

SUPREME COURT OF INDIA

State of Maharashtra & Ors.

Vs.

Dr. D.Y. Patil Vidyapeeth & Ors.

C.A.No.9835 of 2016

(A.K.Sikri and L.Nageswara Rao,JJ.,)

28.09.2016

JUDGMENT

By The Court:

SLP.(Civil)No.26558 of 2016

1. Leave granted.
2. All these appeals arise out of the common order dated August 30, 2015 passed by the High Court of Judicature at Bombay in the writ petitions filed by the respondents herein. In the said writ (arising out of SLP (C) No. 26558 of 2016 & Ors.) petitions, Rule has been issued and during the course of arguments we are informed that these are now listed for final hearing on September 29, 2016.
3. Subject matter of challenge in these appeals is the interim order which is passed by the High Court granting stay of Letter dated August 09, 2016 issued by the Government of India through the Ministry of Health and Family Welfare, the Government Resolution dated August 20, 2016 passed by the State of Maharashtra and the consequential Notice dated August 21, 2016 of the State of Maharashtra.
4. Respondents herein are the deemed universities established under Section 3 of the University Grants Commission Act, 1956 (hereinafter referred to as the 'UGC Act'). The issue pertains to the admission of students in MBBS/BDS courses. An All India Test known as National Eligibility-cum-Entrance Test (NEET) has been conducted in order to have the centralised admission process. This NEET has been conducted by the Central Board of Secondary Education, Delhi, on the basis of which Merit List showing All Indian Ranking has been drawn of the successful candidates. It is the common case of the parties that admission is to be given on the basis of the said Merit List by the educational institutions. However, the process of admission is to be preceded by counselling of eligible candidates/students. It is this counselling which has become the bone of contention.

5. Vide the aforementioned Letter and Resolution, which have been stayed by the High Court, a decision is taken by the Central Government/State Government that the centralised counselling shall be conducted by the State Government. For this purpose, the appellants, i.e. the State of Maharashtra, supported by the Union of India, relied upon the Constitution Bench judgment of this Court in *Modern Dental College and Research Centre & Ors. v. State of Madhya Pradesh & Ors* and some other Constitution Bench judgments including the orders passed in *Sankalp Charitable Trust & Anr. v. Union of India & Ors.* whereby system of NEET is restored coupled with centralised counselling. On the other hand, the respondent universities maintain that being deemed universities, they are autonomous bodies and, therefore, it is their right to undertake the counselling process and the only rider is that they are supposed to admit the students only from the Merit List drawn from the NEET and that too on merit. According to them, the impugned orders issued by the Central and State Governments are ultra-vires as the State Government has sought to exercise its powers under the Maharashtra Act No. XXVIII of 2015 which does not apply to the deemed universities, nay, specifically excludes the institution declared to be a deemed university under Section 3 of the UGC Act, as per the definition of 'Private Professional Educational Institution' provided under Section 2(q), to which institutions the said Act applies, regulating their admission and fees. It is also argued that right to admit students is the fundamental right of these deemed universities guaranteed under Article 19(1)(g) of the Act as per the eleven Judge Bench decision of this Court in *T.M.A. Pai Foundation v. State of Karnataka*³ and any reasonable restrictions thereupon can be imposed only by 'law'. It is, thus, submitted that the impugned decisions and communications which are administrative in nature, having no force of law, cannot take away the right of the deemed universities to admit the students. This is the main issue which is to be adjudicated upon and to be decided by the High Court in the writ petitions filed by the respondents.

6. In the impugned interim order, the High Court has taken note of the provisions of the University Grants Commission (The Institutions Deemed To Be Universities) Regulation, 2016 and other statutory provisions on the basis of which it has come to the prima facie view that the State Government cannot transgress the powers of the deemed universities by issuing Government Resolution, when the field of holding the counselling and right to admit the students is occupied by the Central legislation like the Amendment Notification dated August 05, 2016 issued by the Medical Council of India under Section 33 of the Indian Medical Council Act, 1956 and the aforementioned Regulation, 2016. Sustainance is also drawn from the judgment of this Court in *Modern Dental College and Research Centre* case on the basis of which it is observed by the High Court that right to admit students is conferred upon educational institutions. The High Court has also extensively quoted similar interim order passed by the Kerala High Court on August 26, 2016 in the writ petitions which are filed by private unaided educational institutions in the State of Kerala. While issuing the interim stay of the impugned orders certain conditions are also imposed, as can be seen from paras 10 and 11 of the order of the High Court, which read as under:

“10. Having considered the aforesaid statutory provisions, we are of the view that the universities coming under the purview of Deemed Universities under Clause 2.11 of Regulation 2016 are entitled (arising out of SLP (C) No. 26558 of 2016 & Ors.) to

admit the students as per the merit list drawn on the basis of All India ranking of NEET. In our prima facie view in view of the statutory provisions as extracted above, the State Government cannot transgress the powers of the Deemed Universities by issuing Government Resolution. When the field of holding the counselling and right to admit the students is occupied by the central legislation like Amendment Notification 2016 and Regulation 2016 the Government Resolution cannot override the said statutory provision. We also find that the Hon'ble Supreme Court in the case of Modern Dental College (supra) has categorically held the rights which encompass the right to occupation of educational institutions includes "a right to admit students". We also find that in identical circumstances the Kerala High Court vide order dated 26th August, 2016 has stayed the Government Resolution issued by the State of Kerala by observing at para 9 and 10 as under:

"9. We have given our anxious consideration to the respective contentions advanced before us. It is contended by the learned Advocate General that the impugned orders are issued to ensure that students are admitted only on the basis of merit as per the ranking in NEET, 2016. However, we notice that the admission process itself has been directed to be done by the Commissioner for Entrance Examinations which is not permissible. Though it is contended that it is for the respective colleges to furnish to the Commissioner for Entrance Examinations the list of students who have applied to their colleges, and that it would be only on the basis of such list that students would be admitted, we are not satisfied that the said arrangement is in accordance with the dicta laid down by the Apex Court in T.M.A. Pai Foundation case (supra) and P.A. Inamdar case (supra). In the said decisions, the Apex Court has clearly laid down that, the right to make admissions forms as integral part of the right of the Self Financing Institutions to establish and administer the same. By the impugned orders, the power of admitting students is conferred on the Commissioner for Entrance Examinations. Though we had put a pointed question to the learned Advocate General as to what was the source of the power that has been exercised by the State, we have not been able to get an answer. It is one thing to say that the admission procedure should be fair, transparent, nonexploitative and merit based. It is a totally different thing to say that in order to ensure the same, the allotment would be made by the Commissioner for Entrance Examinations. The limited power that the State has been conceded, extends only to ensuring that the admission process satisfies the criteria laid down by the Supreme Court in T.M.A. Pai Foundation case (supra) and P.A. Inamdar case (supra). Prima Facie, the impugned orders by conferring the power to admit students on the Commissioner for Entrance Examinations has impinged upon the right of the Petitioners to admit students. Therefore, we are satisfied that an interim order of stay of the impugned orders is necessary to be granted. However, we are conscious at the same time that, it is necessary to ensure the admission process to be fair, transparent, nonexploitative and merit based. Therefore, the interim stay shall be subject to appropriate conditions.

10. Accordingly, there shall be interim stay of operation and implementation of the impugned orders, G.O. (Rt.) No. 2314/2016/H&FD dated 20.08.2016, subject to the following conditions:

(i) Admissions to the MBBS/BDS Courses shall be only on the basis of the ranking of candidates in the rank list of NEET, 2016 on the basis of the inter se merit among the candidates, who have applied to the respective colleges.

(ii) All the colleges agree that, the applications for admission are received only through online and that, the said process provides transparency with regard to the merit as well as the identities of the applicants. Such applications shall therefore be uploaded for the scrutiny of the Admission Supervisory Committee also immediately on the expiry of the last date for submission of applications.

(iii) Since the counsel for the Admission Supervisory Committee has voiced a complaint that some of the colleges have not obtained approval of the Admission Supervisory Committee, for their prospects, the admission process shall be proceeded with only on the basis of a prospects, for which approval of the Admission Supervisory Committee has been obtained.

(iv) The Admission Supervisory Committee is directed to either approve or disapprove the Prospectus submitted to them for approval, within three days of such submission.

11. Having regard to the aforesaid, we are of the view that the impugned letter dated 9th August, 2016 issued by the Government of India through the Ministry of Health and Family Welfare, the Government Resolution dated 20th August, 2016 issued by State of Maharashtra and the consequential notice of the Government of Maharashtra dated 21st August, 2016 deserves to be and are hereby stayed. However, it is made clear that the admission as may be given by the Petitioners shall be strictly by abiding the Clause 6.4 of the Regulation 2016 and the Petitioners shall admit the students strictly on the basis of ranking of the candidates in the list of NEET on the basis of inter se merit amongst the students who have applied to the Petitioner's institution.”

7. We may point out at this stage that the learned counsel appearing on either side had argued the matter in great detail, touching upon the main question of law as well which is raised in the writ petitions. It was the endeavour of Mr. Shyam Diwan, learned senior counsel appearing for the State of Maharashtra, and Mr. Ranjit Kumar, learned Solicitor General appearing for the Union of India, that the aforesaid reasons given by the High Court in coming to its prima facie conclusion were patently erroneous. On the other hand, Mr. P. Chidambaran and Dr. A.M. Singhvi, learned senior counsel, and other learned counsel appearing in the matters, supported the impugned order and also advanced arguments to the effect that the present case had to be tested having regard to the provisions of the Maharashtra Act XXVIII of 2015 which excluded deemed universities.

8. We are not reproducing the submissions of counsel for both sides in detail as these questions of law are to be determined by the High Court in the writ petitions filed by the respondents herein. We, therefore, do not want to make any comments on the arguments raised by both sides so as not to influence the decision making process of the High Court. However, few comments are required to be made at this stage, which are as follows:

“(i) Insofar as judgment of the Constitution Bench of this Court in Modern Dental College and Research Centre case is concerned, it does not help the respondent universities at all. On the contrary, it is held by this Court in the said case that the process of admission encompasses not only Centralised Entrance Test (CET), but counselling as well. This is made abundantly clear by the Constitution Bench in its recent order dated September 22, 2016 in the case of State of Madhya Pradesh v. Jainarayan Chouksey & Ors.⁴ It is amazing that it is the respondents which had taken shelter under the aforesaid judgment in Modern Dental College and Research Centre case, before us this argument was abandoned and the respondents tried to distinguish this judgment, whereas the appellants heavily relied upon the said judgment. The question, however, is as to whether the said judgment is applicable to the deemed universities having regard to the provisions of the Maharashtra Act XXVIII of 2015, which aspect has to be decided by the High Court.

(ii) Reliance upon the order dated August 26, 2016 passed by the Kerala High Court is also misconceived as the order passed pertained to private unaided medical institutions and not deemed universities. Since special leave petitions are preferred by the Union of India against the aforementioned order passed by the Kerala High Court, which are yet to be heard, we refrain ourselves from making any further comments.”

9. We are, however, confronted by a different situation altogether. The central issue highlighted above needs to be considered by the High Court. In the meantime, pursuant to the impugned orders passed by the High Court, the respondent universities, which had invited the successful students from the Merit List drawn on the basis of NEET to register for admission in their respective universities, went ahead with the counselling of those students who applied for admissions to them and a statement was also made at the Bar that even admissions have also been done on the basis of first counselling. So much so, classes have started and those admitted students are attending the course. We were informed that second and further counselling would be needed as many such students admitted in particular courses change their discipline of study and/or get admission in other medical institutions, thereby resulting into vacating the seats occupied by them. Last date for admission in MBBS/BDS courses is September 30, 2016. It was also argued by the learned counsel appearing for the respondents that admission was done strictly in accordance with the merit of the successful candidates of NEET who had applied in their respective universities.

10. On the other hand, Mr. Diwan had made valiant effort to demonstrate that had there been a centralised counselling, many students who are higher in Merit could have got admission and they are deprived of their admission. It was pointed out that approximately 15,000

students had registered themselves with the State Government for taking admissions in the deemed universities of the State of Maharashtra on the understanding that the State would be conducting the counselling. A chart was submitted to show that had the list been prepared in respect of such students, the scenario would have been totally different in contrast with the admissions given by the respondents. In nutshell, it was contended that admission was given to many students whose ranking is much below in the Merit List and, therefore, admissions given by the deemed universities do not meet the triple test of 'Fair, Transparent and Non-exploitative'. The respondents, on the other hand, countered the aforesaid argument by contending that the list which was prepared by the State Government in respect of the candidates who had registered with them was on the basis of applications received and it may not reflect the desire of such students to take admission in the respondent institutions. It was argued that the fee structure of the respondent universities was much higher than the Government colleges and even private unaided medical institutions and, therefore, those students who are not able to afford the fee may not be serious in getting admissions in their institutions. It was submitted that many of those students who got themselves registered with the State Government may have taken admission in Government colleges and other educational institutions not only of the State of Maharashtra but other such medical institutions spread throughout the country. In nutshell, their submission was that the exercise done by the appellants did not filter the aforesaid factors.

11. This Court is conscious of the fact that it is dealing with the interim order passed by the High Court and the effect of the stay order given is that the respondent universities are permitted to do the counselling and admit the students. Having considered the respective submissions, our endeavour is to bring about an equitable solution in the context of the respondents, who are deemed universities and also keeping in mind the developments which have ensued.

12. We, therefore, feel that following arrangement shall meet the ends of justice insofar as this academic year is concerned:

“(i) The stay order granted by the High Court shall stand vacated and shall not continue for future years.

(ii) This, however, will not disturb the admissions already made by the respondent universities. This direction is given keeping in view that respondents are deemed universities.

(iii) Insofar as second or third counselling is concerned, that shall be a joint exercise which means that it shall be done by the Committee of the State Government which shall include one representative each from these universities. The respondent universities shall nominate their respective representatives forthwith. It would be a centralised counselling for all the deemed universities and not university-wise counselling. In the second or third counselling, students will be taken by making a combined list of those who got themselves registered with the State Government as

well as the respondent universities. This shall ensure admission of those who are more meritorious but left out but are interested in taking admission in the respondent universities (as contended by Mr. Diwan). In this process, it will also be known as to which students are in fact interested in getting admission to the respondent universities.

(iv) In order to undertake the counselling, all the admission records of the respondent universities shall be handed over to the State Government/Committee forthwith.

(v) Since it may not be possible to complete the process of admission by September 30, 2016, we extend the time to complete the admission by October 7, 2016.

(vi) The appellant State as well as respondent universities shall ensure that all seats are filled and there is no vacant seat. We make it clear once again that the aforesaid directions are given in the peculiar situation that has arisen. We are reminded of the words of the Chief Justice Marshall that life of law is not logic but the experience. We also clarify that this order is passed in exercise of powers under Article 142 of the Constitution. Insofar as admission process of subsequent years is concerned, it shall depend upon the outcome of the central issue raised in the writ petitions.”

13. Having regard to the fact that the issue raised is of seminal importance and shall arise every year, we request the High Court to decide the writ petitions of the respondents on merits, as expeditiously as possible, and it would not allow the respondents to withdraw the writ petitions. Since September 29, 2016 is the date fixed for this purpose by the High Court, we hope that the final hearing would start on that date and would proceed on a

14. The civil appeals are disposed of in the aforesaid terms. day-to-day basis.