

Neutral Citation No. - 2023:AHC-LKO:85773-DB

Court No. - 1

Case :- WRIT - A No. - 9967 of 2023

Petitioner :- Dr. Mohammad Shadab Khan

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Higher Education
Anubhag-I Civil Sect.Lko. And 3 Others

Counsel for Petitioner :- Ghaus Beg

Counsel for Respondent :- C.S.C., Tanveer Ahmad Siddiqui

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Jaspreet Singh, J.

1. Heard Shri Ghaus Beg, learned counsel for the petitioner. Notice on behalf of the respondent no.1 has been accepted by the office of the Chief Standing Counsel and Shri H.G.S. Parihar, learned Senior Advocate, assisted by Shri Tanveer Ahmad Siddiqui has put in appearance on behalf of respondent nos.2, 3 and 4.

2. By means of the instant petition, the petitioner prays for the following reliefs:-

"(i) Issue a suitable direction declaring Section 5(1) & (2) of the Uttar Pradesh Private Universities (Second Amendment) Act, 2021 (U.P. Act No.18 of 2021) published vide notification No.795(2)LXXIX-V-I-21-I-Ka-27-21 dated 24.08.2021 as 'invalid' being ultravires to Doctrine of excessive delegation of power given to the Executive Council of the private Universities in the State of Uttar Pradesh.

(ii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties No.2 to 4 to publish the Statutes, Ordinances and Regulations in accordance to Section 42 of the U.P. Private Universities Act, 2019.

(iii) issue a writ, order or direction in the nature of certiorari quashing the impugned show cause notice dated 7.8.2023, issued by

the opposite party no.4, as contained in Annexure No.3 to this writ petition.

(iv) issue a writ, order or direction in the nature of mandamus commanding the opposite parties No.2 to 4 to allow the petitioner to impart teaching to students of M.Tech/B. Tech Classes by assigning him Teaching Load of Department of Mechanical Engineering, Integral University, Lucknow, forthwith."

3. The primary submission of the learned counsel for the petitioner is that the State-respondents have issued a second amendment in Section 5(1) & (2) of the Uttar Pradesh Private Universities Act, 2021 which was published vide notification dated 24.08.2021 and in effect it amends Section 34(1) and (2) of the Principal Act i.e. U.P. Private University Act 2019 and it is urged that the same is ultra-vires as it is hit by the vice of Doctrine of excessive delegation of power given to the Executive Council of the private Universities in the State of Uttar Pradesh.

4. Further submission of the learned counsel for the petitioner is that the respondent University has not published the Statutes, Ordinances and Regulations as required in terms of Section 42 of the U.P. Private Universities Act, 2019, accordingly a direction in the nature of mandamus be granted as prayed.

5. The next submission made by the learned counsel for the petitioner is that the petitioner has been served with a show cause notice dated 07.08.2023 which is bad in the eyes of law and since the Statutes and Ordinances and Regulations of the private respondent University is under challenge for the vice of excessive delegation of power, hence the show

cause notice also is liable to be quashed as it is nothing but an offshoot of the excessive delegation of power. Once the vires is under challenge so also any action taken by the respondent University in terms of the power under which the show cause notice is issued also falls foul, hence is liable to be set aside.

6. Shri V. P. Nag, learned Standing Counsel appearing for the State submits that the amendment made to the Uttar Pradesh Private Universities Act, 2021 does not suffer from any excessive delegation of power rather it has been notified to crease out the anomalies and to ensure that the private Universities established under the Uttar Pradesh Private Universities Act, 2019 are given enough free play so that the purposes of providing quality education in terms of the New Education Policy 2020 is achieved without much interference and the Universities who function through their Executive Council have adequate autonomy to function to achieve the goal. It is urged that it is primarily not a case of excessive delegation rather it is to achieve the lofty principal of making the Universities autonomous and reducing the governmental interference. It is thus submitted that the challenge to Section 5(1) and (2) of the Uttar Pradesh Universities (Second Amendment) Act, 2021 (hereinafter referred to as the Second Amendment Act, 2021) is without substance and must fail.

7. Shri H. G. S. Parihar, learned Senior Counsel appearing for the respondents no.2 to 4 at the outset submitted that the allegation that the Statutes, Ordinances and Regulations are not being published in terms of Section 42 of the U.P. Private Universities Act, 2019 is not quite correct; inasmuch as the Statutes, Ordinances and Regulations are available in the

public domain and have been uploaded on the official website of the respondent University.

8. It is further urged that in so far as the show cause notice is concerned, the same has been issued in exercise of power available with the University as well as the control it has on its employees. Moreover, the respondent is entitled to file his reply to the said show cause notice and in any case it is now well settled that a writ petition against a show cause notice is not maintainable, however the petitioner in attempt to challenge the show cause notice has created a smokescreen by challenging the vires of Second Amendment Act, 2021 which is not permissible as what cannot be done directly cannot be done indirectly either. Thus, the petition must fail.

9. The Court has heard the learned counsel for the parties and also perused the material on record.

10. At the outset, it may be noticed that the Uttar Pradesh Private Universities Act, 2019 was enacted in August 2019 to provide for establishment of new private Universities and incorporation of existing private Universities in the State of Uttar Pradesh for imparting higher education and to regulate their functions and for matters connected therewith or incidental therewith. The Act provides that the Executive Council shall be the Principal Executive Body of the University and the administration, management and control of the University, its income thereof shall be vested with Executive Council who shall control and administer the property and fund of the University.

11. Section 25(4) of the Private Universities Act, 2019 delineates the

powers and duties of the Executive Council. The entire Section 25 enumerates the powers, duties, the composition of the Executive Council and it also prescribes that every decision of the Executive Council shall be informed by the reasons thereof.

12. From the perusal of Section 25, it would reveal that the composition of the Executive Council includes: (i) Vice Chairman who shall be the Chairperson; (ii) three members to be nominated by the governing body; (iii) two eminent educationists nominated by the President; (iv) one officer of the State Government not below the rank of Joint Secretary to the Government of Uttar Pradesh; (v) one Professor and one Associate Professor of the University in order of seniority on rotation basis for a period of one year; (vi) one educationist not below the rank of Associate Professor; (vii) Registrar who shall be the *ex-officio* Member Secretary; (viii) the Finance Officer shall have the right to speak in and otherwise to take part in the proceedings of the Executive Council but shall not be entitled to vote. All constitute the Executive Council. The said section further provides that the Quorum of the meeting of the Executive Council shall not be less than six members and decision at any meeting of the Executive Council shall be taken by majority of the members present at such meeting and in case of any tie in any proposal, the proposal having support of the Vice-Chancellor shall prevail.

13. The Scheme of the Act of 2019 is such that the first Statute of the University established or incorporated shall be made by the Executive Council and shall be submitted to the State Government for its approval.

14. However, sub-section (2) of Section 34 elucidates that the

Government shall consider the first Statutes submitted by the Universities and shall approve it within three months from the date of its receipt. The said section has an inbuilt mechanism and provides that if the State Government does not approve or communicate to the University, the objections thereon within the time mention above (i.e. three months from the date of receipt) the Statute, so submitted, shall be deemed to be approved. In the aforesaid backdrop, it would be found that the power vested with the Executive Council relates to large number of issues including making of the Statutes and Ordinances.

15. The said power contained in Section 25 (4) (iii) also specifically provides the power to make, amend or repeal Statutes and Ordinances. This indicates that vast powers vest with the Executive Council and the manner in which the composition of Executive Council is envisaged as indicated in Section 25(6) and (8) it reflects that it is a multi faceted body having adequate checks and balances within it including one officer of the State Government to ensure the presence of government voice and it has on inbuilt diffusion of power rather than concentration in one hand within the body.

16. Section 34(1) and (2) recognizes the Authority and the power of the Executive Council to frame the said first Statute and as per the existing provision, the same required the approval of the State Government with a caveat that in case if the approval is not granted or the objections are not communicated to the University within three months, the Statute so submitted shall be deemed to be approved.

17. At this stage, it will also be relevant to notice that sub-section (3) of

Section 34 of the Act 2019 which provides that the Statutes can regulate upon large number of matters which has been enumerated in sub-section (3) (a) to (p) of Section 34 which also includes the appointment, powers and functions of the officers of the University and their emoluments as well as the appointment of teachers of the University and other academic and administrative staff and their emoluments as well as the conditions of service of employees including provisions for retirement benefits, insurance and provident fund, the manner of termination of their service and the disciplinary matter amongst others.

18. Most importantly, sub-section (4) of Section 34 provides that the Executive Council shall not make, amend or repeal any Statute affecting the powers or constitution of any Authority of the University until such Authority has been given an opportunity of expressing an opinion in writing to the propose changes of any opinion so expressed shall be considered by the Executive Council.

19. From the perusal of the aforesaid provisions, it would be evident that the Executive Council has large powers and so also responsibilities and to ensure its proper regulation as stated above, a multi faceted composition of the council has been envisaged. In the aforesaid backdrop, if the Second Amendment Act of 2021 is seen more particularly Section 5(1) and (2) by which Section 34(1) and (2) of the Principal Act of 2019 has been amended, which is being reproduced herein after for ready reference:-

"5. In the principal Act, for sub-section (1) and (2) of section 34, the following sub-sections shall be substituted, namely:-

(1) The first Statutes of the Universities established or incorporated under this Act shall be made and approved by the Executive Council.

(2) The first Statutes as above shall be submitted to the State

Government for information within six months of establishment of a University."

20. The unamended and original version of the Section 34 (1) and (2) of the Act of 2019 may also be gainfully perused hence it is being reproduced hereinafter for ease of reference:-

"34. (1) The first Statutes of the Universities established or incorporated under this Act shall be made by the Executive Council and shall be submitted to the State Government for its approval.

(2) The Government shall consider the First Statutes submitted by the University and shall approve it within three months from the date of its receipt. If the State Government does not approve or communicate to the University the objections thereon within the time mentioned above, statutes so submitted shall be deemed to be approved."

21. Upon comparing the said Section 34 as it existed prior to amendment and after the amendment, it would indicate, that even prior to the amendment the first Statutes were required to be made by the Executive Council and it was required to be submitted to the State Government for approval. However, post the amendment it only recognizes the power of the Executive Council to the effect that the first Statutes shall be made by the Executive Council and it has to be approved by the Executive Council itself.

22. Insofar as sub-section (2) is concerned prior to amendment, it had to be submitted to the State Government who was required to approve it within three months, failing which, there was a provision for deemed approval. After amendment, it only provides that the first Statutes shall be submitted to the State Government for information within six months of establishment of University.

23. Apparently, from the comparison of the provision, prior and post amendment it only amplifies the fact that the Executive Council in both cases has the power to make the first Statutes. Even prior to the

amendment, the approval of the State Government was rather formal in the sense that in case if he did not respond or did not approve without objection, the same would incur deemed approval. This has been done away with by the amendment rather now the information has to be sent to the State Government within six months of the establishment of the University.

24. From the consideration aforesaid, it would reveal that there is no issue regarding excessive delegation as urged by the learned counsel for the petitioner; inasmuch as the manner of composition of the Executive Council which is enumerated in Section 25 has its inbuilt mechanism of checks and balance and with the presence of a government nominated member, it cannot be said that the State has completely abdicated its supervision. Moreover, upon meaningful reading of not only the entire Section 25 but also Section 34 of the Act of 2019 it clearly reflects diffusion of power. Moreover, the learned counsel for the petitioner could not demonstrate as to how the Doctrine of excessive delegation of power can be invoked or how the said amendment falls foul or is hit by any provision of part-3 of the Constitution of India. For the aforesaid reasons, this Court does not find merit in the first submission of the learned counsel for the petitioner which is accordingly turned down.

25. In light of the submissions made by Shri Parihar, learned Senior Counsel that all the Statutes and Regulations of the University are already in public domain and is uploaded on the website, thus, the second submission also pales into insignificance. Be that as it may, the University even in future shall ensure that Ordinances and Regulations must be available in the public domain including any changes made therein should

also be available on the website, promptly, in compliance of Section 42 of the Act of 2019.

26. As far as the last submission regarding challenge to the show cause notice is concerned, we do not wish to enter into the said controversy at this stage rather we leave it open for the petitioner to respond to the said show cause notice within further three weeks from today which shall be considered by University on its own merit.

27. In light of the aforesaid discussions, we are of the clear opinion that the Second Amendment Act, Section 5(1) & (2) of the Act of 2021 does not fall foul of the doctrine of excessive delegation of power and it cannot be said by any stretch by imagination that the said amendment is bad in the eyes of law. Consequently, we are of the considered view that the writ petition sans merit and is, accordingly, dismissed. Costs are made easy.

(Jaspreet Singh, J.) (Attau Rahman Masoodi, J.)

Order Date :- December 22, 2023

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