
(2015) 04 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 6664 of 2014

Dheeraj

APPELLANT

Vs

Maharishi Markandeshwar University and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)
University Grants Commission Act, 1956 — Section 22

Citation : (2015) 04 SHI CK 0003

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Jai Subhash Thakur and R.L. Chaudhary, for the Appellant; Ajay Dhiman, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—Petitioner has approached this Court for grant of following substantive reliefs:

"(i). That writ of certiorari may kindly be issued, quashing the decision dated 05.09.2014 of the respondents, whereby the respondents are going to take a fresh entrance test for filling up the vacant/left out seats (All India Open Seats and State Quota Seats) of MBBS course, since the said decision is in violation of the rules and regulation framed by the respondent University for filling up the vacant seats of MBBS course as per Annexure P-5.

(ii) That writ of mandamus may kindly be issued, directing the respondents to fill up the vacant/left out seats (All India Open Seats and State Quota Seats) of MBBS course on the basis of merit of AIPMT/Merit of Qualifying examination as provided in the prospectus for the year 2014, Annexure P-5."

2. The case set up by the petitioner is that though he had appeared in All India Pre-Medical Entrance Test (AIPMT) but he remained unsuccessful and thereafter had sought admission in the respondent No. 2-College to MBBS course on the

basis of the merit of the qualifying examination, which has wrongly been denied to him despite the petitioner being fully eligible.

3. In reply to the petition, the respondents No. 1 and 2 have stated that the petitioner was not entitled to the admission as he had not qualified AIPMT. Insofar as his claim for admission on the basis of qualifying examination is concerned, it was stated that after second counselling when the seats of the college remained unfilled, it had sought permission from the State Government for filling up these seats which permission though was granted but on the condition that another competitive test would have to be conducted which in turn would form the basis of filling up the vacant seats. The respondents conducted the competitive examination and filled up the seats but since the petitioner failed to appear in this examination he could not be admitted and now therefore cannot complain at this stage.

4. The petitioner filed rejoinder wherein it has been reiterated that the unfilled seats in the respondent No. 2-College were required to be filled up on merit of qualifying examination which is ten plus two (10+2) and the petitioner was entitled to be admitted as he possessed the requisite percentage.

5. We have heard learned counsel for the parties and have gone through the records of the case carefully.

6. No doubt, there exists a provision in the prospectus that at the first instance, the State Quota seats are firstly required to be filled up on the basis of merit of Himachal Pradesh State Rank in AIPMT-UG-2014 in Reserved and General Categories seats and seats under Open Quota will be filled up on the basis of merit of AIPMT-2014 on All India Category Rank and if the requisite number of AIPMT qualified candidates are not available, the resultant vacant seats will be filled up from the candidates on the basis of merit of the qualifying examination. But then it was not the respondent, who refused the admission to the petitioner. It in fact after second counselling had referred the matter to the State Government who refused to grant permission to fill up the seats on the basis of qualifying examination on the ground that this provision ran contrary to not only provisions of the instructions issued by the MCI but it was also in violation to Section 31 of the Act under which the respondent No. 1 was established and further directed the respondents to conduct a competitive examination.

7. Admittedly, the respondent No. 1-University is a private University established under H.P. Government Act No. 22 of 2010 and approved under Section 22 of the UGC Act, 1956. Under Section 31 of the Maharishi Markandeshwar University (Establishment and Regulation) Act, 2010, it has been provided as under:

"31.(1). Admissions in the University shall be made strictly on the basis of merit.

(2) Merit for admission in the University may be determined either on the basis of marks or grade obtained in the qualifying examination for admission and achievements in co-curricular and extra-curricular activities or on the basis of

marks or grade obtained in the entrance test conducted at State level either by an association of the Universities conducting similar course or by any agency of the State.

Provided that admission in professional and technical courses shall be made only through entrance test.

(3) Seats for admission in the University for the students belonging to SC, ST and OBC and handicapped students, shall be reserved as per the policy of the State Government.

(4) At least 25% seats for admission to each course shall be reserved for students who are bona fide Himachalis."

8. Once a mode of making admissions has been prescribed under Section 31 of the Act *ibid*, then no provision of the rules, byelaws, regulations or even the prospectus which provide anything contrary to the provisions of Section 31 can prevail. It is settled law that an Act will prevail over the rules, byelaws, regulations and even the prospectus.

9. According to the "pure theory of law" of the eminent jurist Kelsen, in every legal system there is a hierarchy of laws, and the general principle is that if there is a conflict between a norm in a higher layer of the hierarchy and a norm in a lower level of the hierarchy, then the norm in the higher layer prevails, and the norm in the lower layer becomes *ultra vires*.

10. In our country this hierarchy is as follows:

"(1) The Constitution of India.

(2) Statutory law, which may be either law made by the Parliament or law made by the State Legislature.

(3) Delegated legislation which may be in the form of rules, regulations etc. made under the Act.

(4) Administrative instructions which may be in the form of GOs, Circulars etc."

11. Therefore, in the event of there being a conflict between the Act, Rules and regulations, the Act will prevail and if there is a conflict between the Act, Rules and the regulations on the one hand and the circular or prospectus on the other hand, the Act will prevail and the later becomes *ultra vires*. (Refer: *Union of India (UOI) and Others Vs. Arun Kumar Roy*, *Shish Ram and Others Vs. State of H.P. and Others*, and *Union of India v. Madras Telephones Scheduled Castes and Scheduled Tribes Social Welfare Association* (1997) 10 SCC 226).

12. The State Government has clearly observed in its letter dated 6.9.2014 (Annexure R-4) that the provisions of the prospectus wherein it was stipulated that if the requisite number of AIPMT qualified candidates are not available, the resultant vacant seats will be filled up from the candidates on the basis of qualifying examination was contrary not only to the provisions of Section 31 of

the Act but also to the MCI guidelines.

13. Now insofar as the question regarding competence of the State Government to issue instructions and regulate admissions in private University is concerned, this issue is no longer *res integra* in view of the judgment passed by this Bench in *H.P. Private Universities Management Association v. State of H.P. and others*, decided on 23rd July, 2014, CWP No. 7688 of 2013, wherein as many as 16 private Universities had questioned the competence of the State Government to regulate admissions in professional colleges and this Court held as follows:

"20. In view of the various pronouncements of the Hon'ble Supreme Court, it can safely be concluded that in a right to establish an institution, inherent is the right to administer the same which is protected as part of the freedom of occupation under Article 19(1)(g). Equally, at the same time, it has to be remembered that this right is not a business or a trade, given solely for the profit making since the establishment of educational institutions bears a clear charitable purpose. The establishment of these institutions has a direct relation with the public interest in creating such institutions because this relationship between the public interest and private freedom determines the nature of public controls which can be permitted to be "permissible". Even the petitioners concede that they have established the institutions to ensure good quality education and would not permit the standard of excellence to fall below the standard as may be prescribed by the State Government. The petitioners also conceded that the State makes it mandatory for them to maintain the standard of excellence in professional institutions. Thus, ensuring that admissions policies are based on merit, it is crucial for the State to act as a regulator. No doubt, this may have some effect on the autonomy of the private unaided institution but that would not mean that their freedom under Article 19(1)(g) has in any manner been violated. The freedom contemplated under Article 19(1)(g) does not imply or even suggest that the State cannot regulate educational institutions in the larger public interest nor it be suggested that under Article 19(1)(g), only insignificant and trivial matters can be regulated by the State. Therefore, what clearly emerges is that the autonomy granted to private unaided institutions cannot restrict the State's authority and duty to regulate academic standards. On the other hand, it must be taken to be equally settled that the State's authority cannot obliterate or unduly compromise these institutions' autonomy. In fact it is in matters of ensuring academic standards that the balance necessarily tilts in favour of the State taking into consideration the public interest and the responsibility of the State to ensure the maintenance of higher standards of education.

23. The State has power to regulate academic excellence particularly in matters of admissions to the institutions and, therefore, is competent to prescribe merit based admission processes for creating uniform admission process through CET. Any prayer for seeking dilution or even questioning the authority of the State to act as a regulator is totally ill-founded in view of the various judicial

pronouncements, particularly in Visveswaraiah Technological University (supra) and reiterated in Mahatma Gandhi University (supra)."

The judgment passed by this Court has attained finality inasmuch as the SLP preferred against this judgment has been dismissed by the Hon'ble Supreme Court on 21.11.2014.

14. Surprisingly, the petitioner has not even arrayed the Government of Himachal Pradesh as a party, let alone laying challenge to its decision as communicated vide letter dated 6.9.2014 (Annexure R-4). Therefore, in absence of any challenge having been laid by the petitioner to the directions issued by the State Government on the basis of which the respondents have filled up the seats in question by conducting a competitive examination, no relief whatsoever can be granted to the petitioner.

15. In view of the aforesaid discussion, we find no merit in this petition and the same is accordingly dismissed, so also the pending application(s) if any. The parties are left to bear their own costs.