
(2015) 09 BOM CK 0281
In the Bombay High Court
Case No : Writ Petition No. 1457 of 2015

Pranjali

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-09-2015

Acts Referred:

Constitution of India, 1950 — Article 141, 226

Citation : (2015) 09 BOM CK 0281

Hon'ble Judges : B.R. Gavai and P.B. Varale, JJ.

Bench : Division Bench

Advocate : T.U. Tathod, Advocate, for the Appellant; Sunil Manohar Advocate Counsel and N.A. Gaikwad, Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J.—This writ petition challenges the order passed by the respondent No. 1 Pravesh Niyantran Samiti dated 25.2.2015 thereby refusing to grant an approval to the admission of the petitioner.

2. The petition deserves to be allowed on two grounds. Firstly, the Division Bench of this Court, vide order dated 15.12.2014, had itself directed the Director of Technical Education, who is undisputedly a Member of the respondent No. 1 Committee, to grant an approval to the admission of the petitioner in the peculiar facts and circumstances.

3. Since the orders passed by this Court while exercising the jurisdiction under Article 226 of the Constitution of India, are binding on all the Tribunals subordinate to it, the respondent No. 1 could not have passed the order contrary to the directions issued by the Division Bench of this Court. Time and again, we have observed that if any error is committed by this Court, the only jurisdiction to correct the said error vests with the Hon'ble Supreme Court of India and not with any other authority. In view of this, on this ground itself also the petition deserves to be allowed.

4. Shri Sunil Manohar, the learned senior counsel fairly conceded that the petition deserves to be allowed also on the ground of jurisdiction. The learned senior counsel submits that the Committee has now after perusing the Judgment of the Hon''ble Apex Court in the case of Islamic Academy of Education and Another Vs. State of Karnataka and Others, . has come to the conclusion that the Committee has no jurisdiction to consider the admissions made in the Government Colleges and its jurisdiction is confined only to the admissions made in the private colleges. In that view of the matter, since the Committee itself is of the view that it had no jurisdiction to pass the order impugned herein, on the said ground also the petition deserves to be allowed.

5. By an interim order, we have already protected the admission of the petition.

6. The Rule is, therefore, made absolute in terms of prayer clauses (i) and (ii) as aforesaid.

7. Having allowed the petition, we are now required to deal with the unfortunate part in the present matter. Noticing that the order passed by the respondent No. 1, which is a Tribunal, was in conflict with the order passed by the Division Bench of this Court (Coram: Smt. Vasanti A. Naik and C.V. Bhadang, JJ) in Writ Petition No. 6876 of 2014 dated 15.12.2014, we had issued show cause notice to the respondent No. 1 vide order dated 29th June, 2015 calling upon the Hon''ble Chairman and the Members of the said Committee to show cause as to why action for disobeying the order of this court be not initiated against the Chairman and Members of the said Committee. The notice was made returnable on 27th July, 2015.

8. When the matter was listed before the Court on 3.8.2015, it was observed in the order that the Hon''ble Chairman and the Members of the Committee though had specifically referred to the order passed by this Court in Writ Petition No. 6876 of 2014, had passed an order contrary to the directions issued by this Court. We had noticed from the minutes of the meeting that the Committee specifically referred to the order passed by this Court in the Writ Petition No. 6876 of 2014. We had further also noticed that the Judgment of the Apex Court in Parshavanath Charitable Trust and Others Vs. All India Council for Tech. Edu and Others, . instead of being hindrance to the admission of the petitioner, would rather support the case of the petitioner. On the said date, we noticed that the Committee had chosen to defend the order passed by it on the ground that only the Director of Technical Education was the party and the Hon''ble Chairman and Members of the said Committee were not the parties to the petition in which the order was passed by the Division Bench of this Court on 15.12.2014. We had further observed in the said order that when the order was passed by the Division Bench of this Court, the only option with the Hon''ble Chairman and the Members of the said Committee was either to have complied with the directions issued by this Court or to have directed the Director of the Technical Education to challenge the same before the Hon''ble Supreme Court.

9. Therefore, since we were of the prima facie view that the Hon''ble Chairman and the Members of the said Committee had committed contempt of this Court by disobeying the order dated 15.12.2014 in Writ Petition No. 6876 of 2014, we had called upon; i) Shri D.K. Deshmukh, ii) Shri Raju B. Mankar and iii) Shri K.M. Kulkarni to show cause as to why they should not be held guilty for committing contempt of court by disobeying the order passed by this Court in the Writ Petition No. 6876 of 2014 dated 15th December, 2014. Notice was made returnable on 24.8.2015. The matter could not be heard on 24.8.2015 since one of the learned Judges, who was the Member of the Division Bench, recused himself from hearing of the said matter.

10. Subsequently, when the matter was listed before this Court on 31.8.2015, we had noticed that an affidavit was filed only by Shri Raju Mankar, the Member of the Committee. We had pointed out that when the contempt notice was issued to the individual persons, an affidavit is required to be filed by all the individual persons to whom the notice is issued. In the Contempt Petition, an affidavit on behalf of others would not be permissible. In this situation, when we made a query to Mr. Sunil Manohar, the learned senior counsel, as to whether all the individual members would like to file an affidavit or as to whether if they do not propose to file affidavits, the court should proceed further in accordance with law, Mr. Manohar fairly, stated that the other members of the Committee would also file their affidavits.

11. Accordingly, affidavits dated 7.9.2015 are filed by Shri D.K. Deshmukh and Mr. K.M. Kulkarni thereby tendering unconditional apology. It is stated in the affidavits that the order passed by the Committee was passed on the basis of the Judgment of the Apex Court in the case of Parshvanath Charitable Trust and others vs. All India Council for Technical Education and others (supra). In the affidavit it is also stated that in view of the judgment of the Apex Court in the Islamic Academy of Education and another (supra), the Committee had no jurisdiction to consider the matters regarding the admissions in the Government Colleges and its jurisdiction was only with regard to the admissions in the Private Colleges.

12. The Hon''ble Apex Court in the case of Priya Gupta and Another Vs. Addl. Secy. Ministry of Health and Family Welfare and Others, . has observed thus:-

"12. The government departments are no exception to the consequences of willful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No court or tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot

ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.(Ref. East India Commercial Co. Ltd.. v. Collector of Customs and official Liquidator v. Dayanand. SCC p. 57, paras 90-91)."

13. In the earlier affidavit, the defence was sought to be taken that since the Committee was not a party, it could not be held guilty for disobedience of the order passed by this Court. Such a stand is specifically rejected by the Hon''ble Apex Court in the case of Priya Gupta (cited supra). However, we do not propose to go into that matter. As already observed on earlier occasion, that had the committee in pursuance to our order dated 3.8.2015 at least expressed regret for not following the order passed by this Court, the matter would have ended then and there only. On the said date since we gathered an impression that the Hon''ble Chairman and the Members of the Committee were trying to defend the action of disobedience of the orders passed by this Court, we were required to issue notice to Shri D.K. Deshmukh, Shri Raju Mankar and Shri K.M. Kulkarni.

14. As has been observed by us, in our earlier order, if we had failed to exercise our jurisdiction in the present matter, we would have sent a wrong message to the Society. The message would go to the society that if a common litigant or a small or higher officer of the State Government or the Central Government disobeys the order of this Court, the Court deals with them sternly and if the disobedience is committed by a person, who happened to be a retired Judge of this Court, the matters are ignored.

15. We have already observed that we are at pains to initiate the said action against a retired Judge of this Court. However, the law spares no one. Howsoever, high or low, everyone is required to be treated equally. Majesty of law is supreme. However, at the same time, majesty of law lies not in punishing some one in contempt but for forgiving him. In that view of the matter, we accept the apology tendered by Shri D.K. Deshmukh, Shri Raju B. Mankar and Shri K.M. Kulkarni.

Notice issued to the aforesaid three individuals stands discharged.