

17.06.2022

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WPA 2991 of 2022

Raihan Ul Haque
Vs.
The State of West Bengal & Ors.

Mr. Kishiore Dutta, Ld. Sr. Adv.
Mr. Samarendra Nath Biswas ... for the petitioner

Mr. Swapan Kumar Dutta, Sr. Adv.
Mr. Rajat Dutta for the State

Mr. R.N.Chakraborty,
Ms. Amrita De ... for the University

The factual aspect involved in this case can very well be apparent from the representation made by the petitioner, who is the Director of relevant College, namely Gitanjali College of Physical Education, by his letter dated December 15, 2021, to Burdwan University. The representation is quoted below:

*"To
The Vice Chancellor,
The University of Burdwan
Rajbati, Burdwan, West Bengal
PIN-713104*

*Subject: Permission for Enrollment &
Registration of remaining 28 students
of M.P.Ed Programme session 2020-
2022.*

*Respected Sir,
This is for your kind*

information that the undersigned Director of Gitanjali College of Physical Education is facing problem in respect of the enrollment & registration for the M.P.Ed Students (Session 2020-22). Sir, the University had provided only 12 students for the said programme whereas total number of intake is 40. Rest 28 seats were filled by the college as per appeal and request of the students who applied online application for admission to your esteemed University. Sir, the total students i.e. 40 admitted in our college for the session 2020-2022 are all online applicants. I also would like to add that all 40 students had appeared in 1st & 2nd semester examination through online. Now the office of the Examination Controller is not allowing us to enroll & register the 28 students who are admitted in our college out of your counselling system.

Sir, this is for your kind information that it is very much difficult to run a P.G pvt. College with only 12 students.

*Sir, Therefore I earnestly request you to look into the matter so that the students may not suffer any loss of studies. **In final I assure you that we will remain alert in future regarding admission & registration which will be totally as per the guideline of your good office.***

Hope you will consider the matter and do the needful for the interest of the students and oblige us.

Thanking you

*Yours sincerely,
Sd/-
(Director) "*

The University considered the said representation and by a resolution dated December 20, 2021, resolved as follows :

"THE UNIVERSITY OF BURDWAN

Extracts from the minutes of the meeting of
the Executive Council held on 20.12.2021.

*Item No.-312
(Any Other Matter)
Resolution*

The Council, while considering the letter dated 15.12.2021 vide ref. no.22/other/2021-22, received from the Director, "Gitanjali College of Physical Education, Daikota, Sainthia, Birbhum addressed to the Hon'ble Vice Chancellor, B.U. requesting permission for Enrollment & Registration of remaining 28 students out of 40 students of M.P.Ed. Programme for the session 2020-2022 of the said College, regretted its inability to accommodate the prayer.

Draft for Approval

Approved

Sd/- 20.12.21

Sd/- 20.12.21

Registrar
(Officiating)
& Secretary
Executive Council"

Vice Chancellor & Chairman
Executive Council

The petitioner seeks to assail the said resolution dated December 20, 2021, in this writ petition.

It needs to be further noted that the National Council for Teacher Education by a letter dated March 22, 2017, granted recognition to the said college for the M.P.Ed Course with an intake capacity of 40 students.

Following the recognition granted by the National Council for Teacher Education (NCTE), University of Burdwan granted affiliation to the said institute by letter dated November 6, 2017,

with an intake capacity of 40 students. As per para 13 of the said affiliation letter the admission process of the students including selection is to be done by the University itself.

For the academic year 2020-2022, the University after counseling, forwarded the names of 12 students for the academic year 2020-22. The college, however, as apparent from the above-quoted letter admitted additional 28 students though their names were not forwarded by the University for the said academic session._

The said letter also makes it clear that those additional 28 students were allowed to be admitted "as per appeal and request of the students who applied through online mode for admission to the University". The students so admitted without being recommended by the University were allowed to take 1st-semester as well as 2nd-semester examinations. At the time of 3rd-semester, the University declined to allow them to participate in the examination.

The action of the University was challenged in this writ petition, and by an interim order dated February 21, 2022, passed in this writ petition said 28 students were allowed to take part in the 3rd-semester examination also.

The matter, thereafter, has been heard by

this Bench on exchange of affidavits.

The petitioner now seeks an order to permit the said students to participate in the 4th-semester examination.

I am of the opinion that the students who have been allowed to take part in the 3rd-Semester examination by the interim order passed in this petition, cannot be allowed to appear in the 4th-semester examination. The law holding in the field is well settled and clear.

It has been held by the Supreme Court in the judgment reported at **(1993) 4 SCC 401 (Guru Nanak Dev University v. Parminder Kr. Bansal)** as follows:-

"7. ... We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the

interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions.”

The Supreme Court in the judgment reported at **(2017) 13 SCC 115 (*Dental Council of India v. Dr Hedgewar Smruti Rugna Seva Mandal, Hingoli*)** noted series of judgments with regard to the interim order passed by the High Court in the matter of admission by an institution to the ineligible students. The relevant paragraphs of the said judgment is quoted below :-

“**19.** 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*. The Court found that after 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 : (*Kalinga Institute case* , SCC p. 541, para 27)

“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.

20. It is worthy to note that the Court in *Kalinga Institute case* 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.

21. In *Ashish Ranjan*, the Court after hearing the Union of India, MCI and all the States, had fixed a time schedule and directed as follows : (SCC p. 233, para 3)

“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."

22. 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.

23. The High Court has to realise 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 peoples. One may say, "... life is a foreign language; all mispronounce it", but it has to be borne in mind that artificial or contrived accident is not the goal of life.

24. 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 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 civilised community, and not the victims of personal rule." "

In the present case, it is absolutely clear that those additional 28 students were not at all recommended by the University. The University clarifies that due to the pandemic situation, for the first and second semester all students were

allowed by the College to take part in the examinations through the online mode sitting in their homes. The University never granted them any registration number. In such circumstances, they cannot be allowed to take part in the following examinations on the ground of equity though they were permitted by the interim order to take part in the third semester examination.

The College knowing fully well that only the University can admit the students, allowed the said 28 students to participate in the first and the second semester examinations. Such admission was in clear violation of the terms and conditions of the affiliation granted by the University to the College. Clause-13 of the letter of affiliation dated November 6, 2017, clearly indicates that the entire admission process including the selection of the students will be done by the University only. Admission of those additional 28 students was beyond the competence of the College.

There is no ground to interfere with the resolution of the University adopted on December 20, 2021, as impugned in this writ petition. Such interference, in fact, will be in the teeth of the judgment passed by the Supreme Court. There is

no merit in this writ petition.

Despite being sympathetic to the students, who have been wrongly admitted by the college, this Court cannot grant any relief to them. It is clarified that the students have the right to get compensation by filing appropriate legal proceedings against the college for admitting them in violation of the rules and norms of the University.

With these observations, WPA 2991 of 2022 is dismissed.

Parties are directed to act on the server copy of this order.

(Kausik Chanda, J.)

