
(2005) 03 MP CK 0013

In the Madhya Pradesh High Court

Case No : Writ Petition No. 903 of 2005

Ishwar Chandra Vidyasagar Post Graduate Collge

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 04-03-2005

Acts Referred:

Citation : (2005) 2 MPJR 540 : (2005) 4 MPLJ 107

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : Manoj Sharma, for the Appellant; R.N. Singh, Advocate General with P.N. Dubey, Dy. A.G. for Respondent No. 1 and K.P. Mishra with A.K. Shukla for Respondent Nos. 2, 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Lahoti , J.

Petitioner, an affiliated college with respondent No. 2 Awadhesh Pratap Singh Vishwavidyalaya, Rewa has filed this petition seeking following relief"s:-

1. Call for the entire record pertaining to the issuance of the impugned decision dated 15-2-2005 (Annexure P/3), for it"s kind perusal.
2. Issue a writ in the nature of certiorari quashing and setting aside the impugned decision dated 15-2-2005 (Annexure P/3).
3. Issue a writ in the nature of mandamus directing the respondents to allow the petitioner to conduct the Annual Examination on it"s scheduled examination centre in the interest of justice.
- 4 Any other relief, order, directions as may be deemed fit in the facts and circumstances of the case may also kindly be granted.
- 5 Cost of the petition.

Facts necessary for the decision of this case are that the petitioner is an affiliated

college with respondent No. 2 and is providing education in various branches B.A., B.Sc, B.C.A., M.A. M.Sc. and LL.B. since 1994. Till 2004, petitioner, college was notified as examination centre for the students of the petitioner-college and also for the students of Rambai Smriti College, Dabhora, District Rewa. In this year nearabout 600 students are studying in the college of the petitioner who are eligible to appear in the ensuing examination scheduled from 5-3-2005. It is alleged by the petitioner that nearabout 200 students of Rambai Smriti Mahavidyalya, Dabhora and 200 private students who are eligible for appearing in the examination and were expected to appear from the petitioner-college centre. In the examination forms issued by respondent No. 2 University for the examination of 2005, petitioner-college has been shown as a prospective examination centre for the students of petitioner college and Rambai Smriti Mahavidyalaya, Dabhora. All of a sudden, respondents decided on 15-2-2005 that Petitioner College shall not be the centre for the examination of 2005. This decision of respondents is under challenge.

Learned counsel appearing for petitioner submitted :-

- (i) That aforesaid order is against the interest of the students appearing from examination centre in the college of the petitioner,
- (ii) In the last year also respondents took a similar decision which was subject matter of Writ Petition No. 1203/2004 and the relief was granted to students of the petitioner-college,
- (iii) That the respondents have taken aforesaid decision purely on the political ground as the Chairman of the Governing Body of the college belongs to a political party and after the Vidhan Sabha election, there is change in the political scenario of the State and the respondents are trying to cancel the registration and affiliation of the petitioner-college,
- (iv) That, respondents ought to have notified the examination centre 15 days before the commencement of examination, but the respondents have notified it only on 23-2-2005 which is contrary to the rules of examination. At the centre of the petitioner, nearabout 1000 students including girls are appearing which will cause serious prejudice to them and the entire career of the students will be affected because of the arbitrary decision of the respondents.

Petitioner has placed reliance to the Single Bench judgment of this Court in *Pran Nath Patel v. Secretary, Madhyamic Shiksha Mandal*, 2002 (2) MPLJ 579 and submitted that respondents be directed to hold the examination at the petitioner college which is a notified examination centre.

Learned counsel appearing for respondents No. 2, 3 and 4 opposed the petition by filing a written reply in the case. In nutshell - the reply filed by the respondents No. 2, 3 and 4 is as under:-

- (a) That, the examinations are conducted under Ordinance Nos. 5 and 6 issued under the M.P. Vishwavidyalaya Adhiniyam, 1973. Clause (5) of Ordinance 5

empowers the University to change examination centre of the examinees in respect of the college to which they belong at any time it deems proper without assigning any reason.

(b) That examination is very sensitive matter and to make the standard of the education, respondents have taken the aforesaid decision. The Superintendent of examination centre and other staff engaged in the conduction of the examination at the petitioner-college centre are the persons who do not enjoy complete faith of the University and the examination cannot be handed over in their hands. In the past, there had been complaint against the Superintendent of examination centre of the petitioner college regarding non-compliance of the requirements of submitting complete accounts of used and unused question papers and answer books, apart from other complaints.

(c) Under sub-clause (ii) of clause (3) of Ordinance 5, conduction of examination is the responsibility and duty of the Superintendent of examination centre.

(d) That, in the year 2004-05, petitioner college was not regularly notified as examination centre. In the year 2004, respondent University decided not to notify the examination centre at petitioner-college. Thereafter, petitioner challenged the action of the respondents and the High Court had issued directions (Annexure P/4) which were duly complied with by the respondents. (It is also submitted by the respondents that for the conduction of fair examination as directed by this Court last year, University made an expenditure of nearabout Rs. 10 lakhs. The respondents in the return have specifically denied that because of the some political vendetta, petitioner college has been denied the examination centre).

(e) That, the Executive Council of the University on the basis of information and material available decided not to notify petitioner-college as examination centre. Respondents have also stated in para 10 of the reply that change of examination centre has not affected adversely the interest of students. No student has come forward to file a petition. Mass-copying had been resorted to the examination of the year 2003, as a consequence of which it had been decided by the Executive Council of the University that the examination centre of the petitioner college should be closed and the students of the petitioner college shall appear in the examination from the University Teaching Department Centre,

(f) In para 11 of the return, respondents have stated that the petitioner college never had reputation of good college. It is in order to meet the challenge of the education mafia that the examination centre of the petitioner college has been assigned to Rewa University Teaching Department. Respondents have produced decision of the Executive Council dated 15-2-2005 (Annexure B/3) and also notification dated 23-2-2005 (Annexure B/2) by which list of examination centers has been notified, in which petitioner college has not been notified as examination centre.

In this case intervention application has been filed by some of the students who

supported the petitioner. Students have also shown their grievance that the change of centre at this juncture will cause serious prejudice to their education career. The distance between Jawa and Rewa is nearabout 80 Kms. and no appropriate transport is available between the two places. They have also supported the petitioner, and their prayer is that Petitioner College be notified as examination centre for the examinations scheduled from 5-3-2005.

This petition was filed on 21-2-2005 even before the notification dated 23-2-2005 of the examination centre challenging the decision of the Executive Council dated 15-2-2005. On 22-2-2005 notices were issued, and on behalf of respondent University, notices were accepted by Shri A. K. Shukla for and on behalf of Shri K. P. Mishra, standing counsel for respondent university. Thereafter, on 1-3-2005 when the case was listed for hearing, learned Advocate General Shri Ravi Nandan Singh who was present in the Court were requested to apprise about possibility of providing administrative help for the conduction of examination at Jawa by the local administration. Shri Singh after seeking instructions from the local authorities made a statement to this Court that local authorities are not in a position to provide adequate police force for the conduction of examination at Jawa. He also stated that the general reputation of the college is not good and at present the State is not in a position to depute any responsible officer for the conduction of the examination at Jawa as the date scheduled for the examination is 5-3-2005.

During course of arguments, learned counsel for respondents Stated that in the year 2004, the number of students was 2500 and after change of the centre, number of students has been reduced substantially to the extent of 747. The reason as explained by the learned counsel for respondents No. 2, 3 and 4 is that till 2004, a number of students were appearing from the petitioner-college centre from throughout the country. Petitioner college was extending some facilities, like guarantee to pass the examination by using unfair means and because of the change of the centre, said number has been reduced substantially as at changed centre there is no possibility of use of unfair means.

Respondents have placed reliance to the Apex Court judgment in Controller of Examinations and Others Vs. G.S. Sunder and Another, and submitted that petition has no merit and may be dismissed.

From the perusal of the facts as stated by the learned counsel for the parties, it is not in dispute that the examinations are scheduled from 5-3-2005. Executive Council of the University has taken a decision not to notify petitioner college as examination centre. Though in the examination forms, petitioner college was shown as a prospective examination centre, but on 15-2-2005 respondent-University has decided not to notify the petitioner college as examination centre. The decision has been taken by the Executive Council which is an appropriate authority to take a decision in this regard. The University whose duty is to conduct the examination fairly and properly knows best how to deal with the situation like in the present case. The University cannot be dictated to notify a

particular centre against whom it has formed an opinion that fair and proper examinations are not possible. The primary consideration of the university is of fair and proper examination and to uplift the standard of the education. The students who are appearing at the centre have to appear in the examinations for their better future. In the present system, standard of education can be assessed by the conduction of the examination. In these circumstances, responsibility of the University is at a higher side and it owes responsibility that the examinations are conducted fairly and properly and there should not be any possibility of use of unfair means by the students to pass the examinations. If university has formed some opinion in respect of the centre of the petitioner college and has taken a decision in this regard, the said decision cannot be interfered until and unless it is arbitrary, mala fide or based on some extraneous consideration. The decision of the University also finds support by the statement of the learned Advocate General who has stated to this Court about reputation and possibility of the conduction of the examinations by unfair means at the petitioner-college centre. It is expected that unhealthy practices which are like poisonous weeds in the field of education must be rooted out in order that the innocent and the intelligent students are not affected. The Apex Court in *Controller of Examinations and Others Vs. G.S. Sunder and Another*, considering similar situation held thus : -

We have given our careful consideration to the above submissions. One thing must be put; beyond doubt, in matters of enforcement of discipline this Court must be very slow in interference. After all, the authorities in charge of education whose duty it is to conduct examinations fairly and properly, know best how to deal with situations of this character. One cannot import fine principles of law and weigh the same in golden scales. In the present system of education, the system of examinations the best suited to assess the progress of the student so long as they are fairly conducted. Interference by Court in every case may lead to unhappy results making the system of examination a farce. For instance, we cannot but strongly condemn copying .in the examination which has grown into canker of mass copying. Such unhealthy practices which are like poisonous weeds in the field of education must be rooted out in order that the innocent and the intelligent students are not affected. We feel that:

The hour has come when we must clear The educational fields from poison and from fear: We must remould our standards- build them higher, And clear the air as though by cleansing fire, Weed out the damning traitors to education, Restore her to her ancient place of awe.

This Court while consider the matter in *Pran Nath Patel v. Secretary, Madhyamic Shiksha Mandal*, 2002 (2) UPU 579 has held thus:

14. It cannot be denied that sanctity of the education system is a paramount consideration and the guidelines were issued by this Court considering the same. At the same time, it is equally true that fixation of the centers has to be made by the Board in such a manner that the education does not become a farce and at

the same time the examinees are not deprived of their right to education itself and the conducive atmosphere. The duration of examination is of about three weeks. While fixing the centers at District Headquarter, Board, should have taken into consideration the human problem. Problem of "law and order" as pointed out by the State Government in its communication dated 26-2-2002, there is duty cast upon the Board and the local administration at all costs to prevent the mass copying but at the same time, it is to be borne in mind that of rural area, fixation of examination centers is not made in such a manner that students may not be able to appear in the examination itself in an-effective manner. Centers have to be fixed considering problem of the "law and order" at nearest possible place. It appears that the State as well as the Board have awakened at a belated stage; State asked the Board two days before examination that it has fixed the centers in improper manner; Board had shifted the burden on administration by writing a letter to the Collector, but the real sufferer is none of them. It is the students who are trying to strive towards excellence who suffer in the process. The Board has asked the Collector as the State has directed the change of centers to Tahsil place from District headquarter; in what conceivable manner the administration would inform the examinees with respect to change in their centers just on the eve of examination. State of affairs is pathetic. It is also true that the petitioners have also approached this Court belatedly in all the petitions.

Petitioner has placed reliance to the judgment of this Court in Pran Nath Patel's case (supra) and submitted that respondents should have considered the examination centre at a nearest possible place while issuing notification. Facts of the aforesaid case were different while in the present case, petitioner College has not been notified as examination centre because of the peculiar circumstances of the case. Looking to past and to fact that Executive Council of the University has taken a decision in the larger interest, the action of the respondents cannot be said to be arbitrary or mala fide or based on some extraneous consideration. Aforesaid decision needs no interference of this Court at this juncture. In aforesaid circumstances, I do not find it appropriate to direct University to notify examination centre at petitioner's college at this juncture.

Before parting with the case, it is necessary to see one fact that the respondent University has taken a decision in respect of notification of the examination centers only on 15-2-2005 while at the time when examination forms were filled up, respondent university has issued a list of proposed examination centers. Naturally, this issuance of list has given an impression that the petitioner college can be notified as examination centre. Respondent University ought to have taken a decision before issuance of the examination forms. At the time of the issuance of examination forms, respondent University should be very sure about the prospective examination centers. When the University was having information about the past of the petitioner college then it was not proper on the part of the University to show the petitioner college as a prospective examination centre. Because of the aforesaid publication of the proposed examination centre, students have been given an impression that the petitioner college may be an

examination centre. This should be avoided by the University in future. The University is directed to take a decision about prospective examination centers before issuance of examination forms and should avoid to notify any such centre in respect of whom, respondent University is having information that fair and proper examinations are not possible at that centre. I hope that University shall carry out this direction in future in its letter and spirit.

With the aforesaid directions, this petition stands dismissed with no order as to costs.