

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Special Appeal No. 1073/2017

Sri Sri 1008 Narayan Swami Charitable Trust
... Appellant

Versus

State of Uttarakhand & Others
... Respondents

Sri D. Barthwal, Advocate, for the appellant.
Sri Paresh Tripathi, Chief Standing Counsel, for the State of
Uttarakhand.
Sri Vikas Pande, Standing Counsel, for the UGC/respondent
no. 9.

**Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble Narayan Singh Dhanik, J.**

Ramesh Ranganathan, C.J. (Oral)

Heard Sri D. Barthwal, learned Counsel for the appellant-writ petitioner, and Sri Paresh Tripathi, learned Chief Standing Counsel for the State Government and, with their consent, the appeal is being finally disposed of.

2. The appellant herein had filed WPMS No. 3074 of 2017 seeking a writ of mandamus to declare the Ras Bihari Bose Subharti University Act, 2016, which received the assent of the Governor of Uttarakhand on 7.12.2016 and was published in the Uttarakhand Gazette Extraordinary, Part I, Section (ka) dated 8.12.2016, establishing and incorporating the 10th respondent University, as ultra vires the Constitution of India.

3. While the learned Single Judge has rightly observed that plenary legislation can only be

challenged on the ground of lack of legislative competence and violation of the provision of the Constitution, more particularly Part III thereof, the petitioner has, in his supplementary affidavit, referred to the judgment of the Supreme Court in *Prof. Yashpal v. State of Chhatisgarh*, **(2005) 5 SCC 420**, to contend that, inspite of incorporation of universities as a legislative head in the Concurrent List, the whole gamut of the university, including teaching, quality of education being imparted, curriculum, standard of examination and evaluation, and also research activity being carried on, will not come within the purview of the State Legislature on account of a specific entry on coordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which Parliament alone is competent to legislate.

4. Entry 66 of List I of the Seventh Schedule of the Constitution of India relates to "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions." While Entry 25 of List III, which relates to education, including technical education, medical education and universities, may also confer power on the State Legislature to make a law relating to universities in the State, the question which necessitates examination is whether the subject Legislation, in pith and substance, falls under Entry 25 of List III or whether it falls within the ambit of Entry 66 of List I; and, consequently, whether the State Legislature lacked legislative competence to enact such a law.

5. While the prayer in the writ petition is not happily worded, the appellant-writ petitioner has, in effect, questioned the legislative competence of Uttarakhand State Legislature to make the subject-law, contending that the power to make the law is exclusively conferred on Parliament under Entry 66 of List I of the Seventh Schedule of the Constitution of India. The writ petition, therefore, ought not to have been dismissed at the threshold as these contentions can be examined only after the respondents file their counter affidavit.

6. We consider it appropriate, in such circumstances, to set aside the order under appeal, and restore the writ petition to file. Sri Paresh Tripathi, learned Chief Standing Counsel for the State, requests four weeks' time to file a counter affidavit. It is open to Sri D. Barthwal, learned Counsel for the writ petitioner, to request the learned Single Judge to take up the matter for admission any day after four weeks.

7. The Special Appeal stands disposed of accordingly. No costs.

(N.S. Dhanik, J.)
25.3.2019

(Ramesh Ranganathan, C.J.)
25.3.2019