



2024:DHC:376



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

+ **W.P.(C) 5514/2018**

**HANDEEP SINGH KHARBANDA AND ORS. .... Petitioners**

Through: Ms. Shanta Pandey, Ms. Preeti  
Chauhan and Mr. Hiren Dasan, Advs.

versus

**M/S T.R.E. INSTITUTE OF HOTEL AND ORS. ..Respondents**

Through: Mr. Vijay Joshi and Mr.  
Shubham Chaturvedi, Advs. for R-3/UOI  
Mr. Deepak Kr. Agarwal, Adv. for R-4.

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**J U D G M E N T ( O R A L )**

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**16.01.2024**

1. The petitioners enrolled as the students of the B.Sc. (HCM) Hospitality & Catering Management Course in the T.R.E. Institute of Hotel Management ("the Institute" hereinafter), which held itself out, as per its prospectus, to be affiliated to the Karnataka State Open University (KSOU), which was registered under the University Grants Commission (UGC) and also recognized by the Distance Education Council (DEC).

2. The course was of six semesters. The petitioners successfully completed all the six semesters, as is apparent from the mark sheets which were issued to them. The course, which was intended to be a three year course, stretched till February/March 2015, when the final sixth semester examination was given by the petitioners.

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3. As the petitioners were not being awarded degrees by the institute or by the KSOU, they enquired into the matter, whereupon they came across a Public Notice dated 16 June 2015 issued by the UGC, according to which the KSOU had, in collaboration with various private institutions and entities, been offering distance learning programmes outside the State of Karnataka and, therefore, was in violation of the policy on territorial jurisdiction of UGC, as notified *vide* Public Notice dated 27 June 2013. The Public Notice dated 16 June 2015 further observed that KSOU had also been issued a show cause notice by UGC on 10 June 2011 in this regard and was, despite the said show cause notice, continuing with its off-campus distance learning programme undeterred. The public notice, therefore, cautioned the general public, students and other stakeholders against misreporting, by the KSOU, that the programmes conducted by it through off campus centres outside the state of Karnataka were valid. All such stakeholders were, therefore, cautioned that taking admissions to such programme could jeopardize the career of students, as the programmes were not recognized by the UGC.

4. Following the above Public Notice issued by the UGC, the KSOU issued a Public Notice on 16 June 2017, terminating the Memoranda of Understanding (MoUs) executed between the KSOU and various Academic Collaborative Institutions (ACIs), including the respondent-Institute.

5. This naturally placed the petitioners in a very unenviable

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situation as, under the *bonafide* belief that the B.Sc. (HCM) course was being offered by the KSOU, through the respondent-Institute with recognition by the UGC and in an entirely legal and valid manner, the petitioners had, after paying the requisite fees, obtained admission to the said course and had successfully completed six semesters of the course, which had extended to almost five years.

6. Submitting that the decision of the UGC and the KSOU seriously jeopardized their academic career and rendered the years spent studying the B.Sc. (HCM) course a complete waste, the petitioners have instituted the present writ petition before this Court, seeking issuance of a writ of mandamus, directing KSOU to issue B.Sc. (HMC) degrees to the petitioners. The petition also seeks costs.

7. Apparently, during the pendency of this writ petition, the following communication was addressed by the UGC to the KSOU, on 18 August 2021:

“UNIVERSITY GRANTS COMMISSION  
DISTANCE EDUCATION BUREAU  
35-FEROZ SHAH ROAD  
NEW DELHI-110001

F. No 85-1/2021(DEB-III) (PG)

18 Aug, 2021

The Vice Chancellor,  
Karnataka State Open University,  
Mukhtagangotri, Mysuru,  
Karnataka- 570006

Subject: Public Grievances regarding issue of degree certificate to students (2012-013) who pursued education through academic collaborative institutions located outside the state- reg.

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Sir,

With reference to Public Grievance Registration No. DARPG/E/2021/18241 & DARPG/E/2021/18242 dated 04.07.2021 (copy enclosed), I am directed to inform as under:-

1. Karnataka State Open University, Mysore is a State University established by an Act of State Legislature. As per available records, it was accorded Institutional Recognition by erstwhile Distance Education Council (DEC) from 2007-08 to 2012-13 to offer programmes through distance mode i.e. for the programmes which were approved by the statutory bodies of the University/Institution and not to any specific programme. During the period of institutional recognition, the University was required to offer programmes approved by the statutory bodies of the University, after seeking approval of the concerned Regulatory bodies, wherever required. Seeking approval from the respective Regulatory bodies was the responsibility of the university concerned.

2. The University was not recognised from 2013-2014 to 2017-2018. The Open and Distance programmes of KSOU were recognized only up to 2012-13 by erstwhile DEC, IGNOU. No further recognition was given to the university till 2017-18. The UGC (ODL) Regulations, 2017 were notified on 23<sup>rd</sup> June, 2017. Karnataka State Open University, Mysore has been granted recognition for the ODL programmes for the period 2018-19 to 2022-23. Thereafter, University Grants Commission (Open and Distance Learning Programmes and Online Programmes) Regulations, 2020 were notified on 4<sup>th</sup> September, 2020 and accordingly the university has been granted recognition for ODL programme. Academic session beginning July, 2021 (Revised as November, 2021) to 2025-26 (upto January, 2026) only.

3. It may be noted that for technical/ professional education to be offered through distance mode, approval of concerned apex regulatory body was required and for which responsibility rests with University concerned.

4. It is informed that Karnataka State Open University, Mysore being a State Open University can operate within its State Only. The university is not authorized to open study centre/off campus centre beyond the territorial jurisdiction of the State as per the judgment of Honble Supreme Court of India in the case of Prof. Yash Pal vs The State of Chhattisgarh (2005). The UGC has not granted any approval to the university to open off-campus/study centre anywhere.

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The UGC has issued various directives with regard to the territorial jurisdiction policy for offering Distance Education Programme by the Higher Education Institutions for time to time.

UGC vide circular D.O. No. F.1-52/99 (CPP-II) dated 09.08.2001 directed all universities as under:

“all the universities are being directed to stop franchising their degree education through private agencies/establishments with immediate effect.”

Joint Committee of UGC-AICTE-DEC vide its letter dated 13.05.2003 directed to all Vice Chancellor/Head of Institutions to limit the distance education programme of the Institutions to the neighborhood of the location of the main campus or at the most within the State.

The Hon'ble Supreme Court of India vide its judgment dated 11.02.2005 in the case of Prof. Yashpal & Anr vs. State of Chhattisgarh & Ors held that “In view of Article 245 (1) of the Constitution, Parliament alone is competent to make laws for the whole or any part of the territory of India and the Legislature of the State may make laws for the whole or any part of the State.”

In persuasion observation of Hon'ble Supreme Court, the UGC issued two letters; Vide letter dated 16.04.2009 addressed to State Governments, it was requested to (i) take immediate action to take suitable steps for amending the existing Acts made so as to bring the same in conformity with the observations made by the Hon'ble Supreme Court of India and (ii) to stop all the State/Private Universities in the State from operating beyond the territorial jurisdiction of their State in any manner.

Vide letter dated 15.06.2009 addressed to Vice Chancellors of State Universities, it was requested to ensure that no off-campus centre(s)/ study centre/ affiliating college and the centres operating through franchises is opened by the university outside the territorial jurisdiction of the State in view of the judgement of Hon'ble Supreme Court of India.

The directives were also issued regarding territorial jurisdiction of HEI by Distance Education Council in recognition letters and separately vide letter F. No. DEC/SC/11/9616-9861 dated 31.01.2012 and F. No. DEC/Notification/40.5/2012/16477-16727 dated 01.11.2012.



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The UGC has issued detailed Public Notice dated 27.06.2013 with regards to the territorial jurisdiction of the universities for offering Distance Education Programme and other matters related to distance education on the UGC website. The Public notice dated 27.06.2013 was only reiteration of earlier policy of UGC on territorial jurisdiction of Universities.

Therefore the Karnataka State Open University is directed not to issue any degree for the years for which either the University was not recognized or territorial jurisdiction has not been complied. If any violation is noticed, punitive action shall be initiated against the university.

This may treated as "Most Urgent"

Yours faithfully,

Sd/-

18.08.2021

(Dr. Dinesh Chand)  
Education Officer"

8. It is clear, from a reading of the above communication, that the KSOU was, in frank violation of the judgment of the Supreme Court in ***Professor Yashpal v. State of Chhattisgarh***<sup>1</sup>, offering distance education through off-campus centers, which were outside the state of Karnataka.

9. Mr. Deepak Agarwal, learned Counsel for the KSOU, is also unable to dispute this legal position.

10. That said, though open and distance programmes of the KSOU were recognized by the Distance Education Council (DEC) of the Indira Gandhi National Open University (IGNOU) till 2012-2013, that



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would still not enable the KSOU to award degrees to the petitioners even at the time when they had enrolled for the B.Sc. (HCM) course as there was always, in place, a proscription against providing distance education through centres outside the territorial boundaries of the State, following the judgment of the Supreme Court in **Prof. Yashpal**.

11. The inexorable position that emerges is, therefore, that the KSOU, in full knowledge of the fact that it was providing distance education through centres located outside the State of Karnataka, in transgression of the law laid down by the Supreme Court in **Prof. Yashpal**, nonetheless permitted students to obtain admission against such courses, run by Institutes to which KSOU had granted affiliation, such as the respondent institution.

12. An institute which is not recognized by the UGC for the purposes of awarding degrees cannot do so. The KSOU was carrying out distance education courses, through affiliate institutes outside the State of Karnataka in transparent violation of the judgment of the Supreme Court in **Prof. Yashpal**. For that reason, too, it is not possible for this Court to direct the KSOU to issue B.Sc. (HCM) degrees to the petitioners, as the course itself was being conducted in violation of the decision of the Supreme Court and was *ex facie* illegal.

13. Ms. Shanta Pandey, learned Counsel for the petitioners, candidly acknowledges this position. However, she submits that the respondents should be directed to refund the fees which had been deposited by the petitioners owing to the respondents' misrepresenting



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themselves as empowered to award B.Sc. (HCM) degrees through the Respondent 1 institute, on the basis of which misrepresentation the petitioners secured admission and underwent five years of education.

14. She submits that each student has spent amounts in the region of ₹ 1.85 lakhs towards the fees that had been paid to Respondent 1 institute.

15. Mr. Deepak Agarwal submits that this amount is shared between the institute and the University on a 75:25 ratio.

16. In support of her prayer for compensation, Ms. Pandey has placed reliance on the judgment of the Supreme Court in ***Orissa Lift Irrigation Corporation Ltd. v. Rabi Sankar Patro***<sup>2</sup> and has specifically invited my attention to para 59 of the report in that case, which read thus:

“59. As regards the students who were admitted after the ex post facto approval granted in favour of such deemed to be universities, in our view, there was no sanction whatsoever for their admission. The policy statements as well as warnings issued from time to time were absolutely clear. The students were admitted on the strength either of provisional recognition or on the strength of interim orders passed by the High Court. We therefore, declare that in respect of students admitted after the academic sessions of 2001-2005, the degrees in Engineering awarded by the deemed to be universities concerned through distance education mode shall stand recalled and be treated as cancelled. Any benefit which a candidate has secured as a result of such degrees in Engineering in the nature of promotion or advancement in career shall also stand recalled. However, if any monetary benefit was derived by such candidates that monetary benefit or advantage will not be recovered by the departments or employers concerned. We, further direct that the



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entire amount paid by such students to the deemed to be universities concerned towards tuition fee and all other expenditure for such courses through distance education learning shall be returned by the deemed to be universities concerned to the respective students. This direction shall be complied with by the deemed to be universities concerned scrupulously and the amounts shall be returned by 31-5-2018 and an appropriate affidavit to that extent shall be filed with UGC within a week thereafter.”

17. The Respondent 1 institute is unrepresented today.

18. Mr. Agarwal who appears for KSOU submits that there is no prayer for refund of the fees in the writ petition and that if the petitioners desire any such reliefs, they would have to institute a civil suit for the said purpose.

19. As against this, Ms. Pandey submits that the court under Article 226 of the Constitution of India has ample power to mould the reliefs sought in the petition.

20. Having heard learned Counsel for both sides, while it is true that there is no prayer for refund of fees in the writ petition, that was because, at the time when the writ petition was filed in the year 2018, the Circular dated 18 August 2021 of the UGC had yet to be issued. The UGC Circular dated 18 August 2021 has clearly demonstrated that the KSOU was unjustly enriching itself and, in the process, the institute with whom it entered into MoUs situated outside the State of Karnataka, by misleading students to enroll themselves under the belief that the courses were recognized and would culminate in the issuance of a valid degree. This was being done in the teeth of the



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judgment of the Supreme Court in **Prof. Yashpal**, of which the Court may legitimately presume the KSOU to have been aware. As already noted, Mr. Deepak Agarwal was also unable to offer any explanation for the act of the KSOU in thus holding itself out to be competent to award distance education degrees through institutes situated outside the State of Karnataka and thereby misleading petitioners such as the three who are before us.

21. Ms. Pandey has also drawn my attention to the judgment of the Supreme Court in **Orissa Lift Irrigation Corpn** in which, consequent to holding distance education degrees involved in that case to have been wrongly issued, the Supreme Court directed refund of the entire tuition fees and expenses incurred by the students. The said directions, from a plain reading of para 59 of the decision, are an obvious sequitur to the finding that the degrees awarded by the Universities were illegal.

22. It cannot be that students are left high and dry, with neither the degree, for which they have wasted their five precious years of their lives, nor the money they have spent in the process.

23. Indeed, in my considered opinion, the students, while they cannot be denied refund of the fees paid by them, may additionally be entitled to sue the respondents for damages for the prejudice that they have suffered, which is otherwise irreparable in terms of money. I am completely unable to accept Mr. Agarwal's contention that the petitioners be relegated to civil damages in that regard. Any such



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direction, in my view, would amount to consigning justice to oblivion.

24. Though Mr. Agarwal sought to contend that the Supreme Court is presently seized with certain issues in which similar claims to compensation is involved, he has not placed on record any document in support of the said contention. No petition before the Supreme Court, involving a similar issue, is on record before this Court in the present proceeding.

25. In any event, there is a clear distinction between refund of the fees paid by the petitioners and compensation. Compensation is a remedy available in civil law. The direction contained in para 59 of the decision in ***Orissa Lift Irrigation Corporation Ltd*** to refund the fees paid by the petitioners cannot be likened to compensation. In passing the said direction, the Supreme Court was, in my considered opinion, clearly not awarding compensation. The order was more in the nature of restitution of the petitioners to the status in which they were earlier, at least financially.

26. That, in my view, is completely distinct from awarding compensation to the petitioners which is an independent civil right.

27. In these circumstances, I am in agreement with Ms. Pandey that the petitioners would be entitled to refund of the fees paid by them to the Respondent institute. However, in view of Mr. Agarwal's contention that the fees are shared between the institute and the University on a 75:25 basis, 75% of the fees would have to be



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refunded by the Institution and 25% by the University.

**28.** In that view of the matter, the present writ petition is disposed of in the following terms:

(i) The prayer for issuance of degrees to the petitioners against the B.Sc. (HCM) hospitality and catering management course undertaken by them is rejected.

(ii) The petitioners shall, however, be entitled to be refunded the entire fees paid by them, of which 75% would be refunded by the Respondent 1 institute and 25% by the KSOU.

(iii) In view of the aforesaid, the court is refraining from passing any independent order relating to costs, though, in the facts of the present case, the matter would amply justify awarding costs.

(iv) Payment, as aforesaid, be made within a period of four weeks from today.

**29.** The petition stands disposed of in the aforesaid terms.

**C. HARI SHANKAR, J.**

**JANUARY 16, 2024**

*dsn*

*Click here to check corrigendum, if any*