

CASE NO.:
Special Leave Petition (civil) 10506 of 2005

PETITIONER:
Rai University

RESPONDENT:
State of Chhattisgarh & Ors.

DATE OF JUDGMENT: 07/09/2005

BENCH:
CJI R.C. Lahoti, G. P. Mathur & P.K. Balasubramanyan

JUDGMENT:
JUDGMENT
With

Writ Petition (Civil) No.267 of 2005,

With

IAS No.11-12, 8, 9, 14, 15, 16, 17, 18, 19 and 22 of 2005

In
Writ Petition (Civil) No.19 of 2004

And
Special Leave Petition (Civil) No.16520 of 2005.

G.P. MATHUR, J.

Special Leave Petition (Civil) No. 10506 of 2005

1. This Special Leave Petition has been preferred against the judgment and order dated 26.4.2005 of High Court of Chhattisgarh by which Writ Petition No.1506 of 2005 filed by the petitioner, Rai University, was dismissed.

2. The provisions of The Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 (for short "the Act") were challenged by Prof. Yashpal by filing a writ petition under Article 32 of the Constitution in this Court. The writ petition was allowed by this Court on 11.2.2005 and the judgment delivered is reported in JT 2005 (2) SC 165 (Prof. Yashpal & Anr. v. State of Chhattisgarh & Ors.). Paragraphs 45 and 46 of the reports, which have a bearing on the controversy in hand, are reproduced hereinbelow :

"45. As a consequence of the discussion made and the findings recorded that the provisions of Sections 5 and 6 of the Act are ultra vires and the Gazette Notifications notifying the Universities are liable to be quashed, all such Universities shall cease to exist. Shri Amarendra Sharan, learned Additional Solicitor General has submitted that the UGC had conducted an inquiry and it was found that most of the Universities were non-existent, but the report was not placed before the Court as the complete exercise had not been done. Learned counsel for the Universities have seriously disputed this fact and have submitted that the Universities are functioning. We have not gone into this question as it is purely factual. In order to protect the interest of the students who may be actually studying in the institutions established by such private Universities, it is directed that the State Government may take appropriate measures to have such institutions affiliated to the already existing State Universities in Chhattisgarh. We are issuing this direction keeping in mind the interest of the students and also

Sections 33 and 34 of the Act, which contemplate dissolution of the sponsoring body and liquidation of a University whereunder responsibility has to be assumed by the State Government. It is, however, made clear that the benefit of affiliation of an institution shall be extended only if it fulfills the requisite norms and standards laid down for such purpose and not to every kind of institution. Regarding technical, medical or dental colleges, etc. affiliation may be accorded if they have been established after fulfilling the prescribed criteria laid down by the All India Council of Technical Education, Medical Council of India, Dental Council of India or any other statutory authority and with their approval or sanction as prescribed by law.

46. In view of the discussions made above, Writ Petition (C) No.19 of 2004 (Prof. Yashpal & Ors. v. State of Chhattisgarh & Ors.) and Writ Petition (C) No.565 of 2003 (Gopalji Agarwal Vs. Union of India & Ors.) are allowed and provisions of Section 5 and 6 of the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 are declared to be ultra vires and are struck down. As a consequence of such declaration, all notifications issued by the State Government in the Gazette in the purported exercise of power under Section 5 of the aforesaid Act notifying the Universities (including respondent nos.3 to 94) are quashed and such Universities shall cease to exist. If any institutions have been established by such Universities, steps may be taken for their affiliation to already existing State Universities in accordance with the direction contained in paragraph 45 above. Parties would be at liberty to approach the High Court if any dispute arises in implementation of this direction. All Writ Petitions, Civil Appeals and Transferred Cases filed by the private Universities are dismissed."

4. Thereafter, the State of Chhattisgarh made Statute No.27(A) in accordance with the provisions of Section 36 of the Chhattisgarh Vishwavidyalaya Adhiniyam 1973. Clause (5) of Statute 27(A) of the Statute reads as under :

"Notwithstanding anything contained in the Statutes, Ordinances and Regulations made by any of the Existing State University (ESU) under the provisions of the Chhattisgarh Vishwavidyalaya Adhiniyam 1973 (No.22 of 1973), an Interim Institution will be admitted to the privileges of the ESU on the basis of the territorial jurisdiction of ESU for affiliation, as specified in Second Schedule of the above said Act on application of the Sponsoring Body of the Interim Institution and the same shall be withdrawn thereof in the manner in the paras mentioned hereinafter."

5. Rai University, which had been established under the provisions of the Act, filed the writ petition before the Chhattisgarh High Court challenging the provisions of Statute 27(A)(5) on the grounds, inter alia, that the said University had established 19 study centres in various places in the country like Pathankot, Delhi, Pune, Bangalore, Kochi, Mumbai, etc. and in view of the aforesaid Statute, which lays emphasis on the territorial jurisdiction of the university, the said study centres cannot get the advantage of affiliation to a university in Chhattisgarh. The writ petition was dismissed by the order dated 26.4.2005 which is under challenge in the present special leave petition.

6. Learned counsel for the petitioner has submitted that in paragraphs 45 and 46 of the judgment rendered in the case of Prof. Yashpal (supra), this Court had protected the interest of the students who were studying in the institutions established by the private universities and as large number of

students were studying in various study centres of Rai University, which are outside the State of Chhattisgarh, they cannot get affiliation to a State university in Chhattisgarh. The submission is that all the study centres of erstwhile private university should get the facility of affiliation to a State university in Chhattisgarh.

7. In our opinion, the contention raised cannot be accepted. Sub-section (1) of Section 7 of Chhattisgarh Vishwavidyalaya Adhiniyam, 1973 reads as under :

"7(1) Save as otherwise provided in this Act, the powers conferred on the University by or under this Act shall not extend beyond the limits of the territorial jurisdiction specified in the Second Schedule from time to time.

Provided that the State Government may authorize the University to associate or to admit to any of its privileges colleges situated within the state outside the aforesaid limits in accordance with the provisions of this Act and the Statutes made thereunder.

Provided further that where the University provides for instruction through correspondence nothing contained in this section shall be construed to debar the University from admitting to such course of instructions students residing outside the aforesaid limits.

Provided also that for imparting Oriental Sanskrit education any Sanskrit College imparting Oriental Sanskrit education in Madhya Pradesh shall be affiliated either to Pt. Ravishankar Shukla University, Raipur or any other University which the State Government may notify."

8. The Second Schedule to the Act gives the territorial jurisdiction of Pt. Ravishankar Shukla Vishwavidyalaya, Raipur, and Guru Ghasidas Vishwavidyalaya, Bilaspur, which are the two State universities functioning in Chhattisgarh. The territorial jurisdiction of these universities is confined to districts which are within the State of Chhattisgarh. In view of this clear provision of the Adhiniyam, no statute can be made which may permit affiliation of any institution or college to a State university in Chhattisgarh if the said institution or college is situate outside the State of Chhattisgarh. The validity of the impugned statute, therefore, cannot be assailed on the ground urged by learned counsel for the petitioner.

9. Learned counsel for the petitioner has submitted that if the study centres make an application seeking affiliation to a university which has territorial jurisdiction over the place where the study centre is situate, the same may not be granted in view of the direction given by this Court in paragraph 45 of the judgment which has been reproduced above and in this connection he has referred to the following sentence occurring therein :

"In order to protect the interest of the students who may be actually studying in the institutions established by such private Universities, it is directed that the State Government may take appropriate measures to have such institutions affiliated to the already existing State Universities in Chhattisgarh."

10. At the time of hearing of the writ petition filed by Prof. Yashpal, it was not brought to the notice of the Court that the private universities had established large number of study centres at various places all over the country. We, therefore, consider it proper to clarify that while making the aforesaid observation, it was not meant that affiliation must necessarily be sought only with an already existing State university in Chhattisgarh. The institutions of the erstwhile private universities, if otherwise eligible, may apply and seek affiliation with any other university which has jurisdiction

over the area where the institution is functioning and is empowered under the relevant Rules and Regulations and other provisions of law applicable to the said university to grant affiliation. The decision on the application may be taken expeditiously in the interest of student community and there should be no prolonged uncertainty about their future.

11. It may also be mentioned here that Prof. P.C. Upadhyay, Chairman of Chhattisgarh Niji Kshetra Vishwavidyalaya Regulatory Commission had sent a letter on 23rd March, 2005 to the sponsoring body of an erstwhile university, wherein the following decision of the Government of Chhattisgarh was communicated :

"As you are the Chairman of the Sponsoring Body of one of the Universities mentioned above, it is our duty to inform you, that in case you are running any off campus/study centre in or around Delhi in the NCR, you may immediately approach the Guru Gobind Singh Indraprastha University, Delhi for granting affiliation, to such off campus/study centre, so as to ensure that the students are no longer subjected to avoidable anxiety and uncertainty.

Further, please note that for completion of any formalities by UGC, AICTE, etc. you must start action likewise.

Also, for other off campuses or study centres outside Chhattisgarh for grant of affiliation, you may approach the University of the State where they are located, in the light of the Supreme Court judgment as well as the statement of the HRD Minister. In case of any difficulties, please send us the communication for taking up the matter with UGC and related bodies."

The study centres of erstwhile Rai University which are outside the State of Chhattisgarh may take appropriate steps for their affiliation in the light of the clarification made above and the letter dated 23rd March, 2005 of the Chairman of Chhattisgarh Niji Kshetra Vishwavidyalaya Regulatory Commission.

12. We, therefore, find no merit in this special leave petition, which is hereby dismissed. All the IAs moved in this petition are also dismissed.

Special Leave Petition (Civil) No. 16520 of 2005

Erstwhile Mewar University
Versus
State of Chhattisgarh & Ors.

... Petitioner
... Respondents

This special leave petition has been filed challenging the judgment and order dated 22.7.2005 of the High Court of Chhattisgarh by which Writ Petition No.2954 of 2005 filed by erstwhile Mewar University has been dismissed. The petitioner has challenged the vires of clause 5 of Statute No.27(A) enacted by the State of Chhattisgarh in accordance with the provisions of Section 36 of the Chhattisgarh Vishwavidyalaya Adhiniyam 1973.

For the reasons given in Special Leave Petition (Civil) No.10506 of 2005, this special leave petition is dismissed. All the IAs moved in this petition are also dismissed.

WRIT PETITION (CIVIL) NO.19 OF 2004

Prof. Yashpal & Anr.
Versus
State of Chhattisgarh & Ors.
I.A. Nos.11-12 of 2005

\005 Petitioners
\005 Respondents

These applications have been moved seeking clarification of the direction contained in paragraphs 45 and 46 of the judgment and for giving appropriate directions in order to protect the students studying in study centres established outside the State of Chhattisgarh. The necessary clarification has been given in Special Leave Petition (Civil) No.10506 of 2005 and no further clarification is required. The IAs are disposed of accordingly.

I.A. No.8 of 2005

The prayer made in this application is that the State Government may be directed to take appropriate steps to notify certain institutions as universities keeping in view the fact that such institutions have already been inspected by the UGC. Since the Act itself has been declared to be ultra vires and a direction has been issued by this Court in Writ Petition (Civil) No.19 of 2004 that all universities shall cease to exist, the prayer made in this application cannot be granted. It is accordingly rejected.

I.A. No.14 of 2005

This application has been moved by erstwhile Mewar University, which was a private university. The applicant claims that it is running two institutes; one in Ghaziabad (State of U.P.) and the other at Chittorgarh (State of Rajasthan). The principal prayer made is that a direction be issued to the State Government of Chhattisgarh to ensure the affiliation of the students, who are studying in the aforesaid institutes. Having regard to the fact that the institutes are located outside the State of Chhattisgarh, no such direction can be issued to the State of Chhattisgarh. It is open to the institutes, if otherwise eligible, to seek affiliation with any other university which has jurisdiction and is empowered under the relevant Rules and Regulations and other provisions of law applicable to the said university to grant affiliation. If the applicant feels aggrieved by the decision taken by the University or any other authority, it is open to it to challenge the same before the appropriate forum in accordance with law. The application is accordingly rejected.

I.A. No.22 of 2005

This application has been moved by 11 students who claim to be studying in Ghaziabad and Chittorgarh institutes of erstwhile Mewar University. The prayer made is that a direction be issued to affiliate the institutes to a university in the State of Chhattisgarh. For the reasons already given in Special Leave Petition (Civil) No.10506 of 2005, such a prayer cannot be granted.

In the alternative, a prayer has been made that a direction be issued to affiliate the institutes with Chaudhary Charan Singh University, Meerut and/or U.P. Technical University, Lucknow or Mohan Lal Sukhadia University, Udaipur. The applicants were not party to the writ petition. It is for the institutes to make appropriate application to the concerned university which has jurisdiction and is empowered under the relevant Rules and Regulations and other provisions of law applicable to the said university to grant affiliation. The application is accordingly rejected.

I.A. No.15 of 2005

This application has been moved by erstwhile Jaipuria University (Respondent No.42 to the writ petition) praying that AICTE and UP Technical University be directed to grant one time approval and affiliation for the 22 students who have been pursuing a full time regular course of study of the prescribed syllabus for MBA, meeting the standards set down by the AICTE and have also appeared in the 1st year examination conducted by the U.P. Technical University. Learned counsel has submitted that Jaipuria University is running an institute for imparting MBA degree in Noida, which is affiliated to U.P. Technical University and 60 students are studying there. The notification establishing the Jaipuria University was issued on 6.9.2003 and thereafter 22 students were admitted for MBA course in the said university. After the decision in the case of Prof. Yashpal (supra), the university ceased to exist. As a result, the said 22 students are

facing problem regarding continuance of their M.B.A. course. The record shows that an application was given to the Vice-Chancellor, U.P. Technical University seeking affiliation regarding those 22 students. However, vide letter dated 19.6.2005 of the Registrar of U.P. Technical University, it was informed that the affiliation was not found justifiable by the Chancellor of the university. In our opinion, the relief sought cannot be granted in an application moved in an already decided writ petition on entirely new facts pleaded for the first time. The application is accordingly rejected.

I.A. No.18 of 2005

This application has been moved by a student who claims to have been studying in the Mumbai Campus of the erstwhile Rai University and the prayer made is that a direction be given to either affiliate the Off Campus to Chhattisgarh University or to Mumbai University or to any other university in Maharashtra. For the reasons given in Special Leave Petition (Civil) No.10506 of 2005, it is not possible to grant the first prayer regarding affiliation with a University in Chhattisgarh.

Learned counsel has submitted that there are two enactments, namely, Maharashtra Educational Institutions (Transfer of Management) Act, 1971 and Maharashtra Educational Institutions (Management) Act, 1976, which empower the State Government to appoint Administrator over an educational institution and having regard to the fact that Rai University has ceased to exist, some direction should be issued to the Government of Maharashtra to protect the interest of the students. In our opinion, it will not be proper for us to issue any direction as prayed for by the learned counsel for the applicant as the State of Maharashtra was not a party to the writ petition. It is always open to the applicant or any other student to approach the State Government for appropriate relief. The application is accordingly rejected.

I.A. No.19 of 2005

This application has been moved by certain students of erstwhile ICFAI University (respondent no.73 to the writ petition), who claim to have been studying in a five-year law course. The first prayer made in the application is that a clarification may be issued that the direction contained in paragraphs 45 and 46 of the judgment would apply to all the existing students who are studying in the Off Campus law school of erstwhile ICFAI University at Hyderabad. For the reasons given in Special Leave Petition (Civil) No.10506 of 2005, such a prayer cannot be granted.

In the alternative, learned counsel has submitted that the law school of erstwhile ICFAI University may be affiliated to any university in Andhra Pradesh. It is not possible to issue such a direction as the State of Andhra Pradesh or any university in the said State were not even a party to the writ petition. It is always open to the law school to move an appropriate application seeking affiliation to a University which has jurisdiction and is empowered under the relevant Rules and Regulations and other provisions of law applicable to the said university. The application is accordingly dismissed.

I.A. Nos. 9, 16 and 17 of 2005

In view of the orders passed in the aforesaid IAs, no order needs to be passed in these IAs. The same are accordingly disposed of.

Civil Writ Petition No.267 of 2005

Divya Tiwari & Ors.

... Petitioners

Versus

State of Chhattisgarh & Ors.

... Respondents

This petition under Article 32 of the Constitution of India has been filed by three petitioners who claim to be students of an Off Campus of an erstwhile private university known as SRI University, which is situate in

Akbarpur, District Ambedkar Nagar in the State of U.P. The prayer made in the writ petition is that a writ of mandamus be issued directing the University and the Off Campus to hold their examination.

In view of the decision in the case of Prof. Yashpal (*supra*), the University has ceased to exist and the Off Campus being outside the State of Chhattisgarh, no relief can be granted. The writ petition is accordingly dismissed.

JUDIS