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Court : Jammu and Kashmir

Decided On : Mar-14-1997

Reported in : AIR1997J& K123

Judge : Bilal Nazki, J.

Acts : Constitution of India - Article 226; ;Jammu and Kashmir Constitution - Section 104

Appeal No. : O.W.P. Nos. 27, 59, 64 and 72 of 1997

Appellant : Royal Polytechnic College and Etc.

Respondent : State of J. and K. and ors.

Advocate for Def. : Adv. General, D.S. Chouhan and; Rahul Pant and S. Shukla

Advocate for Pet/Ap. : P. Kohli, C.M. Koul and Ahsaan Malik

Disposition : Petition dismissed

Judgement :
ORDER

Bilal Nazki, J.

1. In all these petitions similar question of fact and law are involved. One of the Institutes, I am taking as model but the judgment shall apply to all the Institutions.

2. Writ petitioners are Institutions imparting technical education. According to petitioners these Institutions are approved by .All India Council for Technical Education and are recognised by the State Government and are affiliated to J. & K. Board of Technical Education.

3. According to petition titled Masterpro Institute and other, petitioner No. 1 started imparting education in 1994, petitioner No. 2 in 1993, petitioner No. 3 in 1989, petitioner No. 4 in 1993, petitioner No. 5 in 1985 and petitioner No. 6 in 1995. They imparted education of diploma's in various, disciplines for a duration of two to three years. These . Institutes have at present a roll of about 3000 students.

4. It is submitted that till 1993 the management of the Institutions were making admissions to the courses available in the Institutes. After the year 1993 when Supreme Court laid down a scheme in J. P. Unni Krishnan v. State of A.P. (AIR 1993 SC 2178) the professional colleges imparting education in medical and engineering were supposed to follow that scheme and State Governments were required to regulate the admissions of Private Technical Institutions.

5. It is the case of the petitioners that State Government did not take any steps to make admissions in accordance with the scheme laid down by the Supreme Court. The judgment of the Supreme Court was delivered on 4-2-1993 (reported in AIR 1993 SC 2178). There is nothing on record to show that as to why and in what manner the admissions for the years 1993-94, 1994-95 were made by the petitioners.

6. It appears from the pleadings of the parties that the matter regarding the implementation of the judgment of the Supreme Court got the attention of the respondent-State and the Institutions for the first time in the year 1995. A letter written by Principal of petitioner No. 2 is on record. This letter is written to the Director Technical Education, J. & K. Government, in which some reference has been made to verbal discussions with him by the Principal. The Principal, in his letter, has drawn the attention of the Board to the fact that no policy regarding admissions has been made, therefore, they are going to make admissions at their own as other Institutions have already done so but on the other hand on 3-8-1995 a circular was issued by the Secretary State Board of Technical Education which

reads as under :-

'All the Principals of the Private Polytechnics/ Institutes located in J. & K. State are hereby directed not to make any admission in their respective Polytechnics/Institutes for the current session 1995-96 till further instructions from the Administrative Department.'

7. This Circular of the Secretary was published in newspapers and a cutting of Daily Kashmir Times dated 4-8-1995 has been annexed with the petition. On 15-8-1995 another advertisement was issued by the Director Technical Education in local newspapers which was a notice to public and it reads as under:-

'It is for the general information of public that no student will take admission either for 3 years diploma or 2 years Draftsman Course (Engineering and non-Engineering discipline) with any Private Polytechnic/Institution located in Jammu and Kashmir State for theSession 1995-96. Anybody doing so will bedoing at his own risk and responsibility.'

8. On 7-8-1995 Government through under Secretary to Government Technical Education Department, wrote a letter to one of the Institutions i.e. National Institute of Technology, Miran Sahib, Jammu. This letter reads as under:-

'Dear Sir,

In pursuance of Hon'ble Supreme Court judgment in case of Unni Krishnan v. State of A.P. (AIR 1993 SC 2178) etc. and in per-suance of A.I.C.T.E. Notification G.S.R. 476(E) dated 20-5-1994 all admissions in professional colleges/Institutions are to be made by the Competent Authority through a common entrance test on 50 : 50 basis for payment seats and free seats. All the State Governments and Institutions are to adhere to the rules/orders w.e.f. academic Session1994. Any deviation to these orders would invite serious consequences in the shape of adverse orders from the Hon'ble Supreme Court.

You are as such advised that these instruction are strictly complied with and no admissions are made in the approved courses in contravention of the Supreme Court orders/ AICTE Rules, 1994 mentioned above. However, if any Institution

make admission in violation of the above instructions, they are doing it at their own cost and risk and the State Govt. or AICTE shall not be responsible for the consequences. Advertisements already made for admission if any, be withdrawn forthwith under intimation to this Department.'

9. After the Government banned Private Institutions from making admissions and making its intention clear by letter dated 7-8-1995, petitioner Institutes made a representation to Commissioner-Secretary to Government, Technical Education Department. Following request was made in the representation :-

'In view of the above mentioned submissions it is very earnestly requested to give your august consideration and revise decisionregarding admissions for 1995-96 as has been done in 1994-95 session in spite of Supreme Court decision being in force from 20-5-1994. It is also highly prayed that a revised admission policy to be formulated by the Government on the basis of Supreme Court verdict may kindly be communicated well in advance for the next session i.e. before May, 1996 as nothing of the sort has filtered down about the procedural changes to be effected in the mode of admission to technical Institutions.'

10. Thus all correspondence has been referred to above, appears to be with regard to 1994-95 Session. For 1995-96 a notification was issued by the State Board of Technical Education on 19-10-1995 which was published in Daily Kashmir Times on 30-8-1995. It reads as follows:-

'It is for the information of general public that the following private Polytechnics approved by All India Council for Technical Education are allowed to make the admissions for the courses approved by AICTE/ SBOTE strictly as per the norms of AICTE/ SBOTE for the Session 1995-96.'

11. The names of institutions were given in the advertisement notice and six institutesout of the present petitioners figure in the list.

12. After following the process in 1996 of banning the admissions by Private Institutions, the Government again came up with a notification on the basis of which an advertisement was issued on 12-9-1996 in local newspapers. It reads :-

'In pursuance of Administrative Department No. Edu/Tech/40132 dated 10-9-1996 the following AICTE and State Government recognised Private Polytechnics of J & K State are allowed to make the admissions for the Session 1996-97 only strictly on merit and prescribed norms of AICTE in the approved courses.

It is one time relaxation. This concession will not however form a procedure in future. In future the admissions will be done by the Competent Authority Entrance Examination.'

13. These facts have been narrated indetail in order to show the modus operandi of the petitioners as well as of respondents.

14. Both the petitioner-Institutes and the respondents were aware of the judgment of the Supreme Court, which is clear from the correspondence which has been referred herein above. The Government was even conscious of the consequences of not following the decision of the Supreme Court but even then it gave relaxation for 1994-95 and 1995-96 and authorised the Institutes to make the admissions to the Institutes on their own.

15. This Court at Srinagar, taking note of a public advertisement issued by an Institution entertained a writ petition in which the order was passed by this Court on 31 -12-1996 and certain directions were given to the respondent-State in that order. The main direction was that since the law laid down by the Supreme Court in Unni Krishanan J. P. v. State of A.P. (AIR 1993 SC 2178) was being violated, therefore, State should ensure that the judgment is being implemented. One of the directions given in the order was that Board of Technical Education and the Universities in Jammu and Kashmir shall not conduct the examination of the candidates who have not been selected in accordance with the scheme laid down by the Supreme Court.

16. In pursuance to this order, State Board of Technical Education passed an order on 6-1-1997, which reads as under:-

'In view of the order passed by the Hon'ble High Court of J. & K. at Srinagar dated 31-12-1996 in a public interest litigation, all polytechnic examinations which are

being conducted in the J. & K. by Secretary State Board of Technical Education are hereby postponed with immediate effect. The dates for the said examination shall be notified later on.'

17. When this order was passed the students of the petitioner-Institutions were not allowed to sit in the examination. They filed this writ petition challenging the order of the Secretary State Board of Technical Education.

18. I have heard the learned counsel forthe parties. State has not filed any counter but the Advocate General has appeared and argued the matter.

19. The only argument advanced by Mr. Kohli, for quashing the order impugned is that institutions have not made admissions on their own but it was the Government which authorised them to make the selections and since the Supreme Court has given power to State Governments to make admission, in Unni Krishnan J.P.'s case (AIR 1993 SC 2178), it should be considered that the State Government delegated those powers to the respective Institutions for making admissions. Before this argument is considered, it will be pertinent to mention as to what was laid down by the Supreme Court in Unni Krishnan J.P. v. State of A.P.

20. In para No. 2 of the scheme laid down by the Supreme Court, it was held :-

'At least 50% of the seats in every professional college shall be filled by. the nominees of the Government or University, as the case may be, hereinafter referred to as 'free seats.' These students shall be selected on the basis of merit determined on the basis of acommon entrance examination where it is held or in the absence of an entrance examination, by such criteria as may be determined by the competent authority or the appropriate authority, as the case may be. It is, however, desirable and appropriate to have a common entrance exam for regulating admissions to these colleges/institutions, as is done in the State of Andhra Pradesh. The remaining 50% seats (payment seats) shall be filled by those candidates who are prepared to pay the fee prescribed therefor and who have complied with the instructions regarding deposit and furnishing of cash security/Bank guarantee for the balance of the amount. The allotment of students against payment seats shall also be done on the basis of inter se merit determined

on the same basis as in the case of free seats. There shall be no quota reserved for the management or for any family, caste or community which may have established such college. The criteria of eligibility and all other conditions shall be the same in respect of both free seats and payment seats. The only dis-tinction shall be the requirement of higher fee by the 'Payment students.' The management of a professional college shall not.be entitled to impose or prescribe any other and further eligibility criteria or condition for admission either to free seats or to payment seats. It shall, however, be open to a professional college to provide for reservation of seats for constitutionally permissible classes with the approval of the affiliating University. Such reservations if any, shall be made and notified to the competent authority and the appropriate authority at least one month prior to the issuance of notification calling for applications for admission to such category of colleges. In such a case, the competent authority shall allot students keeping in view the reservations provided by a college. The rule of merit shall be followed even in such reserved categories.'

21. By reading this para from the judgment of the Supreme Court, it becomes clear that following directions have been given by the Supreme Court :-

a) At least 50% of the seats in every professional college shall be filled by the nominees of the Government or'University, as the case may be;

These students shall be selected on the basis of the merit determined on the basis of a common test (Entrance Examination) and in the absence of an entrance examination by such criteria as may be determined by the competent authority.

b) Remaining 50% seats (payment seats) shall be filled by those candidates who are prepared to pay fee prescribed therefor. The allotment of seats against payment shall also be done on the basis of inter se merit determined on the same basis as in the case of free seats.

c) There shall be no quota reserved for the management.

22. In Cl. 4 following restrictions were imposed:-

'No professional college shall call for applications for admission separately or individually. All the applications for admis-sion to all The seats available in such colleges shall be called for by the competent authority alone, along with applications for admission to Government/University Colleges of similar nature. For example, there shall be only one notification by the competent authority calling for applications for all the medical colleges in the State.'.....

23. In the light of the directions of the Supreme Court, could the State delegate the power of selection to the private institutions?

24. I am afraid, this was not the import of the judgment of the Supreme Court. After all, before the judgment came, same was the method of selection which the present Institutes have continued even after 1993. The method of selection of students which was in vogue in whole of the country, prior to Unni Krishnan (AIR 1993 SC 2178) judgment was improper and therefore the scheme was laid down by the Supreme Court and if the arguments of Mr. Kohli are accepted that the State Government has the power to delegate the power of selection than the whale judgment comes to a naught.

25. In order to avoid compromise on merit and payment of exorbitant fee, the scheme was laid down. In the present case, the Government was bound to make admissions for the petitioner-Institutions but in spite it directed the Institutes to make their owti admissions/ selections.

26. It is a case where the judgment of the Hon'ble Supreme Court has not been only flouted but a complete defiance of the judgment has been shown. In the State of J. & K., nothing has changed after the judgment of the Supreme Court. The Government and the Institutes continued to do what they were doing before the judgment in Unni Krishnan case (AIR 1993 SC 2178). This attitude of the Government and of the private Institutions is nothing but to dilute and dilute completely the judgment of the Supreme Court.

27. Mr. Kohli wants this Court to hold that since the Government had given exemption, therefore, the admissions made by the Institutes should be upheld.

28. Can a Government give an exemption to the application of the judgment of the Supreme Court? This is a perverse argument and needs to be rejected without any discussions.

29. Mr. Advocate General appearing for the State submits that this writ petition is not maintainable on two counts; viz., that the order impugned in these petitions has been issued by the Government in compliance to the directions of the High Court, therefore, no writ would lie. Had the petitioners felt aggrieved of the order of this Hon'ble Court dated 31-12-1996, they should have filed an appeal against the order pissed by this Court, He submits that these proceedings under Article 226 of the Constitution for quashment of an order passed by Board will be in fact quashment of order of this Court dated 31-12-1996, I agree with Mr. Advocate General that this petition has been filed. not only to get the order of this Court diluted, but also for the purpose of getting a licence to perpetually flout the judgment of the Supreme Court. He has further submitted that in a similar case, in which the Government his not made the arrangement for selecting candidates to a Private Medical College, the students who were aspiring to get admissions in that Institution filed a writ petition before this Court being writ petition titled Himani Soi v. State of J. & K., which was decided by the single Bench. The learned single Bench while taking note of the fact that the Medical College was duly recognised and had all the facilities but the candidates had not been selected by the Government, appointed a Committee which was headed by a former Judge of this Court and asked the Committee to make the selections for the Private Medical College. The judgment of the learned single Judge was challenged before the Division Bench. The Division Bench while quashing the order of the learned single Judge on the ground that the learned single Judge had no power to go beyond the scheme laid down by the Supreme Court in Unni Krishnan case (AIR 1993 SC 2178), gave certain directions for admissions. The matter went to the Supreme Court in Chander Chinar Bada Akhara Udasin Society v. State of J. & K., reported in AIR1997 SC 399. While upholding the judgment of the Division Bench the Supreme Court also found that the Division Bench had given certain directions which were not in con-firmity with the judgment of Unni Krishnan case, therefore, Supreme Court held (para 13):--

'In the result, the appeals are dismissed but at the same time in view of the directions given above it has to be held that we are not approving the directions given by the Division Bench. Now the steps have to be taken by the appellant-Society and the State Government in accordance with the different directions given by this Court for admission in the private medical colleges. There shall be no orders as to costs.'

30. In this judgment also the Supreme Court reiterated that the colleges should make the admissions in accordance to the scheme laid by the Supreme Court including the scheme laid down in Unni Krishnans case (AIR 1993 SC 2178).

31. If selection by a Committee of the independent persons, headed by a former Judge of the High Court appointed by the High Court, could not be approved on the ground that it was in contradiction to the scheme laid down by the Supreme Court, how can one say that the Government could give exemption from applying the judgment to the present Institutions and authorise them to make selections.

32. A verdict of the High Court was reversed by the Division Bench and also by the Supreme Court solely on the ground that the judgment was not in conformity to the scheme laid down by the Supreme Court, therefore, the order passed by the Government cannot be upheld as the same is totally in contradiction to the directions of the Supreme Court.

33. Mr. Kohli has also pressed equities into service and submitted that since the students are pursuing their courses, it will be harsh for them to be out of colleges at this stage. This argument cannot be accepted for two reasons;-

1) No student is before this Court, these are Institutions who are filing these petitions.

2) That writ petition is in fact a writ petition challenging the order of this Court dated 31-12-1996, which is not maintainable.

34. In addition the question of equity in such a case has already been considered by the Supreme Court in Chander Chinar Bada Akhara Udasin Society v. State of J. & K., AIR 1997 SC 399, and the Supreme Court laid down following law (para

10) :-

'It is unfortunate that due to the indifferent attitude of the State Government and haste shown by the appellant-Society, the so-called selected candidates, who are said to have been admitted, are virtually on the roads.

But only on equitable grounds, a procedure which is not sanctioned by law cannot be approved only to mitigate the hardship of such candidates who have sought admissions in the medical college aforesaid. .....'

35. The procedure adopted in that case before the Supreme Court was a procedure laid down by the High Court and in the present case the procedure laid down is by Commissioner-Secretary to Government or an Advisor to the Government. Can this be approved? And when it is manifestly clear that it is against the law laid down by the Supreme Court.

36. In my view equities may be pressed into service in any case but there cannot be equity in favour of persons who have flouted the judgment of the Apex Court, therefore, this argument is also rejected.

37. One of the petitioner-Institution i.e. Royal Polytechnic College has not even been recognised/approved by AICTE, which is disclosed by the petitioner himself, therefore, this Institution cannot be allowed to function at all.

38. For these reasons, I do not find any merit in these petitions which are accordingly dismissed with costs.

39. Cost of Rs. 1000/-is imposed on each petitioner which shall be deposited in the Advocates Welfare Fund.

40. During these proceedings show cause notices were issued to certain Officers of the Government by virtue of order dated 18-2-1997 for the reasons given in that order. Those proceedings shall remain on Board.

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