
(2006) 04 MP CK 0053
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4500 of 1996

Amir Patel and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 25-04-2006

Acts Referred:

Advocates Rules, 1961 — Rule 14, 16, 17, 21, 4(2)

Citation : (2006) ILR (MP) 716 : (2006) 2 JLJ 40 : (2006) 3 MPLJ 393

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Rohtash Babu Patel, for the Appellant; Seema Agarwal, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

This writ petition was filed by petitioners way back in the year 1996. They were students of law faculty at the relevant time in the Govt. Arts and Commerce College, Harda. Petitioners came to know that Bar Council of India (hereinafter referred to as "BCI") had issued a circular dated 7-3-96 with respect to appointment of a whole time Principal and at least two other whole-time teachers. The same came into force with effect from 1st July, 1996. The Law Colleges were required to strictly follow the rules. Respondent No. 4 wrote letter to Commissioner, Higher Education demanding creation of 4 posts of full-time Lecturers of Law in Govt. Arts and Commerce College, Harda. Respondent No. 2/ University wrote to the Law Colleges to comply with the directions of BCI. Respondent No. 4 again sent a reminder to the Commissioner, Higher Education for appointment of 4 full-time Lecturers. However, posts were not sanctioned, hence, petition was filed. Prayer has been made by petitioners that respondents be directed to comply with the directions issued by BCI with respect to Law College in question and for other Law Colleges in State of M.P.

Respondent Nos. 1, 4 and 5 in their return have contended that petitioners have passed out their LL.B. Examination, they have been enrolled as Advocates. Hence, petition has been rendered infructuous. Prior to 1982 the College was a Private College, it was taken over by the Government, law faculty used to be run in Govt. Arts and Commerce College. Considering the financial constraints it was not possible to comply with the directives issued by BCI, affiliation was cancelled by BCI as per Order (R-1), dated 22-9-2000, which was challenged by way of filing W.P. No. 5852/2000, which was allowed as per Order (R-2), dated 14-12-2000. L.P.A. No. 45/2001 was filed by BCI. College was required to apply afresh and requisite fee for extension of approval was demanded. Considering the requirement of BCI for running Law Colleges in a separate building, library and retaining at least 5 full time law teachers, etc. Cabinet had taken a decision on 15-9-20 that Law Colleges should be run on self financing basis and fees should be raised in such a manner that requirement of at least 5 teachers is met. College was apprised of the aforesaid decision of Cabinet. College is run by Jan Bhagidari Samiti. Adherence to BCI directions was directed by State of M.P. and an advertisement (R- 8), dated 3-11-2001 was also issued. In 2002, advertisement (R-9) was issued. BCI was to take decision pursuant to communication dated 19-7-02 and the reply sent by Principal of the College.

I have heard learned Counsel for parties at length.

Shri Rohtash Babu Patel, learned Counsel appearing for petitioners has submitted that, that petitioners have passed out, but the directive of BCI in the matter of appointment of Principal and other full time teachers was not complied with. Similar is the situation of other Law Colleges run by the State Govt.

Learned Counsel appearing for State has submitted that petitioners have passed out from the Law Colleges, Colleges were handed over to Jan Bhagidari Samiti, State Govt. had issued a direction to comply with the directive of BCI, thus, nothing survives in the petition.

It is clear from pleadings that though the BCI had directed appointment of full-time Principal and other full-time teachers, but the direction was not complied with due to financial constraints. It appears that Cabinet had taken a decision that Law Colleges in the State should run on the basis of self-financing through societies called Jan Bhagidari Samitis. Question is that merely by creation of Jan Bhagidari Samitis and handing over the administration of Law Colleges to the societies so formed whether State Govt. can escape from the liability not to appoint the whole-time Principal, provide separate building and full-time Lecturers as prescribed under the norms by BCI in the Law Colleges run by it. Even after handing over of the Law Colleges to Jan Bhagidari Samiti on self-financing, State is responsible so as to ensure that the directives issued by BCI are complied with in true spirit.

Bar Council of India has framed the rules under the Advocates Act, 1961 contained in Part IV of the Rules which provide that there shall be two streams of

law course leading to LL.B. Degree viz., a five-year and a three-year law course for the purposes of enrollment as advocates as prescribed under the Rules contained in Section A and Section B. Section A in Part IV provides that law education of 5 years shall be through whole-time Law Colleges or University Department. University Department will be deemed to be whole-time Law College as provided in Sub-rules (2) and (3) of Section A of Part IV in case working time of the College or the University exceeds to at least thirty hours of working per week including contact and correspondence programme, tutorials, home assignments, library, clinical work, etc. provided that the actual time for classroom lectures is not less than 20 hours per week. A Law College shall be located at a place where there is at least a District Court or a Circuit District Court or within such distance thereof as the Bar Council of India permits. Sub-rule (2) of Rule 8 contained in Para 8 provides that every Law College to obtain approval of affiliation must have in its teaching staff in its first year a whole time Principal and at least two other whole-time teachers and by the time it opens its third year, it must have two more whole-time teachers. This rule came into force immediately for the new colleges while in case of existing Law Colleges became effective from 1st July, 1996. Rule 8(2) is quoted below :

8. (2) Every Law Colleges to obtain approval of affiliation must have in its teaching staff in its first year a whole-time Principal and at least two other whole-time teachers and by the time it opens its third year, it must have two more whole-time teachers. This rule will come into force immediately for new colleges while in case of existing Law Colleges, it will be effective from 1st July, 1996.

Various other norms have also been prescribed by BCI. Salaries have to be as per the scales recommended by the UGC from time to time as provided in Rule 14. Rule 16 provides that a Law College affiliated to a University shall by June 1, 1987 be an independent Law College and shall cease to be a department attached to a College. No College after the coming into force of the rules shall impart instruction as provided in Rule 17 unless its affiliation has been approved by BCI. Rule 21 provides that Bar Council of India may issue directives from time to time for maintenance of the standards of legal education. The College/ University is expected to follow them as compulsory. Section B of Part IV of the Rules contains the provisions with respect to three-year law course after graduation. Rule 4 (2) in Section B Part IV provides that every Law Colleges to obtain approval affiliation must have in its teaching staff in its first year a whole-time Principal and at least two other whole-time teachers and by the time to open its third year, it must have two more whole-time teachers. This rule came into force immediately for the new colleges while in case of existing Law Colleges became effective from 1st July, 1996. Thus, it is clear that after three years, the College must have whole-time principal and at least 4 whole-time teachers. The aforesaid requirement is to wipe out the ad hocism from the legal education prevailing in the country.

Law Commission headed by Setalwad in 1958 observed as to miserable state of

law, education, extracts of recommendations/observations made indicates thus:

- (i) Legal education is defective, it fails to organize the study of law as branch of learning and science;
- (ii) Education should fit the law graduates for profession;
- (iii) Lack of infrastructure and competent faculty. Examination system only test memory part;
- (iv) Half baked lawyers which are produced are let loose on society like drones and parasites;
- (v) There is no room for part-time concept in the legal education.

The situation has not improved and Law Colleges are still being run in violation of the directives issued by BCI which is incharge of the Legal Education in the country and lays down the standards which are having binding statutory force having been framed under the Advocates Act. It is regrettable that instead of making compliance of directives issued, State thought it fit to leave the matter at Jan Bhagidari Samiti. It is not clear from the return that appointment was ordered of the whole-time Principal and 4 whole-time teachers which was necessary, mere stand that direction has been issued to Jan Bhagidari Samitis to ensure compliance of requirement/direction issued by BCI in various colleges is not enough, when State is running Law Colleges, mere formulation of committees is not enough, it is duty bound to ensure that mandatory requirements are met in various colleges. This position cannot be allowed to continue. In the circumstances, it is directed that full-time Principal and at least 4 full-time teachers be appointed in the Law Colleges which are running for more than 3 years and in the various colleges run by State Govt. Compliance of the direction be reported to this Court within a period of six months from today under intimation to the Bar Council of India.

Writ petition is accordingly allowed. No order as to costs.