

SUPREME COURT OF INDIA

State of M.P.

Vs.

Suresh Narayan Vijayvargiya

C.A.No.4060 of 2009

(Dr.B.S.Chauhan, K.S. Radhakrishnan and S.A. Bobde JJ.)

27.02.2014

JUDGMENT

K.S. RADHAKRISHNAN

1. We are, in this contempt petition, concerned with the question whether the contemnors have violated the interim orders passed by this Court on 27.5.2009 and 27.1.2011 in Civil Appeal No. 4060 of 2009 in the matter of sharing of MBBS seats between the respondent private medical college and the State Government.

2. Civil Appeal No. 4060 of 2009 was preferred by the respondents/contemnors herein, challenging the judgment of the High Court of Madhya Pradesh dated 15.5.2009, which upheld the validity of the Madhya Pradesh (Admission and Fee Regulatory Committee) Act, 2007 (for short “AFRC Act”), empowering the State Government to fill all the seats (including the NRI seats) in all the education institutions in the State of Madhya Pradesh, including private medical and dental collages. Since serious disputes were raised with regard to seat sharing and fixation of quota of seats for MBBS/BDS, this Court felt that some interim arrangement should be made taking note of the interest of both the parties and also that of the students. This Court, therefore, as an interim measure, passed an order on 27.5.2009 in C.A. No.4060 of 2009 and the connected appeals, which reads as follows:

“We, therefore, direct that the admissions in the private unaided medical/dental colleges in the State of Madhya Pradesh will be done by first excluding 15% NRI seats (which can be filled up by the private institutions

as per para 131 of Inamdar case), and allotting half of the 85% seats for admission to the undergraduate and post- graduate courses to be filled in by an open competitive examination by the State Government, and the remaining half by the Association of the Private Medical and Dental Colleges. Both the State Government as well as the Association of Private Medical and Dental Colleges will hold their own separate entrance examination for this purpose. As regards “the NRI seats”, they will be filled as provided under the Act and the Rules, in the manner they were done earlier.

We make it clear that the aforesaid directions will for the time being only be applicable for this Academic Year i.e. 2009-2010. We also make it clear that if there are an odd number of seats then it will be rounded off in favour of the private institutions. For example, if there are 25 seats, 12 will be filled up by the State Government and 13 will be filled up by the Association of Private Medical/Dental Colleges. In specialities in PG courses also half the seats will be filled in by the State Government and half by the Association of Private Medical/Dental Colleges and any fraction will be rounded off in favour of the Association. In other words if in any discipline there are, say, 9 seats, then 5 will be filled in by the Association and the remaining 4 will by the State Government. Capitation fee is prohibited, both to the State Government as well as the private institutions, vide para 140 of Inamdar case. Both the State Government and the Association of Private Medical/Dental Colleges will separately hold single window examinations for the whole State (vide para 136 of Inamdar case).

We make it clear that the solution we have arrived at may not be perfect, but we have tried to do our best to find out the best via media. Although this order is only for Academic Year 2009-2010, we recommend that it may also be considered for future sessions.

Six weeks’ time is allowed for filing counter-affidavit and four weeks thereafter for filing rejoinder.

List these appeals for final hearing in September 2009. In the meantime, pleadings may be completed by the parties.”

3. The interim arrangement made continued in the subsequent years as well and in the year 2011-2012, this Court vide its order dated 27.1.2011 in I.A. No. 50 of 2011 passed the following order:

“The order dated 27th May, 2009 made in Civil Appeal No. 4060 of 2009 etc. shall be applicable for the academic year 2011-2012.

There shall be an order accordingly.”

4. This contempt petition has been preferred by the State Government and the Director of Medical Education Department alleging that the contemnors have filled up the entire 150 seats available for the year 2011-2012, without sharing it with the State Government, violating the orders of this Court dated 27.5.2009 and 27.1.2011. Petitioners pointed out that the contemnors had sent a letter dated 23.5.2011 stating that they would fill up the entire seats during the academic year 2011-2012 since their colleges would be functioning under the Madhya Pradesh Niji Vishwavidyalaya (Sthapana Avam Sanchalan) Adhiniyam, 2007 [for short “Adhiniyam 2007”], consequent to the establishment of the Peoples’ University under M.P. Act No.18 of 2011 and the admission process of those constituent institutions would be governed by the statutes and ordinances framed under the above- mentioned Act. The State Government noticing the stand taken by the contemnors, wrote a letter dated 14.7.2011 to the Managing Director of the Medical College stating that the admissions have to be made only following the arrangement made by this Court vide order dated 27.1.2011 and, if any change has to be made, the same could be done only with the permission of this Court.

5. The Directorate of Medical Education of the State Government also wrote a letter dated 14.7.2011 to the Medical Council of India, informing the Council of the defiant attitude taken by the contemnors by not giving admission to any of the students included in the State quota for the academic year 2010-11.

6. The Directorate of Medical Education then wrote a detailed letter dated 8.8.2011 to the Secretary, Association of Private Dental & Medical Colleges, in the State, specifically referring to the interim order passed by this Court on 27.1.2011 reminding them of the necessity of the compliance of the Court’s directions in the matter of seat sharing. The contemnors, ignoring those letters, published an advertisement in a local newspaper “People Samachar” on 9.8.2011 informing the public that 150 seats would be available with them for admission to MBBS course under the management quota for the year 2011-12.

7. The Directorate of Medical Education, in the meanwhile, sent a list of 66 students under the State quota to the Medical College for admission to MBBS

course. The contemnors refused to admit those students under the State quota and the State Government received several complaints from the students who were included in the State quota, but not admitted by the contemnors. The State Government then sent a notice dated 17.8.2011, to the Dean of the Medical College to show cause why the following action be not initiated against the college:-

(a) withdraw the Desirability and Feasibility Certificates issued in favour of the college;

(b) report the matter to the Medical Council of India to take suitable action against the college.

(c) report the matter to the concerned authorities for action against Madhya Pradesh Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007.

8. The contemnors, in total defiance of the Court's order as well as the various directions issued by the Directorate of Medical Education, filled up the entire 150 seats in the management quota for the academic year 2011-12.

9. The students, who figured in the State quota, then approached the High Court of Madhya Pradesh. The High Court directed the contemnors to admit students who were included in the State quota. Consequently, they admitted those students and the number of students admitted in the College went up to 245 as against the sanctioned strength of 150 seats. The Medical College does not have the infrastructural facilities to admit 245 students, which has adversely affected the academic standards of the students admitted. The State Government, as also the Directorate of Medical Education, in the above-mentioned circumstances, approached this Court and filed the present Contempt Petition for taking appropriate action against the contemnors for violating the orders passed by this Court on 27.5.2009 and 27.1.2011 and also by not complying with the various directions issued by the State Government as well as the Directorate of Medical Education.

10. When the matter came up for hearing, this Court issued notice to the contemnors. Learned senior counsel appearing for the contemnors, submitted before this Court on 3.2.2014 that they would be tendering their unconditional and

unqualified apology for their actions and made a proposal to set right the illegalities committed, which reads as under:-

(a) None of the 245 students admitted in the Institution – Peoples College of Medical Sciences (PCMS) during the academic year 2011- 12 shall be disturbed and they all will continue to pursue their course without any interruption. This would include the students allotted by the State who had been given provisional admissions pursuant to the orders of the Hon'ble High Court.

(b) In the academic session 2011-12 on the basis of the 50-50 admissions between the College and State after 15% NRI quota is deducted as per the orders of this Hon'ble Court, the State entitlement filled in by the institution was 63 seats. The institution shall accordingly surrender 21 seats in each of the following three academic years i.e. 2014-15, 2015-16 and 2016-17 to the State government to be filled in through the procedure laid down in the order dated 27.5.2009.

11. The contemnors on 13.2.2014, filed a written note wherein, after reiterating the proposals submitted on 3.2.2014, they stated as follows:

“13. Though admissions have already been made by the State against the said 63 seats for the year 2011-12 in the said year itself still in deference to the orders of this Hon'ble Court the Respondent is willing to give up the said 63 seats. It is however requested that if these 63 seats are adjusted only in one year, the college would suffer adversely. Therefore, the Respondent again humbly submits that it be permitted to surrender 21 seats in each of the following three academic years i.e. 2014-15, 2015-16 and 2016-17 as submitted before this Hon'ble Court on 3.2.2014 to the State Government to be filled in through the procedure laid down in the order dated 27.5.2009.

14. It is respectfully submitted that in the captioned contempt petition of the Petitioner State only relates to its 50% quota of admissions i.e. 63 seats in the academic year 2011-12.

15. The respondents reiterate the proposal submitted on 3.2.2014 and again tender an unconditional and unqualified apology for their actions.”

12. In the written note filed by the State of Madhya Pradesh on 13.2.2014, in response to the submissions made by the contemnors on 3.2.2014, the State of Madhya Pradesh stated as follows :-

“20. For the academic session 2011-12, the State Government had a quota of 107 students:-

- 63 seats as per the 50:50 order of this Hon’ble Court.
- 42 seats as per letter dated 19.9.2011 of MCI since Peoples College made excess admissions in 2010-11.
- 2 seats which were not filled in the NRI quota.

21. The aforesaid position of State quota seats for 2011-12 is explained in detail in the letter of MCI dated 5.3.2012 (annexed herewith as Annexure A-1).

22. For the academic session 2011-12

Total sanctioned strength 150

Total seats filled by College 245

College authorized to fill 43

State quota seats filled by College 95

Excess seats filled by College 107

23. The issue of excess admissions made by the College is to be considered as per the Regulations framed by the MCI under the Indian Medical Council Act, 1956 and the submissions made by the MCI in that regard.

24. However, if the scheme formulated by the Peoples College is considered by this Hon’ble Court, then the excess 107 admissions made by the College in 2011-12 be adjusted in the session of 2014-15 in full and remaining seats be adjusted in 2015-16.

25. On account of illegal and unlawful acts of Respondents/Contemnors, not only the State Government, but the students of the State quota, who were illegally denied admissions were severely harassed and were drawn on a long drawn legal battle with uncertainty of their respective careers.”

13. We have no hesitation in saying that the above situation has been created by the contemnors themselves by filling up of the entire 150 seats in total defiance of the interim orders passed by this Court on 27.5.2009 and 27.1.2011 making an interim arrangement for seat sharing between the State Government and the private educational institutions from the year 2009-10 onwards in the State of Madhya Pradesh, which are binding on the contemnors. The contemnors attempted to justify their action on the ground that they are regulated by the Private Universities Act and that AFRC Act has ceased to apply and, after the notification dated 4.5.2011, the State Government has no right even to share seats in their institution, de hors the interim orders passed by this Court. This stand taken by the contemnors is also not correct, since Section 7(m) of the Private University Act, 2007 provides that admission shall not be started till the concerned statutes and ordinances are approved as per Section 35 of the Act, which states that the statutes and ordinances shall come into force only upon publication in the official Gazette. Even otherwise, once there is an order in force binding on the parties, they cannot violate or ignore that order, taking shelter under a statutory provision and if any modification of the orders is warranted, parties should have approached this Court and sought for clarification or modification of those orders. However, without doing so, in total defiance of the orders passed by this Court, they filled up the entire seats, leaving the students who figured in the State list in the lurch. Later, though they were admitted in the College having the infrastructure for accommodating only 150 students, it has affected the quality and standard of medical education. After having convinced that they had violated the orders of this Court, they have come up with an unconditional and unqualified apology and making some suggestions to undo the illegality committed by them after eating away the seats from the State quota.

14. We have, on facts, found that there has been a willful disobedience by the contemnors of the orders passed by this Court, which is nothing but interference with the administration of justice. Disobedience of an order of a Court, which is willful, shakes the very foundation of the judicial system and can erode the faith and confidence reposed by the people in the Judiciary and undermines rule of law. The Contemnors have shown scant respect to the orders passed by the highest Court of the land and depicted undue haste to fill up the entire seats evidently not

to attract better students or recognize merit, but possibly to make unlawful gain, adopting unhealthy practices, as noticed by this Court in *TMA Pai Foundation & Ors. v. State of Karnataka & Ors.* (2002) 8 SCC 481 and various other cases. Once the Court passes an order, the parties to the proceedings before the Court cannot avoid implementation of that order by seeking refuge under any statutory rule and it is not open to the parties to go behind the orders and truncate the effect of those orders. This Court in *T.R. Dhananjaya v. J. Vasudevan* (1995) 5 SCC 619, held that once the Court directed that appeal be disposed of after giving him opportunity of hearing and such direction was not appealed from, it is not open to the concerned authority to deny the hearing on the ground that the Police Manual does not provide for the same. This Court in *Mohd. Aslam alias Bhure, Acchan Rizvi v. Union of India* (1994) 6 SCC 442 held that circumvention of an order can be by 'positive acts of violation' or 'surreptitious and indirect aids to circumvention and violation of orders. In the instant case, the violation is a positive act of violation, which is apparent on the face of the record.

15. We have already pointed out that the contemnors earlier took up the stand that, after notifying their institution as a University on 4.5.2011 under the Private University Act, 2007, the AFRC Act ceased to apply, hence, they are not bound by the orders passed by this Court. Contemnors cannot take refuge under a notification issued under a Statute to defeat the interim orders passed by this Court which are binding on the parties, unless varied or modified by this Court. In the instant case, all the appeals in which interim orders have been passed, are pending before this Court and if the contemnors had any doubt on the applicability of those orders, they could have sought clarification or modification of the order. Now, by tendering unconditional and unqualified apology, the contemnors are trying to wriggle out of the possible action for Contempt of Court, after violating the orders causing considerable inconvenience to the students and after enjoying the fruits for the illegality committed by them. It is trite law that apology is neither a weapon of defence to purge the guilty of their offence; nor is it intended to operate as universal panacea, it is intended to be evidence of real contriteness. (See *M.Y. Shareef & Anr. v. Hon'ble Judges of the High Court of Nagpur & Ors.* (1955) 1 SCR 757 and *M.B. Sanghi, Advocate v. High Court of Punjab & Haryana & Ors.* (1991) 3 SCC 600.

16. Contemnors have now tendered unconditional and unqualified apology and volunteered to set right the illegality committed by them, but the purpose for flouting the orders has been achieved, that is the contemnors wanted to fill up the entire seats by themselves. Therefore, to maintain the sanctity of the orders of this

Court and to give a message that the parties cannot get away by merely tendering an unconditional and unqualified apology after enjoying the fruits of their illegality, we are inclined to impose a fine, which we quantify at Rs.50 lakhs.

17. We may now examine how the illegality committed by the contemnors can be rectified. For the academic year 2011-12, the State Government's quota was 107 seats, details of which is given below:-

- 63 seats as per the 50:50 order of this Hon'ble Court.
- 42 seats as per letter dated 19.9.2011 of MCI since Peoples College made excess admissions in 2010-11.
- 2 seats which were not filled in the NRI quota.

18. The total sanctioned strength for the academic year 2011-12 was 150 students, but the contemnors had filled up 245 seats, though the college was authorized to fill up only 43 seats. The contemnors filled up 95 seats, which would have gone to the State quota. Consequently, 107 excess seats were filled up by the college. The contemnors, however, took up the stand that if 63 seats are to be adjusted for the academic year 2014-15 that may seriously affect the functioning of the College, hence their suggestion is that they will compensate the lost seats in a phased manner, that is 21 seats in the year 2014-15 and the rest in equal proportion in the years 2015-16 and 2016-17, which we find difficult to accept. We are of the view that the excess of 107 admissions made in the year 2011-12 have to be adjusted by adjusting the same for the academic session 2014-15 in full and remaining seats be adjusted in the year 2015-16, because the illegality committed must be set right at the earliest. This Court in *Mridul Dhar (Minor) & Anr. v. Union of India & Ors.* (2005) 2 SCC 65, held (Direction No.11) as follows:

“11. If any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year.”

19. We may reiterate that the above-mentioned situation has been created by the contemnors themselves and due to their illegal and unlawful acts, by admitting students over and above the sanctioned strength, the students who were later

admitted from the list of State quota, could not get the quality medical education, which otherwise they would have got. Further, they were also driven to unnecessary litigation before the High Court creating uncertainty to their future.

20. We, therefore, order that the admission of students under the State quota for the academic year 2011-12 in Medical College is valid and legal and appropriate steps should be taken by the State Government and the Medical Council of India to regularize the admission. The excess 107 admissions made by the Medical College for the MBBS during the year 2011-12 and the previous year, be adjusted in the session 2014-15 in full taking note of the full sanctioned strength and the balance seats be adjusted in the year 2015-16. The unconditional and unqualified apology tendered by the contemnors is accepted, but the contemnors are directed to pay a fine of Rs.50 lakhs in two months from today, to the State Government. Ordered accordingly.

21. The Contempt Petition is disposed of accordingly.