution Kabitirtha as run by the defendants at Bakshipally received the recognised status of affiliated college under the name Kabitirtha and the plaintiff P. R. Bharati had, thereafter, no right to run any college under the style and name of Kabitirtha at Subhaspaliy on the basis of the initial affiliation granted by the University in 1976.

4. After the disposal of the said Title Suit No. 32/1985 on 11-7-1986 by the trial Court the Executive Council of the Rabindra Bharati University in its meeting held on 10-9-1986, on consideration of the matter and in the background of the said judgment, took the following resolution:

(1) That in view of the non-existence of Kabitirtha at Subhaspaliy, Bangaon affiliated to the University the same be and is hereby disaffiliated with immediate effect. A notification in two leading dailies, one in English and one in Bengali be given to this effect:"

(2) That the institution run at Bakshipally, Bangaon is neither an affiliated institution nor a recognised institution and no approval of the council to the alleged Governing Body of a self-styled institution be accorded.

(3) That in the larger interest of the students, already admitted by the two institutions at Subhaspaliy and Bakshipally upto the date of admission allowed by the University vide, the Registrar's letter dated 31-1-1985/4-2-1985 as they may be eligible to appear in the respective examinations of the University according to rules, be and are hereby allowed to appear at such examination.

This resolution of the Executive Council of the university was not wholly a happy resolution in view of the fact that the trial Court had held that the institute Kabitirtha was shifted from Subhaspaliy to Bakshipally and had turned down P.R. Bharati's claim. The obvious import of that decision was that there could not have been an affiliated institution at Subhaspaliy any more under the name Kabitirtha. And therefore there was no question of disaffiliation of the institution Kabitirtha at Subhaspaliy at that point of time. The further import of the decision in the civil suit was that the affiliated institution at Subhaspaliy the name Kabitirtha having been shifted to Bhashipally, the institution which was being run at Bhakshipally under the name Kabitirtha was enjoying the affiliation originally granted by the University, and therefore, in view of the decision in the civil suit and in view of the earlier commitment of the University to recognise the position that may be decided by court, it was not open to the Executive Council of the University on 10-9-1986 to say that the institution run at Bakshipally was neither an affiliated institution nor recognised institution. Rather the institution at

Bakshipally at that point of time was required to be treated as an institution enjoying the original affiliation granted by the university. In its said resolution the Executive Council refused to accord approval to the Governing Body of the institution at Bakshi-pally on the ground that the same was not a recognised or affiliated institution. That resolution was however not proper. It is true that the trial court in the civil suit in view of the irregularity in the formation of the Governing Body of the institution at Bakshi-pally by reason of not having two nominees of the university therein, granted liberty to the university to take a decision regarding approval of the Governing Body formed by the defendants, but the question of approval of Governing Body is something different from the recognition or affiliation of the institution. The university was given the liberty by the Court to take decision regarding the approval of the Governing Body of the institution but the question of recognition or affiliation of the institution at Bakshipally was not open to be decided by the university at that point of time because the university had already committed itself by a letter written by the Registrar, as we have seen, that they would go by the decision of the court. Indeed the university was at liberty to take decision regarding the approval of the Governing Body of the college at Bakshipally, but contrary to the decision of the Civil Court they were not free to say that they would not recognise the college at Bakshipally. Indeed they were free to take action in accordance with law for de-recognition and disaffiliation of the said college if there were valid reasons for taking such action but they did not take any such action and instead took a resolution on 10-9-1986 as noted above.

5. The action taken by the university pursuant to that resolution dated 10-9-1986 was however challenged, for obvious reasons, by the authorities of the college at Bhakshi-pally by filing a writ petition, but P.R. Bharati did not take any steps against the same. Civil Order No. 11649(W) of 1986 which was filed - by the authorities of the college at Bakshipally was disposed of by U.C. Banerjee, J. on 16th Sept. 1986 wherein the learned Judge observed thus:--

"Since the University has already taken a decision in passing an order of disaffiliation of the Kabitirtha College at Subhaspally and since the University has further taken a view that the institution run at Bakshpally is neither an affiliated institution nor a recognised institution and no approval of the Council to a self-styled institution could be granted, I am not inclined to interfere in the matter and pass any order on this application. As such this application fails and is dismissed. But the writ petitioner would be at liberty to take step or steps in accordance with law as may be advised."

The said order also contained inter alia a. further observation as follows:--

"The University is further directed to serve copy of the notice of disaffiliation together with copy of the resolution of the Executive Council of Rabindra Bharati University dated, the 10th Sept. 1986 on the learned Advocate for the writ petitioner by this week."

It has been argued by the learned Advocate for the writ petitioner P.R. Bharati that the said order of U.C. Banerjee, J. dated the 16th Sept. 1986 has not been set aside and in that order the learned Judge has held that the institution at Bakshipally is neither an affiliated institution nor a recognised institution as such the same is binding on all concerned. In my opinion, it is not correct to say that in the order dated 16th Sept., 1986 U.C. Banerjee J. had recorded any judicial finding that Bakshipally institution is neither an affiliated institution nor a recognised institution etc. A plain reading of that order would show that what the learned Judge recorded in the said order in that context was not the finding of the Court but only the recital of the relevant part of the resolution of the Executive Council of the University without however entering into the merit or validity of the said resolution. It would rather appear that the learned Judge gave liberty to the authorities of the Bakshipally institution to take steps in accordance with the law and a copy of the resolution of the Executive Council dated the 10th Sept. 1986 was also directed to be served on the learned Advocate for the Bakshipally College authorities. It would next appear that thereafter the authorities of the Bakshipally College moved a writ petition being C.O. No. 13247(W) of 1986 which was dismissed by U.C. Banerjee, J. on 7th Nov. 1986 with the observation inter alia that the writ court was not the proper forum for the purpose of adjudication of the grievances of the writ petitioner. There was an appeal against that order of the learned Judge before a Division Bench and that appeal was disposed of by a Division Bench consisting of B.P. Banerjee and A.K. Chakrabarty, JJ. on 9th June, 1993. The Division Bench did not sustain the order of the learned trial Judge and observed that the writ application was bound to succeed to the extent that the affiliation of the institution "Kabitirtha" was still continuing and the university must recognise the said institution as an affiliated institution, but that was without prejudice to the rights of the university as the University was entitled to take any decision under the power conferred upon the university in accordance with the law. The Division Bench in the said writ appeal being No. 1130 of 1992, in disposing of the same, also took into consideration the earlier decision of the Division Bench in S. A. No. 520 of 1988, which restored and affirmed the decision of the learned Assistant District Judge in the civil suit between the writ petitioner (plaintiff) and the Bakshipally College Authorities (defendants). The Division Bench in the writ appeal also observed that the dispute had been set at rest and the SLP filed by P.R. Bharati before the Supreme Court had also failed as a result of which the Division Bench judgment of this court in S.A. 520 of 1988 reached its finality. Accordingly the Division Bench in the said writ appeal observed that the court had no hesitation in directing the University to take steps in terms of the said judgment inasmuch as admittedly no opportunity was given to the appellants (that is, the Bakshipally College authorities) before passing the order of disaffiliation. The Division Bench in the writ appeal thus expressly recognised the position that the institution Kabitirtha could not be disaffiliated without giving due opportunity to the appellants, that is, the authorities of the institution at Bakshipally, to make representation in the matter. It was also observed by the Division Bench in the

writ appeal that the judgment of the Division Bench in the second appeal was binding upon the writ court and it must be held that the affiliation of the said institution had not been validly revoked, cancelled or suspended and the same was still continuing. This judgment of the Division Bench in the writ appeal therefore does not purport to say anything which might be contrary to the decision in the civil litigation that was fought upto the Supreme Court. The Division Bench in the writ appeal left the matter to the University to take appropriate action for disaffiliation of the College in the appropriate manner. But the fact remains, in view of the finality of the matter as attained in the civil litigation, that the affiliated college which was initially functioning at Subhaspally had been shifted to Bakshipally in 1984 and the Subhaspally authorities thereafter were not the proper authorities of the said affiliated college which had been shifted to Bakshipally. If any action for disaffiliation of the affiliated college Kabitirtha was required to be taken that had to be taken obviously with reference to the Bakshipally College and the dis-affiliation matter had got nothing to do with the institution which might have been functioning at Subhaspally even after the shifting of the institution to Bakshipally in 1984.

6. It appears that in the background of the two Division Bench decisions, one in the second appeal in connection with the civil litigation being S.A. No. 520 of 1988 and the other in P.M.A. No. 1130 of 1992 dated the 9th June, 1993 passed in the writ appeal the Rabindra Bharati University obtained on 16-7-1993 opinion of their learned senior Advocate in the matter. Thereafter the Rabindra Bharati University appointed one Dr. Ranjit Kr. Mitra as the administrator of Kabitirtha on 25-3-1994. The said Dr. Ranjit Kr. Mitra was also directed by the Registrar of the University by letter dated the 30th March, 1994 to cause inspection of the two colleges and submit report on the points mentioned in the Registrar's Letter. A copy of that letter was also forwarded for information and necessary action to Pinaki Ranjan Bharati describing him as the Principal, Kabitirtha (Subhas Nagar). It also appears that on 15-4- 1994 the administrator Dr. Ranjit Kr. Mitra addressed a letter to Pinaki Ranjan Bharati describing him as Principal, Kabitirtha College, Kabita Nagar (that is, Subhaspally). In that letter it was stated that Dr. Mitra was appointed administrator of Kabitirtha (Subhaspally) by the Vice-Chancellor of the Rabindra Bharati University and Dr. Mitra accordingly assumed charge of the administration of college in presence of Shri Pinaki Ranjan Bharati, the Principal of the college. Copy of that letter was also forwarded to the Vice-Chancellor and the Registrar of the University. The learned Advocate for P.R. Bharati, the petitioner in the present writ petition lays great emphasis on this development that an administrator was appointed by the University for Kabitirtha and the said administrator took charge of the administration of the college at Subhaspally as administrator from Pinaki Ranjan Bharati, the Principal of the college and this clinches the issue as to which one is the real college Kabitirtha and who are the authorities of the same. In my opinion however the position is not really so. In view of the decision in the civil suit as affirmed up to the Supreme Court and in view of the decision of the Division Bench in the writ

appeal as discussed earlier the University had no option but to treat the college at Bakshipally as the one which was carrying affiliation in view of the original affiliation granted while the college, before its shifting, was located at Subhaspally. Of course, in view of the judicial decisions referred to above the university authorities were at liberty to take steps for disaffiliation of the college in accordance with law if such action was warranted, but they were not free to treat at that point of time the college which was being run at Subhaspally by P.R. Bharati as the affiliated college.

7. Naturally therefore the appointment of Dr. R.K. Mitra by the university as administrator of Kabitirtha (Subhaspally) was challenged by the Bakshipally college authorities in a writ petition, as the action taken by the university was indeed a confusing one. In that writ petition Ruma Pal, J. passed an interim order on 29-4-1994. It appears that the university, pursuant to the decision of the Division Bench in the writ appeal dated the 9th June, 1993 appointed an Inspecting Team consisting of Sri Manoj Mitra and others for inspection of the institution Kabitirtha at Bakshipally and inspection was made by the said team on 24-5-1994 and a report of inspection was prepared on 1-6-1994. The Committee in its inspection report inter alia recorded opinion that the institution should be advised to create satisfactory infrastructure with provisions of facilities as laid down in the statute 105 of the Rabindra Bharati First Statute first and the institution can establish its claim only on compliance with the same. It appears that the university subsequently appointed Sri N. Das to make spot inspection of both the colleges and submit report and accordingly Sri Das made inspection and prepared a report on 16-1-1996 in which he recommended that the Bakshipally college might be allowed to enjoy the affiliation of the University as the infrastructural facilities were more or less conducive to satisfy the conditions of affiliation, but the report about Subhaspally College was not favourable. It may be noted here that the reports of Manoj Mitra team and N. Das were not contemporaneous. There was a gap of about one year and a half between the two reports.

8. I have already mentioned that the appointment of Dr. Ranjit Kr. Mitra as administrator was challenged by the authorities of the Bakshipally college in a writ petition. The said writ petition was finally disposed of by Ruma Pal, J. by order dated 24-6-1994. By that order the learned Judge quashed the impugned order of the university appointing Dr. R.K. Mitra as administrator. The learned Judge also recorded that as far as P.R. Bharati was concerned, in view of the clear finding of the court, he had no right to run any institution by the name of Kabitirtha at Subhaspally at all. The learned Judge further observed that it was not P.R. Bharati's case that he had started as new institution after transfer of the institution from Subhaspally to Bakshipally and P.R. Bharati's case was that he had been continuing with the old institution which case had been rejected by the Court repeatedly. Accordingly the learned Judge restrained the respondents from recognising any institution which might be run by P. R. Bharati under the name of Kabi-tirtha. The learned Judge also held in the said order that the institution at

Bakshipally was the affiliated institution and directed the Rabindra Bharati University to forthwith supply Registration Forms and also to nominate two persons on behalf of the University to the Governing Body of the Kabitirtha College, Baksnipally. That order was passed by the learned Judge in C.O.5408(W) of 1994. There was two appeals against that order, one being P.M. A.T.2093/94 filed by P. R. Bharati and the other being F.M.A.T.No.2205/94 filed by the Rabindra Bharati University. The Appeal Bench by its order dated 3-8-94 inter alia directed the University to comply with the concerned order of the learned trial Judge (regarding nominating two members to the Governing Body of the College at Bakshipally), subject to the decision in the appeal. It was also recorded by the Division Bench in the said order dated 3-8-94 that the said order did not debar the university authorities from dealing" with the matter in accordance with law, the same being not inconsistent with the order of the learned trial Court. Again in that appeal the Division Bench, after hearing the learned Advocates for the parties on 19-8-94, recorded that there was virtually no necessity to make any modification cancellation or recalling of the earlier order of the Division Bench and it was only observed that neither in the order of the Division Bench nor in the order of the learned trial Judge there was anything which might debar the appellant P. R. Bharati from running any institution, if it was permissible under law, in a different name without using the name of Kabitirtha and he might also approach the university for affiliation under a different name and if any such application was made it would be for the university authorities to consider and dispose of the matter in accordance with law. The authorities of the Bakshipally College filed another writ petition and in that writ petition Altamas Kabir, J. passed an interim order on 23-12-94 directing the Rabindra Bharati University to accept the registration forms filled up by the students of the college at Bakshipally, etc. Pinaki Ranjan Bharati then filed an appeal, with the leave of the Division Bench, against the said order and that appeal being F.M.A.T.No.49/95 was disposed of on 11-1-95 by the Division Bench comprising M. G. Mukherjee and Vidya Nand, JJ. By that order Rabindra Bharati University was directed to consider the question of recognition of the appellant's institution as a separate entity. The learned Advocate for P. R. Bharati argues that the said order of the Division Bench virtually gives a right to P. R. Bharati to claim recognition of the college run by him at Subhaspally as affiliated college on the basis of the affiliation initially granfed by the University. I am afraid, it is difficult to sustain this argument. In this connection let us see what were the relevant observations of the Division Bench in its order dated 11-1-95 and the same is quoted below:--

"..... We treat the appeal as on the day's list and dispose of the same by directing the Rabindra Bharati University to consider the question of recognition of the appellant's institution as a separate entity in accordance with law keeping in view the judgments on the field in between the appellant on the one hand and respondents Nos. 1 and 2 on the other und the very fact that the latest-stand taken by the Court was to the effect that the institution. Kabirtirtha at

Bakshipally-Bangaon is a gunning one.

Therefore what the Division Bench directed was not that the Rabindra Bharati University would consider the question of recognising the institution of P. R. Bharati at Subhaspally as the affiliated college enjoying the earlier affiliation granted by the University, but that the University would consider the question whether the institution at Subhaspally at that point of time could be recognised as it separate entity. The Division Bench also clearly took note of the fact that the stand taken by the court was to the effect that Kabirtirtha at Bakshipally was a running institution. This order of the Division Bench obviously did not authorise the University to treat the Subhaspally institution as the affiliated institution contrary to the position recognised by the courts by then that the original affiliated college had shifted from Subhaspally to Bakshipally. It was also argued by the learned Advocate for P. R. Bharati that in that order the Division Bench also directed the university to take action against the authorities of the Bakshipally institution. The relevant observation of the Division Bench in this connection is quoted below:

"The university will reserve to itself its further rights under the university regulations to proceed in accordance with law against the respondents Nos. 1 and 2, the Secretary and Principal of Kabirtirtha at Bakshipally, if any of the academic attainments are to be found wanting but that should be done following the principle of natural justice and in due process of law."

Thereafter, as I have already mentioned, Rabindra Bharati University appointed Sri N. Das to make inspection of both the institution at Subhaspally and Bakshipally and Sri Das also submitted his report dated 16-1-96 which report rather goes on the whole in favour of the institution at Bakshipally but at the same time does not go in favour of the institution at Subhaspally.

9. It should be noted here that the question whether, pursuant to the decision of the Division Bench presided over by M. G. Mukherjee, J. any action is required to be taken by the university against the Bakshipally authorities for any deficiency, is entirely a different matter from the question whether recognition or affiliation can be granted by the University to the institution now run by P. R. Bharati at Subhaspally. in view of the repealed decisions of different courts on different occasions as discussed above the position stands firmly rooted that the institution which is being run at Bakshipally under the name Kabirtirtha is the institution which carries with it the benefit of continuing affiliation originally granted to the institution under the same name while it was functioning at Subhaspally before it was shifted to Bakshipally. The institution which might have been running thereafter at Subhaspally under P. R. Bharati cannot claim the benefit of original affiliation of Kagirtirtha since shifted to Bakshipally. This is the legal position which it is high time now for Sri P. R. Bharati to reconcile himself with, whatever may be his personal opinion in the matter. In fact during the pendency of the present writ petition Sri P. R. Bharati reconciled himself with that position and filed application to university authorities to obtain affiliation for his

institution at Subhaspally in a different name other than Kabirtirtha. The university however could not accede even to the name Rabitirtha or Rabindrathirtha as proposed by him. It was submitted before the court that there were already institutions in those names. But even apart from the question of name of the institution the other deficiencies were also there as noted in the inspection-report of N. Das dated 16-1-96. However this court, in this writ petition, by its order dated the 10th April, 1996 directed the Vice-Chancellor of the University to nominate a competent person for the purpose of making a fresh inspection of the institution at Subhaspally. Pursuant to that Rabindra Bharati University appointed Professor Utpala Go-swami, Deany Faculty of Fine Arts of that University to hold inspection. After inspection she submitted report which also did not go in favour of P. R. Bharati. Apart from the proximity, of the two colleges at Bakshipally and Subhaspally a number of other deficiencies also have been noted in that inspection report. Adverse comments have been made in the report in respect of the financial position of the institution, maintenance of accounts, administration, appointment etc. In view of such reports this Court in this writ petition is not in a position to direct the university to grant affiliation to the institution of P. R. Bharati at Subhaspally under a different name. Indeed the writ petition itself has not been filed for any such relief. The reliefs prayed for in the writ petition cannot be granted in view of the fact that the affiliated institution is the institution which has been running under the name Kabitirtha at Bakshipally since after it was shifted from Subhaspally in 1984. Sri P. R. Bharati has no concern with that institution. Indeed P. R. Bharati may, after removing the deficiencies, apply again to the Rabindra Bharati University for affiliation of his institution under an acceptable name other than Kabitirtha. Having regard to the particular facts, circumstances and the history of the case I however dispose of this writ petition with this direction that Sri P. R. Bharati will be at liberty to apply for affiliation of his institution at Subhaspally after removing the deficiencies which are there in his institution at the present moment and if any fresh application for affiliation is made in future by Sri P. R. Bharati after removing the deficiencies, the University authorities will consider and dispose of the same in accordance with law waiving however the bar of proximity of the two colleges as a special case if the institution of Sri P. R. Bharati is otherwise found fit for affiliation in future. While applying for affiliation of his institution in a different name Sri Bharati will be at liberty to suggest at least five names for his institution arranged in order of preference other than Kabitirtha and if the University considers it otherwise fit to grant affiliation to the institution it will grant affiliation in a name which, going by the order of the indicated preference, may be found acceptable to the University. It is needless to mention that if Sri P. R. Bharati makes any fresh application for affiliation in future, the University will be at liberty to cause fresh inspection for the purpose of taking a decision on such application. I have already mentioned that during the pendency of this writ proceeding the petitioner P. R. Bharati also filed in this proceeding an application for restraining the respondents Nos. 5 and 6 (the authorities of the Scheduled Castes and Tribes Welfare Department, Govt. of West Bengal) from making any

payment of Scheduled Castes and Tribes stipends to the Kabitirtha College at Bakshipally till the disposal of the writ petition and also for referring the matter to the C.B.1 for inquiry. The petitioner's grievance as reflected in the said application is that the authorities concerned have unauthorised-ly and illegally released or are going to release Scheduled Castes stipends in favour of the college at Bakshipally. In view of the position, as we have found, that Bakshipally College is required to be treated as the college enjoying the benefit of the original affiliation of Kabitirtha, it is not necessary for this court now to pass any order regarding Scheduled Castes stipend except that all concerned will act in accordance with law in the matter of grant and disbursement of Scheduled Castes stipend and shall remain responsible under law if any irregularity is committed in respect of the same which is however beyond the scope of the present writ petition to deal with. The writ petition and the said application as well as other application all stand disposed of accordingly. No cost is ordered.

10. All parties are to act on a signed copy of the operative part of this judgment off the usual undertaking.

11. Order accordingly.