SUPREME COURT OF INDIA

Dental Council of India

Vs.

Dr. Hedgewar Smruti Rugna Seva Mandal, Hingoli

C.A.No.4926 of 2017

(Dipak Misra and Mohan M. Shantanagoudar,JJ.,)

11.04.2017

JUDGMENT

Dipak Misra,J.,

SLP.(Civil) No. 26887 of 2016

1. Though this Court ordinarily is loath to interfere with interim orders or directions issued by the High Court, yet the impugned order dated 27.05.2016 passed in Writ Petition No. 4529 of 2016 by the learned Vacation Judge of the High Court of Judicature at Bombay, Bench at Aurangabad, constrains, in a way, obliges us to pen a verdict with some concern, for abandonment to write a decision in the obtaining circumstances would tantamount to playing possum with the precedents, which need to be recapitulated by the High Courts.

2. The facts are simple. The respondent, a dental college, vide letter dated 26.05.2015, submitted its scheme on 29.07.2015for grant of permission to start post-graduate course of Orthodontics and Dentofacial Orthopaedics along with four other specialties. A team of Dental Council of India (for short, 'the Council'), the appellant herein, conducted a pre-PG assessment of the respondent-college on 17th and 18th November, 2015 and submitted its report to the Council. The assessment report submitted by the said team was placed before the Executive Committee of the Council in its meeting held on 03.12.2015 whereupon the Committee found many a deficiency relating to infrastructure, teaching faculty and other physical facilities in the respondent-college. The Committee decided to call upon the respondent-college to rectify the deficiencies and submit its compliance within seven days. The said decision was communicated vide letter dated 08.12.2015. The respondent-college vide its letter dated 17.12.2015 submitted its compliance report whereafter the assessors of the Council carried out a compliance verification assessment of the respondent-college on 21.12.2015. The case of the respondent-college was placed before the Executive Committee for consideration, which found that the respondent-college fulfilled the eligibility criteria at the undergraduate level. On 29.01.2016, the Council decided to carry out the physical assessment of the dental college in order to ascertain the infrastructure, clinical material,

teaching faculty and other physical facilities in respect of four postgraduate specialties and in accordance with the decision, inspection was conducted on 28th and 29th January, 2016. The assessment report was considered by the Executive Committee in its meeting held on 12.02.2016 and it observed that there were deficiencies and the college was required to submit compliance.

3. As is evident from the materials brought on record the decision of the Committee was communicated to the college on 18.02.2016 where upon the respondent-college communicated that the defects had been removed. The Council proceeded to verify the compliance made by the college and keeping in view the various facilities and regard being had to the decision of this Court in *Royal Medical Trust (Registered) and another v. Union of India and another*[1], decided to recommend to the Government of India not to grant permission to the respondent-college for starting the post-graduate courses. The Government of India, after affording an opportunity of hearing to the respondent-college, vide letter dated 21.03.2016, required the Council to verify/review the schemes and further desired to furnish its revised recommendation.

4. The communication received from the Government of India was placed before the Committee and the Committee keeping in view the cut-off date, postulated in Royal Medical Trust (supra) and A*shish Ranjan and others v. Union of India and others*[2], decided to reiterate its earlier stand and accordingly it was communicated to the Government of India on 28.03.2016. The Government of India after considering the recommendation of the Council, vide letter dated 31.03.2016, disapproved the scheme of the respondent-college for starting MDS course in the specialty of Orthodontics and Dentofacial Orthopaedics for the academic session 2016-2017.

5. Being dissatisfied with the decision of the Government of India which is based on the recommendation of the Council, the respondent-college knocked at the doors of the High Court by filing a writ petition and the learned Vacation Judge upon hearing the learned counsel for the parties, passed the following order:-

> "The controversy or the issue involved in the matter requires consideration and due to paucity of time, this Court is unable to decide this matter finally. In such circumstances the impugned communication dated 31st March, 2016 is hereby stayed until next date i.e. 06.06.2016. The admission process undertaken by the petitioner is at the risk of the petitioner. The petitioner shall intimate the order passed by this Court to the students who are intending to take admission for M.D.S. course in Orthodontics and Denotfacial Orthopaedics."

After passing the said direction, the Court adjourned the matter to 06.06.2016.

6. Assailing the said order, it is submitted by Mr. Gaurav Sharma, learned counsel for the appellant that the High Court could not have, in the absence of approval of the scheme submitted by the college, passed an order of the present nature by staying the order and

observing that the admission process undertaken by the institution would be at its own risk. Learned counsel would submit that though the learned Single Judge has opined that the college shall intimate the students who are intending to take admission to MDS course in the Orthodontics and Dentofacial Orthopaedics about the order passed by the Court, yet such an order is impermissible as it brings in anarchy and chaos in the process of admission to medical courses. He has referred to certain authorities, which we shall refer to in the course of the judgment.

7. Mr. S.M. Jadhav, learned counsel for the respondent-college would contend, in his turn, that decision of the Council was prima facie erroneous and, therefore, the High Court was justified in staying the said order. It is further canvassed by him that the High Court, while staying the order, had imposed the conditions and hence, there is no justification or warrant on the part of the Council to invoke the jurisdiction of this Court under Article 136 of the Constitution and it would have been advisable for it to wait for the final decision of the High Court. Additionally, it is urged by him that the respondent-college has been granted due approval for the academic session 2017-2018 and that would make the non-denial of the approval for the earlier order illegal and, in any case, the three students who have been admitted by virtue of the order passed by the High Court should not put in a state of suffering and predicament.

8. The narration of facts is absolutely telling that the scheme submitted by the respondent-college for starting the MDS course in the two specialties had been disapproved by the Government of India. The justifiability of the said non-approval was the subject matter of the lis before the High Court. The High Court was expected to adjudicate under Article 226 of the Constitution within its parameters as regards the nature of deficiencies pointed out by the Council, steps taken by the college with regard to removal of such deficiencies and whether there had been any perversity in the decision making process of the Council while not recommending for approval to the Government of India and further declining to review the decision after the Government of India required it to verify/review the scheme and furnish the revised recommendation. As is evident, the Council keeping in view the cut-off date prescribed by this Court in Royal Medical Trust (supra) and Ashish Ranjan (supra) reiterated its earlier recommendation. Thus, the ultimate result was disapproval of the scheme by the Government of India. Hence, the writ court observed, as is demonstrable from the order which we have reproduced hereinbefore, that the controversy required consideration and as the matter could not be finally adjudicated, the circumstances required interim direction and stay of the impugned communication. True it is, the High Court has qualified its order by stating that the admission process shall be at the risk of the college and the students shall be intimated, but the heart of the matter is, whether the High Court should have stayed the order with such conditions. Basically, the order amounts to granting permission for the admission of students in certain courses in a college which had not received approval. There may be a case where the court may ultimately come to the conclusion that the recommendation is unacceptable and eventually the decision of disapproval by the Government of India is unsustainable. But the issue is whether before arriving at such conclusions, should the High Court, by way of interim measure, pass such an order.

9. Such a controversy has not arisen for the first time. A two-Judge Bench in *Union of India v. Era Educational Trust and another*[3] stated that normally this Court would hesitate to interfere with an interlocutory order, but was compelled to do so where prima facie it appeared that the said order could not be justified by any judicial standard, the ends of justice and the need to maintain judicial discipline required the Court to do so and to indicate the reasons for such interference. The Court, adverting to the aspects of passing of orders relating to provisional admission, quoted a passage from *Krishna Priya Ganguly v. University of Lucknow*[4] which reads thus:-

> "[T]hat whenever a writ petition is filed provisional admission should not be given as a matter of course on the petition being admitted unless the court is fully satisfied that the petitioner has a cast-iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible."

The Court also thought it appropriate to reproduce further observations from Krishna Priya Ganguly (supra):-

> "Unless the institutions can provide complete and full facilities for the training of each candidate who is admitted in the various disciplines, the medical education will be incomplete and the universities would be turning out doctors not fully qualified which would adversely affect the health of the people in general."

10. Adverting to the facts in the case before it, the Court held:-

> "9. In the present case, this type of situation has arisen because of the interim order passed by the High Court without taking into consideration various judgments rendered by this Court for exercise of jurisdiction under Article 226. It is apparent that even at the final stage the High Court normally could not have granted such a mandatory order. Unfortunately, mystery has no place in judicial process. Hence, the impugned order cannot be justified by any judicial standards and requires to be quashed and set aside."

The aforesaid passage is quite vivid and reflects the surprise expressed by the learned Judges.

11. In Medical Council of India v. Rajiv Gandhi University of Health Sciences and others5 the three-Judge Bench referred to the authority in Era Educational Trust (supra) and emphatically reiterated the law declared therein. The reiteration is as follows:-

> "4. We once again emphasise that the law declared by this Court in Union of India v. Era Educational Trust (supra) that interim order should not be granted as a matter of course, particularly in relation to matter where standards of institutions are involved and the permission to be granted to such institutions is subject to certain provisions of law and regulations applicable to the same, unless the same are complied with. Even if the High Court gives certain directions in relation to consideration of the

applications filed by educational institutions concerned for grant of permission or manner in which the same should be processed should not form a basis to direct the admission of students in these institutions which are yet to get approval from the authorities concerned or permission has not been granted by the Council." The aforesaid pronouncement, as is manifest, rules that issue of an interim order in respect of an institution which has not received the approval is not countenanced in law.

12. In *Medical Council of India v. JSS Medical College and another*[6] the issue had arisen with regard to passing of interim orders by the High Court relating to permission for increase of seats. The anguish expressed by the Court is reflectible from the following passage:-

> "12. Without adverting to the aforesaid issues and many other issues which may arise for determination, the High Court, in our opinion, erred in permitting increase in seats by an interim order. In normal circumstances the High Court should not issue interim order granting permission for increase of the seats. The High Court ought to realise that granting such permission by an interim order has a cascading effect. By virtue of such order students are admitted as in the present case and though many of them had taken the risk knowingly but few may be ignorant. In most of such cases when finally the issue is decided against the College the welfare and plight of the students are ultimately projected to arouse sympathy of the Court. It results in a very awkward and difficult situation. If on ultimate analysis it is found that the College's claim for increase of seats is untenable, in such an event the admission of students with reference to the increased seats shall be illegal. We cannot imagine anything more destructive of the rule of law than a direction by the Court to allow continuance of such students, whose admissions is found illegal in the ultimate analysis."

13. In *Priya Gupta v. State of Chhattisgarh and others*[7] dealing with various aspects, the Court was in pain and thought it appropriate to request the High Courts with humility. The lucid statement is extracted below:-

> "78.4. With all the humility at our command, we request the High Courts to ensure strict adherence to the prescribed time schedule, process of selection and to the rule of merit. We reiterate what has been stated by this Court earlier, that except in very exceptional cases, the High Court may consider it appropriate to decline interim orders and hear the main petitions finally, subject to the convenience of the Court. ..."

14. In *Medical Council of India v. M.G.R. Educational & Research Institute University & another*[8] treating the admission as unauthorized as there had been no approval by the MCI, the Court imposed costs of Rs. 5 crores on the respondent institution therein, for it had created a complete mess insofar as the students were admitted to the second batch of MBBS course in the college. There has been a further direction that the amount of costs that was directed to be deposited before the Registry of this Court was not to be recovered in any

manner from any student or adjusted against the fees or provision for facilities for students of subsequent batches.

15. The three-Judge Bench in Royal Medical Trust (supra), while dealing with time schedule, stated thus:-

> "33. The cases in hand show that the Central Government did not choose to extend the time-limits in the Schedule despite being empowered by Note below the Schedule. Though the Central Government apparently felt constrained by the directions in Priya Gupta (supra) it did exercise that power in favour of government medical colleges. The decision of this Court in Priya Gupta (supra) undoubtedly directed that the Schedule to the Regulations must be strictly and scrupulously observed. However, subsequent to that decision, the Regulations stood amended, incorporating a Note empowering the Central Government to modify the stages and time-limits in the Schedule to the Regulations. The effect of similar such empowerment and consequential exercise of power as expected from the Central Government has been considered *by this Court in Priyadarshini*[9]. The Central Government is thus statutorily empowered to modify the Schedule in respect of class or category of applicants, for reasons to be recorded in writing. Because of subsequent amendment and incorporation of the Note as aforesaid, the matter is now required to be seen in the light of and in accord with Priyadarshini (supra) where similar Note in pari materia Regulations was considered by this Court. We therefore hold that the directions in Priya Gupta (supra) must now be understood in the light of such statutory empowerment and we declare that it is open to the Central Government, in terms of the Note, to extend or modify the time-limits in the Schedule to the Regulations. However the deadline, namely, 30th of September for making admissions to the first MBBS course as laid down by this Court in *Madhu Singh*[10] and *Mridul Dhar (5)*[11] must always be observed."

16. The question of tenability of an interim order passed by the High Court in matters of admission came for consideration in a recent decision in *Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS) and others*[12]. The Court found that after the MCI and the Central Government having twice considered the inspection report, the matter ought to have been given a quietus by the High Court for the academic year 2015-2016. It has been further observed that the High Court ought to have been more circumspect in directing the admission of students and there was no need for the High Court to rush into an area that MCI feared to tread. It was further observed that:-

> "27. ... Granting admission to students in an educational institution when there is a serious doubt whether admission should at all be granted is not a matter to be taken lightly. First of all the career of a student is involved − what would a student do if his admission is found to be illegal or is quashed? Is it not a huge waste of time for him or her? Is it enough to say that the student will not claim any equity in his or her favour? Is it enough for student to be told that his or her admission is subject to the

outcome of a pending litigation? These are all questions that arise and for which there is no easy answer. Generally speaking, it is better to err on the side of caution and deny admission to a student rather than have the sword of Damocles hanging over him or her. There would at least be some certainty."

We respectfully concur with the said observations.

17. It is worthy to note that the Court thought it appropriate to observe that for the fault of the institution, the students should not suffer nor should the institution get away scot-free. It issued certain directions to the institution that it should not have entered into adventurist litigation and costs of Rs. 5 crores were imposed for playing with the future of the students and the mess that the institution had created for them. Certain other directions were issued in this case which we need not advert to.

18. In Ashish Ranjan (supra), the Court after hearing the Union of India, MCI and all the States, had fixed a time schedule and directed as follows:-

"3. Regard being had to the prayer in the writ petition, nothing remains to be adjudicated. The order passed today be sent to the Chief Secretaries of all the States so that they shall see to it that all the stakeholders follow the schedule in letter and spirit and not make any deviation whatsoever. Needless to say AIIMS and PGI (for the examination held in July) shall also follow the schedule in letter and spirit."

19. From the aforesaid authorities, it is perspicuous that the court should not pass such interim orders in the matters of admission, more so, when the institution had not been accorded approval. Such kind of interim orders are likely to cause chaos, anarchy and uncertainty. And, there is no reason for creating such situations. There is no justification or requirement. The High Court may feel that while exercising power under Article 226 of the Constitution, it can pass such orders with certain qualifiers as has been done by the impugned order, but it really does not save the situation. It is because an institution which has not been given approval for the course, gets a premium. That apart, by virtue of interim order, the court grants approval in a way which is the subject matter of final adjudication before it. The anxiety of the students to get admission reigns supreme as they feel that the institution is granting admission on the basis of an order passed by the High Court. The institution might be directed to inform the students that the matter is sub judice, but the career oriented students get into the college with the hope and aspiration that in the ultimate eventuate everything shall be correct for them and they will be saved. It can be thought of from another perspective, that is, the students had deliberately got into such a situation. But it is seemly to note that it is the institution that had approached the High Court and sought a relief of the present nature. By saying that the institution may give admission at its own risk invites further chaotic and unfortunate situations.

20. The High Court has to realize the nature of the lis or the controversy. It is quite different. It is not a construction which is built at the risk of a plaintiff or the defendant which can be

demolished or redeemed by grant of compensation. It is a situation where the order has the potentiality to play with the career and life of young. One may say, life is a foreign language; all mis-pronounce it", but it has to be borne in mind that artificial or contrived accident is not the goal of life.

21. There is no reason to invite a disaster by way of an interim order. A Judge has to constantly remind himself about the precedents in the field and not to be swayed away by his own convictions. In this context, the oft-quoted passage from ***Felix Frankfurter***[13] would be apt to remember:-

> "For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians − those impersonal convictions that make a society a civilized community, and not the victims of personal rule."

22. That leads us to say something about following the precedents. The purpose is to have consistency. A three-Judge Bench in *Government of Andhra Pradesh and others v. A.P. Jaiswal and others*[14] observed:-

> "24. Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedents, principle of stare decisis, etc. These rules and principle are based on public policy...."

23. In *Arasmeta Captive Power Company Private Limited and another v. Lafarge India Private Limited*[15], dealing with the matter that related to the field of arbitration, the Court emphatically observed that it is an "endeavour to clear the maze, so that certainty remains "A Definite" and finality is "Final"". In this regard, we may travel a decade and a half back. In *Chandra Prakash and others v. State of U.P. and another*[16], it has been held:-

> "22. ... The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court."

24. In the instant case, the precedents are clear and luculent. It does not allow any space for any kind of equivocation. In Priya Gupta (supra), the Court had requested the High Courts to ensure strict adherence to the prescribed time schedule, process of selection and role of merit and except in very exceptional cases, to decline interim orders. The Court had added the words "humility at our command". The "grammar of humility in law" in the hierarchical system basically means to abide by the precedents unless distinguishable but

not to ignore them and pass orders because of an individual notion or perception. Adjudication in accordance with precedents is cultivation of humility. As long as a precedent is binding under the constitutional scheme, it has to be respected by all. It has been said by Simone Weil[17]:-

> "In the intellectual order, the virtue of humility is nothing more nor less than the power of attention"

25. We reiterate the concept of humility as stated in Priya Gupta (supra). However, we intend to add that the meaning behind the words, namely, "humility", and "request" as used by this Court, has to be appositely understood by the High Courts. It requires attention. And attention in the context is disciplined and concerned awareness. Nothing more need be said.

26. In view of the aforesaid analysis, we cannot but hold that the impugned order passed by the learned Single Judge of the High Court is absolutely unsustainable. But the controversy does not end there. It is the admitted position that the respondent-college has been granted approval for the academic session 2017-2018. By virtue of the interim order passed by the High Court, three students had been admitted and they are prosecuting their studies. We intend to strike a balance. The students who have been admitted shall be allowed to continue their courses, but their seats shall be adjusted from the academic session 2017-2018. The respondent-college cannot be allowed to get a premium. The grant of bounty is likely to allow such institutions to develop an attitude of serendipity. Such a culture is inconceivable. Therefore, apart from the adjustment of seats for the next academic session, we also direct the respondent-college to deposit a sum of Rs. 30 Lakhs before the Registry of this Court within eight weeks hence and to ensure such compliance, the matter shall be listed in the third week of July, 2017 for further directions. After the amount is deposited, it shall be determined how to deal with the sum. The costs that has been directed to be deposited before the Registry of this Court shall in no manner be recovered from the students who had been admitted nor shall it be collected from the students who will be admitted to the course in the next year. That apart, the respondent-college shall not think of any kind of adjustment.

27. The appeal stands disposed of in above terms.

Judgment Referred.

1(2015) 10 SCC 19
2(2016) 11 SCC 225
3(2000) 5 SCC 57
4(1984) 1 SCC 307
5(2004) 6 SCC 76
6(2012) 5 SCC 628
7 (2012) 7 SCC 433
8 (2015) 4 SCC 580
9 (2011) 4 SCC 623
10 (2002) 7 SCC 258
11 (2005) 2 SCC 65
12 (2016) 11 SCC 530
13 FRANKFURTER, Felix, in Clark, Tom C., "Mr. Justice Frankfurter: 'A Heritage for all Who Love the Law'," 51 A.B.A.J. 330, 332 (1965)
14 (2001) 1 SCC 748
15 (2013) 15 SCC 414
16 (2002) 4 SCC 234

17 Simone Weil, 1909-1943 Gravity and Grace, 1947