

HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Petition (C) No.3499 of 2017

Shri Gangajali Education Society, Through I.P. Mishra, son of Late Shri S.P. Mishra, aged about 75 years, President, Shri Gangajali Education Society, Sector-6, Bhilai, District-Durg (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through its Principal Secretary, Ministry of Higher Education, Mahanadi Bhavan, Raipur (CG)
2. Chhattisgarh Private Universities Regulatory Commission, Through its Registrar 29/776, Plot No.5, Block-3, Opposite Ram Mandir, Shanti Nagar, Madhu Pillai Chowk, Raipur (CG) 492007
3. University Grants Commission, Through its Chairman, Bahadur Shah Zafar Marg, New Delhi Pin: 110 002

---- Respondents

For Petitioner

Mr.Amalpushp Shrotri and

Mr.C.R. Sahu, Advocate

For Respondent No.1

Mr.Arun Sao, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

20/03/2018

1. R.M. Lodha, CJI. in the State of Tamil Nadu v. State of Kerala¹

observed qua the separation of powers as under:-

“Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India. The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law.”

The aforesaid principle of law enunciated by His Lordship speaking for the Supreme Court squarely and aptly applies to the facts of the present case.

¹ (2014) 12 SCC 696

2. The petitioner herein, a society registered under Section 13(2) of the Chhattisgarh Society Registration Adhiniyam, 1973, made an application on 18.8.2011 under Section 4(1) of the Chhattisgarh Private Universities (Establishment and Operation) Act, 2005 (hereinafter called as "the Act of 2005") in the prescribed form to the Chhattisgarh Private Universities Regulatory Commission containing the proposal and project report containing the particulars enumerated in Section 3(2) of the Act of 2005 to establish private university namely "Shri Shankaracharya Professional University", in which letter of intent dated 19.12.2011 was issued under Section 6(2) of the Act of 2005 to the Sponsoring Body i.e. the petitioner with the conditions mentioned in Section 7 of the Act of 2005. It is the case of the petitioner that Sponsoring Body submitted compliance in respect of the conditions under the Letter of Intent dated 19.12.2011 as well as an undertaking alongwith the relevant documents as required under Section 8(1) of the Act of 2005 to the Regulatory Commission. The same was examined by the Regulatory Commission and spot inspection was also conducted. It is further case of the petitioner that the said Regulatory Commission sent a report-cum-recommendation dated 25.2.2012 to the State Government under Section 8 of the Act of 2005 recommending for establishment and incorporation of the private university namely "Shri Shankaracharya Professional University".

3. After receipt of the report-cum-recommendation of the Regulatory Commission dated 25.2.2012, the University Grants Commission (hereinafter called as "UGC") was asked to conduct an inspection by the State Government as per Section 8(5) of the Act of 2005 and the UGC has already informed the State of Chhattisgarh that it would not be possible for the UGC to conduct inspection of any proposed private university as per Section 8(5) of the Act of 2005 and it would cause inspection after establishment of the private university. Therefore, respondent No.1 ought to have issued the notification of the petitioner's private university, which has not been done in spite of the petitioner's various representations and latest representation dated 27.7.2017 requesting respondent No.1 to expedite the process of establishment of "Shri Shankaracharya Professional University" by amending the schedule appended to the Act of 2005.

4. This writ petition has been filed by the petitioner claiming following relief:-

"10.1 Issue a writ in the nature of mandamus directing the respondent No.1 to establish "Shri Shankaracharya Professional University" by amending the schedule appended to the Chhattisgarh Private Universities (Establishment and Operation) Act, 2005."

5. Mr.Amalpushp Shroti, learned counsel for the petitioner, would submit that a writ be issued to respondent No.1 to establish the aforesaid University by amending the schedule appended to the Act of 2005 or in alternative, representation

made by the petitioner-University to the respondents be directed to be decided.

6. Mr. Arun Sao, learned Deputy Advocate General for respondent No.1, would submit that function of the State Government under Section 9(1) of the Act of 2005 is legislative in character and as such, no direction can be issued to amend the schedule appended to the Act of 2005.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.

8. Section 9(1) of the Act of 2005 provides as under:-

“9(1) The State Government, if satisfied considering the report submitted by the Regulatory Commission under Section 8 and Inspection Report of the UGC, if any, that the Sponsoring Body has complied with the provisions of Section 7 and a private university may be established on the basis of its proposal, shall establish, by amending the Schedule appended to this Act, a private university with such name and description as may be specified in this behalf.”

Undoubtedly and concededly, the function of the State Government assigned under Section 9(1) of the Act of 2005 to amend the schedule for establishing the University is legislative in character and as such, no such direction to amend the schedule of said Act can be issued by this Court.

9. In **Mallikarjuna Rao v. State of A.P.**² and in **V.K. Sood v. Deptt. Of Civil Aviation**³ the Supreme Court held that the court under Article 226 has no power to direct the executive

²(1990) 2 SCC 707

³ 1993 Supp (3) SCC 9

to exercise its law-making power.

10. In **State of H.P. v. Parent of a Student of Medical College**⁴, the Supreme Court deprecated the practice of issuing directions to the legislature to enact a law. It was observed as under:-

“4..... The direction given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging....”

The same principle was followed in **Asif Hameed v. State of J.K.**⁵ where the Supreme Court observed that:

“19.....The Constitution does not permit the court to direct or advise the executive in matter of policy or to sermonise qua any matter which under the Constitution lies within the sphere of the legislature or executive.....”

In **Union of India v. Assn. for Democratic Reforms**⁶ the Supreme Court observed that:

“19.....it is not possible for this Court to give any directions for amending the Act or the statutory Rules. It is for Parliament to amend the Act and the Rules.”

11. Similarly, in **Supreme Court Employees' Welfare Assn. v. Union of India**⁷, the Supreme Court held that a court cannot direct the legislature to enact a particular law. This is because under the constitutional scheme, Parliament exercises a sovereign power to enact law and no other authority can issue directions to frame a particular piece of

4 (1985) 3 SCC 169

5 1989 Supp (2) SCC 364

6 (2002) 5 SCC 294

7 (1989) 4 SCC 187

legislation. This principle was reiterated in **State of J&K v.**

A.R. Zakki⁸, where this Court observed that:-

“10.....A writ of mandamus cannot be issued to the legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation. Section 110 of the J&K Constitution, which is on the same lines as Article 234 of the Constitution of India, vests in the Governor, the power to make rules for appointments of persons other than the District Judges to the Judicial Service of the State of J&K and for framing of such rules, the Governor is required to consult the Commission and the High Court. This power to frame rules is legislative in nature. A writ of mandamus cannot, therefore, be issued directing the State Government to make the rules in accordance with the proposal made by the High Court.”

12. In **V.K. Naswa v. Union of India**⁹, the Supreme Court referred to a large number of decisions and held that:-

“18. Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner.”

13. The Constitution Bench of the Supreme Court in **Manoj Narula v. Union of India**¹⁰ held that this direction by a Bench of two Judges was contrary to the law laid down earlier by three Judges. In that context, the Constitution Bench has conclusively enunciated the legal position thus: (*Manoj Narula case (supra)*):-

“127. The law having been laid down by a larger Bench than in *Gainda Ram* it is quite clear that the decision, whether or not Section 8 of the Representation of the People Act, 1951 is to be

8 1992 Supp (1) SCC 548

9 (2012) 2 SCC 542

10 (2014) 9 SCC 1

amended, rests solely with Parliament.”

- 14.** Recently, in the matter of State of **Himachal Pradesh and others v. Satpal Saini**¹¹, the Supreme Court delineating the powers of executive, legislature and judiciary has held as under:-

“12. The judiciary is one amongst the three branches of the State; the other two being the executive and the legislature. Each of the three branches is co-equal. Each has specified and enumerated constitutional powers. The judiciary is assigned with the function of ensuring that executive actions accord with the law and that laws and executive decisions accord with the Constitution. The courts do not frame policy or mandate that a particular policy should be followed. The duty to formulate policies is entrusted to the executive whose accountability is to the legislature and, through it, to the people. The peril of adopting an incorrect policy lies in democratic accountability to the people. This is the basis and rationale for holding that the court does not have the power or function to direct the executive to adopt a particular policy or the legislature to convert it into enacted law. It is wise to remind us of these limits and wiser still to enforce them without exception.”

- 15.** Likewise, very recently, in the matter of **Ms. Eera, through Dr.Manjula Krippendorf v. State (Govt. of NCT of Delhi) and Anr.**¹², the Supreme Court has held as under:-

“124.....In short, the difference is the well-known philosophical difference between “is” and “ought”. Does the Judge put himself in the place of the legislator and ask himself whether the legislator intended a certain result, or does he state that this must have been the intent of the legislator and infuse what he thinks should have been done had he been the legislator. If the latter, it is clear that the Judge then would add something more than what there is in the statute by way of a supposed intention of the legislator and would go

¹¹ (2017) 11 SCC 42

¹² (2017) 15 SCC 133

beyond creative interpretation of legislation to legislating itself. It is at this point that the Judge crosses the Lakshaman Rekha and becomes a legislator, stating what the law ought to be instead of what the law is.”

- 16.** Following the principle of law enunciated by the Supreme Court in the above-stated judgments (supra), I am of the considered opinion that no such writ can be issued directing the State Government to amend the schedule appended to the Act of 2005 as it would amount to crossing Lakhman Rekha as held by the Supreme Court, as such, the writ petition is held to be not maintainable. Accordingly, the writ petition is dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-



HIGH COURT OF CHHATTISGARH AT BILASPUR

(SB: Hon'ble Shri Justice Sanjay K. Agrawal)

Writ Petition (C) No.3499 of 2017**Petitioner**

Shri Gangajali Education Society

Versus**Respondents**

State of Chhattisgarh and others

(English)

No writ can be issued to the State Government to amend the schedule appended to the Chhattisgarh Private Universities (Establishment and Operation) Act, 2005.

(हिन्दी)

छत्तीसगढ़ निजी विश्वविद्यालय (स्थापना तथा संचालन) अधिनियम, 2005 से संलग्न अनुसूची को संशोधित करने हेतु राज्य सरकार को कोई रिट जारी नहीं की जा सकती।