

(1997) 01 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No. 589 of 1996, 44109 of 1995 and 28448 of 1996

Dr. Sandhya Upadhyaya

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-01-1997

Acts Referred:

Constitution of India, 1950 — Article 142 (1), 144
Karnataka State Universities Act, 1976 — Section 38 (4), 39

Citation : (1998) 4 KarLJ 178

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Sri U.L. Narayana Rao, Sri S.K. Acharya and Sri V.V. Upadhyaya, for the Appellant; Sri A.V. Srinivasa Reddy, Additional Government Advocate, Sri R.H. Chandanagoudar and Sri N.B. Bhat, for the Respondent

Judgement

1. The petitioners are the students of postgraduate degree course in medical sciences conducted by the respondent-Karnataka University. They had joined the course subsequent to the academic year 1992-93. They have approached this Court for seeking a direction upon the respondents to grant exemption of one year to them in post-graduate course undertaken by them.

2. The question raised by the petitioners regarding the power of the University to grant exemption of one year to the petitioners, thereby reducing duration of the PG Course to only two years needs to be examined, keeping in view the imperative directions of the Supreme Court given in the case of Dr Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, , the respective provisions contained in the Karnataka State Universities Act, 1976 (in short "the Act") and the relevant ordinance and regulations framed by the University in respect of the said PG Course.

3. The Supreme Court having noticed that the period prescribed for the PG Medical Courses was not uniform in all the States of the country, being of two years in some of the States, whereas of three years in other States, it was found

desirable that a common pattern should be directed to be adopted immediately. The Supreme Court accordingly directed that-

"A uniform practice has to be evolved so that the discipline would be introduced. We accordingly allow the present arrangement to continue for a period of five years i.e., upto 1992 inclusive. For admission beginning from 1993 there would be only one pattern, namely, a three year course without any housemanship. All Universities and institutions shall take timely steps to bring about such amendments as may be necessary to bring statutes, regulations, and rules obtaining in their respective institutions in accord with this direction before the end of 1991 so that there may be no scope for raising of any dispute in regard to the matter. The uniform pattern has to be implemented for 1993".

4. The above orders so passed by the Supreme Court can be construed as having passed only under Article 142(1) of the Constitution of India, which reads thus.-

"The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provisions in that behalf is so made, in such manner as the President may by order prescribe".

5. In view of the said constitutional provisions and the orders passed by the Supreme Court in pursuance thereof, it has to be held that all the Universities and institutions were under constitutional duty to ensure that the PG Medical Courses were to be necessarily of three years duration for the students taking admission in and after the academic year 1993-94. Further, irrespective of the fact whereof Universities and institutions had taken any such steps by appropriately amending their statute regulations or rules or not they could have conducted the PG Medical Course only by adhering to and uniform pattern of three years course from the academic year 1993-94. No option was left with that they have to conduct the course having the duration of lessor period by exercising any purported power of granting exemption.

6. Article 144 of the Constitution mandates that

"All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court".

7. This Article 144 in its scope and application includes not only the Courts but also civil authorities and it relates not only to the enforcement of the laws declared by the Supreme Court but all its orders, decrees and directions -- Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, . It is also well-settled that no authority or person can plead its inability or bar to comply with the directions issued by the Supreme Court because of its unwarranted acts or omissions -- Azhar Ali Khan and Others Vs. Commissioner, Municipal Corporation of Delhi and Others, . The said

constitutional requirement has been more emphatically insisted upon by the Supreme Court in a contempt proceedings in the case of M.L. Sachdev Vs. Union of India and another, , wherein para 7 of the report, it has been held that.-

"The Union of India being the party against whom the direction has been made was bound by the order and it was its obligation to see that the direction was properly implemented, Under Article 144 of the Constitution all authorities, civil and judicial in the territory of India are required to act in aid of the Supreme Court. Once it was found that before the extended date the direction was not complied with, it was the obligation of the respondent - contemner to approach the Court for further extension of time or to receive such direction as the Court in its discretion thought it appropriate to make. The mandamus in this case required the Union of India to comply with it in a specific manner and the Union of India as respondent in the writ petition to whom the mandamus had been addressed could not keep away from the Court without complying with the direction".

8. Therefore, it is clear that the directions of the Supreme Court as noticed above, and the mandate of Article 144 of the Constitution is complete answer to the question raised herein namely, that the respondent-Universities under no situation can be deemed to have power to grant exemption of one year so as to reduce the PG Course to be of two years. This denudation of power is absolute in its purport and effect and cannot be claimed to exist on the basis of any statutory provision or equitable principle.

9. Keeping in view the aforesaid aspects, the Ministry of Health and Family Welfare, Government of India had written a letter dated 9-9-1991 (Annexure-R3) to the Ministry of Human Resource Development, Department of Education, New Delhi. The material part whereof is to the following effect:--

"Sub: Implementation of Supreme Court judgment in regard to three year postgraduate courses in medical institutions.

xxx xxx xxx. The undersigned is directed to say that the Supreme Court in their judgment dated the 25th September, 1987 (copy enclosed) have directed that there should be continuous three year post-graduate degree course and two year diploma course in all medical institutions in the country from 1993 onwards.

Accordingly all the State Governments and Universities (having medical faculty) were requested, vide this Ministry's Letter No. U. 12011/2/91-ME(P), dated 20-2-1991 (copy enclosed) that they should amend their rules and regulations before the end of 1991 so that there may be no scope for confusion problem or dispute on the subject".

10. Further, the University Grants Commission under its letter dated 29-10-1991 (Annexure-R4), also directed all the Universities including the respondent-Karnataka University to adopt the uniform pattern as directed by the Supreme Court. The letter reads thus-

"Sub: Implementation of the Supreme Court judgment in regard to three year PG Course in Medical Institution.

xxx xxxxxx. I am directed to say that the Supreme Court in their judgment dated the 25th September, 1987 (copy enclosed) have directed that there should be continuous 3 years postgraduate degree course and 2 year diploma course in all medical institutions in the country from 1993 onwards.

Accordingly, all the State Governments and Universities/Institutions (having medical faculty) are requested to amend their rules and regulations before the end of 1991 so that there may be no scope for confusion problem or dispute on the subject and ensure that directions given by the Hon'ble Court are implemented in their letter and spirit by all the concerned Universities/Institutions".

11. It is not in serious dispute that the duration of the course conducted by the University or to grant exemption has to be governed by the ordinance or Regulation framed under Sections 38 or 39 of the Karnataka State University Act (in short the Act"). In the present case, the respondent-University has come on record with the statement of objections stating therein that as required u/s 38 of the Act, appropriate ordinance has been framed providing the duration of post graduate degree course in medical sciences to be of three years.

12. It has further been stated that there is no provision for granting any exemption from the said duration or reducing the same. To substantiate the said aspect, the learned Counsel appearing for the respondent-University has referred to Annexure-R2, wherefrom it can be seen that the faculty on medicine had made the following recommendations at its meeting held on 5-10-1991.-

Rrecommendations of the Faculty of Medicine (Res. No. 1-DT 5-10-1991).

It was resolved to implement the Supreme Court judgment regarding post-graduate course in medical education. The duration of post-graduate degree course shall be of 3 years and post-graduate diploma is of 2 years irrespective of their previous experience as Lecturers, Senior Housemanship, Rural Service or Post-graduate Diploma for degree courses. This shall come into effect for those candidates getting admission in 1993 academic year".

The aforesaid resolution was accepted by the Academic Council on 30-12-1991 and subsequently it was adopted by the Syndicate as an ordinance.

13. Section 38 of the Universities Act reads as under.-

"(1) The ordinance may be made by the Syndicate in the manner hereinafter provided.

(2) In making the ordinance, the Syndicate shall consult-

(a) the Board or the Boards of Studies concerned when such ordinances affect the duties of examiners; and

(b) the Academic Council, when such ordinance after the Courses of study, conduct, or standard of examinations or the conditions of residence of students.

(3) The Syndicate shall not have power to amend the draft of any ordinance proposed by the Academic Council but it may reject the proposal or return the draft to the Academic Council for reconsideration, either in whole or in part together with such amendments as the Syndicate may suggest.

(4) All ordinances made by the Syndicate shall have effect from such date as it may direct. But every ordinance shall be submitted to the Chancellor within two weeks from making thereof. The Chancellor may, within four weeks of the receipt of the ordinance, by order, direct, that the operation of any ordinance shall be suspended and shall as soon as possible inform the Syndicate of his objection to it. He may after receiving the comments of the Syndicate either withdraw the order of suspension or disallow the ordinance. His decision shall be final.

(5) xxx xxx".

14. Under sub-section (4) of Section 38 of the University Act it is the Syndicate which has been empowered to make ordinance and direct as to from which date it shall come into force. In the present case by accepting the recommendations of the Faculty of Medicine, as noticed above, the Syndicate has directed for bringing the above ordinance into force with effect from the academic year 1993, as required and directed by the Supreme Court in the case of Dr. Dinesh Kumar, *supra*.

15. Despite all these, Mr. U.L. Narayana Rao, learned Senior Counsel appearing for the petitioners has ventured to submit that the ordinance in question cannot be deemed to have come into force till the same was approved by the Chancellor. In my opinion, the argument is wholly fallacious. In the ordinance making process as envisaged u/s 38, though the ordinance has to be submitted to the Chancellor within two weeks from making thereof, but the Legislature has not made it Imperative that the submission of the ordinance for consideration of the Chancellor will have any co-relationship with its bringing into force.

16. Sub-section (4) of Section 38 is somewhat paramateria with the laying clause" as incorporated in served legislations. The Supreme Court has consistently held that such laying clauses are not mandatory -- *M/s. Sri Venkata Satyanarayana Rice Mill Contractors Co. Vs. Commissioner of Income Tax, Andhra Pradesh, II*, . In my opinion, the same law has to be applied to the requirement envisaged under sub-section (4) of Section 38 which provides for submission of the ordinances to the Chancellor.

17. Mr. U.L. Narayana Rao, learned Senior Counsel further submits that Section 39 of the Act specifically provides that regulations can be framed for grant of exemption. But he has failed to bring to my notice any regulation to the said effect which would have even otherwise been in the teeth of the Supreme Court's direction, *supra*.

18. For the said reasons, in my opinion, no relief can be granted to the petitioners. The writ petitions are accordingly dismissed. In the facts and circumstances of the case, there is no order as to costs.

19. Let a copy of this order be handed over to Mr. A.V. Srinivasa Reddy, learned Counsel appearing for Rajiv Gandhi Institute of Health Sciences, Bangalore, for communication to its Vice-Chancellor and for circulation amongst all other Universities.