

ITEM NO.61

COURT NO.2

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).19617/2013

(From the judgement and order dated 31/05/2013 in WA No.16/2013 of The HIGH COURT OF MEGHALAYA AT SHILLONG)

CMJ FOUNDATION & ORS.

Petitioner(s)

VERSUS

STATE OF MEGHALAYA & ORS.

Respondent(s)

(With appln(s) for permission to file additional documents and prayer for interim relief)

WITH S.L.P.(C)...CC NO. 13359 of 2013

(With office report)

Date: 13/09/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s)

Mr. Pallav Shishodia, Sr. Adv.

Mr. Amit Kumar, Adv.

Mr. Ankit Rasghana, Adv.

Mr. Sanjay Parikh, Adv.

Mr. Pukhrambam Ramesh Kumar, AOR

For Respondent(s)
(Visitor)

Mr. Siddharth Luthra, ASG

Mr. Ranjan Mukherjee, Adv.

For State

Mr. Ranjan Mukherjee, Adv.

UPON hearing counsel the Court made the following

O R D E R

The petitioners in the connected petition are permitted to file the special leave petition.

These petitions are directed against judgment dated 31.5.2013 of the Division Bench of the Meghalaya High Court whereby the appeal filed against the order of the learned Single Judge refusing to quash order dated 30.4.2013 passed by Principal Secretary to the Governor of Meghalaya under Section 13(3)(b) of the CMJ University Act, 2009 (for short, 'the 2009 Act') was dismissed.

During the pendency of the special leave petitions, the Visitor-cum-Governor, Meghalaya made comprehensive recommendations on 12.6.2013 for dissolution of the University on the grounds of mismanagement, maladministration, indiscipline and failure in the

enforcement of the objectives of the University, apart from criminal liability. The note containing the decision of the Visitor including the recommendations made by him reads as under:

"1. I have perused the letter dated 10th June, 2013 from Shri S.P Sharma, Advocate for CMJ Foundation with reference to the Directives issued by this office vide letter no. GSMG/CMJU/82/2009/311 dated 24th May, 2013. It is observed that the CMJ Foundation/University has moved the Court of Chief Judicial Magistrate seeking copies of documents for the purpose of compliance of the Directives, after much delay, on 10th June, 2013 the last date fixed for compliance of the Directives. It thus appears that the CMJ Foundation is not sincere about compliance with the Directives. Moreover, all the Directives that were issued vide this office letter No. GSMG/CMJU/82/2009/143 dated 30th April, 2013 could have been complied by the CMJ Foundation without recourse to the documents seized by the State Police. The Directives issued on 30th April, 2013 are stated below:

i) The CMJ University shall recall/withdraw all the degrees awarded so far and publish this fact in national and local newspapers at their own cost.

ii) The CMJ Foundation shall submit a fresh proposal for appointment of the Chancellor along with the correct bio-data of the candidate recommended and supporting documents.

iii) The CMJ University shall frame rules and procedures for admission into the M.Phil and Ph.D degree programmes, allocation of supervisor, course work/ evaluation, assessment and further related methods in accordance with the UGC (Minimum Standards and Procedure for Awards of M.Phil/Ph.D degree) Regulation, 2009.

v) No fresh admission of students shall be undertaken by the CMJ University till compliance of the above instructions and till the appointment of the Chancellor in accordance with Section 14 (1) of the CMJ University Act, 2009.

2. It is unfortunate that the Chairman of CMJ Foundation has remained incommunicado all these days and chosen to communicate only through his counsel. According to media reports his counsel says he is in Bihar attending on his sick parent. Even if it is true it cannot be the reason for not addressing the issues for so long.

3. It is worth mentioning that immediately after the first directives were issued the University alleged that the students had vandalized the office and equipment in the University which subsequently was found to be false by police. According to police it was engineered by the university staff at the instance of one of the Directors.

It was a deliberate attempt to destroy evidence and the case is under police investigation.

4. All these cast a shadow on the sincerity of the University to adhere to the requirement of law, initiate corrective actions and uphold the standards of higher education.

5. The commissions and omissions of University are in two parts; i) It started functioning without the Chancellor whose appointment has not been approved by the Visitor, and ii) it functioned in gross violation of the standards and norms set by the University Grants Commission and other regulatory bodies, CMJU Act 2009, and Meghalaya Private Universities (Regulations of Establishment and Maintenance of Standards) Act 2012. This is even more serious an offence; it constitutes a breach of trust in addition. Even with the legally appointed Chancellor no university can be allowed to function with such fraudulent intent and vitiate the academic environment, disgrace the institution of higher learning and bring disrepute to the state where it is established.

6. On the basis of facts and circumstances available it is concluded that the university committed the following grave irregularities:

i) The University functioned from 17/10/2010 with the self-appointed Chancellor without the approval of the Visitor in terms of Section 14 (1) of the CMJ University Act, 2009 on the presumption of "deemed approval" of the Visitor. This is not legally valid and the position has been affirmed by the order dated 16th May, 2013 of the Hon'ble High Court of Meghalaya which has further been upheld by the Division Bench of the Hon'ble High Court of Meghalaya in their order dated 31st May, 2013.

(ii) It awarded B.Ed degree through Distance Mode without the requisite approval of the regulatory bodies and without affiliation. The B.Ed degrees awarded by the CMJ University were held to be invalid in the eye of Law by the order dated 24th May, 2013 of the Hon'ble High Court of Gauhati.

(iii) The Shillong Engineering and Management College was de-affiliated by NEHU from academic session 2011-2012. This College, which was in existence prior to the sanction for establishment of the CMJ University, cannot be affiliated with the CMJ University. While the fate of the students of this College was already uncertain in view of the said de-affiliation, the College continued to make admissions by misleading the students that the degrees will be issued by the CMJ University.

iv) The University had reported that during 2012-2013 it had awarded PhD degrees to 434 students and enrolled another 490 students. These figures though extraordinarily high do not reflect the correct position. Information is available with us that another 29 students have also received PhD degree from the University and more information is coming on a daily basis. So it is obvious that the actual number of award of and enrolment for, PhD and other programs will be much higher than was reported. The University awarded PhD even in subjects like the Bodo and Punjabi languages where the guides/faculty are not easily available. These constitute gross abuse of the university's power and violation of the UGC (Minimum Standards and Procedure for Awards of M.Phil/ Ph.D Degree) Regulation, 2009.

v) The University furnished a list of 10 faculty members with PhD which is inaccurate. One of the faculty members is only a research scholar at NEHU. The list includes the Vice-Chancellor, Registrar and other functionaries of the University as faculty which is quite misleading. In fact the University does not have adequate teachers to introduce courses which it had been doing.

vi) The University is running several off campus centres outside Meghalaya which is not permissible under the UGC (Establishment of and Maintenance of Standards of Private University) Regulations, 2003 and the decision of the Hon'ble Supreme Court (2005) in the case of Prof. Yashpal & Anr. Versus State of Chhattisgarh & Ors.

vii) It is offering distance education programme outside the boundaries of Meghalaya and outside India. These actions are in gross violation of UGC Regulations and guidelines.

viii) Total students enrolled by CMJ University as per information submitted by the University in 2010-11:176, 2011-12: 469, 2012-13: 2734. All these admissions are illegal as all its actions are ab initio void in absence of a legally appointed Chancellor.

x) The University has violated Section 45 (3) and Section 46 (4) of the CMJ University Act, 2009 by not submitting the Annual Report and the Annual Accounts / Balance Sheet and the Audit Report to Visitor.

xi) Even after the initiation of actions by the Visitor the University continued to mislead the students and public by press statements. It issued a news paper advertisement in the Shillong Times on 22nd April, 2013 claiming it has not yet awarded any PhD degree to any of the students enrolled from the State of Assam which is false. Again it issued advertisement in newspaper on 2nd May and 16th May, 2013 in matters of holding Convocation and Award of PhD Degree

knowing full well that there can be no Convocation without the legally appointed Chancellor and that the admissions of the courses and award of the degrees were illegal.

x) The University has violated Section 41(1) of the CMJ University Act relating to establishment of Endowment Fund and indulged in cheating by withdrawing the deposit of Rs.210 lakhs within days of making the deposit.

xi) The University repeatedly acted in contravention of Section 52 of the CMJ University Act 2009 in respect of maintenance of standards and other related matters applicable to private universities.

7. All these established facts clearly indicate mismanagement, mal-administration, indiscipline and failure in the accomplishment of the objectives of the University, apart from criminal liability. In the interest of maintaining proper standards of higher education it would be desirable that the CMJ University be wound up. The state government is accordingly being addressed to consider Dissolution of the CMJ University in terms of Section 48 of the CMJ University Act, 2009."

(emphasis supplied)

In terms of the recommendations made by the Visitor-cum-Governor, the State Government is required to take action under Section 48 of the 2009 Act.

Shri Ranjan Mukherjee, learned counsel appearing for the Government of Meghalaya says that he is not in a position to make a statement whether the State Government has taken action in furtherance of the recommendations made by the Visitor-cum-Governor.

In view of the above, we feel that ends of justice will be served by directing the State Government to take an appropriate action under Section 48 of the 2009 Act after giving notice and reasonable opportunity of hearing to the petitioners.

The special leave petitions are accordingly disposed of with a direction that within three months from today the State Government shall, after giving an opportunity to the petitioners to show cause against the action proposed to be taken, pass a speaking order under Section 48 of the 2009 Act.

The students whose admissions and degrees were declared illegal may also make representation to the State Government and seek an opportunity of hearing from it. The request made by them shall be sympathetically considered by the State Government.

| (Parveen Kr.Chawla)

| | (Phoolan Wati Arora)

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| Court Master
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