

(2012) 08 SC CK 0079

In the Supreme Court Of India

Case No : Civil Appeal No. 5920 of 2012 (Arising out of SLP (C) No. 11883 of 2012)

People's University

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Constitution of India, 1950 — Article 136, 226
High Court of Madhya Pradesh Rules, 2008 — Rule 2(7)
Madhya Pradesh Niji Vishwa Vidyalaya (Sthapana Avam Sanchalan) Adhiniyam, 2007 — Section 26, 26(1), 28, 28(1), 35

Citation : AIR 2012 SC 2883 : (2012) AIRSCW 4752 : (2012) 6 AWC 5975 : (2012) 3 JLJ 292 : (2012) 7 JT 522 : (2012) 7 SCALE 544 : (2012) 9 SCC 714 : (2013) 1 SCT 382 : (2012) 5 Supreme 534

Hon'ble Judges : Sudhansu Jyoti Mukhopadhyaya, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Rajeev Dhawan, Puneet Jain, Anurag Gohil and Ruchika Gohil, for the Appellant; Ravi Shankar Prasad B.S. Banthia, Vikas Upadhyay, S.S. Shamsheery and Shubhashis R. Soren, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—Leave granted.

2. This appeal is directed against order dated 28.3.2012 passed by the learned Single Judge of the Madhya Pradesh High Court whereby he allowed the review petition filed by Respondent No. 1, recalled order dated 6.1.2012 passed in Writ Petition No. 22021/2011 and issued direction for listing of the same before the Division Bench.

3. The Appellant was established u/s 9 of the Madhya Pradesh Niji Vishwavidyalaya (Sthapana Avam Sanchalan) Adhiniyam, 2007 (for short, 'the Act') as amended by the Madhya Pradesh Niji Vishwavidyalaya (Sthapana Avam Sanchalan) Sanshodhan Adhiniyam, 2011. In terms of Section 9(2) of the Act, the Appellant is deemed to have been incorporated with effect from 4.5.2011 i.e.

the date on which the Amendment Act was published in the official gazette.

4. After its establishment and incorporation, the Appellant framed the First Statutes u/s 26 and the First Ordinances u/s 28 of the Act and submitted the same to the Madhya Pradesh Private University Regulatory Commission (for short, 'the Commission'), which was established by the State Government u/s 36(1) of the Act for the purpose of providing a regulatory mechanism at the State level and for working as an interface between the State Government and the central regulatory bodies for the purpose of ensuring appropriate standards of teaching, examination, research, extension programme, protection of interest of students and reasonable service conditions of the employees. The First Ordinances of the Appellant were approved by the Commission and were forwarded to the State Government vide letter dated 23.9.2011 for publication in the official gazette. The First Statutes framed by the Appellant were provisionally approved by the Commission and sent to the State Government vide letter dated 24.10.2011 with a request that the same may be got examined from the Law Department and made available to the Commission with the amendment, if any. In that letter it was also mentioned that if no amendment was proposed by the State Government then the First Statutes be published in the official gazette as per the requirement of Section 35 of the Act. The English translation of that letter, which has been filed with the SLP as Annexure P-6, is reproduced below:

MADHYA PRADESH PRIVATE UNIVERSITY REGULATORY COMMISSION Bhopal
(M.P.)

No. /M.P.P.U.R. Commission, Bhopal

Date: 24/10/2011

The Chief Secretary State of M.P. Higher Education Department Ministry, Bhopal.

Sub: Publication of First Statutes presented by the Peoples University in the Gazette.

In compliance of the provisions of Para 26(2) of M.P. Private University (Establishment & Control) Act, 2007, the First Statutes recommended by the Administrative Body of Peoples University and provisionally recommended by the Commission and its two attested copies are hereby attached and sent.

In this regard it is kindly requested that there is no legal advisor available in the Commission. Therefore, it would be proper to request from the legal department to carry out examination of these statutes and make available to the Commission through the State Government along with the amendment which has been presented, so that these amendments may be presented in the meeting of the commission and after receiving the recommendation of the commission these shall be sent for publication in the Gazette. If no amendment/suggestion is recommended by the legal department, then kindly oblige to get it published in the gazette u/s 35 of the Act considering it recommended by the Commission in final form.

(Recommended by the Chairman)

Encl: Statutes in two copies

Sd/-illegible (Dr. P.K. Khare) Secretary

Endorsement No. 556/M.P.P.U.R. Commission, Bhopal Copy to: Dated 24/10/2011 Registrar Peoples University Bhanpur, Peoples Campus, Bhopal for necessary information.

Sd/-illegible (Dr. P.K. Khare) Secretary

(Note: The word 'recommendation/recommended' used in letters dated 23.9.2011 and 24.10.2011 does not represent the correct translation of the original version in Hindi in which the word 'anumodan' has been used and the English translation of that word is 'approval'. Likewise, the word 'Para' used before figure 26(2) is not correct. The correct word should have been 'Section')

5. After 1 1/2 months, the Registrar of the Appellant sent letter dated 7.12.2011 to the Principal Secretary, Government of Madhya Pradesh, Higher Education Department for publication of the First Statutes and the First Ordinances. After another 17 days, the Appellant filed Writ Petition No. 22021/2011 and prayed for issue of a mandamus to Respondent No. 1 to get the First Statutes and the First Ordinances published in the official gazette. (The date mentioned in the copy of the writ petition annexed with the SLP as Annexure P-8 is 24.12.2011.)

6. The learned Single Judge before whom the writ petition was listed on 29.12.2011 ordered notice to the Respondents for 4.1.2012. In the written statement filed on behalf of Respondent No. 2 on 2.1.2012, reference was made to Sections 7, 8, 9, 26, 28 and 35 of the Act and it was averred that the Appellant had made admissions in complete violation of the undertaking given in terms of Section 7(iv) of the Act despite the fact that it was repeatedly warned vide communications dated 26.3.2011, 30.7.2011, 8.9.2011, 9.11.2011 and 30.11.2011 not to do so. However, the Commission admitted that it had sent letters dated 23.9.2011 and 24.10.2011 to the State Government in the matter of publication of the First Ordinances and the First Statutes.

7. The writ petition was listed for admission hearing on 6.1.2012, i.e., two days after the date specified in the notice. On that day, the counsel appearing for respondent No. 1 sought time to seek instructions. The learned Single Judge did not accept his request and finally disposed of the writ petition by recording the following order:

Heard on admission.

This Court vide order dated 29.12.2011 directed issuance of Hamdast notices to the Respondents, returnable within a week and further directed listing of this petition for final disposal on 04.01.2012. Learned Counsel for the Petitioner has filed memo of acknowledgement indicating that the Hamdast notices were served on the Respondents well within time. i.e. on 30.12.2011. The Respondent No. 2

has already filed a return.

By this petition the Petitioner has made a prayer to direct Respondent No. 1 to get the First Statute and First Ordinance of the Petitioner University, duly approved by the Respondent No. 2 published in the official Gazette within 7 days. It is contended that as per the provisions of Madhya Pradesh Niji Vishwa Vidyalaya (Sthapana Avam. Sanchalan) Adhiniyam, 2007 (herein after referred to as 'Act'), the powers are given to the Respondent No. 2 to make First Statute and First Ordinance, which are required to be approved by the Respondent No. 2 and the same will come into force only after publication in the official Gazette of Madhya Pradesh as per the provisions of Section 35 of the Act. It is contended that though the First Statute and First Ordinance are prepared, duly approved by the Respondent No. 2 but the same are not published in the Gazette on account of which the same are not coming into force.

The Respondent No. 2 by filing the return has contended that the said exercise is completed and the matter has been placed before the Respondent No. 1 for publication of the First Statute and First Ordinance. However, the Respondent No. 1 has not published the same in the official Gazette on account of which the same are not yet in force.

Learned Deputy Advocate General has sought time to seek instructions.

It is seen that the notices were issued in this petition on 29.11.2011 and specifically it was directed that the instructions be obtained and matter be listed on 04.01.2012. No reply or return is filed by the Respondent No. 1 opposing the petition.

There is no prescription of any provision under this Act that the State Government may take any objection with respect to making of any First Statute or First Ordinance. Since the State has no role to play in such a matter, it is directed that the First Statute and First Ordinance so approved by the Respondent No. 2 be published in the official Gazette within 10 days from the date of receipt of certified copy of this order passed today.

8. In the meanwhile, the First Statutes and the First Ordinances framed by the appellant were examined by the State Government and a decision was taken on 16.12.2011 at the level of the Principal Secretary, Medical Department that the Commission be asked to inform the Appellant that admission in Medical, Dental and other courses relating to Health Sciences should be made as per the directions issued by the Medical Education Department of the State Government, Medical Council of India / Dental Council of India (MCI / DCI) and other regulatory bodies and the lists of admitted students be made available to those bodies, the Director, Medical Education, Government of Madhya Pradesh and the Committee constituted under M.P. Niji Vyavasayik Shikshan Sansthan (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007. This decision was approved by the concerned Minister and the Chief Minister in the third week of January, 2012. (These facts are borne out from the files produced by Shri B.S.

Banthia, Learned Counsel representing the State of M.P.) Thereafter, the Secretary of the Commission sent two letters dated 28.1.2012 to the Vice Chancellor of the Appellant and conveyed the instructions received from the State Government. By two other letters dated 6.2.2012, the Commission approved the amendments suggested by the State Government in Para 3(b) of Statute No. 18 that admission in Medical, Dental and other courses relating to Health Sciences shall be made according to the directions issued by the Medical Education Department of the State Government and the regulatory bodies, like, MCI/DCI and the lists of admitted students be forwarded to the concerned authorities.

9. On receipt of the aforesaid communications, the Appellant filed MCC No. 180/2012 in Writ Petition No. 22021/2011 and prayed that a direction be issued to the Respondents to implement order dated 6.1.2012. The learned Single Judge issued notice on 8.2.2012 and fixed the case for 17.2.2012. The Appellant also filed Writ Petition No. 2386/2012 for quashing the directions contained in letters dated 6.2.2012. The High Court entertained the writ petition on 10.2.2012, issued notice to the Respondents and stayed the operation of communications dated 6.2.2012.

10. At that stage, Respondent No. 1 filed a petition for review of order dated 6.1.2012 on the following grounds:

i) That the approval granted by the Commission to the First Statutes and the First Ordinances framed by the Appellant was provisional and the High Court committed an error by issuing a mandamus for publication thereof within 10 days.

ii) That the High Court committed an error by assuming that the State Government does not have any role in the matter of framing of the First Statutes and the First Ordinances ignoring that u/s 36(11) of the Act the State Government has the power to issue instructions to the Commission on policy matters and such instructions are binding on the Commission.

11. The learned Single Judge took cognizance of the provisions contained in Section 36 of the Act and the documents filed with Writ Petition No. 2386/2012 and proceeded to observe:

6. Now it is to be seen whether the Regulatory Commission has any power to ask for any guidance from the State Government or to act in any manner so as to seek approval from the State Government before granting approval of the first Statutes or first Ordinances. Section 36 in Chapter-IV of the Act deals with the constitution of the Regulatory Commission and the opening sentence of the said Section in Sub-section (1) is that the Regulatory Commission shall be established by the State Government for the purpose of providing a regulatory mechanism at the State level and for working as an interface between the State Government and the central regulatory bodies for the purpose of ensuring appropriate standards of teaching, examination, research, extension programme, protection

of interest of the students and reasonable service conditions of the employees. The Regulatory Commission is made to function under the general control of the Visitor, i.e. the Governor of the State. Now what is the meaning of word 'interface' and whether could it be said that the Regulatory Commission is nothing but an agent of the State Government to act in between the State Government and the central regulatory bodies for the aforesaid purpose. The literary meaning of 'interface' as given in Oxford Advanced Learner's Dictionary, is a device or connection or program that joins one device or system to another. The other more appropriate meaning is that the point where subjects, systems etc. meet and affect each other. Thus, the Regulatory Commission set up under the Act has to be treated as a bridge in between the State Government and the other central regulatory bodies for the purpose of ensuring appropriate procedure of teaching etc. as given in Sub-section (1) of Section 36 of the Act. Naturally if such interface is required to get something examined, it has every right to refer the matter to the higher authorities of the State.

7. In the case in hand though nothing has been placed on record in the review petition but in response to the connected writ petition, documents have been filed and it has been pointed out that the Regulatory Commission was of the view that the first Statutes made by the Respondent No. 1 was required to be referred to the Law Department of the Government of Madhya Pradesh for seeking approval whether such first Statutes were in conformity with different laws made in respect of establishing a higher teaching institutions or not. The matter was thereafter returned by the Law Department saying that it was required to give legal opinion only on the legal issues and not in such a case where the statutes were required to be made. Since the medical education is also one of the part of studies and the department of the private university, the matter was thereafter referred to the medical education department of Government of Madhya Pradesh and it was decided that certain changes were required to be made with respect to the admission of the students in the private university. This being so, after the matter travelled up to the Chief Minister of the State, the subsequent orders were passed, of course after the final disposal of the writ petition filed by Respondent No. 1 on 06.01.2012.

The learned Single Judge also referred to Rule 2(7)(e) of the High Court of Madhya Pradesh Rules, 2008 (for short, 'the Rules') and concluded that the writ petition filed by the Appellant for issue of a mandamus to Respondent No. 1 to publish the First Statutes and the First Ordinances, some provisions of which relate to admission of the students, could be heard only by the Division Bench and not by the Single Judge and an error apparent on the face of the record was committed in deciding the matter on 6.1.2012. The learned Single Judge, accordingly, allowed the review petition and directed that the matter be placed before the Chief Justice for issue of necessary instruction for listing of the matter before the Division Bench.

12. Dr. Rajeev Dhawan, learned senior counsel for the Appellant, referred to

Sections 26, 28, 35 and 36 of the Act and argued that once the First Statutes and the First Ordinances were approved by the Commission, the State Government had no role in the matter and it was bound to publish the same in the official gazette in terms of Section 35. Learned senior counsel submitted that the direction given by the learned Single Judge vide order dated 6.1.2012 was legally correct and there was no occasion for him to recall that order at the instance of Respondent No. 1. Dr. Dhawan argued that the learned Single Judge committed a jurisdictional error by entertaining and allowing the review petition by treating the same as a petition for re-hearing the matter. He submitted that the learned Single Judge could not have reviewed order dated 6.1.2012 by assuming that he had committed an error in appreciating the true scope of Section 36 of the Act. He further submitted that instead of complying with the direction contained in order dated 6.1.2012, Respondent No. 1 contemptuously issued directions in the matter of admissions of the students and suggested amendment in the First Statutes and, on this ground alone, the learned Single Judge should have declined to entertain the review petition. Learned senior counsel then argued that even though some provisions of the First Statutes and the First Ordinances relate to admission of the students, the writ petition filed for issue of a mandamus to Respondent No. 1 to publish the same in the official gazette was not required to be placed before the Division Bench of the High Court and the learned Single Judge did not commit any error by entertaining and allowing the same. Dr. Dhawan submitted that even if the writ petition was required to be laid before the Division Bench of the High Court, hearing thereof by the learned Single Judge cannot be faulted because counsel appearing for the Respondents did not point out that as per Rule 2(7)(e) of the Rules, the writ petition can be heard only by the Division Bench.

13. Shri Ravi Shankar Prasad, learned senior counsel and Shri B.S. Banthia, Learned Counsel appearing for the State of Madhya Pradesh supported the impugned order and argued that the learned Single Judge did not commit any error by reviewing order dated 6.1.2012 because the same had been passed without giving reasonable opportunity to Respondent No. 1 to show why the First Statutes and the First Ordinances framed by the Appellant were not published. Shri Prasad referred to letter dated 24.10.2011 sent by the Secretary of the Commission to the Chief Secretary of the State to show that the Commission had provisionally approved the First Statutes and argued that the learned Single Judge committed serious error by directing publication thereof by assuming that the Commission had granted unconditional approval and this, by itself, constituted a valid ground for review of order dated 6.1.2012. Learned senior counsel further argued that u/s 36(11) of the Act, the State Government has the power to issue directions on policy matters, which are binding on the Commission and the former did not commit any illegality by requiring the latter to inform the Appellant that the admissions in medical courses are required to be made strictly in consonance with guidelines issued by the Medical Education Department of the State, MCI/DCI and other regulatory bodies and to submit the

lists of admitted students to the concerned authorities and bodies. Shri Ravi Shankar Prasad emphasized that such directions were sine qua non for ensuring that standard of medical education is not compromised in any manner. Shri Banthia referred to the averments contained in the writ petition to show that even though the prayer made by the Appellant was for issue of a mandamus to Respondent No. 1 to publish the First Statutes and the First Ordinances, substance of the relief claimed by the Appellant related to the policy of admission and admission of the students and argued that in view of Rule 2(7)(e) of the Rules, the Registry of the High Court should not have listed the matter before the Single Bench and the learned Single Judge should not have decided the writ petition.

14. Learned Counsel for the Commission also supported the impugned order and argued that the learned Single Judge did not commit any error by recalling order dated 6.1.2012 because the First Statutes framed by the Appellant had not been finally approved by the Commission and, in the absence of such an approval, a mandamus could not have been issued for publication thereof in the official gazette. Learned Counsel submitted that the Appellant was, and is, not entitled to any relief under Article 226 of the Constitution of India because it had made admissions in brazen violation of the undertaking given as per the requirement of Section 7(iv)(m) of the Act.

15. We have considered the respective arguments/submissions. In our view, even though the learned Single Judge may not have been justified in recalling order dated 6.1.2012 merely because he, on a detailed analysis of Section 36 of the Act felt that the Commission acts as a bridge in between the State Government and the Central Regulatory bodies and the amendments suggested by the State Government in the First Statutes were meant to achieve the objects set out in Section 36(1), the impugned order does not call for interference under Article 136 of the Constitution because the procedure adopted by the learned Single Judge in deciding the writ petition was contrary to the basics of natural justice. The request made by the counsel appearing for Respondent No. 1 for grant of time to seek instructions ought not to have been rejected at the threshold. It is quite possible that the counsel representing the Appellant may have pressed for early disposal of the writ petition but the prayer made therein was not such which could justify denial of opportunity to Respondent No. 1 to file an affidavit to controvert the averments contained in the writ petition and to show cause why a mandamus should not be issued for publication of the First Statutes and the First Ordinances. We have no doubt that if Respondent No. 1 had been given a few days' time, an affidavit of the competent officer could have been filed to show that on receipt of the letters sent by the Secretary of the Commission, the matter was examined by the Medical and Health Department as well as the Law Department and a decision was taken to suggest amendment in the First Ordinances and the First Statutes so that admissions in Medical, Dental and other courses relating to health sciences are made in accordance with the guidelines framed by the Medical Education Department of the State Government

and the regulatory bodies like the MCI and the DCI. Respondent No. 1 could have also pleaded that the Commission's approval of the First Statutes was not final and the matter was referred to the State Government to suggest amendment, if any, which could be considered by the Commission. It seems to us that the learned Single Judge did not get time to go through the contents of letter dated 24.10.2011 sent by the Secretary of the Commission to the Chief Secretary of the State, else he would not have disposed of the writ petition and issued a mandamus for publication of the First Statutes of the Appellant by erroneously assuming that the Commission had finally approved the First Statutes.

16. We also agree with the Learned Counsel for Respondent No. 1 that the Appellant's writ petition should have been heard by the Division Bench of the High Court and the learned Single Judge committed a jurisdictional error by entertaining and allowing the same. In the writ petition filed by it, the Appellant repeatedly emphasized the need for early publication of the First Statutes and the First Ordinances and made a grievance that delay in that regard was affecting the admission process in various courses. This is evident from the contents of paragraph Nos. 4, 5.2, 5.4 to 5.9, 5.11, 6.3, 6.5, 6.8, 6.10, 6.14 and 6.15 of Writ Petition No. 22021/2011. The First Statutes and the First Ordinances, of which publication was sought, also deal with the policy of admission including the Regulation of reservation of seats for different categories and admission of students and their enrolment. This was as per the requirement of Section 26(1)(i) and Section 28(1)(a) of the Act. Therefore, in terms of Rule 2(7)(e) of the Rules the writ petition should have been listed before the Division Bench of the High Court. The error committed by the Registry of the High Court in listing the matter before the learned Single Judge was compounded by him by entertaining and allowing the same. Therefore, there was every justification for recalling order dated 6.1.2012 so that the matter could be heard by the Division Bench.

17. In the result, the appeal is dismissed. Now, Writ Petition No. 22021/2011 be listed before the Division Bench of the High Court and be heard along with Writ Petition No. 2386/2012. We request the concerned Bench of the High Court to make an endeavour to dispose of both the writ petitions as early as possible but latest within a period of three months from the date of receipt/production of copy of this order. It is made clear that the parties shall be free to raise all legally permissible contentions and the High Court shall decide the writ petitions without being influenced by the observations made by the learned Single Judge in the impugned order.