

Court No. - 34

Case :- WRIT - C No. - 18165 of 2024

Petitioner :- C/M Bhullu Maha Vidyalaya Gadaipur And Another

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Anil Kumar Tiwari, Prabhakar Awasthi

Counsel for Respondent :- C.S.C.,P.H. Vashishtha, Vivek Kumar Singh

Hon'ble Syed Qamar Hasan Rizvi, J.

1. Heard Shri Prabhakar Awasthi along with Shri Anil Kumar Tiwari, Advocates for the petitioners and Shri P.H. Vashishtha appearing for Respondent University.

2. The relevant facts that culled out from the pleadings, are that the Petitioner No.1 is a college that imparts education up to graduation level courses in Science, Hindi, Sanskrit, Social Sciences, etc and is affiliated to 'Veer Bahadur Singh Purvanchal University, Jaunpur' (herein after referred as University). The petitioner-College was initially granted provisional affiliation for three consecutive terms by the respondent University. The last provisional affiliation expired in 2021. Upon the expiry of the period of the said provisional affiliation the Petitioner Institution applied for permanent affiliation from the respondent-University on 17.08.2021. In pursuance of the said application, a five-member inspection team was constituted under the direction of the Vice Chancellor of the respondent-University vide letter No.9696 dated 31.08.2021. The said team conducted the due inspection and gave its report dated 10.09.2021, for the grant of permanent affiliation in favour of the petitioner-College. Meanwhile, the Vice Chancellor of the University / respondent No.3 requested the District Magistrate, Ghazipur

to submit a report in respect of the plot of land on which the petitioner College is established.

3. However, before the District Magistrate, Ghazipur could submit the said report, the Respondent No. 2 issued the impugned order dated 30.06.2023 by means of which an extension of the aforesaid provisional affiliation only for a period of one year, in certain subjects/courses of graduation level i.e. from 01.07.2023 till 30.06.2023, was approved with a categorical restriction, prohibiting the Petitioner-College to admit students in the 1st year of the courses for the academic session 2024-25 unless affiliation is obtained from the respondent-University with a warning to the Petitioner-College that in case, if it fails to obtain permanent affiliation by completing the standards prescribed for the same, action for withdrawal of affiliation, from the academic session 2024-25, will be taken against the petitioner-College. The relevant part of the impugned order dated 30.06.2023 issued by the Registrar / respondent no. 3 is reproduced for ready reference:

“विषय- महाविद्यालय को स्नातक स्तर पर कला/ विज्ञान संकाय के पाठ्यक्रम में सम्बद्धता प्रदान किये जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक विश्वविद्यालय के पत्र संख्या - पू०वि०वि० सम्बद्धता/ 2018/ 9364, दिनांक- 08. 08. 2018 का संदर्भ ले, जिसके द्वारा भुल्लु महाविद्यालय, गदाईपुर, गाजीपुर को स्ववित्तपोषित योजनान्तर्गत स्नातक स्तर पर कला संकाय के अन्तर्गत हिन्दी, संस्कृत, समाजशास्त्र, भूगोल, राजनीतिशास्त्र, शिक्षाशास्त्र, गृहविज्ञान एवं विज्ञान संकाय में भौतिक विज्ञान, रसायन विज्ञान, गणित, वनस्पति विज्ञान व प्राणि विज्ञान विषयों/ पाठ्यक्रमों में दिनांक- 01. 07. 2018 से तीन वर्षों के लिए शर्तों के अधीन अस्थायी सम्बद्धता की स्वीकृति प्रदान की गयी थी तथा विश्वविद्यालय पत्र संख्या - पू०वि०वि०/ सम्ब०/ 2021/ 10972, दिनांक- 04. 12. 2021 द्वारा दिनांक- 01. 07. 2021 से 01 वर्ष एवं संख्या- पू०वि०वि०/ सम्ब०/ 2022/ 1898, दिनांक- 25. 05. 2022 द्वारा दिनांक- 01. 07. 2022 से 01 वर्ष हेतु अस्थायी सम्बद्धता विस्तरण की स्वीकृत प्रदान की गयी थी।

सम्बद्धता समिति की बैठक दिनांक- 28. 06. 2023 में की गयी संस्तुति के आधार पर मा० कुलपति जी के आदेश दिनांक- 30. 06. 2023 द्वारा जिलाधिकारी, गाजीपुर की भूमि

जांच आख्या प्राप्त न होने के कारण छात्रहित को दृष्टिगत रखते हुए महाविद्यालय को स्नातक स्तर के उपरोक्त विषयों/ पाठ्यक्रमों में दिनांक- 01. 07. 2023 से 01 वर्ष के लिए अर्थात् 30 जून, 2024 तक सम्बद्धता विस्तरण की स्वीकृति प्रदान की जाती है तथा यह भी निर्देशित किया जाता है कि बिना सम्बद्धता प्राप्त किये शैक्षिक सत्र 2024- 25 अर्थात् 01 जुलाई, 2024 से स्नातक स्तर के उपरोक्त विषयों/ पाठ्यक्रमों में प्रथम वर्ष में छात्रों का प्रवेश प्रतिबन्धित रहेगा। यदि महाविद्यालय द्वारा सम्बद्धता के मानक पूर्ण कर स्थायी सम्बद्धता प्राप्त नहीं की जाती है तो विश्वविद्यालय अधिनियम के अन्तर्गत महाविद्यालय की सम्बद्धता आगामी सत्र (2024- 25) से वापस लिये जाने की कार्यवाही की जायेगी। जिसकी सम्पूर्ण जिम्मेदारी महाविद्यालय प्रशासन की होगी।”

(emphasis supplied)

4. Soon after the Respondent-University issued the impugned order dated 30.06.2023, the Sub-Divisional Magistrate, Jakhania, Ghazipur submitted a report dated 06.07.2023 to the District Magistrate, Ghazipur. Based on the said Report dated 06.07.2023, the District Magistrate, Ghazipur send the Report dated 10.07.2023 to Respondent No. 3, whereby it was reported that:

“...इस प्रकार गदाईपुर परगना बहरियाबाद तहसील जखनियां जनपद गाजीपुर के आराजी संख्या- 649/ 1343 रकबा 0. 635 हे० आराजी नम्बर- 649 मि० रकबा 0. 415 हे० जो०च०आ० पत्र 41 व 45 में अंकित रकबे तथा वर्तमान खतौनी में अंकित रकबे में अन्तर है एवं प्रकरण में अभिलेख शुद्ध किये जाने विषयक अपीलीय न्यायालय आयुक्त महोदय वाराणसी मण्डल वाराणसी में लंबित होने के कारण उक्त आराजी संख्या पर भुल्लू महाविद्यालय का अधिपत्य व स्वामित्व पूर्णतया सिद्ध नहीं है। प्रकरण फर्जी इन्द्राज से संबंधित है तथा विवादित व न्यायालय में लम्बित है।”

5. The submission as advanced by the learned counsels appearing for the Petitioners are that the once a positive recommendation was made by the ‘five-member inspection team’ duly constituted by the respondents-University itself then there was no valid reason available to the Respondent No. 3 to deny permanent affiliation to the Petitioner-College, much-less on the sheer ground of non-receipt of a report from the District Magistrate, Ghazipur; at the time of the meeting of the affiliation committee, which took place on 28.06.2023. He very emphatically asserted that the said action on the part of the respondent-University itself reflects their malafide intention that even before the District Magistrate,

Ghazipur could submit the aforesaid report, the Respondent No. 2, in haste, issued the impugned order dated 30.06.2023 by means of which an extension of the aforesaid provisional affiliation only for a period of one year, in certain subjects/courses of graduation level i.e. from 01.07.2023 till 30.06.2023, was approved with a categorical restriction, prohibiting the Petitioner-College to admit students in the 1st. year course for the academic session 2024-25. In addition to the same, the Petitioner-College was directed to obtain permanent affiliation failing which action for withdrawal of affiliation, from the academic session 2024-25, will be taken against the petitioner-College.

6. It is very emphatically argued by the learned counsel for the petitioners is that once the inspection was held way back on 10.09.2021 and the recommendation was made by the duly constituted Committee, in favour of the petitioner-College, regarding the grant of permanent affiliation, then on the pretext of an uncalled for report, from the District Magistrate, the institution cannot be denied permanent affiliation and could not be restrained from taking admission of the desirous students for the academic session 2024-25.

7. It is also submitted by the learned counsel for the petitioner that time and again provisional affiliations were granted to the petitioner-College by the respondent-University but on such a flimsy ground as aforesaid, further affiliation was declined by the respondents even though the petitioner-institution fulfils all the infrastructural as well as other conditions. He further, contended that the prescribed requirement, as per the Notification No. 3075/सत्तर-2-200202(166)/2002 dated 27.09.2002 issued by the State Government, on the subject is that the '*Application form for no objection / clearance to new colleges proposed at graduate level*' must accompany a Certificate from the applicant college declaring that '*no case / dispute against the land available in the name of the proposed college institution / society or trust*'. His bone of contention is

that after taking into consideration all these aspects the five-member Inspection team duly constituted by respondent-University, vide the Report dated 10.09.2021 made a positive recommendation regarding the grant of affiliation to the petitioner-College, thus there existed no occasion for the affiliation Committee to decline the said request made by the petitioners-College and the respondent-University is bound to strictly follow the prescribed Rules on the subject without any bias or arbitrary methodology.

8. Submission of the learned counsel for the petitioners is that the petitioner-College accommodates more than 600 students, and it is the only institution exists at Gram Gadaipur to bring off the need of the desirous students, to take admission in the courses available in the petitioner-College, but the respondent-University in the most arbitrary and illegal manner deprived them from there lawful right of education.

9. In the Supplementary Affidavit dated 30.5.2024 filed on behalf of the petitioners, they have narrated the background of the proceedings pending before the Revenue Courts and have given the details to substantiate that the pending proceeding under section 38 of the U.P. Revenue Code, 2006 has nothing to do with the adjudication regarding the 'title of the land' and more particularly when the proceedings under section 48(1) of the Consolidation of Holdings Act, 1953 was finalised by Deputy Director of Consolidation, the proceedings under section 38 of the U.P. Revenue Code, 2006 are barred by section 49 of the Consolidation of Holdings Act.

10. It has also been stated on behalf of the petitioners that the alleged rider of pendency of appeal before the learned Commissioner, Varanasi Division, under section 38(4) of the U.P. Revenue Code, 2006 as mentioned in the aforesaid report dated 10.07.2023, has also come to an end as the said Appeal has been allowed vide Order dated 22.12.2023 and the matter has been relegated to the learned lower court with the direction

to decide the matter afresh in the light of observation made in appellate order dated 22.12.2023.

11. Per contra, learned counsel appearing for the respondent No. 2 defending the impugned order dated 30.06.2023 passed by respondent-University, submits that considering the interest of the students, temporary affiliation was granted to the Petitioner-College, only for a year until the land investigation report is received by the Respondent No. 3 so as to ensure that the land undisputedly belonged to the Petitioner-College. He submits that the petitioner-College was granted affiliation for Arts/Science faculties vide order dated 08.08.2018. The learned counsel appearing for the respondent-University placed heavy reliance upon report dated 06.07.2023 submitted by the Sub Divisional Officer, Ghazipur and the report dated 10.07.2023 submitted by the District Magistrate, Ghazipur whereby it was reported that there is pending litigation in respect of the land upon which the petitioner-College is established.

12. It has further been stated on behalf of the respondent-University that during the pendency of dispute on the land; the Notification No. 3075/सत्तर-2-200202(166)/2002 dated 27.09.2002 issued by the State Government, bars the grant of affiliation to the petitioner-College. Further, the regulations of the University for the purpose of affiliation to any colleges provides that the 'land' must be in the name of the college. Clause 7 of the said order clearly stipulates that the affiliation granted in view of the Government Order is subject to inquiry regarding the 'land' through the nominated Sub-Divisional Magistrate who will submit his report in respect of the land, and if anything is found to be incorrect or concealed, then the said affiliation would automatically stand cancelled. He contends that as per the report submitted by the office of the Sub-Divisional Magistrate, Ghazipur dated 06.07.2023, the name of the petitioner-College was found entered in the revenue records for the *Fasli*

year 1427 to 1432 but in *Akaar Patar 41* and *45* the 'land' was found as *Naveen Parti* and this fact was never informed by the petitioner-College to the respondent-University. He contends that since the title of the part of 'land' over which the building of the petitioner-College stands, is disputed therefore the respondent authorities have rightly declined to grant affiliation to the petitioner-College.

13. The learned counsel submits that the *Khata* no. 469/1343/635 which is available as land no. 649/0.1565 is entered as *Naveen parti* in the Consolidation record, although the same was earlier recorded in the name of petitioner, but at present it has been entered as *Naveen parti*, however, in that regard proceeding for correction under section 38(1) of the U.P. Revenue Code, 2006 is pending.

14. Having heard the learned counsels for the parties and on perusal of the materials available on record, this Court finds that undisputedly the petitioner-College was granted temporary affiliation between 2018 to 2021 and on the petitioner's application for permanent affiliation a five-member Committee was constituted by the respondent-University, that conducted the due inspection and returned a favourable report dated 10.09.2021, but unnecessarily, vide the impugned order dated 30.06.2023 issued by the Registrar / respondent No.3 the petitioner-College was denied affiliation, on the premise of non-availability of the 'land investigation report' from the District Magistrate, Ghazipur.

15. Further, as per the report dated 10.07.2023 by the District Magistrate, Ghazipur based upon the report dated 06.07.2023 by the Sub Divisional Officer, Ghazipur, there is certain discrepancy regarding the area of a plot mentioned in the CH Form 41 & 45 and the current Khatauni and the matter for correction of record is pending before the Court of Commissioner Varanasi Division, in appeal therefore an inference has been drawn by the University-authorities that the possession and title of the Petitioner-College is not fully proved.

16. At this juncture, it is imperative to reiterate a well settled law that proceedings for correction of entries in revenue record does not confer or change the title of the property. The Explanation appended to Section 38 (6) of the U.P. Revenue Code, 2006 itself provides that,

“(6) Notwithstanding anything contained in other provisions of this Code, the Revenue Inspector may correct any undisputed error or omission in the record of rights (khatauni) or khasra in such manner and after making such inquiry, as may be prescribed.

Explanation. - The power to correct any error or omission under this section shall not be construed to include the power to decide a dispute involving question of title.”

(Emphasis Supplied)

17. Therefore, proceedings under section 38 of the U.P. Revenue Code, 2006, related appeals and remand orders does not imply a substantial or unresolved ‘title dispute’ as the same completely relates to correction of error or omission in the revenue records and outcome of such proceeding does not, in any manner, be treated as adjudication of the question of ‘title’ of the land. Even otherwise any proceeding regarding correction of error or omission in the revenue records, arising from or instituted under Section 38 of the U.P. Revenue Code, 2006, does not constitute a dispute involving question of title and shall not be construed as a “*case/ dispute against the land*”. Therefore, neither pendency of some report from the District Magistrate nor any pending proceeding related to correction of error or omission in the map, *khasra* or *khatauni* under Section 38 of the U.P. Revenue Code, 2006 will constitute a reasonable ground for refusal of permanent affiliation to the Petitioner.

18. In the present case, it is evident that certain portion of land on which the Petitioner-College is established is subject to the proceedings under Section 38 of the U.P. Revenue Code, 2006. The said proceeding relates to correction of errors and omission in the map, *khasra* or *khatauni*. In the instant case, since certain area of the said land which was previously recorded in the name of the petitioners has been later entered as *Naveen*

Parti, that gave rise to the aforesaid proceeding under Section 38 of the U.P. Revenue Code, 2006.

19. Now, as per the Notification No. 3075/सत्तर-2-200202(166)/2002 dated 27.09.2002 issued by the State Government, the requirement for the grant of permanent affiliation to a college is that there should be *‘no case/dispute against the land available in the name of the proposed college institution/society or trust’*. It is trite that a rule must be read in its’ context. In the present case, the rule requiring undisputed land in the name of petitioner-College is a safeguard against any future disputes regarding the title of the land, that may hamper the interests of students studying in the said college. The nature of dispute involved in the present case relates to the correction of error or omission in the revenue records and not of the title of the land, thus does not fall within the meaning of *‘case / dispute against the land’* as stipulated in the aforesaid Notification No. 3075/सत्तर-2-200202(166)/2002 dated 27.09.2002.

20. In view of the above, the reason recorded by the Respondent No.3 for denying affiliation to the Petitioner on the ground of the report submitted by the District Magistrate, Ghazipur that there is a dispute relating to the question of title, is misconstruction of Section 38 of the U.P. Revenue Code, 2006 as the same deals with the correction of errors and omission in the map, *khasra* or *khatauni*. As such the impugned order dated 30.06.2023 passed by Respondent No. 3 is neither legally apposite nor is in the interest of justice, particularly when the petitioner-College has already been provisionally affiliated and is functioning with a significant number of students.

21. Be that as it may, this court without advertng on the legality or merits of the aforesaid proceeding pending before the revenue authorities, finds the impugned order dated 30.06.2023 issued by respondent No. 3 is liable to be set-aside to the extent it declines to grant affiliation to the

petitioner on the ground as mentioned in the impugned order dated 30.06.2023, Accordingly, the same is quashed to that extent.

22. Taking into consideration the factual matrix of the case and the settled legal preposition as observed herein above, the instant writ petition is **disposed of** with the direction to the University authorities/respondent nos.3 and 4 to consider and pass appropriate orders on the petitioners' application for grant of permanent affiliation in the light of the above noted report dated 10.09.2021 submitted by the five-member inspection team duly constituted under the directions of the Vice Chancellor of the respondent-University.

23. In the interest of justice, it is provided that the respondent-University shall take decision as indicated herein above, at the earliest, so as to protect the academic future of students.

Order Date :- 30.07.2024

Jitendra Patel/Abhishek Gupta