
(2009) 08 MP CK 0120
In the Madhya Pradesh High Court
Case No : W.A. No. 451 of 2009

Balram Jethani

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2010) 1 MPJR 56

Hon'ble Judges : R.K. Gupta, J; Dipak Misra, J

Bench : Division Bench

Judgement

Dipak Misra, J.

In this intra-court appeal preferred u/s 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth ko Appeal) Adhiniyam, 2005, the flawlessness of the order dated 22-4-09 passed by the learned Single Judge in W.P. No. 27636/03 is called in question.

The facts which are indispensable to be adumbrated are that the appellant underwent vasectomy operation after the birth of two children and on the basis of the same, he was issued a policy exempting the children of the green card holder from payment of tuition-fees in respect of Medical and Engineering. The daughter of the appellant took admission in the first year of Veterinary Science & Animal Husbandry in the Veterinary Science and Animal Husbandry College, Mhow which is under the Jawaharlal Nehru Krishi Vishwavidyalaya [for short "the University"]. After taking the admission, the appellant approached the authorities of the University for extending the benefit under the Green-card Yojna which is in vogue since 1985 on the foundation that he had undergone the operation of family planning. The University informed the appellant that the scheme is not applicable to the University in question. Being dissatisfied with the action of the University, the appellant approached the State Government seeking extension of

the benefit thereof. He was informed by communication dated 03-4-03 that there was no decision of the Cabinet to extend the benefit of exemption from fees to the institutions which are under the Agricultural University.

Being grieved by the aforesaid action of the respondents, the petitioner-appellant invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India contending, inter alia, that the Agricultural University imparts technical education and the Veterinary Science cannot be treated separated from Medical Education. It was also urged that the appellant has to be treated at par with the students who prosecute medical and engineering courses.

The learned Single analysed the Green-card Scheme of 1985 and the order passed by the State Government on the representation of the appellant and expressed the view that the scheme is not applicable to the institutions under the Agricultural University and, therefore, no mandamus can be issued to the institution where the daughter of the appellant is studying. That apart, the learned Single Judge observed that the appellant had not challenged the validity of the Scheme being violative of Article 14 of the Constitution and, therefore, the same could not be adverted to. Being of this view, the learned Single Judge directed dismissal of the writ petition.

We have heard Mr. Ashok Lalwani, learned counsel for the appellant, and Mr. Deepak Awasthi, learned Government Advocate for the State.

It is submitted by Mr. Lalwani, learned counsel for the appellant, that the learned Single Judge has fallen into grave error by not treating the students prosecuting studies in Veterinary Science at par with to the students who take admission in Medical and Engineering branch. It is canvassed by him that if the language of the Green-card Scheme is appositely understood, it stipulates that the wards of the green-card holder who prosecute medical and engineering courses would be entitled to exemption of fees and hence, there is no reason to equate Veterinary Science with medical studies. It is proponed by Mr. Lalwani that when the term "medical" has been used in the Scheme there is no reason or justification to restrict it to that branch of medicine which treats the human being and not the branch of study which is meant for treating animals. It is urged by him that the scheme being beneficent has to be widely interpreted and not in a narrow manner. Lastly submitted Mr. Lalwani, learned counsel appearing for the appellant, that the learned Single Judge should have addressed with regard to the disparity and inequality between the two categories of students as the same invites the frown of Article 14 of the Constitution.

Mr. Depak Awasthi, learned Govt. Advocate for the State, supporting the order passed by the learned Single Judge, contended that when the appellant-petitioner had not challenged the constitutional validity of the Scheme, the learned Single Judge has correctly held that the same does not deserve advertence and the said finding cannot be found fault with. It is his further submission that when the constitutional validity of the Scheme was challenged, it

has to be scrutinized in a different spectrum and the matter would have been heard by a Division Bench as per the M.P. High Court Rules and Orders. It is canvassed by Mr. Awasthi that once the scheme is clearly unambiguous and a particular category of students have been extended the benefit, nothing can be given by inference unless the language employed in the Scheme so spells out. It is put forth by him that the students who prosecute study in Veterinary Science cannot be regarded as students who prosecute their studies in medical and engineering since the spheres are absolutely different and the intention of the Government is absolutely clear, as is evincible from the order of rejection has been pressed into service by the learned Single Judge.

To appreciate the rivalised submissions raised at the Bar, it is noticeable that the 1985 Scheme stipulates that the wards shall be exempted from paying fees in engineering and medical colleges. The representation that was submitted has been rejected on the ground that payment of fees in the Agricultural University was not exempted by the State Government as such a decision was not taken by the State Government. The learned Single Judge has opined that the policy of the State Government as regards the 1985 Scheme is not applicable to the educational institutions under the Agricultural University. Mr. Lalwani has laboured hard to highlight that once the term medicine is meant for medical college that would include the Veterinary College. The scheme, as we perceive, is couched in a different language. It refers to the children of medical and engineering colleges. Medical College is not covered under the Agricultural University. It is not a college which comes under the Agricultural University nor it is governed by the Act that applies to the Agricultural University. The term has a different connotation. Mr. Lalwani, learned counsel for the appellant, stated that the students who pass out Veterinary Science treat animals. Be that as it may, unless the Scheme covers any specific benefit, the same cannot be given. To avail the benefit under a scheme, a candidate must be squarely covered and there can be no inference. In this context, we may refer with profit to the decision rendered in *Gaurav Jaiswal vs. State of M.P. and others* [W.P. No. 12402/08, decided on 4-02-09] wherein a contention was advanced that the schemes are not restrictive in nature and cover two categories of green card holders in respect of all types of educational institutions and do not create any distinction between the government colleges and private colleges. Be it noted, the said contention was advanced in the backdrop of the claimant's equality in respect of medical course in government colleges and private colleges. This Court, analysing the facts, expressed the view as under:-

On a perusal of Annexure P-6, there is a stipulation that there would be exoneration from payment of fee in respect of Medical and Engineering courses. The operation, as has been admitted, was conducted in the year 1982. At that point of time there was no private medical college. We are not inclined to advert with regard to other institutions as the present controversy is only with regard to medical college. The certificate was issued in the year 2006. The date of issuance of certificate is not relevant. That apart, terms and conditions in the circular are

not to be read in isolation. It has to be read in the context of circulars in vogue. That apart we cannot be oblivious of the fact that the operation was carried out in the year 1982. The document contained in Annexure-P/6 can be scrutinised from another angle. If the stipulation in the green card is read in the context of circulars issued, we are afraid, we cannot accept that there was a commitment by the State Government to pay the fee of children of the green card holders who are prosecuting their studies in private colleges. In this context we have been apprised by Mr. Awasthi that the students who study in Government colleges the fee for BDS course is approximately Rs. 40,000/-, Rs. 50,000/- whereas the fee in private college is about Rs. 1,65,000/- or sometime more. The learned counsel for the State submitted the State is a welfare one and efforts are being taken to curb the population but there is no reason or justification to give that kind of benefit from the public exchequer in the absence of a clear circular issued by the State. It is urged by him that the circular has classified the two classes, namely, below poverty line and not below poverty line. A cut off date has been provided in Annexure-R-1 so that they would not be affected but that does not mean that students prosecuting their studies in private colleges are entitled to get the benefit of exemption from payment of fees.

In our considered opinion, the said rationale would apply to the case at hand in the absence of positive coverage, the benefit cannot be claimed by inference. The controversy can be appreciated from another angle. The term used in the Scheme pertains to Medical branch. The medical studies are governed by the Indian Medical Council Act, 1956. The Veterinary Science, which deals with treatment of animals, is not covered by the said enactment. Thus, both the groups stand in contradistinction and the conception of equality which is sought to be applied by Mr. Lalwani, learned counsel for the appellant is totally unacceptable.

Consequently, the writ appeal, being devoid of merit, stands dismissed. There shall be no order as to costs.