

Principal, Madhav Institute of Technology and Science

Vs

Rajendra Singh Yadav and others

Civil Appeal No. 5080 of 1998

(Mr. M. Jagannadha Rao and Mr. K.G. Balakrishnan)

02.08.2000

JUDGMENT

M. Jagannadha Rao, J.:— The Madhav Institute of Technology and Science Gwalior, represented by its Principal is the appellant before us. The Ist respondent, who is an employee and a diploma holder in Engineering wanted to improve his educational qualification and joined the part-time Engineering Course (Evening Session) of the appellant Institute in 1996 and also paid the tuition fee for the degree course. This part-time course was started in this Institute in 1991. It appears that the State of Madhya Pradesh, with a view to control population growth wanted to give certain incentives to those who had undergone ‘sterilisation.’ Such persons were given ‘green cards’ by a Govt. Circular dated 1.10.85, which said that ‘children’ of the green card holders would not have to pay fee in Medical Colleges, Engineering Colleges/Polytechnic Colleges and Industrial Training Institutes. Subsequently, the Government issued another order on 6.11.87, extending this benefit to the ‘persons’ who had undergone the sterilisation operation and it was said that there would be ‘waiver’ of tuition fee in Medical and Engineering Colleges in their cases too.

The Ist respondent who joined the Institute in 1996 and who paid tuition fee for 1996-97 then filed W.P.906 of 1997 claiming that under the above order dated 6.11.87 of Government of Madhya Pradesh, he was entitled to exemption from paying the fee in the college and that he was entitled to refund of the tuition fee already paid for 1996-97 and exemption for the future.

The State contended that the above orders were not applicable to ‘part-time’ courses. (There is no dispute that so far as this College is concerned, the regular courses (i.e. other than part-time) were admitted to grant-in-aid and that these part-time were not so admitted). In other words, it was contended that the Ist respondent). In other words, it was contended that the Ist respondent was not entitled to exemption from payment of tuition fee. A further contention was advanced by the State that the first order dated 1.10.85 was issued in the name of the Governor of the State under Article 166 of the Constitution of India (the one which conferred benefit on the ‘children’ who had undergone sterilisation) whereas the second order dated 6.11.87 (which conferred the benefit on the persons who had undergone the sterilisation) was not issued in the name of the Governor and did not confer any enforceable right on the persons who were claiming exemption under the second order.

A learned Single Judge of the High Court of Madhya Pradesh, in his judgment dated 26.8.97 dismissed the Writ Petition on the ground that the second order dated 6.11.87 having not been issued in the name of the Governor under Article 166 of the Constitution of India, it was not enforceable. But, on appeal in LPA. 218 of 1997, the Division Bench allowed the Writ petition and granted relief stating that the appellant-Institute had no case that Government orders were not binding on it and

hence it was bound to implement the second order of the Government dated 6.11.87. The exemption was general in nature and had been made applicable to 'all' colleges and polytechnics/Institutes. The appellant was accordingly directed to grant exemption in regard to the tuition fee. It is against this judgment that the Institute has preferred this appeal.

During the pendency of this appeal, there was no stay of the judgment of the Division Bench. We are informed that the Ist respondent is yet to complete the degree course and is still studying in this Institute in the part-time course.

In this appeal the learned Senior counsel Sri A.K. Chitale, appearing for the appellant-Institute has contended that the order of the Government of Madhya Pradesh dated 6.11.87 would never have been intended to apply to private colleges/Institutes where the courses were not admitted to grant-in-aid by the Government. The Government could not have imposed any obligation on the unaided Colleges/Institutes inasmuch as there was no other way whereby these Colleges/Institutes could meet the expenditure for these part-time courses. Admittedly, the part-time course in this college was not admitted to grant-in-aid by the Government.

The State of Madhya Pradesh has filed a counter in this Court supporting the appellant-Institute and has clarified as follows:

"That it is submitted that the Circulars dated 1.10.85 and 6.11.87 have been issued by the Government for providing facilities of exemption from payment of tuition fees to the green-card holders and these words only in respect of regular courses. The respondent No.1 was granted admission in part-time course which is under self-financing scheme and Government do not provide any fund for the same. Hence the above-mentioned Circulars are not applicable in the case of the respondent No.1".

The above clarification issued by the Government would mean that the part-time courses in this college which were not regular courses and which were not admitted to aid were never intended by the Government to be covered by the orders dated 1.10.85 and 6.11.87. The State stated that there was thus no obligation on the private unaided Colleges/Institutes to grant such exemption from payment of tuition fee in respect of part-time courses.

In our view, there can be no difficulty in granting exemption to the aided courses in private Colleges/Institutes. But there will be difficulty in extending exemption to unaided courses in private Colleges/Institutes. The reason is obvious. If Government is not to meet the teaching expenses in part-time courses and if the College is not to collect the tuition fee, the College will have to bear the financial burden without the corresponding right to collect fee from the students to meet its legitimate expenses for these part-time courses. There is also no material to show that before such an administrative order was issued the private colleges or institutes agreed to bear the expenditure themselves even if grant-in-aid was not extended to these part-time courses. The Government, in our view, was therefore justified in making the clarification as aforesaid in its counter affidavit and it appears to be quite a reasonable stand taken by them.

Learned Senior counsel for the Ist respondent, Sri M.N. Krishnamani contended that but for the representation made by the State in its Circular dated 6.11.87, the Ist respondent would not have undergone sterilisation. The Government and the Institutes were, therefore, now estopped from denying benefit of the order to the Ist respondent. We are unable to accept this contention. The Circular dated 6.11.87 is one addressed to all Chief Medical and Health Officers in Madhya Pradesh.

While we may assume that the Circular has been issued to benefit those who have undergone sterilisation, it cannot be said that any personal representation was made to Ist respondent. Therefore, no question of promissory estoppel arises. There is also no material to hold that the Ist respondent has undergone the sterilisation operation in contemplation of taking up this part-time course. It might have been for other good reasons relevant to the family's financial status to meet extra expenditure for more children. In fact, if he were acting upon any such representation in 1996,- when he joined the part-time course he would not have paid the tuition fee for 1996-97. The reasonable inference is that he was not even aware of this Circular when he joined the course and it was only much later, when he learnt about the circular that he sought refund for 1996-97 and exemption for the future. So far as the Institute is concerned, it never made any representation to the Ist respondent.

It was then argued for the Ist respondent that at the time when this Institute was founded, lot of monies came from Government and the public and, therefore, the fact that for this course there was no grant-in-aid, made no difference. We cannot agree. The capital expenditure incurred at the time of founding the Institute is different from the running expenses of the teaching staff every month.

Learned Senior counsel for the Ist respondent then contended that if there was no grant-in-aid, then the State must be directed to pay the tuition fee in respect of such individual candidates who had undergone sterilisation, though the part-time course was not aided. In our view, it is not possible to issue any such direction in this Writ petition. Grant-in-aid, either for the Institution or for the School or for individuals is a matter of policy. In view of the clarification given in the counter affidavit set out above, if any such direction is given by this Court to benefit individuals, it would amount to amendment of the existing government policy by way of a judicial order and amounts to extension of benefit to persons to whom the policy was not intended to apply.

We are, therefore, unable to agree with the view taken by the Division Bench of the High Court in allowing the Writ Petition. The appeal is allowed and the judgment of the Division Bench in the LPA is set aside and the Writ Petition is dismissed. It will be necessary for the Ist respondent to pay the arrears in the tuition fee for the past years and for the rest of the course. In case any representation is made for instalments, the appellant may grant easy instalments or obtain a bond from the appellant for payment of the tuition fee covering the back period. So far as the future years of the course are concerned, the Ist respondent has any way to pay the fee. Subject to the above directions against the Ist respondent, the appeal is allowed. The Writ Petition is dismissed. There will be no order as to costs.