
(2013) 08 MP CK 0102

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8999 of 2012

Janta Vidyalaya Shiksha Samiti

APPELLANT

Vs

Jiwaji University and Another

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) ILR (MP) 2137 : (2014) 1 MPHT 422 : (2014) 2 MPLJ 510 : (2013) 4 MPLJ 480

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Nakul Khedkar, for the Appellant; Ramesh Sharan Sharma, Advocate for the Vishwavidyalaya, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—Writ Petition No. 8999/2012 is filed by the society challenging the order dated 25.4.2011 (Annexure P/1) issued by the Jiwaji University. By the said order, the University informed the petitioner-institution that for the session 2009-10 the University had granted recognition only for 15 seats in first semester of M.Sc. Microbiology. The institution had admitted 13 more students beyond the permission/recognition granted by the University and, therefore, the University decided to impose Rs. 25000/- penalty per additional student. Lastly, it is stated that Rs. 3,25,000/- be deposited and only after that the mark sheets for those students would be issued. Writ Petitions No. 9000/2012 and 8527/2012 are filed by the students of Chaudhary Dilip Singh Girls College, Bhind, praying that the University be directed to release the said mark sheets.

Since the questions involved in these petitions are common, the matters are analogously heard and decided by this common order.

Brief facts are taken from WP No. 8999/2012.

Petitioner is a registered society. They applied for grant of recognition and

affiliation from the Vishwavidyalaya and Higher Education Department. Shri Nakul Khedkar, learned counsel for the petitioner submits that in the application so submitted by the petitioner, number of students were not mentioned which makes it clear that it was open for the petitioner to admit any number of the students. However, it is stated that the Vishwavidyalaya by notification dated 20.5.2010 (Annexure P/7) committed an error in permitting the petitioner to admit only 15 students in the said subject. The petitioner earlier filed Writ Petition No. 6183/2012. However, in the said petition the petitioner did not challenge the notification (Annexure P/7) dated 20.5.2010. Thus, this Court dismissed the petition on 22.11.2012 but gave liberty to the petitioner to file appropriate writ petition to assail Annexure P/7. Now, in this case Annexure P/7 is also called in question along with Annexure P/1.

2. Shri Nakul Khedkar further submits that the State Government while giving recognition has not fixed number of seats of the course in question and, therefore, it was not open for the University to confine it to 15 seats. In addition, it is contended that the petitioner had deposited examination fees of all the students who were admitted by the petitioner-Institution and without any objection or demur the University accepted the said fees. Accordingly, the University is estopped and cannot take any objection or action after having taken the fee of all the students unconditionally. He relied on *The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another*, in support of the aforesaid submission.

3. Lastly, it is submitted that as per Statute 27, if the University intended to take any coercive action against the petitioner, it should have followed the principle of natural justice. The impugned order is criticized on yet another ground that there is no enabling provision with the University to impose fine on the Institution or students.

4. No other point is pressed by Shri Nakul Khedkar, learned counsel for the petitioner.

5. Shri Sharma, learned counsel for the University supported the impugned order on the strength of various paragraphs of the return and the Statute 27. In addition, he relied on Section 24(xxv) of the Vishwavidyalaya Adhiniyam, 1973 (hereinafter called as "Vishwavidyalaya Adhiniyam") to submit that the University's action is in accordance with law. He submits that the University as per the enabling provision is well within its authority to fix the seats beyond which admissions could not have been granted by the petitioner. Merely because the examination fees is deposited, it will not bestow any right to the petitioner or to the students to treat them admitted beyond the permission granted by notification (Annexure P/7) dated 20.5.2010. As per Annexure P/7, Shri Sharma submits that a minute reading of the Statute makes it clear that the University is empowered to fix the number of seats and merely because the recognition body/ State Government has not fixed any number or petitioner has not mentioned

about the number of seats in his application, it will not create any right in favour of the petitioner to get admission beyond the condition of affiliation vide Annexure P/7. He submits that the petitioner in all fairness should deposit the amount and only thereafter the mark sheets would be released. Lastly, it is submitted that the power of the University can be traced from Statute 27 and Section 24 (xxv) of the Vishwavidyalaya Adhiniyam. A conjoint reading of these provisions makes it clear that the action of the University is permissible and is in accordance with law.

6. I have bestowed my anxious consideration to the rival contentions advanced by the parties and perused the record.

7. In the present writ petition, the petitioner has challenged the notification dated 20.5.2010 (Annexure P/7), whereby the University fixed the number of seats (15) and granted recognition to the petitioner only for the said number of seats. The question is, whether the University is competent to do so.

A bare perusal of notification shows that in exercise of power u/s 26(1)(v) and Section 24(xii) under Vishwavidyalaya Adhiniyam, the Executive Council had decided to grant temporary affiliation on particular number of seats and as per the conditions mentioned therein. It is necessary to deal with the relevant provisions of the Vishwavidyalaya Adhiniyam and the relevant Statute. The relevant provisions are reproduced here as under:-

Section 24. Subject to the provisions of this Act, and the Statutes, Ordinances and Regulations made thereunder, the Executive Council shall have the following powers and perform the following duties, namely:-

(i) to (xi) xxx xxx xxx

(xii) to admit colleges to the privileges of the University on the recommendation of the Academic Council and with the previous sanction of the Commissioner Higher Education and subject to the Provisions of this Act and Statutes and to withdraw any of the privileges and to take over the management of the college in the manner and under conditions prescribed by the Statutes and Ordinances.

(xxv) to arrange for and direct the inspection of affiliated colleges, recognised institutions and halls and to issue instructions for maintaining their efficiency and for ensuring proper conditions of employment for members of their staff, and payment of adequate salaries, and, in case of disregard of such instructions, to modify on the recommendations of the Academic Council the conditions of affiliation or recognition or taking of such other steps as it deems necessary and proper on that behalf.

(xxvii) to call for reports, returns & other information from affiliated colleges, recognized institution or halls.

Clauses of the State No. 27:

Clause 8(d) - No student has been and shall be admitted to the college until the

affiliation prayed for has been granted by the University.

Clause 11(2)- Where the Executive Council proposes to grant affiliation for any or all the subjects/courses prayed for, it shall specify:-

(a) xxx xxx xxx

(b) The conditions if any, which the Executive Council considers it proper to impose and the time and manner of fulfillment of such conditions.

Clause 11(7)- No college shall admit any student for instruction in any subject/course without first receiving a communication under para 11(2).

Clause 13(1)- Every college admitted to the privileges of the University shall, during all time it continues to enjoy such privileges comply with all the provision of the Adhinyam, the Statues the Ordinances, the Regulations, and any order or direction of Academic Council/Standing Committee of the Academic Council in so far those apply to such college.

Clause (13)(2)- Without prejudice to the generality of provision contained in sub-para (1), the college shall in particular comply with following provisions, namely:-

(a) All conditions imposed at the time of granting admission shall be duly fulfilled with due expediency.

Clause (19)- The executive Council may, in consultation with the Academic Council require any College, either permanently or for a specified period, to participate in the system of centralized admission by the University or to restrict the number of students in a class or subject, or require the teaching in a college to be confined only to some particular branch, Any such directions or order of Executive Council shall be given effect to from the beginning of the ensuing academic year after the direction or order is received.

A simple reading of these provisions conjointly makes it clear that by no stretch of imagination it can be said that the University had no power to fix the number of seats. Clause 8(d) r/w 11(7) aforesaid are mandatory provision which makes it obligatory for the College not to admit the students unless the affiliation prayed for has been granted. The affiliation, which was granted by Annexure P/7, was for a limited number of seats. Thus, there is a statutory mandate beyond which admission was not permissible and College was bound to follow the mandate of this law. Annexure P/7 is passed by invoking aforesaid enabling provisions by the Vishwavidyalaya and, therefore, its notification (Annexure P/7) is based on the statutory enabling provision and, therefore has a statutory colour. Apart from this, Clause 11(7) and other provisions also make it clear that the University is well within its right in issuing Annexure P/7 and the College was bound to follow the same as per the Adhinyam and the Statute aforesaid.

8. Thus, I am unable to persuade myself with the argument of Shri Nakul Khedkar. I am unable to hold that since in the application preferred by the College number of seats were not mentioned and State Government while

granting affiliation has not fixed any number of seats, the University cannot do the same. In the considered opinion of this Court, no legal flaw can be found in Annexure P/7 and its validity is upheld.

9. The next question is, once Annexure P/7 is held to be valid and in accordance with law, whether the action of the College in admitting the students beyond the permissible limit is justifiable and whether acceptance of examination fees by the University will amount to promissory estoppel as alleged by the petitioner ?

10. This is settled in law that there cannot be any estoppel against law. At the cost of repetition, it is made clear that the University's notification (Annexure P/7) is in accordance with law and has a statutory texture because it is passed by the Executive Council under the statutory powers vested in it under Vishwavidyalaya Adhiniyam and the Statute. Under clauses 8(d) & 11(7) the College was bound not to grant admission to the students contrary to the permission and conditions of affiliation granted by the University. This is a statutory mandate. Merely because the University accepted examination fees of certain more number of students beyond the permissible limit, in my considered opinion, it will not operate as "estoppel" in any manner. There was no such promise on the part of the University and principle of promissory estoppel has no role to play. There cannot be any estoppel against the Statute and an order which is in conformity with the Statute. The judgment cited by Shri Khedkar has no application in the facts of present case.

11. If the action of the College in admitting the students beyond the permission by the University is accepted, it will amount to giving a premium to an illegality. A Division Bench of this Court in National Council for Teachers Education and Another Vs. Chouhan Education Society and Others, opined as under:-

As has been stated above, the educational society was conscious and aware that the NCTE Had fixed the intake of students at 40 and the University by Annexured-P-9, had communicated to it with regard to such fixation. It has been argued with vehemence that the fixation of strength was uncalled for because the Council had no authority to do so. We have already negated the said contention. We may add here the propriety demanded that the Society should have obeyed the directions given by the council and the University and should not have, in violation thereof, admitted 141 students, as the law prohibited the same. The educational society has not only exceeded the strength but permitted them to appear in the examination though it had no authority to do so. Students also did not take care to know as to whether the institution had authority to impart education to them and whether the institution was authorized to impart education to so many students. It is well settled in law that if the students take admission in an unauthorized educational institution, then they themselves are to be blamed, as their admission in an unauthorised manner, cannot be legalized.

(Emphasis Supplied)

In Mallikarjuna Mudhagal Nagappa and Others Vs. State of Karnataka and

Others, the Apex Court opined that the students admitted in excess of permitted seats have no right. The said judgment of Apex Court is based on State of Punjab and others Vs. Renuka Singla and others, and State of Maharashtra Vs. Vikas Sahebrao Roundale and others,

In Mallikarjuna Mudhagal Nagappa (supra) the Apex Court opined that the students have no case because their admissions were beyond permitted quota of 60. It is held that such students cannot be helped by the Court.

In Satyabrata Sahoo and Others Vs. State of Orissa and Others, the Apex Court held that the number of students admitted cannot be over and above the number fixed by the Statutory Body. In Bhartiya Seva Samaj Trust Tr. Pres. and Another Vs. Yogeshbhai Ambalal Patel and Another, the Apex Court opined as under:-

28. A person alleging his own infamy cannot be heard at any forum, what to talk of a writ court, as explained by the legal maxim *allegans suam turpitudinem non est audiendus*. If a party has committed a wrong, he cannot be permitted to take the benefit of his own wrong. (Vide G.S. Lamba v. Union of India, Narender Chadha v. Union of India, Molly Joseph v. George Sebastian, Jose v. Alice and T. Srinivasan v. T. Varalakshmi.) This concept is also explained by the legal maxims *commodum ex injuria sua non habere debet* and *nullus commodum capere potest de injuria sua propria*. (See also Eureka Forbes Ltd. v. Allahabad Bank and Inderjit Singh Grewal v. State of Punjab).

(Emphasis Supplied)

As per this judgment, it is clear that the petitioner cannot be permitted to take benefit of its own illegality. Petitioner-Institution could not have admitted the students beyond the permissible limit and, therefore, there was no occasion for the Institution to deposit the fees of such students beyond the permissible limit. They committed first illegality in admitting those students beyond limit and committed the second one when they deposited the fees with a view to take advantage of their own wrong. This is clearly impermissible in law.

12. The next question is, whether the petitioner was required to be heard before passing the impugned order, Annexure P/1, whereby the petitioner is saddled with fine. Another question is, whether the University is equipped with any such power to impose fine?

13. Sections 22 and 24(xxv) give very wide powers to the University to take such steps as it deems necessary and proper on that behalf. Unless such steps are shown to be mala fide, extremely arbitrary or capricious, no interference is warranted. In the facts of the present case, admittedly, the College had admitted the students beyond the permission granted by the University. The University could have declared that all such admissions are illegal and, therefore, could have annulled the examinations of those excess students. Instead of taking such extreme measure, the University made an effort to strike a balance so that future of the students are not put to jeopardy, their session does not go waste

and at the same time it is ensured that the College is taken into task for its illegality. For this purpose fine was imposed. It is well within the authority of the University and is in consonance with law. In my opinion, the University has rightly passed the order, Annexure P/1. Since the petitioner had admittedly admitted students beyond the capacity, there was no question of granting him opportunity as per principles of natural justice. This would have been a useless formality. If show cause was not issued, no prejudice is caused to the petitioner nor such prejudice could be established before this Court.

14. This is settled in law that the writ courts should not create a situation by directing the authorities to act contrary to their Statute/Rules. In *State of Punjab and others Vs. Renuka Singla and others*, the Apex Court observed that "We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations." In *Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others*, the Apex Court opined that "the High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been enjoined by law." Similar view was taken in *Manish Goel Vs. Rohini Goel*, Same view was taken in *Maharshi Dayanand University Vs. Surjeet Kaur*,

15. On the basis of these judgments, it is clear that any contrary direction by this Court upsetting Annexures P/1 and P/7 will amount to giving a direction which runs contrary to the *Vishwavidyalaya Adhiniyam* and Statute. On the basis of aforesaid analysis, I find no force in the petitions. Petitions are meritless and are hereby dismissed. No costs.