(2000) 07 MP CK 0029

In the Madhya Pradesh High Court

Case No : Writ Petition No''s. 848 and 913 of 2000

Ankur Agrawal APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Admission to MBBS Course in Medical Colleges of the State of Madhya Pradesth to Payment and NRI Seats Rules — Rule 1
Constitution of India, 1950 — Article 226

Citation : AIR 2000 MP 310 : (2000) 2 JLJ 208 : (2000) 3 MPHT 427 : (2001) 2 MPJR 322 : (2000) 3 MPLJ 627

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.K. Jain, J.

BOTH these petitions (W.P. Nos. 848/2000 and 913/2000) have been heard as connected matters as common question of law, as extracted below, is involved in both these petitions :

Question involved:--

"Whether the demand by the respondent-Authorities for payment of the Institutional fee prescribed for the payment/NRI seats, in full, at the time of admission, for the entire duration of 4 1/2 years MBBS course in State owned medical colleges, is justified in law"?

The Government of Madhya Pradesh has created 10 payment/NRI (Non-resident Indians) seats for admission to MBBS course in each Stale owned Medical Colleges at Bhopal, Indore, Jabalpur, Gwalior and Rewa. The State Government has framed Rules to regulate admissions on these seats entitled : "Rules for Admission to MBBS Course in Medical Colleges of the State of Madhya Pradesh to Payment and NRI Seats (for short, ''the Rules''). The Rules provide for payment of institutional fee at the rate of Rs. 1.1 lacs per annum (for 12 months) for payment seat and US $ 15,000 per annum for NRI seat. It is further provided that the institutional fee payable by the candidates admitted against these seats shall be paid in full, at the time of admission, for the entire duration of 4 1/2 years MBBS course. Petitioners who have been admitted against NRI seats in M.G.M. Medical College, Indore, were asked to deposit the fees in lump sum, as aforesaid. It is this demand which is being called in question in these two petitions.

Petitioners have assailed the demand as arbitrary and unreasonable. It is submitted that the demand is violalve of their fundamental right of education.

Respondents have supported the impugned demand and it is contended that the demand Is made in accordance with the Rules of admission framed by the State Government. It is submitted that the petitioners having accepted the Rules and applied for admission cannot now be permitted to contest the demand which is in conformity with the Rules.

I have heard Shri Amit Agrawal, learned counsel for petitioners and Shri Prakash Verma, learned Government Advocate appearing with Shri S. Mukati for the respondents.

At the outset it may be noted that the Rules (Annexure P/8) are purely administrative in nature not framed under any statute. Generally speaking administrative orders or instructions are not subject to judicial review. To this general Rules, however, exceptions have been admitted by the Courts and an aggrieved party may have his remedies if his constitutional rights are affected by the enforcement of such administrative orders. Such an order or action can also be impugned on the ground that it is arbitrary, unreasonable or mala fide.

In the instant case also the impugned demand is being challenged on the grounds that it is violatlve of petitioners'' right to education besides being arbitrary and unreasonable.

Coming straight to the question involved in the case, in my judgment, the best answer to the question -- and I say it respectfully -- is furnished in the Supreme Court decision in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . The apex Court in this decision has considered at length a citizens ''right to education'' vis-a-vis ''capitation fee'' charged by various medical/ engineering colleges in the States of Andhra Pradesh, Karnataka, Ma-harashtra and Tamil Nadu. The Apex Court held:

"The citizens have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words every child/citizen of this country has a right to free education until he completes the age of fourteen years, Thereafter his right to education is subject to the limits of economic capacity and development of the State. The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution. So far as the right to education is concerned, there are several articles in Part IV which expressly speak of it. Article 41 says that the "State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want". Article 45 says that "the State shall endeavour to provide, within a period often years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years". Article 46 commands that "the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation". A true democracy is one where education is universal, where people understand what is good for them and the nation and know how to govern themselves. The three Articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these articles that the content and parameters of the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41, means : (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/ citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development".

Their Lordships further observed :

"Education cannot be allowed to be con- verted into commerce by relying upon the wider meaning of "occupation". The content of the expression "occupation" has to be ascertained keeping in mind the fact that Clause (g) employs all the four expressions viz., profession, occupation, trade and business. Their fields may overlap, but each of them does certainly have a content of its own, distinct from the others. Imparting of education is not and cannot be allowed to become commerce. A law, existing or future, ensuring against it would be a valid measure within the meaning of Clause (6) of Article 19".

The apex Court then prescribed a Scheme regulating filling of seats in the private colleges imparting professional education and for realising fees from the candidates. This Scheme inter alia provide :

(2) At least. 50% of the seats in every professional college shall be filled by the nominees of the Government or University, as the case may be, hereinafter referred to as "free seats". These students shall be selected on the basis of merit determined on the basis of a common entrance examination where it is held or in the absence of an entrance examination, by such criteria as may be determined by the competent authority or the appropriate authority, as the case may be. It is, however, desirable and appropriate to have a common entrance exam for regulating admissions to these colleges/institutions, as is done in the State of

Andhra Pradesh. The remaining 50% seats (payment seats) shall be filled by those candidates who are prepared to pay the fee prescribed therefore and who have complied with the instructions regarding deposit and furnishing of cash security/Bank guarantee for the balance of the amount".

(5) Each professional college shall intimate the competent authority, the State Government and the concerned University in advance the fees chargeable for the entire course commencing that academic year. The total fees shall be divided into the number of years/semesters of study in that course. In the first instance, fees only for the firstyear/ semester shall be collected. The payment students will be, however, required to furnish either cash security or bank guarantee for the fees payable for the remaining years/ semesters. The fees chargeable in each professional college shall be subject to the ceiling prescribed by the appropriate authority or by a competent Court. The competent authority shall issue a brochure, on payment of appropriate charges, along with the application form for admission, giving full particulars of the courses and the number of seats available, the names of the colleges, their location and also the lees chargeable by each professional college. The brochure will also specify the minimum eligibility conditions, the method of admission (whether by entrance test or otherwise) and other relevant particulars".

It is true that the decision in Unni Krishnan''s case (supra) was rendered in the context of the capitation fees charged by certain private professional colleges (recognised by and affiliated to Government/University) in several States and the ban Imposed by the respective legislatures on that fees. However, the ratio decidendi of that decision is relevant and covers the entire field of education. What the apex Court has held is that the right of education is concomitant to fundamental right and nobody can be allowed to commercialise the education . What is said for the private institutions seeking recognition by or affiliation to Government/University, applies with equal rather more force to Government and University also. Article 14 of the Constitution guarantees "equality before law" and "equal protection of law". The preamble to the Constitution also speaks our commitment to secure to all the citizens ''Equality of Status and of Opportunity''. The executive instructions or directions have to be tested on the envil of this principle of ''equality'' guaranteed by the Constitution. There can be none different causing inequality, among the persons similarly situated. ''Like should be treated alike''. To that end, entry in a private college or a Government College must pale into insignificance. Impugned direction vividly violates the clause of ''equality of Opportunity'' and also trespasses on one''s fundamental right to education as recognised by the apex Court in Unni Krishnan''s case (supra).

The concept of equality in the field of education was emphasised by Division Bench of this Court in M.P. No. 1662/92 (S.P. Anand v. State of M.P.) decided on 10-1-96 as under :--

"Aim of education is to remove ignorance. Those concerned have thus to act in this direction in a manner bringing sense of equality in the matter of education as well".

Education is a step towards better position of life and eventual happiness. By insistence on lump sum payment, onerous to many, such pursuit cannot be obstructed. The Government is not expected to commercialise the education via such onerous and ex facie discriminatory and arbitrary provision. It must, therefore, go on holiday permanently and substituted by a proper provision in terms of the Scheme formulated by the Supreme Court in Unni Krishnan''s case.

Both these petitions thus succeed and are allowed. The said provision in the Rules (Annexure P/8) requiring lump sum payment of fees for the entire 4 1/2 years MBBS course is quashed and instead it is directed that the total fees shall be divided into the number of years/ semesters of study in that course. In the first instance, fees only for the first year/semester shall be collected from the petitioners. The petitioners will be, however, required to furnish either cash security or bank guarantee for the fees payable for the remaining years/ semesters. The benefit of this judgment shall be extended to all similarly situated.

There shall be no order as to costs.

This order be retained in W.P. No. 848/2000 and a copy be placed in the record of W.P. No. 913/2000.