

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No.127 of 2014

Dr. Bhupal Singh Bhakuni **Petitioner**

Versus

State of Uttarakhand & others ... **Respondents**

Mr. A.K. Sharma, Advocate, for the petitioner.

*Mr. S.N. Babulkar, Advocate General assisted by Mr. J.P. Joshi,
Addl. Advocate General, for the State of Uttarakhand*

With

Writ Petition (PIL) No.196 of 2014

Dr. Mahendra Singh Pal **Petitioner**

Versus

State of Uttarakhand & others ... **Respondents**

Mr. M.S. Pal, Senior Advocate/petitioner in person.

*Mr. S.N. Babulkar, Advocate General assisted by Mr. J.P. Joshi,
Addl. Advocate General, for the State of Uttarakhand*

Dated: June 19, 2018

**Coram: Hon'ble Rajiv Sharma , J.
Hon'ble Lok Pal Singh, J.**

Hon. Rajiv Sharma, J. (Oral)

Since the common questions of law and facts are involved, the present petitions have been taken up together and are being decided by this common judgment. For the sake of clarity, the facts of WPIL No.127 of 2014 have been taken into consideration.

2. A question of great public importance has been raised in this writ petition for establishment of National Law University. The grievance of the petitioners, precisely, is that though the National Law University of

Uttarakhand Act, 2011 (Uttarakhand Act No.11 of 2011) has been promulgated and came into force but despite that, the State Government has not established the National Law University in the State of Uttarakhand. This Court has passed number of orders, but no steps were taken pursuant to the orders passed by this Court from time to time.

3. The counter affidavit has been filed by the respondent no.1-Deputy Secretary, Higher Education Department, State of Uttarakhand. According to the averments made in the counter affidavit, as per Section 3(4) of the National Law University of Uttarakhand Act, 2011, it is provided that the Head Office of the University shall be at Bhowali, Nainital. The meeting was convened in the office of Secretary, Higher Education regarding the establishment of University. The Director, Uttarakhand Judicial and Legal Academy (UJALA) Bhowali brought to the notice that the land required for the establishment of the University is not available at Bhowali, therefore, the head office of the University could be established at Pant Nagar after making required amendments in the Act of the University. Thereafter, the proposal was sent to the G.B. Pant University. However, the University, for the reasons best known to it, declined the proposal on 26.12.2013. Thereafter, the District Magistrate, Nainital, vide letter dated 13th August, 2014, communicated the Director, UJALA that the minimum required land was 10 acres. The same was not available at Bhowali. Thereafter, on 14.8.2014, a meeting was held regarding the selection of land for the University. On the proposal of the Principal Secretary, Law Department, it was decided to constitute a Four Members' Committee under

the Chairmanship of Director, UJALA to select the land for the University.

4. Petitioner-Dr. Bhupal Singh has filed rejoinder affidavit to the counter affidavit filed by the respondent no.1. Petitioner has suggested the land available with the State Government/G.B. Pant University. The petitioner has suggested that if the land is not available at Bhowali, there is about 1500 acres of land available at G.B. Pant University, Pant Nagar, District Udham Singh Nagar.

5. The State Government filed yet another counter affidavit, giving therein, the details of the earlier meetings held between the functionaries of the State Government and Director, UJALA. On 11.11.2013, the meeting was conducted in the office of Secretary, Higher Education. After due consideration of the situation, the following decisions were taken: -

- a. A report from the District Magistrate, Nainital will be obtained regarding the availability/non-availability of land at Bhowali for the purpose of establishment of National Law University.
- b. The process of amending the Act of the said university will be started after obtaining the proposal for the same from the Director, Uttarakhand Judicial and Legal Academy, Bhowali bringing the situations to the knowledge of Hon'ble Chief Minister.
- c. The Vice-Chancellor, G.B. Pant University of Agriculture and Technology will be contracted to explore the possibility of availability of land and to

start the classes of the National Law University from the session 2014-15 as an interim measure.

- d. The budget provision for the establishment of the said university will be made in the financial year 2014-15.
- e. The rules/statutes of the said university will be drafted by the Director, Uttarakhand Judicial and Legal Academy, Bhowali with the assistance from Kumaon University and Directorate of Higher Education.

6. Petitioner has also filed the supplementary affidavit bringing to the notice of the Court about the directions issued by this Court in WPMS No.962 of 2005 decided on 21.2.2014. We have specifically requested the District Magistrate, Udham Singh Nagar to assist the Court to find out the availability of land. The District Magistrate was confronted with the directions issued by this Court vide judgment dated 21.2.2014. It would be apt at this stage to reproduce paragraph nos.2 to 9 of the supplementary affidavit: -

“2. That the learned District Magistrate (Dr. Pankaj Kumar Pandey), Udham Singh Nagar has passed an order in compliance of the Hon’ble Court order dated 21-02-2014 passed by Hon’ble B.S. Verma, Acting Chief Justice in Writ Petition No.962 of 2005 (M/S), Writ Petition No.963 of 2005 (M/S), Writ Petition No.1001 of 2005 (M/S) and Writ Petition No.1002 of 2005 (M/S).

Therefore, it is directed that the names of these petitioners, if any, recorded in the revenue records on the basis of the sub-lessees be expunged from the revenue records. The notices, which have been issued by the Collector to these petitioners, were not at all required.

Therefore, on that count, the impugned notices are set aside. The Collector shall take steps accordingly in accordance with law to correct the revenue records and for taking over possession. Since this land is handed over by the lessees to the sub-lessees and it is not in possession of the lessees, therefore, there is no need for the Collector to issue any fresh notice to the lessees in respect of this land as it is already separated by the lessees themselves by handing over possession to the sub-lessees and it also exceeds the ceiling area. Writ Petition No.1001 of 2005 (M/S) and Writ Petition No.1002 of 2005 (M/S) stand disposed of.

3. That in compliance of the Hon'ble High Court's judgment and order dated 21-02-2014 and direction of the learned Advocate General of Uttarakhand, on 25-02-2014 the learned District Magistrate, Udham Singh Nagar has directed to Sub-Divisional Magistrate, Rudrapur stating all the facts.

4. That on same day 25-02-2014 the Sub-Divisional Magistrate, Rudrapur, District Udham Singh Nagar

1. Pawan Papular Ltd. Tehsil Kichha.

2. Prag Agro Farm Ltd. Tehsil Kichha.

Through Tehsildar Kichha.

5. That the 8 Lekhpals and earlier Gram Pradhan Gokulnagar, Consolidation Officer Kichha, Tehsildar Kichha have taken the possession of all the lands to the Nayab Tehsildar Kichha, Shri Harish Chand Muwari and Halka Revenue Inspector and Regional Lekhpals.

6. That the table of Village Pawan Papular Ltd. Tehsil Kichha and Prag Agro Farm Ltd. Tehsil Kichha are quoted below

Village	Pawan Papular Ltd.	Prag Agro Farm Ltd.
1. Laxmipur	79.347	92.430
2. Noorpur	--	122.020
3. Gariya Bagh	90.171	138.211
4. Pantpura	55.363	--
5. Rajpura	148.158	--
6. Bandiya	14.7809	58.2230

7. *That the total land of the above properties is 3300 acres in this land the Government of Uttarakhand has acquired 1972 acres East of the Road side, the proposal of 40 acre land for the Jail of prisoners and the balance land 1932 acres is being proposed for SIDCUL.*
8. *That the Prescribed Authority/Additional District Magistrate (Finance/Revenue), Udham Singh Nagar in ceiling case no.51/01 year 2012-2013, "State Versus Keshar Sugar Works Bahedi, District Bareilly." The land of the Keshar Sugar Works Bahedi, District Bareilly has been declared surplus 1500 acre, which is also acquired by the State Government on 08-08-2014 in compliance of the order dated 28-07-2014 of the Prescribed Authority/Additional District Magistrate (Finance/Revenue) Dipti Vaish Udham Singh Nagar.*
9. *That this land has been proposed 485 acres for SC/ST cottage, 15 acres land for tree planting and 1000 acre for SIDCUL. It is the proposal on behalf of the petitioner that it is the fit land for the National Law University of Uttarakhand."*

7. It is evident from the directions issued by this Court on 21.2.2014 that sufficient land is available in District Udham Singh Nagar. The District Magistrate, Udham Singh Nagar has fairly submitted before this Court that in sequel to the directions issued on 21.12.2014 in WPMS No.962 of 2005, the possession of land has been taken over. The land available is more than 1800 acres. The land required for the University is only 10 acres. Necessary documents including the revenue entries altered have been produced on the file. Petitioner has suggested four alternative sites in the supplementary affidavit as follows: -

1. State Vaccine Institute, Patwadangar (9 km. from Nainital to Haldwani road)

2. Agricultural Science Center, Jeolikote
3. T.B. Sanatorium, Bhowali
4. U.P. Agro under the Mandi Parishad, Uttarakhand
8. The National Law University of Uttarakhand Act, 2011 has come into force vide notification dated 21.04.2011.
9. Section 3 provides for incorporation of National Law University of Uttarakhand.
10. The objects of the University have been spelt out under Section 4.
11. The powers and functions of the University have been provided under Section 5.
12. It is provided under Section 6 that all recognized teaching in connection with the degrees, diplomas and certificates of the University shall be conducted under the control of the Governing Council by the teachers of the University in accordance with syllabi as may be prescribed.
13. The Chancellor and visitor of the University are provided under Section 7. The Hon'ble Chief Justice of India shall be the Visitor of the University. The Hon'ble Chief Justice of the High Court of Uttarakhand shall be the Chancellor of the University.
14. Section 8 provides for the Governing Council, the Executive Council, the Academic Council, the Finance Committee and such other authorities as may be prescribed.

15. The constitution of the Governing Council is provided under Section 9. The Law Minister of Uttarakhand or if the Chief Minister himself is also the Law Minister, then any other Minister nominated by him, would be the member of the Committee. The two Judges from among the Judges of the High Court of the Uttarakhand nominated by the Chancellor.

16. The powers of the Governing Council are provided under Section 11.

17. The Constitution of the Executive Council is provided under Section 14.

18. The Constitution of the Academic Council is provided under Section 20.

19. The Constitution of the Finance Committee is provided under Section 23.

20. The Officer of the University is provided under Section 25.

21. The appointment of the Vice Chancellor is provided under Section 26.

22. The duties of Registrar are provided under Section 28.

23. Section 31 empowers the Executive Council to make regulations to run the affairs of the University.

24. Section 33 deals with the fund of the University. It reproduced as under:-

“1. There shall be a Fund of the University which shall include; namely:-

(i) any contribution or grant made by the State Government;

(ii) any contribution or grant made by the University Grants Commission or Central Government;’

- (iii) any contribution made by the State Bar Council.*
 - (iv) Any bequests, donations, endowments or other grants made by private individuals or institutions;*
 - (v) Income received by the University from fees and charges; and*
 - (vi) Amounts received from any other source; but shall not include any funds received from any agency for sponsoring a scheme.*
- 2. The amount in the Fund of the University shall be kept in a Scheduled Bank as defined in the Reserve Bank of India Act, 1934.*
- 3. The Fund of the University may be utilized for such purpose of the University and in such manner as may be prescribed.”*

25. It is evident from the language employed in Section 33 that the Fund of the University shall include any contribution or grant made by the State Government, any contribution or grant made by the University Grants Commission or Central Government, any contribution made by the State Bar Council, any bequests, donations, endowments or other grants made by private individuals or institutions, income received by the University from fees and charges etc.

26. The grant of law, degree, diploma etc, by the University is provided under Section 38.

27. It is an admitted fact that there is no National Law University in the State of Uttarakhand. The State Government promulgated the Ordinance in the year 2010 followed by the National Law University of Uttarakhand Act, 2011.

28. It is strange that till date, the University has not been established. There is a long unfruitful correspondence entered into between the various functionaries of the State Government with the Director, UJALA. The consistent stand of the respondent-State, as

per the affidavits, is that the land is not available at Bhowali or at Pant Nagar (District U.S. Nagar). It may be that the land is not available at Bhowali but it is difficult to believe that the land is not available in the entire State for the establishment of the University.

29. We have already reproduced the directions issued by this Court in WPMS No.962 of 2005, whereby the District Magistrate, Udham Singh Nagar was directed to hand over the possession of the land. The possession of the land, measuring about 1800 acres, has been taken over. However, the land is recorded in the revenue records in the name of State Government. Petitioner has also suggested various other places where the University could be established. The laudable object, to be achieved by the enactment, has not been achieved by the State functionaries. The necessity for having the National Law University in the State of Uttarakhand is that the new State was created under the U.P. Reorganization Act, 2000. The students of the State of Uttarakhand are also to be imparted quality legal education. There is dearth/shortage of law universities. The purpose of establishment of the National Law University was to enhance the standard of legal education.

30. The Court has not accepted the plea raised by the State Government that the land is not available. We have already noticed hereinabove that sufficient land is available. There are always teething problems as and when a new establishment including a University is to be set up. This could be overcome if there was a will of the State to establish/start the University as per Section 3 of the Act of 2011. The University could be established and thereafter the classes could start in any government

building or rented accommodation. Though the Library is *sine qua non* for the National Law University but the Court can take judicial notice of the fact that due to advancement in technology, the students can download the judgments from internet including the statutes. The compact disks are available including all international standards law publications i.e. Supreme Court Cases, A.I.R. KANOON etc.

31. The worthy Visitor of the University, as per the Act, is Hon'ble the Chief Justice of India. The Chief Justice of the State is the Chancellor of the University. There is remissness on the part of the respondent-State not to establish the University in the State of Uttarakhand. It cannot be treated purely a policy matter, as argued by learned Advocate General appearing for the State. We are not dealing with the policy matter but we are dealing with the enactment which has been legislated especially for the establishment of University u/s 3 of the Act. The same has not been implemented yet except the prolonged correspondence. The laudable object of the University has been frustrated in the rigmarole of red-tapism. The State machinery should have been sensitive to establish the University in the right earnest at the earliest. The present public interest litigation is pending for last 4 years. The brilliant students of the State have been deprived from getting the standard legal education under the National Law University. Under the guidance of Hon'ble the Chief Justice of India being the Visitor of the University and Hon'ble the Chief Justice of the State being the Chancellor of the University, the University could be of international standards.

32. It is reiterated that the stand and instance of the State Government that the land is not available, is contrary to the pleadings and the material placed on record. Sufficient land is available in District Udham Singh Nagar for establishment of University. The airport is also in close proximity at Udham Singh Nagar. There are railway stations in District Udham Singh Nagar. National Highways crisscrosses through the district of Udham Singh Nagar.

33. Learned Advocate General, who has assisted the Court, submitted that the efforts were made to acquire the land from the G.B. Pant University which has denied the request. He also argued that the funds are also required for the establishment of University. The State Government was aware of this contingency at the time when the National Law University of Uttarakhand Act, 2011 was legislated. It was for the State Government to garner the funds. There cannot be any compromise as far as the field of education is concerned. The National Law University could have been a feather in the hat of the State of Uttarakhand.

34. The submission, made by learned Advocate General that despite the best efforts made by the State Government, the land is not available at Pant Nagar (Distt. U.S. Nagar) is not correct as 1800 acres of vacant land is recorded in the name of State Government in District U.S. Nagar. Only 10 acres of land is required for the establishment of National Law University. The requirement of 10 acres of land for the establishment of University can be fulfilled from the aforesaid 1800 acres

of vacant land recorded in the name of State Government at Distt. U.S. Nagar.

35. Mr. C.D. Bahuguna, Senior Advocate, who is present in the Court, has volunteered to pay a sum of Rs.1.00 lakh for creating the corpus for running the University. We authorize Mr. Bahuguna to collect the donations from the Members of Bar, public at large, including Judges of this Court within three months. We also request Mr. Bahuguna to open a separate fund for collecting the donations. The amount shall be received only by way of cheque/draft/NEFT.

36. Accordingly, we allow both these petitions by issuing the following mandatory directions: -

- A. The State Government is directed to start the National Law University in the State within three months from today .
- B. The respondent-State is directed to run the University from the government buildings or by hiring a private accommodation at a reasonable rate.
- C. The State of Uttarakhand is directed to raise construction for the University preferably in Tarai area including in District Udham Singh Nagar where the government land measuring about 1800 acres is available.
- D. The first academic session shall start from September, 2018. Necessary permission shall be obtained by the National Law University from the Bar Council of India.

- E. The respondent-State, till date, has not framed the Regulations as per the Universities Act. The respondent-State is directed to frame the regulations within a period of one month from today. All the appointments in the University shall be made as per the Universities Act and the Regulations, framed thereunder, within a period of three months from today including appointment of teaching faculty and ministerial staff.

All pending applications stands disposed of.

(Lok Pal Singh, J.)

(Rajiv Sharma, J.)

Rdang