
(2012) 06 MP CK 0001

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3834 of 2012

Shri. Purshottam Mahavidyalaya

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 07-06-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226, 32

Citation : (2013) ILR (MP) 27

Hon'ble Judges : Sheel Nagu, J;G.D. Saxena, J

Bench : Division Bench

Advocate : D.P. Singh, for the Appellant; Vivek Khedkar, Dy. A.G. for State and Ami Prabal, on behalf of I.B. Singh, Addl. Director, Higher Education, Govt. of M.P. Satpuda Bhawan, Bhopal, for the Respondent

Judgement

G.D. Saxena, J.—This order shall govern the disposal of connected writ petitions No. 3725/12, 3726/12, 3848/12, 3849/12, 3850/12, 3851/12, 3852/12, 3856/12, 3857/12, 3858/12, 3859/12, 3860/12, 3882/12, 3883/12, 3884/12, 3885/12, 3888/12, 3889/12, 3890/12, 3892/12, 3893/12, 3894/12, 3895/12 and 3898/12 as common question of facts and law are involved in the matter. For facility of reference, facts are being taken from W.P. 3834/2012.

2. The petitioner of W.P. No. 3834/2012 has presented the petition under Article 226 of the Constitution of India against the Admission Rules and Guiding Principles dated 27th March 2012 issued by the Commissioner, Higher Education, Government of Madhya Pradesh, Bhopal for academic Session 2012-2013 prescribing thereby procedure for admission to all undergraduate and post graduate courses in all government and private colleges in the State of Madhya Pradesh. It is prayed that by issuing the writ in the nature of Mandamus or suitable writ, order or directions, the impugned Admission Rules and guiding Principles dated 27th March 2012 issued by the Commissioner Higher Education, State of Madhya Pradesh, Bhopal be quashed awarding the cost against the respondents. It is also prayed that till disposal of the present petition the

operation of the impugned order Annexure P-1 may be kept in abeyance.

3. An application for urgent hearing being W-IA No. 3831/2012 has also been filed for hearing the main petition during summer vacation in the interest of the educational career of the students who after passing their secondary examination 2012, are aspirants to get admissions in various colleges under State.

4. It is also submitted by the learned counsel appearing for the petitioner that the Division Bench at Indore in Writ Petition No. 4055/2012 [Renaissance Education Society through its President Shri. Ravi Kothari and others Versus State of Madhya Pradesh through Principal Secretary Higher Education & another] by order dated 14th May 2012 while allowing the interim relief of same nature directed in the following manner:

Having regard to the provisions contained in Ordinance No. 7 (Annexure P/8) prima facie we are of the view that the respondent cannot restrain the petitioners from giving admission to the student of the courses mentioned in the petition. In the circumstances we permit the petitioners to adopt the procedure prescribed in ordinance No. 7 (Annexure P/8) in the matter of admission of students and the petitioner shall not be forced by the respondents to comply the guidelines dated 27th March 2012 (Annexure P/14).

5. It is further submitted by the learned counsel that subsequent to the aforesaid order, the Division Bench at Gwalior also granted the same, relief to the petitioner in W.P. No. 3726/2012 [GITM College Gwalior Vs. State of Madhya Pradesh and another] vide order dated 31.05.2012. It is, thus, prayed that by following the orders passed by the Division Benches of this Court the respondents be restrained from compelling the students to get admission under new policy as well as guidelines dated 27th March 2012 through online registration for graduation/post graduation studies at their own choice.

6. Countering the submissions, the respondents by filing reply submitted that the new policy of Admission and Guidelines dated 27th March 2012 is issued by the Commissioner Higher Education, State of Madhya Pradesh, Bhopal, Respondent No. 2, maintaining uniformity of admission throughout the State and for the welfare of the students who are aspirants for regular admission in their Graduate/ Post-graduate Educational Courses. To support his submission, a copy of the order dated 31.05.2012 passed by the Division Bench of this Court at Principal Seat, at Jabalpur, in Writ petition No. 8124/2012 [Yuvak Quami Ekta Committee Through its Secretary Shri S.M. Datta Vs. State of MP] has been placed on record. In the said order, it has been observed:

The online admission in question is not contrary to the Ordinance No. 7 of the University. The procedure prescribed by the State can be adopted for online admission provided the college in which the admission is sought has the website and the computers are made available to the students. The modern technique enforces transparency and avoids irregularities which are associated with the process of admission and thereby it benefits the students.

No case for interim relief is made out.

Prayer for same is, therefore, dismissed.

So, the respondents/State requested that in the light of the Division Bench order (supra), the interim prayer of the writ petitioner is liable to be dismissed.

7. Having heard learned counsel appearing for the petitioner as well as learned Deputy Advocate General assisted by the Government Advocate and on perusal of the memo of the writ petition as well as conflicting views expressed vide orders by the different Division Benches of this court, we are of the view that neither the interim prayer made in the present petition can be allowed nor can the impugned order framing Admission Rules and Guidelines dated 27th March 2012 be stayed accepting the policy.

8. At this juncture, learned counsel appearing for petitioner suggested that all writ petitions which are listed today involving the same issue may be heard finally as per their own merits on ground realities prevailing in villages and towns of the State. It is also requested that if this court finds it proper then looking to the problems which are being faced by the students who are meritorious and belong to the rural area and townships of the State, necessary instructions/directions for their successful timely admissions in the colleges may be issued to the Commissioner, Higher Education, State of Madhya Pradesh Bhopal for clarification amendments/annulment of the provisions contained in Admission Policy/Guidelines dated 27th March 2012.

9. The learned Deputy Advocate General and the Government Advocate appearing for the State also agreed that an appropriate direction in consonance with the new admission policy in order to eradicate the hurdles which are being faced by the students belonging to the rural areas may be issued.

10. Shri Anil Choubey, Officer on Special Duties, Department of Higher Education, Government of Madhya Pradesh, Bhopal who is also present in person before this Court, has no objection in issuance of such directions.

11. Before advertng to the factual aspects of the case, we feel it necessary to discuss the mandate enshrined in our Constitution. Article 41 of the Constitution of India speaks as under:

Article 41 "Directive Principles of State Policy.-"Right to work, to education and to public assistance in certain cases,- The State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

12. Thus, Article 41 obliges the State, inter alia, to make effective provisions for securing right to education for citizens. This "Directive Principle as mentioned is supplement to the Article 14 "Equality before law" hence can be enforceable under Article 32 of the Constitution of India. In Miss. Mohini Jain Vs. State of

Karnataka and others, the Hon"ble Apex Court held as under:

9. The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making "right to education" under Art. 41 of the Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate.

10. This Court has interpreted Art. 21 of the Constitution of India to include the right to live with human dignity and all that goes along with it. In *Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others*, , this Court elaborating the right guaranteed under Art. 21 of the Constitution of India held as under (at p. 753 of AIR):

But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self.

12. "Right to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Art. 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens.

13. The fundamental rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Art. 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

14. The "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional-mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society.....

17. We hold that every citizen has a "right to education" under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through State-owned or State-recognised educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfil its obligation under the Constitution. The students are given admission to the educational institutions whether State-owned or State-recognised in recognition of their "right to education" under the Constitution. Charging capitation fee in consideration of admission to educational institutions, is a patent denial of a citizen's right to education under the Constitution.

18. Indian civilisation recognises education as one of the pious obligations of the human society. To establish and administer educational institutions is considered a religious and charitable object. Education in India has never been a commodity for sale. Looking at the economic-front, even forty five years after achieving independence, thirty per cent of the population is living below poverty-line and the bulk of the remaining population is struggling for existence under poverty-conditions. The preamble promises and the directive principles are a mandate to the State to eradicate poverty so that the poor of this country can enjoy the right to life guaranteed under the Constitution. The State action or inaction which defeats the constitutional-mandate is per se arbitrary and cannot be sustained. Capitation fee makes the availability of education beyond the reach of the poor.....

13. On going through the legal aspects of this case, we are also of the considered view that the State while framing the new policy for admission should bear in mind the welfare of the students, who have passed the secondary examination and are eligible for admission in higher education. They should not be deprived of only on the basis of technicalities mentioned in the Policy framed by the Commissioner, Higher Education, Government of Madhya Pradesh. Per contra, it is also true that looking to the educational career of the students appearing in graduate or post graduate courses education calender as declared by the Universities in State should be followed in *Stricto Sensus* but should not elasticized for an indefinite period.

14. Now, on considering the procedure prescribed for the admission under "Admission Rules-cum-Guiding Principles declared by the Commissioner, Higher Education, State of Madhya Pradesh on 27th March, 2012, it appears that by such procedure the registration online has been made compulsory on the portal of the Government website "<http://www.mp.gov.in/highereducationmp> for the students who have passed successfully the Secondary Examination 2012 and are aspirants for admission at undergraduate level in the courses run by the State/Private but recognized Institutions in State between 20th May 2012 to 10th June 2012 and for registration online in the post-graduate courses on the portal of the Government website "<http://www.mp.gov.in/highereducationmp> by the students who have passed graduate courses from recognized Universities and who are

aspirants for getting admission in post graduate courses run by the recognized Universities/Government Post-graduate Colleges or recognized Institutions in the State between 01st June 2012 to 24th June 2012. It is further mentioned in the guidelines that after completing the process of online registration, at nearest helpline centres established in/under the area of Government Colleges, all documents mentioned in clause 2.11 of the admission policy shall be verified and one set of photocopies of the documents shall be provided to the helpline centres upto 11th June 2012 by the aspirants seeking admission in undergraduate/post-graduate level courses and the process of verification shall be completed up to 25th June 2012. It is also mentioned in the policy that such students who remain unsuccessful in registering themselves online and in verifying the aforesaid documents before the helpline centres will be treated to be ineligible and shall not be permitted to get admission in graduate/post graduate level courses.

15. We do not hesitate to mention here and deny the difficulties faced by the aspirants living in village and townships of the State. For e.g., want of electricity; want of facility of internet; despite declaration of the result by the Board of Secondary Education of State, sometimes marksheets are not made available; and the students who appear in the entrance examination have to wait for their results of entrance examinations.

16. Considering the aforesaid, we are of the view that the ground realities have not been taken into consideration in proper perspective at the time of finalization of the Admission policy-cum-guidelines for academic Session 2012-2013 by the Commissioner, Higher Education, State of Madhya Pradesh. Under such circumstances, we are constrained to issue the following directions to the Commissioner and all concerned to comply with the same after affording opportunity of hearing to the persons affected keeping in view the object of Article 41 of the Constitution of India as quoted above. Accordingly, the petition stands disposed of with the following directions:

(1) That, all the petitioners, eligible candidates and other persons concerning the matter shall have the liberty to submit their objections regarding Admission Rules and Guiding Principles dated 27.03.2012 for the academic Session 2012-2013 issued by the Commissioner, Higher Education, Government of Madhya Pradesh, Satpuda Bhawan, Bhopal.

(2) That, all the documents shall be submitted in support of their objections before the Collector concerned in whose jurisdiction the educational institutions are situated.

(3) That, up to 16.06.2012 the Collector concerned in whose jurisdiction the educational institutions are situated shall acknowledge the receipts of their objections.

(4) All the Collectors in whose jurisdiction the educational institutions are situated shall forward forthwith all the objections alongwith the documents through Special Messenger to the Commissioner, Higher Education, Government

of Madhya Pradesh, Satpuda Bhawan, Bhopal up to 18.06.2012 so as to reach there latest by 20.06.2012. The Collectors concerned shall be personally liable to comply with the part of the order positively.

(5) That, the Commissioner, Higher Education, shall himself decide all the objections received from the petitioners, eligible candidates and other persons interested in admission till 27.06.2012. The Commissioner shall decide all the objections by a speaking order meeting out all the grounds and the points raised by the concerned. After passing such order, the Commissioner shall pronounce the order through newspapers which have circulation in the State so that the orders may be complied with positively by the Institutions.

(6) Naturally, this procedure shall take time and there is every possibility of affecting the admission process, hence, it is directed that the admissions for graduate/postgraduate level courses in colleges shall be completed by 15.07.2012. Simultaneously, the Higher Education Department/Concerning Universities/Concerning Colleges shall verify all the documents which have been mentioned in clause 2.11 of the Admission Rules and Guidelines as and when the candidates/students get themselves registered online so that academic session for the graduate/postgraduate level courses could not be affected and begin with by 20.07.2012. It be also ensured that the UGC guidelines at any cost shall be complied with by the Educational Institutions/Universities and all the concerning departments.

17. A copy of this order may be placed on record on each connected petition. The Registry is further directed to fax the copy of the order to the Commissioner, Higher Education, State of Madhya Pradesh, Satpuda Bhawan, Bhopal for compliance of the directions of this Court made above.