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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 274/2017, CM Nos.14120/2017 & 14122/2017

SHUBHANSHU SINGH AND ORS ... Appellants
Through : Mr. Arvind Nigam, Sr. Adv.
with Mr. Vrinda Grover, Ms.
Mangla Verma and Ms.
Parijata Bhardwaj, Advs.

versus

JAWAHARLAL NEHRU UNIVERSITY Respondent
Through : Mr. Vikas Singh, Sr. Adv.
with Ms. Monika Arora, Mr.
Akshay Chandra and Mr.
Aditya Chandra, Advs.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

18.04.2017

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CM No.14120/2017

1. It is contended by Mr. Arvind Nigam, Id. Senior Counsel appearing for the appellants that the impugned judgment dated 16th March, 2017 passed the Id. Single Judge is premised on a completely erroneous reading of the entries in the Lists in the Seventh Schedule to the Constitution of India. It is submitted that the Id. Single Judge has erroneously concluded in the judgment that the Jawahar Lal Nehru University Act, 1966 was enacted by the Parliament under Entry 25 of List III of Seventh Schedule whereas

the Jawahar Lal Nehru University Act was enacted in the year 1966 under the then extant Entry 11 of the List II which provided for the subject of universities. So far as Entry 25 of List III is concerned, in the year 1966, that was restricted to “*vocational and technical training of labour*”.

2. The further submission is that it was only upon the 42nd Constitutional Amendment coming into force in the year 1977, that Entry 11 of the List II was repealed and the subject matter thereof included in Entry 25 of List III of the Seventh Schedule which thereupon came to read as under :

“25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”

3. Our attention is also drawn to Entry 65 of List I and it is urged by Mr. Arvind Nigam, Id. Senior Counsel for the appellant that premised on such erroneous reading of the Entries in the Lists and the finding of the Id. Single Judge that the Jawahar Lal Nehru University Act is a result of exercise of power conferred in List III, ignoring the fact that it was enacted in exercise of power under Entry 11 of the List II/Entry 65 of List I, the Id. Single Judge has erroneously granted complete supremacy to the applicability of the University Grants Commission Act.

4. The contention is that therefore, as a result of the above, the Jawahar Lal Nehru University Act of 1966 was enacted by the Parliament which had the competence and legislative power to legislate *qua* institutions in the Union Territory of Delhi. On these contentions, it is urged that the finding of the Id. Single Judge in paras 43 and 47 of the impugned judgment is contrary to the Constitutional provisions.

5. Mr. Arvind Nigam, Id. Senior Counsel for the appellant would contend that if the findings of the Id. Single Judge are permitted to operate, the same can have wide ramifications on not only the working of the Jawahar Lal Nehru University but also on all other educational institutions prohibiting any innovation or academic developments.

6. On the other hand, Mr. Vikas Singh, Id. Senior Counsel for the respondent university would oppose the submissions made on behalf of the appellant and submit that the findings of the Id. Single Judge in paras 43 and 47 are immaterial so far as the challenge by the writ petitioner was concerned.

7. It is submitted by Mr. Vikas Singh, Id. Senior Counsel for the respondent that irrespective of any Entry in any List under which the appellant has claimed that the Jawahar Lal Nehru University Act was enacted, the provisions of Entry 66 of List I

would have overriding effect and that this matter is no longer *res integra* having been decided by a six Judge Bench of the Supreme Court in *AIR 1963 SC 703, Gujarat University & Anr. v. Shri Krishna Ranganath Mudholkar & Ors.*

8. Mr. Arvind Nigam, Id. Senior Counsel for the appellant has drawn our attention to the pronouncement of the Supreme Court reported at *(2009) 4 SCC 590, Annamalai University Represented by Registrar v. Secretary to Government, Information And Tourism Department & Ors.* wherein in para 47, the Supreme Court has considered the above judgment and has observed thus :

“47. In University of Delhi v. Raj Singh [1994 Supp (3) SCC 516 : 1995 SCC (L&S) 118 : (1994) 28 ATC 541] this Court held: (SCC pp. 526-27, para 13)

“13. ... By reason of Entry 66, Parliament was invested with the power to legislate on ‘coordination and determination of standards in institutions for higher education, or research and scientific and technical institutions’. Item 25 of List III conferred power upon Parliament and the State Legislatures to enact legislation with respect to ‘vocational and technical training of labour’. A six-Judge Bench of this Court [Ed.: The reference is to Gujarat University v. Krishna Ranganath Mudholkar, AIR 1963 SC 703.] observed that the validity of the State legislation on the subjects of university education and education in technical and scientific institutions falling outside Entry 64 of List I as it then read (that is to say, institutions for scientific or technical education other than those financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance) had to be judged having regard to whether

it impinged on the field reserved for the Union under Entry 66. In other words, the validity of the State legislation depended upon whether it prejudicially affected the coordination and determination of standards. It did not depend upon the actual existence of the Union legislation in respect of coordination and determination of standards which had, in any event, paramount importance by virtue of the first part of Article 254(1).”

9. Premised on the above, it is the submission on behalf of the appellant that so far as the fields under which the two legislations in questions are to operate are concerned, this court would be required to consider the impact of the legislation and whether it prejudicially affected the coordination and determination of standards.

10. We have already issued notice in the appeal which has been directed to be listed for hearing on the 28th of April 2017. However, it cannot be denied that the Id. Single Judge in the impugned order has given findings and made absolute propositions of law which would have wide ramifications.

11. The appellant has made out a *prima facie* case so far as the reading of the Entries in the Lists in the Seventh Schedule of the Constitution of India is concerned.

In view thereof, it is directed that till the next date of hearing, there shall be a stay of the effect and operation of the

findings on law of the ld. Single Judge.

12. List on 28th April, 2017.

Dasti under the signatures of Court Master.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

APRIL 18, 2017

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