
(2014) 01 AHC CK 0042

Allahabad High Court (Lucknow Bench)

Case No: Review Petition No. 511 of 2013

Vishesh Narayan
Mishra

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Jan. 27, 2014

Acts Referred:

- University Grants Commission Act, 1956 - Section 3

Citation: (2014) 2 ADJ 308 : (2014) 2 ALJ 288

Hon'ble Judges: Sibghat Ullah Khan, J; Anil Kumar, J

Bench: Division Bench

Advocate: H.S. Jain and Ranjana Agnihotri, Advocate for the Appellant

Judgement

1. Heard Shri H.S. Jain and Ms. Ranjana Agnihotri, learned counsel for the petitioner-appellant applicant and Shri Vijay Krishna learned counsel for vice chancellor and other authorities of Bhatkhande Music Institute University Lucknow, opposite parties 4 to 9. Through this review petition review of our judgment dated 20.8.2013 given in special appeal No. 814 of 2012 Vishesh Narain Misra v. State of U.P. and others, has been sought. The special appeal was directed against judgment and order dated 5.11.2012 delivered by an Hon'ble Single Judge of this Court in Miscellaneous single No. 3947 of 2012 filed by the applicant. Two paragraphs of the said judgment which were quoted in our judgment dated 20.8.2013 are again quoted below:

To end the litigation, both the parties have agreed that once again, the thesis will be examined by an impartial and independent U.G.C. Expert of the subject, for which, the petitioner will submit the fee once again as per the Rules of the University.

In the interest of justice and with the consent of both the parties. Professor Dr. Indrani Chakravarti, for mer Vice Chancellor of Indra kala Sangeet University, Khairagarh is

hereby appointed as an expert (Mobile No. 096523-92725).

In our judgment dated 20.8.2013, we had noted that learned counsel for the appellant had argued that he had not agreed before the learned single judge. We dismissed the appeal in view of the Supreme Court judgment in [State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another](#), and permitted the petitioner appellant to file application/review application before the same Hon"ble Judge who had decided the application.

2. In this review petition on 27.11.2013 and 5.12.2013 following orders were passed on order sheet:

Heard Shri H.S. Jain and Ms. Ranjana Agnihotri, learned counsel for applicant in the review petition.

Learned counsel have argued that inspite of concession having been made, Hon"ble Single Judge should have decided the writ petition on merit as the concession was against law.

Let applicant file an affidavit categorically admitting that the concession as mentioned in the judgment of the Hon"ble Single Judge was made in fact.

As prayed, list on 5.12.2013.

Order date: 27.11.2013

Learned counsel for petitioner has filed affidavit of applicant stating therein that concession was in fact made before the Hon"ble Single Judge.

Heard Shri H.S. Jain and Miss. Ranjana Agnihotri learned counsel for applicant and Shri Vijay Krishna, learned counsel for respondent University.

Order reserved.

Learned counsel for respondent University is directed to supply copy of the University Regulations by 9.12.2013.

Order date: 5.12.2013

3. The main argument of Shri H.S. Jain learned counsel for applicant is that the respondent University Regulations are in contravention of U.G.C. Regulations, 2009, hence, latter Regulations which will apply. Learned counsel for respondent University argued that University Regulations were still applicable as U.G.C. Regulations, 2009 prescribed only minimum condition and something in addition thereto is provided by the respondent University (or deemed University,) and the only restriction is that Regulations

of any University cannot be in derogation of U.G.C. Regulations, 2009 and that in U.G.C. regulations there is no repealing clause to the effect that contradictory Regulations of Universities will stand repealed nor there is any clause to the effect that the Regulations would have overriding effect.

4. Learned counsel for respondent University has also argued that on the principle of promissory estoppel, petitioner having taken admission under the Regulations of University cannot say that he would not be bound by that.

5. Relevant regulation of U.G.C. titled as U.G.C. (minimum standards and Presiding Officer for awards of M.Phil/Ph.D. Degree) regulation 2009 are regulation Nos. 17, 18 and 19. The regulations were issued on 1.6.2009. By virtue of regulation 2 they apply to every university established or incorporated by or under a Central Act, Provincial Act or a State Act and every institution deemed to be a University u/s 3 of U.G.C. Act 1956. Regulations 17, 18 and 19 are quoted below:

17. The thesis produced by the M.Phil/Ph.D student in the Institutions/Departments and submitted to the University, Institution, Deemed to be University, College/Institution of National Importance, as the case may be, shall be evaluated by at least two experts, out of which at least one shall be from outside the State. It shall be upto the University, Institution, Deemed to be University, College/Institution of National Importance concerned to have one examiner from outside the Country.

18. On receipt of satisfactory evaluation reports, M.Phil/Ph.D students shall undergo a viva voce examination which shall also be openly defended.

19. Following the successful completion of the evaluation process and announcements of the award of M.Phil/Ph.D, the University shall submit a soft copy of the M.Phil/Ph.D thesis to the UGC within a period of thirty days, for hosting the same in INFLIBNET, accessible to all Institutions/Universities.

6. Regulation 19 of Regulations of the respondent university, i.e., Bhatkhande Music Institute University, Lucknow which came into force w.e.f. 1.7.2007 are quoted below:

19. The report of the examiners on the Thesis together with the report on the viva-voce test, shall be placed before the Academic Council and if the Academic Council considers upon the report or reports of the examiners, that the thesis is fit to be approved for the Degree of Doctor of Philosophy of the Institute, it shall report it's recommendation to the Board of Management accordingly.

7. In our opinion U.G.C. regulations prescribe only minimum requirement. If regulations of some other University/deemed University prescribe some additional requirement that will remain valid. However, if regulations of some University/deemed University provide lesser minimum standard than the one fixed by U.G.C. regulations then that will not apply. Accordingly, we do not agree with the argument of the learned counsel for the applicant

that the additional requirement of satisfaction of the academic council is against the regulations of the U.G.C.

8. Learned counsel for the respondent University also argued that even legal rights can be waived unless they relate to fundamental rights or special rights for weaker section like rights of workmen under Industrial Disputes Act or rights of tenants under Rent Control Act and right to object against jurisdiction, hence, the concession made by learned counsel for the petitioner applicant before the Hon"ble Single Judge was perfectly valid and binding upon the petitioner. It has further been argued that in any case the concession was not against any law. However, as we have already held that the regulation of the respondent university requiring satisfaction of the academic council about the standard of thesis submitted by a research scholar is valid and binding inspite of subsequent regulations of U.G.C., hence, this point need not be decided. Accordingly, we do not find any such error in our judgment dated 20.8.2013 which may warrant review of the same. The review petition is therefore dismissed.