



CF-1002

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IN THE HON'BLE HIGH COURT OF C.G. AT BILASPUR

W.P. (C) NO. 4345 of 2009

PETITIONER

/ Parth Shikshan Samiti,
Sarkanda, Bilaspur, Registered
Society under the Chhattisgarh
Society Registration Act 1973
bearing Registration No.
1499/1996, through the
President (Basant Sharma),
Registered Office at Sarkanda,
Bilaspur (C.G.)

VERSUS

RESPONDENTS

- /:1) State of Chhattisgarh
Through : The Secretary Higher
Education Department, D.K.S.
Bhawan, Raipur (C.G.)
- / 2) Sarguja University, through the
Registrar, Ambikapur, District-
Sarguja (C.G.)
- 3) Chhattisgarh State Education
Research and Training Council,
through the Director, Shankar
Nagar, Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA





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Bilaspur
P.R. No....
Present
date

OATH COMMISSIONER
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4) amended at 7/17

Union of India, through the Secretary, Ministry of Human Resources and Development Department, ~~Ministry~~ Bhawan, New Delhi.

5)

Guru Ghasidas University, Bilaspur (C.G.), through the Registrar, University Campus, Koni, Bilaspur (C.G.)"

Attested
[Handwritten signatures]



8.10.10



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HIGH COURT OF CHHATTISGARH : BILASPURWRIT PETITION (C) NO.4345 OF 2009PETITIONER

Parth Shikshan Samiti

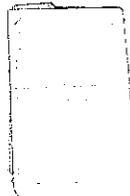
Versus

RESPONDENTS

State of Chhattisgarh & Others

Post for pronouncement of the order on 8th day of October, 2010

Sd/-
Satish K. Agnihotri
Judge





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HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION (C) NO.4345 OF 2009

PETITIONER

Parth Shikshan Samiti

Versus

RESPONDENTS

State of Chhattisgarh & Others

(Writ petitions under Article 226 of the Constitution of India)

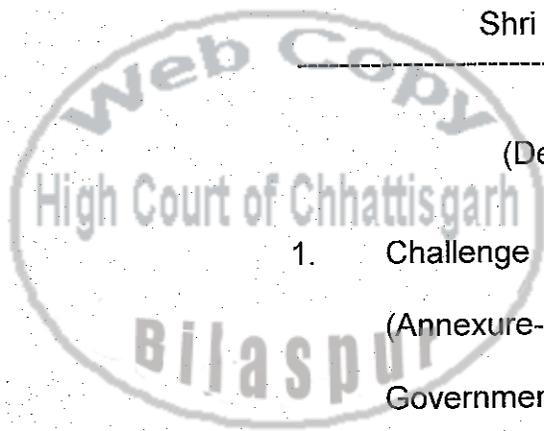
Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

Present :- Shri Prateek Sharma, Advocate for the petitioner.
 Shri M.P.S. Bhatia, Dy. Govt. Advocate for the State/
 respondents No.1 & 3.
 Shri Ajay Dwivedi, Advocate for the respondent No.2.
 Ms. Fouzia Mirza, Assistant Solicitor General for the
 Union of India.
 Shri Ashish Shrivastava, Advocate for the respondent No.5.

ORDER

(Delivered on this 8th day of October, 2010)

1. Challenge in this petition is to the order dated 10-06-2009 (Annexure-P/1) passed by the Principal Secretary to the Government of Chhattisgarh, Department of Higher Education, Raipur, whereunder the request of the petitioner society for affiliation with Surguja University, Ambikapur, District Surguja, was rejected on the ground that the petitioner institute continued to be affiliated with Guru Ghasidas University, Bilaspur (Central University) under Section 4 (f) of the Central Universities Act, 2009 (for short "the Act, 2009") and further by order dated 15-07-2009 (Annexure-P/2) it was observed that only the new colleges will be affiliated with Surguja University, Ambikapur (for short "the University"), as old colleges continued to be affiliated with the Central University.





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2. The indisputable facts, in nutshell, as projected by the petitioner, are that the petitioner is a registered society under the Chhattisgarh Societies Registration Act, 1973. The petitioner society has established a post graduate college namely D.L.S. College, Sarkanda, Bilaspur (*for short "the college"*) and running the college for the last about 12 years. The college was affiliated with the, then, Guru Ghasidas University, Bilaspur, when it was State University in 1997. Thereafter, under the provisions of the Act, 2009 (Annexure-P/5), the State University was up-graded as Central University whereby the, then, Guru Ghasidas University was established and declared as Central University under the provisions of Section 3 (1) of the Act, 2009. Under Section 4(f) of the Act, 2009 it was provided that all colleges, institutions, schools or faculties, and departments affiliated to, or admitted to the privileges of, or maintained by the, then, Guru Ghasidas University shall stand affiliated with the Central University under the provisions of the Act, 2009.

3. On 09-04-2009 (Annexure P/8) the Director/respondent No.3 informed the college that the college would not be permitted to admit the students to B.Ed. course for the session 2009-10 on the ground that the Guru Ghasidas University has been upgraded to the Central University and the petitioner was not affiliated to any other University during the period. The Guru Ghasidas University refused affiliation to the college vide letter dated 20-04-2009 (Annexure P/7). Thereafter, the petitioner made an application to the University on 01-05-2009 & 29-05-2009 (Annexure P/10) for granting affiliation to the college after having paid the requisite fees.



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The college was declined affiliation by the University on the ground that the college continued to be affiliated with Guru Ghasidas University, Bilaspur (Central University) under Section 4 (f) of the Act, 2009 and further by order dated 15-07-2009 (Annexure P/2) it was declared that only the new colleges will be affiliated with the University. Thus, this petition.

4. Shri Sharma, learned counsel appearing for the petitioner, would submit that it is for the college to get affiliated with the University wherein the college falls within the jurisdiction of the State University. Learned counsel would further submit that the statutory provision that any colleges affiliated earlier stands affiliated does not mean that the college cannot seek affiliation with any other jurisdictional University on seeking de-affiliation from the Central University. Learned counsel would next submit that the grounds stated in the impugned letter dated 10-06-2009 that in view of Section 4(f) of the Act, 2009 the college stands affiliated to the Central University, therefore, it cannot be affiliated with the University and only new colleges would be affiliated to the State University is contrary to the provisions of law and against the public policy.

5. On the other hand, Shri Shrivastava, learned counsel appearing for the respondent No.5, Central University, would submit that there is no bar from being affiliated with any other University, having territorial jurisdiction. Shri Shrivastava would further submit that the provision that the college affiliated earlier shall stand affiliated, does not mean that in future the college cannot seek de-affiliation with the Central University and cannot get affiliated with the territorial

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State University. Learned counsel would also submit that all the colleges situated in Bilaspur District may be affiliated with the University on satisfying the various requirements and on payment of requisite fees.

6. Shri Dwivedi, learned counsel appearing for the respondent No.2 University, would submit that there is no prohibition and the University is ready and willing to affiliate the college on being de-affiliated from the Central University and on satisfying the requirement of affiliation.
7. Shri Bhatia, learned Deputy Government Advocate appearing for the State, while supporting the impugned orders (Annexure P/1 & P/2) passed by the State Government, would submit that the same are passed in accordance with law. The orders passed by the Government on the ground that once the college is affiliated with the Central University, it cannot choose to be affiliated with the State University. The State University has been established only for affiliation of new colleges within the territorial jurisdiction of the University.
8. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.
9. Under the provisions of Section 3 of the Act, 2009 Guru Ghasidas Vishwavidyala, which was the State Vishwavidyala under the provisions of the MP/CG Vishwavidyala Adhiniyam, 1973 (*for short "the Adhiniyam, 1973"*), was upgraded and established as Central University in the same name & style.
10. In order to protect the interest of students, studying in the colleges, institutions, schools, or faculties, and departments affiliated from

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being de-affiliated on upgradation of the State University to Central University, the legislature made a provision under Section 4 (f) of the Act, 2009 that all colleges, institutions, schools or faculties, and departments affiliated to, or admitted to the privileges of, or maintained by, then, Guru Ghasidas University shall stand affiliated with the Central University under the provisions of the Act, 2009.

11. Clauses 4(a), 4(f) and 6(vii) of the Act, 2009 read as under :

“4. Effect of establishment of Universities.—On and from the date of commencement of this Act,—

(a) Any reference to Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya or Hemvati Nandan Bahuguna Garhwal University, in any contract or other instrument shall be deemed as a reference to Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya, and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Act;

xxx xxx xxx
xxx xxx xxx
xxx xxx xxx

(f) all Colleges, Institutions, Schools or Faculties, and Departments affiliated to, or admitted to the privileges of, or maintained by, Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University shall stand affiliated to, or admitted to the privileges of, or maintained by, Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Act.

6. Powers of University.—(1) The University shall have the following powers, namely;

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(vii) to recognize an institution of higher learning for such purposes as the University may determine and to withdraw such recognition;

xxx xxx xxx
 xxx xxx xxx
 xxx xxx xxx

12. The legislature of the State of Chhattisgarh amended the Adhiniyam, 1973 by Chhattisgarh Vishwavidyala (Sanshodhan) Act, 2010 (for short "the Amendment Act, 2010") whereunder the territorial jurisdiction of the University was extended to the areas comprised within the limits of the revenue districts of Surguja, Jashpur, Koriya, Bilaspur, Korba, Janjgir-Champa & Raigarh. There is no amendment to the effect that the University will be affiliating only new colleges established after amendment, as understood and stated in the impugned order dated 15-07-2009. If the college or institution has been affiliated to the Central University on account of the fact that it was affiliated to the State University before the State University became Central University under the provisions of the Act, 2009, does not mean that the college remains affiliated for ever to the Central University and the college will not have any discretion or liberty to seek affiliation to the other jurisdictional University.
13. Section 7 of the Adhiniyam, 1973 provides for territorial jurisdiction that the powers conferred on the University by or under the Act shall not extend beyond the limits of the territorial jurisdiction specified in second schedule from time to time.
14. Second schedule of the Adhiniyam, 1973 has been amended by the Amendment Act, 2010 whereunder the jurisdiction of the University has been extended. Thus, the college cannot be

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declined affiliation with the University having territorial jurisdiction on the ground as aforesaid by the respondent/State. The college is free to seek affiliation with the University having territorial jurisdiction and Section 4(f) of the Act, 2009 does not provide for any bar or prohibition from seeking affiliation with the State University having the territorial jurisdiction.

15. It is well settled that principle of interpretation of statutes that the court must give effect to the purport and object of the Act.
16. The Supreme Court in *New India Assurance Company Ltd. v. Nusli Neville Wadia and Another*¹ observed as under :

"51. With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled, which in turn would lead the beneficiary under the statutory scheme to fulfil its constitutional obligations as held by the Court *inter alia* in *Ashoka Marketing Ltd.*

52. Barak in his exhaustive work on "Purposive Construction" explains various meanings attributed to the term "purpose". It would be in the fitness of discussion to refer to Purposive Construction in Barak's words:

"Hart and Sachs also appear to treat 'purpose' as a subjective concept. I say 'appear' because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is

¹ (2008) 3 SCC 279





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composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfil their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably.”

(Aharon Barak, *Purposive Interpretation in Law*, (2007) at p. 87.)

53. In *Bharat Petroleum Corpn. Ltd. v. Maddula Ratnavalli* this Court held: (SCC p. 90, para 22)

“22. Parliament moreover is presumed to have enacted a reasonable statute [see Breyer, Stephen (2005): *Active Liberty: Interpreting Our Democratic Constitution*, Knopf (Chapter on Statutory Interpretation, p. 99 for ‘Reasonable Legislator Presumption’)].”

54. The provisions of the Act and the Rules in this case, are, thus required to be construed in the light of the action of the State as envisaged under Article 14 of the Constitution of India. With a view to give effect thereto, the doctrine of purposive construction may have to be taken recourse to. (See *Oriental Insurance Co. Ltd. v. Brij Mohan.*)”

17. Further in *M. Nizamudeen v. Chemplast Sanmar Limited and Others*² the Supreme Court observed as under : 38

“38. It is well settled that if exception has been added to remedy the mischief or defect, it should be so construed that it remedies the mischief and not in a manner which frustrates the very purpose. Purposive construction has often been employed to avoid a lacuna and to suppress the mischief and advance the remedy. It is again a settled rule that if the language used is capable of bearing more

² (2010) 4 SCC 240





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than one construction and if construction is employed that results in absurdity or anomaly, such construction has to be rejected and preference should be given to such a construction that brings it into harmony with its purpose and avoids absurdity or anomaly as it may always be presumed that while employing a particular language in the provision absurdity or anomaly was never intended."

18. If the interpretation given by the Principal Secretary of the Higher Education Department to the impugned orders dated 10-06-2009 & 15-07-2009 is given effect to, that may lead to absurdity, as the college has an option to seek affiliation with the State University having territorial jurisdiction. The college is not obliged to continue under affiliation with the Central University.
19. Section 4 (f) of the Act, 2009 appears to have been framed with the sole purpose of not disqualifying the colleges and institutions which were earlier affiliated with the State University on account of change of the status of the State University to Central University. Thereafter, the territorial jurisdiction of the University has been extended and the Bilaspur has been brought within the territorial jurisdiction of the University.
20. For the reasons and analysis aforesaid, the impugned orders dated 10-6-2009 (Annexure – P/1) and 15-7-2009 (Annexure – P/2) are quashed. The college is at liberty to seek de-affiliation from the Central University and further seek affiliation to Sarguja University at Ambikapur on satisfying the requirement of affiliation.
21. In the result, the writ petition is allowed. No order as to costs.

Gowri

Sd/-
Satish K. Agnihotri
Judge