
(2008) 11 MP CK 0026
In the Madhya Pradesh High Court

Mahatma Dhule Shiksha Evam Samaj Kalyan Samiti	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 07-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2009 MP 59

Hon'ble Judges : R.K. Gupta, J; Dipak Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dipak Misra, J.—The present writ petition preferred under Article 226 of the Constitution of India depicts and mirrors a scenario which manifestly imprisons the concept of pristine justice possibly on the base of perversely nurtured idea that one can easily defile the precincts of the temple of justice by defying the eternal law that if there is a singular path to seek justice, it is only by correct exposition of facts. And there are many ways to crucify justice on assertion of facts in an unscrupulous and deceitful manner pretending ignorance. Not for nothing, it has been said that one who looks away from something is very much aware that the said thing exists. A litigant may think that his pretended lack of knowledge is in the realm of unsubstantiality and the Court should not be ultra-sensitive to the same, but the real hub of the matter is whether the Court should ignore a fracture in the system of adjudication and dispensation of justice when a decadent propensity is shown on the face of it.

2. Shorn of rhetorics and bereft of detailed scrutiny of the attack and assail as regards the inaction of the State Government, the seminal question that emanates for consideration is whether the steps taken by the petitioner society registered under the M.P. Societies Registrikaran Adhiniyam, 1973 which has established the Gwalior Institute of Information and Technology at Gwalior being aspirant to impart education in various engineering and technical courses under the All India Council for Technical Education Act, 1987 (for brevity "the Act") can

be allowed to play possum and permitted to adopt and harbour the thought that the action taken by the society, through its various representatives at various junctures in different benches of this Court would escape notice for some reason or the other or the Court would put blinkers and turn a Nelson's eye to the adroit design devised for the same. The thought, the idea and the action projected may be in the realm of ambition of the authorities of the society but the said ambition can be stated, without any kind of fear or contradiction, to have no sanction of law because law does not countenance any kind of perverse play with the theme of justice.

3. The factual score lies in a very narrow compass. The petitioner-society obtained approval from the Council for establishment of the technical institute for conducting certain courses with intake capacity of 240 candidates. The approval dated 30th September, 2008 is to remain valid for two years. It is worth noting that a batch of writ petitions was filed forming the subject-matter of W.P. No. 10713/2008 Shri Charrokarn Educational and Social Welfare Society v. State of M.P. decided on 24-9-2008 and other connected matters wherein this Court after scanning the provisions of the 1987 Act, the guidelines issued by the Council especially para 9.8 and 9.12 of the same, the Admission Rules, 2008 framed by the State Government, the letter-circular dated 20-8-2008 issued by the State Government and placing reliance on the decisions rendered in Commissioner of Income Tax, Bombay Vs. Ahmedbhai Umarbhai and Co., Bombay, , Grasim Industries Ltd. Vs. Collector of Customs, Bombay, and Raichurmatham Prabhakar and Another Vs. Rawatmal Dugar, expressed the view as follows:

26. In view of the aforesaid enunciation of law there can be no scintilla of doubt that if there is absence of any kind of ambiguity in the provision under consideration the heading prefixed to the main provision would not control the same. In case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in constructing the provision. In the case at hand the provision is crystal clear. The guideline 9.12(a) clearly postulates that the institutions whose applications are received at the Council on or before 31st December, 2007 and the Letters of Approval issued on or before 30th June 2008 shall be eligible for starting of new institutions for the academic session 2008-09. All other Letters of Approval issued for the applications received after 31st December, 2007 and/or the Letters of Approval issued after the 30th June 2008 shall be eligible for starting the new institutions from the next academic year i.e. 2009-10 or beyond. We may note with profit that Mr. A.K. Mishra, learned Senior Counsel has laboured hard to draw some inspiration from guideline 9.12 (b) and proposed that as there is no mention of 30th June, 2008 therefore, it is not 30th June 2008 is the pivotal or governing factor. Submission of the learned Senior Counsel is that if an application had been submitted on or before 31-12-2007 by an institution even if it gets the Letter of Approval after 30th June 2008 it can be allowed to participate in the counselling. The aforesaid submission suffers from an inherent fallacy. Clause (a) does not permit any new institution to start if the Letter of Approval is received after 30th June 2008. It is prohibitory in nature.

Once an institution cannot start functioning the question of participating in the counselling or admitting the students does not arise. Be it noted, though we are really not concerned in the present case with Clause 12.1.(b) yet as immense emphasis has been laid, we would like to say that the institutions whose applications are received at the Council on or before 31st December 2007 shall be eligible for starting new programme/increase/variation for the academic year 2008-09. The said clause stipulates that all other Letters of Approval issued for the applications received after 31st December shall be eligible for starting of new programmes/increase/variation in intake from the next academic year 2009-10 or beyond. Thus, the conditions stipulated therein are that the Letter of Approval issued for the institutions whose applications are received after 31st December, 2007 cannot start the course for the academic year 2008-09. Thus, emphasis has been laid on the factum of receipt of application by the AICTE. From the aforesaid it is discernible that if a Letter of Approval is issued in respect of an application received before 31st December 2007 and a Letter of Approval issued then the institution can start new programmes intake for the academic year 2008-09. In that context it would not be inapposite to state that the said institutions can participate in the ongoing counselling. We are inclined to think so, when a Letter of Approval is issued in respect of a new institution certain conditions are including obtainment of affiliation from the University, filling up the post of faculty members or other conditions as incorporated. Thus, the submission of the learned Counsel for the petitioner leaves us unimpressed and we are inclined to hold that the language employed in guideline 9.12(a) is absolutely clear and unambiguous and any institution that has been issued a Letter of Approval beyond 30th June 2008 cannot start a new institution for the academic year 2008-09.

27. Though we have interpreted the provisions the problem does neither end nor rest there. The State Government in its own wisdom has relaxed the Rule 4(1)(b) though it had no power to relax the same as that would be running counter to the guidelines which have statutory force. A confusion has occurred as the State Government has sworn in an affidavit that it had entered into correspondence with the Member Secretary of AICTE and it was apprised that it is within the discretion of the State Government. Learned Counsel for the AICTE has seriously refuted the same but nothing has been brought on record. In any case, the Member Secretary, AICTE, alone could not have made any communication or statement in that regard. If we permit ourselves to say so, the State Government has committed a Himalayan blunder. We are not at all impressed with the submissions of the learned Advocate General for the State that the State Government has done it because of better educational interest of the State. In a body polity Rule of Law has to prevail. The State Government has no power to encroach upon the guidelines. The Rule is in consonance with the guidelines. There is no question of relaxation. However, as a measure has been taken, counselling has commenced and other organizations had come, this Court has permitted. The Court has directed so as a one time measure. The authorities

should not play with the provisions and should be guided by law. They should not act according to their whims, caprice or in fanciful manner. No interest can violate the law. Interest of collective or an institution cannot be beyond the law because in a civilized society law reigns supreme. If a public good is thought of, that should be conceived within the parameters of law and not by an individual whim or fancy. However high the authority may be, it has to be guided by law. Neither sympathy nor any kind of empathy or kindness or mercy can bend the law. He who bends the law breaks the law and the law does not countenance the same. When it happens, as some would like to put it. She (justice) cries in agony. However, as a situation has cropped up, the same has to be taken note of. On the basis of circular issued on 20-8-08 counselling had commenced. However many institutions had participated in the counselling is not on record. Because of the said situation this Court had permitted the newly approved colleges to participate in the counselling. This has to be treated as one time measure and, we say so, because of the mistake committed, by the State. Accordingly, we hold the counselling had to be valid. We would add that the authorities of the State Government shall not take such steps in future and be totally guided by the guidelines of the AICTE as published from year to year and not commit any deviancy in their enthusiasm. It should be borne in mind that law does not permit any popular conception and does not pardon anyone to play foul with it. As long as law exists everybody must serve at its altar unless it is altered as per the procedure laid down by law.

4. After the said decision was rendered, a Writ Petition No. 12116/2008 Shri Aggrawal Educational & Welfare Society, Bhopal v. State of M.P. decided on 26-9-2008 was filed by Shri Aggrawal Educational & Welfare Society, Bhopal praying for permission to participate in the counselling. This Court after referring to the decision in Shri Charrokarn Educational and Social Welfare Society v. State of M.P. W.P. No. 10713/2008 expressed the view as follows:

9. The present writ petition has been filed today and on being mentioned it was taken up. The spinal issue that deserves to be addressed is whether the likes of the petitioner should be allowed to participate in the counselling. True it is, there would be second round of counselling but counselling has its own norms and procedure. Mr. Pradeep Sharma, learned Counsel appearing for the AICTE would submit with immense vehemence that the AICTE has jurisdiction to grant approval throughout the year but new institutions can start functioning on certain terms and conditions which have been dealt with by this Court in Shri Charrokarn Educational and Social Welfare Society (supra) and if permission for participating in the counselling is granted the functioning of the AICTE would be jeopardised. Mr. Deepak Awasthy, learned Government Advocate submitted that this Court had clearly stated that the same was done as one time measure and the authorities should be cautious not to play with the Rules at their humour and hubris in future. Mr. Paritosh Gupta, learned Counsel for the respondent--university submitted that a writ Court can always restrict the relief and may decline it to a person or an institution which keeps a watch on the proceeding

and files a litigation after decision is pronounced.

10. On a perusal of the pleadings and the documents brought on record it is indubitably clear that though the petitioners had obtained the approval on 19-8-2008 they chose not to approach this Court with immediacy despite knowing the fact that the State Government had granted permission to other institutions which had obtained the approval on 20-8-2008 to participate in the counselling. The petitioner was well aware that the said institution was not permitted to participate in the counselling. Despite the same it chose to maintain a golden silence and decided to wait and see the fate of those litigations. He who gets into slumber cannot claim parity. Those people who watch on the fence and spring up into life when something happens, benefit should be denied. That apart, if the counselling to these institutions is permitted after first round of counselling is over, there can be no scintilla of doubt that anarchy will reign. It is the duty of Court to see that chaos, by no means, enters into the system. A mistake was committed by the State Government and that is why this Court initially permitted and eventually the decision was rendered. It was difficult at that time to cancel, the counselling that has already been done because the institutions which were permitted by the State Government were not before this Court. Regard being had to the concept of parity this Court granted interim relief and eventually saved the counselling in respect of those institutions as one time measure, but, a pregnant one, after the judgment was delivered an institution cannot come up despite very well knowing the facts, solely on the ground of parity. We are of the considered opinion that the parity cannot be extended. An institution or a person who decides to sleep cannot wake up one fine morning and claim a right. He cannot arise like Rip Van Winkle or "Kumbhkarn" and make a demand that it/he must be given the benefit all that had been given to others. That should not be ordinarily permitted and we do not find any extraordinary circumstances in this case to grant permission. We further proceeded to state that the institutions which have been permitted by the decision in Shri Charrokarn Educational and Social Welfare Society (supra) would be in one compartment and no other institution should be allowed to participate in the counselling for the academic session 2008-09. They can only be permitted for the next academic session i.e. 2009-10. That would be in fitness of things and we say so.

5. The petitioner society situated at Gwalior preferred Writ Petition No. 4670/2008 stating, inter alia, that it has been accorded approval in respect of certain courses by the AICTE and it should be permitted to participate in the counselling. The learned single judge taking note of the decision rendered in Shri Aggrawal Educational and Welfare Society, Bhopal (supra) dismissed the writ petition in limine by order dated 6-10-2008. When this matter was listed on 16-10-2008 a prayer was made to withdraw the writ petition. The learned Counsel appearing for the Council as well as the university opposed the prayer. Regard being had to the factual matrix and opposition made by the learned Counsel for the respondents this Court passed the following order:

The present writ petition has been filed by the same institution represented by the Vice President, Amar Sharma s/o D.P. Sharma. It is contended by Mr. Gupta and Mr. Sharma that there the institution was represented by the mother and here the institution is represented by the son, Amar Sharma.

We have carefully perused the order passed by the Gwalior Bench and the prayer made in the relief clause. It appears, the basic prayer is the same. There is no mention in the writ petition at any place that the petitioner-institution had approached the Bench at Gwalior. It is worth noting, the learned single Judge had decided the matter on 6-10-2008. We really fail to fathom why the institution had preferred a petition at Gwalior and one at Jabalpur. In the case at hand the affidavit has been sworn in on 3-10-2008.

When such an aspect has come to our notice, we are afraid that we cannot grant permission for withdrawal of the writ petition as if it is routine manner. We are of the prima facie opinion that the institution has presumed that one can approach the Law Court as and when advised suppressing the material facts and not disclosing and facts which are material.

Submission of Mr. Sharma and Mr. Gupta is that the conduct of the petitioner is totally non-chalant and contrary to the conception of an ideal citizen living in a law-abiding society. It is urged by them that the institution has given an indecent burial to the truth, objectivity and prudence are three aspects which are the requisite pillars for proper governance and the best way to handle them is to crucify the same.

The present factual matrix, we are inclined to think for the present, is quite perplexing. Hence, we are not disposed to grant permission for withdrawal, and direct for the personal appearance of Amar Sharma s/o D.P. Sharma, the Vice-President of Mahatma Dhule Shiksha Evam Samaj Khalayan Samiti, 14-A, Ashok Colony, Gwalior, the petitioner herein, at 10-30 a.m. On 22-10-2008, failing which this Court shall be constrained to issue a non-bailable warrant of arrest against him.

6. Thereafter on 22-10-2008 this Court directed the petitioner society to produce the letter of authorisation and other documents. Be it noted, an affidavit was filed sworn to by the present petitioner Shri Amar Sharma. This Court taking note of the same passed the following order:

Another perplexity and shocking feature that has come to our notice in this writ petition in para 15 of the affidavit sworn to by Mr. Amar Sharma, it has been stated as follows:

That in the meanwhile due to persuasion by deponent and other similarly placed colleges the State Government sent a letter to ECCA, RGPV, Bhopal, dated 12-10-2008 and whereby the deponent and other six colleges were permitted to take part in the second round of counselling.

We have reproduced the said paragraph only to highlight that the Director of

Technical Education, Govt., of M.P. Satpura Bhawan, Bhopal had issued a letter on 13-10-2008 despite the decision rendered by this Court on 26-9-2008 in W.P. No. 12116/08. We really fail to fathom that on what foundation, the Director had issued the letter. True it is, Mr. Kumaresh Pathak, learned Dy. Advocate General had submitted that the said letter has been withdrawn but the question remains why such letter was issued.

Such a letter on its survival would have definitely created a dent in the whole system of Technical Education and also would have reflected a different attitude as regards the order passed by this Court. Hence, it requires to be enquired into whether the Director remains in a state of slumber or is aware what happens in the Court of law especially pertaining to the field in which he is involved. Be it noted that on earlier occasion while disposing of a batch of writ petitions forming the subject-matter of W.P. No. 10713/2008, this Court had not appreciated the Govt.'s action.

In view of the aforesaid, we would like to have the personal presence of the Director, Technical Education, M.P. Bhopal on 24-10-2008. The Director shall file an affidavit explaining why he shall not be booked under appropriate law. The petitioner, Shri Amar Sharma, Vice President of the Society shall also remain personally present before this Court with necessary documents as directed hereinabove.

Registrar (Judicial) is directed to handover a free copy of this order to Mr. Kumaresh Pathak, learned Dy. Advocate General to intimate the Director, Technical Education to remain personally present.

Mr. Pathak shall intimate the Chief Secretary of the State who shall be obliged in law to send the Director of Technical Education to remain present before this Court on the date fixed.

7. First we shall deal with the conduct of the petitioner-society and thereafter we shall dwell upon the action taken by the State Government. In the explanation offered by the petitioner it has been stated as under:

6) That the DTE refused to accept the representation and orally declined to grant permission without assigning any reason. The deponent also received information that the second round of counselling is likely to commence w.e.f. 4-10-2008.

7) That in the aforesaid circumstances, realizing the urgency and gravity of the matter deponent straight away proceeded to Jabalpur to seek redressal of the petitioner's grievance, from this Hon''ble Court.

8) That the deponent reached Jabalpur on 2-10-2008 and contacted the counsel. The counsel prepared the petition on 2-10-2008 and assured that the same shall be presented on 3-10-2008. The counsel informed that the hearing will only be possible on the opening of the Court on 13-10-2008 or thereafter as per the Court slip granted by the Court.

9) That during the course of preparation of the petition at Jabalpur the deponent met 2/3 office bearers of other colleges facing the same problem. They informed the deponent that the State Government has probably initiating proposal to grant benefit to the similarly placed colleges and therefore, the deponent returned to Bhopal in the evening of 3-10-2008 itself of and thereafter on contact with his mother he for the first time came to know that similar petition has been filed at Gwalior also.

10) That having received aforesaid information the deponent instructed Secretary of the Society to instruct counsel at Gwalior to withdraw the petition filed.

11) That as per the instruction of deponent his mother being old aged lady of 70 years could not herself go to the office of counsel but sent Office Incharge of the society, Shri Suresh Mishra to the office of counsel Shri M.P.S. Raghuwanshi, Advocate to instruct him to withdraw the petition.

8. Thereafter it has been asserted that possibly Shri Suresh Mishra misunderstood that withdrawal of the petition would be possible only after 13-10-2008 when the Court resumes functioning after vacation. In the meantime the learned vacation Judge dismissed the writ petition on 6-10-08 the factum of dismissal of the petition during vacation was not communicated to the petitioner. The petitioner received the intimation of dismissal on 15-10-2008 and immediately prayed for withdrawal. It is contended that the deponent had no information about filing of the petition at Gwalior and that it had been dismissed during vacation. There was no mala fide intention to suppress the factum of filing and dismissal of the petition at Gwalior Bench.

9. On a careful perusal of the explanation and chronology of the events we are not inclined to accept the explanation as we are not convinced. The petitioner is a society registered under the M.P. Societies Registrikaran Adhiniyam, 1973. It has its own bye-laws as admitted by the learned senior counsel for the petitioner. As has been held in Daman Singh and Others Vs. State of Punjab and Others, a society is a body corporate. A body corporate cannot work through its individual functionaries at their own whims and fancy. The society was the petitioner in writ petition preferred at Gwalior Bench represented by the mother, the Secretary of the Society, and at the Principal Bench at Jabalpur by the son, who is the Vice-President of the Society. It is really perplexing how the society could file a writ petition without a proper resolution. No resolution has been brought on record. It is also surprising, if a resolution was passed how the Vice-President and the Secretary were not aware of the same. It is difficult to accept that the Secretary, the mother of the petitioner, would prefer a litigation at Gwalior Bench and the Vice-President at the main seat seeking self same relief. The plea of lack of knowledge is totally unacceptable. It is submitted by Mr. Mishra that once the writ petition had been dismissed at Gwalior no benefit could have accrued in favour of the society to file a writ petition at Jabalpur and, therefore, it should be held that there was absence of knowledge. Such a contention is to be noted to

be rejected. The thrust of the matter is that writ petitions were filed at two places which tantamounts that the society had adopted an attitude of gambling in law Courts. It has approached the Court at Gwalior and also filed a petition at Jabalpur. This is an abuse of process of law and it can be said with certitude and indubitableness that there is deliberate suppression of fact.

10. The High Court while exercising the powers under Article 226 of the Constitution of India exercises extraordinary, inherent and equitable jurisdiction. It is a remedy which is not available as a matter of course. Any litigant who seeks relief from a Court must approach it with clean hands and impeccable conduct. In this context we may refer with profit to a passage from Story's Equity Jurisprudence:

It is one of the fundamental principles upon which equity jurisprudence is founded is that before a complainant can have a standing in Court, he must show that not only has he a good and meritorious cause of action, but also he must come to Court with clean hands. He must be frank and fair with the Court and nothing about the case under consideration should be guarded, but everything that tends to a full and fair determination of the matters in controversy should be placed before the Court.

11. In Pomeroy's Equity Jurisprudence it has been stated as follows:

The maxim of equity says that whenever a party, who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the Court will be shut against him in limine, the Court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy.

It has been further stated:

While a Court of equity endeavours to promote and enforce justice, good faith, uprightness, fairness and conscientiousness on the part of the parties who occupy a defensive position in judicial controversies, it no less stringently demands the same from the litigant parties who come before it as plaintiffs or actors in such controversies. This fundamental principle is expressed in the maxim--"he who comes into a Court of equity must come with clean hands", and although not the source of any distinctive doctrines, it furnished a most important and even universal rule affecting the entire administration of equity jurisprudence as a system of remedial rights.

12. We have already held that there has been suppression of material facts. It is an act of concealment. In Webster's Third New International Dictionary, "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another.

13. In King v. General Commissioners (1970) 1 KB 486 it has been held that a relief under writ should be refused without getting into merits because of

suppression of facts because the applicant has not approached the Court with clean hands.

14. In *Raj Kumar Soni and Another Vs. State of U.P. and Another*, it has been ruled thus:

...It is a fundamental principle of law that a person invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India must come with clean hands and must make a full and complete disclosure of facts to the Court. Parties are not entitled to choose their own facts to put forward before the Court. The foundational facts are required to be pleaded enabling the Court to scrutinise the nature and content of the right alleged to have been violated by the authority....

15. In *B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others*, it has been held that when the material facts have been suppressed the petition deserves to be dismissed at the threshold.

16. Analysing in this backdrop there can be no iota of doubt that the petitioner--society has to be strictly dealt with. It has acted in total disregard of the process of law. It has not maintained the elementary standard of proper conduct. An endeavour has been made to make law a dead letter and spirituality of law a mere formality. It has totally guillotined the concept "place of justice is a hallowed place". How we shall deal with the petitioner, we shall state at a latter stage of this order as another aspect has become imperative to be addressed to. It has come to the notice of this Court while dismissing the writ petition preferred *Shri Aggrawal Educational & Welfare Society, Bhopal* (supra) decided on 29-6-2008 this Court had held that no other institution shall be allowed to participate in the counselling for academic session 2008-09. In view of the aforesaid the Director of Technical Education could not have issued another letter dated 13-10-2008 referring to earlier order dated 24-9-2008. We had directed personal presence of the Director, Technical Education who produced certain documents which have been taken on record. It is submitted by him that letter dated 13-10-2008 was issued to *Rajeev Gandhi Technical University*. The Director, if we allow ourselves to say so, should have taken advice from the law officers of the State. We deprecate the action of the Director of Technical Education, Bhopal. However, we refrain from taking any action against him as the said letter has been withdrawn.

17. Presently to the action to be taken against the petitioner-society. We had expressed our disinclination to grant permission for withdrawal. We have already opined that the petitioner-society has not approached this Court with clean hands but tried to play possum. We would not have been in a position to know had the learned Counsel for the AICTE and the learned Counsel for the University not brought it to our notice. Therefore, we dismiss the writ petition and direct the society to pay Rs. 15,000/- (Rupees Fifteen Thousand) only each to *Rajeev Gandhi Technical University* and AICTE, the respondents 3 and 4 herein

respectively. We have not directed any costs to be paid to the State as we have deprecated the conduct of the Director, Technical Education, Bhopal.