
(2004) 02 MP CK 0047

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 9214-9216 of 2003 and 113 and 156 of 2004

Bhaskar Tiwari

APPELLANT

Vs

Jiwaji University and Another

RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 24, 26

Citation : AIR 2005 MP 110 : (2004) 2 JLJ 109 : (2004) 3 MPHT 145 : (2004) 1 MPJR 433 : (2004) 2 MPLJ 281

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Nandita Dubey, Mahesh Goyal and Vishal Mishra, R.D. Jain and S.K. Jain, for the Appellant; J.P. Gupta and Tapan Trivedi, for the Respondent

Judgement

Rajendra Menon, J.

As common questions are involved in all these petitions, they are being disposed of by this common order.

Petitioner, Bhaskar Tiwari in W.P. No. 113/2004 is a student pursuing his studies in Bachelor of Homeopathic Medicine and Surgery, (hereinafter referred to as "B.H.M.S."). He was admitted in the Session 2000-01 in the respondent No. 2, institute. According to the petitioner in the prospectus and documents issued by the institute at the time of admission, it has been indicated that the institute is affiliated to the Jiwaji University, Gwalior and after participating in the entrance examination and after counselling, he was granted admission in the first year B.H.M.S., course. The course was of eighteen months duration and after completion of the course in August, 2003, he was entitled to appear in the first year B.H.M.S. examination to be conducted by the respondent No. 1/University. It is the case of the petitioner that in spite of the fact that in accordance with the conditions stipulated in the Regulations of 1983 issued by the Central Council of Homoeopathy, New Delhi (hereinafter referred to as "the Council") examination

for 1st year B.H.M.S., is not being taken by the respondent No. 1. Prayer of the petitioner is that a direction be issued to the respondent/University to conduct examination of the petitioner as he has completed his course and respondent/University is bound to conduct the examinations.

Similarly, in W.P. No. 9214/2003, petitioners, Satendra Singh and Shivkant Sharma have also contended that they were admitted in the first year B.H.M.S., course in the year 2001-2002. They have also completed the course of study in accordance with the rules and regulations issued by the Council and in spite of the fact that the course in accordance with the Regulations is over, the respondent/University is not conducting examinations.

In W.P. No. 9215/2003, petitioners Kumari Artee Sharma and Kumari Trapti Gupta were admitted in the year 1999-2000 and according to them, they had completed course of study in June, 2003.

In W.P. No. 9216/2003, petitioners contend that their supplementary examination for second year B.H.M.S. is not being conducted in spite of the fact that they had completed the course and appeared in the main examinations.

In W.P. No. 156/2004, petitioners therein also contended that they are students of fourth year B.H.M.S. course and in spite of the fact that their course is over on 15-10-2003, respondent/University is not conducting the examinations. Petitioners in this case have completed their third year examinations, results were declared by the respondent/University and marks-sheets issued to them have been filed as Annexure P-2. After completing their third years examinations, they have been admitted to the fourth year and after completing their final year course in accordance with the statutory rules, their grievance is that their examinations is not being conducted by the respondent/University.

Accordingly, grievance of the petitioners in these petitions are that they were admitted in the institute of the respondent No. 2 prior to the year 2001. They have completed their respective courses in accordance with the Regulations framed by the Council, they have completed the course of study after having undergone the requisite training, practicals and study in theoretical subjects for the period prescribed by the Regulations and now they are only required to appear in the examinations so that they can either appear in the next examinations or if eligible degree/certificates can be issued to them. Grievance of the petitioners in all the petitions are that the respondent No. 1/ University is not taking any action for conducting examinations in the institute of the respondent No. 2 since August, 2003 on the ground that the institute is not affiliated for the present. Contentions of the petitioners in all the petitions are that when they were admitted in the institute, the respondent No. 2/institute was affiliated. Their selection and admission is in accordance with the rules and regulations. Prospectus issued by the institute clearly indicated that it is affiliated with Jiwaji University, Gwalior, institute approved by the State Government and is recognised by the Council, they have not committed any illegality nor is their

admission irregular or vitiated in any manner whatsoever. Cases of the petitioners are that they have completed the course of study as per the stipulation contained in the Regulations issued by the Council and the respondent/University is duty bound to conduct their examinations and action of the University in not conducting examinations is said to be illegal and unsustainable.

On notice being issued, respondent No. 1/University had filed its reply and it is stated by the University that respondent No. 2, Vasundhara Raje Homoeopathic Medical College & Hospital was last granted affiliation in accordance with provisions of statute No. 27 applicable to Jiwaji University, Gwalior for the year 2000-2001. Thereafter, affiliation has not been granted to the institute. It is the case of the respondents that obvious result of this is that after commencement of the session 2001-2002, respondent No. 2, institute is not entitled to the privileges of affiliation with the University. It is the case of the respondent No. 1/University that the institute has been consistently violating the lawful conditions imposed by the University in accordance with the provisions of statute No. 27 and as the institute had committed breach of the statutory provision, University was left with no option but to serve a direction to the institute on 20-9-2003 where it was clearly intimated to the institute that for non-fulfilment and contravention of the conditions imposed by the University in their letter dated 27-5-2003, the privilege related to holding of examinations is withdrawn. Both these letters dated 27-5-2003 and 20-9-2003 are filed with return as Annexure R-1. In sum and substance, it is the case of the respondent/University that the institute is guilty of violating the conditions lawfully and reasonably imposed by the University and hence, University has no option but to partially withdraw the affiliation and this has been done by imposing restrictions for holding examinations.

In the return and during the course of hearing, Shri J.P. Gupta, learned Senior Counsel for the University has emphasised that the University is not at all interested in causing any inconvenience or hardship to the students. They very much desired that the students career should not be adversely affected but it is stated that the University is helpless in the matter and unless Institute complies with the conditions reasonably and lawfully imposed as per statute No. 27, no relief can be granted to the petitioners.

During the course of hearing, it was submitted by Shri J.P. Gupta, learned Senior Counsel that the institute instead of complying with the requirements of statute has instigated the students to file this petition which is not the correct way of dealing with the matter.

Respondent No. 2/institute have appeared through Shri R.D. Jain, learned Senior Counsel and has filed reply. It is the case of the respondent No. 2 that the petitioners were admitted in B.H.M.S. course for the sessions as alleged by them, permission was granted by the University on 18-10-2000 for admitting the students for the session 2000-01 vide Annexure R-2-1. It is also the case of the respondent No. 2 that in view of the affiliation granted, petitioners have

completed their studies in the course in question. The course have been completed on various dates prior to August, 2003 and examinations were to be held by the University after completion of the course. In the case of first year students, examinations have to be conducted after eighteen months. It is stated that the University without any justification is not conducting examinations. It is also stated by the institute that it is duly recognized by the Council, recognition granted by the Council is in force for a period up to 2003-04. The institute had complied with all the directives of the University and by making certain additional pleas from Paragraph 10 onwards in their return and by filing various documents. Respondents have tried to emphasise that they have complied with all the reasonable directions of the University and in spite of the aforesaid. University in gross violation of the provisions of Section 24 of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 and contravention of the statutory regulations have refused to conduct the examination.

Additional return was filed by the University to demonstrate that the respondent No. 2/ institute has filed incorrect statement in the return, and therefore, no relief can be granted in the petition.

During the course of hearing, Shri R.D. Jain, learned Senior Counsel appearing for the institute and Smt. Nandila Dubey, Shri Mahesh Goyal and Shri Vishal Mishra, learned Counsel appearing for the petitioners placed reliance on the following judgments to indicate that a mandamus can be issued to the respondent/University in the facts and circumstances of the present case for conducting the examinations.

(1) Bal Krishna Tiwari v. Registrar of Awadesh Pratap Singh University, Rewa and Ors. 1978 MPLJ 172.

(2) Ashok Chand Singhvi Vs. University of Jodhpur and Others,

(3) Al-Karim Educational Trust and another Vs. State of Bihar and others,

(4) State of U.P. and Ors. v. Reena Singhal (Dr.) (2000) 9 SCC 391.

(5) T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others,

I have heard learned Counsel for the parties at length and perused the record.

From the records, it is seen that the main dispute because of which the University is refusing to conduct examinations is the so called non-compliance of various conditions stipulated in statute No. 27 of the Statutes of Jiwaji University, Gwalior. There is serious dispute between the parties in this matter. Even though the respondent/institute submits that it had complied with the requirements and directions issued by the University. But the University by filing various documents and by filing an additional return have tried to demonstrate that the institute has not complied with the directions.

Before examining rival contentions of the University and institute, it would be appropriate to deal with the statutory provisions which are applicable in the

matter.

Section 24 of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 (hereinafter referred to as "the Adhiniyam, 1973") contains the power of the Executive Council. It is provided in this section that subject to the provisions of the Act, and the Statutes, Ordinances and Regulations, the Executive Council shall perform the powers and functions in accordance with the provisions of this Section. Sub-section (xii) thereof contemplates that the Executive Council is empowered to admit colleges to the privileges of the University. Even this is done on the basis of the recommendations of the Academic Council. Thereafter, it provides that the Executive Council is also empowered to withdraw the privileges granted. "Affiliated College" has been defined in Section 4, sub-section (xxiv) and means an institution admitted to the privileges of the University.

Section 26 of the Adhiniyam, 1973 contains powers of the Academic Council and Sub-section (v) thereof provides that the Academic Council is empowered to consider the application for admission of an educational institution to the privileges of the University.

In accordance with the provisions of the Adhiniyam, 1973, various statutes have been enacted by the Jiwaji University and statute No. 27, thereof deals with affiliation of a college. These statutes have been formulated in accordance with the powers conferred u/s 35 (j) of the Adhiniyam, 1973, Statute No. 27 contains a detailed procedure to be followed for affiliation of a college to the privileges of the University, procedure to be followed for such admission, conditions necessary for grant of admission to the privileges and withdrawal thereof.

From the aforesaid, it is clear that the entire matter pertains to affiliation is covered by the aforesaid provision. Section 24 Sub-section (xii) of the Adhiniyam, clearly indicates that the privilege is to be granted by the Executive Council on the basis of the recommendations of the Academic Council with previous sanction of the Commissioner, Higher Education and subject to the provisions of the Act and Statutes. Respondent/University has admitted that the institute in question was admitted to the privileges and affiliation was granted for the year 2000-01. However, it is their case that affiliation granted is for a definite period and thereafter it has been partially withdrawn. A perusal of the complete provision as contained in statute No. 27 indicates that it does not contemplate any provision for limited privilege being granted. When a college is admitted to the privilege of the University, there is a provision for withdrawal of the privilege. However, the privilege is either for a definite period or permanent in nature.

The very fact that the institute was admitted to the privileges in the year 2000-01 which is admitted by the University indicates that before granting affiliation and admitting the institute to the privileges, requirement of statute No. 27 with regard to admitting the institute to the privileges has been complied with which includes recommendation and consideration of the case by the Academic Council. Paragraph 1 of Statute No. 27 provides for submission of applications by

the college, fee to be deposited and various other requirements to be complied with for submitting the application.

Paragraph 4 of the Statute No. 27 contemplates that when a college is given admission for a limited period, the college can ask for extension of the period and Paragraph 4 (2) provides conditions for permanent affiliation.

It is, therefore, clear from the aforesaid provision that affiliation is for a limited period or permanent in nature.

Paragraph 5 of the Statute No. 27 contemplates that an application received under Paragraph 1 or 4 of the Statute thereof has to be submitted to the Registrar and the Registrar refers the application to the Standing Committee of the Academic Council which appoints a Committee for inspection consisting of three persons. After inspection, the Committee submits its report and the report of the Inspection Committee is placed before the Academic Council which makes appropriate recommendations to the Executive council with regard to acceptance or rejection of the application. Proviso to the aforesaid paragraph provides for action to be taken when the Academic Council is not likely to meet at an early date.

It is not the case of the University that affiliation granted to the institute is not in accordance with the aforesaid statutory provision. That being so, it is an admitted position that affiliation granted for a limited period in the year 2000-01 is in accordance with the statutory provision.

Once affiliation is granted even if for a limited period, Paragraph 7 (1) and proviso to the aforesaid paragraph of statute No. 27 contemplate that when a college is admitted to the privilege of the University for a definite period and the admission is not extended for a further period, it shall not amount to withdrawal of privileges. Meaning of this provision is that even if the privilege is granted for a definite period as in the present case, non-extension of the period will not amount to withdrawal of the privilege. Privilege can be withdrawn only in accordance with the procedure contemplated in Paragraph 7 of statute No. 27 which requires issuance of a show-cause notice, reasons for intended action to be taken, period for reply to the show-cause notice and thereafter Paragraph 7 (4) provides that receipt of reply to the show-cause notice, the Executive Council is required to consider the matter in the light of the reply and representations made, if any, by the college and even if no reply is received, it is required to consider the matter on expiry of the said period and after consulting the Academic Council or Standing Committee of the Academic Council make such order as may appear to it proper including the withdrawal of all or any of the privileges granted to the college.

It is, therefore, clear from the aforesaid that even for withdrawing the privilege or any of the privilege granted, consultation with the Academic Council is necessary. In the present case, even though, the respondent/University has specifically stated that withdrawal of the privilege has not been done but even if

it is assumed that decision to not to hold examinations is withdrawal of the privilege to a limited extent as is not recommended and is without concurrence of the Academic Council, and therefore is illegal. University has not produced any record on the basis of which it can be established that withdrawal of the privilege even for limited purpose as argued by learned Senior Counsel appearing for the University is after following the procedure contemplated in Paragraph 7 of the statute No. 27. It seems that in the present case, the decision to withdraw the privilege of conducting examinations has been taken without referring the matter to the Academic Council, and therefore, there is much force in the contention of the petitioners that withdrawal of the privilege is contrary to the statutory provision. It is a specific case of the institute that before withdrawing of the privilege, the matter was never referred to the Academic Council. Even though, specific averments in this regard have been made, University has not established that withdrawal of the privilege is in accordance with the provisions of the statute.

Accordingly, prima facie, it is seen that the action of the University is contrary to the statutory procedure contemplated for withdrawal or curtailment of the privilege.

On merits of the case, it is the contention of the University that privilege granted in the year 2000-01 has been temporarily curtailed and in this regard they have filed a letter dated 20-9-2003, filed as Annexure R-1 to indicate that the Executive Council has decided in its meeting held on 27-5-2003 that because of certain serious dispute between the teaching and non-teaching staff of the institute and its management which has not been resolved, privilege of affiliation for the session 2003- 04 can not be granted. Institute has been directed not to admit candidates for the session 2003-04. It is, therefore, clear that on 20-9-2003 after issuing certain letter and after considering reply of the institute, University decided not to grant affiliation for the session 2003-04. The University kept quiet so far as taking action for the previous years is concerned. It is for the first time that on 9-1-2004 vide Annexure R-4. University has informed that it can not take examinations of the students for the session 2003-2004 as certain directions issued by its have not been fulfilled by the institute. Even in this letter, there is no mention with regard to withdrawal of privilege already granted in the year 2000-01. From the aforesaid, it is clear that privilege granted in the year 2000-01 has not been cancelled or withdrawn vide Annexure R-2-4, dated 9-1-2004 and vide letter dated 20-9-2003. University has refused to grant affiliation for the session 2003-04.

Accordingly, apart from the fact that withdrawal of the privilege, prima facie, is contrary to the provisions" of statute No. 27. As indicated hereinabove, there is nothing on record to indicate that the privilege has been withdrawn. Even if it is construed that affiliation is not granted for the session 2003-04, it can not be construed to mean that the students already admitted for the sessions in question have no right to seek holding of their examinations.

Apart from the aforesaid, a close scrutiny of various documents that have been

filed by the institute and the University indicates that for the first time, the University had issued a notice to the institute on 27-5-2003 vide Annexure R-2-11 which has been filed by the University as Annexure R-1. In the said letter, the main subject-matter pertains to settlement of certain dispute between the teaching and non-teaching staff of the institute and its management. Obviously, this letter deals with a dispute of the employees. Thereafter, the institute had submitted details of the dispute and it has been indicated that the question with regard to payment of salary and recommendations of the Fifth Pay Commission are pending adjudication in certain writ petitions before this Court.

As far as validity of the managing committee is concerned, it was pointed out that the said matter is also pending in W.P. No. 1205/2001 and W.P. No. 907/2001 and stay has been granted by this Court.

Apart from the aforesaid dispute, the other question was with regard to having a building of the college of its own and appointment of senior most teacher as Officiating Principal. As far as the building is concerned, respondent/institute has submitted its reply and by producing certain documents had tried to emphasise that they have purchased the building and tax is being paid. A condition has been imposed in respect of change of Principal. It has been complied with by the institute by appointing Dr. (Smt.) Aparna Suranglikar as Principal.

A close scrutiny of all these documents indicate that with regard to non-compliance of the directives of the University, institute had submitted its explanation from time to time and had also carried out various directives of the University with regard to taking action for appointment of Sports Officer, holding of fresh meeting and various other aspects of the matter. However, the University had been putting out different objections from time to time. It is not necessary for this Court to evaluate in detail to these disputes and record a finding in these petitions. In this petitions, the only question required for consideration is as to whether mandamus can be issued to the University for conducting examination of the students. Some what, similar circumstance was considered by the Supreme Court in the case of Al-Karim Educational Trust and Anr. (supra). Even though, that was a case for grant of affiliation, the Supreme Court after considering the facts of the case had directed for grant of affiliation. In the present case, affiliation for the period in question when the petitioners were admitted has already been granted and they completed the course of study and as indicated hereinabove there is nothing on record to indicate that the affiliation has been withdrawn in accordance with law. Even if that is withdrawn now then also after the course of study of the petitioners having been completed, there is no reason why examinations of the petitioners should not be conducted.

One of the objections raised by Shri J.P. Gupta, learned Senior Counsel was with regard to right of the petitioners to claim a mandamus. It is well settled that mandamus will lie for enforcement of a statutory right, so also for seeking performance of a statutory duty by public bodies, authorities or statutory institutions like universities. Mandamus can also be issued to correct an abuse of

discretion. In the present case, respondent/University has exercised its discretion by withdrawing the privilege in refusing to hold the examination, even though students have completed the course in accordance with the regulations issued by the Central Homoeopathic Council. It is not the case of the University that there is some illegality or irregularity in admission of the students. Nor is it their case that the training imparted is contrary to the regulations. That being so, the question is, has the University exercised discretionary power vested in it in a fair and reasonable manner.

Discretionary power must be exercised for proper purpose, consistent with the conferring statute. One begins with the elementary proposition that statutory authorities like the University have a duty to determine a matter within their power and jurisdiction in a just, fair and reasonable manner. Wrongful refusal to exercise jurisdiction or doing an act in an unreasonable manner amounts to misuse of the discretionary power and in such circumstances the breach complained of can be redressed by issuance of a mandamus. Mandamus is an extra-ordinary legal remedy, as it is not limited by conditions which apply to ordinary suits or proceedings. It is reserved for extra-ordinary situations being a supplementary means of attaining substantial justice where there is a clear legal right and no other adequate legal remedy. It is issued when there is failure of justice and the omission and commission complained of is substantial, resulting in grave injustice to the aggrieved person. In such circumstances, this Court can exercise its jurisdiction, over persons who are charged with performance of public acts and duties. The Court's duty normally is to confine itself to question of legality, i.e., has the authority exercised its power reasonably or abused it or has acted in an irrational, unreasonable and arbitrary manner or the like. When the allegation is that the authority is guilty of non-performance and it is shown that it has failed to perform its statutory duty, mandamus can be issued to seek performance of such duty, once it is established that such a duty is imposed by the statute. Even in cases the duty is discretionary, if the discretion is not exercised fairly or reasonably, mandamus can be issued.

The Supreme Court had considered the question of issuing mandamus and its meaning in the case of Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, and in Paragraph 17 of the aforesaid judgment, it has been held as under:--

"..... The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along the recognised lines and subject to certain self-imposed limitations. The expression "for any other purpose" in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Courts must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other

words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior Courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition *Kalyan Singh v. State of U.P.* AIR 1962 SC 1183. The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law....."

Considering the case in hand, in the back drop of the aforesaid legal principle and on due consideration of the facts and circumstances of the case, as indicated hereinabove, it is clear that in refusing to conduct examination of the petitioners, the respondent/University has not exercised its discretion reasonably and in a fair manner.

During the period when the petitioners were pursuing their studies and had completed their course, affiliation was in force. That being so, the contention that privilege has been withdrawn to the limited purpose of refusing to hold examinations, in the opinion of this Court, the University is acting unreasonably with the students. Even though, there may be some dispute between the University and the institute with regard to non-compliance of the directives but as the students who have completed their course of study when affiliation was in force, it is not the case of the University that the students have misrepresented or committed illegality in the matter of their admission, it is not proper for the University to punish the students by refusing to conduct examinations.

Considering the question of promissory estoppel in such matter as discussed by the Supreme Court in the case of *Reena Singhal (Dr.)* and keeping in view observations made by a Full Bench of this Court in the case of *BalKrishna Tiwari* (supra) referred to by learned Counsel for the petitioners during the course of hearing. It is the considered view of this Court in the facts and circumstances of the present case that the students can not be permitted to suffer as they are not at fault.

Dispute between the institute and the University can be resolved in accordance with the provisions of law and the University is well within its right to take action against the institute for non-fulfilment of statutory conditions governing grant of affiliation or privilege. But once the privilege is granted and it is not withdrawn in

accordance with provisions of law and the students who had taken admission at a time when the institute was enjoying the privilege can not be adversely affected for no fault of theirs.

Considering the totality of the facts and circumstances that have come on record and keeping in view the observations made hereinabove, all these petitions are allowed. Respondent No. 2/University is directed to take steps for issuing necessary forms and for taking further steps for conducting the examinations of the petitioners for the course for which they were studying and for which they have completed their training and studies in accordance with the statutory provisions as contained in the regulations issued by the Council.

Accordingly, respondent/University is directed to conduct examinations of the petitioners in accordance with law within a period of two months from the date of receipt of a certified copy of this order.

A copy of the order be placed on record of other connected writ petitions.