
(2001) 02 MP CK 0054

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 668, 768, 775, 851 and 873 of 2001

Amarnath Dwivedi and Another

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 24-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 — Section 9(4)

Citation : (2001) ILR (MP) 1333 : (2001) 5 MPHT 343 : (2001) 3 MPLJ 53

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Prabhakar Singh and S.K.P. Verma, for the Appellant; Sanjay Dwivedi, for the Respondent No. 1 and J. Choudhary, for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India the petitioners in this batch of writ petitions have prayed for issue of a writ of mandamus to the Secretary, Board of Secondary Education to enforce the order dated 15-12-2000, issued by the State Government and further to command the said respondent to issue examination forms to the students to enable them to undertake the examination to be held in the mid of March, 2001. For the sake of clarity and convenience the facts of W.P. No. 851/2001 are adumbrated herein.

The petitioner No. 1 is the President of Nisant Higher Secondary School and petitioner No. 2 is the working President of Gyanganga Teerath Prasad Tiwari High School. Both the schools are situate in the District of Rewa. It is averred in the writ petition that both the schools are run by two different societies. The petitioner No. 1 started the school on 1-7-99 and submitted the recognition fee to the Board of Secondary Education (hereafter referred to as "the Board"). The

competent authority of the Board inspected the school and submitted a report. The inspection report has been brought on record as Annexure P. 4. As the Board did not confer recognition the petitioner No. 1 submitted a representation to the State Government which in exercise of power conferred on u/s 9 (4) of the Madhyamik Shiksha Adhiniyam, 1965 (hereinafter referred to as "the Act") granted recognition to the said school. It is pleaded that the petitioner No. 2 had established the school in the year 1999 and requested the Board for grant of recognition. As the same was not done he also submitted a representation to the State Government and similar order was passed. It is worth noting here that petitioner No. 2 has deposited the inspection fee as well as the recognition fee with the Board and the Board has inspected the school in question. It has been set forth that number of students have already taken admission and they are prosecuting their studies in the school, but as recognition has not been conferred by the Board there is likelihood of closure of the school. It has been set forth that when the State Government has granted recognition in exercise of powers vested in it by the statute it was incumbent on the part of the Board to accept the same and act accordingly. It has been set forth that in spite of the command given by the State Government the Board has maintained a sphinx like silence and has not carried out the mandate of the State Government which has not only affected the management of the school but the future careers of number of students. With these averments the prayer as has been indicated above has been made in the writ petition.

A preliminary objection has been filed by the respondent Board contending, inter alia, that the State Government had granted recognition on certain conditions to 38 schools. While extending the benefit of conditional recognition the State Government has also fixed the outer limit of filling up the forms by extending the date to 20-12-2000. It has also been pleaded that the Board has ample reasons to doubt the genuineness of the students who have been admitted in the aforesaid schools. It has also been set forth that the students have been admitted in clear violation of Regulation 14 (19) of the Recognition Regulation. It has been asserted that the Board has made all arrangements of conducting the examination which is going to commence from 15-3-2001 and at this juncture it is well nigh impossible to scrutinise the forms, to do the data processing, delivery of admission cards, sitting arrangements, fixation of centre, printing of question papers and supply of blank papers as the same have already been completed. It has also been asseverated that the practical examination for 10th and 12th classes have already been conducted.

A rejoinder affidavit has been filed by the petitioners highlighting that the students had taken admission within the time stipulated under Regulation 14 (9) of the Regulations. It is also put forth that in similar cases this Court has passed the orders permitting the students of some other schools to appear in the examination on certain conditions. Quite apart from the above the action of the Board has been seriously criticised.

I have heard Mr. Prabhakar Singh, learned counsel for the petitioners, Mrs. J. Choudhary, learned counsel for the Board and Mr. Sanjay Dwivedi, learned Panel Lawyer for the State.

It is submitted by Mr. Singh that when the State Government had passed the order on 15-12-2000 conferring recognition on certain conditions the Board should have immediately complied with it and should not have frustrated the order passed by the State Government by egregious inaction. It is also urged by him that when under similar circumstances this Court had intervened and passed appropriate orders permitting the students of the other schools to appear the petitioners should not be deprived and despoiled of the same benefit. It is also argued by the learned counsel that when the Board is conducting the examination for 10 to 12 lacs of students and it will be not an arduous task for the Board to hold the examination for the students of the schools who have approached this Court through their respective Presidents and it should not be allowed to adopt an dynamic attitude.

Resisting the aforesaid submissions, on the contrary, it is canvassed by Mrs. J. Choudhary that the petitioners could have approached this Court earlier so that the directions which were issued by this Court in the previous writ petitions could have been granted in respect of the schools in question but at this stage it would be impossible on the part of the Board to permit the students to appear in the examination. Learned counsel has further submitted that the entire preparation to hold the examination has been completed and the Board is in a total helpless situation to accommodate the likes of the petitioners. It is also highlighted by Mrs. Choudhary that the Government had conferred the benefit on 38 schools and 17 schools have approached this Court at the earliest point of time and this Court had taken cognizance of that and passed the order and if interference is done at this stage flood gates will open.

Before I advert to the rival submissions raised at the Bar it is apposite to refer to various kinds of orders passed by this Court so that facts are set forth in proper chronology and appreciated in proper perspective. It is worth noting here that at the earliest point of time when some schools through their Principal or President approached this Court without notice to the Board directed that the schools in question shall bring the order passed by the State Government to the notice of the Board which shall take appropriate decision within a week therefrom. It is fairly submitted by Mrs. J. Choudhary that the said orders were produced before the authorities of the Board and they have been duly complied with and the students of the said schools have been accommodated on certain conditions. Later on a batch of writ petitions were filed which were disposed of by order dated 23-1-2001. In the said batch of cases a return was filed by the Board that it had entered into correspondences with the State Government communicating the difficulties to comply with the directions of the State Government and after receipt of the letter the concerned department had communicated to the Board that it may apprise the Hon'ble Chief Minister for necessary guidance and

comply with the order. In course of hearing of the said writ petitions Mr. Saxena, learned senior counsel appearing for the Board expressed grave doubt about the authenticity of the students who would be appearing from the schools in question. Appreciating the totality of circumstances this Court passed the following order :

"In course of hearing of these writ petitions Mr. Saxena, learned counsel for the Board expressed grave doubt about the authenticity of the students who would be appearing from the schools in question. He has given a suggestion that the students may appear through a nearby Government Higher Secondary School after taking admission therein and the Principal of the said school would scrutinise the forms and sent the same to the Board and thereafter the Board would conduct the examination as per the regulations. It is also suggested by Mr. Saxena that the concerned students may also appear as private candidates. Mr. K.P. Mishra, learned counsel for the petitioner in W.P. No. 80/2001, submitted that the suggestion given is quite rigorous and it may be modified to the extent that the students may be permitted to fill up the forms which may be scrutinised by the Principal of concerned government school and he be authorised to sent the same to the Board. Learned counsel for the petitioners in other writ petitions have accepted the submission made by Mr. K.P. Mishra.

Having hearing learned counsel for the petitioners, Mr. P.D. Gupta, learned Dy.A.G. for the State and Mr. S.L. Saxena, learned counsel for the Board it is directed as under:--

- a. the schools shall strictly comply with the directions given by the State Government and would not deviate from the same;
- b. the students who are eligible to appear in the examination as per the instructions of the State Government and also have the eligibility as per the regulation of the Board shall fill up the forms which would be scrutinised by the Principal of nearby government Higher Secondary School on the basis of the records produced by the schools and thereafter shall transmit the same to the Board alongwith the necessary fees within a period of ten days;
- c. the Principal of Government Higher Secondary School shall act in pursuance of this order if certified copy of the same is produced before him;
- d. on receipt of the forms the Board shall issue the admit cards and facilitate the appearance of the candidates in the concerned examination."

On a perusal of the aforesaid order it is perceptible that after hearing the learned counsel for the parties and keeping the factual scenario in view on certain conditions the writ petitions were disposed of.

At this juncture it is apposite to refer to two orders which were passed at a later stage in W.P. No. 636/2001 and W.P. No. 589/2001 wherein this Court reiterated the order passed in W.P. No. 83/2001 as the factual matrix exposited a similar scenario. Now the core question that arises for consideration whether at this

juncture the students of petitioners" schools should be allowed to appear in the examination because of the orders passed on earlier occasions in respect of schools which are similarly placed. The present case was filed on 15-2-2001 and was listed on 16-2-2001. It is to be noted here that on 7-2-2001 the order was repeated and at time the learned counsel for the Board had not indicated any kind of difficulty, may be for the simple reason at that time difficulties did not exist. As has been put forth by Mrs. Choudhary the practical examinations are over and all arrangements have been made for holding the examination. It is to be borne in mind that the State Government had passed the order on 15-12-2000 and the petitioners slept over the matter and approached this Court after expiry of two months. Two months time in a case of this nature makes a world of difference. It is discernible that the petitioners were not vigilant from the very beginning and infact they chose to play with the fate of the students. It would have been quite different, had they approached this Court like others and in that event similar orders could have been passed in their favour. But unfortunately they were not percipient and Argus-eyed and slept like Rip Van Winkle and rose when they chose. At this stage they canvass the cause of the students who are young and innocent on the ground that if they are not allowed to appear in the examination they would face a cataclysm and would be on the path of ruination. True it is the students are likely to face a sea of troubles but they have themselves to blame as they have left their fate in the hands of the school authorities who have silently proclaimed that they are "As flies to wanton boys are we to gods, they ill us for their sport." Hence, it does not behave on the part of the petitioners to canvass a cause which by efflux of time has become a non-cause. The rubric does not permit so and they have crossed the Rubicon. This Court cannot be oblivious to the fact that the Board as a statutory organisation has also to carry out its duties within a particular frame work of time. It is not disputed at the Bar that some more schools have not been conferred the privilege by the Board and they have not yet approached the Court. In every litigation a phase comes where the Courts have to apply the restraint so that a non-diligent litigant does not reap the benefit. Not for nothing it has been said by an eminent author "delays have dangerous ends." It has to be borne in mind that conducting of an examination is indeed a Herculean task more so when 10 lacs of students appear every year. Judicial notice can be taken of the fact that education institutions are established without taking prior permission of the State Government and without waiting for the recognition of the Board. It is education and education alone which makes good citizens. John Dewes speaks "Education is not preparation for life education is life itself. But the mushroom growth of education institutions at the whim and fancy of the people who have no responsibility cannot be appreciated. Such propensities cannot be encouraged to make them propitious. The petitioners can be put in that category as they have knocked at the doors of justice at a belated stage when no relief can be granted. They have crucified themselves and chosen their path to perdition. They have played with the innocence of the students and they have to suffer the consequences. A departure from the earlier orders is warranted

because due to passage of time a consistent approach is not possible. A Court of law cannot arrest time. It has been rightly said even in darkness the clock does not stop. The petitioners have made an impossible effort to imprison time which is beyond human prowess. As they slept like "Kumbhakarna" and woke up when bells tolled, no relief can be granted.

Resultantly, the writ petitions being sans merit stand dismissed without any order as to costs.