



2024 : DHC : 1206



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

+ **W.P.(C) 14933/2023**

NAZAR MOHAMED MOHAIDEEN S Petitioner
Through: Mr. M. Yogesh Kanna, Ms.
Prakriti Rastogi, Mr. Azad Bansala, Ms.
Vasu Kalra, and Ms. Monica Saini, Advs.

versus

JAWAHARLAL NEHRU
UNIVERSITY AND ANR. Respondents
Through: Ms. Monika Arora, CGSC, with
Mr. Subhrojeet Saha, Mr. Kushal, and Mr.
Ranjeet Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (O R A L)
15.02.2024

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A Housekeeping Note

1. It is noticed that there are two counter affidavits on record filed by the JNU, one under an index dated 15 January 2024 and the second under an index dated 3 February 2024, accompanied by an application for condonation of delay. Delay is condoned.

2. Mr. Saha submits that the JNU is not pressing the first affidavit filed under index dated 15 January 2024.

Facts



2024 : DHC : 1206



3. The petitioner was enrolled, in 2022, with the Special Centre for Molecular Medicine (SCMM) in the Jawaharlal Nehru University (JNU) as a Ph.D scholar.

4. Prof. Shailja Singh was nominated as the petitioner's supervisor, to supervise him during his Ph.D course. Certain differences arose between the petitioner and Prof. Singh, resulting in Dr. Singh addressing a communication dated 27 February 2023 to the Chairperson of the SCMM, alleging that the petitioner had been irregular in attending the lab, that he was insincere in performing the work assigned to him and that he was visiting the lab at late hours with strangers, which was a security threat. Predicated on these allegations, Prof. Singh requested the Chairperson of the SCMM to transfer the petitioner from her supervisorship and to take necessary action.

5. It is important to note, at this point itself, that, though the statutes and ordinances governing the JNU contained ample provisions under which punitive or disciplinary action can be initiated against an incorrigible or undisciplined scholar, no such action was ever initiated against the petitioner at any point of time.

6. Ordinances 6.1 and 6.6 of the Ordinances of the JNU read thus:

“6.1 The Research Supervisor for a Research Scholar shall be appointed by the Committee for Advanced Studies and Research or its equivalent body, as the case may be, on the recommendation of the Centre or School/Special Centre concerned.

6.6 In case of insuperable difficulties, either the Research Scholar or the Research Supervisor/Co-supervisor may request in



2024 : DHC : 1206



writing for change of supervision arrangement. Such request shall be addressed to the Chairperson of the Centre or School/Special Centre. who shall place it before the Faculty Committee. The Faculty Committee may, if it is considered to be appropriate, feasible and in the best interests of all, recommend to the Committee for Advanced Studies and Research or its equivalent body, as the case may be. for change of Research Supervisor/Co-supervisor. The Committee for Advanced Studies and Research or its equivalent body may appoint, in such case, different Research Supervisor/Co-supervisor.”

7. Though Ordinance 6.6 of the Ordinances requires any written request by a supervisor, expressing unwillingness to supervise a Ph D scholar, to be placed before the Faculty Committee, the Chairperson of the SCMM did not do. Instead, he placed the matter before a Central Level Grievance Redressal Committee (hereinafter referred to as “the GRC”).

8. On 17 March 2023, the GRC expressed the view that the differences between the petitioner and Prof Singh could be amicably resolved and, therefore, advised them to sit together and try and settle the matter.

9. The differences between the petitioner and Professor Shailja Singh could not come, however, to any happy resolution, resulting in both the petitioner and Prof Singh addressing communications to the Chairperson of the SCMM, making allegations against each other.

10. The matter was, once again, referred by the Chairperson of the SCMM to the GRC, instead of being referred to the Faculty Committee in terms of Ordinance 6.6.



2024 : DHC : 1206



11. The Grievance Redressal Committee met on 12 May 2023, and recommended, apropos the supervisorship of the petitioner's Ph D programme, that, as neither the petitioner nor Prof. Singh desired to work together, and wanted to part ways, the Chairperson could initiate steps to reallocate a new supervisor to the petitioner "*as per the official process of the JNU*".

12. The Chairperson of the SCMM, on 18 May 2023, wrote to the petitioner informing him that the GRC had permitted the petitioner to change his supervisor. The petitioner was, therefore, directed to arrange for a NOC from Prof. Shailja Singh *and obtain written consent from his prospective supervisor.*

13. It is not in dispute that there is no provision in any Rule, Regulation, Statute or Ordinance governing the JNU which entitles the JNU to call upon a Ph.D scholar to find a prospective supervisor for himself or herself.

14. I have repeatedly queried of Mr. Saha on this point. Mr. Saha, while being unable to cite any provision which requires a Ph.D candidate to find a supervisor for himself or herself, seeks to submit that this was the past practice which was being followed by the JNU. Mr. Saha also desired to refer to the dictionary definitions of "past practice".

15. I do not see how, in a university governed by Statutes, Rules



2024:DHC:1206



and Ordinances, any procedure foreign to their provisions can be adopted, on the tenuous plea of “past practice”. If any such past practice is being followed, which is not sanctioned by the Rules, Regulations, Ordinances and Statutes governing the JNU, it would be well that such a practice is jettisoned at the earliest.

16. This is not even a case in which it can be said that said “past practice” can be relied upon to supplement a lacuna in the applicable Ordinances and Statutes. Ordinance 6.1 of the Ordinances clearly states that the research supervisor for a Ph.D scholar shall be appointed by the Committee for Advance Studies and Research (CASR) or its equivalent body. There can, therefore, can be no “past practice” which allows the JNU to call upon the Ph.D scholar to find out her, or his, own supervisor. Such a practice is directly contrary to the mandate of Ordinance 6.1. Any such past practice is *ex facie* illegal.

17. The JNU could not, therefore, have called upon the petitioner to find a supervisor for himself. The task of finding a supervisor for a Ph.D. scholar is unequivocally cast, by the JNU’s own Ordinance 6.1, on the CASR, or the equivalent department in the JNU. *The request, in the communication dated 18 May 2023, to the petitioner, to obtain a written consent from his prospective supervisor was, therefore, ex facie without jurisdiction or authority.*

18. Be that as it may, Prof Shailja Singh gave her NOC to function as supervisor of the petitioner to the Chairperson of the SCMM on 21



2024:DHC:1206



May 2023.

19. On 10 August 2023, the Chairperson of the SCMM once again wrote to the petitioner, once again calling upon him to provide the name of a prospective supervisor to guide him during his remaining Ph D program, along with a consent letter from the prospective new supervisor, though this was clearly contrary to Ordinance 6.1 of the JNU.

20. As the petitioner was unable to provide the name of any new supervisor to guide him, the Chairperson of the SCMM deemed it appropriate to invoke Ordinance 6.6 and placed the case before the Faculty Committee.

21. The Faculty Committee issued the following communication to the petitioner on 4 October 2023:

“To,

04/10/2023

Mr. Nazar Mohammad Mohaideen S.
SCMM, JNU
New Delhi-110067

Subject: Regarding allotment of a new supervisor from SCMM

Dear Mr. Nazar Mohammad Mohaideen S.,

This has reference to your letter as well as email communication dated 06/09/2023 and continuous reminders dt. 13/09/23, 14/09/2023, 22/09/2023 & 25/09/2023, received from you, as well as the forwarding emails/reminders from Rector-I office and Vice Chancellor's office.

As per your communication, you informed that-

Clause 6.6 of that ordinance states that:



“In case of insuperable difficulties, either the Research Scholar or the Research Supervisor/Co-supervisor may request in writing for change of supervision arrangement. Such request shall be addressed to the Chairperson of the Centre or School/Special Centre, who shall place it before the Faculty Committee. The Faculty Committee may, if it is considered to be appropriate, feasible and in the best interests of all, recommend to the Committee for Advanced Studies and Research or its equivalent body, as the case may be, for change of Research Supervisor/Co- supervisor. The Committee for Advanced Studies and Research and its equivalent body may appoint, in such case, different Research Supervisor/Co-supervisor”.

Clause 17.3 of the Ordinance further states that:

"In a School or Special Centre where the Committee for Advanced Studies and Research does not exist, all powers and functions of the said Committee under this Ordinance shall be exercisable or he carried out by such School or Special Centre concerned.

This is to inform you that your matter with the reference of the above Ph.D ordinance clauses 6.6 & 17.3, was discussed in the Faculty committee meeting held on 22/09/2023 and committee passed the following resolution.

“Once SCMM has allotted a supervisor to Mr. Nazar Mohammad Mohaideen S. in the year 2022, but due to differences cropped up between Mr. Nazar Mohammad Mohaideen S., and Prof. Shailja Singh, Mr. Nazar Mohammad Mohaideen S. gave in writing that he cannot continue as PhD student with Prof. Shailja Singh. Prof. Singh also shown her inability to supervise Mr. Nazar Mohammad Mohaideen S as Ph.D. student. Mr. Nazar Mohammad Mohaideen S. have put serious allegations against Prof. Singh in his statement on 19.04.2023 in front of Grievance committee and Prof. Singh has also put serious allegations in her emails written to SCMM office and in front of Grievance committee. *The matter was deliberated in faculty meeting and resolved that it is not feasible for any SCMM faculty to supervise Mr. Nazar Mohammad Mohaldeen S. as Ph. D. student, as per the Ph.D. ordinance clauses 6.6 & 17.3¹, mentioned in your*

¹ 17.3 In a School or Special Centre, where the Committee for Advanced Studies and Research does not exist, all the powers and functions of the said Committee under this Ordinance shall be exercisable or carried out by



2024 : DHC : 1206



request. It was also resolved that Prof. Sneha Sudha Kamath, SLS and Dean, SLS did not give anything in writing to SCMM at any point of time, hence it is not possible by SCMM to consider that request”.

The three member's grievance committee and faculty committee also noted that you have wrote vide your presentation/statement (submitted by you in a sealed envelope, as demanded by grievance committee vide minutes of Grievance Committee meeting dt 19/04/2023), that you don't want to continue his Ph.D. under the supervision of Prof. Shailja Singh.

“I am sorry that I will have to lose the opportunity to work on a project that was closed to my heart, and for no fault of my own. Therefore, I have no choice but to request that Centre to assign me another supervisor, as my work has already been delayed for this reason and the approval of my synopsis and confirmation of my admission to the Ph.D. are impending.

So, in such situation, you cannot continue as Ph.D student at SCMM. As per your salary bill submitted to center, we will process it after getting an opinion from JNU administration asap. I hope it suffices your query

Thanking you.

Vibha Tandon”

(Emphasis supplied)

22. The petitioner has approached this Court under Article 226 of the Constitution of India assailing the afore-extracted communication dated 4 October 2023 and seeking that it be quashed and set aside. The petitioner has also prayed that the JNU be directed to allot a new supervisor to the petitioner at the SCMM in accordance with Ordinance 6.1. Other prayers in this writ petition are merely incidental

such School or Special Centre concerned. They shall be considered equivalent to the Committee for Advanced Studies and Research under this Ordinance.

The report of every decision made or action taken by the School or Special Centre, while acting as equivalent to the Committee for Advanced Studies and Research, shall be placed before the Special Committee of such School or Special Centre for consideration and ratification.

Signature Not Verified

Digitally Signed By: AJIT
KUMAR
Signing Date: 16.02.2024
17:46:47



2024 : DHC : 1206



to this request.

Rival Contentions

23. I have heard Mr. M. Yogesh Kanna, learned Counsel for the petitioner, and Mr. Subhrojeet Saha, learned Counsel for the JNU.

24. Mr. Kanna submits that the JNU has no jurisdiction even to refuse to provide a supervisor to the petitioner, much less to cancel the Ph Dship of the petitioner on the ground that no supervisor was available to supervise him. He has drawn my attention to Ordinances 6.1 and 6.6 of the Ordinances of the JNU and submits that they are clear and categorical in placing the responsibility of assigning a supervisor to a Ph.D scholar on the JNU and the JNU alone.

25. In the event that, on account of insuperable difficulties, it is not possible for a Ph.D scholar to be supervised by the supervisor assigned to him, Ordinance 6.6 requires the Faculty Committee to take a decision on the feasibility of having the scholar supervised by another supervisor. He also points out that there is, unfortunately, no fall back clause available in the ordinances of the JNU which could be invoked in the event that no alternate supervisor was available. He suggests that, in the absences of any such fall back option, and keeping in mind the fact that the responsibility to ensure that every Ph.D scholar is duly supervised is cast on the JNU, the Chairman of the SCMM could be directed to act as the supervisor of the petitioner.



2024 : DHC : 1206



26. Mr. Saha, countering the submission of Mr. Kanna, submits that the petitioner was incorrigible in his behaviour and that was the reason why Prof. Shailja Singh found it impossible to supervise him. He submits that the petitioner had himself to blame if he was placed in a situation in which there was no one to supervise him, as the reluctance of other supervisors to supervise the petitioner was owing to the conduct exhibited by the petitioner himself. It was in these circumstances, he submits, that the JNU had no option but to call upon the petitioner to find his own supervisor. On the petitioner being unable to do so, and on no supervisor within the JNU being available to supervise him, Mr. Saha submits that the JNU had, again, no option but to cancel the Ph.D candidature of the petitioner, as a Ph.D scholar cannot continue without a supervisor.

Analysis

27. I have perused the record and applied myself to the position that emerges from the Ordinances and the various submissions made at the Bar.

28. Certain things are absolutely clear.

JNU cannot act contrary to Ordinances and Statutes

29. The JNU is governed by its Statutes and its Ordinances. It has, therefore, to scrupulously act as per their dictates.

30. Though, hypothetically, it may be possible to argue that a



2024 : DHC : 1206



lacuna in the Statutes or Ordinances may be provided or supplemented by an administrative decision based on “past practice”, in my opinion, that occasion does not arise in the present case. We are not faced with a situation in which there was any lacuna in the statute, which had to be supplemented by any administrative decision, or past practice.

Discontinuance of the petitioner’s Ph.D candidature

31. Addressing, first, the issue of the discontinuance of the candidature of the petitioner as a Ph.D scholar by the impugned order dated 4 October 2023, it is plain that the decision cannot sustain for an instant, either on facts or in law.

32. The candidature of a Ph.D scholar cannot be cancelled by the JNU save and except in the manner known to the Statutes and Ordinances. It is settled, since the times of *Taylor v. Taylor*², through *Nazir Ahmed v. King Emperor*³ and the judgment of the Supreme Court in *State of UP v. Singhara Singh*⁴ among a host of others, that, when the statute requires a particular act to be done in a particular manner, that act has to be done in that manner or not done at all, all other methods of doing that act being necessarily forbidden.

33. Ordinance 10 governing the JNU specifically envisage a situation in which a student’s Ph.D candidature can be cancelled. Ordinances 10.1 to 10.3 read thus:

“10. Removal of name/Cancellation of Registration

² (1876) 1 Ch D 426

³ AIR 1936 PC 253

⁴ AIR 1964 SC 358



2024 : DHC : 1206



10.1 The name of the candidate provisionally admitted to Ph.D. programme shall stand automatically removed from the rolls of the University if he or she:

- (i) Fails to fulfill the eligibility criteria specified for confirmation of admission under clause 9.
- (ii) Fails to submit his/her thesis, in case of candidates admitted directly to the Ph.D. Programme, within the period of four years from the date of admission or within the extended period, where extension has been granted under clause 5.3.
- (iii) Fails to submit his/her thesis, in case of candidates admitted to Ph.D. Programme in integrated M. Phil. - Ph.D. Programme, within the period of three years or within extended period, where extension has been granted under clause 5.3.

10.2 The Committee for Advanced Studies and Research or its equivalent body may remove, at its discretion, the name of the candidate admitted directly to the Ph. D. Programme, who is undergoing Course Work, from the rolls of the University if he or she:

- (i) Fails to clear all the courses prescribed in the first semester of the Course Work; or
- (ii) Fails to secure SGPA of 5.0 in the first semester course work (4.5 in the case of SCST/ OBC (non-creamy layer)/differently-abled) in order to be eligible to continue in the Programme.

10.3 The Committee for Advanced Studies and Research or its equivalent body may, in its discretion, cancel the registration of the Candidate/Research Scholar if:

- (i) The Research Advisory Committee recommends for cancellation under clause 13.4.
- (ii) For breach of provisions contained in clause 10.4 and clause 10.5 below.”

34. The Ordinances of the JNU thus envisaging certain specific exigencies in which alone the Ph.D candidature of a Ph.D scholar



2024 : DHC : 1206



could be cancelled, the JNU cannot cancel the candidature of a Ph.D scholar on any other ground.

35. Mr. Saha does not dispute the fact that there is no provision in the Statutes or Ordinances which enables the JNU to cancel the candidature of a Ph.D scholar on the ground that there was no supervisor available to supervise him.

36. The Ph.D candidature of the petitioner has not been cancelled, in the order dated 4 October 2023, on any of the grounds envisaged in Ordinance 10.

37. The inexorable sequitur would be that the decision to cancel the petitioner's Ph.D candidature, as contained in the impugned order dated 4 October 2023, cannot sustain in law and is liable to be set aside.

The “supervisory dilemma”

38. That would restore the petitioner as the Ph.D. scholar in the JNU. The question still remains as to how the petitioner's Ph.D candidature is to proceed, given the mandatory requirement of a supervisor to supervise the petitioner.

39. As I have already noted, Ordinance 6.1 clearly places the responsibility of finding a supervisor for every Ph.D scholar registered with it on the CASR, or its equivalent body. However, Mr. Saha



2024 : DHC : 1206



submits that as there is no CASR in the SCMM, the decision would be taken by the SCMM itself, as the equivalent body.

40. As such, the direction to the petitioner to find himself a supervisor and obtain consent from him or her to supervise the petitioner, was in the teeth of Ordinance 6.1 and is, consequently, illegal. It was for JNU, and JNU alone, to assign a supervisor to the petitioner.

The Faculty Committee decision dated 22 September 2023

41. Adverting, now, to the decision of the Faculty Committee, held on 22 September 2023 and reproduced in the impugned communication dated 4 October 2023 from the SCMM to the petitioner, it is clear, again, that this decision is beyond the jurisdiction and remit of the Faculty Committee, cast on it by Ordinance 6.

42. Ordinance 6.6 does not allow the Faculty Committee to come to a decision that a Ph.D. student *cannot* be supervised. The reason is obvious. Had Ordinance 6.6 so permitted, it would have run directly foul of Ordinance 6.1, which mandated the JNU to appoint a supervisor to supervise every Ph.D candidate. Quite obviously, the Faculty Committee could not have come to a conclusion that it was not feasible to comply with Ordinance 6.1, unless the Ordinances themselves were to so provide. They do not.

43. Ordinance 6.6 only enables the Faculty Committee to, if it is



2024 : DHC : 1206



considered to be appropriate, feasible and in the best interests of all, recommend, to the concerned committee, for change of the supervisor of the Ph D scholar.

44. It may be possible to argue that, if Ordinance 6.6 empowers the Faculty Committee to recommend the appointment of an alternate supervisor “*if it is considered to be feasible*”, that would necessarily carry, with it, the power to hold that it is *not feasible* to appoint another supervisor. This is, however, at best arguable, as, as Mr. Kanna correctly points out, Ordinance 6.6 provides for the consequence of the Faculty Committee finding that it is feasible to appoint another supervisor, but does not provide for the consequence of the Faculty Committee deciding in the alternative, viz., that it is *not feasible* to do so.

45. The general principle that conferment of the power to hold that circumstance X applies would also carry, with it, impliedly, the power to hold that circumstance X does not apply may, therefore, not be applicable where the statute conferring the power provides for the consequence of the former decision, but does not provide for the consequence of the latter. In such a case, it may legitimately be presumed that the legislature *does not* confer the power, on the authority, to adopt the latter view, i.e. that circumstance X does not apply.

46. Specifically, in the conspectus of the present facts, while Ordinance 6.6 provides for an alternative supervisor being appointed



2024 : DHC : 1206



if the Faculty Committee feels that it is feasible to do so, *it does not provide that, if the Faculty Committee does not feel that it is so feasible, the candidature of the Ph.D scholar can be prematurely terminated.* Mr. Saha – as also the JNU, *vide* the impugned letter dated 4 October 2023 – however, apparently feel that this alternate sequitur can be read into Ordinance 6.6. It cannot, in law.

47. That apart, the decision of the Faculty Committee in its meeting dated 22 September 2023 contains no reason or justification, whatsoever, for the view that it was not feasible for any SCMM faculty to supervise the petitioner. The decision of the Faculty Committee dated 22 September 2023, as extracted in the impugned letter dated 4 October 2023, merely states that “the matter was deliberated in faculty meeting and resolved that it is not feasible for any SCMM faculty to supervise Mr. Nazar Mohammad Mohaideen S. as Ph.D student...”. Why it was not feasible, is anybody’s guess. The letter does not refer to the number of supervising faculty available. It does not identify the reasons why none of the supervisors could supervise the petitioner.

48. It is fossilized, in the law, that any decision, administrative, quasi-judicial or judicial, which entails civil consequences, has to be reasoned. Here, the decision did not merely entail civil consequences on the petitioner; it resulted in curtailment of his fundamental right to education, and resulted in the extreme decision to discontinue his Ph.Dship prematurely. Irrespective of all other infirmities in the said decision, the Faculty Committee was required, at the very least, to



2024 : DHC : 1206



explain *why* it was not feasible for any supervisor to supervise the petitioner.

49. Though Mr. Saha sought to contend that no faculty was willing to supervise the petitioner, no such finding is forthcoming in the decision taken by the Faculty Committee on 22 September 2023, as reproduced in the impugned communication dated 4 October 2023. Following the dictum laid down by Krishna Iyer, J, in *Mohinder Singh Gill v. Chief Election Commissioner*⁵, it is well settled that the JNU cannot seek to provide, during oral arguments or even on affidavit, any reason to justify the decision of the Faculty Committee meeting held on 22 September 2023, which does not find place in the decision itself.

50. For want of reasons, too, the decision of the Faculty Committee, in its meeting dated 22 September 2023, that it was not feasible for any supervisor to supervise the petitioner, is fatally imperilled in law.

51. In any event, there is the Ordinance 6.1, the mandate of Ordinance 6.1 is clear and admits of no equivocation. The responsibility to find an appropriate supervisor for the petitioner is on the JNU, and so long as Ordinance 6.1 continues to operate, the JNU is bound to comply with that obligation.

52. One of the suggestions that Mr. Yogesh Kanna who appears for the petitioner advanced was that the Chairperson of the SCMM could

⁵ (1978) 1 SCC 405



2024:DHC:1206



himself supervise the petitioner as he is competent and authorized to so act. Needless to say, that would be a decision for the Chairperson of the SCMM to take. The suggestion, absent any good reason why it should not be accepted, appears, however, to the court, to be wholesome and possibly worthy of acceptance.

Conclusion

53. In view of the above, this writ petition is allowed in the following terms:

- (i) The impugned order dated 4 October 2023 is quashed and set aside.
- (ii) The petitioner shall, therefore, be reinstated as a Ph.D scholar in the SCMM forthwith.
- (iii) The JNU/SCMM shall take steps to assign a supervisor to supervise the petitioner within two weeks from today.

54. I may note here that the petitioner has also agreed at the Bar, to be supervised by Prof. Shailja Singh herself and undertakes to ensure that there would be no cause for any grievance to be raised by Prof. Shailja Singh in future insofar as the conduct of the petitioner is concerned.

55. All reliefs consequential to the re-induction of the petitioner as a Ph.D scholar in the SCMM shall also be accorded to him.



2024 : DHC : 1206



A concluding caveat

56. The Court is exercising, here, jurisdiction under Article 226 of the Constitution of India, of which equity is an essential component. An order granting relief under Article 226 cannot, therefore, be permitted to be abused or misused. The relief granted in this petition is, therefore, strictly conditional to the petitioner conducting himself in accordance with the discipline of the JNU, and not providing any legitimate ground for complaint by the newly appointed supervisor. Any such conduct or behaviour on the petitioner's part – provided, of course, that it is proved by cogent material – would result, *ipso facto*, in vacation of the relief granted by this judgement, and would revive the impugned order dated 4 October 2023.

57. This writ petition stands allowed in the aforesaid terms, with no orders as to costs.

C. HARI SHANKAR, J.

FEBRUARY 15, 2024

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[Click here to check corrigendum, if any](#)