
(2003) 07 AHC CK 0028

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9052 of 2001

Sheetala Prasad Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-07-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Uttar Pradesh Homeopathic Medical Colleges (Acquisition and Misc. Provisions) Act,
1981 — Section 4(2), 6

Citation : (2003) 6 AWC 5457 : (2003) 3 UPLBEC 1987

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : Ashok Khare, A.K. Singh, B.P. Yadav, B.P. Singh and R.S. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—By means of this writ petition the petitioner has prayed for a writ of certiorari to quash the impugned Government Order dated 17.2.2001, Annexure-3 to the writ petition and the Circular Letter dated 24.2.2001, Annexure-4 to the writ petition in so far as they direct merger of Rajkiya Tilakdhari Homeopathic Medical College, Jaunpur (hereinafter referred to as Jaunpur College) with Rajkiya Lal Bahadur Shastri Homeopathic Medical College, Allahabad (hereinafter referred to as Allahabad College) and transfer of students and teachers to the Allahabad College.

2. We have heard learned Counsel for the parties.

3. The Jaunpur College was a privately managed Homeopathic Medical College. The petitioners were appointed as lecturers in that College when the same was under private management. On 23.10.1981 the State Legislature enacted the U.P. Homeopathic Medical College (Acquisition and Misc. Provisions) Act, 1981 copy of which is Annexure-1 to the writ petition. As a consequence, the Rajkiya Tilakdhari Homeopathic Medical College, Jaunpur stood provincialised and the

petitioners stood absorbed in the service of the State Government by virtue to Section 6 of the 1981 Act.

4. The U.P. Government promulgated the U.P. Ordinance No. 4 of 2001 which was published in the U.P. Gazette Extra-ordinary dated 15.2.2001 vide Annexure-2 to the writ petition. By means of this Ordinance power has been conferred for transfer of students, teachers and employees from one Schedule College to another Schedule College or to the National Homeopathic Medical College, Lucknow. On 17.2.2001 the State Government issued a Government Order directing amalgamation of the Jaunpur College with Allahabad College, and transfer of all the teaching and non-teaching employees to the Allahabad College except the Officer Incharge of the Hospital, Pharmacist attached to the outdoor and the peon. True copy of the Government Order dated 17.2.2001 is Annexure-3 to the writ petition. As a follow up the Director of Homeopathy, U.P. issued a circular dated 24.2.2001, Annexure-4 to the writ petition.

5. It is alleged in Paragraph 16 of the writ petition that the impugned decision of amalgamation and transfer is not based on any administrative reason nor prompted by financial constraints and it is not in the public interest. It is alleged that the impugned decision is arbitrary and violative of Article 14 of the Constitution.

6. A counter affidavit has been filed and we have perused the same. In Paragraph 4 of the same it is stated that the State Government, looking to the financial burden and shortage of funds decided to combine and amalgamate the two colleges, and hence it is issued the Ordinance and Orders of 2001.

7. In Paragraphs 6 and 7 of the counter affidavit it is stated that not only the Allahabad and Jaunpur Medical Colleges have been amalgamated but several other Homeopathic Medical Colleges have also been amalgamated.

8. We have carefully considered the submissions of the learned Counsel for the parties. Sri Ashok Khare learned Counsel for the petitioner submitted that the Government Order dated 17.2.2001 while directing the amalgamation of the Jaunpur College with the Allahabad College excludes the Hospital attached to the Jaunpur College. In our opinion, this decision was taken on administrative grounds and it is not for this Court to sit in appeal over such administrative decisions. Whether the Hospital attached to the Jaunpur College should be transferred to Allahabad or not is for the authorities to decide, and not for this Court. Moreover, as stated in Paragraph 13 of the counter affidavit, in the Hospital attached to the Jaunpur College there were two departments namely outdoor department and indoor department. The indoor patient department has been closed down at Jaunpur and merged with the Allahabad College. The outdoor patient department is still functioning at Jaunpur for which the post of Medical Officer Incharge, a Pharmacist and a peon have been retained at Jaunpur. In Paragraph 14 of the same it is stated that out of 54 employees and teachers who were posted at the Jaunpur College 46 joined at Allahabad and

only the petitioners did not join and they obtained ex parte interim orders concealing the true facts.

9. In Paragraph 16 of the same it is stated that in the year 1981 when the U.P. Act 21 of 1981 came into force two College which were not found upto the mark were amalgamated with the Jaunpur College but by lapse of time the Jaunpur College also could not maintain the standards which were required and hence it was amalgamated with the Allahabad College.

10. A perusal of Section 4(2) of the 1981 Act shows that the State Government has power to amalgamate two or more Colleges and transfer students and teachers from one College to another. The U.P. Ordinance No. 4 of 2001, Annexure-2 to the writ petition, confers further power for such transfer¹ and amalgamation. Thus, it cannot be said that there is no power to issue the impugned Government Order and Circular Letter.

11. The impugned Government Order and Circular amounts to policy decision and this Court should not ordinarily interfere with such policy decisions.

12. Education is in Entry 25 of List III of the VIIth Schedule of the Constitution, and hence the State Legislature can certainly legislate on this subject.

13. In *The Dental Council of India Vs. Subharti K.K.B. Charitable Trust and Another*, and *Aruna Rai v. Union of India*, the Supreme Court has observed that in matters of policy the Courts have a limited role or jurisdiction, and can intervene only if the policy is against some provision of the Constitution. In our opinion the impugned Government Order do not violate any provisions of the Constitution.

14. In Civil Misc. Writ Petition No. 34022 of 2002, *XL-IIT Forum and Ors. v. State of U.P. and Ors.*, decided on 27.5.2003 [Reported in *XL-IIT Forum and Others Vs. State of U.P. and Others*, a Division Bench of this Court observed that the Court should exercise restraint in policy matters and should not sit in appeal over the decision of the Legislature. In Civil Misc. Writ Petition No. 43985 of 1997, *Kanpur Aloo Arhati Association and Anr. v. State of U.P. and Ors.*, decided on 1.7.2003 [Reported in (2003) 2 UPLBEC 1588, a Division Bench of this Court considered the challenge to the validity of the Notification u/s 7(2)(b) of the U.P. *Krishi Utpadan Mandi Samiti Ltd. Adhiniyam* and held that the said Notification amounts to delegated legislation and hence the Court has very limited scope of interference.

15. In both the aforesaid decision this Court stressed the importance of judicial restraint by the Court towards legislative or administrative decisions.

16. In the counter affidavit the respondents have mentioned in Paragraph 4 the reasons for issuing the impugned orders, and we cannot say that these reasons are arbitrary.

17. Following the decisions of this Court in Civil Misc. Writ Petition No. 34022 of

2002, XL-IIT Forum and Ors. v. State of U.P. and Ors. and Civil Misc. Writ Petition No. 43985 of 1997, Kanpur Aloo Arhati Association and Anr. v. State of U.P. and Ors. (supra), this writ petition is dismissed. Interim order is vacated.