

Dental Council Of India & Anr vs Hari Prakash & Ors on 29 August, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3303, 2001 (8) SCC 61, 2001 AIR SCW 3353, 2001 (3) SERVLJ 468 SC, 2001 (5) SCALE 573, (2001) 3 SERVLJ 468, (2001) 7 JT 342 (SC), 2001 (8) SRJ 457, (2001) 60 DRJ 410, (2001) 4 SCT 336, (2001) 4 SCJ 489, (2001) 4 SERVLR 227, (2001) 6 SUPREME 556, (2001) 5 SCALE 573, (2001) 4 ESC 564, (2001) 93 DLT 291

Bench: S. Rajendra Babu, Brijesh Kumar

CASE NO.:

Appeal (civil) 14743 of 1996

PETITIONER:

DENTAL COUNCIL OF INDIA & ANR.

Vs.

RESPONDENT:

HARI PRAKASH & ORS.

DATE OF JUDGMENT: 29/08/2001

BENCH:

S. Rajendra Babu & Brijesh Kumar

JUDGMENT:

RAJENDRA BABU, J. :

1.1 The facts leading to this appeal are as follows :

1.1 Dr. Sidhu, Professor & Head of the Department of Dental Surgery, All India Institute of Medical Sciences [for brevity AIIMS] was a member of the Dental Council [Council for brevity] under Section 3(d) of the Dentists Act, 1948 [the Act for brevity] for the period between 23.2.1991 to 22.3.1996. He having retired from the services of the AIIMS in 1993, to fill up the said vacancy respondent No.1 was stated to have been elected by the Dental Faculty of the AIIMS, which was approved by the Chairman, Academic Committee and his name was forwarded to the Council as member of the Council representing the AIIMS for the unexpired period of Dr.

Sidhus nomination. A communication was sent by the Acting President of the Council that respondent No.1 has not been elected by the members of the Senate or the Court and the AIIMS has no Senate or Court and his membership to the Council as representative of the AIIMS was being terminated and his name would stand deleted and that AIIMS was not also eligible to send its elected representative to the Council. Aggrieved by that action, a writ petition was filed before the High Court. The stand of respondent No.1 is that the medical degrees granted by the AIIMS are recognised as medical qualifications for the purpose of the Act and has been included in the Schedule to the Act as recognised dental qualification within the meaning of Section 2(j) of the Act; that the provisions of Section 3(d) of the Act must be liberally construed in such a manner as to treat AIIMS as a University and the Academic Committee of the AIIMS as the Senate of the University and the Governing Body as Court of the University within the meaning of the said Section. On behalf of the Council, contention put forth is that respondent No.1 could not be elected under the provisions of Section 3(d) of the Act as AIIMS cannot be treated to be a University established by law in any State; that the language of Section 3(d) of the Act is clear and unambiguous and there is no scope for interpreting the same except as it is stated therein. The High Court, on the contentions raised, formulated the question as to whether AIIMS is a University and its Academic Committee a Senate or Governing Members a Court within the meaning of Section 3(d) of the Act.

1.2 The High Court noticed that the Act is a pre-constitutional Act and when the Act came into force, there were hardly three institutions in the country, one at Lucknow, the second at Amritsar and the third at Bombay, which imparted dental education. It is only much later other institutions took up dental education. The High Court, after making a detailed reference to the provisions of the AIIMS Act, held that if the provisions of Section 3(d) of the Act are applied as the language stands, the nomination of respondent No.1 to the Council cannot be stated to be valid because: (1) AIIMS cannot be said to have been established by law as a University; and (2) respondent No.1 was not elected either by members of the Senate or the Court from amongst the members of the Dental or Medical Faculty of the University.

1.3 Thereafter, the High Court went on to state as to in what circumstances liberal construction should be adopted and particularly when the expression University had not been defined its etymological meaning could be adopted. By analysing Section 3(d) of the Act and various provisions of the AIIMS Act, the High Court concluded as follows:

.one of the main objects being to develop patterns of teaching in under-graduate and post-graduate medical education, which includes establishment of dental college for the purpose of dentistry and for the practical training of the students in those branches of medical education; and above all the recognition of the post-graduate degree awarded by the AIIMS as recognised dental qualification as defined in Section 2(g) of the Act by its inclusion in the Schedule to the Act, we feel that it is a fit case

where the doctrine of reading down needs to be applied to interpret Section 3(d) of the Act to treat the AIIMS as a deemed University because, though not technically established as a University, it apparently has, for the purpose of the Act, all the trappings of a University, and to equate the Academic Committee of the AIIMS with the Senate of a University and the Governing Body as the Court of the University for the purpose of Section 3(d) of the Act. We are of the view that if Section 3(d) of the Act is given literal and narrow interpretation it would be contrary to the apparent purpose for which the Act was enacted. There seems to be no reason why the expertise of the AIIMS, which imparts post-graduate training and degree in this branch of medical science, duly recognised by the Council, could not be made use of by the Council to advance the object of the legislation by its representation in the Council.

1.4 On that basis, the High Court held that the action of the appellant is wrong and allowed the writ petition.. Against this order this appeal is preferred.

1.5 Shri P.P.Rao, learned Senior Advocate appearing for the appellant, raised a preliminary point that the writ petition filed before the High Court was only in relation to nomination of respondent No.1 to the Council and his term having come to an end on 3.1.1996, there was no occasion for the High Court to decide the matter on July 23, 1996. As the period for which respondent No.1 was nominated had lapsed, the petition should have been disposed of as having become infructuous. We do not think the High Court was not justified in deciding the contentions raised in the case although the occasion to consider this question was in the context of election of respondent No.1 under Section 3(d) of the Act.

The appellant objected to sending a representative from AIIMS to the Council itself on grounds indicated earlier in the course of this order, goes to the root of the matter and is likely to recur often and on. Therefore, that contention need not detain us any further and is rejected.

2. Shri P.P.Rao further contended as follows :

2.1 The High Court did not apply its mind to the various clauses in Section 3 but only looked at clause

(d) thereof. On a reading of the entire Section 3 it will be clear that there is a clear distinction between States and Union Territories. So far as Union Territories are concerned a special provision is made in clause (f) of Section 3 for the nomination of members by the Central Government of whom at least one shall be a registered dentist duly qualified and practising or holding an appointment in an institution for the training of Dentists in a Union Territory.

2.2 All India Institute of Medical Sciences is established under Section 3 of the 1956 Act. It is declared to be an Institution of National Importance but not stated to be a University. It does not

have the democratic structure of a University like the Academic council, the Executive Council and the Court or the Senate, the Syndicate etc. vide Sections 4 and 10 of the Act. It has the power to grant degrees and medical diplomas under Section 24 of the All India Institute of Medical Sciences Act, 1956 [for brevity AIIMS Act]. The degrees and diplomas awarded by the Institute enjoy statutory recognition in view of Section 23 of the AIIMS Act.

2.3 The concept of deemed university was incorporated in the UGC Act, 1956. The AIIMS is not a deemed university within the meaning of (Section 3 of the UGC Act, 1956) and is not subject to the UGC. Therefore the word University used in the Dentists Act, 1948 could not have been intended to cover an institution like All India Institute of Medical Sciences which was not in existence when the Act was made in 1948.

2.4 The High Court erred in over looking the requirements of Section 3(d) viz. that the University should be one established by law in a State and it should have a Senate, or Court. The AIIMS has no Senate or a Court. The person to be elected should be a member of the Dental Faculty of the University and if there is no Dental Faculty then he should be the member of the Medical Faculty. In the AIIMS there is no Senate or Court but only a governing body and other committees. There is no Dental Faculty or a Medical Faculty as such, as in the AIIMS, the entire institute being a medical institute, to attract clause (d) of Section 3.

2.5 On a correct interpretation of Section 3, the AIIMS can secure representation in the Dental Council only under clause (f) as and when the Central Government chooses to nominate a Member of the Department of Dentistry of the AIIMS and not under clause (d) of Section 3.

2.6 The principle of reading down has no application at all to this case.

2.7 Shri R.N.Trivedi, learned Additional Solicitor General for India appearing for AIIMS, submitted that the AIIMS Act had been enacted pursuant to Entry 63 or 64 of List I of the Seventh Schedule to the Constitution of India and took us through various provisions of the AIIMS Act. He contended that if we properly examine the scheme of Section 3 of the Act, several classes of members are provided under the same and one of them is a University which can have representation under clause (d) of Section 3 of the Act. There are members who are nominated and there are members who are elected. The object of the said provisions is clear that there should be representation of all teaching institutions covered by the Act and it cannot be the intention of excluding member from an institution of national importance as AIIMS; that when one member from each University is brought in, it cannot be said that the AIIMS would be excluded from the category arising under Section 3(d) of the Act.

2.8 Shri Vikas Singh, learned counsel appearing for respondent No.1, reiterated the contentions raised by him before the High Court to which we have already adverted to. He also submitted that in terms of Section 3(58) of the General Clauses Act, State shall include Union Territory and, therefore, under Section 3(d) of the Act one member from each University established by law in the State would include a Union Territory. Shri Trivedi, supporting this contention, adverted to the decision of this Court in Ram Kishore Sen & Ors. vs. Union of India & Ors., 1966 (1) SCR 430, wherein such

an interpretation has been adopted by using the General Clauses Act. Both of them contended to have representation on the Council under Section 3(d) of the Act all that is required is that it should be a University established by any law in the State which would include Union Territory and grants a recognised dental qualification elected either by members of the Senate or the Court from amongst the members of the Dental or Medical Faculty of the University (where there is no separate dental faculty members]. It was also brought to our notice that Explanation to Section 3(e) of the Act in defining the State, Union Territory is specifically excluded and, therefore, wherever the expression State is used would include Union Territory unless expressly excluded, so as to make it clear that the meaning attributed to the expression State in the General Clauses Act would not be applicable. Therefore, it is submitted that, by implication, it must be held that the expression State in Section 3(d) of the Act would include a Union Territory. Shri Rao, however, contended that there has been a history to the formation of States in this country. Originally there were Part A, B and C States and on the State Reorganisation Act coming into force by the Adaptation of Orders, certain changes in the Act were made and, therefore, when the expression State has been used in Section 3(d) of the Act, that background should not be forgotten and the same has to be borne in mind and interpreted appropriately. So done, he submitted that, the expression State in Section 3(d) of the Act would not cover a Union Territory like Delhi where AIIMS is located.

3. For purposes of proper appreciation of the rival contentions, we may set out Section 3 of the Act :

Section 3. The Central Government shall, as soon as may be, constitute a Council consisting of the following members, namely:-

(a) one registered dentist possessing a recognised dental qualification elected by the dentists registered in Part A of each State register;

(b) one member elected from amongst themselves by the members of the Medical Council of India;

(c) not more than four members elected from among themselves by-

(a) Principals, Deans, Directors and Vice-Principals of dental colleges in the States training students for recognised dental qualifications:

Provided that not more than one member shall be elected from the same dental college;

(b) Heads of dental wings of medical colleges in the States training students for recognised dental qualifications;

(d) one member from each University established by law in the States which grants a recognised dental qualification, to be elected by the members of the Senate of the University, or in case the University has no Senate, by the members of the court, from amongst the members of the Dental Faculty of the University or in case the

University has no Dental Faculty, from amongst the members of the Medical Faculty thereof;

(e) one member to represent each State nominated by the Government of each State from among persons registered either in a medical register or a dental register of the State;

Explanation.- In this clause, State does not include a Union territory;

(f) six members nominated by the Central Government, of whom at least one shall be a registered dentist possessing a recognised dental qualification and practising or holding an appointment in an institution for the training of dentists in a Union territory, and at least two shall be dentists registered in Part B of a State register;

(g) the Director General of Health Services, ex officio :

Provided that pending the preparation of registers the State Government may nominate to the first Council members referred to in parts (a) and (e) and the Central Government members referred to in part (f) out of persons who are eligible for registration in the respective registers and such persons shall hold office for such period as the State or Central Government may, by notification in the Official Gazette, specify.

3.1 The Act is a pre-constitutional enactment but it has application in the post-constitutional era also. When interpreting such an enactment, we have not only to bear in mind the historical background leading to the legislation and the amendments effected therein, but also various aspects covered by it. To our mind, reading of Section 3(d) of the Act would make it clear that the expression state has been used in the larger sense as defined in the General Clauses Act to include Union Territory. This position becomes further clear when we read Section 3(e) of the Act wherein it is stated that nomination can be made from amongst the members of each State. By explanation thereto, it is stated, the State would not include a Union Territory. In respect of Union Territory a separate provision has been made in Section 3(f). The General Clauses Act read with the scheme of the enactment will make it clear that the expression State used in Section 3(d) of the Act would include a Union Territory also.

3.2 The scheme of Section 3(d) of the Act will indicate that there are different constituencies for representation on the Council; first, constituency is from amongst the registered dentists in Part A of each State register; second, from amongst the members of the Medical Council of India; third, from the teaching faculty of different dental colleges such as the Principals, Deans, Directors and Vice-Principals of dental colleges or Heads of dental wings of medical colleges in the States training students for recognised dental qualifications; fourth, from each University established by law

in the States which grants a recognised dental qualification; fifth, nominated members from States other than a Union Territory; sixth, from nominated members from the Union Territory and those dentists registered in Part B of a State register; and lastly, the Director General of Health Services. The Act covers the various institutions and Universities over which it has control under the various provisions in relation to qualification and discipline as well as those who practise after obtaining the necessary qualification in the dentistry. The object of Section 3 is to provide a wide representation to the Council, which is a professional body. Therefore, appropriate meaning will have to be given to the expressions used in the enactment bearing in mind the historical background and purpose of the legislation.

4. Now, we may briefly glean into provisions of the AIIMS Act. The AIIMS Act provides for constitution of a governing body [Section 10] and the objects of the AIIMS include developing the pattern of teaching in under-graduate and post-graduate medical education and attain self sufficiency in post-graduate medical education [Section 13]. In terms of Section 23 of the AIIMS Act, AIIMS stands outside the scope of the Medical Council in the conferment of medical degrees and diplomas granted under the AIIMS Act, which shall be recognised medical degrees for the purpose of that Act and shall be deemed to be included in the First Schedule of the Act. Under Section 24 of the AIIMS Act, it is provided that the AIIMS shall have the power to grant medical degrees and diplomas and other academic distinctions and titles irrespective of what may be contained in other enactments.

5. The thrust of the submission made by Shri Rao is that the eminence of the AIIMS in the field of medical education is undisputed but the fact remains that the language of Section 3(d) of the Act requires that representation under that clause is available only to a University established by law and not any other institution though established by law imparting dental education and conferring degrees. In this context, the High Court placed very heavy reliance upon the provisions of the AIIMS Act which enacted that AIIMS imparts dental education and confers or grants degrees, which is normally the function of a University and, therefore, in a general sense by adopting the dictionary meaning, it should be stated that it is a University, while the contention on behalf of the appellant is that it must be a University established by law.

6. We may in this context notice the provisions of Section 22 of the University Grants Commission Act, 1956 [hereinafter referred to as the UGC Act]. Section 22 of the UGC Act provides that the right of conferring or granting degree shall be exercised by three categories of institutions, namely,-

- (1) a University established or incorporated by a Central or a State Act;
- (2) an institution deemed to be a University under Section 3 of the UGC Act; and (3) an institution specially empowered by an Act of Parliament to confer or grant

degrees.

6.1 The fact that there are three kinds of authorities empowered to grant degrees or diplomas is too well known in educational field and is legislatively taken note of as aforesaid. Thus it is clear that there are various institutions in India other than Universities which are empowered to confer or grant degrees and diplomas and AIIMS is one such institution. Therefore, it cannot be said that mere fact of being empowered under the AIIMS Act to confer degrees or diplomas, would convert it into a University established by law.

7. The intention of the legislature is primarily to be gathered from the language used in the statute, thus paying attention to what has been said as also to what has not been said. When the words used are not ambiguous, literal meaning has to be applied, which is the golden rule of interpretation.

8. To interpret the meaning of the expression University the High Court proceeded to examine various dictionaries. That exercise could not have been undertaken by the High Court in view of the fact that the expression used in Section 3(d) of the Act is a University established by law. The expression used is not just a University but University established by law and the expression University cannot be divorced from the following words established by law. Entire expression University established by law constitutes one concept and is well known in law as indicated in Section 22 of the UGC Act. Hence, construction of the expression used in the Act with reference to dictionaries is not called for. Such a course will result in either omission of words in the Act such as established by law or to add different words which is not permissible in the language of the Act.

9. The learned counsel for respondents referred to large number of decisions where the meaning of the expression used in an enactment has been given a wider meaning or even to cover a situation which could not have arisen when the law was enacted. But we are afraid, these principles cannot be applied in the present context, for the Parliament is well aware of the situation of University, deemed University and the institutions constituted and empowered under relevant enactments to confer degrees and the Act has been amended from time to time, to suit fresh needs as and when they arose. Thus, the Act has not remained static but is catching up with times. Therefore, what is not included by the legislature cannot be undone by us by adopting the principle of purposive interpretation.

AIIMS is an institution, which is specially empowered by Act of Parliament to confer or grant degrees. As a result thereof AIIMS may impart education in dentistry and also confer degrees or diplomas as provided under the AIIMS Act but that circumstance would not itself convert such an institution into a University established by law. If Parliament had intended that all categories of institutions which impart dental education will also be covered by Section 3(d) of the Act, it would not have provided that it is only a University established by law imparting dental education could send its representative to the Council. The object of Section 3(d) of the Act being to provide representation to the University established by law, to give any other meaning would strain the meaning of the expression University established by law so as to treat any other institution empowered by an Act of Parliament to confer or grant degrees at par with University established by law for the purpose of representation on the Council. May be Parliament found that such an

institution to be merely covered by Section 3(c) of the Act so that the institution is merely treated as a dental college in a State training students for recognised dental qualifications from whom the Principals, Deans, Directors and Vice Principals or Head of the Dental Wing would also be elected, if found fit. Again, it is for the Parliament to amend the law to give representation appropriately in the Council to the AIIMS and the High Court ought not to have proceeded to consider other modes of interpretation when the language of the provision itself is absolutely clear. Therefore, we think the view taken by the High Court cannot be sustained. The other question whether the Governing Body or the Academic Committee of the AIIMS is equivalent to a Senate or a Court in a University does not arise for consideration in the view we have taken in the matter.

10. Insofar as respondent No.1 is concerned, inasmuch as his term on the Council came to an end in 1996 his petition had become infructuous by the time it was disposed off and hence nothing need be said on that aspect of the matter. Appeal is allowed accordingly. No order as to costs.

...J. [S. RAJENDRA BABU] ...J. [BRIJESH KUMAR] AUGUST 29, 2001.