
(2010) 03 AHC CK 0100
In the Allahabad High Court

Ram Dulari Bachcu Lal Jaiswal Mahavidyalaya and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 37(10)

Citation : (2010) 2 UPLBEC 1121

Hon'ble Judges : Amitava Lala, Acting C.J.;Ashok Srivastava, J

Bench : Division Bench

Judgement

Amitava Lala, A.C.J.

1. This Special Appeal has been filed challenging the order passed by the learned Single Judge on 25th of February, 2010. From the order itself, it appears that the learned Single Judge has appreciated the proposition of law u/s 37(10) of the State Universities Act, 1973, which provides that no institution shall admit any student in the first year of such course of study without obtaining affiliation under Sub-section (2) of the Act. Ultimately, the learned Single Judge has held that since there is no affiliation either temporary or permanent with the appellants-Institution, it is not possible to issue any direction to the University at this stage. However, as the matter of permanent affiliation is to be considered by the State Government within two months, the writ petition was directed to be listed for admission/hearing in the week commencing from 3rd May, 2010, and the parties were directed to exchange their respective affidavits in the meantime.

2. Mr. P.S. Baghel, learned Senior Counsel, assisted by Gautam Baghel, appearing for the appellants - Institution, has contended before us that the examinations for the session 2009-10 were likely to commence from 11th March, 2010, which have been postponed for a period of two weeks. Temporary affiliation was granted for a period of three years, which expired on 30th June, 2009. Before expiry of the said period, the Institution has made an application for the purpose of appropriate affiliation. The University has recommended for one year affiliation. However, as per the order of the learned Single Judge, the

proposal of permanent affiliation is to be considered by the State within two months. The State has no objection with regard to consideration of affiliation, even if this Court shortens the time period. Therefore, the question before us is as to whether it can be done within two weeks and if it is not done within two weeks, what will happen with regard to the career of the students, who have already pursued their studies and going to sit in the examinations. Whether any sympathy shown to such students will be misplaced sympathy or not particularly in view of Section 37(10) of the Act.

3. We have heard Mr. P.S. Baghel, learned Senior Counsel as well as Mr. Neeraj Tiwari, learned Counsel appearing for the University.

4. Admittedly, there is no question of fraud in imparting studies by any mushroom made Institutions. The Institution was already affiliated and permanent affiliation is awaiting. Against this background, we have to go through the respective provisions of law. We find that Section 37(10) of the Act has been relied upon by the learned Single Judge to come to an appropriate conclusion. This is an amended provision introduced under the U.P. Act 1 of 2004 with effect from 11th July, 2003. Such provision is quoted below:

37.[(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-sections (2).]

5. From the plain reading of such Sub-section, we find that it is in respect of giving affiliation to the college before commencement of the Uttar Pradesh State Universities (Amendment) Act, 2003 and also with regard to admission of the students in the first year of such courses of study without affiliation under Sub-section (2).

6. So far as the question of admission is concerned, in this particular case, it will be in respect of the admission from July, 2010. Mr. Baghel with all humility and command has given an undertaking before us that he is not going to admit any student for such year without getting any affiliation. Against this background, remaining question is with regard to the sitting of the students in the examination who have already been admitted after July, 2009 when the recommendation was already sent by the University for the purpose of further affiliation.

7. Learned Counsel appearing for the University is though not required to say very much because there is laxity on the part of the State, yet submitted by making several references. Firstly he cited a judgment of the Supreme Court reported in A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, to establish that the Courts cannot direct the University to

disobey the statute, to which it owes its existence and the regulations made by the University itself. The Court cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the laws. He has also relied upon a judgment reported in C.B.S.E. and Another Vs. P. Sunil Kumar and Others, to establish that permitting the students of an unaffiliated institution to appear in the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination, would tantamount to subversion of law and this Court will not be justified to sustain the orders of misplaced sympathy in favour of the students. This principle has been followed by Supreme Court even in the judgment reported in (2006) 13 Scc 673 (Sunil Oraon and Ors. v. C.B.S.E. and Ors.) that though the ultimate victims are innocent students, that cannot be a ground for granting relief to them and further in the judgment reported in (2009) 1 Supreme Court Cases 59, (Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh v. Vaibhav Singh Chauhan), it has been held that in such circumstances, passing of such interim orders in the educational matters cannot be approved. Lastly, he relied upon a judgment of the learned Single Judge reported in 2006 (5) ADJ 368 (Committee of Management, Devi Degree College, Ruhai, Hathras v. State of U.P. and Ors.) by saying that judgment was passed by a Single Bench but the same stand has been taken by the Division Bench also. He has relied upon paragraphs 4 and 5 of the judgment of the learned Single Judge and said that the matter herein is similarly placed. However, in such cases, we find that the University by an order directed the college not to take any admission without getting affiliation and issued reminders too but the students were admitted. Such facts, however, are not available in the present case. On the contrary, the undertaking has been given by the Institution before us that no admission will be made for July, 2010. However, another Division Bench judgment reported in 2008 (4) ADJ 654 (DB) (Kum. Poonam Sengar and Ors. v. State of U.P. and Ors.), has also been shown before us to strengthen the case of the University. We fail to appreciate the stand of the University because on the one hand there is recommendation for the affiliation either temporary or permanent and, on the other hand, the University is not permitting the college to conduct the examination.

8. Mr. P.S. Baghel, learned Senior Counsel, on the other hand, relied upon certain relevant paragraphs of a Constitution Bench judgment, in which eleven Judges of the Supreme Court were the members reported in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, which are quoted as follows:

Private unaided non-minority educational institutions

48. Private education is one of the most dynamic and fastest-growing segments of post-secondary education at the turn of the twenty-first century. A combination of unprecedented demand for access to higher education and the inability or unwillingness of the Government to provide the necessary support has brought private higher education to the forefront. Private institutions, with a

long history in many countries, are expanding in scope and number, and are becoming increasingly important in parts of the world that relied almost entirely on the public sector.

49. Not only has demand overwhelmed the ability of the Governments to provide education, there has also been a significant change in the way that higher education is perceived. The idea of an academic degree as a "private good" that benefits the individual rather than a "public good" for society is now widely accepted. The logic of today's economics and an ideology of privatisation have contributed to the resurgence of private higher education, and the establishing of private institutions where none or very few existed before.

50. The right to establish and administer broadly comprises the following rights:

- (a) to admit students ;
- (b) to set up a reasonable fee structure;
- (c) to constitute a governing body;
- (d) to appoint staff (teaching and non-teaching); and
- (e) to take action if there is dereliction of duty on the part of any employees.

51. A University Education Commission was appointed on 4-11-1948, having Dr. S. Radhakrishnan as its Chairman and nine other renowned educationists as its members. The terms of reference, inter alia, included matters relating to means and objects of university education and research in India and maintenance of higher standards of teaching and examination in universities and colleges under their control. In the report submitted by this Commission, in paras 29 and 31, it referred to autonomy in education which reads as follows:

University autonomy.-Freedom of individual development is the basis of democracy. Exclusive control of education by the State has been an important factor in facilitating the maintenance of totalitarian tyrannies. In such States institutions of higher learning controlled and managed by governmental agencies act like mercenaries, promote the political purposes of the State, make them acceptable to an increasing number of their population and supply them with the weapons they need. We must resist, in the interests of our own democracy, the trend towards the governmental domination of the educational process.

Higher education is, undoubtedly, an obligation of the State but State aid is not to be confused with State control over academic policies and practices. Intellectual progress demands the maintenance of the spirit of free inquiry. The pursuit and practice of truth regardless of consequences has been the ambition of universities. Their prayer is that of the dying Goethe: "More light", or that of Ajax in the mist "Light, though I perish in the light".

* * * The respect in which the universities of Great Britain are held is due to the freedom from governmental interference which they enjoy constitutionally and

actually. Our universities should be released from the control of politics.

Liberal education.-All education is expected to be liberal. It should free us from the shackles of ignorance, prejudice and unfounded belief. If we are incapable of achieving the good life, it is due to faults in our inward being, to the darkness in us. The process of education is the slow conquering of this darkness. To lead us from darkness to light, to free us from every kind of domination except that of reason, is the aim of education.

52. There cannot be a better exposition than what has been observed by theses renowned educationists with regard to autonomy in education. The aforesaid passage clearly shows that the governmental domination of the educational process must be resisted. Another pithy observation of the Commission was that State aid was not to be confused with State control over academic policies and practices. The observations referred to hereinabove clearly contemplate educational institutions soaring to great heights in pursuit of intellectual excellence and being free from unnecessary governmental controls.

9. Against this background, we are of the view that the balance of convenience and equity are within the prescribed four corners of law. The submissions of the respective counsel appearing for the parties show us that the time for the purpose of giving affiliation be shortened and, accordingly, we grant only two weeks" time to consider such affiliation from the date of production of certified copy of this order. The order of the learned Single Judge impugned herein is modified to the extent above.

10. So far as the appearance of the several students for examination is concerned, if there is any delay on the part of the University, it will be open for the Institution to allow the students to appear at the examination. However, their examination answer sheets will be kept in a sealed cover and subject to the decision by the State, it will be examined by the appropriate examiners within a period of two weeks of such decision but good things will prevail, if the State on the basis of this order takes steps immediately to comply with the same, so that there should not be any delay. This is much more required for the purpose of the career of the students.

11. After giving so much directions, we do not find that there is any necessity to keep the special appeal pending as also the writ petition. Therefore, both are disposed of, however, without imposing any cost.

12. I agree