

(1996) 10 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 1234 and 1235 of 1996

Osmania University

APPELLANT

Vs

Syed Asghar Hussain and Others

RESPONDENT

Date of Decision : 29-10-1996

Acts Referred:

Citation : (1997) 1 ALT 146 : (1996) 2 APLJ 525 : (1996) 1 APLJ 525

Hon'ble Judges : P.S. Mishra, C.J.;V. Rajagopala Reddy, J

Bench : Division Bench

Advocate : K. Ramakanth Reddy, S.C. for O.U, for the Appellant; Philkhana Rama Rao, for Respondent Nos. 1 to 3 in W.A. No. 1234/96 and R-1 to R-7 in W.A.1235/96 and Mirza Imamulla Baig, in W.A.1234/96 and for R-8 in W.A.1235/96, for the Respondent

Final Decision : Allowed

Judgement

P.S. Mishra, C.J.—Heard.

2. Instant cases in appeal under Clause 15 of the Letters Patent have presented the predicament of the Courts how to balance sympathies with outrageous violation of law. Writ Petitioner - respondents are allegedly admitted to the M.B.A. Courses of studies of the Osmania University by the management of the Deccan School of Management allegedly managed by a trust known as Dar-Us-Salam Educational Trust in excess of the sanctioned strength of the students in the institution. When, however, the time to appear in the first semester examination of the academic year 1995-96 reached, the University found them in excess of the number of students sanctioned by the University and the University accordingly declined permission to them for appearing in the first semester examination. When the second semester examination approached, the writ petitioner - respondents moved this Court and it appears, the Court directed the University to permit them to appear in the second semester examination. Writ petitioner - respondents have allegedly pursued their studies notwithstanding, however, the fact that they were never admitted to the institution within the

limits of the prescriptions as respects the number of seats for the students (sanctioned strength of students) and when finally it has come to be decided by this Court, it is held as follows:

"It is necessary to refer to the permission granted by the first respondent to the second respondent. Permission was granted on 11-6-1992. It says that "as recommended by the Inspection Commission which visited the institution on 30-4-1992, the Dar-Us-Salam Educational Trust, Hyderabad is granted permission to make admissions into first year M.B.A. Course during the academic year 1992-93 with the existing ceiling of (30) thirty students only subject to fulfillment of the conditions stipulated in the report and subject to the general rules of affiliation". By proceedings dated 16-8-1994 the first respondent increased the number of students to be admitted in M.B.A. Course to 40 with effect from 1994-95. It is not disputed that the petitioners are admitted in excess of the ceiling limit. It is also not disputed that the petitioners were not aware of the fact that the second respondent did not have the permission to admit more than the ceiling limit. It is only after admitting the students more than the ceiling limit, the second respondent has written to the first respondent for increasing the number of seats in the college. Though the second respondent produced before me an endorsement made by the then Vice-Chancellor Sri Malla Reddy permitting the second respondent to increase the number of seats to 50 with a warning that they should not do it without previous permission. I do not propose to refer to the same as there is no original available with the first respondent - University and I doubt very much whether such an endorsement was made by the Vice-Chancellor."

Having held so, the Court has further observed in some details what considerations should prevail in sanctioning the strength of students in the institution and finally ordered as follows:

"Under these circumstances, the only course open to this Court is in the interest of students whose future is affected by virtue of the wrongful act of the Management is to direct the first respondent to send its inspection team immediately within a week from to-day to assess the infrastructural facilities available in the second respondent school and if satisfied that the facilities are sufficient to impart education to 50 students consider granting permission with effect from the date of the letter, dated 9-9-1995; (2) If the infrastructural facilities are not sufficient to impart education to more than 40 students, in that even direct the second respondent to increase the infrastructural facilities so as to enable it to impart education to 50 students within a period of four weeks from the date of their completion of inspection. Six weeks thereafter, the first respondent is directed to send its Inspection Team to ascertain and assess whether the directions issued by it is complied with and whether the second respondent has provided infrastructural facilities to impart education to 50 students. If the second respondent fails to comply with the directions the first respondent is directed to take steps to disaffiliate the second respondent school

in accordance with law. It is true that there is no specific power to disaffiliate the school under the Act, if the directions issued by the University are not complied with. However under the General Clauses Act the power to grant affiliation includes the power to disaffiliate provided the University follows the principles of natural justice. Till such time a decision is taken by the first respondent, the petitioners are allowed to continue in the School. In case, it is found that the infrastructural facilities are not sufficient to cater to the needs of 50 students then the second respondent is directed to admit the petitioners for the academic year commencing from 1996-97 by giving priority in the sanctioned strength i.e. 40 seats so that they will complete their M.B.A. degree by the end of the academic year 1997-98. The second respondent is directed not to collect fees from the petitioners in case they are admitted to the academic year commencing from 1996. In the event of initiating proceedings for disaffiliation, the first respondent is directed to consider dis-affiliation with effect from the academic year 1998 only as by that time the petitioners complete their M.B.A. Course. The first respondent is also directed to consider not permitting the second respondent from admitting students for the academic year commencing from 1997-98. The first respondent is directed to publish the result of its action in all local news papers so that the students and parents will be informed and cannot be misled by the second respondent.

The first respondent is also directed to consider amendment of the Act/statutes by incorporating a provision making the management liable for punishment by way of imprisonment and fine for violating its directions."

The University has appealed against the above.

3. Courts, many a times, have been found embarrassed by situations which revealed that certain well-known rules of practice and procedure are ignored when interim orders are passed - one such rule being that permission is not granted to the students to take up any examination unless they qualify and they are admitted in accordance with the rules and regulations in this behalf to particular courses of studies. A Division Bench of this Court in *The Registrar, Osmania University Vs. Madina Educational Society*, has dwelt into the aspect of any minority institution also admitting students in excess of the sanctioned strength and sending them for examination and recorded that the Court cannot be a party to direct the students to disobey a statute, as that would be destructive of the rule of law. While Courts have recognised the imperatives of a good number of institutions for imparting education on account of ever increasing number of students seeking admission to various institutions for various courses of studies, at the same time emphasised repeatedly that in no case there should ever be any compromise with the standard of education and in no case there should be any occasion that any institution is permitted to violate the statutory regulations with immunity.

4. There is some allegation in the instant proceeding and a mention is made in the impugned order also of the allegation that the respondent - Deccan School of

Management proceeded to admit the writ petitioner - respondents in excess of the sanctioned strength of students after receiving a nod to the said effect from the then Vice-Chancellor of the University, who incidentally had fallen in several controversies. We have no reason, at least we do not have any further information to go beyond the observations of the learned single Judge in this behalf that it is doubtful whether the Vice-Chancellor made any endorsement which appeared to be a green signal to the institution to admit students in excess of the sanctioned strength. Fact, however, remains undisputed that writ petitioner - respondents have been admitted to the institution without being any seat available for them as the sanctioned strength had already been exhausted before they were admitted. Can, in such a situation, the Court recognise any right in the writ petitioner - respondents for entering into the examinations conducted by the University for the students who are admitted to the institutions affiliated/recognised by it within the sanctioned strength and strictly in accordance with the regulations. The answer to our mind is an emphatic "no". By sympathies for the students who are projected as innocent victims most of the time the Court may play in the hands of unscrupulous persons who deliberately violate the regulations and who either admit students for reasons which are not honest or who get admitted by means which are not lawful. The best course in such circumstances for the Court to administer justice is to uphold the regulations and strike every such act which is found violative of the law. In the case of the writ petitioner - respondents, it is conceded, the law has been violated. Most likely the writ petitioner - respondents were innocent, when they found a convenient institution which readily admitted them although they were forbidden from taking any student in excess of the number prescribed in this behalf. The institution i.e., Deccan School of Management, however, can neither plead innocence nor honesty in its doings in the manner it has chosen to admit writ petitioner - respondents in excess of the prescribed number of seats. If the University has chosen to assert and implement the law, it is time that the University must recognise that it can maintain its good name only by showing adherence to the regulations pertaining to the education and by not showing any favour or ill will.

5. At one stage of the hearing of the proceeding we desired to issue specific directions to the competent authorities to institute enquiries as to whether the law prohibiting capitation fee is violated by institutions like the Deccan School of Management when they admit students in excess of the sanctioned strength and we desired accordingly to record that it would be proper if stringent action is taken and no delay is made in taking action when the law prohibiting capitation fee is violated by such institutions. The State of Andhra Pradesh has taken lead in making law and prohibiting capitation fee and Structuring its education system by prescribing fees to be realised from students who are not allotted to the institutions in terms of the regulations made in this behalf but are admitted on the so-called "management seats" but within the sanctioned strength. Have managements of such institutions been adhering to the rules, or they have been

successfully escaping the rigours of the rules of law in this behalf and admitting students for reasons other than merit and going beyond the prescriptions as to the fees to be realised from the students, are matters which are again assuming importance, for the respondent - Deccan School of Management is not alone in the list of such institutions which are found admitting students in violation of the regulations made in this behalf. How true it is, that people in their wisdom develop laws to regulate the society in various spheres including for higher/technical education and people, who desired to live outside of the laws, find out some loopholes to escape the rigours of law creating need once again to redesign the laws and plug the loopholes. Since we are alarmed in the rise in the number of cases coming to this Court showing violation of the regulations by the educational institutions, we are prompted to think on the lines as above and inclined to do so as observed above in an appropriate case. We are informed, however, that a batch of cases is ready for hearing and that may provide appropriate opportunity for the Court to devise some method for thorough investigation into the violations of various statutory provisions by several of the affiliated/recognised institutions, by the University.

6. In the instant case, however, since we are not satisfied that writ petitioner - respondents are themselves responsible for the predicament in which they are placed, we think it appropriate to leave the matter at this stage with the modification in the order issued by the learned single Judge that the admissions allegedly given to the writ petitioner - respondents by the management of the Deccan School of Management are not valid and give no legal right to them to seek entry into the examinations conducted by the appellant -University. They will, however, if they have been taken for a ride by the management of the institution, be entitled to sue for such relief of compensation for damage caused to them for which they may be found entitled to in accordance with law. They can, if they are otherwise eligible, be favoured by the University, if the University so thinks, for a fresh admission and to the above extent the number of seats must be deemed to have been reduced in the Deccan School of Management and the writ petitioner - respondents admitted against such seats in the next academic session.

7. In the result, the appeals are allowed; the impugned judgment is set aside and title writ petitions are dismissed with the observations as above.