

(2010) 07 AHC CK 0194
In the Allahabad High Court
Case No : Special Appeal No. 1957 of 2009

Sampurnanand Sanskrit University, Varanasi and Another	APPELLANT
Vs	
Shanti Pandey and Another	RESPONDENT

Date of Decision : 03-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0194

Hon'ble Judges : F.I.Rebello, CJ and A.P.Sahi, J

Final Decision : Disposed Of

Judgement

1. Heard Mr. Ved Byas Misra, learned counsel for the appellantUniversity and Mr. A.K. Tripathi, learned counsel for the respondentpetitioner Shanti Pandey, who has described herself as Principal, Jageshwari KedatTiwari PracharyaVidyapeeth, Devradh Kalan, Post KevdhDudra, Kaimoor, Bihar.

2. The University has come up in appeal against the directions issued by the learned Single Judge while disposing of the writ petition filed by the respondent, allowing the students, who were being represented by the Principal of the College, to appear in the fresh examinations and for that, the learned Single Judge passed an order that the Registrar of the University, shall conduct fresh examinations for the students, who had been left out in the main examination of the year 200809 within a month from the date of production of certified copy of the order.

3. The University has questioned the correctness of the impugned judgement in this appeal. This Court passed an elaborate interim order staying the operation of the said judgement after noticing certain glaring facts worth consideration. The said interim order is as follows :

"Heard Shri Ved Byas Mishra for Sampurnanand Sanskrit University, the respondentappellant in the special appeal. Shri A.K. Tripathi appears for Shanti Pandey, the Principal of Jageshwari Kedat Tiwari Pracharya Vidyapeeth. By the judgment dated 20.11.2009 in Writ Petition No. 18650 of 1998 filed by Shanti

Pandey, the Principal of the institution, the learned Judge has found that the dispute between the Principal of the College and the University in which students are suffering and will lose one year of their career. Keeping in mind the interest of the students, to be above the issue of self-centre between the college and the university the students have been permitted to appear in the examination for the session 200809. A direction is also issued to the Registrar, Sampurnanand Sanskrit University, Varanasi to conduct fresh examination for the students of the institution, who have been left out in the main examination within a month from the date of production of certified copy of this order.

In this matter we are concerned with the examination of "Purva Madhyama1, "Uttar Madhyama1, "Shastri" and "Acharya" examination conducted by the University, which are equivalent to the High School, Intermediate, Graduation and Post Graduation examinations.

Shri Ved Byas Misra states that on a complaint made by the University an enquiry committee headed by Professor Rajiv Ranjan Singh, Chairman of the Enquiry Committee and the Registrar carried out an inspection. They visited the college at Devradh Kala Kudra on 20.1.2009 and found that there are four or five rooms without any doors and windows. There was no furniture, students, employees or equipment in the institution. The campus was filled with straw (pual), which is used as cattle feed. There were buffaloes and goats grazing in the campus. One person wearing "lung" was found taking care of two buffaloes. He identified himself as teacher of modern subject. He claimed "himself to be post graduate in History but could not answer basic questions on the subject. Two more persons came to the spot and identified themselves as teacher of the literature and son of the manager. When the team visited the manager's residence, they were informed that 800 students appear every year in the examinations conducted by the University. He could not inform as to where they sit for examination and stay during the period of examination. The committee photographed and tape recorded the conversation and recommended that the college should not be allowed to hold examinations as Centre and a showcause notice be given to the college for cancellation of the recognition.

It is stated by Shri A.K. Tripathi that report was appended with the supplementary affidavit. He did not get sufficient time to reply. The report was obtained behind the back of the Principal. It is submitted that the college exists, and that students have been regularly attending the classes and appearing in the examination since 2003.

We find substance in the contention of learned counsel for the University that in the circumstances of the case only the students could be aggrieved, for the reliefs claimed in the writ petition. A writ petition by a Principal of the college, where no college exists, and no students or teachers were found and for which there was no explanation as to how 800 students are studying and where do they sit to appear in the examination, was prima facie, not maintainable.

Let a counter affidavit be filed within four weeks. The rejoinder affidavit may be filed within one week, thereafter.

Until further orders, there shall be stay of the directions contained in the judgment dated 20.11.2009.

Listen 12th January, 2010."

4. The contention raised on behalf of the University is that respondent Shanti Pandey, who is Principal of the Institution, in question, has no locus to pray for any such mandamus for holding of fresh examinations inasmuch as none of the aggrieved students have approached this Court. It is further submitted that the University under its Statute, Ordinances and Executive Council's decisions controls the holding of examinations and in exercise of such powers, the Examination Committee of the University constituted under the Statute took a conscious decision on 21.6.2009, not to allow such students to appear in the fresh examinations, who had voluntarily boycotted the same.

5. Mr. Misra, for the University further submits that prior to holding of examinations, while considering allocation of centres for holding of examinations, the University on a complaint got an enquiry conducted through Prof. Rajiv Ranjan Singh, who was Chairman of the Committee and the said Committee submitted a report, which has also been placed on record. According to the said report, it was found that the Institution, in question, did not have any infrastructure for holding of examinations and there was no facility available for either conducting classes or imparting education to the students of the said Institution. As a matter of fact, the Committee found that the students are admitted to the examinations at the centre on payment of certain amounts. These aspects, as indicated in the report, according to the learned counsel for the University, have been overlooked by the learned Single Judge, while issuing directions for holding of fresh examinations for the students, who were being represented by the Principal. It is further submitted by him that the admit cards for the said students had already been received by the Principal on 27.5.2009 and the examinations were held with effect from 29.5.2009 and came to close very shortly. The writ petition was filed in August, 2009, that too even by the Principal and not by the students. He further submits that a large number of students from outside the State, who had received admit cards have appeared in the examinations and that the students of the Institution of which the respondent is the Principal, were sitting on the fence only for change of centre in their own Institution.

6. Mr. A.K. Tripathi, learned counsel appearing for respondent no.1, contends that it was the fate of the students, which was involved and, therefore, the Principal of the College filed the writ petition on their behalf as the Institution is situated in the State of Bihar. He submits that there was no fault on the part of the students or the Institution and as a matter of fact, the Institution had moved an application on 21.5.2009 for change of centre. This communication between

the Principal of the Institution and the University has been taken note of by the learned Single Judge in the impugned judgment. However, the decision taken by the University on 21.6.2009, whereby it was resolved not to allow such students to appear in the reexamination, who had voluntarily boycotted the same, was not under challenge and the learned Single Judge has not commented upon the same.

7. We have heard the learned counsel for the parties and have gone through the records.

8. The report with regard to the actual functioning of the Institution, that has been referred to hereinabove and has also been considered at the time of granting of interim order, is quoted below:

"A" approved.

Sd/8.2.2009"

9. The above report has been approved by the Vice Chancellor of the University and accordingly, the Registrar of the University issued a direction on 9.3.2009 itself to the Deputy Registrar (Examinations) intimating him that the Institution, in question, shall not be given the benefit of selfcentre for holding of examinations in the session 200809. Further recommendations were made to hold a detailed enquiry in order to consider the disaffiliation of the Institution.

10. In the light of above as also the fact that there is no challenge to the decision dated 21.6.2009, it is evident that the University had taken all appropriate measures for holding of examinations at a different centre in the same District. The admit cards had been handed over on 27.5.2009 itself. The students did not raise any grievance and it is the Principal of the Institution, who has subsequently filed the writ petition. In our opinion, the aforesaid measures taken by the University do not indicate any lapse on their part. In such a situation, the provisions of holding of fresh examinations were not at all attracted in the present controversy. Some of the students have voluntarily not participated in the examinations and they have neither challenged the decision of the University, nor have they approached this Court by filing their writ petitions and raising their grievance.

11. Accordingly, we are of the opinion that the learned Single Judge ought not to have issued the directions without considering the impact of the facts and circumstances of the case, as noticed hereinabove. The University was under no obligation to hold reexaminations for the students represented through the respondent.

12. The Institution even otherwise did not have an absolute vested right to seek change of centre through an application on 21.5.2009, which was in very close proximity of the schedule of the examinations.

13. Mr. Tripathi, for the respondent Principal, submitted that the name of the

Institution, in question, was not mentioned in Category 4 of the resolution of the Examination Committee and, therefore, the decision taken therein would not apply to his Institution. The aforesaid submission is absolutely misplaced inasmuch as the students voluntarily did not appear in the examinations. They were not prevented by the University from appearing in the examinations. The decision of the University dated 21.6.2009, therefore, covers all such students.

14. So far as the enquiry against the Institution is concerned, on the basis of the report referred to hereinabove, it is not necessary for us to dwell into this question any further, as the impugned judgement confines itself only to the direction for holding of fresh examinations for the students.

15. For all the reasons, as stated hereinabove, we do not find any merit in the submission of the respondent for compelling the University to hold fresh examinations for the students.

16. The appeal is, therefore, allowed. The judgement and order of the learned Single Judge dated 20.11.2009 are hereby set aside. No order as to costs.