

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

WPA 17055 of 2019
with
CAN 1 of 2019 (Old No. CAN 9174 of 2019)

(Through Video Conference)

Reserved on : 15.03.2022
Pronounced on: 06.05.2022

Dr. Kunal Saha
...Petitioner

-Vs-

University of Calcutta & Anr.
...Respondents

Present:-

Dr. Kunal SahaPetitioner-in-person

Mr. Jishnu Chaudhuri,
Mr. Nilotpal Chatterjee,
Mr. Chayan Gupta,
Mr. Sandip Dasgupta,
Mr. Saaqib Siddiqui,
Mr. Aviroop Mitra, Advocates

... for the Calcutta University

Mr. Debajyoti Datta,
Mr. Rishad Medora,
Ms. Rishika Goyal, Advocates

....for the Respondent No. 2

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**
**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. The instant writ petition has been filed in the Original side of this Hon'ble Court in relation to the awarding of the D.Sc. honorary degree to the respondent no.2 by the respondent no.1 i.e., the University of Calcutta.
2. The facts of the case are that the writ petitioner has filed a petition against the University of Calcutta/ respondent no.1 and one Dr. Sukumar Mukherjee/ respondent no.2 on the grounds that there has been gross abuse of power by the Calcutta University by granting the respondent no.2 with a degree of Doctorate in Science (D.Sc.).
3. The controversy involved in the proceeding originates from the death of Anuradha Saha, the deceased wife of the writ petitioner on 28th May, 1998 due to gross negligence by respondent no.2 owing to which the writ petitioner lodged a complaint before the State Council alleging medical negligence on part of the respondent no.2 under the Bengal Medical Act, 1914. However, by an order dated 18th June, 2002, the State Council exonerated the respondent no.2 of the charges following which the writ petitioner filed a petition registered as W.P No. 1357 of 2002 (Dr. Kunal Saha v. The West Bengal Medical Council) challenging the order of the State Council which was dismissed by the High Court as well as the Supreme Court.
4. The Hon'ble Supreme Court on 7th August, 2009 in Malay Kumar Ganguly v. Dr. Sukumar Mukherjee [(2009) SCC 221] held the respondent no.2 as "primarily responsible" for the death of the petitioner's wife. However, it sustained the judgement of acquittal passed by the Court previously, but opined that the judgement of the commission in which Dr. Saha's plea, herein the writ petitioner for compensation was rejected was wrong and the case was remitted to the commission for the purpose of determining of quantum of compensation. On 24th October, 2013, the Hon'ble Supreme Court awarded highest-ever compensation for the wrongful death of the petitioner's wife with scathing criticisms of the respondent no.2.

5. On August-November, 2012, the respondent no.2 was appointed as the “chief adviser” to the West Bengal Health Department which was challenged by the writ petitioner vide W.P 16879 (W) of 2012. The Hon’ble Court, nonetheless, issued notice to the respondents in that matter on 16th August, 2012 directing to delete the name of the respondent no. 1 from the array of parties. The writ petitioner challenged the said direction before the Hon’ble Supreme Court vide SLP (civil) No. 33158/2012. Both the W.P and the SLP are pending before this Hon’ble Court and Hon’ble Supreme Court, respectively.

6. Moreover, several petitions were instituted by the writ petitioner against respondent no.2, some of which being W.P No. 32469 (W) of 2014, W.P No. 15515 (W) of 2014 and W.P 17057(W) of 2017 seeking cancellation of license granted to respondent no.2, challenging the conferment of “Banga Bibhushan” award by the State of West Bengal on respondent no. 2 and assailing the appointment of the respondent no.2 as a member of the West Bengal Clinical Establishment Regulatory omission respectively. However, all the Writ Petitions were dismissed by the Hon’ble Court.

7. On 1st January, 2019, the petitioner discovered from news reports that respondent no.1 selected respondent no.2 to receive the prestigious honorary D.Sc., highest academic degree awarded by respondent no.1 university, to people of high moral, professional and personal character in advancement of science undermining the Hon’ble Supreme Court’s observation and causing the petitioner great agony.

8. Thus, being aggrieved by such act of the respondent no.1, the petitioner filed the present petition. Hence, following are the issues before this court:

- i. Whether the conferring of the honorary academic degree D.Sc. to the respondent no. 2 by the University is discriminatory and violates the principle of equality under Article 14 of the Indian Constitution?

- ii. Whether the conferring of the honorary degree D.Sc. to the respondent no. 2 is against public interest and undermines the sanctity and dignity of the entire judicial system since he has been held guilty of “medical negligence” by the Hon’ble Supreme Court?
- iii. Whether the conferring of the honorary academic degree D.Sc. to the respondent no. 2 by the University violates the words and spirits of Article 144 of the Indian Constitution?

9. The following are the contentions of the petitioner:

- i. All public and private authorities including government universities are duty bound to respect directions passed by the Hon’ble Supreme Court and must always act in the aid of the Supreme Court as stipulated under article 144 of the Indian Constitution.
- ii. Conferral of the Honorary academic degree like D.Sc. to a doctor who has been held guilty of “medical negligence” by the Hon’ble Supreme Court amounts to public glorification of a grossly tainted doctor.
- iii. The public glorification of a doctor who has been found to be reckless, negligent and unethical person is a contemptuous act and has brought “great disrespect” to his profession.
- iv. By promoting the negligent doctor, the public and government academic institutions are responsible for the pain and anguish to the living victims of “medical negligence”.

10. The respondent no.1 i.e., the University of Calcutta contends that:

- i. Doctor Sukumar Mukherjee is known for his excellence in the field of medicine. As such, there cannot be any assertion made against the respondent no.1 that it has acted beyond its authorities in bestowing the respondent no.2 with the honorary degree of D.Sc.

ii. The expertise of the Doctor Sukumar Mukherjee in the field of Medicine is unquestionable.

11. Having heard the learned counsels for the parties, this court is of the view that it is not the expertise of this Court to decide the criteria of awarding of the honorary D.Sc. degree. As mentioned in section 22 (1) of The University Grant Commission (UGC) Act, 1956, the right to conferring or granting degree 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 the section 3 or an institution specially empowered by an Act of the Parliament to confer or grant degree.

12. The Supreme Court in Prof. Yashpal & Anr. v. State of Chattisgarh & Ors. (2005) 5 SCC 420 examined the provision of the UGC Act and the purpose for which the Act was enacted and observed that it was the responsibility of the Parliament to ensure that proper standards and uniformity are maintained in institutions for higher education and research throughout the country and after noticing the statement of object and reasons of the UGC Act, pointed out that in view of Section 22 of the Act, the right to confer or grant a degree can be exercised only by a University. Thus, to confer a degree is solely at the discretion of the University of Calcutta in the instant case. The Supreme Court even laid down a rule of prudence that courts should hesitate to dislodge decision of academic bodies. It would normally be wise and safe for courts to leave the decision of academic matters to the experts who are more familiar with problems they face than the courts as held in D.A.V College v. State of Punjab (1971) 2 SCC 269.

13. This Court does not agree with the submission that the respondent no. 1 acted in an arbitrary or capricious manner. It is a fact that the petitioner instituted several litigations against the respondent no. 2 and that some inter-party litigation is pending before the Hon'ble Supreme Court. It is further found that the selection of the respondent no. 2 by the respondent no. 1 has

not undermined the sanctity or honour or dignity of the Hon'ble Supreme Court or violated Article 144 of the Constitution of India. The honorary degrees are awarded to achievers in their respective fields. This does not warrant the interference of the Constitutional Court. Thus, where the nature and subject matter of a decision is not amendable due to judicial process because the court is not competent to deal with the matter, the court should not intrude into such questions.

14. Hence, this Court is not getting into the merits of awarding the D.Sc. degree to respondent no.2 by respondent no.1 since that is the domain and expertise of an education institution like the University of Calcutta, moreover, this court will not get into the technicalities on the basis of which such a degree was awarded to the private respondent.

15. For the foregoing reasons the writ petition is allowed. All pending applications are also accordingly disposed of.

**(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE**

**(RAJARSHI BHARADWAJ)
JUDGE**

Kolkata

06.05.2022
PA(BS)