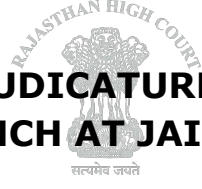




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Special Appeal Writ No. 467/2024

Singhania University, Pacheri Bari, District Jhunjhunu Through
Its Registrar (Raj.)

----Appellant

Versus

1. State Of Rajasthan, Through Additional Chief Secretary (Medical, Health And FW), Department Of Health And Family Welfare, Government Of Rajasthan, Secretariat, Jaipur
2. Rajasthan Medical Council, Jaipur, Sardar Patel Marg, C-Scheme, Jaipur, Rajasthan Through Its Registrar
3. National Medical Commission (NMC), Pocket-14, Sector-8, Dwarka Phase-1, New Delhi-110077, Through Its Chairman
4. Rajasthan University Of Health Science, Sector-18, Kumbha Marg, Pratap Nagar, Jaipur, Rajasthan-302033, India, Through Its Registrar
5. University Grants Commission (UGC), Through Its Chairman, Bahadur Shah Zafar Marg, New Delhi -110002
6. Ranjana Jangra, D/o Sohan Lal, Aged About 24 Years, R/o House No. 2, J.E. Colony, Near Sawan Senior Secondary School, Sirsa, Haryana (Batch Year 2016)
7. N. Priyanka, D/o N. Nagaraja, Aged About 24 Years, R/o 191/b, Sharavathi Marg, M.g. Railway Colony, Bangalore (North), Bengaluru, Karnataka (Batch Year 2016)
8. Sweta Guria, D/o Sujit Guria, Aged About 26 Years, R/o Radhanagar Road, Nichpura, Chinnamasta Burnpur Sansol, Heerapur, Bardhaman, W.B.-713325 (Batch Year 2016)

----Respondents

For Appellant(s) : Mr. Parag P. Tripathi, Senior Advocate through VC assisted by Mr. Aditya Jain, Advocate & Mr. Mahesh Chand Gupta, Advocate



HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

06/08/2024

1. The appellant seeks to assail the impugned order dated 23.05.2024 passed by the learned Single Judge, whereby the appellant's prayer for recusal has been turned down with strictures and observations.

2. Learned Senior Counsel appearing for the appellant argue in extenso, taking this Court through various pleadings, issues involved in the writ petition as also plethora of decisions with an attempt to persuade this Court that, on the facts of the case, learned Single Judge ought to have recused from the matter as it is a case of conflict of interest.

3. Quintessential facts necessary to appreciate the legal submissions on the face of the record of the case before us, are that the private respondents herein, students, approached the writ Court ventilating their grievance that they, having passed the MBBS course from the appellant-University, are not being awarded provisional MBBS degree in their favour due to which, they are deprived to seek registration from the Rajasthan Medical Council. A declaration is sought that inaction on the part of the University in not awarding provisional MBBS degree, be declared illegal and arbitrary, coupled with the prayer for issuance of writ of mandamus to the Rajasthan Medical Council to provide registration and also to allow the private respondents to do medical practice on the basis of the degree, which they are entitled to be awarded. In response thereto, the concerned University (Appellant herein) took a stand that it enjoys a legal



and constitutional status of a recognised and autonomous university, having been established by an Act of legislature and recognised by the University Grants Commission (UGC) under Section 2(f) of the University Grants Commission Act, 1956 and is, therefore, unconditionally empowered by the authority of law to award degree/diploma/certificate in any and all courses including courses in Medical Science. An emphatic reply is that the appellant-University is not required to seek any recognition from the Medical Council of India (now National Medical Commission).

4. The Medical Council of India (National Medical Commission) has taken a categorical stand that under the scheme of laws governing the medical education in India, any institution including the appellant-University, is required to be registered/affiliated appropriately in accordance with the provisions of the NMC Act and rules/regulations made thereunder, which it does not possess and despite various notices given, followed by public notices, warning students and public at large, the appellant is not only giving admission but claiming to award degrees without any authority of law.

5. Though registration was granted in favour of the appellant by the Rajasthan Medical Council, one of the respondents in the writ petition, it has also taken stand that the appellant is legally required to seek recognition/affiliation/registration from the National Medical Commission (NMC) for running courses in the medical science including MBBS.

6. When the case was listed at an advance stage of final hearing, the appellant herein prayed the learned Single Judge to recuse from the matter on the submission that the learned Judge



assigned the matter, had represented the income tax department as a standing counsel in D.B. Income Tax Appeal No.44/2020 which involved issue of entitlement of exemption as a charitable institution. As that issue revolves around in the case in hand, it would be a case of conflict of interest as the learned Judge assigned the matter, argued in favour of the Revenue and against the appellant, insofar as issue of exemption is concerned. Reliance has been placed upon the decisions of Hon'ble Supreme Court in the case of **Ramesh Chandra Vs. Delhi University and Ors. [(2015) 5 SCC 549]**; **Supreme Court Advocates-On-Record Association and Anr. Vs. Union of India [(2016) 5 SCC 808]**; **PK Ghosh, IAS and Anr. Vs. J.G. Rajput [(1995) 6 SCC 744]**; **S. Parthasarathi Vs. State of A.P. [(1974) 3 SCC 459]**; **State of W.B. and Ors. Vs. Shivananda Pathak and Ors. [(1998) 5 SCC 513]**; **Aureliano Fernandes Vs. State of Goa [(2024) 1 SCC 632]**; **Institute of Chartered Accountants of India Vs. L.K. Ratna and Ors. [(1986) 4 SCC 537]**. In the submission of learned Senior Counsel, the test would be whether a reasonable man would, in the circumstances, infer that there is a real likelihood of bias in deciding the matter in hand. The learned Judge's decision may lead to promotion of a cause in which the Judge was involved together with one of the parties and therefore, would lead to automatic disqualification.

7. After having given our anxious consideration to the submissions made by the learned counsel for the appellant, various authorities cited at the bar and the scope and extent of the issue involved for determination in the writ petition, we have no hesitation to hold that the plea for recusal at the fag end of



hearing of the case was wholly unwarranted and uncalled for. The pleadings of the parties before the writ Court on the face off it disclose that the students are seeking writ of mandamus for registration with the Rajasthan Medical Council on the claim that they were granted admission, pursued course and have passed examination conducted by the appellant-University, which is an autonomous institution established by an Act of legislature and duly recognised by the University Grants Commission. The stand taken by the writ petitioners has been supported by the appellant-University in its reply by submitting that by virtue of its autonomous status conferred on it by an Act of legislature and coupled with recognition by UGC, it does not require any affiliation/recognition from the National Medical Commission and is unconditionally empowered to run courses and award MBBS degrees, which needs to be recognised all over.

8. Having gone through the pleadings of the parties meticulously, we do not find that there is any whisper in the pleadings of the petitioners or of the National Medical Commission or of the Rajasthan Medical Council that under the scheme of any such enactment, a charitable institution entitled to exemption under the Income Tax laws, is exempted from the rigour of NMC Act, 2019 and its regulatory umbrella.

9. Irrespective of its claim for exemption under the tax laws, the issue which arises for consideration in the writ petition is whether the appellant-University, on the strength of it being a university established by an Act of legislature and recognised by University Grants Commission, can claim an autonomy beyond the purview of regulatory mechanisms of National Medical Commission



Act, Rules & Regulations framed thereunder, the Indian Medical Council Act, 1956 and the National Medical Commission Act, 2019 and Rules & Regulations framed under those enactments made by the Parliament.

10. The entire edifice of arguments stands on this misconceived notion of fact as well as law that in the course of adjudication of the issue involved in the matter, the writ Court is required to give its verdict of appellant's entitlement to certain kind of exemptions under the tax laws.

11. The decisions cited at the bar laying down broad principles on the aspect of recusal, particularly, the Constitution Bench judgment in the case of Supreme Court Advocates-On-Record Association (supra) do not come to the aid of the appellant to advance his submission that present is a case where the learned Single Judge ought to have recused the matter. It is now well settled legal proposition as adumbrated in the case of Supreme Court Advocates-On-Record Association (supra) that though pecuniary powers lead to automatic disqualification, however, in cases where interest of the Judge is other than financial, the disqualification may not be automatic and the real test would be real danger or reasonable apprehension of bias in the mind of the litigant.

12. Learned Senior Counsel, on principle, is correct in submitting that the tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other and that reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is a real likelihood of bias. In **Regina Vs. Bow**

**Street Metropolitan Stipendiary Magistrate and Ors.**

[(2000) 1 AC 119] it was declared that where it is likely that the Judge's decision will lead to the promotion of a cause in which the Judge is involved together with one of the parties, it would lead to automatic disqualification of the Judge.

13. However, on the facts of the present case and particularly taking into consideration the scope and ambit of the issue involved for determination in the writ petition, it cannot be held by any stretch of logic and reasoning that while examining the issue in hand as to whether the appellant-University is unconditionally empowered to run medical course and award MBBS degree without seeking affiliation/registration/recognition from the National Medical Commission (NMC) only on the strength of it being an autonomous university established by an Act of legislature and recognised by UGC, even peripherally, an issue whether it is entitled to exemption under the tax law would have any role to play.

14. The learned Single Judge, in its order, has very aptly recorded that the case was listed on so many dates i.e. 27.07.2022, 23.01.2023, 16.02.2023, 03.03.2023, 20.03.2023, 10.04.2023, 25.04.2023, 21.08.2023, 23.11.2023, 01.12.2023 and 14.12.2023 when enough opportunity was granted to the respondents to file reply and the early hearing application of the petitioner was allowed. The learned Single Judge also took note of the fact that even thereafter, the case was taken up on 02.02.2024, 27.02.2024, 11.03.2024, 13.03.2024 and 21.03.2024 when the matter was listed for final disposal and then again time was sought by the State and the writ petitioners to file rejoinder.



The case was again adjourned with directions to list the matter for final disposal on 02.04.2024 and then again on 02.04.2024, an application for impleadment of UGC as party was made which was though delayed, but allowed. Again adequate time was given and the matter was listed on 30.04.2024, on which date, the counsel for UGC prayed for and was granted last opportunity and the case was directed to be listed on 23.05.2024 with clear stipulation that no more adjournment would be granted. The counsel for UGC stated regarding filing of reply during the course of day and the writ petitioners raised urgency. At this stage, the counsel for the appellant raked up an issue with reference to proceedings in D.B. Income Tax Appeal No.44/2020 praying for recusal of the assigned Judge dealing with the case. Such a prayer was, however, opposed by the other respondents.

15. The learned Single Judge taking note of the fact that the matter pertains to the year 2022 and the matter has been considered at length 5-6 times and further taking into consideration that the issue arising for consideration in income tax matter pertains to applicability of Section 10 of the Income Tax Act, which has nothing to do with the case in hand, firmly refused to recuse from the matter and in our opinion, rightly so. The prayer for recusal was made at the eleventh hour when the case was to be taken up for final hearing with a clear direction earlier that no further adjournment would be granted.

16. To put records straight, though the learned Single Judge refused to recuse, yet the matter was directed to be placed for consideration for further orders before the Chief Justice and the



case was again directed to be placed before the appropriate Bench as per the roster.

17. In our view, the learned Single Judge, while deciding on the prayer for recusal, adopted correct approach and line of reasoning, as was done in the case of Supreme Court Advocates-On-Record Association (supra), wherein following pertinent observations were made:

"56. Despite the factual position noticed above, I wish to record that it is not their persuasion or exhortation, which made me take a final call on the matter. The decision to remain a member of the reconstituted Bench was mine, and mine alone. The choice that I made, was not of the heart, but that of the head. The choice was made by posing two questions to myself. Firstly, whether a Judge hearing a matter should recuse, even though the prayer for recusal is found to be unjustified and unwarranted? Secondly, whether I would stand true to the oath of my office, if I recused from hearing the matters?"

57. If I were to accede to the prayer for my recusal, I would be initiating a wrong practice, and laying down a wrong precedent. A Judge may recuse at his own, from a case entrusted to him by the Chief Justice. That would be a matter of his own choosing. But recusal at the asking of a litigating party, unless justified, must never to be acceded to. For that would give the impression, of the Judge had been scared out of the case, just by the force of the objection. A Judge before he assumes his office, takes an oath to discharge his duties without fear or favour. He would breach his oath of office, if he accepts a prayer for recusal, unless justified. It is my duty to discharge my responsibility with absolute earnestness and sincerity. It is my duty to abide by my oath of office to uphold the Constitution and the laws."

18. Resultantly, we find that the present appeal is *sans substratum* and is liable to be dismissed and is accordingly dismissed.



19. By way of abundant caution, we may hasten to clarify that we have not commented upon the merits of the issue involved in the writ petition and the observations made in this order are limited only as to whether the learned Single Judge has rightly refused to recuse from the matter.

(GANESH RAM MEENA),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

Jayesh/

