

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

+ **Crl. Rev. P. No.463/2009**

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Decided on: 23rd February, 2012

J.K. Soni

..... Petitioner

Through: Mr. Chetan Sharma, Sr. Adv. with Mr.
V.K. Goel, Mr. Aseen Swaroop & Ms.
Sudipa Dasgupta, Advs.

versus

State Govt. of NCT of Delhi

..... Respondent

Through: Mr. Manoj Ohri, APP for the State.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition, the Petitioner lays a challenge to the judgment dated 6th April, 2009 passed by the Learned Additional Sessions Judge dismissing the Criminal Appeal No. 44/2008 filed against the order of the learned Metropolitan Magistrate convicting and sentencing the Appellant for offence under Section 24 of the University Grants Commission Act (in short 'UGC Act') and to pay a fine of Rs. 500/-.

2. Learned counsel for the Petitioner contends that the Petitioner is the Secretary of "Commercial University Limited", a public limited company incorporated and registered under the Indian Companies Act, 1956 having its registered office for more than 50 years and conducting various commercial courses like typing, short-hand etc. and awarding certificates. Since the name of the company itself include University, in terms of Section 147 of the Companies Act, 1956, the company is duty bound to paint and affix the its name at its office and any contravention thereof is liable to be punished with a fine, which may extend to Rs. 5000/-. The complainant, who has no locus

standi and is a disgruntled student, got the FIR registered against the Petitioner being FIR No. 309/1991 for offences under Section 420 IPC and Section 24 UGC Act registered at PS Daryaganj. Both the Courts below found that no case for offence punishable under Section 420 IPC was made out, however convicted the Petitioner for offence under Section 24 UGC Act and directed him to pay a fine of Rs. 500/-.

3. Learned counsel for the Petitioner further contends that the Courts below did not apply its mind to the fact that since the Petitioner was registered under the Companies Act, it was duty bound to paint and affix its name outside its office or place of business in legible letters and violation thereof would entail a penalty. Thus, the Petitioner is faced with a peculiar situation where either of his acts would amount to an offence. In view of the repugnancy between the provisions of the two Acts, the Petitioner could not have been convicted for the offence alleged. Petitioner had applied for permission to the University Grants Commission for notifying it as a 'Deemed University', however, the representation made by the Petitioner has not been disposed of till date. The Courts below ought to have come to the conclusion that no offence has been committed in terms of Section 23 (2) of the UGC Act. Neither the UGC nor the State is a complainant and the complainant K. Ambalavanan had no locus standi to file the complaint or prosecute the Petitioner. The contentions of the Petitioner have not been taken into consideration and Section 147 of the Companies Act does not find mention in any of the two judgments impugned. It is contended that in case of two parallel Statutes for penal provisions, the Petitioner can be dealt only with the one which provides for lesser punishment. Reliance is placed on

State of H.P. Vs. Pawan Kumar (2005) 4 SCC 350 to contend that one of the basic principles of interpretation to a Statute is to construe it according to plane, literal and grammatical meaning of the words. If the same are contrary to the expressed intention or declared purpose of the Statute or involve absurdity or repugnancy or inconsistency, the grammatical sense must be modified, extended or abridged to avoid such an inconvenience. Reliance is also placed on *Diwan Singh Vs. Rajendra Prasad Ardevi (2007) 10 SCC 528*; *Ashok Lanka Vs. Rishi Dixit (2005) 5 SCC 598*; *M.P. Gopalakrishnan Nair Vs. State of Kerala (2005) 11 SCC 45* and *State of H.P. Vs. Surinder Singh Banolta (2006) 12 SCC 484* in this regard. No other contention has been raised before this Court.

4. Learned counsel for the Respondent on the other hand contends that three witnesses were examined by the UGC. As per PW-1 R.P. Gulati, the UGC had published a list of fake universities in which the name of the Petitioner's company was mentioned. The Petitioner's company was awarding degrees in M.A., M.Com, Ph.Ds besides giving typewriting, shorthand coaching etc. The complainant was registered as a Ph.D student. The officers of Petitioner's company were also prosecuted earlier for the said offence, which conviction was challenged before the Hon'ble Supreme Court wherein the contentions now raised by the Petitioner were rejected. Reliance in this regard is placed on *Prem Chand Jain & Anr. Vs. R.K. Chhabra AIR 1984 SC 981*.

5. I have heard learned counsel for the parties. Briefly the facts leading to filing of the present petition are that the Petitioner is the Secretary of Commercial University Limited. A complaint was filed by one P.K.

Ambalavanan that the Petitioner is misrepresenting that they were having formal sanction from the UGC for running a University and on the said misrepresentation, the complainant was made to enroll with this so called University for Ph.D and a sum of Rs. 3240/- was taken from him. During the course of trial, witnesses were examined both by the Prosecution and the defence. PW-1 Shri R.K. Gulati, Desk Officer in UGC has stated that the Petitioner's company is neither recognized by the UGC nor established by the Legislature. He produced the list of recognized universities, press notes, etc. in this regard. PW-2 A.N. Rai, Principal Information Officer, UGC was also examined, who exhibited a press release which has listed 27 institutions as fake Universities wherein the name of Petitioner's company was also mentioned. The Courts below acquitted the Petitioner of the charge under Section 420 IPC as K. Ambalavanan the complainant had not been examined and thus it could not be proved that he had been cheated. However, on the basis of other material evidence on record, the Petitioner was convicted for offence under Section 24 UGC Act for using the word "University" in violation of Section 23 of the UGC Act.

6. Before further adverting to the issues raised in the present petition, it would be appropriate to reproduce the relevant Sections of the UGC Act. Section 2(f), 3, 23 & 24 of the UGC Act reads as under:

"2. Definitions.

2(f) " University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act.

3. Application of Act to institutions for higher studies other than Universities. The Central Government may, on the advice of the Commission, declare, by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of section 2.

23. Prohibition of the use of the word " University" in certain cases. No institution, whether a corporate body or not, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word " University" associated with its name in any manner whatsoever:

Provided that nothing in this section shall, for a period of two years from the commencement of this Act, apply to an institution which, immediately before such commencement, had the word " University" associated with its name.

24. Penalties. Whoever contravenes the provisions of section 22 or section 23 shall be punishable with fine which may extend to one thousand rupees, and if the person contravening is an association or other body of individuals, every member of such association or other body who knowingly or wilfully authorizes or permits the contravention shall be punishable with fine which may extend to one thousand rupees.”

7. Reading of the Sections makes it amply clear that a University means one established or incorporated by a Central Act or a State Act or the one which is declared by the Central Government on the advice of the UGC by way of a notification in the official gazette. The Petitioner’s does not fall in any of the categories specified. Section 23 creates a complete embargo on

any institution from using the word “University” unless it is a university established in terms of the UGC Act. For the existing institutions using the word ‘University’, a period of 2 years from the date of commencement of the Act was given so as to enable them to conform to the statutory provisions. Thus, a breather of two years was provided to the institutions to change their names or get themselves notified as Universities. The contravention of Section 23 UGC Act is a strict liability offence under Section 24 and the person is liable to be punished with fine which may extend to five thousand rupees.

8. Section 147 of the Companies Act reads as under:

“147. Publication of name by company

1) Every company—

(a) shall paint or affix its name [and the address of its registered office], and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible; and if the characters employed therefor are not those of the language, or of one of the languages, in general use in that locality, also in the characters of that language or of one of those languages;

(b) shall have its name engraven in legible characters on its seal; and

(c) shall have its name [and the address of its registered office] mentioned in legible characters in all its business letters, in all its bill heads and letter paper, and in all its notices [***] and other official publications; [and also have its name so mentioned in all bills of exchange], hundies, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of company.

(3) If a company fails to comply with clause (b) or clause (c) of sub-section (1), the company shall be punishable with fine which may extend to [five thousand rupees].”

9. From the reading of the provisions of the two enactments it is clear that though the Petitioner’s company was registered in the name of Commercial University Limited prior to coming in force of the UGC Act, however within two years thereof it was required to take remedial measures. There is no repugnancy in the two Statutes which needs harmonious construction by this Court.

10. It may be noted that earlier also the office bearers of the Petitioner’s company were prosecuted and convicted for offence punishable under Section 24 IPC, which conviction was upheld by this Court. On an appeal, the Hon’ble Supreme Court in *Prem Chand Jain & Anr. Vs. R.K. Chhabra AIR 1984 SC 981* considered the issues at length. In the said appeal the vires of the UGC Act were also challenged, which were upheld by the Hon’ble Supreme Court. Their Lordships declined to accept the submissions of the learned counsel for the Appellant therein that the definition of the ‘University’ given in Section 2 (f) or the prohibition in Section 23 of the UGC Act are ultra vires on the ground that such provisions were beyond the legislative competence of the Parliament. It may be noted that in the said judgment, their Lordships acquitted the Appellants therein in view of the fact that they had resigned in between 1962 to 1970 and the fact that in view of the Companies Act they were under a misapprehension that they could use the word ‘University’. Their Lordships in held:

“7. The word “university” has been defined in Section 2(f) of the Act to mean: “a University established or incorporated by or

under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the commission in accordance with the regulations made in this behalf under this Act”. Section 23 of the Act imposing the prohibition for use of the word “University” also provides that way. Undoubtedly under the Companies Act when a company is duly registered, it gets incorporated and such incorporation brings into existence an independent legal entity different from the share-holders constituting it. Yet we are not prepared to agree with Mr Shanti Bhushan that the Act intended to admit a company incorporated under the Companies Act into the definition or for the purpose of Section 23. The words “established” or “incorporated” referred to Acts under which universities are established or incorporated. Several universities in this country have been either established or incorporated under special statutes, such as the Delhi University Act, the Banaras Hindu University Act, the Allahabad University Act etc. In these cases, there is a special Act either of the Central or the Provincial or the State Legislatures establishing and incorporating the particular universities. There is also another pattern — where under one compendious Act several universities are either established or incorporated — for instance, the Madhya Pradesh Universities Act, 1973. The definition of university and the provisions in Section 23 of the Act refer to Acts of the Central, Provincial or the State Legislatures by which one or more universities are established or incorporated and not to institutions incorporated under a general statute providing for incorporation. We do not accept the contention of Mr Shanti Bhushan that CUL when incorporated under the Companies Act satisfied the definition as also the provisions of Section 23 of the Act and, therefore, there could be no prosecution. We agree with the observation of Lord Somervell to the effect:

“The mischief against which the statute is directed and, perhaps though to an undefined extent, the surrounding circumstances can be considered,”

in ascertaining the true legislative intention. (*A.G. v. H.R.H. Augustu* (1957) 1 All ER 49(HL)). Lord Porter also spoke to the

same effect while speaking for the Board in the following words:

“A right construction of the Act can only be attained if its whole scope and object together with an analysis of its working and the circumstances in which it is enacted are taken into consideration.”

Bhagwan Baksh Singh v. Secretary of State, AIR 1940 PC 82. Several institutions styling themselves as “universities” had started awarding degrees and diplomas which had no basis and could not be accepted. Keeping in view the mischief which was sought to be eradicated and the consideration which weighed with Parliament to introduce the prohibition in the Act, it must be held that the Act recognises only those institutions established or incorporated under special statutes of sovereign Legislatures.”

11. Thus, after the decision of the Hon’ble Supreme Court, the Petitioners cannot claim, either as of right or as of misapprehension, that they were entitled to use the word ‘University’ in the name of their company. I find no merit in the present petition. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 23, 2011
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