
(2021) 11 UK CK 0075

In the Uttarakhand High Court

Case No : Writ Petition (PIL) No. 155 Of 2020, 78 Of 2019, 430, 439, 510 Of 2021

Ravindra Jugran & Others

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 16-11-2021

Acts Referred:

Central Universities Act, 2009 — Section 4(f)
University Grants Commission Act, 1956 — Section (12A)(4), (12A)(5)
Affiliation Of Colleges By Universities) Regulations, 2009 — Regulation 2.1, 2.2, 2.3, 3, 5, 6, 8, 8.1, 8.2, 8.3, 8.4

Citation : (2021) 11 UK CK 0075

Hon'ble Judges : Raghvendra Singh Chauhan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : M.C. Pant, Arvind Vashisth, Munish Bhardwaj, Ajay Veer Pundir, Shobhit Saharia, Virendra Kaparuwan, S.C. Dumka, Saurav Adhikari, C.S. Rawat, Pradeep Joshi, Dr. Kartikey Hari Gupta, Hemwati Nandan Bahuguna, Vikas Pande, Ravi Babulkar

Final Decision : Allowed

Judgement

Raghvendra Singh Chauhan, CJ

1. Since two Public Interest Litigations, namely Writ Petition (PIL) No.155 of 2020, and Writ Petition (PIL) No.36 of 2019, and the other writ petitions connected therewith, raise the same legal issues based on the same facts, they are being decided by this common judgment.

2. The petitioners in these writ petitions are aggrieved by the letter dated 05.06.2020, sent by the Joint Secretary, University of Human Resources and Development, New Delhi to the Principal Secretary (Higher Education), Government of Uttarakhand, whereby he has directed the Principal Secretary, Higher Education, to ensure that "de-affiliation of the remaining colleges/institutions is achieved following due procedure in an early time-frame". The

petitioners have also challenged the legality of the letter dated 24.07.2020, written by the Registrar, Hemwati Nandan Bahuguna Garhwal University (for short "the University"), to the Principal/Secretary/Director, D.A.V. (P.G.) College, Dehradun, directing him to ensure that necessary steps are taken for transfer of affiliation of the college from the University to the Sri Dev Suman University.

3. The facts of the case are being taken from Writ Petition (PIL) No.155 of 2020.

4. Briefly, the facts of the case are that the D.A.V (P.G.) College, Dehradun was established as far back as 1948. It is the oldest degree college imparting higher education to the students in the State. Like the D.A.V. (P.G.) College, there were other colleges which were initially affiliated with the University. While the said University was a State University, in 2009, the said University was upgraded and was declared as a Central University under the Central Universities Act, 2009 ("the Act" for short). Subsequent to the declaration of the University as a Central University, the D.A.V. (P.G.), and other colleges were affiliated with the University.

5. However, subsequently, by letter dated 05.06.2020, the Joint Secretary, Ministry of Human Resources and Development, New Delhi, has directed the Principal Secretary (Higher Education), to ensure that those colleges which were affiliated with the University, a Central University, are duly de-affiliated. Consequently, by letter dated 24.07.2020, even the Registrar of the University has directed the colleges to de-affiliate themselves from the Central University. Hence, the present set of writ petitions before this Court.

6. The three issues before this Court are:-

(i) Whether the Central Government has the power to direct de-affiliation of the college, or not?

(ii) Whether the Registrar of the University has the power to direct the colleges to de-affiliate themselves in consequence of the letter dated 05.06.2020, or not?

(iii) While the colleges are affiliated with the Central University, whether the State Government is still required to fund such colleges, or not?

7. Mr. M.C. Pant, the learned counsel for the petitioners in Writ Petition (PIL) Nos.155 of 2020, and 76 of 2019, has vehemently pleaded that the University Grants Commission (for short "the Commission") has issued Regulations, 2009, namely UGC (Affiliation of Colleges by Universities) Regulations, 2009 (for short "Regulations, 2009"). Regulation 2.1 defines the word "affiliation". The word "affiliation" means recognition of a college by, association of such college with, and admission of such college to the privileges of a university.

Secondly, Regulation 8 of the Regulations, 2009 prescribes four circumstances under which affiliation can be withdrawn. However, a bare perusal of the provision clearly reveals that the power to withdraw affiliation is bestowed, either upon the Commission, or upon the University. Even when such power is being exercised either by the Commission, or by the University, the procedure

established under Regulation 8 of the Regulations, 2009 will necessarily have to be followed. However, Regulation 8 of the Regulations, 2009 does not bestow any power upon the Central Government to direct de-affiliation of a college from a Central University. Therefore, the letter dated 05.06.2020 is, patently, in violation of Regulation 8 of the Regulations, 2009.

Thirdly, even the letter written by the Registrar of the University, dated 24.07.2020, is in violation of Regulation 8 of the Regulations, 2009. For, while directing the Principal to ensure that the colleges are de-affiliated, the procedure under Regulation 8 of the Regulations, 2009 has not been followed. Therefore, both the impugned letters, namely letters dated 05.06.2020, and 24.07.2020 are legally unsustainable.

Fourthly, in order to resolve these issues, one would, firstly, have to turn to the provisions of the Act. According to Section 4(f) of the Act, all Colleges, Institutions, Schools or Faculties, and Departments affiliated to University, would have to be maintained by the said University established under this Act. Therefore, it is the responsibility of the Central University to maintain all the colleges which are affiliated thereto.

Lastly, since according to Section 4(f) of the Act, it is the duty of the University to maintain the colleges, which are affiliated thereto, the State Government cannot be saddled with the burden to maintain the colleges. Therefore, the State Government is unnecessarily being burdened with the liability to maintain the colleges.

8. Mr. Pradeep Joshi, the learned Additional Chief Standing Counsel appearing for the State, submits that according to the letter dated 05.06.2020, due to the acts and omissions of the colleges, the Central University is being defamed. Therefore, the Central Government is of the opinion that such colleges should be directed to be de-affiliated with the Central University. It is only in compliance of the directions issued by the Joint Secretary, by letter dated 05.06.2020, that the letter dated 24.07.2020 has been issued. In order to save the reputation of the Central University, the State has asked the colleges to de-affiliate themselves with the Central University.

Secondly, a quixotic condition has emerged after the affiliation of the colleges with the Central University.

While, the colleges have been affiliated with the Central University, the burden of maintaining the colleges is being imposed on the State Government. Therefore, the State Government has been saddled with a responsibility, out of which the State Government cannot take an exit.

9. Heard the learned counsel for the parties, and perused the record.

10. Regulation 2.1 of the Regulations, 2009 defines the word "affiliation" as under:-

"Affiliation" together with its grammatical variations, includes, in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of, a university".

11. Regulation 2.2 defines the word "college" as under:-

"College" means any institution, whether known as such or by any other name which provides for a programme of study beyond 12 years of schooling for obtaining any qualification from a university and which, in accordance with the rules and regulations of the university, is recognized by the UGC as competent to provide for such programme of study and present students undergoing such programme of study for the examination for the award of such qualification".

12. Regulation 2.3 defines the word "Commission" as under:-

"Commission" means the University Grants Commission established under the UGC Act".

13. Regulation 3 prescribes the eligibility criteria for temporary affiliation, which is as under:-

"3. Eligibility Criteria for Temporary Affiliation.- 3.1. The proposed college seeking affiliation, at the time of inspection by the university, shall satisfy the following requirements, or the requirements in respect of any of them prescribed by the Statutory/Regulatory body concerned, whichever is higher:

3.1.1. undisputed ownership and possession of land measuring not less than 2 acres if it is located in metropolitan cities, and 5 acres if it is located in other areas;

3.1.2. administrative, academic and other buildings with sufficient accommodation to meet the immediate academic and other space requirements as specified by the University concerned for each of the higher education course/programme with adequate scope for future expansion in conformity with those prescribed by the UGC I Statutory/Regulatory body concerned, taking care that all buildings constructed in the college are disabled friendly;

3.1.3. academic building sufficient to accommodate the faculties, lecture/seminar rooms, library and laboratories with a minimum of 15 sq.ft. per student in lecture/seminar rooms/library and 20 sq.ft. per student in each of the laboratories;

3.1.4. number of teaching and non-teaching staff as per University norms;

3.1.5. adequate civic facilities for essentials like water, electricity, ventilation, toilets, sewerage, etc. in conformity with the norms laid down by the Central/State PWD;

3.1.6. a library with at least 1000 books, or 100 books in different titles on each subject, whichever is more, of the proposed programmes to include both text books and reference books, besides two journals per subject, along with a book

bank facility for students belonging to the Scheduled Castes, Scheduled Tribes and such other sections as may be specified by the UGC from time to time;

3.1.7. Necessary laboratory equipments as prescribed by the University/ Statutory/Regulatory body concerned, for each of the higher education programmes;

3.1.8. a multi-purpose complex/an auditorium and facilities for sports, canteen, health care, separate common rooms and separate hostels for boys and girls as per the local requirements as decided by the University;

3.1.9. appropriate furniture for lecture/seminar rooms, laboratories, library, faculty rooms, rooms for administrative staff including the Principal, multi-purpose complex/auditorium, common rooms and hostel rooms, and for other facilities;

3.1.10. a duly constituted managing body as specified by the University.

3.2. The College, if not run by the State Government,---

3.2.1. shall be managed by a duly constituted and registered Society or Trust;

3.2.2. shall satisfy the University that adequate financial provision is available for running the college for at least three years without any aid from any external source. In particular, it shall produce evidence of creating and maintaining a Corpus Fund permanently in the name of the college by way of irrevocable Government Securities of Rs. 15 lakh per programme, if the college proposes to conduct programme only in Arts, Science and Commerce, Rs.35 lakh per programme or as prescribed by the relevant Statutory/Regulatory body, if it proposes to offer professional programmes, or FDRs for like amounts jointly held by the college and the University for a minimum lock in period of three years. The interest accrued out of it may be utilized by the college with the prior permission of the University for strengthening its infrastructure facilities;

3.2.3. shall also provide an undertaking to the University that it has adequate recurring income from its own resources for its continued and efficient functioning.

3.3. The Registered Society/Trust in justified exceptional cases may be allowed to start the college for the first year of the programmes in a readily available building, with the condition that all other academic and administrative requirements are satisfied under the Regulations and the college shall complete the buildings per para 4.4.6 and other requirements cited in the detailed project report by the end of the second year and the college is moved completely to the proposed permanent building by the beginning of the third year, failing which the college shall not be granted renewal of temporary affiliation until the college moves to the permanent buildings. Under no circumstances, extension of time for this movement to the permanent building shall be granted by the University beyond five years.

3.4. The Registered Society/Trust proposing the college shall execute a bond :

3.4.1. to impart instruction only in the subjects and for the courses/programmes in the faculties for which affiliation has been granted by the University and shall not seek retrospective affiliation. All such courses/programmes shall follow the syllabi approved by the appropriate academic bodies of the, University,

3.4.2. to comply with all the provisions of the Act, the Statutes and the Ordinances, Rules and Regulations of the University framed in this regard;

3.4.3. to follow the Rules, Regulations and Guidelines of the Statutory/Regulatory bodies issued from time to time;

3.4.4. to the effect that the number of teaching posts, the qualification of teaching staff and their recruitment/promotion procedures as prescribed by the UGC and conditions of service shall be in accordance with the Statutes/ Ordinance./Regulations of the University/State Government/UGC, and shall ensure imparting of adequate instruction to the students in the courses/ programmes of studies to be undertaken by the college and that the Student-Teacher Ratio in the college shall be as per the UGC norms;

3.4.5. to the effect that the members of (he teaching and non-teaching staff shall be regularly and fully paid in the pay scales along with applicable allowances as per the pay scales prescribed by the UGC/Central/State Govt., as the case may be, from time to time;

3.4.6. to the effect that appointment of members of the leaching and the non-teaching staff shall be made only on considerations of merit based on qualifications and experience prescribed for them and not by demanding or accepting any donation or other consideration;

3.4.7. to the effect that the college shall obtain the eligibility approval of the appointed teaching staff from the University within three months of affiliation and shall report all changes in the teaching staff and all other changes that may affect the fulfillment of the conditions for affiliation to the University within a fortnight of changes coming into effect.

3.4.8. to the effect that all fees to be charged from the students shall be as per the fee structure approved by the University based on the norms of the UGC from time to time;

3.4.9. to the effect that the college shall not collect any capitation fee or donation in any form amounting to corrupt practices from or on behalf of any of its students or their parents/guardians except the prescribed fee and other charges as approved by the University based on the norms of the UGC;

3.4.10. to the effect that no student shall be admitted to any programme of study by the college in anticipation of grant of affiliation or in excess of the number of seats sanctioned per programme of study by the University;

3.4.11 to the effect that the college shall not, without the previous permission of the University, suspend offering an already approved course/programme of study;

3.4.12. to the effect that the academic and welfare activities of the students belonging to the Scheduled Castes. Scheduled Tribes and other disadvantaged groups, including minorities, wherever applicable, shall be properly taken care of by the college;

3.4.13. to the effect that all registers and records, including audited statement of accounts, as required to be maintained under the Regulations/Orders of the UGC/University/Government shall be maintained and made available as and when required for inspection;

3.4.14. to the effect that the college shall furnish all such returns and other information as the UGC/University/Government may require to enable it to monitor and judge the performance of the college with regard to maintenance of academic standards and shall take such action as the UGC/University/Government may direct to maintain the same".

14. Regulation 5 prescribes the eligibility criteria for permanent affiliation, which is as under:-

"5. Eligibility Criteria for Permanent Affiliation.- 5.1. The college shall have completed at least five years of satisfactory performance after getting temporary affiliation and attained the academic and administrative standards as prescribed by the University/UGC/Statutory/Regulatory Body concerned from time to time.

5.2. The college shall have completed construction of buildings and all infrastructure/facilities as stipulated in the Regulations.

5.3. All the teaching and non-teaching staff are appointed on permanent (appointed on regular basis, in case of a Government college) on the UGC/Government scales of pay.

5.4. The college shall have a duly constituted College Council as per the norms".

15. Regulation 6 deals with the procedure for granting permanent affiliation, which is as under:-

"6. Procedure for granting Permanent Affiliation.- 6.1. A college which wishes to get permanent affiliation shall apply to the University any time after completing five years of temporary affiliation in the proforma along with the prescribed fee in the form of Demand Draft drawn in favour of the Registrar of the University.

6.2. The procedure for according permanent affiliation shall be the same as for granting temporary affiliation given in the Regulations.

6.3. If the University decides not to grant permanent affiliation to the college for reasons, to be recorded in writing, of its failure to meet the conditions/requirements for getting such affiliation, the college may apply again if it fulfills the conditions/requirements subsequently, but not earlier than six months from

the date of rejection of its earlier application".

16. Regulation 8, the essential regulation for deciding the issue pending before this Court, is as under:-

"8. Withdrawal of affiliation.- 8.1. The privileges conferred on a college by affiliation may be withdrawn in part or in full, suspended or modified, if the college, on due enquiry, is found to have failed to comply with any of the provisions of the Act, the Statutes, the Ordinances, the Rules and Regulations or any other direction or instruction of the UGC/University/Statutory/Regulatory body concerned, or failed to observe any of the conditions of affiliation, or has conducted itself in a manner prejudicial to the academic and administrative standards and interests of the University.

8. 2. If an affiliated college ceases to function or is shifted to a different location or is transferred to a different Society, Trust, individual or a group of individuals without the prior approval of the University, the affiliation granted to the college shall lapse automatically on such ceaser, shifting or transfer as the case may be, and it shall be treated as a new college for the purposes of future affiliation. The University/Government shall have the duty to alleviate the educational future of the affected students in an appropriate manner as per its decision.

8.3. Without prejudice to the Regulations, the Commission on its own, or oh the basis of any complaint or any other information or report from any other source, can cause an enquiry by the University in respect of a college, and after giving the college a reasonable opportunity of being heard, may pass an order under Section (12A)(4) of the UGC Act prohibiting such college from presenting any student then undergoing such specified course/programme of study therein to an university for the award of the qualification concerned and the affiliation of the college shall stand terminated as per Section (12A)(5) of the UGC Act.

8.4. If the University decides to withdraw the affiliation of the college, or "the affiliation stands terminated by the order of the University, temporarily or permanently, such decision shall not affect the interests of the students of the college who were on its rolls at the time of issue of the order till they pass out the normal duration of programmes to which they are registered at that time. The University/Government shall have the duty to alleviate the educational future of the affected students in an appropriate manner as per its decision".

17. A bare perusal of Regulation 8 clearly reveals that an affiliation once granted to a college can be withdrawn in part or in full; it can be suspended or modified. But only if upon an inquiry it is discovered that: (i) the college has failed to comply with any of the provisions of the Act, the Statutes, the Ordinances, the Rules and Regulations; or (ii) any other direction or instruction of the Commission/University/ Statutory/ Regulatory body concerned; or (iii) failed to observe any of the conditions of affiliation; or (iv) has conducted itself in a manner prejudicial to the academic and administrative standards and interests of the University.

18. However, what is relevant to be noted is that a due inquiry needs to be conducted before a conclusion can be drawn that a particular college has committed an act which would bring the college in one of the four conditions, enumerated hereinabove.

19. According to Regulation 8.2, a college may be de-affiliated if it has ceased to function, or is shifted to a different location, or is transferred to a different Society, Trust, individual, or group of individuals without the prior approval of the University. In these conditions, the de-affiliation is an automatic one. In fact, in these conditions, the college shall be treated as a "new college" for the purpose of future affiliation.

20. Regulation 8.3 bestows a power on the Commission, either suo motu, or on the basis of any complaint, or any other information or report from any other source, to de-affiliate a college after giving the college a reasonable opportunity of being heard. Even under this regulation, an opportunity of hearing, i.e. due inquiry has to be held before a college can be prevented from undertaking any specified course/programme of study.

21. Regulation 8.4 does not deal with the process of de-affiliation, but protects the interest of those students who are already on its rolls in such a college. This regulation clearly states that the decision to de-affiliate the college shall not affect the interest of the students of the college who are on its rolls at the time of order of de-affiliation till they pass out the normal duration of programmes.

22. A holistic view of Regulation 8 of the Regulations, 2009 clearly reveals that the power to de-affiliate a college lies either with the University, or with Commission. The said regulation does not bestow any power on the Central Government to de-affiliate a college from a University. Therefore, the letter dated 05.06.2020 is, patently, in violation of Regulation 8 of the Regulations, 2009.

23. Moreover, even for the University to de-affiliate a college, it must comply with the procedure established under Regulation 8.1. However, in the present case, there is not an iota of evidence to show that the University has carried out an inquiry against the colleges which are being asked to de-affiliate themselves from the Central University. Moreover, there is not a shred of evidence to show that these colleges have fallen into any of the four categories mentioned in Regulation 8.1.

24. Furthermore, there is not a shred of evidence to show that all the colleges have committed a misconduct which would entail their de-affiliation from the Central University. Therefore, the letter written by the Registrar of the University dated 24.07.2020 is clearly in violation of Regulation 8.1 of the Regulations, 2009. Hence, both the letters dated 05.06.2020 and 24.07.2020 are legally unsustainable.

25. The only other issue before this Court is whether the State Government can be saddled with a responsibility of having to maintain those colleges which are,

admittedly, affiliated with the Central University, or not?

26. Section 4(f) of the Act, 2009 is as under:-

"4(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 Hemwati 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 Hemwati Nandan Bahuguna Garhwal University, respectively, established under this Act".

27. According to this provision, it is the responsibility of the Central University to maintain the colleges affiliated with it. Since the entire budget for the Central University is granted by the Central Government, obviously, it is the responsibility of the Central University to maintain the colleges affiliated with it.

28. The said burden of having to maintain these colleges cannot be imposed upon the State Government. However, it is an issue that needs to be ironed out between the Central Government and the State Government. But the Central Government cannot be oblivious of the requirement of Section 4(f) of the Act, 2009.

29. Therefore, this Court would not like to issue any direction to the Central Government. However, this Court does expect the Central Government and the State Government to resolve the financial difficulties being faced by the State Government in maintaining these colleges. This Court expects the Central Government to fulfill its responsibilities as imposed upon it under Section 4(f) of the Act, 2009.

30. Mr. Shobhit Saharia, the learned counsel for the petitioners in Writ Petition (M/S) No.510 of 2021, has pointed out that suddenly the State Government has refused to continue to maintain these colleges. However, due to the stand taken by the State Government, the colleges find it extremely difficult, if not possible, to maintain themselves. Since, the colleges are unable to maintain themselves, it adversely affects the interest of the students to continue to study in the respective colleges. Therefore, the learned counsel submits that a direction should be issued to the State Government to continue to maintain these colleges, including to pay the salaries of the employees, so that they continue to work in the interest of the student community.

31. On the other hand, Mr. Pradeep Joshi, the learned Additional Chief Standing Counsel for the State, submits that since the State Government can no longer be burdened with the financial responsibility of maintaining the colleges, a time-frame should be prescribed for the Central Government to thrash out the issue with regard to the maintenance of the colleges.

32. Under these circumstances, the State Government is directed to maintain the colleges, including to pay the salaries of the employees, till the issue is thrashed

out between it and the Central Government. Furthermore, the Central Government, the respondent No.1, is directed to settle the dispute with regard to the maintenance of the colleges with the State Government within a period of two months from the date of furnishing a certified copy of this judgment.

33. With these directions, the writ petitions are, hereby, allowed. The letters dated 05.06.2020 and 24.07.2020 are set-aside.

34. No order as to costs.