A THE STATE OF MAHARASHTRA AND ORS.

v.

ADMANE ANITA MOTI AND ORS.

AUGUST 31, 1994

B [R.M. SAHAI AND N.P. SINGH, JJ.]

Education : Admission to Diploma in Education (D.Ed.) Course—Admission in excess of sanctioned strength—Accommodating the extra students in proper colleges—Only for academic year 1991-92—Directions issued.

C

Practice & Procedure : Issue of interim orders—One Bench rejecting the application on the ground that the dispute was not decided—Coordinate Bench allowing the claim after deciding disputes on merits—Reason for rejecting the application by the earlier Bench having disappeared there is no question of legality of propriety of the subsequent Bench disagreeing with the Coordinate Bench.

D

Observation of High Court Judge—Likely to be misunderstood or misconstrued—To be avoided in the interest of the institution—Refraining from making such observation—Necessity of.

E

The main issue in this appeal preferred by the State Government, was whether the High Court was justified in directing the Education Officer by way of an interim order to ensure that 112 students, all girls, admitted by a christian Minority Institution to Diploma in Education (D.Ed.) course for academic year 1991-92 against the sanctioned strength F **of 80, should be accommodated and admitted in proper colleges. The incidental issue was as regards the legality and proprierty of one Bench disagreeing with the Coordinate Bench of the same court on grant of interim order.**

G **Disposing of the appeal, this Court**

HELD : 1. Interim orders are granted by the Court as they are necessary to protect the interest of the petitioner till the rights are finally adjudicated upon. Even where it is not provided in the statute this Court has held that the Courts have inherent power to grant it. In admission H **matters, however, such orders once obtained create vested interest of**

avoiding final adjudication to enable the student to complete the course and then the invoke sympathy of the Court. No further need be said as the circumstances in which the impugned order was passed were entirely different. Earlier interim orders were not granted, as the claim of the management that it was not under regulatory supervision of Education Department and was entitled to admit students even more than the sanctioned strength, was pending and had not been decided. But on the date the impugned order had been passed writ petition No. 1703 of 1990 had been decided by a Bench on merits and one of the Judges who granted the interim order was party to the decision. The petition was allowed in part and the management was permitted to admit eighty students, the strength which was sanctioned by the Department. The decision, it is not disputed, has been accepted by the department. No appeal has been filed against it. The order, thus, passed by the High Court, even though interim, has been passed after the dispute pending between management and the department had been decided on merits. The reason for rejecting the application filed by the Management for interim order and by the writ petition filed by the students, earlier, disappeared. The department cannot assail the correctness of the order passed by the High Court to the extent of the sanctioned strength. [823-E to H, 824-A, B]

2.1. Normally this Court does not interfere with consent order. But in the present case, it was made against law. It was in teeth of even the decision given in W.P.(C) No. 1703 of 1990. The order was passed, presumably, because the eligibility criteria of D.Ed. had been changed by the Government and it would have adversely affected the students who were all girls. The High Court in the circumstances thought it proper that since such students will be nowhere and if the Government in earlier years had accommodated similar students who were admitted by colleges which were not recognised then it would be in fitness of things that the students who were admitted by an institution which was recognised at the time of admission were entitled to indulgence by directing the students to be accommodated in other colleges. This was not proper. One illegally cannot justify the other. [825-B to D]

2.2. The utmost that the High Court could have done was to record the consent and to ask the Government to consider the matter and raise the strength in the special circumstances for one year. Such misplaced equities encourage indiscipline and the management of those educational

A institutions which are gradually degenerating and converting such institution into commercial houses, flout the orders of educational authorities and the Government, fleece the students and their parents and then leave the students to invoke sympathy of the Court to protect them from the exploitation suffered by them and save their career from being ruined. [825-D, E]

B

3.1. The management is directed to produce the list of admissions before the Education Officer within ten days and he shall within three days thereafter scrutinise the list and direct admission of 50% of the sanctioned strength of students from Christian community. The admission shall be granted on merits. If students of Christian Community are not available C the seats shall go to other students. [826-D]

3.2. The Education Officer shall further grant admission to the remaining 50% students of other communities, that too, on the basis of merit. [826-E]

D

3.3. So far as 31 remaining students out of 112, one having died during pendency of the writ petition in the High Court, are concerned the Education Officer should send a letter to the Government to raise the sanctioned strength to 111 for 1991-92 only. The Government may consider sympathetically, the question of raising the strength of the institution for E one year or accommodate them in other colleges as all the candidates are girls belonging to backward class. [826-F]

3.4. The Education Officer shall write to the Government within two weeks. The Government may pass appropriate orders within one month from the date of receipt of the recommendation. [826-G]

F

3.5. These extra students, if admitted, shall be distributed in other D.Ed. colleges for which necessary directions shall be issued by the Education Officer. [826-H, 827-A]

G

3.6. In case the facility in the respondent-college is available for 80 students then the Education Officer shall permit all the 80 students to study in the college, complete their course and appear for the examination. But if there is any technical difficulty it shall be open to the Education Officer to accommodate the students in different colleges in such batches as are feasible. This exercise shall be completed within the same time as H is allowed for scrutiny of the applications. It shall further be the respon-

sibility of the Education Officer to ensure that if any student is sent to a college, other than the respondent-college, then his students are not hampered and are permitted to complete the course. [827-B, C]

3.7. If the time is short then the respondent instituted shall hold extra classes for all the students, complete their course so as to enable them to appear in their examination for the first year at the appropriate time. [827-D]

4. An observation by a Judge, presiding over the highest constitutional court of the State which is apt to be misunderstood or misconstrued should be avoided in the interest of the institution. The Judge should have refrained from making the observation which was not only unnecessary but apt to create misapprehension. But it was even more unfortunate that it was taken advantage of by the appellant, who did not act with responsibility as is expected of it in creating misleading impression on this Court to serve its own purpose. The appellant should have being like an enlightened litigant. And not like an ordinary person to obtain an interim order, which was of little consequence, except that it appears to have hurt the vanity of the Education Department. This Court refrains from saying further except expressing its anguish. [820-G-H, 821-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5795-96 of 1994.

From the Judgment and Order dated 30.9.93 and 20.10.93 of the Bombay High Court in W.P. Nos. 585/92 and 2654 of 1993.

A.S. Bhasme and N. Sudhakaran for the Appellants.

Uday Sinha and P.S. Jha for the Respondents in No. 15, 23, 56 and 58.

A.K. Ganguli, Ms. Manjula Gupta and Shambhu Prasad Singh for the Respondent in Nos. 37, 51, 92 and 97.

The Judgment of the Court was delivered by

R.M. SAHAI, J. The real issue in the appeal, whether the High Court was justified in directing the Education Officer by way of interim order, to ensure that 112 students, all girls, admitted by the respondent no. 102, a

A Christian minority institution, to Diploma in Education (D.Ed.) course for the academic year 1991-92 against the sanctioned strength of 80 should be accommodated and admitted in proper colleges, got submerged in an incidental issued of legality and propriety of one bench disagreeing with a coordinate bench of the same Court on grant of interim order.

B

How the issue of propriety was bloated out of proportion by the State of Maharashtra, presumably, in its anxiety to get the interim order passed by the High Court stayed is a matter of concern. Two basic circumstances, one, by way of affidavit and the other, oral, which persuaded this court to pass the order were an averment, in the special leave petition, that when C the petitioners approached the High Court for grant of one month's time, from 20th October 1993, to enable them to file an appeal in this Court, the request was turned dowe even though the Bench was apprised that this Court was closed for Dussehra Vacation, till 26th October 1993, and the appellant was directed to comply with the order by 25th October 1993 even D when similar request for interim order had been turned down, earlier, twice by two different benches. The other was a oral, by the learned counsel for the State that the High Court did not extend the time for approaching this Court because it observed that stay orders are granted by this Court, even, at midnight. Whatever may have been the purpose or objective of stating it but the manner in which it was placed before a Bench of this E Court of which one of us (R.M. Sahai, J.) was a member, it did have the desired effect resulting in an interim order staying further proceedings in the High Court. But when an affidavit was filed, by an officer of the Department who was present in the court, it transpired that a mountain had been made out of nothing. The affidavit states that the Bench did not F extend the time and when it was informed that this Court was closed till 26th October 1993 it observed that it was not necessary to grant any time as, 'citizens are well aware that the doors of Supreme Court are open at midnight even'. An observation by a Judge, presiding over the highest Court constitutional Court of the State which is apt to be misunderstood or misconstrued should be avoided in the interest of the institution. The G learned Judge should have refrained from making the observation which was not only unnecessary but apt to create misapprehension. But it was even more unfortunate that it was taken advantage of by the appellant, who did not act with responsibility as is expected of it in creating misleading impression this Court to serve its own purpose. The appellant should have H behaved like an enlightened litigant. And not like an ordinary person to

obtain an interim order, which was of little consequence, except that it appears to have hurt the vanity of the Education Department. We refrain from saying further except expressing our anguish.

Not only that the appellant even attempted to assail the observation by the Court in its order dated 20th October 1993 that the impugned order having being passed with consent there was no justification for delay in compliance of it. Relevant portion of the order is extracted below :

> "By the previous order dated 30/9/1993 which we passed after discussion upon which 111 student, agreed to appear fresh to April 1994 on payment of fresh fees, the Education Officer agreed to accommodate these students, who were directed to appear before him on 4.10.1993 and the petition was posted on 8.10.1993 to report compliance. This was on agreed order. The petition was taken up in view of observations of the S.C. in SLP 9598/92 dated 30/3/1992. Also we considered the fact that all 111 student, are women."

The has been attempted to be diluted by the appellant by averring as under in paragraph (xiv) of the S.L.P. :

> "That despite the aforesaid situation being pointed out to the Hon'ble High Court, the High Court declined to grant any time beyond 25-10-93 and surprisingly for the first time it was sought to be imputed that the earlier order dated 30- 9-93 was an order by consent. That the Petitioners respectfully say and submit that the perusal of earlier directions clearly indicates that no such consent was either sought for nor given by the concerned officer and as such the finding in this regard is totally incorrect."

It is well established that the factual recitals or observations made in a judgment or order are taken to be correct unless rebutted. The burden to rebut it is on the person who challenges it. One of the methods to rebut such observation is to file the affidavit of the person who was present in the Court and to produce such material which may satisfy the Court that the recital in the judgment crept in inadvertently or it was erroneous. But the averment extracted above would indicate that it is a statement more of law than rebuttal of fact of what happened in the Court. The Deputy Education Officer has not taken upon himself the responsibility of denying the observation in the affidavit categorically. The counsel who appeared

before the Court and was required to file affidavit did not do so. A skilful drafting by vaguely asserting without even stating and explaining why consent could not have been given cannot be held to be sufficient rebuttal of statement of fact in the order passed by the High Court.

We may now advert to if the Bench in granting interim order acted illegally or with impropriety. The respondent is a recognised minority institution entitled to admit 80 students in D.Ed. in an academic year. For 1991-92 it admitted 112 students. Reason for it was that the respondent has been claiming complete immunity from any control by the Education Department. Similar dispute had arisen earlier and the respondents had filed W.P. (C) No. 1703 of 1990 challenging the guidelines issued by the Department in which notice was issued but no interim order was granted. The Education Officer, therefore, did not approve of the admissions and issued notice cancelling the admissions as they were beyond the sanctioned strength and the institution had not followed the guidelines issued in this regard by the Department. Since the admission for 1991-92 was cancelled for not observing the guidelines the Management filed an application No. 562 of 1992 in W.P. (C) No. 1703 of 1990 for regularising the admission granted by it to 112 students. This application was rejected by a Division Bench of the High Court. The order runs as under :

> "After hearing the Counsel for the petitioner, we do not find any rational basis for selecting these 112 students. Under the circumstances, we are not inclined to grant any interim relief. Even otherwise, last date for submitting of forms is over long back. *Petitioner may seek appropriate relief at the time of disposal of main petition.* Liverty to move for fixed date of hearing.
>
> Rejected, subject to aforesaid.'

Therefore, some of the students who had been granted admission filed writ petition No. 585 of 1992 in which, too, the prayer for interim order was rejected by a detailed order taking note of the earlier order. It was observed.

> "So far as the interim relief is concerned, in view of the above order passed by the Division Bench of this Court on 26-2-1992, we are bound by the said order. The interim relief is refused on two grounds; firstly on the ground that there is no rational basis for

selection of 112 students; and secondly, that the last date for submitting forms is over long back". A

This order was challenged by way of S.L.P. in this Court which was disposed of on 30th July 1992 by requesting the High Court to decide the writ petition along with earlier petition at an early date. But the High Court could not take up the matter. Consequently another set of students filed another writ petition no.2654 of 1993 in which impugned order was passed on 30th September 1993 as under. B

"These students, shall appear before the Education Officer, Zilla Parishad, Ahmednagar, on Monday-October 4, 1993 at 11.00 a.m. The Education Officer, Zilla Parishad, Ahmednagar, shall take necessary steps to see that the students are admitted to proper D.Ed. colleges. He shall also take necessary steps to complete the education course of these students so as to make them ready to appear for the D.Ed. examination first year course for April, 1994. The petition stands adjourned to October 8, 1993, for the Education Officer, Zilla Parishad, Ahmednagar, to report compliance. It is made clear that all the petitioners-students are to be admitted on payment of regular fees." C D

Interim orders are granted by the Court as they are necessary to protect the interest of the petitioner till the rights are finally adjudicated upon. Even where it is not provided in the statute this Court has held that the Courts have inherent power to grant it. In admission matters, however, such orders once obtained create vested interest of avoiding final adjudication to enable the student to complete the course and then invoke sympathy of the Court. No further need be said as the circumstances in which the impugned order was passed were entirely different. Earlier interim orders were not granted as the claim of the management that it was not under regulatory supervision of Education Department and was entitled to admit students even more than the sanctioned strength was pending and had not been decided. But on the date the impugned order had been passed writ petition No. 1703 of 1990 had been decided by a Bench on merits and one of the Hon'ble Judges who granted the interim order was party to the decision. The petition was allowed in part and the management was permitted to admit eighty students the strength which was sanctioned by the department. The decision it is not disputed has been accepted by the E F G H

A department. No appeal has been filed against it. The order, thus, passed by the High Court, even though interim, had been passed after the dispute pending between management and the department had been decided on merits. The reason for rejecting the application filed by the Management for interim order and by the writ petition filed by the students, earlier, disappeared. In view of the decision in W.P. (C) No. 1703 of 1990 the department cannot assail correctness of the order passed by the High Court to the extent of the sanctioned strength.

But things did not stop there. The High Court by way of interim order granted admission to 112 students. This was because the department agreed for it. In fact it was a consent order as is clear from the observation made by the Bench which has been extracted earlier. When the department wanted to drag its feet the Bench which has been extracted earlier. When the department wanted to drag its feet the Bench made following observation :

> "The Education Officer was directed to comply with the order in the interest of the students. The petition was kept today when counsel sought to tender letter dated 19/10/1993 of the Supreme Court, Advocate letter taken on record. It is not seen that SLP is filed. The question of Education of 111 lady students and the arrangement was agreed upon. The Education Department has not been fair to the court when the Education Officer is not even present today. This, is interference Education Officer Mrs. Deshmane and the Dy. Education Officer Mr. Bhagwat are directed to present themselves personally on Monday 25/10/1993 to answer the situation. The learned counsel is also directed to bring this order to the notice of the Supreme Court through their Counsel at Delhi, when the matter is taken up before the Supreme Court put up on 25/10/1993 at 10.30 a.m. first on board."

Dispute about consent raised by the Department has been referred to earlier.But it was not correct. The Department definitely agreed and it was on its concession that the Court passed the order. The concession on behalf of the appellant precluded it from challenging the order. It is indeed surprising and shocking that the department did not bring the vital fact to the notice of this Court that W.P. (C) No. 1703 of 1990 had been allowed on the day the impugned order was passed. It is not possible to accept the submission of the learned State counsel that the department was not aware

of it. It came to the notice of this Court when a copy of the judgment was filed in May 1994. The appellant, thus, not only concealed important information from this Court but it played with the career of students who even after the order passed by the High Court have lost nearly two years.

Normally this Court does not interfere with consent order. But it was made against law. But it was made against law. It was in teeth of even the decision given in W.P. (C) No. 1703 of 1990. The order was passed, presumably, because the eligibility criteria of D.Ed. had been changed by the Government and it would have adversely affected the students who, as stated earlier, were all girls. The High Court in the circumstances thought it proper that since such students will be nowhere and if the Government in earlier years had accommodated similar students who were admitted by colleges which were not recognised then it would be in fitness of things that the students who were admitted by an institution which was recognised at the time of admission were entitled to indulgence by directing the students to be accommodated in other colleges. This was not proper. One illegality cannot justify the other. The utmost that the High Court could have done to record the consent and to ask the Government to consider the matter and raise the strength in the special circumstances for one year. Such misplaced qualities encourage indiscipline and the managements of those educational institutions which are gradually degenerating and converting such institution into commercial houses, flout the orders of educational authorities and the Government, fleece the students and their parents and then leave the students to invoke sympathy of the Court to protect them from the exploitation suffered by them and save their career from being ruined.

We consider it necessary to place on record that after the order was reserved, after hearing learned counsel for parties, we directed it to be listed again, for further hearing and requested the learned State counsel to obtain further instructions as the dispute involved was not only with respect to admission based on concession but it did not reflect well on the officials of the Education Department. In pursuance of it the learned counsel has placed a letter on record that the Government was willing to accommodate 80 students. That they were bound to after the decision in W.P. (C) No. 1703 of 1990. The Government in agreeing to accommodation 80 students is not showing any concession. The purpose of granting time for further instructions was to find out a solution for those students who were admitted

beyond sanctioned strength. But the letter is silent.

It is further stated that there are only 27 students of minority community. And it would be financially more viable if the students in batches of 10 to 15 are placed in several D.Ed. college for completion of First year D.Ed. course instead of putting all 80 students in one D.Ed. college. But it has not been pointed out as to what is the difficulty in permitting these 80 students to study and complete their course in the same college. No stipend appears to be paid by the Government. Further the Government having sanctioned the strength there appears no reason to assume that the institution shall not be able to impart education. The management too has not expressed any difficulty in this regard.

For these reasons this appeal is disposed of with following directions:

(i) The management is directed to produce the list of admissions before the Education Officer within ten days from today who shall within three days thereafter scrutinise the list and direct admission of 50% of the sanctioned strength of students from Christian community. The admission shall be granted on merits. If students of Christian community are not available the seats shall go to other students.

(ii) The Education Officer shall further grant admission to the remaining 50% student of other communities, that too, on basis of merit.

(iii) (a) So far 31 remaining students out of 112, one having died during pendency of the writ petition in the High Court, are concerned the Education Officer should send a letter to the Government to raise the sanctioned strength to 111 for 1991-92 only. The Government may consider sympathetically, the question of raising the strength of the institution for one year or accommodate them in other colleges as all the candidates are girls belonging to backward class.

The Education Officer shall write to the Government within two weeks from the day a copy of this order is produced before it. The Government may pass appropriate orders within one month from the date of receipt of the recommendation.

(b) These extra students, if admitted, shall be distributed in other D.Ed. colleges for which necessary directions shall be issued by the Education Officer. A

(iv) In case the facility in the respondent-college is available for 80 students then the Education Officer shall permited all the 80 students to study in the college, complete their course and appear for the examination. But if there is any technical difficulty it shall be open to the Education Officer to accommodate the students in different colleges in such batches as are feasible. This exercise shall be completed within the same time as allowed for scrutiny of the applications. It shall further be the responsibility of the Education Officer to ensure that if any student is sent to a college, other than the respondent-college, then his studies are not hampered and she is permitted to complete the course. B C

(v) If the time is short then the respondent institution shall hold extra classes for all the students, complete their course so as to enable them to appear in their examination for the first year at the appropriate time. D

In view of the facts we were inclined to issue notice to Deputy Education Officer, Zilla Parishad, Ahmednagar, to show cause for concealing the truth from this Court that on the date the impugned interim order had been passed writ petition No. 1703 of 1990 had already been decided. But the learned State counsel succeeded in persuading us that be shall ensure that the authorities are more careful in future. For the same reason and on persuasion by the learned State counsel we are not imposing any exemplary costs on the State of Maharashtra and direct the parties to bear their own costs. E

G.N. Appeals disposed of.