SUPREME COURT OF INDIA

Manipal University

Vs.

Union of India

C.A.No.8381 of 2017

(S.A.Bobde and L.Nageswara Rao,JJ.,)

03.07.2017

JUDGMENT

L.Nageswara Rao,J.,

SLP(Civil)No.21772 of 2012

1. Leave granted.

2. The instant Appeal arises from a Writ Petition No.12673 of 2005 filed by Manipal University (formerly known as Manipal Academy of Higher Education and Others), wherein the High Court disposed off the Writ Petition giving effect to the directions of this Court in *PA Inamdar v. State of Maharastra*[1], until suitable law or regulation is made by the University Grants Commission (UGC) or Central Government. Aggrieved, Manipal University has preferred this Appeal.

2. Two medical colleges were established by Manipal Academic Higher Education in 1953 and 1955 at Manipal and Mangalore. In the year 1978, the UGC recommended to the first Respondent to grant status of Deemed University to Manipal Educational Complex consisting of medical & engineering colleges which was rejected on the ground of paucity of funds. The UGC enquired whether the Appellant would be able to raise the resources if permission was granted for admission of foreign and Indian students in the ratio of 60:40 and sought an undertaking to that effect. The Appellant informed the UGC that it would not seek any aid if it was permitted to make admissions in the ratio of 60:40. The first Respondent granted permission to the Appellant on 12.08.1991 to admit 350 foreign students out of total intake of 550 students for that year.

3. The first Respondent declared the Appellant as a Deemed University on 01.06.1993. Two medical colleges, two dental colleges and one nursing college at Manipal and Mangalore were part of the Appellant University. The General Body of the second Respondent considered the continuance of recognition of MBBS degree granted by the Appellant on 27.08.2002. The Appellant was asked to show cause why action should not be initiated for

making admissions to the NRI quota in excess of 15 per cent of the intake in violation of the directions of this Court. After consideration of the explanation of the Appellant, the Second Respondent by its letter on 27.09.2002 requested the first Respondent to withdraw the recognition of MBBS degree granted by the second Respondent for not following the directions of this Court regarding the admission of NRI/foreign students. The first Respondent did not take any action as recommended by the Second Respondent.

4. Thereafter, the second Respondent by its letter dated 08.02.2005 directed the Appellant not to make admissions in the NRI quota for 37 seats in the year 2005-2006, 37 seats for the year 2006-2007 and 29 seats for the year 2007-2008 in Kasturba Medical College, Manipal. It was stated in the said letter that the said direction was being issued to offset the undue advantage gained by the Appellant by admitting 103 students in MBBS course in excess of the permissible 15 per cent NRI quota. A reference was made to an order passed by this Court on 09.08.2004 in *Islamic Academy v. State of Karnataka*[2], wherein permission was granted to private unaided colleges to admit NRI students to the extent of 15 per cent of the available seats. The second Respondent also referred to an order passed by this Court on 30.08.2004 in I.A. Nos.19-20 of in SLP No.11244 of 2004 (R.L. Minority Profession Colleges Association v. State of Karnataka and Ors.). By the said order dated 30.08.2004 this Court permitted admission of NRI/foreign students against 15 per cent of the management quota seats in respect of medical, engineering and dental courses in minority unaided professional colleges.

5. The Appellant challenged the directions issued by the second Respondent by its letter dated 08.02.2005 in the High Court of Karnataka by filing Writ Petition 12673 of 2005. The High Court accepted the contention of the Appellant and held that Section 10-A of the Medical Council Act confers power on the second Respondent to determine the intake capacity only. It was further held that the second respondent did not have the power to regulate admissions to sub categories. According to the High Court, the second Respondent lacked jurisdiction to determine the quota for NRIs/foreign students. The High Court was aware that the letter impugned in the Writ Petition was on 08.02.2005 which was prior to the judgment of this Court in PA Inamdar's case. However, the High Court held that the directions issued by this Court bind all parties concerned. As the Appellant admitted NRI students in excess of 15 per of the intake capacity, the High Court held that the Appellant was not entitled to the relief prayed for. The said judgment of the High Court is assailed by the Appellant in this Appeal.

6. Dr. Rajeev Dhawan, learned Senior Counsel appearing for the Appellant submitted that the second Respondent lacked jurisdiction to direct reduction of the intake of NRI seats for the year 2005 to 2008. Admittedly, the MCI is not competent to determine and interfere with the admission to sub categories and the internal quota for reserved categories and NRIs. The direction issued by the second Respondent not to make admission to NRI seats amounts to interference with the quota which is liable to declared as illegal as it suffers from the vice of lack of jurisdiction. He further submitted that the High Court erred in holding that the directions issued in PA Inamdar's case are applicable to the Appellant retrospectively.

According to him, the directions issued in PA Inamdar are not applicable to a Deemed University. He also urged that the said directions cannot operate retrospectively.

7. Mr. Vikas Singh, learned Senior Counsel appearing for the second Respondent conceded that the Medical Council of India does not have the power to fix quotas for reserved categories and NRIs. However, Mr. Singh relied upon Regulation 5 of the Medical Council of India Regulations on Graduate Medical Education, 1997 to contend that the selection of students to medical colleges shall be based solely on the merit of the candidates. He submitted that interim orders were passed by this Court from the year 1994 permitting admissions to NRI/foreign students to the extent of 15 per cent of the total intake. He further submitted that in case admissions are made to NRI seats in excess of the 15 per cent of the intake, the quota reserved for other categories will be reduced adversely affecting the merit based selection. He also submitted that the 1997 Regulations empower the second Respondent to issue suitable directions to ensure merit based selections. Therefore, the second Respondent was competent to issue directions to restrict admissions to NRI seats for the years 2005 to 2008. He relied upon a judgment of this Court in *Mridul Dhar v. Union of India*[3], wherein it was held that excess admission made by an institution in the management quota can be offset by reduction of seats in the succeeding years. He further submitted that there was no need for the second Respondent to challenge the findings of the High Court that Section 10-A of the Medical Council Act does not confer power on the second Respondent to regulate or supervise the admissions to sub categories.

8. The issues before us are:-

> "i. Whether the MCI is the competent authority/justified to issue direction disallowing the Appellant to make admissions in the NRI quota for three years?
>
> ii. Whether the decision in PA Inamdar (supra) operates retrospectively with respect to the letter dated 08.02.2005?
>
> iii. Whether the decision in PA Inamdar applies to Deemed Universities or only to private colleges?

9. There is no doubt that the Appellant was granted the status of a Deemed University in the year 1993. There is also no controversy about the directions issued by this Court regarding pegging of the NRI quota in medical colleges at 15 per cent. Admittedly, the Appellant has made admissions to NRI quota beyond 15 per cent. Both sides agree that the Medical Council of India does not have the power to fix the quotas to sub categories within the total intake. The principal question that arises for our consideration is regarding the correctness of the directions issued by the second Respondent to the Appellant not to fill up 103 seats in the category of NRI/foreign students during the years 2005 to 2008.

10. Determination of a quota for NRI seats is beyond the domain of the second Respondent. The direction given by the second Respondent by its letter dated 08.02.2005 directing the Appellant not to make admissions in the NRI quota to the extent of 103 seats during the

years 2005 to 2008 amounts to interfering with the quota. We do not agree with the submission made by Mr. Vikas Singh that the second Respondent has power to issue such directions in the interest of merit based selection as provided by Regulation 5 of the 1997 Regulations. It is no doubt true that the second Respondent has a duty to ensure merit based selections. However, no direction can be issued by the second Respondent interfering with the regulation or supervision of sub categories. The direction issued by the second Respondent by its letter dated 08.02.2005 is ultra vires and is liable to be declared illegal. Exercise of power by an authority has to be within the contours conferred by the statute and for the purpose of promoting the objectives of the statute. There is no express power conferred on the second Respondent in the Medical Council of India Act to interfere in allocation of quotas for sub categories. In the facts and circumstances of this case it is not possible to hold that the second Respondent has power to issue directions pertaining to NRI quota even by reasonable implication. It is relevant to refer to a judgment of the *House of Lords in Baroness Wenlock v. River Dee Co*[4]*.,*:

> "But I cannot assent to the doctrine which was contended for by Mr. Rigby. Whenever a corporation is created by an Act of Parliament, with reference to the purposes of the Act, and solely with a view to carry on these purposes into execution, I am of opinion, not only that the objects which the Corporation may legitimately pursue must be ascertained from the Act itself, but that the powers which the corporation may lawfully use in furtherance of these objects must either be expressly conferred or derived by reasonable implication from its provisions. That appears to me to be the principle recognised by this House in Ashbury Company v. Riche (Law Rep. 7 H.L. 653) and in Attorney-General v. Great Eastern Railway Company (5 App. Cas. 473)".

11. There is no dispute that this Court permitted the Medical Colleges to admit NRI students to the extent of 15 per cent of their quota. There is also no dispute that the Appellant made admissions beyond 15 per cent to the NRI quota of the total intake. The question is whether the second Respondent has jurisdiction to restrict admissions to the NRI quota on the ground that the Appellant acted in violation of the interim orders of this Court. The Appellant being a Deemed University is governed by the provisions of the UGC Act and the competent authority to take any action for violation of the provisions of the Act regarding maintenance of standards is the Commission.

12. The 1997 Regulations obligate the second Respondent to ensure merit based selection to admissions in medical colleges. However, the second Respondent cannot issue directions interfering with the quota in the guise of exercising power under Regulation 5 of the said Regulations. It is settled law that what cannot be done directly, cannot be done indirectly. See *State of Tamil Nadu and Ors. v. K. Shyam Sunder and Ors*[5]*. (Para 43).*

13. As we have held that that the direction issued by the second Respondent in its letter 08.02.2005 is vitiated as it suffers from the vice of lack of jurisdiction, it is not necessary to deal with the other submissions made on behalf of the Appellant. We also take note of the

fact that the direction issued by the Medical Council of India was not implemented either for the years 2005 to 2008 or thereafter.

14. For the aforementioned reasons, the direction issued by the second Respondent to the Appellant not to make admissions to the extent of 103 NRI seats for the years 2005 to 2008 is declared ultra vires and without jurisdiction. The Appeal is allowed. No costs.

Judgment Referred.

[1] *(2005) 6 SCC 0537*
[2] *(2003) 6 SCC 0697*
[3] *(2008) 17 SCC 0435*
[4] *(1885) 10 AC 0354*
[5] *(2011) 8 SCC 0737*