

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 1199 of 2016
In
SPECIAL CIVIL APPLICATION NO. 1452 of 2016
With
CIVIL APPLICATION NO. 11072 of 2016
In
LETTERS PATENT APPEAL NO. 1199 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE M.R. SHAH sd/-

and

HONOURABLE MR.JUSTICE B.N. KARIA sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

RAHULKUMAR RAJANPRASAD DAVE & 10....Appellant(s)

Versus

STATE OF GUJARAT & 2....Respondent(s)

Appearance:

MRS NISHA M PARIKH, ADVOCATE for the Appellant(s) No. 1 - 11

MR. DHAWAN JAYSWAL ASST. GOVERNMENT PLEADER for the Respondent(s)
 No. 1 - 2

MR MITUL K SHELAT, ADVOCATE for the Respondent(s) No. 3

CORAM: HONOURABLE MR.JUSTICE M.R. SHAH

and

HONOURABLE MR.JUSTICE B.N. KARIA

Date : 08/09/2017

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

Feeling aggrieved and dissatisfied with impugned judgment

and order passed by the learned Single Judge passed in Special Civil Application No. 1452 of 2016 by which, learned Single Judge dismissed the said petition, original petitioners have preferred present Letters Patent Appeal under Clause 15 of the Letters Patent Appeal.

2.0. The facts leading to the present Letters Patent Appeal in nutshell are as under:

2.1. That the original petitioners submitted certificate of Post Graduate issued by Madurai Kamaraj University, Tamilnadu (hereinafter referred to as the "MK University"). It was the case on behalf of the petitioner that all of them have passed Post Graduate off Campus, Center of MK University. However, the original concerned respondents did not issue the call letters to the original petitioners on the ground that their post graduate from MK University by stating Off Campus Centre in State shall not be recognized and / or considered as eligible. Therefore, the original petitioners preferred aforesaid Special Civil Application before this Court and prayed for following reliefs:

"(A) This Honble Court may be pleased to issue an appropriate writ, order or direction quashing and setting aside the No Call Letters at Annexure-C colly, issued to the petitioners and this Honble Court may be further pleased to direct the respondents to prepare merit list on the basis of merit marks prepared by adding marks for Post Graduation so far as the petitioners are concerned and thereafter, to issue call letters for the interview starting from 27.01.2016 for the selection on the posts of Vidhyasahayak in the State of Gujarat;

(B) This Honble Court may be pleased to issue an appropriate writ, order or direction to give deem date of appointment to the petitioners in case of their appointment at subsequent stage;"

2.2 It was the case on behalf of the original petitioners that as the MK University was recognized under the provisions of UGC Act, 1956 and when they studied their recognition was continued, the certificate issued by the MK University be considered as valid. However, on the other hand, it was the specific case on behalf of the University Grant Commission (hereinafter referred to as the "UGC") that MK University is a State University and it was Act of State Legislature as a State University. It was the specific case on behalf of the UGC that UGC has not granted any approval to MK University to open Off Campus or study centre anywhere (outside Tamilnadu). Therefore, it was submitted that MK University can not open study centre/off campus centre beyond the territorial jurisdiction of the State (State of Tamilnadu). It was submitted that therefore, in any study centre operated by the MK University in Gujarat or other State is illegal. In support of his above submission, reliance was placed upon the decision of the Hon'ble Supreme Court in the case of Prof. Yaspal and Another vs. State of Chhattisgarh and ors reported in (2005) 5 SCC 420 and in the case of Kurmanchal Institute of Degree & Diploma and Ors vs. Chancellor, M.J.Rohilkhand University and Ors reported in (2007) 6 SCC 35.

That considering the submissions made on behalf of the respective parties and accepting the stand and / or submissions on behalf of the UGC, by impugned judgment and order, the learned Single Judge has dismissed the aforesaid petition. While dismissing the aforesaid petition, the learned Single Judge has also observed that it is very unfortunate that none of the authorities of the State

Government or the UGC took appropriate steps to see that such Study Centres of the distance learning programmes outside its territorial jurisdiction are stopped. The learned Single Judge has further observed that the students interested to pursue their post graduation would get misled unmindful when it would come to meet such degree of the post graduation would not be considered. Thereafter, the learned Single Judge has further observed that these petitions should be an eyeopener for the State Government as well as for the University Grants Commission to take appropriate steps against the M K University so far as their Study Centres which are operating in different States are concerned.

2.3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge, the original petitioners have preferred present Letters Patent Appeal under Clause 15 of the Letters Patent.

3.0. Ms. Nisha Parikh, learned advocate for the appellants - original petitioners has reiterated what was submitted before the learned Single Judge. It is submitted on behalf of the appellants-original petitioners that as at the relevant time MK University was recognized by the UGC and was a recognized University and therefore, certificate of post graduate issued by the MK University ought to have been considered as valid.

3.1. However, it is required to be noted that even as per the letter dated 27.05.2014 addressed by the Deputy Director to the Vice Chancellor, M K University the territorial jurisdiction in respect of

universities for offering programmes through distance mode will be as per the policy of UGC on territorial jurisdiction and opening of off campus/centres/study centres as mentioned in the UGC notification No.F.27-1/2012 (CPP-II), dated 27th June, 2013. It does not seem to be in dispute that M K University is a State University and was established by an Act of State Legislature as a State University and is empowered to award degrees as specified by the UGC under 22 of UGC Act, 1956. The territorial jurisdiction of the MK University to open Off Campus or Study Centre was State of Tamilnadu only. It appears that UGC had not granted any approval to the MK University to open Off Campus or Study Centre anywhere. Thus, MK University as such was not authorized to open study centre / Off Campus Centre beyond the territorial jurisdiction of State of Tamilnadu. It is not in dispute that original petitioners claim their right on the basis of their studies in the Off Campus Centre / Study Centre in the State of Gujarat. Therefore, the petitioners study from the Off Campus or the Study Centre in Gujarat would not be authorized or legal and void.

4.0. At this stage, decision of the Hon'ble Supreme Court in the case of Prof. Yaspal and Another (supra) is required to be referred to. In the aforesaid decision, while considering *vires* / constitutional validity of the Chhattisgarh Niji Kshetra Vishwavidhyalaya (Sthapana Aur Viniyman) Sanshodham Adhiniyam, 2004 ("the amending Act"). The Hon'ble Supreme Court has observed and held that the aforesaid Act to be ultra vires to Article 245(1) of the Constitution of India and has held that the said Act which

specifically makes a provision enabling a university to have an off-campus centre outside the State as defined in Section 2(f) of the amended Act is clearly beyond the legislative competence of the Chhattisgarh Legislature.

4.1. At this stage, the decision of the Hon'ble Supreme Court in the case of Kurmanchal Institute of Degree & Diploma and Ors (supra) also requires to be referred to and considered. In the aforesaid decision, the Hon'ble Supreme Court has negated the contention that such study centre should be permitted to be operated beyond the territorial jurisdiction of the concerned university.

4.2. Applying the law laid down by the Hon'ble Supreme Court in the aforesaid decisions to the facts of the case on hand, and when it is specifically mentioned in the MK University Act, 1965 that it extends to the area comprising the districts of Madurai, Ramanathapuram, Tirunelveli and Kanya Kumari in the State of Tamilnadu, the Study Centre/ Off Campus of MK University beyond the territorial jurisdiction of aforesaid District in the State of Tamilnadu and even beyond the State of Tamilnadu are illegal and petitioners cannot claim any right to get appointment on the basis of such certificates obtained by studying in such Off Campus / Study Centre in the State of Gujarat.

4.3. In view of the above, as such learned Single Judge is justified in dismissing the petition. We are in complete agreement with the view taken by the learned Single Judge. No interference of this

Court is called for.

5.0. During the course of hearing of the present appeal, we called upon the learned AGP to place on record the steps taken by the State Government to stop such study centres / off campus centres in the State of Gujarat so that students of the State of Gujarat are not duped. To the aforesaid, affidavit in reply is filed on behalf of the State Government affirmed by the Under Secretary, Education Department, Sachivalaya, Gandhinagar. In the affidavit in reply, State Government pointed out the steps taken which is stated in para 4 as under:

"4. That by way of present affidavit the answering respondent would like to bring to the kind notice of this Hon'ble Court the effective steps taken by the State Government to bring awareness amongst the Students to become cautious before getting admission in such unauthorized study centers and efforts to stop such centers in the larger interest of the Students:

Sr.No	Date	Particulars
1.	20.02.2016	The Commissioner, Higher Education had send Communication to Dean, Gujarat University to take effective steps to stop the unauthorized running of Self-Finance Colleges and Private Institutions without affiliation and runs against the Guidelines issued by the UGC. The copy of the letter dated 20.02.2016 is annexed herewith and marked as Annexure-R1 .
2.	18.05.2016	Deputy Director, Commissionerate of Higher Education, Gujarat State had issued instructions to all the major Universities of Gujarat State whereby it was informed to publish the press note for issuing awareness regarding the running of non-affiliated and bogus institutes under the area of Jurisdiction of respective University in the interest of the Students. The copy of the letter

		dated 18.05.2016 alongwith press notes are annexed herewith and marked as <u>Annexure-R2collectively.</u>
3.	01.07.2016	It was communicated to all the Universities to published the list of affiliated courses in view of the Public Interest Litigation No. 92 of 2016. The copy of the letter dated 01.07.2016 is annexed herewith and marked as <u>Annexure-R3.</u>
4.	04.07.2016 21.07.2016	In view of Circular dated 04.07.2016 issued by the State of Gujarat through Education Department, it was communicated to all the Universities to update the list of the authorized colleges and institution and also affiliated courses on the respective websites of the Universities for spreading awareness amongst the parents as well as to the Students. The copy of the Circular dated 04.07.2016 is annexed herewith and marked as <u>Annexure-R4.</u>
5.	05.08.2016 27.09.2016	In view of the order dated 11.04.2016 passed in Special Civil Application no. 1452 of 2016 the necessary instructions was issued to all the Universities to initiate appropriate steps. And further on 27.09.2016 the State Government through Education Department had also issued Circular. The copy of the letter dated 05.08.2016 and Circular dated 27.09.2016 are annexed herewith and marked as <u>Annexure-R5collectively.</u>
6.	20.10.2016 31.08.2016	The necessary details have been called for from all the University regarding steps taken in view of the order passed by this Hon'ble Court to stop unauthorized Study Centers run outside the Territorial Jurisdiction of Madurai Kamraj University. The copies of the letters dated 20.10.2016 and 31.08.2017 are annexed herewith and marked as <u>Annexure-R6Collectively.</u>
7.	31.08.2017 01.09.2017	In view of the queries raised by the State Government, the respective Universities had replied the details submitting the information about such

		Study Centers and even one M.S. University had undertaken from the one such study centers who undertakes that after the facts came to the notice of such illegal activity related to Madurai University, the same had been discontinued. The copies of the replies of different Universities are annexed herewith and marked as <u>Annexure-R7 Collectively.</u>
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5.1. The steps taken by the State are noted. By dismissing the appeal , it is hoped that the similar steps should be taken and / or continued to be taken by the State Government to stop such unauthorized study centres / off campus centre so that the student of the State of Gujarat do not have to suffer and / or are not duped.

6.0. In view of the above, there is no substance in the present appeal and same deserves to be dismissed and is accordingly dismissed.

In view of dismissal of Letters Patent Appeal, Civil Application stands dismissed.

sd/-

(M.R. SHAH, J.)

sd/-

(B.N. KARIA, J.)

Kaushik