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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Judgment: 13th July, 2012

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LPA 121/2009

GOVT. OF NCT OF DELHI

..... Appellant

Through: Ms. Ruchi Sindhwani & Ms. Bandana
Shukla with Ms. Megha Bharara,
Adv.

Versus

BHARTI VIDYAPEETH & ORS.

..... Respondents

Through: Mr. Harish N. Salve, Sr. Adv. with
Mr. Kailash Vasdev, Sr. Adv., Mr.
Satyajit Saha & Mr. Prasenjit
Keswani, Adv. for R-1 to 5.
Mr. R.V. Sinha, Mr. R.N. Singh &
Ms. Sangita Rai, Adv. for UOI.
Mr. A.S. Chandhok, ASG with Mr.
R.B. Singh, CGSC with Mr. Ritesh
Kumar, Mr. Piyush Sanghi & Mr.
Sidharth Tyagi, Adv. for UOI.
Mr. Rakesh Dwivedi, Sr. Adv. with
Mr. Amitesh Kumar & Mr. Mayank
Manish, Adv. for UGC.

AND

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LPA 123/2009

GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY

..... Appellant

Through: Mr. S. Mahapatra for Mr. Mukul
Talwar, Adv.

Versus

BHARATI VIDYAPEETH & ORS.

..... Respondents

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Mr. Amitesh Kumar & Mr. Mayank
Manish, Advs. for UGC.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. All the three intra-court appeals impugn the common judgment dated 20-02-2009 of the learned Single Judge allowing WP(C)1995/2008 and WP(C)3885/2008 preferred by respondents No. 1 to 5 herein by directing the appellants Guru Gobind Singh Indraprastha University (GGSIPU) and the Government of NCT of Delhi (GNCTD) to pass order granting disaffiliation of respondent No.3 Bharti Vidyapeeth's College of Engineering, New Delhi and respondent No.4 Bharti Vidyapeeth's Institute of Computer Applications and Management, New Delhi to enable the said respondents No. 3 and 4 to function as a deemed university from the academic session 2009-2010 onwards.

2. The appeals were admitted for hearing and the operation of the order of learned Single Judge stayed. After hearing the counsels on 26-10-2009 and 27-10-2009, this Bench vide a detailed order of 27-10-2009 sought the stand of the Central Government on the aspects mentioned therein. An

affidavit dated 18-01-2010 of the Secretary, Department of Higher Education, Ministry of Human Resources Development, was filed in pursuance thereof. Thereafter, on 9-08-2010, it was informed that a discussion between the Central Government and the GNCTD had been scheduled to arrive at a solution of the subject problem. The matters were adjourned from time to time to await the outcome of the said discussion. Ultimately, on 01-02-2011 it was informed that though a meeting was held but without any fruitful outcome. As such, the appeals were again listed for hearing.

3. We have heard the counsels for the parties. The counsels for GNCTD, UGC and respondent Nos. 1 to 5 have also filed written submissions. The counsel for GGSIPU has adopted the arguments of the counsel for the GNCTD.

4. The learned Single Judge, in a detailed judgment running into 55 pages, has on an interpretation of the powers of respondent No.7, University Grants Commission (UGC) and of GNCTD held that upon inclusion of the respondents No.3 and 4 colleges, (earlier affiliated to GGSIPU) in the respondent No.2 Bharti Vidyapeeth, (a Deemed University within the meaning of Sec.3 of the University Grants Commission Act, 1956),

GGSIPIU and GNCTD could not deny disaffiliation thereto. However after hearing counsels, what we find is, that the real dispute is as to the land allotted by the respondent DDA to respondents No. 3 and 4 colleges at concessional rates on account of being then affiliated to the GGSIPIU.

5. Respondent No.1 Bharti Vidyapeeth, a trust constituted under the provisions of Bombay Public Trust Act set up the respondents No. 3 and 4 Colleges. The said Colleges sought and were granted affiliation by GGSIPIU. The said Colleges approached GNCTD for allotment of land on concessional/pre-determined rates.

6. Notice in this regard, at this stage may also be taken of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 as then existed and which permitted allotment of nazul land inter alia to Colleges at pre-determined rates, as distinct from disposal by open auction. Needless to state that the pre-determined rates are much lower than the market rates fetched in an open auction. It is also worth mentioning at this stage that the said Rules have been amended with effect from the year 2006 and the policy earlier prevalent of allotment of nazul land inter alia to colleges at pre-determined rates, has been done away with and all nazul land are now to be disposed of only by open auction. It may also be mentioned

that allotment by the DDA of nazul land to Colleges as respondents No. 3 and 4 at pre-determined rates could be made only upon the case for such allotment being sponsored by GNCTD. The GNCTD vide its letter dated 2-8-99 informed respondents No. 3 and 4 Colleges that their applications, for sponsorship of their case for allotment of nazul land by the DDA, had been acceded to on the condition that respondent No.1 society which had set up respondents No. 3 and 4 Colleges will follow all norms and guidelines of All-India Council for Technical Education (AICTE) and directions of GNCTD including criteria for admission/employment of qualified staff governing fee structure etc.; that the students admitted to the Colleges built on such land would be charged fee not exceeding the amounts stipulated by AICTE, Directorate of Training in Technical Education, GNCTD; that in case, respondent No.1 society deviated from activities for which the land was allotted, the same shall be forfeited. The Principal of respondents No. 3 and 4 Colleges (respondent No.5 herein) also furnished an affidavit dated 2.8.1999 to the GNCTD on the aforesaid lines and in the said affidavit also undertook to provide 85% seats to students from Delhi and 15% seats on All India Basis. On the strength of the sponsorship of GNCTD, DDA vide letter dated 15.10.1999 allotted perpetual lease hold rights of a plot land

admeasuring 14862.35 sq. mtrs at A4, Paschim Vihar, New Delhi to the respondents No. 3 and 4 Colleges.

7. It appears that respondents No. 1 to 5 having established the Colleges affiliated to the GGSIPU on the land granted at pre-determined/concessional rates were separately pursuing with the UGC for inclusion of respondents No.3 and 4 Colleges in respondent No.2, Deemed University. The said desire of respondents No. 1 to 5 is understandable. Respondents No. 3 and 4 Colleges though having been set by respondent No.1 trust and which trust had also set up the respondent No.2 Bharti Vidya Peeth University at Pune, which had been given a status of Deemed University, were affiliated to GGSIPU and were thus under the overall control of GGSIPU instead of parent trust/Deemed University. The said efforts of respondents No. 1 to 5 bore fruit and it appears that the respondent UGC recommended such case of respondents No. 1 to 5 and on the basis of such recommendation, the respondent No.8 Ministry of Human Resources Development (MHRD), issued a notification dated 14.2.2007 declaring respondents No. 3 and 4 Colleges to be included in the ambit of respondent No.2 Deemed University, as its constituent institutions for the purposes of UGC Act, 1956 - from the date of disaffiliation from GGSIPU.

8. Armed with the aforesaid notification, respondents No. 3 and 4 Colleges, sought their disaffiliation from GGSIPU.

9. GGSIPU sought guidance of GNCTD in this regard. The GNCTD expressed reservation, observing that the disaffiliation from GGSIPU would result in de-control of the said Colleges from the supervision of the State Government. Respondents No. 1 to 5 initially offered to undertake to, notwithstanding such disaffiliation from GGSIPU, continue to grant reservation in respect of 85% of the seats for students from Delhi region; but GNCTD was not satisfied therewith and sought undertaking also of compliance of rules, regulations, policy guidelines of GNCTD from time to time and with the condition that failure to comply with such undertaking would result in forfeiture of the land aforesaid. At that stage WP(C) 1995/08 (supra) was filed seeking mandamus for disaffiliation from GGSIPU and in the alternative a direction to take a decision on the request for disaffiliation. During the pendency of the said petition, the GNCTD vide communication dated 14.5.2008 refused disaffiliation and challenging which communication WP(C) 3885/08 (supra) was filed.

10. The stand of the GNCTD in the counter affidavit to the writ petitions was that it had not been consulted by MHRD or by UGC while dealing with

the request of respondents No. 3 and 4 Colleges for a status of Deemed University, resulting in disaffiliation from GGSIPU; that the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and other Measures to Ensure Equity and Excellence) Act, 2007 was applicable to all the institutions affiliated to GGSIPU; that if respondents No. 3 and 4 were disaffiliated from GGSIPU, all the seats or 50% seats would be filled up on all India basis; that it appears that respondents No. 3 and 4 colleges affiliated themselves to GGSIPU only for obtaining land at concessional rates in Delhi and with the hidden agenda to thereafter go in the fold of respondent No.2 Deemed University.

11. The learned Single Judge, in the judgment impugned before us, has observed/found/held:

- (i) UGC Act 1956 has been enacted in exercise of powers under Entry 66 of the Union List in Schedule VII of the Constitution;
- (ii) the power of the State government, under Entry 25 of the Concurrent List to legislate in respect of education is subject to the provisions inter alia of Entry 66 of the Union List;
- (iii) even otherwise, adverting to Article 246, the legislative power

- of the State in respect of any matter enumerated in the Concurrent List is subject to the power of the Parliament;
- (iv) thus the State Government cannot legislate in conflict with the UGC Act and can also not, in exercise of its executive power, act in contravention of the UGC Act;
 - (v) Section 3 of the UGC Act does not mandate that the Government of the State in which institution proposed to be declared as Deemed University is situated is to be consulted or to give consent before such a declaration is made and the decision under Sec. 3 of the UGC Act is of the Central Government alone;
 - (vi) thus, the non-consultation of the GNCTD before issuance of the notification dated 14.02.2007 (supra), including respondents No. 3 and 4 colleges in the fold of respondent No.2 Deemed University, was immaterial;
 - (vii) that once a declaration under Sec. 3 of the UGC Act had been made, the State Government cannot prevent flight of the institution from State level to national level;
 - (viii) that the approach of the GNCTD in the present case of denying

disaffiliation to respondents No. 3 and 4 colleges from GGSIPU was in contravention of the constitutional scheme;

- ix) a Deemed University is to serve the interest of the citizens of the State in which it is located by strengthening the university system in the country;
- x) that the notification dated 14.2.2007 (supra) including respondents No. 3 and 4 Colleges in the fold of respondent No.2 Deemed University was not conditional upon disaffiliation of respondents No. 3 and 4 Colleges from GGSIPU;
- xi) that though Sec. 3 of the UGC Act postulates conferment of the Deemed University status on institutions and not a trust or society which manages such institutions, but the Central Government, earlier vide notification dated 26.4.1996, having declared 12 specific institutions of Bharti Vidyapeeth as Deemed University, respondents No. 3 and 4 could also be added thereto;
- xii) that the affidavit submitted by respondents No. 3 and 4 Colleges at the time of obtaining allotment of land, did not bind

respondents No. 3 and 4 Colleges in as much as DDA while issuing letter of allotment of land did not include the terms and conditions of the said affidavit and respondents No. 3 and 4 Colleges by seeking declaration of Deemed University had not breached any of the terms and conditions of the other letter of allotment;

- xiii) that respondents No. 3 and 4 Colleges could not be expected to remain bound by the undertaking given by them at the time of allotment of land after being specifically declared as a Deemed University and such an undertaking is in the teeth of Entry No. 66 of the Union List and the UGC Act;
- xiv) the undertaking given at the time of obtaining land was good only as long as respondents No. 3 and 4 Colleges remained affiliated to the GGSIPU;
- xv) that if GNCTD has any legal right to demand compensation from respondents No. 3 and 4 Colleges for the reason of their being no longer in position to abide by the undertaking given at the time of obtaining land, it is free to take appropriate measures but the same would not affect the notification

including respondents No. 3 and 4 Colleges in the fold of respondent No. 2 Deemed University;

- xvi) that GNCTD could not extract any undertaking as demanded for disaffiliation of respondents No. 3 and 4 Colleges from GGSIPU and such demand is in direct conflict with the powers of UGC;
- xvii) that the 2007 Act (supra) is not applicable to Deemed Universities;
- xviii) that reliance on Sec. 5(2), Delhi University Act, 1922 was misconceived in as much as the notification dated 14.02.2007 (supra) of the Central Government under Sec. 3 of the UGC meets the requirements of Sec. 5(2) of the DU Act.

12. Though the learned Single Judge as aforesaid, has dedicated considerable length of the judgment to the power of GNCTD to withhold disaffiliation of the respondents No. 3 and 4 Colleges from GGSIPU once the notification under Sec. 3 of the UGC Act had been issued but in our view that is not the issue here. The real issue at controversy is the entitlement of the GNCTD to keep an institution which has been granted land on concessional rates by the DDA on recommendation of GNCTD

under its control and provisions. As will be noticed, the learned Single Judge also has granted liberty to GNCTD to take whatsoever steps it may be entitled to in this regard. However, inspite of having held so, learned Single Judge has further held that since the condition imposed and the undertaking given at the time of sponsorship were not included in the terms and conditions of allotment by the DDA, the same no longer govern the allotment and which is now only on the terms and conditions contained in the allotment letter. We are, however, of the opinion that the latter part of the opinion aforesaid of the learned Single Judge cannot be upheld being in direct conflict with the earlier judgment of the Division Bench of this court in *Social Jurists, A Lawyers Group vs. GNCTD* 140 (2007) DLT 698. There also, a similar argument was raised that the terms and conditions imposed at the time of allotment and not included in the lease deed ultimately executed and thus did not bind the allottee/lessee was negatived. It was held that Sec. 21 of the Delhi Development Act regulates disposal of the land by DDA, subject to any directions given by the Central Government; Section 22 specifies the powers of the Central Government to place at the disposal of the DDA undeveloped lands in Delhi, vested in the Union of India and known as 'Nazul Land'. It was observed that DDA has a

right to dispose of land after development only in accordance with the conditions specified by the Central Government and these conditions would be applicable to such lands even if not specified in the letter of allotment or the lease deeds executed. It was further held that the allottees cannot pick up documents of lease in exclusion to preceding and subsequent documents which completes the rights, privileges and obligations between the parties. The allottees being hospitals in that case, were thus held liable to grant free admissions notwithstanding absence of such a condition in the lease deeds of the land executed in their favour. It was also observed that they cannot thrive at public costs and State expenses without fulfilling the minimum conditions imposed upon them to achieve greater social goal and look after the interest of the public at large. We find that the special leave petitions preferred against the judgment were dismissed.

13. We may also mention that the aforesaid judgment of the Division bench of this court has been approved of recently by the Supreme Court in *Society for Un-Aided Private Schools of Rajasthan vs. Union of India* 2012 (4) SCALE 272.

14. Once it is held that respondents No. 3 and 4 Colleges remain bound by the undertaking given by them while seeking allotment of land, it has to

be necessarily held that upon non-compliance by them of the said conditions, they would be liable to forfeit the land allotted to them.

15. In that view of the matter, we are of the view that there is no need for adjudicating in this case as to whether the GNCTD and GGSIPU can withhold disaffiliation of respondents No. 3 and 4 Colleges or not, once notification qua them under Sec. 3 of the UGC Act has been issued. It is for the respondents No. 3 and 4 to decide whether they want to disaffiliate at the cost of forfeiting the land or want to continue being affiliated to GGSIPU. It is not as if the GNCTD/GGSIPU also deny disaffiliation in toto. All they did was to seek an undertaking from respondents No. 3 and 4 to abide with the terms agreed at the time of allotment of land to them. However, what respondents No. 3 and 4 desired was to obtain disaffiliation without furnishing the said undertaking, also. The demand by the GNCTD/GGSIPU for the said undertaking cannot be said to be in conflict with the UGC Act. The UGC Act is not concerned with the land on which the Universities are established and which land is a State subject. Forfeiture of the land earlier allotted to respondents No. 3 and 4 does not tantamount to depriving respondents No. 3 and 4 of the benefits of the notification (supra), if they choose to avail of the same. There is, thus, in our opinion no conflict. We

may also mention that though the learned Single Judge has observed that a perpetual lease of the land has been executed, but we have been unable to find any plea or document to the said effect. Respondents No. 3 and 4 are thus holding the land on the basis of letter of allotment alone.

16. We are constrained to observe that we indeed find a trick having been played by respondents No. 1 to 5 in the matter of obtaining the land. The 12 other institutions established by respondent No.1 trust had, as aforesaid, been declared a deemed university as far back in the year 1996 i.e., prior to the setting up of respondents No. 3 and 4 Colleges. Respondents No. 3 and 4 Colleges notwithstanding having been set up/established by the same respondent No.1 trust then did not choose to come under the umbrella of its parent Deemed University. Needless to state that if respondents No. 3 and 4 upon being established, had been affiliated to respondent No.2, Deemed University or been within its fold, the occasion for their being allotted land at concessional rates could not have arisen. To build/set up a campus in Delhi, they would have then been required to obtain land at market rates. However, as soon as they were allotted land and put into possession thereof and complete construction thereon, they showed their hidden agenda/design to disaffiliate from the GGSIPU and to come back in to parent fold of

Deemed University. We have thus no doubt whatsoever that the affiliation with GGSIPU was sought only for the purpose of obtaining land at concessional rates. The act of respondents No. 1 to 5 thus also amounts to cheating and once it is found so, we cannot uphold their claim.

17. We may at this stage also notice the stand of the Central Government. It is their stand in the affidavit aforesaid filed in pursuance of directions in this appeal that upon receipt of application for inclusion of respondents No. 3 and 4 colleges in respondent No. 2 Deemed University, comments of GGSIPU with which respondents No. 3 and 4 Colleges were then affiliated were sought and it was owing to no response having been received that the notification dated 14.2.2007 was made subject to disaffiliation from the GGSIPU to ensure consent of GGSIPU before respondents No. 3 and 4 could be included in respondent No. 2 Deemed University. It is also stated in the said counter affidavit that such consent of the university to which the institution is affiliated, is essential before conferring the status of deemed university thereon. The Central Government also has thus not supported the interpretation of the said notification given by the learned Single Judge. Learned senior counsel for the UGC also has supported the stand of the Central Government.

18. We therefore allow these appeals and axiomatically set aside the judgment of the learned Single Judge. The writ petitions filed by respondents No. 1 to 5 are dismissed. We however clarify that in the event of respondents No. 3 and 4 Colleges choose to avail of the notification dated 14.02.2007 under Sec. 3 of the UGC Act without disaffiliating from the GGSIPU and/or without furnishing the undertaking as demanded by the GNCTD and GGSIPU, they will forfeit the land allotted to them and the DDA and GNCTD would be entitled to take action for dispossession thereof.

No costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 13, 2012

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