
(2016) 09 MP CK 0026

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12208 of 2014

Shriyut Mahavidyalaya, Gangeo

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 23-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 MPLJ 671

Hon'ble Judges : R.S. Jha and C.V. Sirpurkar, JJ.

Bench : Division Bench

Advocate : Shri Deepak Awasthy, Government Advocate, for the Respondent No. 1; Shri Ravendra Tiwari, Advocate, for the Respondent No. 2; Shri Rajendra Tiwari, Senior Advocate with Shri Neeraj Tiwari, Advocate, for the Petitioner; Shri A. Singh, Advocate, for the Int

Final Decision : Dismissed

Judgement

R.S. Jha, J. - This petition has been filed by the petitioners being aggrieved by order dated 25.2.2014 (Annexure P/1) issued by the State Government and the consequential order dated 17.7.2014 (Annexure P/2) issued by the respondent/ University, wherein it has been ordered that the examination center of those students who are studying in non-government colleges, shall not be fixed in the non-government colleges, where they are studying.

2. The petitioners in the petition has prayed for the following reliefs:-

"1. The Hon"ble Court be pleased to issue a writ in the nature of Certiorari to quash the orders Annexure P/1 and P/2 in their entirety.

2. The Hon"ble Court be further pleased to issue a writ in the nature of mandamus directing the University to make thorough checking through flying squad or by other means in respect of examinations being held in non-government institution and if any wrong is found the University may take suitable action, but not otherwise.

3. Any other writ, order or direction which this Hon"ble Court may deem fit and proper may also be passed in favour of the petitioners.

4. Cost of the petition."

3. The respondent/University and the State both have filed returns and have brought on record the orders passed by this Court in various petitions and other documents to establish that mass copying etc. is taking place in several institutions including the institutions of the petitioners and other colleges and therefore, the impugned orders have been issued by the State Government as well as the University. The respondents have also brought on record the fact that the State Government had issued an order regarding change of examination centres to the Registrar, A.P.S. University and that order has been affirmed and upheld by the Division Bench of this Court in the case of Brijendra Kumar Mishra v. The State of M.P. and others (W.P. No. 1565/2012 (PIL)) decided on 20.3.2014 with a direction to the University to comply with the same and the review petition filed by the University, R.P. No. 536/2014 (Kulsachiv, A.P.S. University v. State of M.P. And others) has also been dismissed by this Court on 31.10.2014, with a further direction that the University is not only obliged to take action as directed by the State Government but also to ensure that in future black-listed examination centres should not be notified for any examination hereafter.

4. To appreciate the controversy involved in the present case, it is necessary to first take into consideration the orders passed by this Court in the previous petition that was filed before this Court. W.P. No. 2860/2001 by one Dr. Sandhya Tiwari seeking declaration of her result of the B.A. Examination. When the matter came up before the learned Single Judge of this Court on 6.7.2001, this Court found that inspection report in respect of the college concerned i.e. Arun Tiwari Memorial College, Pahadiya, Rewa/petitioner No.4, which had been placed on record, it was found that mass copying had taken place in that centre and that is why the result had been withheld. The petition was accordingly disposed of after taking into consideration and according approval of the report regarding mass copying with a direction that the students of the petitioner college should be allowed to appear in the examination at some other centre. A copy of the order passed by this Court in W.P. No. 2860/2001 has been filed by the respondent/State along with their return as Annexure R-1-6.

5. Thereafter, W.P. No. 953/2002 was filed by one Shri Brijendra Shukla and another, wherein the order dated 14.2.2002, passed by the respondent University, cancelling the examination centre at the petitioner No.4/college was assailed. Having considered the rival submissions of the parties, the following order was passed by the learned Single Judge of this Court in W.P No. 953/2004 on 29.7.2002:-

"In this writ petition, the petitioner has prayed for the relief to quash the order Annexure P/5 issued on 14.2.02 cancelling the examination centre at Arun Tiwari Memorial College, Pahadiya, Rewa. Petitioner has alleged that respondent-

University has allowed the centres at such places where, executive council of the University had taken a decision not to allow the centres at those places but later on centres were allowed to be established at those very places. With the time as the examination has been held, the prayer made by the petitioner has been rendered infructuous, however, the fact remains that a per Annexure P/17 notification was issued on 17.08.2001 noticing the fact of mass copying the following centres were cancelled :-

1. Nehru Smarak Mahavidyalaya, Chakghat, District-Rewa.
2. Sudarshan Mahavidyalaya, Lalgaon, District-Rewa.
3. Govt. Swami Vivekanand Mahavidyalaya, Teothar, District-Rewa.
4. Degree College, Sirmour, District-Rewa.
5. Govt. College, Majholi, District-Sidhi.
6. Sharda Sanskrit Higher Secondary School, Loa, District-Sidhi.

As per notification dated 21.08.2001, centre at Janta Mahavidyalaya, Janeh, Teothar, District Rewa was cancelled and cancellation of centres at Seth Raghunath Prasad Mahavidyalaya, Hanumana, Rajbhanu Singh Smarak Mahavidyalaya, Manikwar, Vindhyachal Mahavidyalaya, Jigna and Govt. Mahavidyalaya, Gudh, District Rewa was under consideration owing to allegation of mass copying. Later on as per notification dated 7.3.2002 the centres were allowed at above said colleges which have been mentioned at serial no. 9,11,12,13,14,16, 18, 20 etc. Where there was allegation of mass copying at certain centres those ought not to have been restored. University is directed to see that in future no such examination centre is fixed which have been found places of mass copying for which the decision has to be taken on consideration of the report by the executive council.

Writ petition is disposed of with the aforesaid observations.

No order as to costs."

6. From a perusal of the aforesaid order, it is apparent that this Court took note of the fact that mass copying had taken place in six centres and therefore, a notification in that regard was issued on 17.8.2001 and thereafter, this Court also took note of the notification dated 21.8.2001 relating to petitioner No.2 by which the result of the centre at petitioner No.2 college was cancelled on account of mass copying. This Court also took note of the fact that complaints in respect of mass copying at several other centres were there in spite of which the respondent University notified them as examination centers, which fact was deprecated and it was directed that the colleges in respect of whom there were allegations of mass copying should not be made examination centres and the University was directed to see that in future no such examination centres are nominated.

7. Apparently, the directions issued by this Court have been totally ignored by the respondent University. W.P. No. 1565/2012 (PIL) was filed before this Court again raising the same issue regarding nomination of colleges as examination centres in spite of the fact that there were allegations of mass copying against the colleges and they had been black-listed for that purpose.

8. During the pendency of the aforesaid PIL, the respondent/State issued directions to the Registrar, A.P.S. University prohibiting nomination of examination centres in colleges where mass copying was reported and various other directions, and this Court in the aforesaid writ petition directed the University to comply with the directions issued by the State Government and while doing so, observed that the University was obliged to comply with the directions until and unless the University challenges the same and gets them set aside and if the University takes any step contrary to the directions issued by the State Government, it would be viewed as contempt of the directions issued by this Court. The order passed by this Court in W.P. No. 1565/2012 (PIL) is in the following terms:-

"Heard counsel for the parties.

The grievance made in this petition, in our opinion, stands redressed with the directions issued by the State Government to the Registrar of A.P.S. University. The nature of directions have been reiterated in the reply-affidavit, as under:

(a) Those examination centre situated in the concerned universities where the instance of mass copying are reported those centre should not again be made centre in future.

(b) The invigilator and Superintendent deployed in the examination centres should not be from the same centres/colleges but from the other centres/colleges and as an abundant caution in these sensitive centres susceptible to reporting of mass copying observers should also be appointed in the said centre.

(c) If the invigilator/Superintendent and other concerned persons who are deployed in the examination centres are found to be involved in any manner in the mass copying appropriate legal action should be taken against them.

(d) That a committee should be constitute at the university levelled who would supervise the working of the said centres with the help of observatory and the Flying Squads.

The copy of the necessary direction/instructions issued by the Under Secretary, Higher Education dated 13.1.2014 is filed herewith and marked as ANNEXURE R-1.

In our opinion, the University is obliged to comply with each of these directions and if the University has any reservation will have to challenge the communication issued by the State Government before appropriate forum. If the

University takes any steps contrary to the decision issued by the State Government, it will be viewed as University and its officials have committed contempt of Court of having violated the order passed today by this Court. If the University challenges the directions issued by the State Government, the correctness of that challenge can be tested in appropriate proceedings. Till such time, the directions will be binding on the University. Besides this, nothing more is required to be done in the present petition.

The petition is disposed of accordingly."

9. The University, instead of taking steps to comply with the directions, took a decision in its Executive Council to await decision on the application for review filed by them. R.P. No.536/2014, filed by the University, came up for hearing before the Division Bench of this Court on 31.10.2014 and was dismissed by this Court by issuing the following directions:-

"We are appalled to find that the Executive Council of the University was advised to take a view, which runs contrary to the directions issued by this Court in order dated 20.3.2014. The direction, plain and simple, against the officials of the University was to comply with the directions issued by the State Government to the University in the context of the unfair practise prevailing in some of the Examination Centres coming within the jurisdiction/area of operation of the University. Instead of taking that action, the University has approached by way of this application to permit the University to take action against the erring Centres prospectively.

This means, the University has already decided to condone the irregularities and illegalities committed by the concerned Examination Centres in the past in respect of which directions were issued by the State after due inquiry.

We cannot countenance such stand coming from the University. The University is ill-advised to seek clarification in this regard. There is no ambiguity in the order passed by this Court on 20.3.2014. That order not only requires the University to do what the State Government has directed it to do against the concerned Examination Centres but as a matter of fact, it was the statutory obligation of the University to act in that regard on its own without waiting for the direction of the State Government.

It is quite possible that there is conflict of interest between the Members of the Executive Council and the Examination Centres against whom action is required to be taken pursuant to the directions issued by the State Government. If that is so, the concerned Member would be disqualified even to participate in the proceedings on that subject matter. The Vice Chancellor may inquire into this aspect of the matter and proceed in accordance with law.

Suffice it to say that the University is not only obliged to take action as directed by the State Government, which has been made part of the order dated 20.3.2014 but also ensure that in future, the black-listed Examination Centres

should not be notified for any examination hereafter without taking prior permission of this Court.

This order is passed in public interest and keeping in mind the gravity of the situation which warranted issuance of the direction by the State Government to the University.

Accordingly, this review petition is dismissed with the above said directions."

10. From a perusal of the order passed by this Court in the review petition, it is clear that the Court has expressed severe displeasure in respect of the attempt of the University to seek clarification and modification of the order passed by this Court in the writ petition and while doing so, observed that the University was trying to misinterpret the order of the Court by seeking permission to take action against the erring centres prospectively, whereas the Court has already ordered that in colleges and centres where mass copying had taken place on the previous occasions, examination centres shall not be nominated.

11. This Court further observed that the University is not only required to do what the State Government has directed but it was also statutorily obliged to do so. This Court has also observed that if there was any conflict of interest between the Members of the Executive Council and the Examination centres, the concerned Members would be disqualified even to participate in the proceedings of the subject matter and the Vice Chancellor was directed to inquire into this aspect of the matter and proceed in accordance with law. This Court has also directed that the University was not only obliged to take action, as directed by the State Government, but was also required to ensure that in future, the black-listed Examination centres should not be notified for any examination hereafter without the prior permission of the Court.

12. The University in its return has stated that, pursuant to the order passed by the Division Bench of this Court in the Public Interest litigation, it has nominated Centre In-charges and Supervisors in respect of Shriyut Mahavidyalaya, Gangeo; Janta Mahavidyalaya, Janeh; Arun Tiwari Memorial College, Pahadiya; and Eshwarchand Vidhyasagar Mahavidyalaya, Jawa, vide order dated 29.5.2014. It is also stated that, in addition to the aforesaid, the University had also nominated one Dr. R.M. Dwivedi to go and inspect the petitioner No.4/college and the said Dr. R.M. Dwivedi has given a report to the effect that the respondent No.4 college is a known centre for mass copying and that the Inspector was also threatened by the President of the Committee managing the petitioner No.4/college, by stating that he should not visit the college otherwise he would be dealt with adversely. These reports have been filed by the respondent University along with its additional return marked as Annexure R-2-B. Report submitted by Inspector Dr. R.M. Dwivedi has also been filed by the State along with their return as Annexure R-1-5.

13. The State along with its return has also filed two letters issued by the Registrar of the respondent/University dated 2.3.2002 addressed to the

Inspector General of Police, Rewa and S.H.O. University Police Station, Rewa making a complaint to the effect that the officers of the University, who had visited the petitioner No.4/college, had been threatened by Shri Balendra Shukla, who had also written a threatening letter to the University. In the aforesaid complaint the Registrar has asked the police authorities to register a case and also to provide police protection and force to the respondent University for the purposes of ensuring compliance of the directions issued by the University and for conducting free and fair examinations.

14. From a perusal of the aforesaid orders passed by this Court as well as the documents filed by the University and the State, it is apparent that there is mass copying in several private colleges, that are affiliated to the respondent A.P.S. University including the petitioner colleges and that in spite of directions being issued by this Court, such centres have been continued to be notified by the respondent/University though proceedings for black-listing had been taken against them and in spite of the directions of the Court that such centres should not be nominated as examination centres in future.

15. It is also apparent that the University has not been acting in accordance with the directions issued by this Court and has been deliberately avoiding strict compliance of the orders passed by this Court by not taking action against the concerned colleges. This fact is apparent from a perusal of the order passed by this Court in W.P. No. 953/2002 and the order passed by this Court in the Public Interest Litigation (W.P. No. 1565/2012) decided on 20.3.2014, which indicates that in spite of the order being passed by this Court in W.P. No. 953/2002, the respondent/University has continued to be nominated the black-listed colleges as centres for a long period of 12 to 14 years. It is also clear that the Division Bench of this Court while dismissing R.P. No.536/2014 has also expressed its displeasure on the manner the University is acting in the case by not de-notifying or withdrawing the nomination of such colleges as examination centres.

16. In view of the aforesaid facts and circumstances of the case, we are of the considered opinion that as free and fair examinations are a sine quo non for maintaining the standard of education for imparting proper education and as the University is statutorily bound to ensure not just the fact that the standards of education is maintained but, also the conduct of free and fair examinations, therefore, it is required to issue immediate orders that such centres, where mass copying has taken place in the past, are not nominated as examination centres in future.

17. In the backdrop of the aforesaid facts and the orders of this Court, no fault can be found with the impugned orders, Annexure P/1 and Annexure P/2, passed by the State as well as the respondent University, more so, as they have been issued during the pendency of the Public Interest Litigation before this Court.

18. We are also of the considered opinion that the contention of the learned Senior Counsel for the petitioner/colleges that the order dated 17.7.2014 issued

by the University, could have been issued only after a decision in that regard had been taken by the Executive Council in view of Ordinance No.5 and until and unless such a decision is not taken by the Executive Council, the order cannot be enforced, is heard only to be rejected in view of the fact that this Court in W.P. No. 1565/2012 (PIL) and R.P. No. 536/2014 has already held and directed the respondent University to comply with the directions issued by the State Government and to ensure that Examination centres that have been black-listed should not be notified for any examinations to be held in future, without the prior permission of this Court and while doing so, the request made by the University in the review application to permit it to take action against the erring centres prospectively was categorically rejected.

19. In view of the aforesaid facts and circumstances, we are of the considered opinion that the orders passed by the State Government and the University, Annexure P/1 and Annexure P/2, to the effect that the examination centres of the students studying in private colleges under the respondent University shall not be fixed in the same colleges are valid and have rightly been issued/directed and are therefore affirmed.

20. We are also of the considered opinion that in view of the orders passed by this Court as well as the documents on record indicating that the petitioner institutions had been black-listed previously, they should not be notified as examination centres by the respondent University without the leave and permission of this Court as ordered in R.P. No. 536/2014 arising out of W.P. No. 1565/2012 (PIL).

21. Before we part with the case we would like to observe that the conduct of the respondent University in the present case cannot be appreciated and in fact has to be deprecated. It is observed that in spite of the directions issued by this Court in several petitions, the respondent University, for the reasons best known to it, has continued to violate the orders passed by this Court. It is also observed that even after passing of the order by this Court in W.P. No. 1565/2012 (PIL) on 20.3.2014, the University still made an attempt to bypass the order which was deprecated by this Court in R.P. No. 536/2014 and therefore, while dismissing the petition, it is directed that the State Government shall look into the aforesaid aspect and, if so requires, shall take action in accordance of Section 52 of the M.P. Vishwavidyalaya Adhiniyam or any other provision of law in respect of, not just the violation of the orders passed by this Court but, in respect of the general administration and functioning as well. Appropriate action against such members who are opposing the orders passed by this Court and blocking their implementation may also be taken in accordance with law at the earliest with information to this Court. It is also observed that the respondent/State shall nominate an officer either of the district administration or the police department to make regular inspection in respect of the examination conducted by the University and if it is found that the respondent/University or the colleges are violating the directions issued by this Court, they shall take up the issue at their

level as well as point out the violations to this Court and in case such instances are brought to the notice of this Court, this Court would be constrained to take up appropriate contempt proceedings against the persons or institution concerned. It is further directed that the University shall also take necessary action, if so required, towards de-affiliation etc. against colleges violating orders of this Court as well as the University.

22. With the aforesaid directions, the petition stands dismissed.

23. In the facts and circumstances of the case, there shall be no order as to costs.