

(2011) 04 UK CK 0005

In the Uttarakhand High Court

Case No : Writ Petition No. 236 of 2008 (M/S)

State

APPELLANT

Vs

Himalayan Institute of Medical Science and others

RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

General Clauses Act, 1897 — Section 21

University Grants Commission Act, 1956 — Section 2, 3

Uttar Pradesh State Universities Act, 1973 — Section 37, 37(2), 37(8), 37(9)

Citation : (2011) 3 UC 2322 : (2011) 1 UD 497

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble B.S. Verma, J.—Heard Learned Counsel for the parties.

2. This writ petition has been filed by the State of Uttarakhand against the respondent in the nature of certiorari quashing the impugned letter dated 02.02.2008, written by respondent No. 1 to the Chief Minister of Uttarakhand (Annexure no. 9 to the writ petition) and it has been further prayed for mandamus directing respondent No. 1 that the allotment of 50% seats as Uttarakhand Government Quota may not be filled on the basis of entrance examination held on 15.02.2008. Further writ in the nature of mandamus is sought commanding the respondent to recognize the reservation of the seats quota of 50% for Post Graduation Course and 40% for the MBBS Course as previously done since last six years.

3. It is pertinent to mention here that another writ petition No. 485 of 2008, Sarfaraj Ahmad Ansari and others Vs. Himalayan Institute of Medical Sciences, was dismissed for want of prosecution, vide order dated 12.05.2010. In said writ petition No. 485 of 2008, prayer was made for quashing entire selection process, initiated by Himalayan Institute of Medical Sciences (respondent No. 1). Pursuance to the advertisement, published in daily newspaper Hindustan Times

dated 24.12.2007.

4. Briefly stated the relevant facts giving rise to this writ petition are that the respondent no. 1 was granted Deemed University status vide Notification dated 6th June 2007, published in the official Gazette of India (Annexure No. 3). The relevant extract of the Notification reads as under:-

In exercise of the powers conferred by Section 3 of the University Grants Commission Act, 1956, the Central Government, on the advice of the University Grants Commission (UGC), hereby declare that Swami Rama Vidyapeeth, Swami Ram Nagar, P.O. Doiwala, Dehradun, Uttarakhand, consisting of Medical College shall be a "Deemed-to-be-University", for the purpose of the aforesaid Act, with effect from the date the Swami Rama Vidyapeeth disaffiliates its Medical College (Himalayan Institute of Medical Sciences) from the affiliating university, viz. Hemwati Nandan Bahuguna Garhwal University, Srinagar (Garhwal), Uttarakhand.

2. This declaration is also subject to further conditions mentioned at si. No. 7 of the endorsement of this notification.

3. Government of India or the University Grants Commission will not provide any Plan and Non-plan grants to Swami Rama Vidyapeeth or any of its constituent unit.

(Ravi Mathur) Joint Secretary to the Government of India" According to the petitioners as on today, the respondent no. 1 Himalayan Institute of Medical Sciences, Swami Rama Vidyapeeth, Swami Ram Nagar, P.O. Doiwala, Dehradun (for short the Institute) is an affiliated medical college and is still affiliated college to the H.N.B. Garhwal University Srinagar (for short the University) and under this Medical College both M.B.B.S. and Post Graduate Degree/Diploma courses are allocated for the domiciles/ residents of State of Uttarakhand. Earlier State quota of 50% in respect of M. B. B. S. entrance examination and 50% quota for post graduate courses had been provided by the said medical college. It is also alleged that after the judgment of the Apex Court in I namdar Case, the State quota/reservation is to the tune of 40% for MBBS and 50% for Post Graduate courses. This allocation of State quota for the residents of Uttarakhand has been given since 2002, when the first Uttarakhand Pre Medical Test was held through the State.

5. It is further contended on behalf of the State of Uttarakhand, that Government of Uttarakhand issued a no objection certificate on 21.04.2006 to the institute for establishment of deemed university. The following conditions were mentioned by the Government for the change of deemed status:-

(i) Himalayan Institute of Medical Sciences, Jolly Grant Dehradun will have to fulfill all the norms prescribed by the Government of India and U.G.O, in all respect.

(ii) 50% seats will have to be provided by the aforesaid Institute to the Govt, of Uttarakhand.

(iii) The aforesaid No Objection Certificate will not be treated as for the purpose of deemed University.

(iv) The said no objection certificate is meant only for one year.

6. According to the petitioners, the Government of India by Notification dated 6th June 2007 granted "Deemed University" status to the institute and has put a condition that the status will become effective from the date of de-affiliation granted by the University.

7. The controversy arose when the respondent no. 1 issued an advertisement for conducting admission test for postgraduate courses. According to the respondent no. 1, the institute had written a letter to the Vice Chancellor of the University on 23-10-2007, which has been annexed as Annexure -6 to the counter affidavit filed on behalf of the respondent no. 1 wherein in the last paragraph it has been mentioned that "in the present circumstances it is requested that affiliation for all the courses for which we have been granted deemed-to-be University status should be considered ceased from the University from the date we start admitting students for these courses. However, for other courses the affiliation with the University will continue. The Vice Chancellor of the University in reply thereto has written a letter to the institute on 31-10-2007, which has been annexed as Annexure CA-4 as under:-

Kindly refer to your letter No. HIHT/PB/2007-62 dated 23rd October, 2007. Subsequent to your recognition as Deemed to be University by the Govt, of India under provisions of section 3 of UGC Act 1956, your affiliation to HNB Garhwal University ceases to exist w.e.f. from the date you start admitting the students for the courses for which you have been recognized as "Deemed to be University. For the courses not included in the Deemed to be University, the affiliation to our University continues.

8. Learned Counsel for the petitioners has vehemently urged that the Vice Chancellor did not follow the procedure as has been mentioned in Section 37 of the U.P. State Universities Act 1973 and it was further argued that the affiliation can be withdrawn only in the manner in which it was granted. Learned Counsel has relied upon the provision of Section 21 of the General Clauses Act, 1897, which reads as under-

21. Power to make, to include power to add to, amend, vary or rescind, orders, rules or bye-laws.- Where, by any Central Act, or Regulation, a power to issue notification, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary, or rescind any notifications, orders, rules or bye-laws so issued.

9. It has further been contended that the condition was properly imposed as per Section 21 of the General Clauses Act 1897 by the Central Government that the institute shall be deemed-to-be university from the date of its de-affiliation from

the University. The procedure for de-affiliation has to be followed in the same manner in which it was granted at the initial stage by the authority concerned as per sub-section (2) of Section 37 of the State Universities Act, the power lies with the Executive Council of the University and first statute. Sub-section (2) of Section 37 reads as under-

(2) The Executive Council may, with the previous sanction of the Chancellor, admit any college which fulfils 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.

10. At the time of arguments, Learned Counsel has given much stress on the last two lines of sub-section (8) of Section 37. Sub-section (8) reads as under:-

(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 Chancellor, be withdrawn or curtailed by the Executive Council in accordance with the provisions of the Statutes.

11. Learned Counsel for the petitioners has made a reference to first statute of clause 13.32 of the Appendices appended to the U.P. State Universities Act, 1973, which reads as under-

13.32. (1) The Executive Council may with the prior sanction of the Chancellor, deprive an affiliated college of the privileges of affiliation either wholly or for any degree or subject, if it fails to comply with the directions of the Executive Council or to fulfill the conditions of affiliation or for gross mismanagement, or if for any other reason the Executive Council is of opinion that the college should be deprived of such affiliation.

12. Learned Counsel for the respondent no. 1 Sri V.K. Kohli, Senior Advocate, has submitted that the procedure pressed into service by the Learned Counsel for the petitioners applies only in case of grant of affiliation privilege, while Sri PC. Bisht, learned Brief Holder appearing for the State has vehemently urged that the same procedure has to be followed in the manner as has been provided as per Section 37 and first Statute of clause 13.32 of the U.P. State Universities Act 1973. He has also relied upon the provisions of Section 21 of the General Clauses Act and submitted that in the case of rescind order, the same procedure would apply.

13. I have heard Learned Counsel for both the parties at length and perused the record.

14. The undisputed facts of the case are that the respondent no. 1 institute was affiliated to the University and earlier affiliation was granted as per provisions of Section 37 of the U.P. State Universities Act, 1973. It is also undisputed fact that the institute applied for a Deemed-to-be University status and no objection was given by the State Government with certain conditions. No objection certificate is

annexed along with Writ Petition as Annexure No. 2. Condition No. 3 clearly mentions that the no objection of the State Government shall be effective only for a period of one year from the date of issue of the order, i.e. 21 -4-2006. After expiry of the period of one year, the U.GC. again sought for comments from the State of Uttarakhand and the State Government then declined to issue no objection certificate, copy of which has been annexed as Annexure No. 1 to the Supplementary Counter Affidavit. Even though the institution was granted Deemed-to-be University status vide aforesaid Notification dated 6th June, 2007 with the condition that the Deemed University status shall be effective from the date the Swami Rama Vidyapeeth disaffiliates its Medical College from the affiliating university.

15. The controversy to be decided prima facie by this Court is from which date the Deemed-to-be University status comes into operation.

16. Learned Counsel for the respondent no. 1 has relied upon the Division Bench judgment of the Madras High Court in the case of Dr. R. Sivaraman and etc. Vs. The Registrar, Dr. M.G.R. Medical University and Others, . In paragraph No. 13, the Division Bench of the Madras High Court has observed as under:-

13. It is not disputed that the Central Government has issued Notification No. F-9-3/97-U.3, dated 7th July, 1998, which was published in the Gazette of India, u/s 3 of the U.GC. Act, on the advice of the University Grants Commission, exercising the powers conferred by Section 3 of the U.GC. Act, declaring the Chennai Medical College and Research Institute, Chennai as Deemed-to-be University for the purpose of the aforesaid Act with immediate effect subject to a review after three years. The said notification was also republished in the Tamil Nadu Government Gazette dated July 21, 1998. As is evident from Section 3 of the U.GC. Act, the Central Government, on the advice of the University Grants Commission, has declared by Notification, the Chennai Medical College, Chennai to be a Deemed-to-be University u/s 3 of the U.GC. Act. A plain reading of Section 3 of the U.GC. Act does not show that anything more is required to be done further in order to deem any institution for higher education as Deemed University. In the said Section, it is also stated that all the provisions of the U.GC. Act shall apply to such institution, as if it were University within the meaning of Section 2(f) of the U.GC. Act. Hence, it is very clear that on such declaration being made in regard to an institution for higher education as Deemed University, all the provisions of the U.GC Act shall apply and it becomes a University for the purposes of the U.GC. Act, as per Section 2(f) of the said Act. It is not possible to accept the contention of the learned senior counsel for the petitioners well as the learned special Government Pleader that something more is required to be done, even after the declaration that the Chennai Medical College Chennai is a Deemed University under the U.GC. Act. Section 3 of the U.GC. Act is self contained as regards the declaration of the status of an institution as a Deemed University. It is also not possible to say that the Notification issued under the said Section is merely as executive order. The

Notification is issued by virtue of the powers conferred u/s 3 of the U.G.C. Act itself on the Central Government. From the date Chennai Medical College, Chennai, was declared to be a Deemed University as per Section 3 of the U.G.C. Act, by issuing a Notification by the Central Government, it ceases to be a "college" or "affiliated college" within the meaning of Section 2(a) and (d) of the University Act. The definitions of "affiliated college" and "college" given in the University Act do not take within them a "Deemed-to-be-University" and a University covered by Section 2(f) of the U.G.C. Act.

17. In paragraph no. 16, the Madras High Court has inter alia observed that "By necessary and inevitable implication, the Chennai Medical College Chennai is deemed to be excluded from the Schedule, the moment a declaration was made u/s 3 of the U.G.C. Act, conferring the status of Deemed-to-be University on it. Even assuming that there is some conflict between the U.G.C Act and the University Act, to this limited extent, the declaration made u/s 3 of the U.G.C. Act prevails."

18. Learned Counsel for the petitioner, in reply thereto, has argued that the case, which was decided by the Division Bench of Madras High Court, the Notification had been applied forthwith from the date of Notification. According to the petitioner, the said judgment relied upon by the respondent no. 1 is of no help.

19. The Learned Counsel for the respondent no.1 Sri V.K. Kohli, Senior Advocate has also further relied upon the judgment of the Apex Court in the Case of Bharati Vidyapeeth (Deemed University) and others Vs. State of Maharashtra and another (AIR 2004 SCW 1790). The said judgment is on the legislative competence. Learned Counsel for the petitioner as well as Learned Counsel for the respondent no. 1 have conceded the legal proposition to the extent that after getting the status of "Deemed University", the Central Act would apply and the control of the State and the University would cease over the institution.

20. On the other hand, learned Brief Holder appearing for the petitioner has reiterated his argument that no objection was granted to the institution with the condition that the institute shall provide 50% quota to the State for the domicile students of Uttarakhand State.

21. Intimation was given to the Vice Chancellor by the Institute by letter dated 23-10-2007 with the request that affiliation for all the courses for which we have been granted deemed-to-be University status should be considered ceased from the HNB Garhwal University from the date we start admitting students for these courses. However, for other courses the affiliation with the HNB University will continue."

22. In reply to the above letter, the Vice Chancellor had written a letter and accepted the request made by the institute for its de-affiliation.

23. The controversy to be decided is whether this letter of the Vice Chancellor will amount de-affiliation as per procedure prescribed u/s 37(2) and Section

37(8) and 37(9) of the U.P. State Universities Act, 1973 read with first statute para 13.32 as well as Section 21 of the UP. General Clauses Act, which was adopted for grant of affiliation as contemplated therein.

24. Now to resolve the controversy, it has to be seen as to what are the power of the Vice chancellor under the State Universities Act.

25. Section 13 of the UP. State Universities Act, 1973 deals with the powers and duties of the Vice Chancellor and sub-section (6) of Section 13 provides as under:-

(6) Where any matter other than the appointment of teacher of University is of urgent nature requiring immediate action and the same could not be immediately dealt with by any officer or the authority or other body of the University empowered by or under this Act to deal with it, the Vice-Chancellor may take such action as he may deem fit and also to the officer, authority, or other body who or which in the ordinary course would have dealt with the matter.

26. The Petitioner has annexed the copy of the letter written by the Registrar of the University to the Principal of the Institute, which has been annexed as Annexure No. 8 to that writ petition, relevant portion of which reads as under:-

This has reference to your letter dated 17 January 2008, regarding P.G Medical Entrance Examination-2008. In this connection the University has sought the Legal Opinion from your standing counsel at Hon'ble High Court of Uttarakhand. The process of de-affiliation of your Institute has not been completed and as per the notification of the Govt, of India letter no. F-9-43/2006-W-3A, dated 06 June 2006 the status of the Deemed University will be effective from the date of de-affiliation of your Institute from HNB Garhwal University. The letter of the University (Ref.No. VC/2007/625 dated 31.10.2007) Was issued in good faith to help in the developmental process of the Institute.

27. The controversy which remains to be decided is when the respondent no. 1 - Institute has given intimation to the Vice Chancellor vide letter dated 23-10-2007 (Annexure No. 3 to the writ petition filed by the State), whether the Institute stands ceased to be affiliated or whether it is a bilateral act in the case of voluntary de-affiliation.

28. Except other than appointment of a teacher of the university, if the matter is of urgent nature requiring immediate action and the same could not be immediately dealt with by any officer or the authority or other body of the University empowered by or under this Act to deal with it, the Vice-Chancellor may take such action as he may deem fit as has been provided under sub-section (6) of the UP. State Universities Act 1973.

29. Whether the matter was reported by the Vice Chancellor to the Chancellor or not, it can only be clarified by filing counter affidavit by the University and then only what action was taken by the Chancellor or whether it is not at all required, is to be examined.

30. In view of the discussion made in the foregoing paragraphs, this Court is of the view that when affiliation is granted to any institute, the procedure is altogether different. In case of de affiliation, the same procedure could not be adopted and it is the choice of the institute whether to continue its affiliation with the University or not. De-affiliation to the institute was allowed by Vice Chancellor himself and the State has no concern with affiliation or de-affiliation. So far as the second prayer is concerned, that pertains to the year 2008 and has become infructuous. Considering the third relief sought in the petition, since the status of deemed university has been granted to the Institute, therefore, there cannot be any State quota in view of the Apex Court judgment reported in 2004 AIR SCW 1790, Bharati Vidyapeeth and others Vs. State of Maharashtra and another.

31. The writ petition is dismissed. No order as to cost. However, it is pointed out by the Senior Advocate Mr. V.K. Kohli, appearing for the respondent that the Institute has passed a resolution to give admission to 30% students of Uttarakhand. Interim order dated 26.02.2008, stands vacated.