

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Writ Petition No.792 of 2010 (M/B)

Sri Krishna Sewa Ashram Society

C-2, Dhalwala Rishikesh

District Dehradun

Through its President Dr. C. L. Kohli ... Petitioner

Versus

State of Uttarakhand and others Respondents

Dated:- 29th April, 2011

Hon'ble Tarun Agarwala, J.

Heard Mr. Subhash Upadhyay, the learned counsel for the petitioner, Mr. J. P. Joshi, the learned counsel for the H.N.B. Garhwal University, Srinagar and Mr. Shailendra Nauriyal, the learned counsel for the Uttarakhand Technical University.

2. The petitioner is a society registered under the Societies of Registration Act and has its own hospital known as Sri Krishna Hospital, which has all the infrastructure and facilities. In the year 2006, the petitioner moved an application for affiliation with H.N.B. Garhwal University, Srinagar. On this application, the University conducted an inspection on 14th June, 2006. The inspection committee recommended a temporary affiliation for the academic session 2006-2007 permitting 30 seats in B.P.T. (Bachelor of Physiotherapy) and 30 seats in B.M.L.T. (Bachelor of Medical Laboratories Technology). The University, on the basis of recommendation given in the inspection report, referred the matter to the Chancellor for grant of temporary affiliation where the matter remained pending and, eventually, the State Government passed an order dated 25th February, 2010 granting 'no objection certificate' for affiliation to the University and allowing the petitioner's society to fill 15 seats each in the course of B.P.T. and B.M.L.T.

3. On the aforesaid basis, the petitioner admitted its students and also approached the University to grant temporary affiliation

and conduct the examination. In the meanwhile, the University was declared as a Central University w.e.f. 15th January, 2009 by Act No.25 of 2009. Accordingly, the University by a letter dated 29.03.2010 intimated the petitioner that since the University has been declared a Central University, it was no longer possible to grant affiliation to the petitioner in view of the provision of Section 4(f) of the Central University Act, 2009 which prohibited the University to make any new affiliation.

4. Since the petitioner was stranded at the crossing and had already admitted its students and there was no examination body to conduct the examination, the petitioner approached the writ court by filing the present writ petition seeking appropriate directions.

5. The learned counsel for the petitioner pointed out to a letter dated 15th April, 2010 written by the Secretary to the Government addressed to the Vice Chancellor of the University brining on record the discussion held between them agreeing that since “no objection certificate” was granted belatedly, the examination of the students admitted by the petitioner for the session 2009-2010 would be conducted by the University and, for the subsequent session, the examination would be conducted by the Uttrakhand Technical University respondent no.3. In spite of this arrangement being made between the University and the State Government, the University did not conduct the examination.

6. This court by an interim order dated 08th June, 2010 directed the H.N.B. Garhwal University to conduct the examination for the academic year 2009-2010, which was subject to the final decision of the writ petition. Based on the interim direction, the examination has been conducted by the University, but, the results have not been declared. In para 10 of the writ petition, the petitioner has categorically brought on record the

order of the State Government dated 15th April, 2010 wherein the arrangement was made for holding the examination for the University for the academic session 2009-2010. The H.N.B. Garhwal University in para 8 of its counter affidavit admits to the discussion that took place between the University and the State Government and the issuance of the letter of 15th April, 2010 but submitted that since the University became a Central University it was not possible to grant new affiliation or to hold the examination of the students admitted by the petitioner.

7. Having heard the learned counsel for the parties, this court is of the opinion that since the process for affiliation had started as far back as in the year 2006, the petitioner is not at fault, the University is also not at fault since they had made the inspection at the earliest opportune moment and had also recommended for a temporary affiliation. The matter remained pending with the State Government and, eventually, a “no objection certificate” was issued by the State Government on 25th February, 2010, but at that time, the H.N.B. Garhwal University became a Central University and was governed by the Central Universities Act, 2009. Faced with this situation coupled with the fact that the students were admitted whose career should not be jeopardized, the State Government held discussions with the H.N.B. Garhwal University and came out with a via-media, namely, the examination would be conducted by the University which is a examining body for the session 2009-2010 and affiliation and examination would thereafter be done by the Uttarakhand Technical University. The learned counsel for the Uttarakhand Technical University admits the aforesaid arrangement made by the State Government. The order of the State Government dated 15th April, 2010 has not been questioned either by the H.N.B. Garhwal University or by the Uttarakhand Technical University.

8. In the light of the aforesaid and taking into consideration the interest of the students, this court disposes of the writ petition directing the H.N.B. Garhwal University to declare the results of the examination which it had conducted for the session 2009-2010. The students, who are successful, will be admitted in the Uttarakhand Technical University for the session 2010-2011 and it would be open to the Uttarakhand Technical University to take necessary arrangements for inspection etc. with regard to the affiliation of the petitioner's society at the earliest.

(Tarun Agarwala, J.)

Dated 29.04.2011

Rawat