

(1998) 09 MP CK 0010

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4699 of 1997

Krishnaram Markande and Others

APPELLANT

Vs

Pt. Ravishankar Shukla University and Another

RESPONDENT

Date of Decision : 24-09-1998

Acts Referred:

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 13, 14, 20, 21, 22

Citation : (1999) 1 JLJ 405

Hon'ble Judges : Shahi Kant Kulshreshtha, J

Bench : Single Bench

Advocate : S.L. Kochar, A.K. Pandey and Shimla Jain, for the Appellant; A.S. Rajada and H.B. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

S.K. Kulshreshtha, J.—The Petitioners have challenged, by this petition the withholding of the mark list of the Petitioners in relation to the first year LL.B. Examination, conducted by the Respondent No. 1 Pt. Ravishankar Shukla University, for the academic session 1996-97, in which the Petitioners had appeared as students of the Respondent No. 2 Seth Ratanchand Surana Law College, Durg. In W.P. No. 4738/1997, the Petitioners have challenged the action of the Respondent University in not permitting them to take the LL.B. 1st Year Examination, as students of the said College. These Petitioners were, however, permitted to take the examination in accordance with the interim order passed by this Court. In W.P. No. 169/98, a similar challenge is made to the action of the Respondent No. 1 University in not allowing the Petitioners at the LL.B. 1st Year Examination. All these students were permitted to prosecute their studies and to take their examination under the interim order dated 14.1.1998 passed in this petition. Since all the three petitions relate to a common controversy about the minimum percentage of marks at the graduation level for admission to the LL.B. Courses conducted by the colleges affiliated to the said University as also the University, the petitions were heard analogously and common arguments were

advanced. Accordingly, this order shall also govern the disposal of the said W.P. Nos. 4738/97 and 169/98. However, for convenient disposal of the case, the facts mentioned in W.P. No. 4699/97 are being referred to.

2. The admission to the courses conducted by the Respondent University and the colleges affiliated to it is regulated by the Ordinance framed u/s 38 of the "Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973. According to the Petitioners, the Ordinance No. 26 of the University made u/s 38 of the Adhiniyam, had provided for a minimum of 40% marks at the graduation level for admission to the LL.B. First Year course in the University and in the colleges affiliated to it. Accordingly, the Petitioners who had 40% or more marks at the graduation level had sought admission in the First Year LL.B. Courses conducted by the Respondent/Seth Ratanchand Surana Law College, Durg and were duly granted admission and were prosecuting their studies. However, on executive instructions being issued by the Commissioner of the Higher Education Department to the effect that for admission to the First Year LL.B., the candidates must have a minimum of 50% marks at the graduation level, the Respondents did not permit the Petitioners to pursue the said course and to appear at the Examination of LL.B. 1st Year on the ground that the Petitioners did not have the minimum 50% marks as required for admission. The learned Counsel for the Petitioners have, therefore contended that the executive instructions issued by the Government cannot prevail over the Ordinance made under the statutory provisions of the Vishwavidyalaya Adhiniyam and the action of the Respondents in preventing the students from prosecuting their studies in LL.B. - 1st Year in the Respondent College and in prohibiting them from taking the ensuing examination was, therefore, illegal and arbitrary. Learned Counsel for the Petitioners have also referred to a decision of a Division Bench of this Court in W.P. No. 5061/1996 Basant Kumar and Anr. v. Rani Durgawati Vishwavidyalaya and Ors. dated 7.5.97 filed as Annexure P/2 in support of their contention that unless a provision is made in the ordinance of the University concerned, laying down the criteria of minimum 50% marks at the graduation level, the Respondents could not have cancelled the admission or reject their candidature for examination of LL.B. Part-I.

3. The Respondents have filed their Return in which the Respondents have pointed out that the facts considered in the judgment of Basant Kumar (supra) are clearly distinguishable because the Ordinance No. 26 of the Respondent-University (Annexure R/2) itself lays down a clear provision that admission shall be granted only to candidates who had a Bachelor's Degree with at least 50% marks in the aggregate and, therefore, it is not a case where the condition is being enforced on the basis of any executive direction of the Commissioner of Higher Education.

4. The short question which falls for consideration, therefore, is as to whether the Respondents can insist upon a minimum of 50% marks in the aggregate at the Degree level Examination for admission to the LL.B. Part-I in the University

and the affiliated colleges of the University. Learned Counsel for the Respondents has pointed out that Annexure R/2 clearly contains the criteria of 50% marks at the Bachelor's Degree Level for admission to the LL.B. Part-I Examination conducted by the University and this criteria was made known to all the candidates even before the admissions were finalised by the Respondents. According to the learned Counsel for Respondent No. 1, the condition being clear in the Ordinance No. 26, there was no substance in the contention of the Petitioners that it was on the basis of the executive instructions that the said condition was being applied and enforced. Learned Counsel for the Petitioners have, however, pointed out that unless it is shown that the Ordinance has been made in accordance with Section 38 of the Vishwavidyalaya Adhiniyam, it cannot be said that the condition of minimum 50% marks in the Ordinance has come into existence and, therefore, only the Ordinance, as it stood prior to the amendment said to have been made by the Vice-Chancellor acting as the Executive Council in pursuance of the Notification u/s 52 of the Adhiniyam, continued to apply. The Ordinance, prior to the said Amendment, laid down only 40% marks as minimum marks at the Bachelor's Degree Level and, therefore, each of the Petitioners was entitled to admission to LL.B Part-I and to appear at the examination after the completion of the course, contends the learned Counsel for the Petitioners.

5. Learned Counsel for the Respondents has referred to Section 52 of the "MP. Vishwavidyalaya Adhiniyam which deals with the power of the State Government to apply the said Act in modified form with a view to provide for better administration of University in certain circumstances. Sub-section (1) of Section 52 lays down that if the State Government on receipt of a report or otherwise, is satisfied that a situation has arisen in which the administration of the University cannot be carried out in accordance with the provisions of the Act, without detriment to the interests of the University, and it is expedient in the interest of the University so to do. it may by notification, direct that the provisions of Sections 13, 14, 20 to 25, 40, 47, 48, 54 and 68 shall, as from the date specified in the notification, apply to the University subject to the modifications specified in the Third Schedule. Sub-section (4) lays down the consequences that ensue from the appointed date i.e. the date specified in the notification under Sub-section (1) of Section 52. Since the argument of the learned Counsel is anchored on the construction of Sub-section (4) of Section 52 of the Vishwavidyalaya Adhiniyam. the said Sub-section (4) is reproduced hereunder:

Section 52(4). As from the appointed date, the following consequences shall ensue namely:

- (i) during the period of operation of the notification this Act shall take effect subject to the modification specified in the third schedule;
- (ii) the Kulpati, holding office immediately before the appointed date, shall notwithstanding that his term of office has not expired, vacate his office;

(iii) even" person holding office as a member of the Court, the Executive Council of the Academic Council, as the case may be, immediately before the appointed date shall cease to hold that office;

(iv) the student representatives of the University on the student consultative committee under Clause (i) of Sub-section (1) of Section 54 immediately before the appointed date shall cease to be members of the said committee;

(v) until the Court, Executive Council or Academic Council, as the case may be, is reconstituted in accordance with the provisions as modified, the Kulpati appointed under Sections 13 & 14 as modified shall exercise the powers and perform the duties conferred or imposed by or under this Act, on the Court, the Executive Council or Academic Council:

Provided that the kuladhipati may, if he considers it necessary so to do, appoint a committee consisting of an educationist, an administrative expert and a financial expert to assist the kulpati so appointed in exercise of such powers and performance of such duties.

6. Learned Counsel for the Respondent No. 1 has referred to Clause (v) of Sub-section (4) of Section 52 and has pointed out that until the Court, Executive Council or Academic Council is reconstituted in accordance with the provisions as modified, the Kulpati appointed under Sections 13 & 14, as modified by notification under Sub-section (1), exercises the powers and performs the duties conferred or imposed by or under this Act, on the Court, the Executive Council or Academic Council. To further illustrate the point, the learned Counsel has invited attention to Section 23 of the Act relating to the Constitution of the Executive Council and has also referred to Schedule III containing Section 23 in the modified form. Learned Counsel has, thus, pointed out that the Executive council can be constituted, after a notification u/s 52(1) of the Act. only in the manner laid down in the modified Section 23 under Schedule III which requires nomination of six members by the Kuladhipati from among eminent public men and educationists which is a time consuming process and it is for this reason that during the period the Constitution of the Academic Council in accordance with Schedule III is under-way, the Kulpati appointed u/s 13 & 14 as modified, has been granted powers to perform the duties of the Court, the Executive Council or the Academic Council. Learned Counsel has, therefore, submitted that the amendment in the Ordinance No. 26 was made at a time when after the notification u/s 52(1), the Constitution of the Executive Council was under-way and the powers were being exercised by the Kulpati in accordance with Clause (v) of Sub-section (4) of Section 52 and, therefore, the amendment made in the Ordinance by raising the minimum percentage from 40% to 50% in the case of General Candidates was legal and referable to the powers exercisable by the Executive Council.

7. It is true that in a situation where the Executive Council in its modified form, as per Schedule III, is yet to be constituted, all the functions and duties arc

discharged by the Kulpati under Clause (v) of Sub-section (4) of Section 52, but it is equally true that the action of Kulpati in performing the functions of the Executic Council will be subject to such limitations as are otherwise laid down in the Act. While the learned Counsel has satisfactorily demonstrated before this Court that the amendment was made in the Ordinance No. 26, to raise the minimum marks from 40% to 50% Section 38 of the Vishwavidyalaya Adhiniyam also lays down that an Ordinance made by the Executive Council shall come into force from the date on which it is approved by the Co-ordination Committee. The learned Counsel for the Respondent No. 1 has not been able to dispute that after the amendment was made in the Ordinance No. 26 by the Kulpati, no approval was obtained from the Co-ordination Committee. In the absence of the approval, the Ordinance, in the present case amendment, cannot be said to have come into force and it cannot, therefore, be contended that the earlier Ordinance laying down the criteria of 40% marks stood replaced by the amendment made by the Kulpati, exercising powers of Executive Council.

8. Learned Counsel for the Respondent No. 1 has, however, urged that the Co-ordination Committee in its meeting held on 23.5.1995 of which the minutes have been placed on record as Annexure R/I, had taken a decision to raise the minimum percentage of marks from 40% to 50% at the graduation level for admission to LL.B. Part-I and the amendment made in me Ordinance is, therefore, in accord with the said recommendation. Section 34 of the Vishwavidayala Adhiniyam provides for the Constitution Co-ordination Committee and Sub-section (4) thereof enumerates the powers which the Committee exercises and the function it discharges. Sub-section (4) of Section 34 reads as follows:

Section 34(4). The Co-ordination Committee shall exercise the following powers and discharge the following functions:

- (i) to undertake from time to time examination of the Statutes and Ordinances in force in the various Universities and suggest modifications;
- (ii) to approve or reject the Statutes and Ordinances submitted by the Executive Council of the University;
- (iii) to recommend to the Universities and the Commissioner, Higher Education on its own motion or on the request of any University a Teacher Exchange Programme, organisation of refresher courses or any other academic programme;
- (iv) to promote co-operation in academic programmes among the Universities;
- (v) to consider matter of common interest to all or some of the Universities;
- (vi) to frame bye-laws for the conduct of its business.

9. Clause (ii) of Sub-section (4) lays down as one of the functions of the Co-ordination Committee, the power to approve or reject the Statutes and Ordinances submitted by the Executive Council of the University. Clause (i)

invests the Co-ordination Committee with the power to undertake from time to time, the examination of the Statutes and Ordinances in force in the various Universities and suggest modifications. The minutes of the meeting (Annexure R/ I) referred to by the learned Counsel and relied upon by the Respondents only indicate that in exercise of recommendatory function, the Co-ordination Committee had taken the decision in accordance with Clause (i) of Sub-section (4) of Section 34 and, therefore, it cannot be said that the recommendation with regard to the modification which has preceded the amendment made by the Respondent No. 1 University in Ordinance No. 26, laying down higher percentage of marks for admission to LL.B. Part-I courses, stands impliedly approved by the Co-ordination Committee as required by Sub-section (2) of Section 38. Section 38 reads as follows:

Section 38. Ordinance how made - (1) All Ordinances except the first Ordinance shall be made by the Executive Council.

(2) An Ordinance made by the Executive Council shall come into force from the date on which it is approved by the Co-ordination Committee.

10. From the plain language used in Sub-section (2) of Section 38, it is manifest that the approval has to be subsequent to the making of the Ordinance or amendment therein and any advice, recommendation or suggestion made by the Co-ordination Committee under Clause (i) of Sub-section (4) of Section 34 cannot be taken as approval under Sub-section (2) of Section 38. Even in cases where on the basis of the recommendation of the Co-ordination Committee, certain amendments have been made in the Ordinances of the Universities, it would always be open to the Co-ordination Committee to examine each case of modification in the Ordinance on its own facts. There may be cases where on account of various factors such as geographical, economic or other constraints in an area where a University is situate, the Co-ordination Committee may not consider it appropriate to lay down higher criteria for admission to various courses notwithstanding the same having been approved in other Universities. This examination is possible only when such individual Ordinances are placed before it for approval u/s 38(2) of the Vishwavidyalaya Adhiniyam. It is, therefore, clear that the amendment in Ordinance No. 26 of the Respondent No. 1 University as reflected by Annexure R/2 is still in the stage of making and has not come into force for want of approval of the Co-ordination Committee as required by Sub-section (2) of Section 38. Since the action of the Respondents in denying admission to the LLB Ist year course and refusal to permit the Petitioners to take the examination is based only on the ground that as per the modified Ordinance No. 26, the Petitioners do not have the minimum of 50% marks at the Bachelor's Degree level, the action cannot be sustained till the amendment in the Ordinance is brought into force in accordance with law.

11. At this stage, an ancillary argument of Shri AS. Rajada, learned Counsel for the Respondent No. 1, may also be considered. Learned Counsel has pointed out that the Petitioners have not challenged the validity of the Ordinance No. 26 in

its present form containing the modified criteria for admission to LLB. course; indeed have withdrawn the application made specifically in this behalf and, therefore, the Petitioners cannot assail the action of the Respondents on the ground that the Ordinance is not valid. The question of consideration of validity or otherwise of an Ordinance can arise only if an Ordinance is in force in accordance with law and not when the provision has not ever come into being. Learned Counsel has not been able to dispute that the amendment in Ordinance No. 26 has not so far been approved by the Co-ordination Committee as required by Section 38(2). Since this amendment has not come into existence, no occasion arises for challenging the same. It is only when the modified Ordinance comes into force, such an occasion may arise.

12. In the result, the petitions are allowed and the Respondents are directed not to cancel the admission of the Petitioners in LL.B. Part-I on the ground that they do not satisfy the changed criteria of minimum 50% marks at the Bachelor's Degree Level. The Respondents are also restrained from cancelling the candidature of the Petitioners, otherwise eligible to take the LLB. Part-I Examination, on the said ground. The Respondents shall declare the results of the Petitioners who have appeared at the LLB. Part-I Examination, forthwith. There shall be no order as to costs.