

CASE NO.:
Appeal (civil) 2698 of 2007

PETITIONER:
Kurmanchal Inst. Of Degree & Diploma & Ors

RESPONDENT:
Chancellor, M.J.P. Rohilkhand Univ. & Ors

DATE OF JUDGMENT: 17/05/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2698 OF 2007
[Arising out of SLP (Civil) No. 5023 of 2006]

W I T H

CIVIL APPEAL NO. 2699 OF 2007
[Arising out of SLP (Civil) No. 9522 of 2006]

S.B. SINHA, J :

1. Leave granted.

2. Kurmanchal Institute of Degree and Diploma is a study centre. It is recognized by Mahatma Jyotiba Phule Rohilkhand University (for short "the University"). It was constituted in the year 1975 by issuance of a notification under Section 4(1-A) of the Uttar Pradesh State Universities Act, 1973 (for short "the Act") The State, however, is yet to make the first ordinance for the University.

3. Section 5 of the Act deals with territorial exercise of powers providing that the powers conferred on each University shall be exercisable in respect of the area for the time being specified against it in the Schedule. The University is to exercise its jurisdiction within the limits of districts Badaun, Bareilly, Bijnor, Jyotiba Phule Nagar, Moradabad, Pilibhit, Rampur and Shahjahanpur in terms of Entry 7 of the Schedule appended to the Act

4. The Executive Council of the University was constituted in terms of Section 51 of the Act. The power to make ordinance is contained in Section 51 of the Act, clauses (a), (b) and (h) of Section 51(2) whereof read as under:

"(2) Without prejudice to the generality of the provisions of sub-Section (1), the Ordinance shall provide for the following matters, namely-

(a) the admission of students to the University and their enrolment and continuance as such;
(b) the courses of study to be laid down for all degrees, diplomas and other academic distinctions of the University;

(h) all matters relating to correspondence courses and private candidates;"

5. Section 52 of the Act provides for the manner in which the ordinance is to be made. Sections 52(2) and 52(2-A) of the Act read as under:

"(2) The First Ordinances of the Universities of

Kumaun and Garhwal and of any other University to be established after the commencement of this Act shall be made by the State Government by notification in the Gazette,

(2-A) Until the First Ordinances of the Purvanchal University are made under sub-section (2), the Ordinances of the University of Gorakhpur, as in force immediately before the establishment of the said University, shall apply to it subject to such adaptations and modifications as the State Government may, by notification, provide."

6. We may at this stage notice the facts of the case.

In its meeting on 1.07.2003, the Academic Council granted permission to start 'distance education'. By a letter dated 17.07.2003, the Vice-Chancellor of the University sought permission to start courses through Distance Education. On 1.08.2003, the Registrar of the University sent a letter to the Personal Secretary of the Chancellor enclosing therewith a copy of the draft ordinance for launching Degree, Diploma and Certificate Courses through distance education for obtaining his approval. The Ordinances governing Distance Education programme were framed in exercise of the power conferred under Section 52 of the Act. The Registrar of the University by a letter dated 27.08.2003 sought permission from the Principal Secretary, Higher Education to start the distance education programme. A letter dated 20.01.2004 was issued from the Office of the Chancellor to the Principal Secretary, Higher Education, State of U.P. wherein it was stated:

"As per section 42(2) of the Uttar Pradesh State University Act there is provision of notification of the first ordinance of the University by the Government, but the first ordinance of Mahatma Jyotiba Phule Rohilkhand University has not been notified by the Government till now.

Therefore, in the circumstances mentioned above by sending the photo copy (with annexures) of the ordinance of Mahatma Jyotiba Phule Rohilkhand University on the above cited subject I am directed to state that after examining, the said ordinance may be included in the first ordinance of Mahatma Jyotiba Phule Rohilkhand University and take necessary action."

7. On 24.02.2004, a letter was sent by the Joint Secretary, Higher Education \026 I, U.P.Government, to the Registrar of the University wherein approval to include the ordinance of Distance education was granted. In reply thereto a letter dated 25.02.2004 was sent by the Registrar of the University with the request that the ordinances as sent by the University may be included in the First Ordinances as Chapter No. XXII which is to be framed by the State Government. By a letter dated 19.03.2004, the State Government granted approval to run the diploma and certificate courses of the University through distance education mode. Since the degree course was not included in the letter issued by the State Government dated 05.04.2004, the Registrar of the University requested the State Government to grant permission for starting distance programme under distance education mode.

8. The Chancellor, as noticed hereinbefore, disapproved the proposal for starting a new course in distance education, by reason of the impugned order dated 12.08.2005, opining:

"From the above analysis, it is clear that the

distance education programme started by Mahatma Jyotiba Phule Rohilkhand University, Bareilly is wholly irregular and irresponsible work, which is cancelled with immediate effect and the University is directed that all the activities related to these programmes be closed immediately. It is required of the University that the students who have got enrolled for these programmes the correspondence courses be started in respect of those students and the students who do not want to participate in the correspondence courses, their fee be refunded. In addition to this the Vice Chancellor, Kulsachiva and Financial Controller and other concerned officers and teachers of Mahatma Jyotiba Phule Rohilkhand University, Bareilly are warned that such type of illegal programme should not be started by the University in future."

9. A writ petition was filed questioning the legality of the said order by the appellants herein which was marked as Civil Misc. Writ Petition No. 75902 of 2005. A Division Bench of the Allahabad High Court by an order dated 20.12.2005 dismissed the said writ petition relying on a judgment and order dated 25.07.2005 passed by another Division Bench of the said Court in Civil Misc. Writ Petition No. 47825 of 2005 titled Allahabad College of Engineering and Management & Ors. v. His Excellency The Chancellor, M.J.P. Rohilkhand & Ors. In the said judgment, the Division Bench inter alia opined that in absence of the first ordinance issued by the State, the initiation of the distance education programme was illegal.

10. The Chancellor in his order dated 16.04.2005 noticed that various universities established under the provisions of the Act had been conducting courses under the distance education programme without any ordinance having been made in this regard and it was noticed by the Chancellor that many Universities have opened such study centres where regular courses had been going on. The Chancellor, therefore, issued a direction for stopping such courses which were being run without following the procedure prescribed by law and the Universities were directed to furnish information within a week. The Chancellor by an order dated 13.06.2005 further directed that in spite of specific directions contained in the order dated 16.04.2005 some of the universities not only continued with the courses but others had even issued fresh advertisements which according to the learned Chancellor was a serious matter and as such a direction to the effect that the running of such courses should be immediately stopped and the study centres should also be closed was issued. The Chancellor further noticed that such study centres had been opened by various universities wherefor an extreme step was necessary to be taken.

11. The Division Bench of the High Court opined that in certain circumstances the Chancellor has the power to act suo motu and the circumstances mentioned in his orders were exceptional ones writing invocation thereof.

12. Ms. Sunita Aggarwal, learned counsel appearing on behalf of the appellants, inter alia would submit that as the appellants were not parties in the earlier writ proceedings, the decision rendered therein was not binding on them. Had the appellants been parties, it was urged, they could have shown that all the necessary steps for making an ordinance had been taken. The University, the learned counsel would contend, having granted permission to start the courses pursuant where to and in furtherance whereof students having been admitted, it will cause a great hardship to the students if they are forced to stop their studies and switch over to the distance education programme.

13. Mr. Ravi Prakash Mehrotra, learned counsel appearing on behalf of the respondents, on the other hand, submitted that such study centres cannot

be legally permitted to be opened beyond the territorial jurisdiction of the University. It was also submitted that as use of such study centres has financial aspects, a previous approval of the State was also required to be taken in terms of Section 52(3)(c) of the Act.

14. The learned counsel would contend that in any event this Court should take a holistic view of the matter as only 150 students have not opted for distance education course in terms of the order passed by the Chancellor and they are in the first semester only. It was pointed out that there exists a distinction between a diploma course, on the one hand, and a degree course on the other. Although no objection certificate (NOC) has been granted to certificate courses, no such permission had been granted for degree courses.

15. The University Grants Commission, which has been constituted in terms of Entry 66, List I of the Seventh Schedule of the Constitution of India, has framed regulations in the year 1985 relating to distance education, from a perusal whereof it would appear that the study centres are such which are established for helping the students who are undergoing distance education course.

16. It appears that in order to satisfy itself as to whether the study centre of the appellants have sufficient infrastructure or not, this Court appointed a Committee. The Committee submitted its report wherein it was inter alia stated:

"3) The Committee noted that KIDDE does not offer any academic activity of its own and supporting either distance education programmes of other universities or running training programmes for private institutions with help of guest or invited faculty on pay basis.

4) The Committee, based on the availability of academic facilities and infrastructure, is of the opinion that KIDDE has basic amenities to serve as a study centre for delivering distance education programmes. The laboratory facilities, however, have to conform to curriculum requirements.

7) The Committee noted that the State Government had restricted MJPRU distance education programmes only to certificates and diplomas without any specific mention on the jurisdiction to offer these programmes, where as per the Act of the University, the jurisdiction of the University is limited to 7 districts of Uttar Pradesh. University by its own offered distance education programmes through 85 study centres of which 40 centres located out of the State. University also offered Degree programmes through distance mode that too in some disciplines not available in campus in formal stream."

17. Although we are inclined to agree with the learned counsel appearing on behalf of the appellants that for all intent and purport the requirements of law for making an ordinance by the Executive Council of the University had been done pursuant whereunto new courses could be opened, we are, however, unable to persuade ourselves to accept the contention that such study centres should be permitted to be operated beyond the territorial jurisdiction of the University. Section 5 of the Act clearly states in regard to the territorial jurisdiction of the University. In terms of the Schedule appended to the Act, the territorial jurisdiction of the University is confined only to seven districts, Nainital not being one of them. Each University in the country which is recognized under the University Grants Commission Act must have their own territorial jurisdiction save and except for the Central Universities or specified in the Legislative or Parliamentary Act.

18. The submission of the learned counsel that for the purpose of running a distance education course, extra-territorial activities must be carried out may not be entirely correct. It is one thing to say that the University takes recourse to the correspondence courses for conferring degrees or diplomas but it would be another thing to say that study centres would be permitted to operate which requires close supervision of the University. In a study centre, teachers are appointed, practical classes are held and all other amenities which are required to be provided for running a full-fledged institution or college are provided. Such an establishment, in our opinion, although named as a study centre, and despite the fact that the course of study and other study materials are supplied by the University cannot be permitted to be established beyond the territorial jurisdiction of the University. Nainital is outside the territorial jurisdiction of the University. In fact it is not situated in the State of U.P. and, thus, beyond the provisions of the Act.

19. The submission of the learned counsel that the UGC Regulations 1985 provides for study centre of this nature cannot be countenanced. The UGC Regulations being a subordinate legislation must be read with the principal Act. The subordinate legislation will be ultra vires if it contravenes the provisions of the principal Act. [See Vasu Dev Singh & Ors. v. Union of India & Ors. 2006 (11) SCALE 108] A statutory authority, it is well known, must act within the four-corners of the statute. A'fortiori it has to operate within the boundaries of the territories within which it is to operate under the statute. Such territorial jurisdiction of the University must be maintained as otherwise a chaos would be created. If distance education of such a nature is to be encouraged, the only course would be to suitably amend the provisions of the Act.

20. We are not oblivious that in certain situations the territorial jurisdiction in relation to a University may not be strictly enforced as was done in the case of Sushanta Tagore & Ors. v Union of India and Others [(2005) 3 SCC 16] but in the said matter, this Court was concerned with a totally different situation.

21. We, thus, are of the opinion that in this case we need not go into the other submissions raised by Ms. Aggarwal.

22. The study centres of the appellants being situated in Nainital, is beyond the territorial jurisdiction of the respondent university. No writ of or in the nature of mandamus as has been prayed for in the writ petition can be issued.

23. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly. No costs.