

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Saugata Bhattacharyya

W.P.A. 6416 of 2015

(IA NO: CAN 1/2016 (Old No: CAN 1471/2016))

Amitabha Chanda

-vs-

State of West Bengal & Ors.

For the Petitioner : Mr. Sudeep Sanyal,
Mr. Sukanta Das,
Mr. Surodeep Sanyal

For the Balurghat Municipality : Mr. Srijan Nayak,
Ms. Riturparna Maitra

For the UGC : Mr. Anil Kumar Gupta

For the State : Mr. Biswabrata Basu Mallick,
Mr. Sanjib Das

For the Respondent no.6 : Dr. Jyotirmoy Som

Hearing concluded on: 07.08.2023

Judgment on: 07.08.2023

Saugata Bhattacharyya, J.:

Petitioner being Lab Assistant was deputed to Sanitary Section in Balurghat Municipality (hereinafter referred to as “Municipality”) for maintenance of day-to-day conservancy works of the Municipality as per direction of Conservancy-in-Charge and Sanitary Inspectors.

Petitioner is having Diploma Certificate in Health and Sanitary Inspection issued by Vinayaka Missions University, Salem, Tamilnadu. A notification was issued on 22nd February, 2014 by the Chariman, Balurghat Municipality for filling up the post of Sanitary Inspector and in pursuance of the said notice petitioner had offered his candidature having the qualification of Diploma in Health and Sanitary Inspection.

It has been submitted by Mr. Sanyal, learned advocate representing the petitioner that the petitioner was the only candidate for the said post of Sanitary Inspector in the said Municipality. The grievance which has been voiced on behalf of the petitioner is issuance of memo dated 26th February, 2015 by the Director of Local Bodies, West Bengal whereby it was intimated to the Chairman of the said Municipality that the selection of the petitioner for the

post of Sanitary Inspector is not permissible since Diploma Certificate in Health and Sanitary Inspection of the petitioner is not an approved qualification.

The said communication dated 26th February, 2015 has been questioned in the present writ petition and it has been submitted on behalf of the petitioner that he obtained Diploma Certificate from Vinayaka Missions University, Salem, Tamilnadu in Health and Sanitary Inspection on 25th June, 2012 and the same ought to have been accepted by the concerned respondent authorities in the matter of his selection for the post of Sanitary Inspector in the Municipality.

The writ petition is heard in presence of the learned advocates representing the petitioner, Municipality, Indira Gandhi National Open University, University Grants Commission and the State respondents.

Having considered the submissions made on behalf of the parties, it appears that petitioner obtained Diploma in Health and Sanitary Inspection from Off-Campus Study Centre situated at Dhanbad, Jharkhand. According to the petitioner said Off-Campus Study Centre is under the aegis of Vinayaka Missions University. It has also been

submitted that the petitioner had undergone the course in academic session 2011-12. Therefore it has been contended that there is no impediment in accepting the Diploma Certificate of the petitioner in the matter of selection for the post of Sanitary Inspector in the said Municipality.

In support of such contention reliance has been placed on a document dated 28th February, 2007 which is at page 16 of the affidavit-in-opposition affirmed on behalf of UGC and it has been strenuously argued that with effect from 28th February, 2007 for a period of five years Faculty of Distance Education of Vinayaka Missions University was permitted to run such courses. Therefore it is presumed according to the petitioner that the course which was undergone for the Session 2011-2012 was approved by the Distance Education Council (DEC).

In addition thereto reliance has been placed on judgment of the Apex Court, reported in **(2009) 4 SCC 590 (Annamalai University represented by Registrar -vs- Secretary to Government, Information and Tourism Department & Ors.)**.

On behalf of the said Municipality reliance has been placed on the affidavit affirmed on behalf of the UGC in order to satisfy the query of this Court that it is true for a five years with effect from 28th February, 2007 institutional recognition was granted by the DEC to Vinayaka Missions University but Diploma in Health and Sanitary Inspection was not included in the approved programmes.

According to the Municipality as well as other respondents as it has been submitted that Diploma Certificate in Health and Sanitary Inspection is not an approved qualification therefore the candidature of the petitioner has rightly been cancelled by the Director of Local Bodies vide communication dated 26th February, 2015.

This Court while considering the issue involved in this writ petition needs to consider the affidavit-in-opposition of the UGC wherein the status of Diploma Certificate of the petitioner has been considered and the contention of the petitioner relating to the status of such Diploma Certificate has been negated in view of the documents appended to the said affidavit-in-opposition.

It appears from page 18 onwards of the said affidavit of UGC that one document dated 20th April, 2011 has been enclosed wherefrom it appears that an Expert Committee comprising nominees of UGC, AICTE and DEC visited Vinayaka Missions University and submitted its recommendation. Such recommendation of the Expert Committee was placed before the 38th Meeting of DEC and the decision of the DEC taken in the said meeting was communicated to the University thereby according recognition for a period of three years with effect from academic year 2011-12 to the academic year 2013-14 for offering certain programmes through Distance Education and the programmes have been delineated in a table appended to the said document dated 20th April, 2011. However, petitioner has failed to show that Diploma in Health and Sanitary Inspection was included in the list as contained in the said document dated 20th April, 2011.

In addition thereto it has been clarified in Clause B9 of the said document dated 20th April, 2011 that territorial jurisdiction for offering programmes through distance mode by Vinakaya Missions University shall be

the head quarters of the University as per the notification of the UGC as per DEC norms.

In addition thereto, this Court is required to rely upon the judgment of the Apex Court, reported in **(2005) 5 SCC 420 (Prof. Yashpal & Anr. -vs- State of Chhattisgarh & Ors.)** In paragraph 60 of the said judgment it has been enunciated that in view of the Article 245(1) of the Constitution, Parliament alone is competent to make laws for the whole or any part of the territory of India and the legislature of a State may make laws for the whole or any part of the State. The impugned Act which specifically makes a provision enabling a university to have an off-campus centre outside the State is clearly beyond the legislative competence of the Chhattisgarh Legislature.

In the present case nothing has been produced before this Court based on statutory provisions promulgated by the Central Legislature empowering the Vinayaka Missions University to run Off-Campus Study Centre outside the territorial jurisdiction of the State of Tamilnadu where the University situates. Though an attempt has been made on the part of the petitioner to justify running Off-Campus Study Centre outside the

territorial jurisdiction of the State upon placing reliance on **Annamalai University (supra)** but this Court fails to find out any observation made by the Apex Court which empowers the Vinayaka Missions University to run Off-Campus Study Centre outside the territorial jurisdiction of the State of Tamilnadu.

In view of law laid down by the three-Judge- Bench of the Apex Court in **Prof. Yashpal (supra)** and in consideration of the document annexed to the affidavit-in-opposition of the UGC dated 20th April, 2011, page 18 onwards, which contains list of courses which can be offered through Distance mode of Education by Vinayaka Missions University, the list is devoid of the course called Diploma in Health and Sanitary Inspection, this Court does not find any illegality in the communication dated 26th February, 2015 issued by the Director of Local Bodies, Government of West Bengal cancelling the candidature of the petitioner on the ground that the Diploma Certificate of the petitioner is not an approved qualification.

Accordingly this Court does not find any merit in this writ petition and the same stands dismissed.

Application, if any pending, also stands dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)

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