

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th December, 2010.

+ W.P.(C) No.2540/2010

% HARPAL SINGH DHINGRA PETITIONER

Through: Mr. H.S. Phoolka, Sr. Adv. with Mr.
Sharat Kapoor & Ms. Prabhsahay
Kaur, Advocates.

Versus

PUNJAB TECHNICAL UNIVERSITY & ORS..RESPONDENTS

Through: Mr. Harish Malhotra, Sr. Adv. with
Mr. Amrit Paul & Mr. Sandeep
Sharma, Advocates for R-1 to 5.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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 the judgment should be reported
in the Digest? | NO |

RAJIV SAHAI ENDLAW, J.

1. The petitioner, appointed as an authorized Study Centre of the respondent University under its Distance Education Programme for conducting various Information Technology (IT) courses of the University has filed this writ petition impugning the order dated 10th February, 2010 of the University holding that the term of the authorization letters earlier issued to the petitioner and of the contract with the petitioner had already expired and also terminating the authorization/contract with the petitioner for the

reason of the petitioner having indulged in activities detrimental to the academic pursuits of a State Technical University and for the reason of the Centre of the petitioner being a teaching shop for commercial gains and bringing bad name to the University. The petition seeks restoration of the status of the petitioner as the authorized center of the University and direction to the University to refund/remit certain amounts, TDS Certificates etc. to the petitioner.

2. The petitioner had earlier preferred W.P.(C) No.7327/2008 impugning the order dated 3rd July, 2008 of the University suspending the petitioner's Centre. During the pendency of that petition a cancellation order dated 24th October, 2008 was also served on the petitioner. The said writ petition was dismissed vide order dated 24th October, 2008. The petitioner preferred an Intra Court Appeal being LPA No.126/2009 which was disposed of vide consent order dated 4th May, 2009 whereunder the University agreed to withdraw the cancellation order dated 24th October, 2008 then issued to the petitioner without issuing any show cause notice and to issue show cause notice and to grant hearing to the petitioner before passing any fresh order. However the orders suspending the Centre of the petitioner was allowed to continue and it was further directed that the petitioner shall neither advertise nor issue any Brochure or otherwise put up any signboard of the University.

3. Thereafter the University issued a show cause notice and gave hearing to the petitioner and has thereafter passed a detailed order running into 14 pages cancelling the contract with the petitioner.

4. Aggrieved therefrom the present writ petition was filed. Notice thereof was issued. A common counter affidavit has been filed by the University and the other respondents and rejoinder whereof has been filed by the petitioner.

5. Since the order impugned in this writ petition also recorded that the term for which the petitioner was authorized to run the Study Centre of the University had already expired, it was at the outset enquired as to in which document was the said term prescribed. The senior counsel for the respondents in this regard has drawn attention to a Certificate of Authorization issued to the petitioner wherein the authorization of the petitioner is shown to be from June, 2001 to May, 2006. Else, none of the other documents filed show any such term. The senior counsel for the petitioner has also contended that the calendar of the University also does not provide for authorization for a certain period. It is further contended that since the petitioner continued to be the authorized centre even after the year 2006, the term mentioned in the certificate is irrelevant and what has to be seen by this Court is as to whether the reasons on which the cancellation has been effected are made out or not.

6. In my view, the term mentioned in the certificate of authorization is relevant. It shows that the parties knew that the authorization was for a certain time only. The contract between the petitioner and the University is of a nature which ordinarily is not specifically enforced. The same requires work of a personal nature and involving minor details which cannot be

supervised by the Courts. It is also not as if the petitioner was entitled to continue after 2006. The senior counsel for the petitioner admitted that a suspension order was issued in 2006 also but was subsequently withdrawn because the person who had issued the said order was not found to be having a proper authorization to so act. Even if the suspension effected in the year 2006 suffered from technical flaws, the same nevertheless is also indicative of the authorization of the petitioner being for a fixed period expiring in the year 2006 and whereupon steps were taken to end the relationship with the petitioner. The relationship between the parties being contractual, irrespective of whether the grounds for cancellation existed or not, the petitioner after the expiry of contractual period, has no right to continue as the authorization centre of the University.

7. The gravamen of the case of the petitioner is that the action against him is motivated and *mala fide*. It is contended that the University for its Distance Learning Programme constitutes a Regional Learning Facilitating Centre (RLFC) and there was one such RLFC in Delhi also. It is stated that all was well till the year 2006 and neither the University nor its RLFC had any grievance whatsoever against the petitioner. It is urged that thereafter one Mr. Rajan Chopra (respondent no.3) took over the charge as Director, RLFC at Delhi and realizing the commercial potential, in collusion with the other officials of the University (impleaded as respondents no.4 & 5) set up his own authorized centers of the University for the same courses for which the petitioner was authorized and within the vicinity of the centre of the

petitioner; that however the said new centers were not able to compete with the petitioner and said Mr. Rajan Chopra with a view to eliminate competition from the petitioner devised the scheme for having the authorization of the petitioner cancelled.

8. The petitioner in this writ petition has made detailed averments in this regard. The respondents as aforesaid have filed a common affidavit and are represented by the same Advocate. Taking a cue therefrom, the senior counsel for the petitioner contended that collusion is evident from the University joining hands with Mr. Rajan Chopra (respondent no.3) against whom allegations of bias and *mala fide* have been made. It is urged that the same shows that the suspension order, show cause notice as well as the final order have been coloured by said Mr. Rajan Chopra to encourage his own commercial interest to the detriment of the petitioner who has in the last several years given the University a boost and a good name in Delhi.

9. As aforesaid, the cancellation order is voluminous and full of details. It was enquired from the senior counsel for the petitioner as to how this Court in writ jurisdiction can go into the facts. The senior counsel for the petitioner relies on *ABL International Ltd. Vs. Export Credit Guarantee Corporation of India Ltd.* (2004) 3 SCC 553 laying down that in a writ petition also if the facts require consideration of the evidence, it can be taken and merely because disputed questions of fact arise, is no ground for dismissing the writ petition. There can be no dispute with the said proposition. However in the same judgment also, it has been laid down that

in such circumstances, writ “will not normally be entertained”. Neither has the senior counsel for the petitioner been able to satisfy nor have I been able to fathom from the file as to why an exception should be made out in the present case.

10. This Court is not to sit in appeal over the findings of the University against the petitioner and forming the basis of the cancellation of authorization of the petitioner. The scope of writ jurisdiction is limited. The Supreme Court recently in *Jagdish Mandal Vs. State of Orissa* (2007) 14 SCC 517 held that the power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest or to decide contractual disputes. It was also held that a writ petition in contractual matters would be only if there is an element of public interest in the litigation. The senior counsel for the petitioner however relying on *Kumaon Mandal Vikas Nigam Ltd Vs. Girja Shankar Pant* (2001) 1 SCC 182 has contended that the writ would lie because bias is clearly made out in the present case. However I am of the opinion that to arrive at unassailable conclusion of bias is distinct from mere apprehension of bias; one will have to first return a finding of fact and which exercise ought not to be ordinarily done here. The petitioner has a remedy of a suit or arbitration as the case may be available to him and I fail to see why an exception should be made. It was held in *DD Suri Vs. A.K. Barren* (1970) 3 SCC 313 that even where substance in allegation of *mala fide* is found, the proper course in a given case may still be to seek relief by way of a suit if several disputed questions

of fact are required to be adjudicated.

11. The arguments of bias as are being raised here were raised by the petitioner in response to the show cause notice and in the hearing given by the University also. Notwithstanding the same, the Dean of the University, the highest authority in the University has found the petitioner guilty. Rather, strong words have been used in the order, of the continuation of the petitioner as an authorized centre being detrimental to the academic pursuits of a State Technical University; the petitioner having brought a bad name and having become teaching shop for commercial gains by ignoring the interest of students' community; the petitioner having not performed the role as expected of a Centre of learning and having not protected the integrity in education system.

12. The question which arises is, can this Court on its own assessment thrust a Distance Learning Centre on the University which it does not want. The welfare of the students of such a Distance Learning Centre requires constant interface between such Centre and the University. Unless there is feeling of *bon homie* and well being between such Center and the University, the welfare of the students is likely to suffer and which ought to be the primary concern of this Court. The private rights of the petitioner even if any affected ought to give way to the public good. Even if there were to be merits in the contention of the petitioner that after the petitioner has popularized and created a demand for the courses of the University in Delhi, he has been summarily removed to give benefit thereof to another, the

petitioner on proving such case can always seek compensation from the University.

13. The senior counsel for the petitioner has contended that the *mala fides* of the University are apparent from, i) fresh allegations being included after the earlier order of cancellation was set aside by the Division Bench as aforesaid, ii) the impugned order not dealing with the reply of the petitioner to the show cause notice; iii) only few students being subject matter of show cause notice and who had also passed out in the year 2006 and 2008, iv) contradictory allegations in the complaints of the said students; v) the earlier complaints against the petitioner being given a complete go by; vi) all the complaints of the students referred to, being not supplied to the petitioner; viii) the study centre of Mr. Rajan Chopra having the same flaws/defects as imputed to the petitioner; viii) grievances of the students being attributable to the University itself.

14. I have recorded the grievance urged only to show that the nature thereof is factual. I do not deem it appropriate to deal with the said pleas as the same may prejudice the case of the parties before the fora competent to adjudicate the same. Suffice it is to state that from the material on record, I am unable to gather any breach of procedure for making the order or any perversity on which ground alone, interference would be called for.

15. The academicians cannot be expected to write orders as lawyers and judges. Thus the argument of the order not dealing with each and every plea in reply to the show cause notice has to be seen in the said light.

16. Else, petitioner inspite of repeated enquires has failed to show any right to continue. The only answer which has come is that since the respondent University is a “State” within the meaning of Article 12 of the Constitution of India, it ought to act fairly and ought not to terminate its contracts for oblique reasons. However, the relationship between the parties was purely contractual and once the contract term has expired and after complying with principles of natural justice the contract has been terminated, this petition would not lie.

17. The senior counsel for the respondents has contended that the decision of cancellation was taken upon finding that the petitioner had not been following the norms of the University; it is contended that the petitioner has increased the strength of centre from 1100 to 16000; that the petitioner in violation of the University’s norms was having as many as 132 students in a class and it is virtually impossible to teach so many students in a class; it is controverted that the complaints of the students relied on in the order were not given to the petitioner; from the pleadings, it is shown that the pleading is not of the same having not been given earlier but of having not been given at the time of the show cause notice; no grievance in this regard were made in the earlier writ petition or before the Division Bench. It is further contended that the Institute of the petitioner was found without any lab for Hotel Management and Bio Technology courses, having one lecturer for Hotel Management course and lecturers for B.Sc. and M.Sc. Bio Technology and other non-IT courses; that the petitioner also has admitted,

having collected fee from some of the students which was not submitted to the University, amounting to misappropriation of University funds and cheating the students; it is contended that the explanation of the petitioner of taking Hotel Management students to the Hotels was not in consonance with the norms of the University.

18. The writ petition is thus held not maintainable for the reason of entailing disputed questions of fact and is dismissed with liberty to the petitioner to approach the appropriate fora where such disputed questions of fact can be adjudicated. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

16th December, 2010
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