

22.09.2023

MAT 1499 of 2016

**Sumanta Majumder
Vs.
The State of West Bengal & Ors.**

Mr. Bikram Banerjee
Mr. Sudipta Dasgupta
Ms. Dipa Acharyya
Mr. Sutirtha Nayek

... ... for the appellant

Ms. Tapati Samanta

... ... for the State

Mr. Pulak Ranjan Mandal
Ms. Bandana Mandal

... ... for the College Service Commission

Mr. Anil Kr. Gupta

... ... for the UGC

Mr. Biswaroop Bhattacharya
Mr. Pourush Bandyopadhyay
Mr. Kausik De
Ms. Mohini Majumder
Mr. Raghav Munshi

... ... for the Madurai Kamaraj University

1. The writ petitioner/appellant pursued a distance education course from Madurai Kamaraj University for the academic session 2009-2010. He applied to the said course on the basis of the representation made by the University that it is an approved course and the University is the authority to conduct such distance education course from its study centre at Gaziabad.
2. On the basis of the recommendation issued he was appointed to the post of Assistant Professor. However, subsequently West Bengal College Service Commission recalled the recommendation letter forming the basis of his appointment on the ground that the course the writ petitioner/appellant pursued

in the distance mode is an unapproved course. This has resulted in a writ application being filed by the present appellant.

3. The writ petition was dismissed on the ground that the UGC has not recognized such degree and accordingly the recommendation letter based on such degree cannot be acted upon.
4. The learned Single Judge has proceeded on the basis of the submission made on behalf of the UGC that the degree obtained through off campus distance learning mode is not recognised. Moreover, the University although located in Madurai but run a study centre in Gaziabad. Since such off campus study centre is not recognized the degree obtained from the Madurai University is not valid and cannot be recognised.
5. We have heard the learned counsel for the parties extensively.
6. The primary concern is the approval and recognition of the degree under the distance education course after the decision of the Hon'ble Supreme Court in **Prof. Yashpal and another Vs. State of Chhattisgarh and others, (2005) 5 SCC 420**. However, it appears that the Distance Education Council being faced with a dilemma particularly in respect of the courses that were pending and continued after the judgment of **Prof. Yashpal (supra)** had reviewed the situation in its meeting held on 10th

March, 2010 in which in item no.35.3 the Council has specifically dealt with the territorial jurisdiction in offering programmes through distance mode. The said decision is reproduced below.

“Item No. 35.3 : Territorial Jurisdiction in offering programmes through distance mode

The Council in its 28th meeting held on 23rd March, 2007, had decided that jurisdiction for offering programmes through distance mode will be as per the Acts and Statutes of the concerned university. However, in the ninth Joint Committee of UGC-AICTE & DEC held on 17.08.2009 regarding territorial jurisdiction for offering programmes through distance mode, it was decided that the latest UGC notifications will prevail over all previous notifications and circulars of the DEC.

The Council considered the roles and responsibility and the authority of the Joint Committee and decided that the Joint Committee cannot supercede the Statutory Authority of the Distance Education Council. The Council noted that the distance education and online education cannot have the Territorial Jurisdiction and it was decided that in case of Central Universities and the State Universities, the Territorial Jurisdiction will be as per their Acts and Statues for offering programmes through distance mode. The Territorial Jurisdiction in case of Deemed Universities will be as per UGC which mandates the prior approval of the UGC for opening Centres/off Campus Centres outside the Headquarters. The Territorial Jurisdiction in case of Private Institutions (other than Universities) will be as decided by the Joint Committee.”

7. The aforesaid resolution would show that the Distance Education Council noted a subsequent decision taken on 17th August, 2009 by the UGC-AICTE and DEC regarding the territorial jurisdiction for offering programmes through distance mode in

which it was decided that the latest UGC notification would prevail over all previous notifications and circulars of the DEC. Until the said decision was taken by the DEC, it appears that the distance education course was allowed to be continued notwithstanding the decision in **Prof. Yashpal (supra)** for the reasons stated by the Distance Education Council in its several meetings and deliberations subsequent to the decision in **Prof. Yashpal (supra)** and it seems to have been resolved and settled in so far as the present issue is concerned in the meeting held on 10th March, 2010.

8. Mr. Biswaroop Bhattacharya, learned Counsel appearing on behalf of the Madurai Kamaraj University has fairly submitted that the annexure to the minutes of the meeting held on 10th March, 2010 indicates certain important decisions with regard to recognition accorded by the Distance Education Council to the University/Institution for offering programmes through distance mode.
9. The minutes dated 10th March, 2010 contained an annexure dealing with the recognition accorded by the Distance Education Council to the Universities/institutions for offering programme through distance mode. It contains summary of certain important decisions which, inter alia, included study centre and territorial jurisdiction. In relation to

“study centre” the decision is taken that the distance education council (DEC) does not give approval to the study centre of any university/institutions either directly or through franchisee as they are established by the University/Institution concerned as per the provision available in their acts and statutes. In so far as the “territorial jurisdiction” is concerned, it states that in case of Central Universities and the State Universities, the Territorial Jurisdiction will be as per their Acts and Statutes for offering programmes through distance mode. The Territorial Jurisdiction in case of Deemed University will be as per UGC which mandates the prior approval of the UGC for opening Study Centres/off campus centres outside the HQs. The Territorial jurisdiction in case of private institutions (other than Universities) shall be their HQs and in no case outside the State concerned.

10. In respect of Madurai Kamraj University, Madurai for the duration of recognition relating to academic year 2007-2008 it is stated that it will continue till the Committee visits and submits its recommendations and a decision is taken by the DEC.

11. Prima facie it appears that when the writ petitioner/appellant was admitted he was covered by the resolution dated 10th March, 2010 as regards the duration for the purpose of recognition was in respect of the academic year 2009-2010. The direction was to

give a provisional recognition. There was as such no impediment to take admission in the said course.

12. Moreover, with regard to the territorial jurisdiction in the meeting held on 10th March, 2010 it was clarified that the decision taken on 23rd March, 2007 would prevail as the recommendation of the Joint Committee dated 17th August, 2009 cannot supersede the statutory authority of the Distance Education Council. The academic session of the writ petitioner/appellant unfortunately had fallen in between the aforesaid period i.e. 23rd March, 2007 and 17th August, 2009 and he had completed his course in December, 2010. He was admitted in January, 2009 and on successful completion of course in MBA in December, 2010 he was given Course Completion Certificate. The writ petitioner cannot be made to suffer for the indecision and lack of clarity which was resolved only after he was admitted and completed almost after 13 months when DEC finally resolved the issue.

13. It would appear from the minutes and materials disclosed on behalf of the UGC that the Distance Education Council was deliberating on the issue of off campus and had from time to time extended such benefit.

14. The problem arose when the Secretary, University Grants Commission did not respond to the query of

the Joint Secretary to the State of West Bengal dated 1st February, 2016 in which the clarification is sought for with regard to the MBA degree obtained by the candidate from Gaziabad Study Centre of Madurai, Tamil Nadu in distance mode. This issue is now required to be resolved on the basis of all the relevant notification and the minutes of the meeting held by the distance education council regarding the validity of such degree obtained in the distance mode.

15. Having regard to the aforesaid facts, we direct the Secretary, University Grants Commission to take a final decision on the MBA degree obtained by the present appellant/writ petitioner for the academic session January 2009-December, 2010 upon taking into consideration the observations made by us in this order and the minutes of the meeting of the Distance Education Council dated 10th March, 2010 and any other material relevant to the issue.
16. We are of the view that in the minutes of the meeting of the DEC held on 10th March, 2010 is relevant to decide the issue of recognition of the degree of the writ petitioner.
17. The Secretary, University Grants Commission shall decide the matter after giving a reasonable opportunity of hearing to the writ petitioner/appellant and the representative of Madurai Kamaraj University

by a reasoned order within a period of eight weeks from the date of communication of this order.

18. Hearing may take place on the virtual mode.

19. Order of the learned Single Judge is set aside.

20. The appeal stands disposed of.

21. Urgent certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)