
(1990) 09 MP CK 0021
In the Madhya Pradesh High Court
Case No : M.P. No. 474 of 1990

Subuddh Kumar	Vs	APPELLANT
Jiwaji University and Others		RESPONDENT

Date of Decision : 11-09-1990

Acts Referred:

Constitution of India, 1950 — Article 14
Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 15(4)

Citation : (1991) 36 MPLJ 50 : (1991) MPLJ 50

Hon'ble Judges : T.N. Singh, J; Shacheendra Dwivedi, J

Bench : Division Bench

Advocate : Arun Mishra, for the Appellant; N.P. Mittal, for the Respondent

Final Decision : Allowed

Judgement

Shri Arun Mishra, Counsel for the petitioner.

Shri N.P. Mittal, Counsel for the University.

Heard counsel.

Annexure R-1 is the document, which has come from the University with its return. The short question is, if the notification which the University has issued on 18-9-1990 can constitutionally kill petitioner's entitlement to sit in the examination to be held in this month for certain category of candidates contemplated thereunder. We may refer to para 1 of the said notification as that projects manifestly and properly the vicious discrimination which petitioner has complained.

In the return, it is submitted that on 4-8-1988, 5-8-1988 and 11-8-1988 "Standing Committee" had held meetings to give effect to Government of India's uniform policy in regard to 10 + 2 + 3 course and considered the effect thereof on 11 + 3 system. It was decided that if any student appearing in First Year of Degree Course in 11 + 3 course system in 1989 fails, he would get a chance in

1990 and that will be "last chance" and there after university will not organise any examination on the old pattern. That far the Standing Committee may have constitutionally acted. But, the decision of the committee, said to be projected in Annexure R. 1 for debarring the students who did not appear in 1989 but wish to take examination with other candidates who have given last chance for appearing in 1990 is wholly beyond our comprehension because of unreasonable classification and unreasonable nexus.

Reliance is placed on paragraph 36 of Ordinance No. 6, subsequently in the additional return filed on 10-9-1990 by the University to supply the source of the notification submitting that that had been made with the approval of the Academic Council u/s 15(4) of the M. P. Vishwavidyalaya Adhiniyam, 1973. The vice noticed above is not purged thereby. In our view, petitioner need not make any claim to take a supplementary examination as contemplated in para 36 of Ordinance No. 6 because the question which has been validly, forcefully and rightly agitated is of par unconstitutionality of the notification aforesaid. It is not necessary for us therefore to examine or to pronounce on the competence of the Academic Council or of the Standing Committee to make the notification. We hold invalid, in part, the notification as that part we have found to be patently discriminatory to a class of candidate to which the petitioner belongs. Merely for the reason that he had not appeared in 1989, he should not lose his entitlement to take the last chance. That cannot, according to us, be ground for classification of his entitlement desperately. His entitlement stands on par with other candidates who had taken the examination and failed because they also were atuned 11+3 course system. The vice is so patent that it does not conform to any rational classification and it cannot also be said that the classification is meant to subserve any wholesome object. Because of the change of system of education when last chance is contemplated to candidates atuned to the old system, all are to be treated equally to subserve the same object. By not doing that, and by making an unwholesome classification which does not subserve the objects if any thing is achieved, that, according to us, is meant to defeat the object.

Petitioner admittedly cleared Part I of B.Com of the old system and he was admitted in Govt. College, Karera, to pursue studies for Part II of the course. If that can be called a sin he defaulted certainly in not taking examination in 1989 even after completing studies for part II. But the blame for that has to be shared not by the petitioner. According to Annexure P-4, by the University itself. That is a letter which college wrote to University informing the University that petitioner had been given admission to prosecute studies in Second Year class and the college had not received an intimation interdicting that. Having completed the course of study, the petitioner certainly earned entitlement to sit in the examination. But, the University's decision as per Annexure R-1 came as stumbling block in his way.

For the aforesaid reasons we are of the view that petitioner is equally entitled with other similar candidates of old system to sit in the examination to be held in

this month, for taking the examination as a last chance. He has been unconstitutionally debarred, according to us, by Annexure R-1, in doing that. We would, therefore, direct respondent-University to allow the petitioner to take the examination and we hold invalid part of the notification which interdicts petitioner and others of his class in taking the examination. Within three days petitioner must file his form through his college along with requisite fees to enable the University to issue him admission card for the examination.

In the result, the petition succeeds and it is disposed of in terms of aforesaid directions.

C. C. today.