

Kashi Vidyapith

Vs

Motilal and Others

Civil Appeals Nos. 929-30 of 1981

(K. Ramaswamy, G. B. Pattanaik JJ)

24.07.1996

ORDER

1. These appeals by special leave arise from the order of the Division Bench of the Allahabad High Court made on 10-5-1979 in WPs No. 2171 and 2172 of 1977. The admitted facts are that the appellant-Vidyapith though initially was a society constituted under the Societies Registration Act, by operation of sub-section (2) of Section 4 of the U.P. State Universities Act, 1973 (for short 'the Universities Act'), it became a deemed university w.e.f. 16-1-1974 after the publication of the notification under Section 4(2) on 10-1-1974. Though proceedings were initiated in the year 1971-72 for acquisition of the lands for construction of the university campus buildings including the staff quarters etc. the notification under Section 4(1) of the Land Acquisition Act, 1894 (1 of 1894) (for short 'the Act') came to be published in the State Gazette on 19-4-1974. After Enquiry was conducted under Section 5-A, declaration under Section 6(1) was published on 27-3-1977. The respondents came to question the validity of the notification under Section 4(1) and the declaration under Section 6 of the Act. The Division Bench allowed the writ petitions and set aside the declaration under Section 6 on the ground that the procedure contemplated in Chapter VII of the Act was not followed. The University is not "other authority" under Section 3(31) of the General Clauses Act, 1897 as applicable to the State of U.P. The "other authority" should be understood ejusdem generis as municipality, gram panchayat etc. The fund held by the appellant cannot be held to be a local fund under the control of the State. Under those circumstances, unless the State makes a part of its contribution for the acquisition, it is not a public purpose and, therefore, the declaration under Section 6 was invalid. Calling that order in question, these appeals came to be filed.

2. The crucial question that arises for consideration is whether the view taken by the High Court is correct in law ? It is contended by Shri Shiv Pujan Singh, the learned counsel for the appellant, that the view of the High Court is not correct in view of the provisions contained in the Universities Act. After the appellant became a deemed university, by operation of sub-section (3)(i) of Section 4 of the Universities Act the fund held by the appellant became a statutory fund over which the members had no control. The fund should be expended only for the purpose of management and improvement of the university and for no other purpose. The "local fund" as defined in Section 3(31) of the General Clauses Act has wide meaning over which the State Government has control under the Act. Therefore, the view of the High Court is untenable. Shri P.A. Chowdhary, the learned Senior Counsel appearing for the respondents, raised threefold contention. It is contended that the view of the High Court is sustainable on the ground that unless the university is a local authority, the purpose of acquisition cannot be declared to be a public purpose. The local authority ejusdem generis would be like municipality having statutory control over its local funds over which the State Government also has control. In this case, the university is an autonomous university over which the State has no financial control. The local fund as understood in the etymological sense would be

construed to be the fund analogous to the fund held and expended by the municipality etc. In support thereof, he places strong reliance on the judgment of this Court in *Valjibhai Muljibhai Soneji v. State of Bombay (now Gujarat)* [(1964) 3 SCR 686 : AIR 1963 SC 1890] and *State of W.B. v. P.N. Talukdar* [AIR 1965 SC 646 : (1966) 1 SCJ 28]. With a view to appreciate the respective contentions, it is necessary to look to the provisions of the Act.

3. The "public purpose" as was available prior to the Amendment Act 68 of 1984 is an inclusive definition as contained in Section 3(f) of the Act which includes the provisions of villages in districts in which the local Government shall have declared by notification in the Official Gazette which is necessary for the Government to make such provision and... under second proviso to Section 6(1) of the Act, no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company or wholly or partly out of the public revenue or fund controlled or managed by a local authority.

4. It is not in dispute that the establishment of university and construction of the buildings including staff quarters, hostels, playground etc. is a public purpose provided if it is done by an authority within the meaning of Section 3(31) of General Clauses Act. The main emphasis of Shri Chowdhary is that unless the authority is one that is analogous to the one like municipality, it would not be a local authority. The State has the control over the local fund held by the municipalities etc. but the funds held or controlled by the university are not under the control of the State Government and that, therefore, unless the procedure prescribed in Chapter VII of the Act is followed, it is not public purpose. We do not find the contention to be acceptable.

5. Section 4(3)(i) of the Universities Act postulates thus :

"4. (3) As from the date appointed under sub-section (2) -

(i) the society known as the Kashi Vidyapith, Varanasi shall be dissolved, and all property moveable and immovable, and rights, powers and privileges of the society shall be transferred to and vest in the University and shall be applied to the objects and purposes for which the University is established;"

6. Section 8 of the Act envisages the inspection and control over the universities and it postulates, among other things, that the State Government shall have the right to cause an inspection made by such person or persons as it may direct, of the university or any constituent college or any institute maintained by the university, including its buildings etc. to cause an enquiry made in the like manner in respect of any matters connected with the administration and finances of the university.

7. Section 33 gives power of control over the provident fund etc. of the teaching staff. Section 55(3) obligates the university to prepare annual accounts and the balance sheet duly audited which shall together with the copies of the report be submitted by the Executive Council to the court and to the State Government. Section 55(8) gives control to the State Government over the finances as well. Section 55-A gives power to impose surcharge and to take action against the erring Vice-Chancellor. It also gives power to have the control over the grants made by the State Government, Government of India or the University Grants Commission or any international organisation or any other fund by the funding authorities. It would thus be clear that the State Government has financial control over the university.

8. It is true that the university is supposed to be autonomous in its management. But the limited

question that arises for consideration is whether the State has control over the funds of the university ? As seen from the above provisions, the State has sufficient control over the funds to be expended by the university. Though the expenditure is to be made by the university, the funds come from the contributions made by various authorities. Under those circumstances, it is a local fund.

9. The further question is whether the procedure prescribed under Chapter VII should be followed ? It is true that this Court in Valjibhai case [(1964) 3 SCR 686 : AIR 1963 SC 1890] had held that the State Transport Corporation constituted under the Bombay Transport Corporation Act was a company and the procedure prescribed in Chapter VII was not followed and that, therefore, though the Road Transport Corporation came to be constituted for public transport, it is not a public purpose. It is seen that that decision has no application to the facts in this case. In that case the State Transport Authority came to be constituted under a State enactment which was repealed by the Central Act. The Corporation was not constituted under the Central Act. Under the State statute that continued to be a company and the Government had not contributed any money for the expenditure to be incurred for acquisition. Under those circumstances, this Court came to hold that the acquisition was bad in law.

10. In Talukdar case [AIR 1965 SC 646 : (1966) 1 SCJ 28] a Bench of three Judges of this Court was called upon to consider whether the acquisition of Ramakrishna Mission was for a public purpose without following the procedure prescribed under Section 40 in Chapter VII of the Act. Though the object of the institution was very wide and it intended to propagate religious, social, educational and teaching activities for the benefit of the public, it was held that construction of the staff quarters, playground and hostel was not a public purpose. Since the acquisition was for an integral scheme which cannot be separated, the entire notification came to be quashed. The ratio therein also has no application to the facts in this case. Once it is held that the university was duly constituted under the Act, the very object of the establishment of the university is for imparting higher education to the students. Without the buildings to the staff and the students, hostel, playground etc. the object of the establishment of the university cannot be achieved. Under these circumstances, it must be held that the acquisition is for a public purpose.

11. The learned Judges, with due respect, have applied the doctrine of ejusdem generis to the other authority under Section 3(31) of the General Clauses Act to be like a municipality etc. When the "local authority" was widely defined under the General Clauses Act to include "any authority", a university must be construed to be any other authority within the meaning of Section 3(31) of the General Clauses Act as applicable to the State of U.P. Therefore, the establishment of a university being by an authority established under the Universities Act, the amount spent from the university fund is a local fund within the meaning of Section 3(31) of the General Clauses Act and that, therefore, there is no need for the State Government again to contribute from the exchequer towards the costs of acquisition of the property. Consequently, the procedure prescribed under Chapter VII of the Act need not be followed.

12. It is then contended by Shri Chowdhary that since there was inordinate delay of over 22 years from 1974, it is not a case for interference. We find no force in the contention. As seen, when the declaration was published, the appellants had gone to the Court and had the declaration quashed. In view of the fact that the view taken by the High Court was not correct in law, we cannot uphold the quashing of declaration under Section 6. However, the Land Acquisition Officer is directed to conduct and complete the award enquiry within a period of six months from the date of the receipt of this order and then pass appropriate award accordingly.

13. The appeals are accordingly allowed, but in the circumstances, without costs.