

(2016) 10 SC CK 0080

In the Supreme Court Of India

Case No : Civil Appeal No. 10286 of 2016 (Arising out of SLP (C) No. 16885 of 2012)

State of Jammu and Kashmir

APPELLANT

Vs

Vichar Kranti International

RESPONDENT

Date of Decision : 21-10-2016

Acts Referred:

Jammu and Kashmir Government Employees (Conduct) Rules, 1971 — Rule 10
Jammu and Kashmir Public Men and Public Servants (Declaration of Assets and Other Provisions) Act, 1983 — Section 13

Citation : (2016) 11 ADJ 9 : (2017) 169 AIC 240 : (2017) AllSCR 910 : (2017) 1 AllWC 269 : (2017) 1 ApexCourtJudgments(SC) 79 : (2016) DNJ 995 : (2016) 151 FLR 811 : (2016) 10 JT 295 : (2016) 4 LawHeraldSC 3181 : (2016) 10 Scale 378 : (2017) 1 SCT 120 : (2017) 2 SLJ

Hon'ble Judges : T.S. Thakur CJI, A.M. Khanwilkar and Dr. D.Y. Chandrachud, JJ.

Bench : Full Bench

Advocate : Sunil Fernandes, Ms. Astha Sharma, Ms. Mithu Jain, Puneeth K.G, Advocates, for the Appellant; Anupam Raina, Deepak Goel, Advocates, for the Respondents

Final Decision : Disposed Of

Judgement

Dr. D.Y. Chandrachud, J.—Leave granted.

Delay condoned.

A Writ Petition was instituted in the public interest before the High Court of Jammu and Kashmir by the respondents seeking to challenge a circular dated 11 August 2005 issued by the Government of Jammu and Kashmir in its Education Department. The circular adverted to the provisions of Rule 10 of the Jammu and Kashmir Government Employees (Conduct) Rules 1971 which prohibits a government servant from taking up any assignment without the permission of the competent authority. The circular recorded that complaints were received to the effect that officials of the Education Department were indulging in coaching activities in private institutions. Accordingly, the circular contained the following

directions:

"In order to safeguard the public interest i.e., the academic work in the schools it is hereby directed that no official shall undertake any activity/assignment including teaching in a private institution or coaching centre unless permission is obtained from the competent authority to do so. It is further directed that no such permission shall be available two hours before the opening of the school and two hours after the school gets closed. It is further directed that it shall be the responsibility of the Chief Education Officers, Zonal Education Officers, Principals of Higher Secondary Schools and Headmasters of High School to be on the lookout so that none of the members of the Education Service (Gazetted or Non-Gazetted) indulges in any activity on this account which is in violation of the prescribed Code of Conduct or these instructions. In the first instance, the said officers shall take such action as they may deem appropriate to prevent such activities in their area and in case of failure to stop such activities the matter shall be brought to the notice of the concerned Chief Education Officer who will in turn take it up with the Director School Education and District Magistrate for appropriate action.

Besides challenging the above circular dated 11 August 2005, the respondents sought a prohibition on private tutoring by government teachers. In addition, the respondents also prayed for a complete ban on private practice by government doctors including those working in medical colleges. The reliefs which were sought in the Writ Petition read as follows:

- "a) Take steps for improving the purpose of Government Schools;
- b) Ban completely private tutoring by Government teachers both gazetted and non-gazetted cadre;
- c) Ban Private practice by Government Doctors including those working in Medical Colleges. Ensure that even in private schools the teachers which are appointed should bear minimum qualification of being trained graduates...Certiorari quash circular No. Edu/PS/C/S/11/05 dated 11th August 2005 as being arbitrary, illegal and unconstitutional."

2. The writ petition was disposed of by a Division Bench of the High Court by a final judgment on 18 November 2011. The Division Bench held that Rule 10 of the Jammu and Kashmir Government Employees (Conduct) Rules 1971 does not empower the government to issue general instructions of this nature allowing teachers in government schools to pursue private assignments. In the view of the High Court, it was only in exceptional situations that the power under Rule 10 could be utilized to grant permission for engaging in any other trade, business or employment. On these grounds, the circular dated 11 August 2005 was quashed and set aside. Having set aside the circular, the High Court also issued the following directions:

"With the above said directions, this writ petition stands disposed of by setting

aside that part of the instructions contained in circular No. Edu/PS/C/S/11/05 dated 11.08.2005 granting general permission/authority to the officials of the Education Department and Medical Department to grant permission to all the teachers and Doctors respectively to engage themselves by way of self-employment or in the form of accepting part time employment in private coaching centres two hours before the opening of the school and two hours after the closing of the schools and private practice by the doctors, with other directions stated therein."(emphasis supplied)

3. The State has challenged the judgment of the Division Bench. During the course of the hearing, learned Counsel appearing on behalf of the State has urged that the State is not aggrieved by the directions of the High Court in their application to teachers, insofar as the circular dated 11 August 2005 was set aside. The circular, it has been submitted, was issued by the Education Department and specifically dealt with the issue of whether officials engaged in schools could be permitted to take up private assignments. However, the grievance is that the directions issued by the High Court which have been extracted above, proceeded on the basis that the circular also regulated government medical doctors engaging in self-employment or other activities. It was urged that the rules governing private practice by government doctors were not placed before the Court. Hence, without considering those rules, the High Court has issued a blanket direction erroneously on the basis that the circular of 11 August 2005 also covered the services of medical doctors.

4. Section 13 of the Jammu and Kashmir Public Men and Public Servants Declaration of Assets and Other Provisions Act 1983 stipulates that no public servant, whether on leave or in active service, shall practice any profession or carry on any trade or business, directly or indirectly or undertake any other employment without the previous permission in writing of the Prescribed Authority. In exercise of powers conferred by Section 16(2)(b) of the Act, the State Government issued a notification, bearing SRO-156 dated 23 April 1984 permitting private practice by government doctors, subject to its terms. The permission granted by the above notification for government doctors, engaging in private practice was withdrawn by government orders dated 31 May 1986 and 05 June 1986 (Government order no. 340-GR-HME of 1986). Subsequently, on 23 January 1987, the State Government issued SRO-42 to regulate the conduct of private practice by government doctors. The above rules were challenged before the Jammu and Kashmir High Court in Sukesh Chander Khajuria v. State and Ors, 1994 AIR (J&K) 73. By a judgment and order dated 14 February 1994, a Division Bench of the High Court dismissed the Writ Petition, observing as follows:

"27.....Whether private medical practice should be allowed to doctors in Government service or not is a policy matter. Policy decisions have to be taken by the Executive and not by Courts. Courts can only indicate the legal position. The legal position is that the State has power to ban private practice as well to

allow it. When it will allow and when it will ban it is for the Government to decide and not for the Courts. "

Subsequently, by a notification dated 04 August 1995, the Jammu and Kashmir Government Doctors (relaxation of restrictions on private practice) Rules 1987 were rescinded. Once again on 23 April 1998, a fresh government order - SRO 132 was issued by the State Government formulating rules for regulating private practice by government doctors.

5. There is merit in the contention which has been urged on behalf of the State Government that the High Court proceeded erroneously on the basis that the circular dated 11 August 2005 which was impugned before the High Court, dealt with the issue of whether government doctors should be permitted to engage in private practice. Plainly, the circular dated 11 August 2005 was issued by the Education Department and applied exclusively to officials in schools engaging in private assignments outside school hours. The circular had no application to government doctors. The regulation of private practice by government doctors is the subject matter of separate rules framed by the State Government. Neither were those rules under challenge before the High Court nor did the High Court had the benefit of evaluating the rules before it proceeded to decide the case.

6. In the circumstances, we are of the view that there is merit in the grievance of the State Government in regard to the correctness of the view which has been formulated by the High Court. The High Court was not apprised of the relevant statutory rules which govern the field. An order of remand would hence be necessitated to enable a fresh consideration of the issue by the High Court.

7. Quite apart from the issue of whether government doctors should be allowed to engage in private practice, there are other and, perhaps more fundamental aspects which would arise from the Public Interest Litigation that was instituted before the High Court. The basic issue which requires to be addressed is the availability of infrastructure and facilities in government hospitals across the state of Jammu and Kashmir and the facilities for the treatment of patients. The respondents would be at liberty to move an appropriate application before the High Court for amending the Writ Petition to adduce pleadings and for claiming appropriate reliefs in that regard. However, independent of that, we are of the view that the quality of medical care in government hospitals across the state of Jammu and Kashmir is a matter which should receive attention and oversight in the exercise of the jurisdiction under Article 226. In particular, we emphasise the following issues which would require careful scrutiny and such remedial directions as may be necessitated on the basis of the material which may become available to the High Court. The areas of concern include:

- (i) The availability of adequate infrastructure in government hospitals;
- (ii) The availability of essential equipment for treatment;
- (iii) The availability of staff-medical, para medical and of a supporting nature;

(iv) Enforcement of conditions of hygiene to secure proper medical treatment facilities; and

(v) The availability of essential medicines.

8. The Respondents have placed on the record a report of the Estimates Committee of the Jammu and Kashmir Legislative Assembly on unprecedented neonatal/infant deaths which took place in January-May 2012 in GB Pant (Children) Hospital, Srinagar. We would commend to the High Court the need for constituting a Committee of Experts to scrutinize the conditions in public-government hospitals in the state. The High Court would be at liberty to constitute a Committee of medical experts and administrators. The Committee shall submit a report on the state of public - government hospitals in the state and covering among other things, the areas which have been emphasised above. The High Court would be at liberty, after scrutinizing the report of the Expert Committee and upon hearing the relevant stakeholders including the state, to issue appropriate directions and monitor compliance. The hospitals which are conducted by the state and by public agencies cater to medical needs of the poorest strata of society. The need for ensuring proper medical care of a requisite standard has to be duly addressed.

9. We hence remand the proceedings back to the High Court for considering both aspects of the matter, as highlighted above. To facilitate this exercise, the impugned judgment and order of the High Court dated 18 November 2011 is set aside insofar as it deals with the regulation of private practice by government doctors. The proceedings shall stand restored to the High Court for hearing afresh having regard to the observations made above.

10 The Civil Appeal is accordingly disposed of.