

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 9944/2006

Reserved on: September 13, 2010

Decision on: September 22, 2010

UNIVERSITY OF DELHI

..... Petitioner

Through: Ms. Maninder Acharya, Advocate

versus

BOMBAY PATEL WELFARE SOCIETY, BHARUCH Respondent

Through: None

CORAM: JUSTICE S. MURALIDHAR

- | | |
|---|-----|
| 1. Whether Reporters of local papers may be
allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGMENT
22.09.2010

1. An interesting question of law concerning the affiliation of a minority educational institution located outside Delhi to the University of Delhi ('UOD') arises in this writ petition.

2. By the impugned order dated 20th April 2006 the National Commission for Minority Educational Institutions ('NCMEI') allowed the petition filed by the Respondent Bombay Patel Welfare Society, Bharuch challenging an order dated 17th February 2006 passed by the Petitioner UOD rejecting its request for grant of affiliation. Consequently, the NCMEI has while allowing the application directed the Petitioner to grant affiliation to the Respondent.

3. While directing notice to issue in this petition on 1st June 2006 the

aforementioned impugned order of the NCMEI was stayed by this Court.

4. This Court has heard the submissions of Ms. Maninder Acharya, learned counsel for the Petitioner on 9th September and 13th September 2010. None appeared for the Respondent on either date.

5. The facts leading to the present petition are that the Respondent is a public trust registered under the Bombay Public Trusts Act, 1950. It is also a society registered under the Societies Registration Act, 1860. All the founder trustees of the society are Muslims and all of its present trustees are also Muslims. The Respondent desired to establish a dental college at Bharuch in Gujarat Relying upon Section 10(1) of the National Commission for Minority Educational Institutions Act, 2004 ('NCMEI Act'), the Respondent made an application to UOD on 17th October 2005 seeking affiliation. Since the UOD did not take any decision on the said application, the Respondent filed a petition before the NCMEI which was registered as a Case No. 154 of 2006. Pursuant to the notice issued in the said case, the UOD filed a reply dated 8th March 2006 stating that on 7th March 2006 it had considered and rejected the prayer of the Respondent for grant of affiliation.

6. It must be noticed at this stage that Section 10(1) of NCMEI Act read as under:

“10 (1) Notwithstanding anything contained in any other law for the time being in force, a Minority Educational Institution may seek recognition as an affiliated college of a Scheduled University of its choice.”

UOD is one of the universities listed in the Schedule to the NCMEI Act.

Further, Section 22 of the NCMEI Act read as under:

“22. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

7. Under Section 12 of the NCMEI Act, any dispute arising between a minority educational institution and a Scheduled University relating to the affiliation to such University shall be adjudicated by the NCMEI and its decision shall be final.

8. The admitted position is that at the time when the Respondent made an application before the UOD on 17th October 2005 the above provision had not been amended. However, at the time the Respondent's application was taken up for consideration by the UOD, the NCMEI Act stood amended. With effect from 23rd January 2006 the National Commission for Minority Educational Institutions (Amendment) Ordinance 2006 ('Amendment Ordinance') became effective. The Amendment Ordinance was later replaced by an Amendment Act. This recast Section 10, and inserted a new provision, Section 10 A. The recast Section 10 and the new Section 10A of the NCMEI Act, after its amendment, read as under:

“10. Right to establish a Minority Educational Institution.- (1)

Any person who desires to establish a Minority Educational Institution may apply to the Competent authority for the grant of no objection certificate for the said purpose.

(2) The Competent authority shall, —

(a) on perusal of documents, affidavits or other evidence, if any; and

(b) after giving an opportunity of being heard to the applicant, decide every application filed under sub-section (1) as expeditiously as possible and grant or reject the application, as the case may be:

Provided that where an application is rejected, the Competent authority shall communicate the same to the applicant.

(3) Where within a period of ninety days from the receipt of the application under subsection (1) for the grant of no objection certificate, —

(a) the Competent authority does not grant such certificate; or

(b) where an application has been rejected and the same has not been communicated to the person who has applied for the grant of such certificate, it shall be deemed that the Competent authority has granted a no objection certificate to the applicant.

10A Right of a Minority Educational Institution to seek affiliation:- (1) A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established.

(2) Any person who is authorized in this behalf by the Minority Educational Institution, may file an application for affiliation under sub-Section (1) to a University in the manner prescribed by the Statute, Ordinance, rules or regulation, of the University.

Provided that such authorized person shall have right to know the status of such application after the expiry of sixty days from the date of filing of such application.”

9. What is significant is that the unamended Section 10 (1) opened with the non-obstante clause “notwithstanding anything contained in any other law for the time being in force.” This non-obstante clause was dropped in the amended Section 10 after the 2006 Ordinance. Further, the unamended

Section 10 (1) of the NCMEI Act gave a right to the minority educational institution to seek affiliation to any University of its choice. The newly inserted Section 10 A of the NCMEI Act made this “subject to such affiliation being permissible within the Act under which the said University is established.” Therefore, contrary to the earlier scheme where notwithstanding anything contained in any other law, the right of the minority institution to seek affiliation under Section 10 (1) of the NCMEI Act was preserved, after the amendment it was made subject to the provisions of the Act under which the University with which it was seeking affiliation was constituted.

10. This brings us the Delhi University Act, 1922 (‘DU Act’) which also underwent changes from time to time. Section 5 of the DU Act which is relevant for the purposes reads as under:

“5(1) Save as otherwise provided in this Act, the powers of the University conferred by or under this Act [other than those conferred by sub-clause (d) of Section 4] shall not extend beyond the limits of the State of Delhi and notwithstanding anything in any other law for the time being in force, no educational institution beyond those limits shall be associated with or admitted to any privileges of the University.

Provision (**omitted**)

(1-A) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is of opinion that it is necessary or expedient so to do in the public interest, direct, by order in writing, the University to admit to the privileges any institution situated outside India and the University shall be bound to comply with such direction.

(2) Notwithstanding anything in any other law for the time being in force, no educational institution within the

aforementioned limits shall be associated in any way with or be admitted to any privileges of any other University incorporated by law in India, and any such privileges granted by any such other University to any educational institution within those limits prior to the commencement of this Act shall be deemed to be withdrawn on the commencement of this Act.

Provided that the Central Government may by order in writing, direct that the provisions of this sub-section shall not apply in the case of any institution specified in the order.”

11. It is in the above background that the UOD, by its decision dated 7th March 2006, declined the request of the Respondent for affiliation for the following reasons:

“(i) According to Section 10 -1 of the National Commission for Minority Education Institution Act a Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established. Section 5 of the Delhi University Act, 1922 prohibits to grant any affiliation to an institution which does not lie within the territorial limits of the State of Delhi.

(ii) In addition to the above, granting affiliation to a far-flung professional institution may affect the quality/academic standards set by the Delhi University. Moreover, there would be problems in conducting examinations in the field of medical education where continuous evaluation and monitoring are necessary. The University of Delhi is not equipped with adequate facilities and manpower to deal with such a problem.”

12. In the impugned order the NCMEI has proceeded on the footing that Section 10 (1) of the unamended NCMEI Act was “substituted by Section 10 (A)” as inserted by the Amendment Act. In the considered view of this Court, this premise was not entirely correct. What in fact was done was to replace Section 10 of the unamended NCMEI Act with another Section 10 and introduce a new Section 10A, and both provisions had to be read in sequence to understand the new legislative scheme regarding grant of affiliation to a minority educational institution. The statement of the NCMEI that “the provisions of Section 10 (1) of the Principal Act have been omitted by the Amendment Act”, is not entirely correct. The right of a minority educational institution to seek affiliation to a university of its choice has been retained but with a qualification that it is subject to the law under which such University is constituted. Therefore, the ensuing discussion in the impugned order of the NCMEI of the effect of repeal of a provision and the position under Section 6 of the General Clauses Act was not called for.

13. The second error in the impugned order is that the NCMEI proceeded on the footing that by merely making an application for affiliation under the unamended Section 10 (1) of the NCMEI Act a right had accrued in the Respondent which could not be taken away by the newly inserted Section 10A. The further consequential error committed was in holding that the Respondent’s application having been filed prior to the amendment, its case for affiliation would continue to be governed by the unamended Section 10 (1) read with Section 22 of the NCMEI Act. There was no accrued or vested right in an applicant minority educational institution to be granted affiliation even in terms of the unamended Section 10 (1) of the NCMEI Act. There was

only a right to be considered for affiliation.

14. In *Commissioner, Municipal Corporation Shimla v. Prem Lata Sood* (2007) 11 SCC 40 the Respondents had been granted development and construction rights under the Himachal Pradesh Town and Country Planning Act, 1977 subject to approval under the Himachal Pradesh Municipal Corporation Act, 1994. Meanwhile, the town of Shimla was declared to be a heritage zone and a freeze on construction activities was imposed in terms of the 1977 Act. The application for sanction of the building plans was ultimately rejected by the Corporation. While holding the said decision to be valid, the Supreme Court observed as under: (SCC @ p. 54)

“36. It is now well-settled that where a statute provides for a right, but enforcement thereof is in several stages, unless and until the conditions precedent laid down therein are satisfied, no right can be said to have been vested in the person concerned.”

15. The Supreme Court in *Prem Lata Sood* referred to an earlier decision in *Howrah Municipal Corporation v. Ganges Rope Co. Ltd.* (2004)1 SCC 663, where it was held:

“37....The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to ownership or possession of any property for which the expression vest is generally used. What we can understand from the claim of a vested right set up by the respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a legitimate or settled expectation to obtain the sanction. In our considered opinion, such settled expectation, if any, did not

create any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rule-making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such settled expectation has been rendered impossible of fulfillment due to change in law. The claim based on the alleged vested right or settled expectation cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such vested right or settled expectation is being sought to be enforced. **The vested right or settled expectation has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such a settled expectation or the so-called vested right cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon.**” (emphasis supplied)

16. In *Vishwant Kumar v. Madan Lal Sharma* (2004) 4 SCC 1, S. 3(c) was inserted by an amending act with effect from 1st December 1988 which excluded from the operation of the Delhi Rent Control Act (“DRC Act”) premises where the monthly rent exceeded Rs.3,500/-. It was held that a tenant’s right to get standard rent fixed under Section 9 of the DRC Act was not a vested, accrued or acquired right but only a protective right to take advantage of the DRC Act. Only rights acquired or accrued remained unaffected by repeal. The Supreme Court observed: (SCC @ p. 4)

“There is a difference between a mere right and what is right acquired or accrued. We have to examine the question herein

with reference to Sections 4, 6 and 9 of the Act. It is correct that under Section 4 of the Rent Act, the tenant is not bound to pay rent in excess of the standard rent, whereas under Section 9 he has a right to get the standard rent fixed. Such a right is the right to take advantage of an enactment and it is not an accrued right. In the case of *D.C. Bhatia v. Union of India reported in (1995)1 SCC 104*, it has been held that right of a statutory tenant to pay standard rent is a right to be governed by the Act and if the Legislature repeals the Act or a part of it, the statutory tenant can do nothing about it. It is a mere right and not a vested right. To the same effect is the judgment of this Court in the case of *Thyssen Stahlunion GMBH v. Steel Authority of India Ltd. AIR1999SC3923*, in which it is held that right to be governed by the Act is not a right of an enduring nature. What is unaffected by repeal is a right acquired or accrued under the Act. That till the decree is passed, there is no accrued right. The mere right existing on date of repeal to take advantage of the repealed provisions is not a right accrued within Section 6(c) of the General Clauses Act...”

17. Reverting to the case on hand, at the time the application made by the Respondent was taken up for consideration by the UOD, the Amendment Act had come into force. The Respondent’s application had necessarily to be considered in terms of Section 10A(1) of the NCMEI Act. In terms of Section 5 of the DU Act affiliation of an institution beyond the territorial limits of Delhi was not permitted. Even Section 22 of the NCMEI Act did not come to the aid of the Respondent since it now referred to the amended Section 10 and the newly inserted Section 10A of the NCMEI Act and made those provisions subject the DU Act.

18. The third error in the impugned order of the NCMEI was to proceed on

the premise that there was repugnancy between the provisions of the DU Act which was an earlier statute and the provisions of the later NCMEI Act. There was nothing inconsistent between the newly inserted Section 10A of the NCMEI Act and Section 5 of the DU Act. Both could well be read harmoniously as a scheme. The right to seek affiliation to a university of the minority institution's choice was not taken away. It was only made subject to the DU Act. Consequently, the discussion in the NCMEI's impugned order on the NCMEI Act being a special later law prevailing over the earlier DU Act was not relevant. The NCMEI Act also perhaps failed to notice that there was no challenge to the validity of Section 5 of the DU Act which had to be given effect to while considering the right of a minority educational institution under Article 30 (1) of the Constitution of India. That fundamental right, as has been explained in several decisions, is not absolute especially in the context of affiliation to universities. For instance, in *T.M.A. Pai Foundation v. State of Karnataka (2002) 8 SCC 481*, the Supreme Court held as under:

“Q5(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and Principal including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and **the conditions of recognition as well as the conditions of affiliation to an university or board have to be complied with**, but in the matter of day-to-day management like

the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.”

19. For the aforementioned reasons, the impugned order dated 20th April 2006 passed by the NCMEI cannot be sustained in law and is hereby set aside.

20. The writ petition is allowed in the above terms but in the facts and circumstances with no orders as costs.

S. MURALIDHAR, J.

SEPTEMBER 22, 2010

rk