

ITEM NO.301

COURT NO.6

SECTION PIL

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.142 of 2006

VIPLAV SHARMA

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

WITH W.P.(C) No.349 of 2009

W.P.(C) No.30 of 2010

(With appln.(s) for early hearing and office report)

W.P.(C) No.152 of 2010

(With appln.(s) for directions and office report)

W.P.(C) No.156 of 2010

(With appln.(s) for permission to file synopsis and list of dates and appln.(s) for directions and appln.(s) for permission to file additional documents and office report)

W.P.(C) No. 177 of 2010

(With appln.(s) for permission to file synopsis and list of dates and appln.(s) for directions and appln.(s) for permission to file additional documents and office report)

W.P.(C) No.191 of 2010

(With office report)

W.P.(C) No.194 of 2010

(With office report)

W.P.(C) No.217 of 2010

(With appln.(s) for directions and appln.(s) for permission to file additional documents and appln.(s) for permission to file rejoinder affidavit and appln.(s) for permission and office report)

W.P.(C) No.119 of 2011

(With appln.(s) for stay and appln.(s) for clarification of court's order and appln.(s) for directions and Office Report)

Date: 08/01/2015 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

For Petitioner(s) Mr. Sanjay R. Hegde, Adv.  
Mr. S. Nithin, Adv.  
Mr. Aditya Jain, Adv.  
Mr. Anil Kumar Mishra-I, AOR

WP 349/09 Mr. G. Umapathy, Adv.  
Mr. Rakesh K. Sharma, AOR  
Ms. R. Mekhala, Adv.

WP 30/10 Mr. Amit Anand Tiwari, AOR  
Mr. Avinash Tripathi, Adv.  
Mr. Abhinandan Banerjee, Adv.  
Mr. Raghwendra Tiwari, Adv.

WP 152/10 Mr. R. Ayyam Perumal, AOR

WP 156/10 M/s. Lawyer S Knit & Co.

WP 191/10 Mr. R. Gopalakrishnan, AOR

WP 194/10 Mrs. Kirti Renu Mishra, AOR

WP 217/10 Mr. Raghavendra S. Srivatsa, AOR

WP 119/11 Mr. Ranjan Kumar Pandey, AOR

For Respondent (s) Mr. Tushar Mehta, ASG  
Ms. Rashmi Malhotra, Adv.  
Md. Kharati, Adv.  
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Mr. B.V. Balram Das, Adv.  
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For UGC Mr. Maninder Singh, Sr. Adv.  
Mr. Manoj Ranjan Sinha, Adv.  
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Mr. Vikas Singh, Sr. Adv.  
Mr. S. Venkatesh, Adv.  
Ms. Deepika Kalia, Adv.  
Mr. Anny P. Agarwala, Adv.  
Mr. Kapish Seth, Adv.

Mr. B.A. Khan, Sr. Adv.  
Mr. Himanshu Upadhyaya, Adv.  
Mr. Arvind Minocha, AOR

Mr. Amarendra Sharan, Sr. Adv.  
Mr. Vivek Singh, AOR  
Mr. K.K. Sinha, Adv.

Mr. R.S. Suri, Sr. Adv.  
Mr. Rahul Malhotra, Adv.  
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Mr. V. Prabhakar, Adv.  
Mr. R. Chandrachud, AOR  
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Mr. Mathai M. Paikaday, Sr. Adv.  
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Mr. S. Janani, Adv.

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Mr. Navin Prakash, AOR

Mr. G. Umapathy, Adv.

Mr. S. Gowthaman, AOR

Mr. P. Venkat Reddy, Adv.

Mr. Sumanth Nookala, Adv.

Dr. S. K. Verma, AOR

Mr. Amit Kumar, AOR

Mr. A. Subba Rao, AOR

Mr. B. Mohan, AOR

Mr. C. D. Singh, AOR

Mr. Dharmendra Kumar Sinha, AOR

Mr. E. M. S. Anam, AOR

Mr. Gaurav Agrawal, AOR

Mr. G. N. Reddy, AOR

Mr. K. V. Mohan, AOR

Mr. Lakshmi Raman Singh, AOR

Mr. M. R. Shamshad, AOR

Mr. Nikilesh Ramachandran, AOR

Mr. P. Parmeswaran, AOR

Mr. Praveen Swarup, AOR

Mr. P. Vinay Kumar, AOR

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Ms. Hemantika Wahi, AOR  
Ms. N. Annapoorani, AOR  
Ms. Shubhangi Tuli, AOR  
Ms. S. Usha Reddy, AOR  
Mr. D. S. Mahra, AOR  
Mr. Arjun Harkauli, AOR  
Mr. Bimlesh Kumar Singh, AOR

UPON hearing the counsel the Court made the following  
O R D E R

I.A. No.96 of 2014

Learned counsel for the applicant seeks leave of this Court to withdraw the interlocutory application.

The interlocutory application is permitted to be withdrawn.

I.A. No.97 of 2015

This is an application by the University Grants Commission (UGC) seeking modification of the order dated 27<sup>th</sup> October, 2014, to the extent that the UGC may be ordered to inspect the certain institutes and submit a report to the extent of noting deficiencies in deemed to be university and to extend the time by two months that is up to 28<sup>th</sup> February, 2015, for inspecting the universities and submit a report.

Be it stated, the present litigation has a chequered history. There are many voices, many an echo; yet the problem is singular. The complex situation arose when there were certain deemed universities created by the Central Government seemed to lack the requisite standard as stipulated. Regard being had to the situation, a Committee, namely, Prof. Tandon Committee was constituted by the Central Government to verify the status of the deemed universities. The Committee submitted a report to the Central Government

and in the said report they categorized the universities, as 'A', 'B' and 'C', depending upon their infrastructure, faculty, etc.

Be it noted, that prior to submission of the Tandon Committee report, the present writ petition was filed by the petitioner, Viplav Sharma, an Advocate of this Court, contending, *inter alia*, that the status of deemed university was being conferred in an arbitrary manner without application of mind. It was also pleaded that the standard that was expected of a deemed university had been given a go-by and the status had been conferred without keeping in mind any kind of normative value. When the writ petition was pending and the Prof. Tandon Committee report was submitted, some universities filed applications for impleadment. At that juncture, on 25<sup>th</sup> January, 2010, this Court had passed the following order:

" Issue notice on the impleadment applications.

Notice be issued to forty four Institutions, details of which have been given in Column 1 Annexure-5 at Page No.346.

Notice be also issued to all the named Universities, which have also been mentioned in Column 5 of the same annexure.

Dasti service, in addition, is permitted.

The assistance be also taken from the learned counsel appearing for the different States in the Supreme Court as far as service on Deemed Universities (Annexure-5) is

concerned.

During the interregnum period, status quo, as of today shall be maintained as far as forty four Institutions, which have been enumerated in Annexure 5 at page 346.

Learned Attorney General submit that the entire Review Committee Report and the Task Force Committee Report would be placed before the Court within two weeks.

Learned counsel appearing for the University Grants commission prays for a short adjournment to take instructions.

Place this petition on 8<sup>th</sup> March, 2010, as a last item."

It is necessary to state here that when the matter was posted for hearing, this Court had directed for constitution of a Committee by the Central Government to examine the status of the forty-four universities and to afford adequate opportunities. Thereafter, the Committee submitted its report to this Court. After submission of the report by the Committee constituted by the Central Government, objections were raised before this Court that the Committee had not independently looked into any of the aspects, but had reiterated the observations/findings of the Tandon Committee. Eventually, on 21<sup>st</sup> January, 2014, this Court passed an order, the relevant part of which reads as follows:

"7. At this moment, we are only concerned with the legality of the continuance of Deemed University status with respect to 44 institutions. With regard to the status of

those institutions, it is seen, there is some conflict between the report prepared by the UGC as well as that of Prof. Tandon.

8. Regulation 22 of UGC (Institutions Deemed to be Universities) Regulations, 2010 deals with the consequences of violation of regulations. Regulation 22.1 enables the Central Government and the Commission to cause an inspection of the institutions deemed to be university, or inspection in matter of the institution deemed to be university. We have now two parallel inquiries, one conducted by the UGC directly and another conducted by the Central Government through Prof. Tandon. But we find that UGC had no occasion to examine the Prof. Tandon Committee report. Further, we also notice that there is another report of the Committee of Officers, which has also not been placed before the UGC.

9. Under such circumstances, we feel it appropriate to give a direction to the UGC to examine all the reports, with notice to all the 44 institutions concerned. Institutions are free to raise their objections against the reports and the UGC has to consider the same and take an independent decision in accordance with law, if necessary, after affording a hearing, within a period of two months from today. UGC has then to tender its advice to the Central Government with its report. Needless to say that the advice of the UGC is not binding on the Union of India but has to be given due weight since the UGC is an expert statutory authority.

10. We make it clear that we have not given our stamp of approval to any of the reports and it is for the UGC to consider all the reports, with notice to the 44 institutions, in accordance with law."

It is submitted by Dr. Rajeev Dhawan, Mr. K.V. Vishwanathan, Mr. Vikas Singh and Mr. Amarendra Sharan,

learned senior counsel appearing for various universities that the aforesaid order should be complied with by the Central Government, for that has to be given effect to.

Keeping in view the aforesaid submission, we are only inclined to direct that the report that has been submitted in respect of the other thirty-three universities (as three universities have expressed their view not to be treated as deemed universities) shall be considered by the Central Government in the meantime and its view shall be put by an affidavit on the next date of hearing. We have mentioned about thirty-three universities as eight universities have earlier expressed their explicit opinion that they are available for physical inspection. The Central Government while scrutinizing, shall also keep in view whether these thirty-three universities were physically inspected or not. If there has already been physical verification, the report of the same shall also be filed before this Court.

Presently, we shall advert to the issue that has arisen *in praesenti*. It is not in dispute that initially the seven universities did not get the benefit of any of the reports. An application was filed before this Court. It was contended that inspections had been done by video conferencing and, therefore, the report was absolutely unjustified and indefensible in law. In that backdrop, on

19<sup>th</sup> September, 2014, the following order came to be passed:

"Mr. Harish Salve and Mr. Dhruv Mehta, learned senior counsel for the applicant have referred us to Clause 4.16 of the UGC (Institution Deemed to be Universities) Regulations, 2010, which reads as follows:

"4.0 ELIGIBILITY CRITERIA FOR AN INSTITUTION TO BE DECLARED AS AN INSTITUTION DEEMED TO BE UNIVERSITY

b) Conditions

4.16. There shall be a mandatory intensive external review of every deemed to be university in every five years based on the criteria prescribed by the Commission from time to time. (emphasis added)"

It is submitted by the learned counsel for the applicant that on a perusal of aforesaid Regulation, it is vivid that there has to be physical inspection of the institution and not to scrutinise the photographs as a substitute for inspection to arrive at any conclusion. Learned counsel appearing for the UGC did not dispute that they have not gone for physical inspection.

Whether physical inspection is a must or not shall be adverted to on 23.09.2014. Learned counsel for the UGC shall obtain instructions and, if necessary, filed affidavit in this regard.

List on 23.09.2014."

On 25<sup>th</sup> September, 2014, it was further directed that:

"Considering the facts and circumstances of the case, it is directed that the UGC shall send a team for inspecting the applicant-institution, namely, Bharat Institute of Higher Education and Research University, within a period of eight weeks. If any defect is found by the concerned team, it shall be pointed out to the

authorities of the University and they should be granted a reasonable time to remove the same. Needless to say, this direction for inspection is without any prejudice to the contentions to be raised by the parties."

On 26<sup>th</sup> September, 2014, when the matter was listed, it was contended that the U.G.C. instead of taking recourse to physical inspection of the concerned institutions, had adopted an innovative modus operandi by inspecting through photographs and video camera. The said process was not appreciated and, accordingly, the following directions were issued:

"Regard being had to what we have stated herein-above, it is directed that the institutions covered in the aforesaid Interlocutory Applications shall be inspected by the UGC within a period of 12 weeks from today. After the inspection is conducted, it would be an obligation of the UGC to point out the defects/defaults so that the institutions can rectify the same in quite promptitude. A reasonable time shall be granted for the same for due compliance. Thereafter and only thereafter, the same shall be submitted to the Central Government and be filed before this Court along with the recommendations of the UGC."

It is seemly to state here that thereafter an application was filed by Gurukul Kangri Vishwavidyalaya, Haridwar, Uttarakhand, making certain prayers. Noting the prayers in the application, it was directed that the University Grants Commission should send a team for inspection of Gurukul Kangri Vishwavidyalaya and file a

report before this Court within a period of three weeks and the report shall indicate whether the said University can be categorized as 'C'/'B'/'A' depending upon the criteria. It was also observed that this Court would restrain itself from grading the university as it is in the domain of the U.G.C. After stating so, it was directed as follows:

"In the meantime, the University Grants Commission is directed to send a team for inspection to the applicant - Gurukul Kangri Vishwavidyalaya and file a report before this Court within a period of three weeks. The report shall indicate, whether the applicant - Gurukul Kangri Vishwavidyalaya can be categorised as 'C'/'B'/'A' depending upon the criteria fixed by the University Grants Commission.

It is clarified that this Court would restrain itself in grading the University as it is in the domain of the University Grants Commission, subject to limited judicial review."

Today, an application has been filed by the University Grants Commission. We have already noted the prayer earlier. The prayer, which has been sought for modification, can only be an excuse and we say so. At this juncture, Mr. Maninder Singh, learned senior advocate appearing for the UGC, has drawn out attention to paragraph 3 of the application. The basic asseveration in the said paragraph is that it is not the U.G.C. which can make the categories, but the Central Government. At this juncture, on a query being made Mr. Tushar Mehta, learned Additional

Solicitor General appearing for the Union of India, submitted that it is the Central Government which categorizes the universities into different categories.

Regard being had to the aforesaid submissions, we are obligated to state a part of the order passed on 27<sup>th</sup> October, 2014. The said part is as follows:

"After the inspection report is filed and the gradation is determined, appropriate order can be passed. A copy of the report shall be supplied to Mr. Pravin H. Parekh, learned senior counsel for the applicant - Gurukul Kangri Vishwavidyalaya as well as to Mr. Tushar Mehta, learned Additional Solicitor General.

Learned senior counsel for the applicant shall be at liberty to file objection/reply, if required, within two weeks."

From the aforesaid paragraph, it is absolutely clear as day that this Court had not meant that it is the UGC which would categorize. True it is, in an earlier order it was observed that it is in the domain of the UGC to categorize. As far as the order dated 27<sup>th</sup> October, 2014 is concerned, it only states that the report of the UGC shall indicate whether the applicant therein, Gurukul Kangri Vishwavidyalaya, can be categorized as 'C'/'B'/'A', depending upon the criteria fixed by the UGC.

At this stage, it is necessary to state, as has been submitted by Mr. Tushar Mehta and Mr. Maninder Singh and also by the learned senior counsel appearing for the respondents that this categorization was not there before Prof. Tandon

Committee. Be that as it may, all the deemed universities possibly cannot be put into one class/category depending upon their status. As the Prof. Tandon Committee was constituted by the Central Government in exercise of executive powers, we have only indicated that UGC should also in its report indicate the criteria. Indication of criteria is in the realm of recommendation. There has to be objective assessment by the Central Government. We so clarify.

The application for extension of time has been seriously criticized by Dr. Rajeev Dhawan, Mr. P.H. Parekh and Mr. Vikas Singh, learned senior counsel, as well as by learned counsel appearing for the other universities. Dr. Dhawan would criticize the same on the ground that by virtue of such extension of time, the order passed on 21<sup>st</sup> January, 2014, is not being complied with by the Central Government. As advised at present we are of the considered opinion that the submission which has been proposed by Dr. Dhawan with immense persuasiveness and composed vehemence, should be dealt with after the universities which are to be inspected are dealt with.

The real thrust of the matter is the time consumed by the UGC. Dr. Dhawan would submit that the UGC cannot sleep like *Rip Van Winkle*. Mr. Maninder Singh, learned senior counsel appearing for the UGC, except expressing his helplessness, cannot justify the action. The learned counsel

would only pray for extension of time. We can appreciate the plight of Mr. Singh when UGC is in real slumber.

Mr. Tushar Mehta, learned Additional Solicitor General, has submitted that the UGC should have conducted the inspection of the universities, namely, Maharishi Markandeshwar University, Mullana, Ambala, Haryana, Manav Rachna International University, Faridabad, Haryana, Institute of Advanced Studies in Education, Churu, Rajasthan, Academy of Maritime Education and Training, Anna Nagar, Chennai, Bharath Institute of Higher Education & Research, Selaiyur, Chennai, Ponnaiyah Ramajayam Institute of Science & Technology (PRIST), Thanjavur, Tamil Nadu and Vinayaka Mission's Research Foundation, Salem, Tamil Nadu, and the non inspection in *toto* is neither appreciable nor supportable. Apart from the aforesaid seven Universities, the other University, namely, Gurukul Kangri Vishwavidyalaya, Haridwar, Uttarakhand, shall also be inspected. The directions given by the previous orders for physical inspection and the steps taken thereafter, shall be carried out from all spectrums within four weeks. The Central Government shall express its views *prima facie* within a week therefrom. It is hereby made clear that no extension shall be granted to the UGC or to the Central Government. We have said so as a stitch in time saves nine. If the inspection is done timely, all the voices that echo in this Court possibly melt in the flowing 'Brook'.

Let the matters be listed on 23<sup>rd</sup> February, 2015 at  
2.00 p.m.

(Chetan Kumar)  
Court Master

(H.S. Parasher)  
Court Master