

(1997) 08 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : LPA (W) No. 197 Of 1997, LPA(W) No. 187 Of 1997

Sajal Gupta and others etc

APPELLANT

Vs

State of J.and K.and others

RESPONDENT

Date of Decision : 05-08-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1998 J&K 1 : (1997) KashLJ 375 : (1998) SCT 1

Hon'ble Judges : R.C.GANDHI, J and G.D.SHARMA, J

Bench : Division Bench

Advocate : D. C. Raina, M. K. Bhardwaj, Z. A. Shah, D. S. Thakur and S. S. Lehar, N. A. Kakroo, N. A. Goni, Neeru Goswami, D. S. Chouhan and S. K. Shukla, Advocates appearing for the Parties

Judgement

1. These two Latter Patent Appeals are directed against the judgement and order dated 14.3.1997 passed by the learned Single Judge, whereby

Writ Petition Nos. 64, 27, 72 and 59 of 1997 have been dismissed.

2. A few facts necessary for disposal of the appeals are that the appellants in LPA No. 187/97 are the private institutes approved by the All India

Council for Technical Education and affiliated with the J&K State Board of Technical courses for a duration of 2 years and 3 years and have to

their roll about 3000 students. The managements of these institutions till the year 1993 were making admissions to the course available in the

institutes for imparting technical education. In the year 1993 on 421993, the Hon'ble Supreme Court in case titled ""J.P. Uni Krishanan and ors V/s

State of A. P. and ors (AIR 1993 SC 2178) laid down a Scheme for imparting education by the professional colleges in Medical and Engineering

Courses and the State Governments were required to regulate the admissions of

the private institutes through Competent Authority or prescribed authority. The judgement of the Supreme Court was not complied with and implemented till 1995 by the authorities of the State for selecting the candidates for undergoing training in professional courses in these institutes according to the scheme laid down and directed by the Supreme Court.

3. Kashmir Institutes of Technology and Engineering, Raj Bagh Srinagar, appellantwrit petitioner in W.P. No: 27/1997, for the first time in the year

1995, addressed a letter to the Director, Technical Education, J&K Government inviting attention that no policy regarding the admission has been

made by the Govt., therefore, his institution is going to make admissions at his own for the course available in the Institutes as other Institutes have

already made the admissions. The secretary, State Board of Technical Education, on 3895 issued a Circular for information as directive to the

institutions which was published in the Daily Kashmir Times on 481995, which reads as:

All the Principals of the Private Polytechnics/Institutes located in J&K

State are hereby directed not to make any admission in their respective Polytechnics/Institutes for the current session 199596 till further instructions

from the Administrative Department.

4. Under Secretary to Government, Technical Education also wrote a letter on 781995 to the National Institutes of Science and Tech

'nology, Miran Sahib, Jammu, directing him that in pursuance to the Judgement of the Hon'ble Supreme Court in J. P. Uni Krishanan & Ors V/s

State of A.P. and others and in pursuance of A.I.C.I.E. Notification G.S.R.476(E) dated 2051994 all admission shall be made by the competent

authority through a common Entrance Test on 50:50 basis for 'Paid seats' and Tree seats'. Any deviation of the order would invited serious

consequences in the shape of adverse orders from the Hon'ble Supreme Court. The letter further communicated that no admission should be made

by the institutes in contravention of the Supreme Court orders and if any adverstisement has already been made for admission be withdrawn

forthwith.

5. This letter specifically disclosed the mind of the Government for banning the admissions to be made by the management of the institutions.

6. On 15895 another Circular came to be issued by the Director, Technical

Education, which appeared in the news column of a Local Newspaper as a notice to the general public, which reads as :

It is for the General information of public that no student will take admission either for 3 years diploma or 2 years Draftsman Course(Engineering and nonEngineering discipline) with any Private Polytechnic/Institution located in Jammu and Kashmir State for the session 199596. Any body doing so will be doing at his own risk and responsibility.

7. Confronted with this situation appellants made representation to the Commissioner Secretary to Govt., Technical Education, the next of which is reproduced as under:

In view of the above mentioned submissions it is very earnestly requested to give your august consideration and revise decision regarding admissions for 199596 as has been done in 199495 session inspite of Supreme Court Decision being in force from 2061994. It is also highly prayed that a revised admission policy to be formulated by the admission policy to be formulated by the Government on the basis of Supreme Court verdict may kindly be communicated well in advance for the next session i.e. before May, 1996 as nothing of the sort has filtered down about the procedural changes to be effected in the mode of admission to technical Institutions.

8. The State Board of Technical Education on 290895 issued a notification permitting 6 private institutes out of the present appellants to make admission for the Session 199596 which came to be published in Daily Kashmir Times on 300895, which reads as follows:

It is for the information of general public that the following private Polytechnics approved by All India Council for Technical Education are allowed to make the admission for the course approved by AICTE/SBOTE strictly as per the norms of AICTE/SBOTE for the session 199596.

9. Till session 199596, the authorities of the state, did not implement the judgment consequently admission could not be made in accordance with the scheme laid down by the Supreme Court. Though the State Government was aware, which is evident from the facts stated herebefore that their action of permitting the Institutes for making selection is contemptuous, derogatory and in breach of the directions of the Hon'ble Supreme Court.

Still the Govt. again issued Notification on 12/9/1995 which was published in local Newspaper which reads as:

In pursuance of Administrative Department No. Edu/Tech/40132 dated 10/9/1996 the following AICTE and State Government recognised Private

Polytechnics of J&K state are allowed to make the admissions for the sessions 1996/97 only strictly on merit and prescribed norms of AICTE in the approved courses.

It is one time relaxation. This concession will not however form a procedure in future. In future the admissions will be done by the Competent

Authority Entrance Examination.

10. One of the private institutions issued an advertisement which appeared in the column of a newspaper inviting candidates to seek admission for

diploma course in the institute. One of the Judges of this Court taking notice of the said advertisement, submotto entertained the writ petition and

passed certain directions therein on 31/12/1996. One of the directions was issued to the respondents State that since the law laid down by the

Supreme Court in *J.P. Unnikrishnan and ors V/ sState of A.P. and others*, is being violated, therefore, the State should ensure compliance and

implementation of the judgement and that the Board of Technical Education and Universities in the State of J&K shall not conduct the examination

of the candidates who have not been selected in accordance with the scheme laid down by the Supreme Court.

11. Pursuant to the directions issued by the writ Court on 31/12/1996, the State Board of Technical Education for seeking compliance and

implementation of the said directions issued an order on 6/1/1997, which reads asunder

In view of the order passed by the hon'ble High Court of J&K at Srinagar dated 31/12/1996 in a Public Interest Litigation, all polytechnics

examination which are being conducted in the J&K, by Secretary State Board of Technical Education are hereby postponed with immediate effect.

The dates for the said examination shall be notified later on.

12. The appellants Writ petitioners have challenged this order dated 6.1.1997 in writ petitions, which came to be dismissed by the learned Single

Judge by an order dated 14.3.1997 with the observation that the judgement of the Hon'ble Supreme Court has not been flouted only but a

complete defiance has been shown by the Government and by the management of the private Institutions and the attitudes of the government and

private Institutes is nothing but to dilute and dilute the judgment of the Supreme Court completely.

13. It is this order (dt. 14.3.1997) which has been challed in question in the LPA NO. 187/ 97 by the appellants.

14. LPA No. 187 of 1997 came to be presented by the affected students against the same order which is under appeal in LPA No. 197 of 1997.

15. Three applications were filed being IA No. IV on behalf of eight petitioners, IA NO V by 12 petitioners and IA NO. VI by 40 petitioners,

who are also effected students, form impleading them as partyappellants. The applications were allowed and the petitioners were directed to be

impleaded as partyappellants.

16. The Management of the Institutions and some of the affected student have filed the appeals while the State Government has not preferred to

challenge the order of the learned Single Judge in appeal.

17. We have heard the learned counsel for the parties, gone through the Memorandum of the appeals and the grounds taken therein, order under

appeal and the other evidence on record.

18. The learned counsel for the appellants have urged before us that the scheme laid down by the Supreme Court in its judgement (supra) is a

method, manner and procedure evolved for regulating the Professional Colleges and the selection and admission of the candidates for undergoing

courses, in the college is neither sacrosanct nor law as such, laid down by the Supreme Court. The Scheme is subject to further modification as has

been done by the Supreme Court. Further that whether the judgement of the Supreme Court can be implemented by the High Court in terms of the

mandate of Article 144 read with Article 215 of the Constitution of India and Section 94 of the Constitution of the State of Jammu and Kashmir

Whether the students, who have acted on representations can be made to suffer and penalised for commission of the contempt of the Supreme

Court judgement, if any, and for no fault of their Whether for the sins committed by the State and the Management of the Institutions, the Students

can be visited upon with a penalty of the nature with which they have been penalised being thrown out from the classes hanging in the balance

cursing their fate Whether 2 years/3 years 'Diploma Certificate secured by those students who, admittedly have been enrolled in these Institutes

after the judgement of the Supreme Court, will be honoured by the Govt. and what will happen to those students who are similarly situated but

could not get through in 1st attempt to secure the diploma and being their basic admissions are at peril? Whether the students/appellants are not

justified in demanding equitable relief?

19. The learned counsel for the State has also made submissions and contended that the appeals should be rejected for the reason that the writ

petitions are not maintainable as the order under challenge in the writ petitions is issued by the State Board of Technical Education in execution of

the order dated 31121996 passed by the learned Single Judge. He submits that this objection was raised by him before the learned Single Judge

who has made a mention of his contention in the course of the order, but has not returned a finding to that effect and the petitions have been

dismissed on other grounds. The objection taken before this court with regard to the maintainability of the writ petitions.

20. He has tried to justify that the Institutions were permitted to make admission because of the peculiar circumstances with which the State is

confronted because of the militancy and efforts have been made to implement the Scheme laid down by the Supreme Court, authorising them to

make admission as one time relaxation only. We are not convinced with the arguments of Mr. M.A Goni, learned Sr. Additional Advocate General

to that effect. The scheme laid down by the Supreme Court should have been put in practice by the State of Jammu and Kashmir in its right earnest

in the year 1993. Though the SRO 51 of 1997 has been issued in implementation of the judgment still fee structure have not been fixed and it is yet

to be known as to what yearly fee a student has to pay for undergoing the course.

21. Mr. Goni was also directed to apprise the Court as to what is the system evolved by the Government for monitoring the implementation of the

judgments of the High Court and the Supreme Court. What prompted the State Government to authorise the Institution for permitting them to

make admission as one time relaxation, while the Competent Authority in the State is already in existence. Mr. Goni could not tender any plausible

explanation but pleaded only that the State is facing extremely peculiar circumstances and have tried to implement the scheme laid down by the Supreme Court.

22. Before we deal with all the question raised and canvassed at the bar, the objection raised by the learned counsel for the state that writ petitions are not maintainable and so the appeals, need to be considered first, as it goes to the roots of the case and its determination can well decide the fate of the case.

23. Undoubtedly, the direction issued by the writ court on 31.12.1996 have not been challenged. It is only the order dated 6.1.1997 issued by the

State Board of Technical Education seeking compliance of the court direction have been challenged. The learned Single Judge in the course of the

order under appeal has referred the objection taken by the learned Advocate General, representing the State that the order impugned in the writ

petitions have been issued by the Government in compliance to the direction of the High Court, therefore, no writ would lie. Had the petitioners felt

aggrieved of the writ Court order dated 31.12.1996 they should have challenged the said order in appeal. The learned Single Judge has not

specifically dealt with the point and returned finding on the objection raised, which is sustainable to be agitated for having determination by us in

appeal. We feel that there is substance in the contention of the learned counsel representing the State which must prevail. The legal contention

raised by the learned counsel for the State is not res integra and stand settled by the Apex Court in case titled Narsh Shridhar Mirajkar Vs. State

of Maharashtra and another reported in AIR 1967 S.C. ! while dealing with the scope of writ jurisdiction under Articles 32(2), 226 and 19(1) of

the Constitution of India. The facts of the case are that in a suit proceedings, the trial judge passed the oral order prohibiting publication of the

proceedings of the trial. The learned counsel made a prayer before the court that a written order to that effect should toe passed by the court.

Rejecting the submission, the court did not pass a written order, but observed that no written order was necessary and expected that the oral order

should be obeyed. Against this oral direction passed by Mr. Justice Tarkunde, the trail judge, the aggrieved party moved the Bombay High Court

in a writ petition under Article 226 of the Constitution of India, The petition was

dismissed by the Division Bench of the said High Court on the ground that the impugned order was a judicial order of the High Court and was not amenable to writ jurisdiction under Article 226. The aggrieved party moved the Supreme Court under Article 32 of the Constitution of India questioning the legality of the orders of the High Court. The Supreme Court has dealt with this aspect as to whether the judicial order of the High Court is amenable to writ jurisdiction under Article 226 in para 39 of the judgement, which is reproduced as under:

The impugned order is, in a sense an order of a collateral nature, it has no direct relation with the decision of the dispute which had been brought before the Court in the proceedings between the parties. The learned judge, however, thought that in order that he should be able to do full justice between the parties it was necessary to pass the impugned order. Thus, though the order in a sense is collateral to the proceedings which were pending before the Court, it was directly connected with the said proceedings in as much as the learned Judge found that he could not do justice between the parties and decide the matter satisfactorily unless the publication of Mr. ""Coda's evidence was prohibited pending the trial. The order is not collateral in the sense that the jurisdiction of the judge to pass that order can be challenged otherwise than by a proceeding in the appeal. Just as an order passed by the Court on the merits of the dispute before it can be challenged only in appeal and cannot be said to contravene the fundamental rights of the litigants before the Court so could the impugned order be challenged in appeal under Article 136 of the Constitution, but it cannot be said to affect the fundamental rights of the petitioners. The character of the judicial order remains the same whether it is passed in a matter directly in issue between the parties or is passed incidentally to make the adjudication of the dispute between the parties fair and effective. On this view of the matter, it seems to us that the whole attack against the impugned order based on the assumption that it infringes the petitioners' fundamental rights under Article 19(1) must fail.

24. This law laid down by the Supreme Court contained in the Judgement(supra) is applicable to the facts of the present case with full force. In the present case also the order impugned in writ petition is issued seeking implementation and compliance of the court direction dated 31.12.1996. If

order dated 6.01.1997 is set aside, it will render the direction issued by the writ court on 31.12.1996 redundant and infructuous. The order passed

by the writ court in exercise of the extraordinary writ jurisdiction under Article 226 of the Constitution of India can be modified and altered in the

same proceedings by the writ court but, cannot be sought to be set aside by filing a separate writ petition invoking extraordinary writ jurisdiction.

The remedy for the writ petitioner was either to seek modification of the basic order dated 31.12.1996 or to challenge it before any available

competent forum.

25. In view of the above narrated facts and the law laid down by the Supreme Court, the writ petitions are held to be not maintainable and

consequently the appeals are bound to fail, which are accordingly dismissed.