

(2000) 12 P&H CK 0057

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 8988 of 2000

Narinderpal Kaur

APPELLANT

Vs

Punjabi University

RESPONDENT

Date of Decision: Dec. 12, 2000

Acts Referred:

- Constitution of India, 1950 - Article 226, 227, 30

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Mr. S.M. Tripathi, for the Appellant; Mr. Rajiv Malhotra, Mr. P.S. Patwalia and Mr. G.R.P. Singh, for the Respondent

Judgement

R.L. Anand, J.

By this order, I dispose of two writ petitions No. 8968, (Narindcupal Kaur and others v. Punjabi University etc.) and 10262, (Aarti and others v. Punjabi University etc.) of 2000, as in my opinion both the writ petitions can be disposed of by common judgment as the common question of law arises in both the writ petitions.

2. For the sake of facts, I taking the same from CWP 10262 of 2000. However, brief mention shall also be made to the prayer clause of CWP 8988 of 2000.

3. In CWP 10262 of 2000, the petitioners have made a prayer that a writ in the nature of mandamus under Articles 226/227 of the Constitution of India be issued to the effect that the Punjabi University, Patiala, be called upon to conduct the examinations of the petitioners as well as the proforma respondents, who are the students of B.Sc. (Nursing) 1st Year in the College of Nursing for Women, Nangal Kalan (Mansa), run by the Khalsa Rural Nursing Training Institute and Hospital Trust, Nangal Kalan, District Mansa, and who are fully eligible to appear in the B.Sc. (Nursing) 1st Semester Examination, which was to be conducted in December, 1990 and the 2nd Semester Examination; which was to be conducted in June, 2000, by the Punjabi University, Patiala.

4. Narinderpal Kaur and others have prayed that the Punjabi University, Patiala, be called upon to take examination of the petitioners as well as the respondents who are students of First Professional Course, Bachelor of Physiotherapy, Khalsa Rural Nursing Training and Hospital Trust, Nangal Kalan, District Mansa, as the aforesaid students were fully eligible to appear in the 1st Professional Bachelor of Physiotherapy Examination which was to be held in June, 2000.

5. The common case set up by the petitioners is that they are the students in B.Sc. (Nursing) in the College of Nursing for Women, which is run by the Khalsa Rural Nursing Training and Hospital Trust, for the last more than one year. The course of Nursing consists of 3-1/2 years" duration which includes six semesters, followed by internship for six months. The Punjabi University, Patiala, was to conduct the examinations for two semesters - first in December, 1999 and the second in June, 2000, but so far the University has failed to discharge its statutory duty of conducting the aforesaid examinations. The petitioners allege that vide letter dated 13.5.1999, the Punjabi University issued letter No. 239/DCDC intimating the Managing Director, Khalsa Rural Nursing Training Institute and Hospital that the University had decided to grant affiliation to B.Sc.(Nursing) in the College for 1999-2000 session for intake of 100 students. Before issuing this letter, the University had also issued another letter dated 20.11.1998, vide which it was conveyed that the University in anticipation of the permission to be accorded by the Academic Council, had granted affiliation to the Khalsa Rural Nursing Training Institute and Hospital. As per the petitioners, they are fully eligible to appear in the above referred examinations which were supposed to be conducted by the Punjabi University but for the reasons best known to the University, it has not conducted the examinations. On inquiries, the petitioners were informed that now the examinations are to be conducted by the Baba Farid University, Faridkot. The grouse of the petitioners is that the Khalsa Rural Nursing Training Institute and Hospital Trust has fulfilled all the conditions as regards affiliation. Therefore, the Punjabi University is bound to hold the examinations and by not doing the same, the rights of the petitioners have been violated.

6. Narinderpal Kaur and others are also relying upon the same allegations and their stand is also common so far as the factual and legal position is concerned.

7. Notice of the writ petition was given to the respondents. There are three types of respondents in this case, i.e. the Punjabi University, Baba Farid University and the Khalsa Rural Nursing Training Institute and Hospital Trust.

8. First of all, it will be appropriate to summarise the defence of the Punjabi University. As per the University, in view of notification No. 9/25/98-5HBIII/1167 dated 22.3.1999, all the colleges and other educational institutions in the State of Punjab imparting education in Health Sciences which were previously admitted to the privileges of or affiliated to Guru Nanak Dev University, Amritsar, Punjab University, Chandigarh and Punjabi University, Patiala, or any other University shall

now be admitted for the privileges of or affiliated to Baba Farid University of Health Sciences, Faridkot, which will start conducting examinations from November/December, 1999. This notification was brought to the knowledge of the Khalsa Rural Nursing Training Institute and Hospital Trust on 8.6.1999 and with the coming into force of the notification, it is the sole responsibility of the Baba Farid University to conduct the examinations. With regard to the facts of so-called affiliation, it is the stand of the University that the Institute under reference was affiliated with the Punjabi University subject to fulfilling of certain conditions but as per the Govt. of Punjab, Department of Medical Education and Research notification dated 22.3.1999, all the colleges and other educational institutions in the State of Punjab imparting education in Health Sciences and previously admitted to the privileges of or affiliated to the Guru Nanak Dev University, Punjab University and Punjabi University are, now, to be admitted to the privileges of or affiliated to the Baba Farid University. It was also submitted that the College was permitted to start B.Sc. Nursing Degree Course for 1998-99 subject to fulfilment of certain conditions and in anticipation of the permission/approval to be accorded by the Academic Council but keeping in view the Punjab Govt. notification, the Institute did not remain affiliated with the Punjabi University. The institution was so informed on 8.6.1999. In these circumstances, the College itself had failed to discharge its obligations. The admissions made by them are at their own peril and consequences. The Punjabi University has fully discharged its obligation by informing the College about the notification. With this broad background, respondent No. 1-Punjabi University has prayed for the dismissal of the writ petition.

9. Baba Farid University has filed a separate written statement by stating that before a College can be established, it has to seek a No Objection Certificate (N.O.C.) from the State Government and affiliation with the respondent-University. The College has never sought affiliation for the said course from the Baba Farid University nor it has granted affiliation at any time to the said College, therefore, the writ petition cannot succeed. The College has never sought N.O.C. from the State Government. In fact, the State Government is in the process of investigating how the said Institute started two courses, i.e. B.Sc. Nursing and B.Sc. Physiotherapy, without obtaining N.O.C. from the State Government. Baba Farid University received a memo dated 6.7.2000 from the department of Medical Education and Research, Govt of Punjab, asking it how in the absence of the N.O.C., the courses have started. The University has informed the Govt. that it has never extended affiliation. This University is not in a position to tell how the Punjabi University had issued letter dated 11.5.1999 sought to be relied upon by the petitioners when it has ceased to undertake any examination w.e.f. 22.3.1999. No session started w.e.f. January, 1999 in the said Institution. In short, the stand of Baba Farid University is that neither it granted affiliation to the College nor N.O.C. was ever issued in favour of the College by the State Government.

10. Yet another written statement was filed by the Managing Director of the Institution. According to him, Punjabi University, Patiala, was to conduct the examinations for two semesters, first in December, 1999 and the second in June, 2000. There was a delay of one year in conducting the examinations as a result of which 80 students left the Course causing tremendous financial loss to the Trust. Vide letter dated 20.11.1998, the students were asked to get the amount of Rs. 5 lacs deposited towards Endowment Fund. This was so done as it was stated by the Punjabi University that they had allowed the Trust to collect a sum of Rs. 6 lacs from the students. Now, the doctrine of estoppel and legitimate expectation will apply. The Punjabi University has no other option but to abide by the affiliation which was rightly granted by it. In support of its case, the institute is relying upon the two documents, viz., (1) letter dated 13.5.1999, issued by the Punjabi University, and (2) letter dated 20.11.1998, Annexure R-1/T, which was issued by the Punjabi University under the signatures of Shri Balkar Singh, Dean. College Development Council, and this letter is addressed to the Managing Director of the Institute.

11. In rebuttal respondent No. 1 is relying upon the notification dated 22.3.1999 and the correspondence between the Govt. and the University.

12. On the contrary, respondent No. 2 is relying upon the correspondence between the Punjabi University and the Institute.

13. In CWP 8988 of 2000, the petitioners are relying upon a letter issued on behalf of the Punjabi University, Patiala, No. 335/OS (College) dated 11.5.1999 issued under the signatures of Shri S.S. Pahal, Similarly, Baba Farid University is relying upon the notification dated 22.3.1999. It may be mentioned here that in this writ petition, the letter dated 20.11.1998 has not been placed on record. Rather, letter dated 20.7.1999 has been placed on record, issued by the Baba Farid University and addressed to the Registrar, Punjabi University, Patiala, asked the letter under what circumstances, an advertisement dated 18.7.1999 has been issued under the signatures of the Director, Khalsa Dental College and Hospital, when the examinations are to be conducted henceforth by Baba Farid University.

14. I have heard the counsel for the parties and with their assistance have gone through the record of this case. Counsel for respondent No. 20 has whole-heartedly supported the case of the petitioners for the obvious reasons because it is this Institute which is responsible for the admission of several candidates in the two courses. Counsel for respondents 1 and 2 have opposed the prayer made by the petitioners in the two writ petitions.

15. The common case set up by the petitioners, which has been vehemently argued by S/Shri G.R.P. Singh and S.M. Tripathi, is that the Institute was affiliated with the Punjabi University, which has granted the provisional affiliation and on the basis of that affiliation letter (Course ?) 20.11.1998, the University has accepted the students in the Court. The Institute was always under the hope that in due course proper

affiliation shall be granted by the Punjabi University and on the basis of that affiliation, the State Government shall also grant the N.O.C. and under the doctrine of legitimate expectation, it is not open to the Baba Farid University or the Punjabi University not to hold the examinations of the students who are suffering on account of the inaction of the Punjabi University. According to the counsel, the petitioners are eligible in all respects to undertake their examinations and the directions should be given to the respondents to hold the examination.

16. On the other hand, both Mr. Patwalia, and Mr. Malhotra submitted that after 22.3.1999 Punjabi University cannot undertake the examinations as the jurisdiction vests with the Baba Farid University. Since, there was no valid affiliation to the Institute, therefore, they are not bound to hold the examinations. Mr. Patwalia was so vehement that he submitted that Baba Farid University is not bound to accept a dead child and after 22.3.1999, Punjabi University had become functus officio and any letter issued on 11.5.1999 is not binding on the authorities of Baba Farid University.

17. After considering the rival contentions of the parties, I am of the considered opinion that these writ petitions must fail. Let us go with the chain of proved facts. The first letter being relied upon by the petitioners is dated 20.11.1998. This letter has been issued by the Punjabi University in relation to a letter dated 17.11.1998 of the Managing Director of the Institute in continuation of the letter dated 21.7.1998, vide which the Vice Chancellor of the Punjabi University in anticipation of the approval of the Academic Council granted provisional affiliation for starting B.Sc. (Nursing) Degree Programme for the year 1998-99 to the Institute so as to admit 100 students and the Institute was permitted to get deposited the outstanding amount of Rs. 5 lacs towards Endowment Fund within a period of three months and it was further informed that on the fulfilment of these conditions, the inspection of the institute shall be conducted. Thus, a reading of this letter would show that only a provisional affiliation was granted and that too subject to fulfilment of certain conditions. The second letter is dated 13.5.1999, which has been reproduced in para-6 of the writ petition. As per this letter, the University informed the Managing Director of the Institute that the University had decided to grant affiliation to B.Sc. (Nursing) Course for the Session 1999-2000 for intake of 100 students, subject to the condition that it will be obligatory for the college to obey all the rules in force; that the College must appoint one more qualified teacher in Nursing; that the College should be associated with a 100 - bed hospital; and that the college must add at least 100 books in the library on the topic of nursing. Further, the College Governing Council must hold 3/4 meetings in a year in which the University nominees must be invited. Further, it was stated that the University be informed about the fulfilment of above conditions within six months. The most interesting part of this letter is that this was issued with respect to a telephonic request made by the College authorities. The letter dated 13.5.1999 has to be rejected on the short ground that after 22.3.1999, the Punjabi University had no authority to take any decision with

regard to affiliation. This letter to my mind has been issued without jurisdiction and in haste. The letter dated 20.11.1998 does not give any right of affiliation to the Institute.

18. It may be appropriate for me to refer to the additional affidavit dated 6.10.2000 which has been filed by Dr. B.S. Bhatia, Registrar, Punjabi University, who has clarified the entire position regarding the Institute in pursuance of a query of the Hon'ble Division Bench when the Division Bench asked from the Punjabi University why did it open the channel of communication as regards affiliation aspect with the institute when there was a clear cut notification dated 12.3.1999 issued by the Government as regards affiliation of the Colleges and other educational institutions in the State of Punjab. It was clarified in this additional affidavit that the notification was applicable w.e.f. 1.7.1999 onwards, therefore, the communications were kept open till 30.6.1999 in the interest of students and their future careers. Coming to the institute, it was stated that on 9.7.1998, the Institute, had applied for grant of affiliation to start B.Sc. (Nursing) course for the Session 1998-99 for which an inspection of the College was conducted on 18.7.1998. On the recommendations of the Inspection Committee, a letter of intent was issued to the College on 21.7.1998 imposing thereby certain conditions to be fulfilled by the College and subject to approval of the Academic Council. The letter of intent was later on approved by the Academic Council at its meeting held on 1.2.1999 and by the Syndicate on 24.3.1999. The notification dated 22.3.1999 was received on 7.4.1999. When the Institute advertised for admission showing its affiliation with the Punjabi University in The Tribune dated 18.7.1999, the Officer on Special Duty, Baba Farid University asked the Punjabi University to take a strong action against the institute since the said institute did not remain affiliated to Punjabi University. A letter dated 13.5.1999 was written in routine by the Officer on Special Duty, who was holding the additional charge of Dean, College Development Council, since it was an old case in the pipeline just to safeguard the career of students. It was also clarified by the Punjabi University that by virtue of the notification dated 22.3.1999 all the Universities of the State of Punjab, including Punjabi University imparting Education in Health Sciences were to be now admitted to the privileges of or affiliated to Baba Farid University. Thus, a combined reading of all the documents would show that this Institute was never given affiliation by the Punjabi University. For a valid affiliation, mere letter of intent is not sufficient. Provisional affiliation never ripened into full-fledged affiliation. There is no evidence on the record to show that any conditions were fulfilled. Also there is no evidence that the State Government had issued the N.O.C. In the absence of any good affiliation, how a direction can be issued either to the Punjabi University or to the Baba Farid University to hold the examinations. It is the admitted case of the Punjabi University that w.e.f. 22.3.1999, the courses of medical sciences are to be conducted by the Baba Farid University, Faridkot. In these circumstances, Punjabi University had no role to play and directions cannot be issued to it to hold the examinations. So far as Baba Farid University is concerned, in

the writ petition no directions are being sought against it. Even otherwise also, Baba Farid University cannot be compelled to accept an Institute which had accumulated funds in the shape of fees, etc. from the students. In my opinion, a fraud has been played by the Institute with the students. Their careers have been spoiled. The persons sitting at the helm of affairs of the Management of said institute have, prima facie, committed a substantive offence of criminal breach of trust and mis-appropriation. It is for the Government or the affected persons to decide what action is to be taken against the guilty but so far as the relief to the petitioners is concerned, nothing can be granted to them. The question of doctrine of legitimate expectation does not arise in this case at all. Baba Farid University or the State Government had never given any undertaking or promise to the Institute or the students. If the students have accepted a College, which was never validly recognised or affiliated by the Punjabi University, they must suffer.

19. The writ petitions are devoid of merit and are dismissed with no order as to costs.

20. Let a copy of this order be sent to the Principal Secretary, Medical Education and Research for taking such action as the Government may deem fit in the matter. He is requested to bring this matter to the notice of the Minister Incharge.

21. Petitions dismissed.