

(2004) 05 SC CK 0004

In the Supreme Court Of India

Case No : Civil Appeal No. 5886 of 2002

P.M. Bhargava and Others

APPELLANT

Vs

University Grants Commission and Another

RESPONDENT

Date of Decision : 05-05-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(C), 226, 30(1), 51A
University Grants Commission Act, 1956 — Section 4(2), 5

Citation : AIR 2004 SC 3478 : (2004) 4 ALD 99 : (2004) 5 ALLMR 658 : (2004) 1 JT 548 Supp : (2004) 4 LW 197 : (2004) 5 SCALE 551 : (2004) 6 SCC 661 : (2004) 2 SCR 186 Supp : (2004) 2 UPLBEC 1663

Hon'ble Judges : S. Rajendra Babu, C.J.; G. P. Mathur, J

Bench : Division Bench

Advocate : Kirit N. Rawal, Solicitor General, Shanti Bhusan, Prashant Bhusan, Narinder Verma, Vishal Gupta, Sanjai Pathak Shivangi, Maninder Singh, Pratibha M. Singh, Ankur Talwar, Angad Mirdha, Kirtiman Singh, Avijit Bhattacharjee, Madhumita Bhattacharjee, C.L. Sahu and R.C. Kohli, for the appearing parties, for the Appellant;

Final Decision : Disposed Of

Judgement

G.P. Mathur, J.—The introduction of "Jyotir Vigyan", (science of astrology) as a course of study by the University Grants Commission is subject matter of challenge in the present appeal which has been preferred by special leave against the judgment and order dated April 27, 2001 of High Court of Andhra Pradesh.

2. A writ petition by way of public interest litigation was filed in the High Court of Andhra Pradesh praying that a writ of mandamus be issued commanding the University Grants Commission not to start and give any funds for Graduate and Post-Graduate Courses (BSc. and M.Sc.) in Jyotir Vigyan. The petition was preferred by Dr. P.M. Bhargava who was founder Director of center for Cellular and Molecular Biology, Hyderabad and had received many awards including "Padma Bhushan" in the year 1986 for his research, work and contribution to

science. The other petitioners were Prof. K. Subash Chandra Reddy who was Head of Department of Political Science, Osmania University, and Mrs. Chandana Chakrabarti who is a writer and consultant. It was pleaded in the writ petition that the University Grants Commission (for short 'the UGC') had taken a decision to start and give grants for Graduate and Post Graduate (B.Sc. and M.Sc.) courses in Vedic Astrology called "Jyotir Vigyan" from the year 2001 onwards in various Universities and for teaching such a course posts of one Professor, one Reader, two Lecturers, one Library Attendant and one Computer Operator shall be created for which a non-recurring grant of Rs.15 lakhs shall be given to the said department in the Universities. Thus the total expenditure which will be required in starting the course in various universities would run into several crores. The course in Vedic Astrology cannot be termed as a course of scientific study as astrology had never been regarded as a science. Science is defined as knowledge acquired through the use of the scientific methods and the attributes of such knowledge include fallibility, verifiability and repeatability. Scientific truths are not dependant on whims and fancies of individuals. That apart science is international and if and when differences of opinion arise, scientists all over the world work honestly and diligently to resolve them. Astrology can not be regarded as a science, as it lacks the above mentioned features. It has never been supported by any scientific research or study conducted according to stringent scientific procedure. It was further averred that the proposal to introduce "Jyotir Vigyan" is a clear attempt on the part of the respondents to saffronise education and of thrusting their hidden agenda of imposing Hindu values in higher education. It was also pleaded that research in the fields of pure science was being affected for want of funds and therefore there was no justification in spending huge amounts on a pseudo-science called Vedic Astrology which is a giant leap backwards.

4. The High Court after taking note of the meaning and other attributes of Astrology held that Astrology is a subject which according to opinion of the experts require pursuit of further studies. It was a policy decision and while exercising power of judicial review under Article 226 of the Constitution, the High Court would not interfere with the aforesaid policy decision of the UGC to start a course in "Jyotir Vigyan". The High Court was also of the opinion that the averments made in the writ petition and the relief sought showed that the UGC had not taken any final decision in the matter and therefore it should not interfere at this stage. The writ petition was accordingly dismissed summarily as not maintainable.

5. Shri Shanti Bhushan, learned senior counsel for the appellants has submitted that Vedic Astrology is not a science and cannot be introduced in University curriculum as a scientific subject. Science is attributed with provable knowledge than with beliefs or opinions and it is defined as a branch of study which is concerned either with a concerned body of demonstrated truths or with observed facts systematically classified and more or less colligated by being brought under general laws, and which includes trustworthy methods for discovery of new truth

within its domain. For a field to be science the knowledge must be acquired through the use of scientific methods and should have attributes like verifiability, fallibility and repeatability. If tested against these accepted and essential attributes of science, Vedic Astrology will unarguably fail on most, if not all, parameters mentioned above. Learned counsel has also submitted that the scientific community all over India has unanimously protested against the introduction of Vedic Astrology as a scientific stream of study in Universities. An appeal signed by a large number of reputed members of Indian Scientific Community and others against the decision of the respondents to start courses of Vedic Astrology was sent to the UGC wherein the impugned decision of UGC was termed as a giant leap backwards, undermining whatever scientific credibility the country has so far achieved. It has also been urged that the decision to introduce Vedic Astrology would erode and negate Article 51A of the Constitution which entrusts a fundamental duty upon the citizens of the country to develop a scientific temper, humanism and spirit of enquiry and reform. The teaching of Vedic Astrology will go diametrically against fundamental duties as enshrined in the Constitution. Lastly, it has been urged that the attempt of the respondents to introduce courses of Vedic Astrology in the Universities is malafide and it amounts to saffronising education.

6. In support of his submission Shri Shanti Bhushan has referred two passages from 68 American Jurisprudence 2d paragraphs 343-345 which read as under:

"343. Constitutional implications of teaching creationism and evolution: Legislation forbidding the teaching in public schools of the Darwinian theory of evolution has been found to constitute an impermissible state endorsement of a particular religious viewpoint. The mandated teaching of evolution as a major theme of science is not a violation of the Establishment Clause since evolution is not religion. The allegedly religious aspects of evolution theory have been ruled too insubstantial to make its teaching an establishment clause violation, particularly in the absence of any official policy regarding evolution.

Teaching or using books referring to evolution has been found not to violate the free exercise rights of persons believing in the literal truth of the Biblical story of creation, since the mere exposure to objectionable ideas, without governmental compulsion to affirm or deny a religious belief is insufficient to support a free exercise complaint.

A state statute, providing that the public schools are not required to teach either the theory of evolution or "creation science", but that if either one is taught, the other must also be taught, advances a religious doctrine in violation of the First Amendment's establishment of religion clause, where state officials charged with implementing the statute fail to identify a clear secular purpose for it. Even though the statute's stated purpose is to protect academic freedom, it violates the establishment clause where the evidence shows that the statute is primarily designed either to promote a particular religious tenet or to prohibit the teaching of a scientific theory disfavored by certain religious sects.

344. Wearing of religious garb by teachers : According to some decisions, the wearing by teachers in the public schools of clothing distinctive of some religious order is violative of a constitutional provision forbidding the use of public money in support of any school or institution in which any sectarian doctrine is taught or forbidding sectarianism in public schools. And it has been held that the prohibition of the wearing of any sectarian costume, either by regulation or statute is valid. On the other hand, other decisions hold that the mere wearing of religious garb by teachers, where there is no attempt to give instruction in religious or sectarian subjects, is not violative of any constitutional provision, and that absent a prohibiting statute or regulation, religious garb may be worn by teachers in public schools.

345. Use of school as place of worship or for religious purposes, generally

Neither Congress nor the Supreme Court has seen fit to require a school district to open its doors to non students who wish to use school facilities for the purpose of conducting religious activities within a school. If the intended use of school facilities is not required or authorized by statute, there is no constitutional right to such use where a school district has not, by policy or practice, permitted a similar use in the past. However, where a school district denies an organisation the use of its facilities for a religious purpose, having permitted other religious uses of school property in the past, the denial may be viewed as lacking viewpoint-neutrality, and may therefore be deemed unconstitutional.

It has been stated that the power of school authorities to prohibit the use of a schoolhouse for religious worship is well- recognized. Some statutes authorising or providing for the authorization of the use of public school premises for non school purposes, but not specifically permitting religious meetings or utilizations, have been construed by the courts as providing authority for the use of the school building as a place for holding church or other religious meetings at times when the school is not in session.

In most cases in which persons applying to use a public school building during non schooltime for the holding of church services or some other religious meeting have contested the legality of the school authorities refusal to permit the particular use of the school premises, the courts have found that the school authorities acted lawfully in refusing the application.

An agreement entered by school officials to lease a high school auditorium during non-instructional hours to a nondenominational student study group for the purpose of conducting a baccalaureate service featuring religious speakers does not violate the Establishment Clause, where :

- * the school board maintains an "open forum" policy toward all civic, private, and student groups, both religious and nonreligious, which seek to use its facilities during non-instructional hours;
- * allowing the service to occur in the school auditorium would not have the

primary effect of advancing religion, particularly since the school board had already formally and publicly dissociated itself from the baccalaureate service and refused to lend any financial support to the sponsoring group, and faculty and board members, while invited to attend, would not be involved in any aspect of the service either in their official or personal capacities; and

* the school board would have a minimal role in custodial oversight of the service.

Under the federal Equal Access Act, a school which provides a limited open forum by allowing non curriculum- related student groups to meet on school premises during non-instructional time cannot discriminate among groups on the basis of the content of speech. A public high school violates the Equal Access Act by denying students permission to form a Christian club which would meet on school premises during non-instructional time for purposes of Bible study, where the school's existing student groups include a number which are noncurriculum related.

Learned counsel has also placed reliance on a decision of US Supreme Court in *Susan Epperson et al., v. State of Arkansas* and the summary of the decision as reported in 21 L Ed 2d 228 is being reproduced below :.

"A public school biology teacher in Arkansas, faced with the dilemma that if she used a new textbook she would presumably teach a chapter therein on the Darwinian theory of evolution and thus be subject to dismissal for committing a criminal offence in violation of the Arkansas statute prohibiting any teacher in the state schools from teaching such theory, instituted an action in the state Chancery Court seeking a declaration that such statute was void and enjoining the state officials from dismissing her for violation of the statute. A parent of children attending the public schools intervened in support of the action. The Chancery Court held that the statute violated the Fourteenth Amendment to the United States Constitution, but on appeal the Supreme Court of Arkansas reversed, sustaining the statute as an exercise of the state's power to specify the curriculum in public schools, while expressing no opinion on whether the statute prohibited any explanation of the theory of evolution or merely prohibited teaching that the theory was true. (242 Ark 922, 416 SW2d 322)

On appeal, the United States Supreme Court reversed. In an opinion by FORTAS, J., it was held, expressing the views of seven members of the court, that the statute was contrary to the mandate of the First, and in violation of the Fourteenth Amendment, as conflicting with the constitutional prohibition of state laws respecting an establishment of religion or prohibiting the free exercise thereof.

BLACK, J., concurred in the result, but expressed the view that it was doubtful whether the case presented a justiciable controversy, and that, assuming that it did, either the statute should be struck down as too vague to enforce, or the case should be remanded to the Arkansas Supreme Court for clarification of its holding and opinion.

HARLAN, J., concurred in the result and in so much of the court's opinion as held that the statute constituted an "establishment of religion" forbidden to the states by the Fourteenth Amendment, but disapproved, as obscuring the holding, the court's extended discussion of the issues of vagueness and freedom of speech despite its conclusion that it was unnecessary to decide such issues.

STEWART, J., concurred in the result, expressing the view that the statute was so vague as to be invalid under the Fourteenth Amendment."

7. On the strength of the above mentioned authorities it has been vehemently contended that teaching of "Jyotir Vigyan" would saffronise the education as it is not a scientific study but something peculiar to Hindus and associated with Hindu religion and, therefore, it will erode the concept of secularism which is the basic feature of the Constitution.

8. A counter-affidavit on behalf of the UGC has been filed in this Court. It is averred therein that under the University Grants Commission Act, 1956, the UGC has been entrusted with the duty, inter alia, to recommend measures for the improvement of university education. The decision in relation to academic matters are arrived at collectively by the Commission, which is a multi-member body established u/s 5 of the said Act. The members include persons, who are teachers in universities and also others who are experienced and knowledgeable in various other fields. The purpose of university education is multi-directional, its object is to provide structured instruction in all subjects of relevance and interests. In a country like India, there are various subjects in which instructions need to be imparted in a structured manner in view of the relevance of these subjects to society. For example, various forms of medicines and treatments, which are not prevalent in the western world, such as 'ayurvedic', 'unani' and 'tibbia' systems, are also parts of medical education in India. Indian wisdom, for example, encompasses things, such as belief in rebirth and cosmic existence. Mysteries of nature have not been fully fathomed by the human mind and therefore it would not be proper to denounce any such belief as being utterly unworthy of recognition. It is submitted that education and instruction should, in a liberal and pluralistic society, must accommodate as far as possible all points of view and provide for all sections of society. In fact a number of National dailies and magazines carry astrological columns as a regular feature, which are read by large number of people with interest.

9. The counter-affidavit of UGC also gives details regarding various steps which were taken by the Commission before taking a final decision for introducing 'Jyotir Vigyan' as a part of graduation, post-graduation and Ph.D. courses and they are as under:

(i) This matter was first mooted on June 16, 2000.

(ii) On August 14, 2000, the Chairman, UGC, constituted a nine member Expert Committee to report and recommend on the subject of opening of 'Vedic Astrology' at the select universities. The expert committee held its meetings and

discussed the matter with different bodies and persons.

(iii) On January 10, 2001, at its first meeting the Expert Committee recommended opening of the departments of "Jyotir Vigyan" instead of 'Vedic Astrology' in universities for course studies and research leading to the award of certificate, diploma, degrees - both in undergraduate and post-graduate and Ph.D.

(iv) After the expert committee examined the matter, it placed a set of proposed guidelines, which were adopted by the Commission on January 25, 2001.

(v) On February 23, 2001, proposals were invited from the various universities on the basis of these guidelines for setting up of departments of 'Jyotir Vigyan' for providing teaching and training in the subject leading to certificate, diploma, undergraduate, post- graduate and Ph.D. degrees. The universities were requested to submit their proposals as per the guidelines, latest by March 15, 2001. The last date was later on extended to May 5, 2001.

(vi) On June 13, 2001, the second meeting of the Expert Committee examined the proposals received from 41 universities for opening of departments of Jyotir Vigyan to conduct the degree courses in Jyotir Vigyan. The proposals came from 16 States of the country. The Committee recommended that the independent departments be created to conduct degree courses in 'Jyotir Vigyan' only in 20 out of 41 universities who had applied for it.

(vii) On June 27, 2001, the Commission at its 397th meeting, approved the recommendations of the Expert Committee and decided that the independent departments of 'Jyotir Vigyan' be created at 20 selected universities to conduct the courses leading to award of B.A./B.A. (Hons.)/M.A./Ph.D. degrees in 'Jyotir Vigyan'. The Commission also decided that the aforesaid selected universities be allowed to frame the required syllabus for respective B.A. and M.A. degree courses in 'Jyotir Vigyan' and while doing so, they may prefer to include among other subjects - Astronomy, Cosmology and Mathematics etc. besides 'Jyotir Vigyan' as the main subject.

(viii) On July 21, 2001, the selected 20 universities were communicated the decision of the Commission for opening of an independent department of 'Jyotir Vigyan' in their universities for conducting courses leading to award of B.A./B.A. (Hons.) M.A. and Ph.D. degrees in 'Jyotir Vigyan'.

In pars 14 to 19 of the counter-affidavit details of the various other courses introduced by UGC have been given which were hitherto not being taught as conventional subjects like Functional Hindi, Functional Sanskrit, Functional English, Tourism and Travel Management, Agro Services, namely, Animal Farming, Forestry & Wildlife Management, Soil Conservation & Water Management, Hill Agriculture, Non-Conventional Energy Sources, Dryland Agriculture, Rural Handicrafts, Gemology & Jewelry Designing, Cosmetology etc. It is also averred that UGC is processing to introduce certain other subjects in

degree courses in selected universities like B.Sc./M.Sc. in Electronic Media, Clinical Nutrition and Dietetics, Water harvesting and Oceanography etc.

10. Before dealing with the contentions raised it will be useful to understand the meaning of the word 'Astrology' as given in various dictionaries.

"The science or doctrine of stars, and formerly often used as equivalent to astronomy, but now restricted in meaning to the pseudo science which claims to foretell the future by studying the supposed influence of the relative positions of the moon, sun and stars on human affairs [Webster's New International dictionary]

Either a science or a pseudo science, astrology - the forecasting of earthly and human events by means of observing and interpreting the fixed stars, the sun, the moon and the planets - has exerted a sometimes extensive and a sometimes peripheral influence in many civilizations, both ancient and modern. As a science, astrology has been utilized to predict or affect the destinies in individuals, groups or nations by means of what is believed to be a correct understanding of the influence of the planets and stars on earthly affairs. As a pseudo science, astrology is considered to be diametrically opposed to the findings and theories of modern Western science.[Encyclopedia Britannica (2nd edition)]"

11. According to the above mentioned standard books Astrology is a science which claims to foretell the future or make predictions by studying the supposed influence of the relative positions of the moon, sun, planets and other stars on human affairs. It, therefore, requires study of celestial bodies, of their positions, magnitudes, motions, and distances, etc. Astronomy is a pure science. It was studied as a subject in ancient India and India has produced great astronomers, long before anyone in the western world studied it as a subject. Since Astrology is partly based upon study of movement of sun, earth, planets and other celestial bodies, it is a study of science at least to some extent.

12. The Counter-affidavit filed on behalf of the UGC shows that the UGC constituted a nine-member Committee which after discussion and deliberations recommended opening of the departments of "Jyotir Vigyan" in universities for award of degrees. The Committee has recommended to create such courses only in 20 out of 41 universities which had applied for the same and the degree which would be awarded will be B.A./B.A.(Hons.)/M.A./Ph.D. The decision to start the course has been taken by an expert body constituted by the UGC. The courts are not expert in academic matters and it is not for them to decide as what course should be taught in university and what should be their curriculum. This caution was sounded in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, wherein Gajendragadkar, J. (as His Lordship then was) speaking for the Constitution Bench held that it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. In this case challenge was made to certain appointments and the Bench held that what the High Court

should consider is whether the appointment made by the Chancellor on the recommendation of the Board had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should show due regard to the opinion expressed by the Board and its recommendations on which the Chancellor has acted. This principle was reiterated in *Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others*, wherein it was held as under:

"While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies. But university organs, for that matter any authority in our system are bound by the rule of law and cannot be law unto themselves. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the court keeps its hands off; but where a provision of law has to be read and understood, it is not fair to keep the court out."

The above mentioned principle has been consistently followed by this Court and it is not necessary to burden this judgment by giving references of those cases.

13. The appellants do not allege breach of any statutory provision, rule or regulation. Their complaint is that the inclusion of Jyotir Vigyan as a course of study in the university is wrong as the accuracy or correctness of the subject, namely Jyotir Vigyan has not been established by the scientific tests or experiments. The precise question as to whether Jyotir Vigyan should be included as a course of study having been considered and examined by an Expert Body of UGC and they having recommended for including the said course for study and award of degree in universities, it will not be proper for this Court to interfere with the aforesaid decision specially when no violation of any statutory provisions is demonstrated.

14. We are unable to accept the contention of the learned counsel for the appellants that the prescription of Jyotir Vigyan as a course of study has the effect of saffronising education or that it in any manner militates against the concept of secularism which is part of the basic structure of the Constitution and is essential for the governance of the country.

15. In *D.A.V. College, Vs. State of Punjab and Others*, , challenge was made to certain provisions of Guru Nanak University Amritsar Act (Act 21 of 1969) which made a provision for study and research on the life and teachings of Guru Nanak and their cultural and religious impact in the context of national and world civilisations on the ground that such a provision would propagate Sikh religion and would violate the rights of the writ petitioners therein guaranteed under Article 30(1) of the Constitution. Violation of Articles 14 and 19(1)(C) was also pleaded. The Constitution Bench repelled the challenge in the context of section 4(2) of the relevant Act which provided for study and research on the life and teachings of Guru Nanak and it was held as under:

"Religious instruction is that which is imparted for inculcating the tenets, the rituals, the observances, ceremonies and modes of worship of a particular sect or

denomination. To provide for academic study of life and teaching or the philosophy and culture of any great saint of India in relation to or the impact on the Indian and world civilizations cannot be considered as making provision for religious instructions."

In Santosh Kumar and others etc., Vs. The Secretary, Ministry of Human Resources Development and another, it was held that teaching of Sanskrit alone as an elective subject can in no way be regarded as against secularism. The decision of the United States Supreme Court cited by learned counsel for the appellants can hardly have any application here as teaching of 'Jyotir Vigyan' can under no circumstances be equated with teaching of any particular religion. We are, therefore, of the opinion that the challenge made to the inclusion of Jyotir Vigyan as a course of study on the ground that the same will violate or impinge upon the concept of secularism enshrined in the Constitution has therefore no merit and must be rejected.

16. A similar challenge to the inclusion of 'Jyotir Vigyan' as a course of study was made by one Dr. K. Natarajan by filing WP no. 13540 of 2001 (Dr. K. Natarajan v. Union of India) before the Madras High Court. Mr. Justice F.M. Ibrahim Kalifulla who heard the writ petition held that the very purpose of imparting education is to gain knowledge and therefore there should be every scope for making a study on very many subjects in order to enrich ones craving for knowledge. Any such attempt from any quarters in furtherance of that pursuit should not be stultified. The learned Judge further held that it was for the pupil concerned to select any particular field or subject in furtherance of his future career, and merely because the subject has got its basis or origin traceable to some cult, it cannot be held that the same would only result in propagation of a particular religion. On these findings the writ petition was dismissed. We are in agreement with the view taken by the Madras High Court.

17. For the reasons discussed above, the appeal lacks merit and hereby dismissed with costs.