
(2019) 08 UK CK 0060

In the Uttarakhand High Court

Case No : Special Appeal No. 764 Of 2019

Dr. Jagat Narain Subharti Charitable Trust & Another

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Indian Medical Council Act, 1956 — Section 10A

Allahabad High Court Rules, 1952 — Rule 5

Constitution Of India, 1950 — Article 32, 226

Citation : (2019) 08 UK CK 0060

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : S.K. Gangele, M.C. Pande, V.K. Kohli

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, C.J.

1. This intra-court appeal is preferred, by the petitioners in Writ Petition (M/S) No.2074 of 2010, aggrieved by the interlocutory order passed by the learned Single Judge dated 23.07.2019 directing that the impugned order dated 04.07.2019, and recovery in terms thereof, remain stayed, provided the appellants-writ petitioners deposit R.25.00 crores, from out of the total amount, with the Director, Medical Education, Government of Uttarakhand; and this shall be subject to further orders of the Court. The amount was directed to be deposited within two weeks from the date of the order i.e. on or before 08.08.2019. Subject to the deposit, the respondents were directed not take any coercive action, against the appellants-writ petitioner, till the next date of listing.

2. By the order, impugned in the Writ Petition dated 04.07.2019, the Director, Medical Education, Government of Uttarakhand ordered recovery of Rs.97.13 crores payable jointly and severally by the petitioners. The Director, thereafter, noted that a sum of Rs.9.5 crores had already been received from the Medical Council of India by way of encashment of bank guarantees of the appellants-writ

petitioners, and the said amount stood appropriated against the recovery; and a recovery certificate, for the balance sum of Rs.87.63 crores, was payable forthwith with by appellants-writ petitioners.

3. The appellants-writ petitioners, hitherto, ran a medical college. The students of the said medical college approached the Supreme Court filing Writ Petition (C) No.571 of 2018. In its order dated 06.12.2018, the Supreme Court noted that the Writ Petition had been filed by students who were admitted to the first year MBBS course in the subject college; the total number of students who were admitted to the first year MBBS course was 150; the students had invoked the jurisdiction of the Supreme Court since the college had not got its act in order; as a result of which, they prayed that they be transferred from the said college to any other college in the State, and be allowed to take their examination after having completed the first year MBBS course. The Supreme Court, thereafter, noted the submission of the learned Deputy Advocate General, appearing for the State of Uttarakhand, that he was instructed to make an offer that the State Government was willing to take over the students and the college itself, along with its entire infrastructure and assets, movable and immovable, so that it could then meet both the Medical Council of India's norms, and affiliate with the Hemwati Nandan Bahuguna Uttarakhand Medical University, Dehradun. The Supreme Court directed the college to hand over the land, building and all assets to the State Government forthwith.

4. With a view to allay the apprehension raised on behalf of the State Government, that the management of the college should not be given any time to deal with the assets and/or infrastructure as it existed on the date of the order, the Supreme Court further directed the University, after taking an inspection as per the Statutes, to proceed to take steps either to grant affiliation or otherwise, within a period of four weeks from the date on which the said application was made to it by the State Government; and once the State Government sets up the necessary infrastructure in terms of the teaching staff etc, it would apply to the Medical Council of India for its permission under Section 10(A) of the Medical Council of India Act. The Supreme Court made it clear that, if the university affiliated the institution and the Medical Council of India granted permission, the students, who had taken the first year course, could then sit for the first year MBBS examination to be conducted by the affiliating university. The Director General of Police, Dehradun was directed to seal the premises forthwith. The Supreme Court made it clear that any litigation qua the college, that may arise in future, could only be made before the Supreme Court and no other.

5. Thereafter, in its order dated 13.12.2018, the Supreme Court noted the submission, urged on behalf of the college and the trust, that the properties, which had nothing to do with the Medical College, had also been taken over. After taking note of the denial of the learned Deputy Advocate General for the State of Uttarakhand, the Supreme Court directed that a sketch plan be filed indicating

specifically as to what exactly was the area of land and buildings together with the list of the assets which were exclusively apportioned to the medical college, along with an affidavit, within one week from the date of the order. The other parties were permitted to respond to that affidavit within two weeks thereafter. The Supreme Court noted the submission of the learned Deputy Advocate General, appearing for the State, that the land, buildings, immovable and movable assets would be taken over in accordance with law, and compensation would be paid by way of Act /Ordinance of the State Legislature/Government. The Supreme Court, thereafter, observed that, in so far as the medical college was concerned, the Medical Council of India was free to act in accordance with law, in so far as respondent nos.4 and 5 therein (appellants-writ petitioners herein) were concerned, during their period of management of the medical college.

6. In its order dated 23.01.2019 the Supreme Court, after perusing the status report dated 04.01.2019 and having been apprised of the fact that the Hemwati Nandan Bahuguna Medical University had refused to affiliate the State Government, which had now been put in charge of the management of the medical college, observed that the State Government, contrary to the assertion made before the Court, was not able to take over or manage the medical college; at one point of time, it was stated that Legislation would be passed to take over the land, as well as other buildings and facilities so that the State Government could run the medical college in question; and given the fact that the Hemwati Nandan Bahuguna Medical University had refused to affiliate them, that may not be possible. The State Government was directed to hand back to the erstwhile Management, whatever had been taken over by them, within a period of one week from the date of the order pursuant to the earlier orders of the Court.

7. While dealing with the problem of 150 students of the first year, and 150 other students of the second year in the institution, the State Government had indicated that there were three Government Medical Colleges and two private Medical Colleges in the State; and they had suggested the mode of distribution. The Supreme Court directed that, in accordance with the results obtained in the NEET examination, these two batches of 150 students be accommodated as stated in the status report; the most meritorious of the students be accommodated in the three Government Colleges first, and thereafter in the two private Medical Colleges. The MCI was directed to accord permission for the additional seats, that would have been created in these institutions, as a one-time measure, given the problems that had been faced by these students. The Supreme Court made it clear that the 150 students, in their first year, would have to take the exam of the affiliating University or the institution in which they joined; in so far as the 150 students in the second year were concerned, they would also take the examination for the first year from the affiliating University; and it was only on their clearing the examination, would they then be allowed to take classes of the second year in the college in which additional seats for them had been so created. The examinations for these students were also directed to

be held within a period of 12 weeks from the date of the order.

8. With regards the teaching and other staff, the Supreme Court made it clear that, for the period of the State Government takeover, their salary would be paid by the State Government; and the salary and other emoluments of the teaching staff and other staff, for the past period was concerned, would be paid by the erstwhile management. The erstwhile management was permitted to apply to the MCI for return of the bank guarantee of Rs.9.5 crores. The Supreme Court recalled its earlier order dated 06.12.2019 that any litigation qua the college, that may arise in future, could only be made before it and no other. The State Government was directed to make attempt to solve the impasse that had been created as a result of its not taking over management of the college as originally proposed; a committee was directed to be set-up under the auspices of the Chief Secretary of the State to look into the future employment of the persons who had been part of the teaching staff and other staff of the erstwhile management; and the committee was directed to deliberate on where these persons were to be employed, and submit a report to the Court within three weeks from the date of the order.

9. Thereafter, in its order dated 07.03.2019, the Supreme Court observed that, in view of the several orders passed by it earlier, since the students had been accommodated and seats had been created in other colleges, nothing further survived in the Writ Petition filed under Article 32 of the Constitution of India. The Supreme Court took on record the report of the committee, appointed by the Chief Secretary of the State dated 22.02.2019, that there was no provision for direct recruitment in Government service of any private ex-employees on sympathetic grounds; there were 92 posts which were regular notified vacancies in the medical service of the State and were filled in on a contractual basis till regular appointments were made; the interested employees could be informed that they could still apply against the vacancies; they would be considered for appointment if found fit; and, in the near future, the State Government would certainly consider any such unemployed teaching or non-teaching staff of these institutions, should they choose to apply and in case they were found eligible and remained successful in the selection process. The college was directed to return back the original documents along with the security deposit of Rs.2.00 lakh made by them, within a period of fifteen days from the date of order, without any deduction. Mr. S.K. Gangele, learned counsel for the appellants-writ petitioners, would submit that the said amount had been returned to the students.

10. Thereafter, a show-cause notice dated 29.04.2019 was issued by the Director, Medical Education to the appellants-writ petitioner informing them that they were granted conditional letter of permission initially for a period of one year by proceedings dated 26.09.2016, with an annual intake of 150 MBBS seats, for the academic year 2016-17 under Section 10A of the IMC Act, 1956, with the stipulation that the permission would be renewed on a yearly basis subject to verification of achievement of annual targets as indicated in the

scheme till the establishment of the medical college, and expansion of the hospital facilities, were completed and a formal recognition of the medical college was granted; the SSS Medical College had admitted the first batch of 150 students, for the academic year 2016-17, but had failed to affiliate with the HNBUME University and, instead, got itself affiliated to the Ras Bihari Bose Subharti University; the Executive Council of the MCI, in its meeting dated 14.12.2017, decided not to recommend grant/renewal of permission for the 3rd batch of 150 students for the academic year 2018-19; the MCI had, in its executive committee meeting held on 12.04.2018, observed that the appellants-writ petitioners had deliberately not obtained valid affiliation from the HNBUME University; and the Central Government, by its order dated 20.04.2018, had rejected the request for renewal of permission, for admission of the 3rd batch of 150 MBBS students, for the academic session 2018-19.

11. On these orders being challenged, a Division Bench of the Delhi High Court had recorded in its order that the appellants-writ petitioners had, effectively, accepted that they did not have the necessary infrastructure in place and were not in a position to meet the essential statutory conditions of renewal; and the Government of India was justified in denying renewal permission for admission of the 3rd batch of 150 MBBS students for the academic year 2018-19. This judgment of the Division Bench of the Delhi High Court was upheld by the Supreme Court in its order in SLP (C) No.22414 of 2018. On some students, of the second batch admitted during the academic session 2017-18, approaching the Supreme Court, by way of Writ Petition (Civil) No.571 of 2018, the Supreme Court had, in its order dated 20.07.2018, observed that the students had submitted that there was no infrastructure in the college in question; hence it was not worth continuing education in the said college; similar was the stand of the MCI; besides other questions of fraud etc, the question of shifting of the student to other institutions was also involved; and an intervenor-Mr. Manish Verma had claimed that he was the owner of the land.

12. After referring to the subsequent orders of the Supreme Court, the Director, Medical Education took note of the contents of the report of the Multi-Departmental Committee dated 01.01.2019, recording several deficiencies both regarding infrastructure and the faculty. He then referred to a Suit filed by Sri Sri 1008 Narayan Swami Charitable Trust against the appellant-writ petitioners trust being Original Suit No.2544 of 2013 at Dehradun, wherein it was alleged that the Sri Sri 1008 Narayan Swami Charitable Trust/ Mr. Manish Verma had set up a Charitable Hospital, Medical and Dental College; in return for loans taken by the NSC Trust, they had handed over the property to JNSC Trust; and there were civil and criminal cases filed by Mr. Manish Verma against JNSC Trust and its trustees. The Director, thereafter, took note of the various complaints received by the police from individuals alleging that they had been cheated at the time of counseling/admission of students to the MBBS course, and the college and JNSC Trust had misrepresented to the students that it had affiliation from the MCI approved centrally funded HNBUME University; and, in compliance with the

orders of the Supreme Court dated 23.01.2019, Rs. 2,22,18,575/- was paid to 460 employees as salary for the period of takeover by the State Government namely 07th December, 2018 to 25th January, 2019.

13. After taking note of the orders of the Supreme Court directing adjustment/accommodation, of all the 300 students, in three Government Colleges, the show-cause notice records that accommodating all 300 students in Government Colleges required setting up of infrastructure, almost equal to that required for opening a fresh medical college, which had come as a huge unexpected financial burden on the State Government, which could not have been budgeted and had, perforce, to be borne by the State Government, even though the primary responsibility of funding the same rested with the appellants-writ petitioners, who had collected fees from these students for the last two years without any benefit to them.

14. The show-cause notice, thereafter, records that the rough estimates provided by the Head of the Institutions of the three Government Medical Colleges, keeping in view expenditure for 50 students of each batch, would be approximately Rs.39.66 crores annually for 300 students; and of the 300 students, 150 students would have to undergo at least a 2.5 years study, and 150 students would have to undergo 3.5 years study, for which the expected expenditure would be Rs.39.66 crores (+) (36.50 crores x 2.5) = Rs.130.91 crores.

15. While noting that the Government would received Rs.36 crores towards fees from 300 students, @Rs.4 lakh per year from each student, and a sum of Rs.2,22,18,575/- had already been paid, the show-cause notice thereafter records that the sum recoverable as damages and loss from the Trust and Medical College was Rs.130.91 crores +(plus) Rs.2.22 crores -(minus) Rs.36 crores = Rs.97.13 crores. On the ground that this liability was required to be borne by them, in view of the fraud committed by the appellants-writ petitioners, they were called upon to pay the said amount. This was followed by the impugned order dated 04.07.2019 directing recovery of Rs.97.13 crores -(minus) Rs.9.5 crores already received by way of encashment of the Bank Guarantee i.e. a balance sum of Rs.87.63 crores. It is this order dated 04.07.2019 which was impugned in the Writ Petition.

16. In the interlocutory order under appeal dated 23.07.2019, the learned Single Judge, after taking note of the orders of the Supreme Court dated 06.12.2018, 13.12.2018 and 23.01.2019, observed that the Supreme Court was concerned with the future of the students as, due to non-compliance of the guidelines of the MCI, the college was effectively at a standstill; the students, who were studying in the Medical College and Hospital, were now pursuing their studies in the three Government Medical Colleges; apparently, a huge financial burden had been caused to the State by admission of these three hundred students in Government Medical Colleges; the State Government had to garner resources to give education to these three hundred students, which would mean not only

additional infrastructure, but recruitment of new teachers, increase of staff etc; all this could not be managed from the fees received from students who had been freshly inducted; an amount of Rs.97.13 crores was calculated as the approximate expenditure; and, after giving due notice, a final recovery order had been passed.

17. While taking note of the submission, put forth on behalf of the appellants-writ petitioners, that any order could only have been passed by the State Government and not by the Director, Medical Education, the learned Single Judge took note of the submission of Mr. M.C. Pande, learned Additional Advocate General appearing for the State Government, that the Director had issued proceedings after the orders of the State Government which, by its letter dated 03.04.2019, had not only cancelled the essentiality certificate granted to the appellants-writ petitioner earlier on 28.08.2015, but had also directed the Director, Medical Education to give notice to the Trust and the Medical College for recovery of financial losses incurred to the State exchequer. As an interim measure, the learned Single Judge stayed the impugned order dated 04.07.2019, and the recovery sought to be made pursuant thereto, on condition that the petitioners deposit Rs.25.00 crores, from out of the total amount, with the Director, Medical Education ; and this was to be subject to further orders of the Court. The amount was directed to be deposited within two weeks from the date of the order.

18. While contending that such recovery is not authorized by law, Mr. S.K. Gangele, learned counsel for the appellants-writ petitioners, would submit that imposition of such a huge liability of Rs.87.63 crores was wholly unjustified; except to state that the amount required to be spent, by all the Medical Colleges clubbed together, was as detailed in the show-cause notice, the break-up of the actual expenditure was not made available to the appellants-writ petitioners; and this liability cannot be thrust on the appellants-writ petitioners without authority of law.

19. In examining these contentions, we must bear-in-mind that the present appeal is preferred against the interlocutory order directing the appellants-writ petitioners to deposit Rs.25.00 crores as a condition for grant of stay of recovery of the balance amount. In an intra-court appeal, under Chapter VIII Rule 5 of the Allahabad High Court Rules, the scope of interference, against such interlocutory orders, by a Division Bench is extremely limited. Since the learned Single Judge is not a Court sub-ordinate, and both the learned Single Judge and the Division Bench exercise jurisdiction only under Article 226 of the Constitution of India, it is only if the order under appeal suffers from a patent illegality, would interference be justified.

20. In the present case, the learned Single Judge has exercised his discretion to grant stay of recovery of Rs.87.63 crores on condition that appellants-writ petitioners deposit a little less than 30% of the amount claimed as due by the Government from the appellants-writ petitioners.

21. The interim order passed by the learned Single Judge, in the exercise of his discretionary jurisdiction under Article 226 of the Constitution, would necessitate interference only if this Court were to be satisfied that no condition should have imposed by the learned Single Judge while granting stay. As has been noted hereinabove, and as is evident from the show-cause notice issued by the Director, Medical Education, for the inability of the appellants-writ petitioners to run the institution and to provide education to the students admitted by it, the State Government has now been forced to take upon itself the additional burden which it had not even contemplated earlier. The impugned order, and the show-cause notice prior thereto, disclose that the students, hitherto studying in the appellants-writ petitioners' college, are now required to be accommodated in various Government Medical Colleges requiring huge investment towards additional infrastructure, faculty, other resources etc which far exceeds the fees charged from these students.

22. There was no legal obligation on the part of the State Government to take over these students, who were not in a position to pursue their medical courses in the appellants-writ petitioners' college. The unfortunate situation in which the students found themselves in, was not for any fault of the State Government, but solely on the account of the appellants-writ petitioners failure to obtain approval from the MCI which, in turn, was because of their failure to provide the necessary infrastructural and other facilities. Having admitted these students into their college, the appellants-writ petitioners cannot, prima facie, be permitted to walk away, without owning any responsibility for completion of the MBBS course by students hitherto admitted in its college by the appellants-writ petitioners.

23. We refrain from expressing any further opinion in this regard, since the main Writ Petition is still pending on the file of the learned Single Judge and the rival contentions, regarding the claim made by the State Government against the appellants-writ petitioners, necessitates examination therein. We are satisfied, however, that the discretion exercised by the learned Single Judge, in directing the appellants-writ petitioners to deposit Rs.25.00 crores as against the total sum of Rs.87.63 crores, does not suffer from a patent illegality warranting interference in an intra-court appeal, that too against an interlocutory order. In any event, the learned Single Judge has merely directed the appellants-writ petitioners to deposit the said amount and such deposit would, undoubtedly, be subject to the outcome of the Writ Petition and, in case the appellants-writ petitioners were to succeed therein, they would be entitled for refund of the said amount deposited by them. Granting absolute and unconditional stay may have resulted, in case the Writ Petition were to be dismissed later, in the State Government not being in a position to recover even this sum of Rs.25.00 crores from the appellants-writ petitioners.

24. Mr. S.K. Gangele, learned counsel for the appellants-writ petitioners, on instructions, would submit that the appellants-writ petitioners are ready and willing to deposit Rs.5.00 crores within two weeks from today and would furnish

a detailed statement of its properties before this Court, to show that they have enough properties to secure the demand raised by the State Government, even in case the Writ Petition were to be dismissed later.

25. As noted hereinabove, there appear to be several disputes, pending in various fora, between the appellants-writ petitioners and others, over the properties owned by them. We, therefore, asked Mr. S.K. Gangele, learned counsel for the appellants-writ petitioners, whether they were ready and willing to deposit the said amount of Rs.25.00 crores within a extended time frame. Learned counsel would, however, express the appellants-writ petitioners' inability to do so.

26. We see no reason, therefore, to interfere with the order under appeal. The Special Appeal fails and is, accordingly, dismissed. No costs.