

CASE NO.:
Appeal (civil) 5147-5148 of 2005

PETITIONER:
LAXMI SHARMA & ORS.

RESPONDENT:
V.C., CHHATRAPATI SAHUJI MAHARAJ UNIVERSITY & ORS.

DATE OF JUDGMENT: 23/06/2006

BENCH:
Dr.AR. Lakshmanan & Altamas Kabir

JUDGMENT:
J U D G M E N T
WITH
CIVIL APPEAL NOS. 5149-5150/2005

HIMALAYA AYURVEDIC MEDICAL COLLEGE .Appellant
Versus
CHANCELLOR, SRI SHAHUJI MAHARAJ
UNIVERSITY& ORS.

.Respondents

ALTAMAS KABIR, J.

The appellants in Civil Appeal Nos.5147-5148/2005 were admitted as students by the Himalaya Ayurvedic Mahavidyalaya between 1992 to 1995 in its Medical College being the appellant in Civil Appeal Nos. 5149-5150/2005. Inasmuch

as, the aforesaid college had not obtained affiliation from any recognized university the appellants in the first set of appeals were not allowed to appear for examinations conducted by the university.

It may be indicated that soon after the aforesaid college was established in 1993, the college applied for affiliation under Section 37 (2) of the Uttar Pradesh State University Act for the course of Ayurveda Acharya, Bachelor of Ayurvedic Medicine/Surgery, (hereinafter referred to as 'the BAMS') to the Vice-Chancellor of Shri Sahu Ji Maharaj University, Kanpur, now known as Chhatrapati Sahu Ji Maharaj University. According to the college, it admitted three students during the academic year 1992-1993, 15 students for the academic year 1993-1994. Lastly, the college admitted 23 students for the academic year 1994-1995 without having obtained affiliation with the aforesaid university.

It is only after such admissions had been completed that the State Government and the Secretary, Medical Education, constituted a team to inspect the aforesaid college to submit a report for the purpose of grant of affiliation to the college. The said team members of the Central Council of Indian Medicine inspected the institution on 12th August, 1995 and from the inspection report which has been made part of the records, it appears that it was the opinion of the Committee that the college had the necessary infrastructure for being granted affiliation to the university. On the basis of the report of the expert panel, the Vice Chancellor of the university by his order dated 20th January, 1997, granted temporary affiliation to the college for one year with effect from 1st July, 1996. Since the rules do not provide for grant of temporary affiliation, the college reiterated its prayer for grant of permanent

affiliation and in connection therewith, the State Government wrote a letter to the Central Council of Indian Medicine on 8th January, 1998 stating that if the Council gave its consent then the Government would have no objection in recommending the case of the Himalaya Ayurvedic Mahavidyalaya for grant of permanent affiliation. The Central Council of Indian Medicine after conducting a further inspection of the medical college granted permission to the college for conducting the BAMS course for the academic year 1997-1998, subject to prior permission of the State Government and affiliation to the university.

However, as the appellants in the first set of appeals were not allowed to appear for the first professional examination by the university, they filed two writ petitions, being nos. 29413/1998 and 30840/1998, before the Allahabad High Court for being granted permission to appear in the examination. By its interim order dated 11th September, 1998, the Allahabad High Court allowed the said appellants to appear in the first professional BAMS examination subject to the condition that their results would be subject to the decision in the writ petition. Similarly, by its interim order dated 22nd September, 1998 in Writ Petition 30840/1998, another set of appellants was permitted to appear in the first professional session of the BAMS examination on the same conditions. When a similar situation occurred in 1999, another writ petition was filed being numbered as 11502/1999 in which similar orders were passed.

On 8th August, 1999, an inspection team constituted by the Vice-Chancellor submitted its report reiterating that the college fulfilled all the requisite norms for grant of permanent affiliation. Accordingly, the said inspection team recommended that the college be granted permanent affiliation in accordance with the provisions of Section 37 (2) of the University Act.

While the aforesaid matters were pending, the Himalaya Ayurvedic Mahavidyalaya filed a writ petition, being No.12643/2000, on 10th April, 2000, before the Allahabad High Court for a direction upon the concerned authorities to grant permanent affiliation to the institution. In the said writ petition, an interim direction was given to the State Government to decide the matter of grant of affiliation to the college within two weeks. On 31st October, 2000, the Chancellor of the university granted ex-post facto extension of temporary affiliation of the college to the university retrospectively from 1st July, 1997 to 30th June, 1998. In view of grant of such temporary affiliation, the university allowed some of the students to sit for the examinations and their results were also declared. In the meanwhile, on 11th September, 2002, the Allahabad High Court by an order passed in W.P.No.12643/2000 allowed the appellants in the first two set of appeals to appear in the 3rd final professional examination with a further direction to declare the results of such students who had passed subject to the final decision of the writ petition. It appears that a Special Leave Petition, being No. 21312/2002, was filed by the respondents herein against the said order of the High Court, but the same was dismissed on 22nd November, 2002.

On 4th April, 2003, the Registrar of the University requested the college to fill the examination forms and to submit the examination fee of the students so that their results could be declared. The said directions were duly complied with, but it appears that till date the

results of the students have not been declared.

Various writ petitions filed by the college and the students appeared for final hearing before the High Court and by its order dated 13th May, 2003, the High Court upon holding that there was no provision for grant of provisional affiliation under the U.P. State Universities Act dismissed all the writ petitions.

While dismissing the said writ applications by a common order, the Court observed that since temporary affiliation had been granted to the college with effect from 1st July, 1996 those students who had been admitted before the said date and after 30th June, 1998, had been so admitted illegally in the absence of any affiliation and as such their cases could not be considered. Even in respect of the students who had been admitted between 1st July, 1996 and 30th June 1998, when the college had been granted temporary affiliation, the High Court was of the view that notwithstanding any hardship that such students may have to suffer, the Court could not direct that they should be allowed to sit for the examination or that their results should be declared.

Aggrieved by the said judgment and order of the Allahabad High Court, both the college as well as the students who had been affected, filed several Special Leave Petitions which were admitted on 18th August, 2005 and were, thereafter, posted for hearing. The views expressed by the Allahabad High Court is a reflection of the views expressed by this Court in several matters where it had been called upon to consider the plight of students who had been admitted to colleges which did not have the necessary infrastructure for grant of affiliation to a recognized university. In several cases, this Court was compelled to reject the prayers made on behalf of such students to allow them to appear in the university examinations since they had already completed a certain number of years of study in the different course conducted by such colleges. The Allahabad High Court merely followed what had been dealt with by this Court in different matters and we too would have followed suit but for certain special circumstances which have persuaded us to adopt a different course of action in the present set of appeals.

Admittedly, the college had applied for affiliation soon after it was established in 1993 and pursuant to its application an inspection was conducted by a team consisting of members constituted by the State Government and the Secretary, Medical Education. Such inspection was conducted on 12th August, 1995 and a recommendation was made that the college was suitable for grant of affiliation with the university. On the basis of such inspection and recommendation, the college was granted temporary affiliation to the Respondent No.1-university and pursuant to another inspection conducted by the Central Council of Indian Medicine, the college was granted further permission to conduct the Ayurveda Acharya Course for the session 1997-1998.

The matter did not rest there and a third inspection was conducted by an inspection team constituted by the Vice Chancellor of the university which submitted its report on 8th August, 1999 recommending grant of permanent affiliation to the college.

It is, therefore, evident that from 1995 onwards during all the three inspections conducted by the different authorities the college was found suitable for grant of permanent affiliation to the university and, in fact,

affiliation was granted to the college from 1st July, 1996 till 30th June, 1998. Students who had been admitted in the college during this period were allowed by the university to appear for the final examination through other institutions since the temporary affiliation granted to the college had not been extended after 30th June, 1998.

As the facts disclosed indicate, there was always an expectation in the mind of the college authorities that permanent affiliation would be granted to the college, which also encouraged students to take admission in the hope of being allowed to sit for the final examination of the university once such permanent affiliation was granted to the college. The High Court also appears to have been convinced to some extent in this regard on account of the interim orders passed from time to time allowing the students to appear for the 1st, 2nd and 3rd professional sessions of the BAMS examination, subject of course to the condition that the results in respect thereof would be subject to the decision in the writ petition. On 11th September, 2002, the last such interim order was passed in W.P. No. 12643/2000 and the same reads as follows:-

"Until further orders we direct that the students of petitioner No.1 shall be permitted to appear in B.A.M.S. examination, and the results of those who have passed shall be declared, but this shall be subject to final decisions of the writ petition."

It is another matter that consequently all the writ petitions were dismissed on account of the fact that permanent affiliation had not been granted to the college. Appearing for the appellants in the first two appeals, Mr. Uday Lalit, learned senior counsel, referred to the inspection report of the inspection held on 12th August, 1995, by the inspection team of the Central Council of Indian Medicine wherein in paragraph 5 the year-wise list of students admitted in the college has been spelt out. The said list indicates that at the time of inspection there were 23 students in the IVth year and Mr. Lalit confined his submissions to the said 23 students only. He made a fervent appeal that since the said 23 students had been allowed by different interim orders to appear in the final examinations of each of the three sessions of BAMS course, results of those who had passed should be declared in pursuance of the order dated 11th September, 2002. He submitted that the university should be directed to declare at least their results, particularly when a Special Leave Petition filed by the respondents against the said order had been dismissed by this Court on 22nd November, 2002.

This Court has no doubt indicated on various occasions that mushrooming educational institutions, without having the requisite infrastructure for grant of recognition, are harmful to the interest of the students and that the practice of allowing students of such institutions to appear at the university examinations is to be deprecated. However, the facts of this case, as we have pointed out earlier, are different from those set of cases persuading us to take a different view. Three inspections conducted by three different bodies, including the team constituted by the Vice-Chancellor, came to the common conclusion that the college merited grant of permanent affiliation. It is quite likely that such a state of affairs prompted the High Court to pass the different interim

orders by which the students in question were allowed to complete the BAMS course and to also appear in the final examination.

In such special circumstances, we allow Civil Appeal Nos. 5147-5148/2005 only as far as the 23 students of the IVth year indicated in paragraph 5 of the inspection report conducted by the members of the Central Council of Indian Medicine on 12th August, 1995, being Annexure P-2 to the SLPs, are concerned, but our judgment is not to be treated as a precedent in future cases. The university is directed to declare the results of the said 23 candidates who completed the course and appeared for the final professional BAMS examinations.

As far as the appeals preferred by the college against the common judgment and the order passed on the review application are concerned, we agree with the view expressed by the High Court that it is not for the Court to direct the concerned authorities to grant affiliation as that would amount to trespassing on the jurisdiction of the university. We can only request the university to consider the grant of such affiliation in view of the several inspection reports and the recommendations made by the inspection teams for grant of such recognition. The appeals preferred by the college are, therefore, disposed of with a direction upon the university to consider the grant of permanent affiliation to the college after giving the college authorities a reasonable opportunity of being heard. The parties will bear their own costs.