Supreme Court of India
Prem Chand Jain & Anr vs R. K. Chhabra on 13 February, 1984
Equivalent citations: 1984 AIR 981, 1984 SCR (2) 883
Author: M Rangnath
Bench: Misra Rangnath

PETITIONER:
PREM CHAND JAIN & ANR.

Vs.

RESPONDENT:
R. K. CHHABRA

DATE OF JUDGMENT13/02/1984

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
FAZALALI, SYED MURTAZA
VARADARAJAN, A. (J)

CITATION:
1984 AIR 981 1984 SCR (2) 883
1984 SCC (2) 302 1984 SCALE (1)279
CITATOR INFO :
R 1987 SC2034 (24)

ACT:
University Grants Commission Act , 1956 (Act III of 1956) Sections 2(f), 22 and 23, Scope of-Right to confer degree and Right to have the word "University" associated to the name of an institution-Whether the words "established" or "incorporated" in section 2 (b), 22 and 23 also included a university registered under the Companies Act of 1913?

HEADNOTE:
Section 2 (f) of the University Commission Act, 1956 defines "a University" to mean: "a University established or incorporated by or under a Central Act, a Provincial Act, or a State Act , and includes any such institution, as may in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act". Section 22which empower the right to confer degrees and Section 23 which imposes the prohibition for use of the word "University" also provides that way. Penalties for contravening the provisions of sections 22 and 23 are provided under section 24 of the Act but the proviso to section 23 exempts any institution having

a suffix "University" before the commencement of the University Grants Commission Act, for a period of two years only to enable it to take appropriate steps under the University Grants Commission Act.

Commercial University which was registered under the companies Act of 1913 and before the coming into force of the University Commission Grants Act , 1956 and was doing useful service to the students community did not take any steps as required under the new Act even after the lapse of the two years, and therefore, the appellant came to be prosecuted for the offences under sections 22 and 23. The appellants having lost their case including in the High Court have come up in appeal by way of special leave.

Allowing the appeal in part and setting aside the convictions and sentence of fine, the Court

884

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HELD 1: 1 The University Grants Commission Act, 1956 did not intend to admit a company incorporated under the Companies Act into the definition of a "University" under section 2 (f) or for the purposes of Section 23. Several institutions staying themselves as `universities' had started awarding degrees and diplomas which had no basis and could not be accepted. Keeping in view the mischief which was sought to be eradicated and the consideration which weighed with Parliament to introduce the prohibition in the Act, the Act recognises only those institutions established or incorporated under special statutes of sovereign legislatures. [890D-E]

1:2 The definition of university and the provisions in S.23 of the Act refer to Acts of the Central, Provincial or the State legislatures by which one or more universities are established or incorporated and not to institutions incorporated under a general statute providing for incorporation. The words "established" or "incorporated" referred to Act under which universities are established or incorporated. Several universities in this country have been either established or incorporated under special statutes, such as the Delhi University Act, the Banaras Hindu University Act, the Allahabad University Act etc. In these cases, there is a special Act either of the Central or the Provincial or the State legislatures establishing and incorporating the particular universities. There is also another pattern-where under one compoundious Act several universities ere either established or incorporated-for instance, the Madhya Pradesh Universities Act 1973. [889G-E; F]

1:3 Commercial University Ltd. when incorporated under the Companies Act, therefore, did not satisfy the definition as also the provisions of section 23 of Act consequently the prosecution under section 23 was valid. [889H]

Attorney General v. H.R.H. Augushtis [1957] 1 All E.R. 49 (HL); Bhagwan Prasad v. Secretary of State; AIR 1940 P.C.

82, quoted with approval.

2:1 The definition of University given in section 2 (f) or the prohibition in section 23 of the Act are not ultra vires the Parliament on the ground that such provisions are beyond its legislative competence. [891F]

2:2 `Education including universities' was a State subject until by the 42nd Amendment of the Constitution in 1976, that entry was omitted from the State list and, was taken into entry 25 of the Concurrent list. The University Grants Commissions Act essentially intended to make provisions for the coordination and determination of standards in universities and that, is squarely covered under entry 66 of list I. While legislating for a purpose germane to the subject covered by that entry and establishing a University Grants Commission, Parliament considered it necessary, as a regulatory measure, to prohibit unauthorised conferment of degrees and diplomas as also use of the word `university' by institution which had not been either established or incorporated by special legisla-

885

ation. In doing so the Parliament did not entrench upon legislative power reserved for the State legislature. [890E-G]

2:3. The legal position is well-settled that the entries incorporated in the lists covered by Schedule VII are not powers of legislation but `fields' of legislation. Such entries are mere legislative heads and are of an enabling character. The language of the entries should be given the widest scope or amplitude. Each general word has been asked to be extended to all ancillary or subsidiary matters which can fairly and reasonably be comprehended. An entry confers powers upon the legislature to legislate for matters ancillary or incidental, including provision for avoiding the law. As long as the legislation is within the permissible field in pith and substance, objection would not be entertained merely on the ground that while enacting legislation, provision has been made for a matter which though germane for the purpose for which competent legislation is made it covers an aspect beyond it. If an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature enacting it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature. [891A-E]

Harakchand v. Union of India, [1970] 1 S.C.R. 479 at p. 489; State of Bihar v. Kameswar , [1952] S.C.R. 889; Navinchandra v. C.I.T. [1955] 2 S.C.R. 829 at p. 836; State of Madras v. Cannon Dunkerley, [1959] S.C.R. 379 at p. 391; The Check Post Officer & Others v. K.P. Abdulla Bros. [1971] 2 S.C.R. 817; State of Karnataka v. Ranganatha, [1978] 1 S.C.R. 641 at p. 661; KSE Board v. Indian Aluminium, [1976] 1 S.C.R. 552; Subramanyam Chettiar v. Muthuswami [1945]

F.C.R. 179; Prafulla Kumar Mukherjee & Others v. Bank of Commerce, [1947] F.C.R. 28; Ganga Sagar Co. v. U.P. State, [1960] S.C.R. 769 at p. 782.

3. The observations in Azeez Pasha & Anr v. Union of India [1968] I.S.C.R. 833 were with reference to the rights of the minority community to establish a university in exercise of its right guaranteed under Art. 30 of the Constitution. Admittedly. CUL is not an institution belonging to any minority community. It will not be appropriate either to allow arguments based on what has been observed with reference to an institution belonging to the minority community or to examine the vires of the Act with reference to what does not arise for consideration in the appeals. [892A-B]

4. Though the proviso to s. 23 had specified a period of two years within which the word `university' had to be omitted by the institution not entitled to its use yet there is scope for the submission that being incorporated under a Central Act, the people connected with CUL worked under the bona fide impression that such incorporation satisfied the requirements of the Act. In such circumstances, the conviction of the appellant must be set aside. [892D-E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 253-254 of 1972.

From the Judgment and Order dated the 6th day of January, 1972 or the Delhi High Court in Criminal Appeal Nos. 103 & 104 of 71.

Shanti Bhushan, R.K. Garg, Shiv Dayal and S.K. Bagga for the Appellants.

Hharbans Lal, R. N. Poddar, Ms. Halda Khatun and C. V. Subba Rao for the Respondent.

The Judgment of the Court was delivered by RANGANATH MISRA, J. Both these appeals are by Special leave and challenge is to the conviction and sentence of fine imposed under Section 24 of the University Grants Commission Act, 1956 (III of 1956) (`Act' for short) by the learned Additional Sessions Judge and upheld by the Delhi High Court in appeal.

Commercial University Limited (CUL for short) was incorporated under the Companies Act, 1913 (VII of 1913) with objects, inter alia, to promote commercial education, encourage and impart commercial education by opening institutes, colleges and schools and provide, prescribe and maintain various standards of studies and examinations in the study of commercial subjects and to ascertain by means of examinations and/or otherwise the persons who acquire the prescribed standards and to confer on such persons any academic diplomas, degrees, etc. It has a Board of Governors and the Registrar of the University is one of the Ex-Officio Governors. This institution claims to have expanded its activities and regular convocations have been held for awarding degrees

and diplomas. The Act came into force in 1956 and for the first time provided restrictions under ss. 22 and 23 of the Act to the following effect :

> "S.22. the right to confer degrees-
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> (1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.
>
> (2) Save as provided in sub-section (1) no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.
>
> (3) For the purpose of this section, "degree means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the official gazette."
>
> "S.53. No institution, whether a corporate body or not, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word `University' associated with its name in any manner whatsoever:
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> Provided that nothing in this section shall, for a period of two years from the commencement of this Act, apply to an institution which, immediately before such commencement, had the word `University' associated with its name."

Penalties for contravening the provisions of ss.22 and 23 were provided in s. 24 and whoever contravened those provisions became punishable with fine which would extend to rupees one thousand and if the person contravening was an association or other body of individuals, every member of such association or other body who knowingly or willingly authorised or permitted the contravention was punishable with fine which would also extend to one thousand rupees.

The appellants came to be prosecuted for the offence under s. 24 of the Act as CUL continued to bear the description of University even after the period indicated in the proviso to s. 23 of the Act was over.

Before coming into force of the Act, there was no legislation in India which prohibited any individual on body from establishing a university and such university was free to confer degrees and diplomas. Section 22 prohibited privately established universities from conferring degrees and restricted such conferment to universities established by Acts passed by State legislatures or Parliament or institutions which were deemed to be universities in the manner provided by the Act. Similarly, before the Act came into force there was no law which restricted the use of the word `University' and all institutions were free to associate this word with their names if they liked. Section 23, however, imposed the restriction in absolute term and the proviso allowed a period of

two years within which adjustments to the new situation brought about by law had to be made.

Originally there were five accused persons. One of them died and in respect of another the prosecution was withdrawn as he resigned from CUL. The prosecution continued against the remaining three-Shri P.C. Jain and Smt. Sushila Sohni who are appellants in Criminal Appeal No. 253 of 1972 and Shri L.N. Mehra who is appellant in the connected criminal appeal.

Mr. Shanti Bhushan appearing for the appellants anvanced four contentions:-(I) CUL had been incorporated under the Companies Act of 1913 and is deemed to be a company under s. 3 of the Companies Act, 1956, the prosecution was misconceived as the prohibition in s. 23 was not attracted. (II) The restriction imposed under s. 23 of the Act was ultra vires because entry 11 which read as "Education including universities" was in list II of Schedule VII of the Constitution and was a State subject but the Act in question was passed by Parliament. The long title of the Act reads as "an Act to make provision for the coordination and determination of standards in universities and for that purpose, to establish a University Grants Commission" and is covered by entry 66 of list I of the Seventh Schedule. The restriction provided by s. 23 as such does not appear to be a matter squarely within the ambit of the entry and therefore such a provision is ultra vires the Constitution. (III) This Court observed in S. Azeez Basha & Anr. v. Union of India(1) as per Wanchoo, C. J.:

> ".....we should like to say that the words `educational institutions' are of very wide import and would include a university also. This was not disputed on behalf of the Union of India and therefore it may be accepted that a religious minority had the right to establish a university under Art. 30 (1). The position with respect to the establishment of Universities before the Constitution came into force in 1950 was this. There was no law in India which prohibited any private individual or body to establish a university.....Thus, in law in India there was no prohibition against establishment of universities by private individuals or bodies and if any university was so established it must of necessity be granting degrees before it could be called a university. But though such a university might be granting degrees it did not follow that the Government of the country was bound to recognise those degrees....."

It was urged by Mr. Shanti Bhushan that since Art. 30 guaranteed the right to establish a university to the minority communities, the restrictions imposed by the Act would not be operative and to that extent the provision would be ultra vires the Constitution; (IV) All the three accused appellants had severed their connection with CUL- Smt. Sohni resigned in August, 1962; Shri Mehra in December, 1965; and Shri Jain in 1970. On the same analogy which led to withdrawal of the prosecution against Shri Anand Singh, the present prosecution should not have been pursued against the appellants.

The word `university' has been defined in s. 2 (f) of the Act to mean: "a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the commission in accordance with the regulations made in this behalf under this Act". Section 23 of the Act imposing the prohibition for use of the word `University' also provides that way. Undoubtedly under the Companies Act when a company is duly registered, it gets incorporated and such incorporation

brings into existence an independent legal entity different from the share-holders constituting it. Yet we are not prepared to agree with Mr. Shanti Bhushan that the Act intended to admit a company incorporated under the Companies Act into the definition or for the purpose of s.

23. The word "established" or "incorporated" referred to Acts under which universities are established or incorporated Several universities in this country have been either established or incorporated under special statutes, such as the Delhi University Act, the Banaras Hindu University Act, the Allahabad University Act etc. In these cases, there is a special Act either of the Central or the Provincial or the State legislatures establishing and incorporating the particular universities. There is also another pattern-where under one compendious Act several universities are either established or incorporated for instance, the Madhya Pradesh Universities Act, 1973. The definition of university and provisions in s. 23 of the Act refer to Acts of the Central, Provincial or the State legislatures by which one or more universities are established or incorporated and not to institutions incorporated under a general statue providing for incorporation. We do not accept the contention of Mr. Shanti Bhushan that CUL when incorporated under the Companies Act satisfied the definition as also the provisions of s. 23 of Act and, therefore, there could be no prosecution. We agree with the observation of Lord Somervell to the effect:

> "The mischief against which the statute is directed and, perhaps though to an undefined extent, the surrounding circumstances can be considered", "In ascertaining the true legislative intention. (A. G.

v. H. R. H. Augustus(1). Lord Porter also spoke to the same effect while speaking for the Board in the following words:

> "A right construction of the Act can only be attained if its whole scope and object together with an analysis of its working and the circumstances in which it is enacted are taken into consideration."

Bhagawan Prasad v. Secretary of State(2). Several institutions styling themselves as `universities' had started awarding degrees and diplomas which had no basis and could not be accepted. Keeping in view the mischief which was sought to be eradicated and the consideration which weighed with Parliament to introduce the prohibition in the Act, it must be held that the Act recognises only those institutions established or incorporated under special statutes of sovereign legislatures.

`Education including universities' was a State subject until by the 42nd Amendment of the Constitution in 1976, that entry was omitted from the State list and, was taken into entry 25 of the concurrent list. But as already pointed out the Act essentially intended to make provisions for the coordination and determination of standards in universities and that, as already indicated, is squarely covered under entry 66 of list I. While legislating for a purpose germane to the subject covered by that entry and establishing a University Grants Commission, Parliament considered it necessary, as a regulatory measure, to prohibit unauthorised conferment of degrees and diplomas as also use of the word `university' by institution which had not been either established or incorporated by special legislation. We are not inclined to agree with the submission advanced on

behalf of the appellants that in doing so Parliament entrenched upon legislative power reserved for the State legislature. The legal position is well-

settled that the entries incorporated in the lists covered by Schedule VII are not powers of legislation but `fields' of legislation. Harakchand v. Union of India(1). In State of Bihar v. Kameswar(2) this Court has indicated that such entries are mere legislative heads and are of an enabling character. This Court, has clearly ruled that the language of the entries should be given the widest scope or amplitude.. Navinchandra v. C.I.T. (3) Each general word has been asked to be extended to all ancillary or subsidiary matters which can fairly and reasonably be comprehended. See State of Madras v. Gannon Dunkerley(4). It has also been held by this Court in The Check Post Officer and Others. v. K.P. Abdulla Bros(5) that an entry confers power upon the legislature to legislate for matters ancillary or incidental, including provision for avoiding the law. As long as the legislation is within the permissible field in pith and substance, objection would not be entertained merely on the ground that while enacting legislation, provision has been made for a matter which though germane for the purpose for which competent legislation is made it covers an aspect beyond it. In a series of decisions this Court has opined that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature enacting it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature. See State of Karnataka v. Ranganatha (6); KSE Board v. India Aluminium (7); Subramanyam Chettiar v. Mutuswami (8); Prafulla Kumar Mukherjee & Other v. Bank of Commerce (9); Ganga Sugar Co. v. U.P. State (10). We, therefore, do not accept the submission that the definition of university given in s. 2

(f) or the prohibition in s. 23 of the Act are ultra vires the Parliament on the ground that such provisions are beyond its legislative competence.

In the decision of this Court in the case of Azeez Basha, the observations relied upon were with reference to the rights of the minority community to establish a university in exercise of its right guaranteed under Art. 30 of the Constitution. Admittedly, CUL is not an institution belonging to any minority community. We do not think it is appropriate to allow arguments to be canvassed in this case on the basis of what had been observed with reference to an institution belonging to the minority community. Nor is it appropriate that the vires of the Act should be examined with reference to what does not arise for consideration in the appeals before us.

There is no dispute that prosecution against Shri Anand Singh was withdrawn as he had resigned from CUL after the case was launched. The claim of Mr. Shanti Bhushan that the three accused persons have resigned between 1962 to 1970 as already indicated has not been disputed. Though the proviso to s. 23 had specified a period of two years within which the word `university' had to be omitted by the institution not entitled to its use, yet there is scope for the submission of Mr. Shanti Bhushan that being incorporated under a Central Act, the people connected with CUL worked under the bona fide impression that such incorporation satisfied the requirements of the Act. In such circumstances, we think it appropriate to accept the submission advanced on behalf of the appellants to a limited extent and allow the appeals and set aside the conviction of the appellants under s. 24 of the Act. They are acquitted of the offence and fines if already realised be refunded.

Before we part with the matter, we think it appropriate to deal with another aspect. Under s. 3 of the Act provision has been made that the Central Government may on the advice of the Commission declare by notification in the official gazette any institution for higher education other than a university to be deemed to be a university for the purposes of the Act and when such declaration is made, all the provisions of the Act would apply to such an institution as if it were a university within the definition of the term in s. 2 (f). CUL may make an application to the Central Government for such recognition and on the advice of the University Grants Commission, the Central Government should dispose of the same in accordance with law. We have been told that the institution has been working very satisfactorily and has, to its credit, a long history of service in the field of education. We are hopeful that taking all aspects into consideration both the Commission as also the Central Government would consider the request of the institution to be recognised under s. 3 of the Act. If it is so recognised the institution would be able to confer degrees as provided in s. 22 of the Act.

It is for the Central Government next to consider whether an institution covered by s. 3 of the Act would not satisfy the provision of s. 23 of the Act and if in the opinion of the Central Government such an institution is not covered, whether an appropriate amendment to s. 23 should not be made so as to exclude recognised institutions under s. 3 of the Act from the field of prohibition covered by s. 23 of the Act. CUL should make the application within one month from now and the Central Government should examine the matter appropriately and pass proper orders or directions within six months thereafter. At any rate the institution should have reasonable time-until end of 1984-to take such appropriate steps as it may be advised, to avoid further Prosecution under the Act.

S.R. Appeal partly allowed.