

P.A. Inamdar and Others Vs. State of Maharashtra Through Its Additional Chief Secretary Medical Education and Drugs Department and Others

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Court : Mumbai

Decided On : Feb-04-2014

Judge : Anoop V. Mohta & a.a. Sayed

Appeal No. : Writ Petition No. 1106 of 2014

Appellant : P.A. Inamdar and Others

Respondent : State of Maharashtra Through Its Additional Chief Secretary Medical Education and Drugs Department and Others

Judgement :

Oral Order: (Anoop V. Mohta, J.)

Rule. Hearing expedited. Mr. A.I. Patel, AGP waives notice on behalf of Respondents 1 and 2. Mr. S.S. Patwardhan waives service on behalf of Respondent No.3.

2 Heard in view of urgency for interim relief.

3 The Petitioners have challenged order/communication dated 22 November 2013 passed by Respondent No.3-Pravesh Niyanttran Samiti (for short, Samiti), thereby refused to grant permission to conduct Postgraduate entrance test for admission of muslim minority students for First M.D.S. Course for academic year 20142015

in Petitioner No.3-College (M. A. Rangoonwala College, Pune). The impugned order is as follows:

œItem No. 5(g) : Letter dated 11 November 2013 M.C.E. Society's M. A. Rangoonwala College of Dental Sciences and Research Centre, Pune requesting to permit to conduct CET-2014 for admission to Minority Quota for Post Graduate Dental Course for the Academic Year 2013-14. Samiti perused the aforesaid letters received from M.C.E. Society's M. A. Rangoonwala College of Dental Sciences and Research Centre, Pune requesting to permit it to conduct separate CET for admissions to first year B.D.S. Course and Post Graduate MDS courses for the Academic Year 2013-14. Samiti observes that per the law laid down by the Supreme Court of India in its judgment in the case of Islamic Academy versus State of Karnataka (2003) 6 Supreme Court Cases 697 (para 16) there is no provision for separate CET for minority institutes.

In view of the above, after deliberations, Samiti decides not to accede to the request made by the aforesaid Institute. Office to inform accordingly.?

4 To the petition, pursuance to the order passed by this Court, Respondent No.3-Samiti filed its reply dated 3.2.2014 and opposed all the prayers, basically also on the following grounds in para 12 which read thus:

œ12 I say that the petitioner also relies on the orders passed by respondent no.3 Committee in the past permitting M.A. Rangoonwala Dental College, Pune to hold separate a entrance test. I say that the said permission has been granted erroneously by respondent no.3 in the year prior to Academic Year 2013-2014. I say that the said permission was granted because M.A. Rangoonwala Dental College at Pune was admitting students even prior to the constitution of respondent no.3 Committee. I say that for the academic year 2013-2014, the application of the said M.A. Rangoonwala Dental College for holding a separate CET made to respondent no.3 Committee is rejected by its Resolutions passed in meetings dated 21.12.2012, 11.1.2013, 15.3.2013 and 18.4.2013, held for that purpose. I thus say that the petitioner cannot claim equal protection of a mistaken view, by relying on the fact that M. A. Rangoonwala Dental College was erroneously granted permission to conduct separate CET in the past.? (emphasis

supplied)

There are about 231 minority institutions. They will also ask such permission is also the averment in support of the order.

5 There was no hearing of any kind given before passing such order by the Samiti. The impugned order nowhere provides this reason - "The said permission has been granted erroneously." The impugned order as reproduced above referred only paragraph 16 of *Islamic Academy versus State of Karnataka* (2003) 6 SCC 697. The justification, therefore, given for the first time in this reply, at this stage of the proceeding and in the situation where, as contended by the learned counsel appearing for the Petitioners, that there is an urgency in the matter as per the brochures/invitation/advertisement-the date of examination is 9.2.2014. The mandate to follow such schedule in such courses, is now settled and is well within the knowledge of all the parties concerned. Everybody needs to stick to the schedule, as well as the timetable, right from filling of the forms for examination including the commencement of term of particular year/session. The inspection and the formalities are required to be completed by the requisite Authorities within the stipulated time is also a relevant aspect which just cannot be overlooked, while taking any decision in such matter, in view of the averments so made and the citations so read and referred by the learned counsel appearing for the parties. Both the learned counsel appearing for the parties mainly relied upon the following citations, apart from others:

(i) *TMA Pai Foundation v. State of Maharashtra*, (2002) 8 SCC 481;

(ii) *P. A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537 and

(iii) *Islamic Academy of Education v. State of Karnataka*, (2003) 6 SCC 697.

6 Admittedly, since 2007, Respondent No.3-Samiti has been granting the requisite permissions every year to the Petitioners. All the parties including the students have acted upon the same accordingly. There is no change in circumstances including the law.

7 Admittedly, Special Leave Petitions filed against the Petitioners and/or similarly situated persons are pending in the Supreme Court, specifically against the orders passed by this Court in various other similarly situated matters, whereby after considering the judgments so read and referred, this Court by ad-interim order, stayed similar orders and permitted the Petitioners/similarly situated institutions to conduct the College Entrance Examination for admission to the First Year M.B.B.S. Course for the academic year 2013-2014 for minority institutions/students. Order dated 4 September 2013 in Writ Petition (Lodging) No.1970/2013 (Jamia Islamia Ishaatul Uloom and anr v. State of Maharashtra and ors) is one of the same. The S.L.P against the same order is pending and so also the Review Petition. There is no stay to the interim relief order so passed. Similar is the case in Writ Petition (Lodging) No.3180/2013 dated 12 December 2013 (Seva Mandal Education Society's College Nursing and anr vs. The State of Maharashtra and ors). These two Petitioners/Institutions are also part of the list so relied upon by Respondent No.3.

8 Strikingly, even for the academic year 2013-2014, for the Post graduate course of MDS and also for B.D.S. Course, pursuance to the proposal/letter of Petitioners, the same Samiti has granted permission on 11.1.2013. The situation, as recorded above, admittedly not changed till this date, except the pendency of the litigations. The same was the situation since 2007 so far as the Petitioners are concerned.

9 During 2008-2012 in academic years 2008-09, 2009-10, 2010-11, 2011-12 (Order dated 18.1.2011), 2012-13 (Order dated 17.1.2012), the Samiti granted permission to College CET. On 13.12.2012, the Supreme Court granted permission to institution to conduct CET for academic year 2013-14. On 11.1.2013 and 15.2.2013, the Samiti accordingly granted permission to Petitioner to conduct CET of 2013-2014. On 13.5.2013, the Supreme Court allowed to do admission. On 18.7.2013, the Supreme Court allowed Writ Petitions and set aside amendment to MCI/DCI Regulations for single CET “ in Christian Medical College v. Union of India : 2013 (9) SCALE 226, para 133 (iv) @ pg. 237, para 157 @ pg.280, 281 and para 161, 162 @ pg. 282. On 25.10.2013, MCI filed Review Petition No.21592268/2013 in which Supreme Court issued notice on 25.10.2013 and same is pending. On 20.12.2013 the Samiti granted approval to admissions of

2013-14 at Petitioner-College.

10 The Petitioners, therefore, based upon the earlier consistent orders though the matters are pending in the Supreme Court, has applied from time to time for such permission and as the Samiti has granted the same, for the academic year 2014-2015, applied again for same permission. On earlier occasions, after considering the similar material placed on record, granted the permissions. However, by the impugned order, contrary to the earlier permissions, the Samiti has without giving any opportunity and assigning specific reasons, rejected the permissions. The reason so added for the first time in reply is as reproduced above, in our view, therefore, just cannot be accepted at this stage, to overlook the Respondent No.3-Samiti's earlier decisions. All the parties have been acting upon the earlier decisions without any break.

11 There is no case made out by Respondent No.3-Samiti to deny the rights of the Petitioners which are flowing from Articles 14, (15)(5), 19, 29 and 30(1) of the Constitution of India. There is no denial to the fact that the Petitioners are the only minority institution which is conducting this post-graduation course in Maharashtra. The judgment so referred and cited above itself deal with and/or recognise the rights of minority institution. The purpose and object of such examination, is to show the transparency and to select the meritorious students amongst the minority. The procedure in the background which they have adopted and as Respondent No.3-Samiti has already recognised it earlier, therefore, by overlooking the same and by giving a particular interpretation at this stage, such drastic order contrary to the earlier orders passed is unacceptable. This definitely affects the rights of the Petitioners including the students who are interested in pursuing their study, based upon the advertisement so made by the Petitioners, which has a foundation of earlier practice of the Petitioner's institution and so also of Respondent No.3-Samiti, of granting such permissions for so many years. We see there is no reason at this stage to obstruct and stop or to interfere with the timely steps which are required to conduct the post-graduation course in question.

12 There is nothing on record to show that the procedure which the Petitioners have adopted and/or in such permission to conduct examination, in any way is

unacceptable, unfair, exploitative, not transparent and/or would affect the rights of minority institutions and the students. The freedom so given to the minority institution to conduct their course by following the due procedure of law and by taking note of the principle so laid down in the above referred judgments, just cannot be curtailed at this stage in such fashion, pending the litigations specially, when all the issues are interconnected and interlinked. Therefore, we are inclined to grant interim relief as prayed in the Petition.

13 For the above reason, we are inclined to observe that in the present facts and circumstances the balance of convenience, equity lies in favour of the Petitioners and the students. It is made clear that the final decisions, if any, in the pending matters and/or related issues will bind all the parties concerned. However, subject to the orders by the respective Courts.

14 Therefore, at this stage, as the case is made out and in the interest of justice, we are inclined to grant the interim reliefs in terms of prayers (c) and (d) of the Petition which read as follows:-

œ(c) during the pendency and final disposal of the present Writ Petition, grant permission to petitioners to conduct its own P.G. CET at institutional level for its MDS Course for ensuing academic year 2014-2015 in the interest of justice;

(d) during the pendency and final disposal of the present Writ Petition, grant stay to impugned order of respondent No.3 dated 23.11.2013 on Item No.5(g) (communicated by forwarding letter dated 3.12.2013) [which is at Exhibit-A] in the interest of justice.?

The parties to act on an authenticated copy of this order. Liberty is also granted to communicate the order by all possible modes to all concerned.

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