

(2013) 05 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : LPA No. 278 of 2011 and IA (C) No. 459 of 2011

University of Kashmir and Another

APPELLANT

Vs

Faheem Nissar and Others

RESPONDENT

Date of Decision : 28-05-2013

Acts Referred:

Citation : (2013) 05 J&K CK 0016

Hon'ble Judges : M.M. Kumar, C.J; Ali Mohammed Magrey, J

Bench : Division Bench

Advocate : J.A. Kawoosa, for the Appellant;

Final Decision : Allowed

Judgement

M.M. Kumar, C.J.—The instant appeal under Clause 12 of the Letters Patent has been preferred by the University of Kashmir and its

officer challenging the interim order dated 27.10.2011 passed by the learned Single Judge while disposing of CMP no. 2249/2011. According to

the directions, the writ petitioner-respondents have been allowed to appear in the 6th Semester examination of Bachelor of Engineering course at

their own risk and responsibility. However, their result was not to be declared. The order of the learned Single Judge dated 27.10.2011 was

stayed by this Court on 18.11.2011. Brief facts of the case are that two students-respondent nos. 1 and 2 filed OWP no. 1423/2011 in this Court

claiming that the provisions of Statute 15 of the University Calendar issued by the appellant-University is liable to be declared ultra vires.

According to Statute 15, if a student has backlog in 4 papers in preceding two semesters i.e. 4th and 5th semester, than such a student would not

be eligible to appear in 6th Semester examination. It has remained undisputed

that respondent nos. 1 and 2 had backlog attracting the provisions of Statute 15 which make them ineligible to appear in 6th Semester examination. However, the learned Single Judge permitted them to appear subject to condition that their result was not to be declared.

2. We have heard Mr. J.A. Kawoosa, learned counsel for the University. None has put in appearance on behalf of the writ petitioner-respondents despite the fact that notices were served on them.

3. Having heard the learned counsel and perusing the memo of appeal, we are of the considered view that this appeal merits acceptance.

4. The provisions of Statute 15 are still on the Statute book and as per the practice and precedence no direction could be issued by the Courts

which may run counter to the University Statute. There is no prima facie satisfaction recorded by the learned Single Judge to provisionally conclude

that Statute 15 is likely to be declared ultra vires. It would be appropriate to read Statute 15 which is set out below in extenso:-

Detention of the student on account of the backlog shall be determined at the end of the 3rd, 5th and 7th Semester results and a student shall not

have more than four backlogs (excluding the 1st Semester backlogs) in the immediate proceeding two Semesters for the purpose of promotion to

the 4th, 6th and 8th semester respectively provided that the backlog paper(s) of the 1st Semester Examination shall not be considered for the

purpose of promotion at the end of 3rd and 5th Semester examination subject to the condition that the candidate has secured a pass in at least one

subject of the 1st Semester examination such candidate shall be required to clear the backlog of the 1st Semester examination latest by the end of

6th Semester.

5. Another principle which has been repeatedly highlighted by Hon'ble the Supreme Court is that the High Courts would not issue any fiat directing

the University authorities to disobey their own Statute. In that regard reliance may be placed on the observations made by Hon'ble the Supreme

Court in the case of A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, . The following appropriate

observations made in para 10 while rejecting the argument advanced on behalf of the students, is quoted below in extenso:-

Any direction of the nature sought by Shri Venugopal would be in clear

transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws. The case of the medical college started by the Daru-Salaam Trust appears to stand on a different footing as we find from the record placed before us that permission had been granted by the State Government to the Trust to start the medical college and on that account, the University had granted provisional affiliation. We also find that the Medical Council of India took strong and serious exception to the grant of provisional affiliation whereupon the University withdrew the affiliation granted to the college. We are unable to treat what the University did in the case of the Daru-Salaam Medical College as a precedent in the present case to direct the University to do something which it is forbidden from doing by the University Act and the regulations of the University....

6. It also is well settled that the Courts should be very slow in interfering in the working of the Universities because the academic world is assisted by experts which the Courts lack. The Universities are regarded as the best Judge of their governance and administration. In that regard reliance may be placed on the observations of Hon'ble the Supreme Court made in para 6 of the judgment rendered in case of Regional Officer, C.B.S.E.

Vs. Ku. Sheena Peethambaran and Others, . Hon'ble the Supreme Court has deprecated the practice of passing interim orders by the High Courts by permitting the students to pursue their studies and appear in the examinations under the interim orders because in most of these cases it is ultimately pleaded that the course was over and the matter deserved to be considered sympathetically. It results in very awkward and difficult situations and the rules stare at the face to the plea of sympathy and concessions. Their lordship has relied on the judgment of Hon'ble the Supreme Court in C.B.S.E. and Another Vs. P. Sunil Kumar and Others, . Likewise reliance may also be placed on the observations made by their lordships of the Supreme Court in the case of Mahatma Gandhi University and Another Vs. Gis Jose and Others, .

7. Moreover, it is a general principle of jurisprudence which is well rooted in our

jurisprudence that by interim relief such a relief cannot be granted

which is required to be granted eventually by allowing the petition. In that regard reliance may be placed on the judgment of Hon'ble the Supreme

Court rendered in case of State of Uttar Pradesh and Others Vs. Ram Sukhi Devi, .

8. As a sequel to the above discussion the appeal succeeds and the order dated 27.10.2011 passed by the learned Single Judge is set aside. We

request the learned Single Judge to take up the matter and decide the same expeditiously. We wish to make it clear that any observation made in

the proceeding paras shall not be construed as an expression of opinion on the merit of the controversy and the learned Single Judge shall proceed

to decide the issue without being influenced by them.