
(2010) 09 MP CK 0005

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11038 of 2008

Pradeep Kujur and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 46

Citation : (2010) 09 MP CK 0005

Hon'ble Judges : Vimla Jain, J;K.K. Lahoti, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. By this order, aforesaid batch of petitions is decided involving similar questions of law based on similar set of facts. So far as petition nos. W.P.Nos.12868/2009,12869/2009,12870/2009,12934/09 and 13169/2009 are concerned, in these petitions, the petitioners have challenged clause 5.3 and clause 24.1.4 of Ordinance for Examination (General) as amended on 6.9.2004 and 29.11.2007 respectively, on the ground that it is ultra vires to Articles 14, and 15 of the Constitution of India.

2. Before proceeding further in the matter, it would be appropriate if the facts of the case are stated. In W.P.No. 11038/2008, the petitioners have sought following reliefs:

(i) Issuance a writ in the nature of Certiorari, Hon''ble Court may kindly be pleased to hold that the retrospective implementation of the amended clause 5.3 of the Ordinance No.4 of the B.E. Course by the respondent University is illegal, unjust and against the principles of natural justice.

(ii) Issuance a writ in the nature of mandamus, Hon''ble Court may kindly be pleased to direct that there can be no retrospective implementation of the amended rules and further no upper limit being prescribed in the year 2000 hence at a later stage, the upper limit to complete BE course cannot be

implemented.

(iii) The NFT (Not Fit for Technical Education) be removed from the mark sheets of the petitioners.

(iv) Any other order/s that this Hon"ble Court deems fit and proper in the facts and circumstances of the case may also be passed.

In W.P.No.13169/2009 the petitioners have sought following reliefs:

(i) This Hon"ble Court be pleased to declare Clause 5.3 of Ordinance No.4 of 2000 and Clause 24.1.4 of Ordinance for Examination (General) 2000 as amended on 6.9.2004 being ultra vires Articles 14,15 and 16 of the Constitution of India.

(ii) This Hon"ble Court be further pleased to direct the respondent no.4 for granting the petitioners further opportunity of taking examination commencing 20-12-2009 and permitting them to pursue their studies in final year 7th and 8th semester.

(iii) This Hon"ble Court be further pleased to pass any such other orders as this Hon"ble Court may deem fit under the circumstances of the case.

3. For the convenience, facts are taken from W.P.No. 11038/2008 (Pradeep Kujur and others vs. State of M.P. And others).These petitioners are students, who belong to reserved category i.e. mostly belonging to ST, SC and OBC communities.

Most of the students were admitted in the B.E. Course in the year 2000 and some of them in the year 2001. They have already completed 8 1/2 years period but could not complete B.E. Course within normal period which is of 4 years, in spite of getting a period of 8 years to complete the course and one more special opportunity allowed to them to complete course by way of mercy attempt.

The clauses of ordinance have been assailed by the petitioners on the ground that the aforesaid Ordinance deals students unequally and the students belong to weaker sections of reserved category of the society and are being treated at par with the students of general category. Social disparities are with the students of reserved category have not been taken care of. On the aforesaid grounds, it is stated by the petitioners that the aforesaid provisions be declared ultra vires.

4. Before proceeding further, it would be appropriate if clause 5 of Ordinance No.4 is referred which reads as under:

5.0 DURATION OF COURSE

5.1 There shall be at least fourteen weeks of teaching in every semester.

5.2 A candidate may provisionally continue his/her studies in higher semester class after the examinations of the semester he/she appeared is over. However, his/her eligibility shall be evaluated only after the results of semesters are

declared at which he/she had appeared.

5.3 The maximum duration of the course shall be seven years.

Provided that if a candidate is unable to pass/clear the first year of BE course within two and half years from the date of his first admission he shall not be allowed to continue in BE course and the maximum duration of the course will be seven years.

This proviso was inserted by way of amendment on 6.9.2004.

The Ordinance No.12 clause 24.1.4 after amendment on 29.11.2007 reads as under:

Clause 24.1.4. Maximum two mercy attempts in full course to a candidate who failed to complete the PG/UG/Diploma courses or clear Ist year of UG course in maximum duration as specified in concerned Ordinance may be given by the Vice Chancellor.

5. The respondents have filed reply in which they have stated that the provision of time period for completion of duration of the course within 7 years was earlier in the Ordinance, which was applicable in 2000. A copy of said Ordinance is on record as Annexure AR/1 which provides in respect of duration of course as referred hereinabove.

6. The ordinance specifically provided that at the time of admission of the students even in the year 2000, maximum duration of course was of 7 years. The B.E. Course is of four years and provision was to complete the course within 7 years.

7. Though it is stated by the petitioners that the subsequent amendment in the Ordinance is ultra vires to the Articles 14 and 15 of the Constitution of India, but no material is produced before us to show how the students belonging to the reserved category i.e. SC,ST and OBC are entitled to be treated differently in comparison to other students. Though there may be reservation to these students in admission of the course, but in respect of period of completion of course they cannot be treated differently until and unless a specific provision is made or some executive instructions having force of law may be issued in this regard. The petitioners are claiming that they may be allowed some more time to complete the course on and above to the other students but merely the petitioners belong to the reserved category, they are not entitled for some special treatment in absence of some statutory or executive provisions. In view of the aforesaid, provision cannot be declared as ultra vires.

8. Shri Aditya Sanghi, appearing for the petitioners, submitted that the Apex Court in the case of Avinash Singh Bagri and Others Vs. Registrar IIT Delhi and Another, found some favour in the matter of students of reserved category. The Apex Court held thus:-

The facts of the aforesaid case were that the petitioners belonging to reserved

categories (SC/ST/OBC) were students of IIT Delhi and pursuing the B Tech course. They got admission in IIT Delhi through All India Joint Entrance Test in the year 2006-07 and 2007-2008. They were expelled from the B.Tech. course as they could not make the required average credits in their second year and their names struck off from the roll of the Institution. The appellants also filed the petition before the Apex Court. The Apex Court considering the factual position in the case held that it is true that the petitioners were not able to secure the required credits as against the stipulated minimum requirement for continuation of their studies. All the petitioners had joined IIT Delhi after clearing the All India Joint Entrance Examination conducted jointly for all the IITs. It shows that they were successful in securing the minimum cut-off marks earmarked for the SC/ST categories. Therefore, it cannot be claimed that all these students were not fit to be admitted in IIT. In IIT Delhi, the required average credits for general category students in the first year were 20 credits and for reserved category students were 16 for their promotion in the second year.

The Apex Court considering this position held that it is not in dispute that SCs and STs are a separate class by themselves and the creamy layer principle is not applicable to them. In light of Article 46 these socially and economically backward categories are to be taken care of at every stage even in the specialized institutions like IITs. They must make all endeavour by providing additional coaching and bring them up on a par with general category students.

The Apex Court further directed that IIT Delhi shall consider their case afresh in the light of the various aspects mentioned in the judgment and in view of the peculiar facts, reappraise their performance taking note of special features available/applicable to these reserved categories and take a decision one way. It is clarified that the first respondent IIT Delhi is free to pass appropriate orders by considering all the aspects mentioned above including the policy of the Government of India in providing reservation to bring them in the mainstream along with others.

9. The Apex Court in the aforesaid judgment has not directed the University to allow more opportunities to such students to appear in the course. However, it was left open to the university to consider the case. In view of the aforesaid settled position of law, it is clear that ultimately it has to be decided by the University, which has expertise in the matter, to extend any more opportunity to such type of students or not.

10. So far as the petitioners are concerned, they belong to SC,ST and OBC categories. They were given admission in B.E course. They must have cleared the entrance test on the basis of their own merits, but in absence of any specific provision in the statute or ordinance, the aforesaid concession in respect of period of course cannot be allowed to the petitioners. When the statute or ordinance does not permit any other provision, merely on the ground that the petitioners belong to SC, ST and OBC categories, the aforesaid provision cannot be declared ultra vires.

11. In view of the aforesaid, first contention of the petitioners of W.P.Nos.12868/2009,12869/2009,12870/2009,12934/09 and 13169/2009 for declaring the aforesaid provision as ultra vires can not be accepted. In this regard, their contention is repelled and this part of the petition is dismissed.

12. Now, the question arises whether the petitioners are entitled for any further mercy attempt to clear the aforesaid course.

13. The background of the case is that earlier as per Ordinance, the period of 7 years was provided to the students to complete the course. Thereafter a provision was made to allow two more attempts by way of mercy with effect from 29.11.2007 by amendment in Clause 24.1.4 of the Ordinance No.12 by which following provisions was made.

Clause 24.1.4 Maximum two mercy attempts in full course to a candidate who failed to complete the PG/UG/Diploma courses or clear Ist year of UG course in maximum duration as specified in concerned Ordinance may be given by the Vice Chancellor."

14. After this amendment in Ordinance 12 clause 24.1.4 usual period is of 7 years but if the student is not in a position to complete the course within this period then he is entitled to for two mercy attempts by the Vice-Chancellor. Thereafter another amendment was made in the Ordinance no.4 in clause 5.3 by which the maximum duration of the Course was extended for a period of 8 years. For ready reference Clause 5.3, by which the maximum duration of the course has been extended for eight years is referred which reads thus:

5.3 The maximum duration of the course shall be eight years.

15. This amended ordinance is filed in W.P.No.13169/2009 as Annexure R/I by respondent University. As the period of course was extended 8 years further amendment in respect of mercy attempts by amending clause 24.1.4 by Ordinance no.12 was made which reads as under:

Only one mercy attempt which a candidate can be avail at any time during full course. If he/she failed to complete the PG/UG/ Diploma course or clear Ist year of UG course in maximum duration as specified in concerned Ordinance may be given by the Vice Chancellor.

16. When W.P. No.11038/2008 was listed for hearing on 12.2.2009, this Court specifically directed respondents to clarify the reason why the proviso to clause 5.3 of the Ordinance No.4 impugned in that writ petition was incorporated and to produce the relevant records of the University in this regard. In compliance of the order, the University has produced the minutes of the meeting in which the aforesaid amendment was considered, showing the justification for incorporation of such amendment.

17. The relevant portion of the minutes dated 27th May, 2004, in which resolution no.02 is relevant, is referred which reads as under:

5.3 The maximum duration of the Course shall be seven years.

The proposed amendment was made " Provided that if a candidate is unable to pass/clear the first year of BE course within two and half years, from the date of his first admissions he shall not be allowed to continue in BE course and the maximum duration of the course will be seven years.

The justification shows in the said minutes is as under:

To stop the student after 7 years study, it is better to stop at Ist year study after 2.5 years.

18. The justification in the Ordinance appears to be just and proper which provided that if a candidate is unable to pass/clear the first year of BE course within two and half years, from the date of his first admission he shall not be allowed to continue in BE course after two and half years. Earlier the provision was that the student even not completing first year in 2.5 years from the date of his first admission he was allowed to continue in BE course and the maximum duration of the Course was seven years and only after 7 years, he was liable to leave the course. In view of the aforesaid, the aforesaid justification appears to be just and proper.

19. In all cases, the students could not complete their course in normal tenure of 8 years then in spite of getting mercy opportunity.

20. A similar contention was raised before this Court on 11.11.2009 and this Court considering this contention of the petitioners passed an order which reads as under:

Heard Mr. Aditya Sanghi, learned counsel for the petitioners, Mr. Deepak Awasthy, learned Government Advocate for the State and Mr. Paritosh Gupta, learned counsel for the respondent no.3, Rajiv Gandhi Proudhyogiki Vishwavidyalaya.

In course of hearing there was lot of debate with regard to the justifiability of the petitioners undertaking the examination and publication of results. Mr. Sanghi, learned counsel appearing for the petitioners, on one hand, submitted that the present case has its own peculiarity and special features inasmuch as all the four petitioners are belonging to the tribal belt of the State of Madhya Pradesh, which is quite backward and the students are not in a position to clear the examinations regard being had to the lack of facilities and certain other historical factors. It is contended by him that they come from lowest strata of the society and spend valuable years in prosecuting their studies and if they are not permitted to complete the course and allowed to obtain a degree, there will be an economic catastrophe as well as a psychic disorder.

Per contra, Mr. Paritosh Gupta, learned counsel appearing for the third respondent-University submitted that in a country governed by rule of law, the rule of law has to prevail and when there is prescription that a student is

required to complete the course within a specified period, there cannot be any deviancy from the same. It is canvassed by him that the University had no role and the college has permitted the students to appear in the examination without allotment of roll numbers and admit cards by the University.

Be it noted, the college in which the petitioners had prosecuted their studies is a Government College. Question that emerges for consideration is whether such a problem which has become situational having special features should be solved or should the prescription in the brochure guillotine the careers of the students? We are absolutely conscious, the compassion cannot always take the place of law but indubitably, the law cannot be totally bereft of compassion. In the case at hand, the Principal of the Government College knowing fully well about the procedure permitted the students to appear and the University has stuck to its procedure treating it as the Bible.

In course of hearing a suggestion was given to the learned counsel for the University and Mr. R.D. Jain, learned Advocate General whether a solution can be arrived at We may repeat that we have requested the learned Advocate General to intervene as the case has its own special features. Had the students not been permitted to appear at the initial stage by the Principal of the Government College possibly the matter would have been different. True it is, the students had given their undertaking but the Principal could not have been totally oblivious of the law.

Regard being had to the facts in entirety and the special features of the case, we would request the Executive Council of the third respondent to put a proposal how to solve the situation before the Chancellor of the University. Wherever help, support and assistance of the State Government would be necessitous needless to emphasize. Mr. R.D. Jain, learned Advocate General for the State shall impress upon the competent authority of the Department of Education to assist the cause, as the cause, in the obtaining factual matrix, cannot be allowed to metamorphose the controversy be a non -cause. Be it clarified, we have left it to the Executive Council as well as the Chancellor of the University in the aforesaid manner as a solution can be arrived at in a rational and reasonable manner.

At this juncture, we may remind ourselves that "hard cases make bad law" but we are not laying down the law at present as we are of the view that there should be some kind of leverage or sanction or power to deal with such kind of situations either with the Chancellor of the Executive Council. We may hasten to clarify, we do not immediately treat it as a lacunae but we have expressed our concerned, albeit, a judicial one, in this regard. The Executive Council shall conduct an emergent meeting for this purpose because there is an emergency in the present situation. We are inclined to say so as, waiting is one of the sorriest experiences for the human beings more so, for the young.

Let a free copy of the order be handed over to Mr. Deepak Awasthy, learned Government Advocate to apprise Mr. R.D. Jain, learned Advocate General to

enter into correspondence with the competent authorities. A copy be also handed over to Mr. Paritosh Gupta, learned counsel for the University to do the needful. This Court hopes and trusts, the University and the State Government shall act in harmony and not get stuck to the procedural facet in entirety or stay embedded to any kind of egocentric intellect.

Let the matter be listed for further hearing on 24th of November, 2009

21. It is stated by Shri Paritosh Gupta that in compliance of the aforesaid order, the matter was placed before the Executive Council of the University in the meeting dated 23rd November, 2009 and in compliance of the order passed by this Court, the University decided that the students who could not complete the course in spite of getting usual period of 8 years and also on getting one mercy opportunity, so the result of these students cannot be declared. However, the matter was referred to the Chancellor for a final decision and the Vice Chancellor vide letter dated 18th December, 2009 intimated to the college that he was fully in agreement with the resolution of the Executive committee and affirmed the aforesaid resolution.

22. In the Ordinance, there is no provision for providing one more mercy opportunity to the petitioner. The petitioners have got 8 years to complete B.E course which is of 4 years and ought to have been cleared it in a normal tenure of 4 years. In spite of getting sufficient period to complete the course, the petitioners could not complete the course. Thereafter they were allowed one mercy opportunity to appear in the course, but even they could not complete the course. In these circumstances, if the respondents have not declared the result of the petitioners, in which the petitioners appeared without any permission of the University, no fault is found.

23. It is pertinent to mention that in the last examination, the University had not permitted petitioners to appear in the examination, but anyhow they appeared in the examination on the permission of the Principal, who permitted the petitioners to appear in the examination on an undertaking that the petitioners shall abide with the decision of the University. In absence of any permission by the University if the petitioners appeared in the examination on the basis of an undertaking to the Principal and if the University has declined to declare the result, no fault is found.

24. The Apex Court recently in All India Council for Technical Education Vs. Surinder Kumar Dhawan and Others, held thus:

The Courts are neither equipped nor have academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the Courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realizing the repercussions on the field of

technical education in general, it will lead to chaos in education and deterioration in standards of question. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off.

25. In view of the settled position of the matter, we do not find any merit in all the petitions. All the petitions are being dismissed with no order as to costs.