

(2011) 11 AHC CK 0467

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 52453, 60594, 52458 and 56667 of 2011

Shree Rabhubir Saran Degree College and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-11-2011

Acts Referred:

Uttar Pradesh State universities Act, 1973 — Section 21(1), 21(2), 37(2), 37(8), 37(9)

Citation : (2011) 9 ADJ 745

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble K. Shukla J.

1. this bunch of writ petitions, the petitioners have approached this Court requesting therein for quashing of the impugned decision dated 21.8.2011 taken by the Executive Council of Dr. B.R. Ambedkar university, Agra, wherein affiliation of petitioner institutions has been kept in abeyance. Further prayer has been made to direct the State Government to allot the students for undertaking B. Ed. Courses for the academic session 2011-12.

2. In all the four matters, common question of law and fact are involved, hence they are being heard and decided together by a common judgment. For the same of convenience writ petition No. 52453 of 2011 is being treated as leading writ petition.

3. Petitioners before this Court are running B. Ed. Courses at their respective institutions after having due recognition from the National Council for Teachers Education. The petitioner institutions have already been accorded affiliation in terms of Section 37 (2) of the U.P. State universities Act, 1973. It appears that against the institutions concerned, large scale complaints had been made in

respect of illegal extraction of money from the students. On the said complaints enquiry appears to have been conducted in the matter, thereafter report was submitted and based on the said report clarification was sought for from the petitioners with regard to illegal collection of fees and harassment of students admitted in their Colleges in the academic session 2010-11. In the said letter, it was mentioned as to why on the grounds disclosed in the enquiry report their affiliation be not terminated. On the very next day, the State Government issued Government Order dated 14.7.2011 granting permission to the University u/s 37 (8) of the Act for termination of affiliation of the petitioners institutions, alongwith other similarly situated institutions. At the said point of time writ petition had been preferred before Lucknow Bench of the Court, being writ petition No. 4095 of 2011, Shree Rabhubir Saran Degree College And Another v. State of Uttar Pradesh and Others. The aforesaid writ petition was allowed on 19.7.2011, whereby the order of the State Government dated 14.7.2011 was set aside, and the Court had directed the University to hold enquiry in accordance with law keeping in view the observations made in the judgment within two weeks from the date of receipt of the order. Petitioners have contended that Sri Prabhash Dwivedi had not been acting fairly, and they were compelled to file writ petition No. 4610 of 2011, Shree Rabhubir Saran Degree College And Another v. State of Uttar Pradesh and others, wherein this Court was pleased to ask the Vice Chancellor of the University to replace Prabhash Dwivedi vide order dated 5.8.2011. The Vice Chancellor constituted two member committee comprising Professor R.K. Gautam and Dr. Sujata, Principal of the College, and one Sri Akhilesh Agrawal, Superintendent, was directed to assist the Enquiry Committee. Thereafter, the Committee conducted enquiry and submitted its report on 9.8.2011. Petitioners have submitted that the said Enquiry Committee found no conclusive evidence to come to the conclusion against the institutions, however, the matter was placed in the emergent meeting of the Executive Council of the University on 21.8.2011, and therein, it has been resolved to suspend the affiliation of the institutions in question for the academic year 2011-12, as the institutions in question were involved in illegal collection of fees and harassment of students, and further penalty of Rs. 5 to 10 lacs has been imposed. At this juncture, present writ petitions have been filed, questioning the validity of the decision so taken.

4. In the leading writ petition No. 52453 of 2011 counter and rejoinder affidavits have been exchanged, and thereafter with the consent of the parties, present writ petitions have been taken up for final hearing and disposal.

5. Learned counsel for the petitioners contended with vehemence that in the present case, the Executive Council has transgressed and overstepped its jurisdiction by proceeding to pass resolution suspending the affiliation of the petitioner institutions, and in this way, the Council has proceeded to usurp the power of the State Government vested u/s 37 (8) and 37 (9) of the Act, as such action taken is per se bad. Coupled with this, it has also been stated that fine has been imposed without affording any opportunity of hearing on this score, as such

action taken is bad.

6. Countering the said submissions, learned counsel representing the University, on the other hand, has contended that in the facts of the case rightful action has been taken in view of the fact that the petitioners have indulged in malpractice, which is clearly substantiated, as such no interference should be made.

7. In order to consider the foremost arguments, which have been so advanced, authority of the Executive Council as enshrined u/s 21 (1) (ix) of the Act as well as the authority of the State Government u/s 37 (2) of the Act, are being looked into and examined. For ready reference the aforesaid provisions are being quoted below:

21. Powers and duties of Executive Council--(1) The Executive Council shall be the principal executive body of the University and subject to the provisions of this Act, have the following powers, namely-

(i).....

(ii).....

(iii).....

(iv).....

(v).....

(vi).....

(vii).....

(viii).....

(ix) Subject to the provisions of Section 37 to admit any college to the privileges of affiliation or recognition or enlarge the privileges of any college already affiliated, recognized or withdraw or curtail any such privilege.

37. Affiliated Colleges.--(2) Executive Council may, with the previous sanction of the Chancellor admit any college which fulfills such conditions of affiliation, as may be prescribed, to the privileges of affiliation or enlarge the privileges of any college already affiliated or subject to the provisions of sub-section (8) withdraw or curtail any such privilege:

Provided that if in the opinion of the Chancellor, a college substantially fulfills the conditions of affiliation, the Chancellor may sanction grant of affiliation to that college or enlarge the privileges thereof in specific subjects for one term of a course of study on such terms and conditions as he may deem fit:

Provided further that unless all the prescribed conditions of affiliation are fulfilled by a college, it shall not admit any student in the first year of the course of study for which affiliation is granted under the foregoing proviso after one year from the date of commencement of such affiliation.

(7) The Executive Council may direct an affiliated college so inspected to take such action as may appear to it to be necessary within such period as maybe specified,

(8) The privileges of affiliation of a college which fails to comply with any direction of the Executive Council under sub-section (7) or to fulfill the conditions of affiliation may, after obtaining a report from the Management of the college and with the previous sanction of the [State Government], be withdrawn or curtailed by the Executive Council in accordance with the provisions of the Statutes.

(9) Notwithstanding anything contained in sub-sections (2) and (8), if the Management of an affiliated colleges has failed to fulfill the conditions of affiliation, the State Government] may, after obtaining a report from the Management and the Vice-Chancellor, withdraw or curtail the privileges of affiliation.

8. On the parameters of the provisions quoted above, it is clearly reflected that the Executive Council is the principal executive body of the University and subject to the provisions of the U.P. State University Act has been conferred with the authority enumerated in clauses (I) to (xvii) of sub-section (1) of Section 21 of the Act. Sub-section (2) of Section 37 makes it clear that the Executive Council is entitled to admit any college to the privileges of affiliation or recognition or enlarge the privileges of any college already affiliated, recognized or withdraw or curtail any such privilege. The power of the Executive Council is thus subject to the provisions of Section 37 of the Act and Sub-sections (8) thereof clearly provide that the privileges of affiliation of a college which fails to comply with any direction of the Executive Council under sub-section (7) or to fulfill the conditions of affiliation may, after obtaining a report from the Management of the college and with the previous sanction of the [State Government], be withdrawn or curtailed by the Executive Council in accordance with the provisions of the Statutes. Sub-section (9) of Section 37 of the Act clearly provides that notwithstanding anything contained in sub-sections (2) and (8), if the Management of an affiliated colleges has failed to fulfill the conditions of affiliation, the State Government] may, after obtaining a report from the Management and the Vice-Chancellor, withdraw or curtail the privileges of affiliation. As on date, the authority of the Chancellor has now been substituted by the State Government, and now it is the State Government competent to accord affiliation u/s 37 (2) of the Act and to accord sanction for withdrawal of affiliation. Thus, the scheme of things clearly provide that the Executive Council can withdraw the privileges of affiliation, but it has to take prior sanction from the State Government. In the present case accepted position is that the Executive Council has passed resolution to suspend the affiliation for the academic year 2011-12 without taking any sanction from the State Government. Sanction in question has to be prior in time. In the present case such a decision has been taken by the Executive Council on its own without seeking any prior

sanction from the State Government, The Executive Council thus has overstepped its authority, such an action on the part of the Executive Council cannot be approved of, as such resolution passed by the Executive Council is unsustainable.

9. Apart from it, in the present case, Executive Council has even proceeded to impose penalty after the report was submitted by the Enquiry Committee, but at no point of time, petitioners were informed that based on the said enquiry report petitioner's affiliation was going to be kept in abeyance and fine was to be imposed upon them. Such an action on the part of the Executive Council being in violation of the principles of natural justice, is not being approved of.

10. Consequently, writ petitions succeed and they are allowed. The impugned decision dated 21.8.2011 taken by the Executive Council is hereby quashed and set aside. Let entire papers be placed within ten days before the State Government for appropriate decision on the papers submitted by the University, and while taking decision, the State Government shall also consider the request of petitioners for sending students to their colleges keeping in view the directive of Hon''ble Apex Court dated 22.7.2011, Institute of professional Studies v. State of Uttar Pradesh Entire exercise be concluded by reasoned decision, within four weeks from the date of receipt of certified copy of this order.