

STATE OF UTTAR PRADESH AND ORS.

v.

KM. RAMONA PERHAR

SEPTEMBER 2, 1994

[M.N. VENKATACHALIAH, CJ., AND B.P. JEEVAN REDDY, J.]

*Admission to Professional Courses—M.B.B.S.—Transfer from Karnataka to Uttar Pradesh—Rejected by U.P. Government in accordance with its policy decision—High Court directing transfer without reference to Government's policy—Held such orders cannot be sustained.*

*Constitution of India, 1950:*

*Art. 226—Power of judicial review—Not to be exercised as a matter of course without reference to the legal principles governing the power.*

*Practice & Procedure:*

*Interim orders—Passing of—Power to do so coupled with duty to consider all relevant facts and legal principles—Admission to educational institutions not to be granted by interim orders without fully hearing the other side.*

The respondent obtained admission in a private medical college in Karnataka in 1990. In 1992 she applied for a transfer to Allahabad. The request was rejected following the U.P. Government's policy that no one outside the State shall be permitted to be transferred to a medical college within the State. The respondent filed a writ petition before the High Court.

On 2.4.1992 the Single Judge before whom the matter was listed asked the Standing Counsel for U.P. to obtain instructions from the Government. On 7.4.1992 the matter was listed again and the Single Judge granted three more weeks' time to the Standing Counsel for filing counter affidavit and at the same time passed an order to provisionally admit the respondent. Ultimately, by order dated 12.11.1992 another Single Judge before whom the matter was listed allowed the writ petition. Against this order the State Government preferred the present appeal.

A Allowing the appeal, this Court

B HELD : 1. A mandatory Interim order, which had the consequence of displacing the student from a private college in Karnataka to a government college in Allahabad was passed as a matter of routine. This court has emphasised in several decisions that passing of interim orders - more particularly of a mandatory nature like the present one - is neither a matter of course nor a matter of charity. The power to grant interim orders is coupled with the duty to consider all the relevant facts and legal principles relevant in that behalf. Admissions to educational institutions should not be granted by interim orders - at any rate, not without fully hearing the respondents. [78-C-D]

D 2. The learned Single Judge who finally disposed of the writ petition was conscious of the fact that the order of the Government admitting the petitioner into a college in U.P. was in obedience to the aforesaid interim orders of the High Court and yet such order of the govt. was made the basis for allowing the writ petition. In this order too, there is no reference to the government's policy. Nor was any effort made to find out how many others have applied for such transfer and who among them is more deserving. Again the matter appears to have been dealt with as a matter of course without reference to the relevant legal principles governing the power of judicial review vested in High Court by Article 226 of the Constitution. [79-B]

F 3. The respondent has invited the said orders and she has to take the consequences flowing from their invalidation. Similar matters are being heard by the Allahabad High Court now and it is but proper that this matter too is remitted to the High Court for an appropriate decision on merits in accordance with law. [79-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5874 of 1994.

G From the Judgment and Order dated 12.11.92 of the Allahabad High Court in C.M.W.P. No. 11612 of 1992.

Ms. Rachna Gupta and R.B. Misra for the Appellants.

H Sunil Gupta and H.K. Puri for the Respondent.

The following Order of the Court was delivered :

A

Leave granted. Heard counsel for both the parties.

The appeal is preferred against the judgment of a learned Single Judge of the Allahabad High Court allowing the writ petition filed by the respondent.

B

The respondent obtained admission in a private medical college in Karnataka (J.J.M. Medical College, Devangera) in July, 1990. The said college is said to be recognised by the Indian Medical Council. Sometime, in early 1992, the respondent applied to the Government of Uttar Pradesh for transferring her to the medical college at Allahabad. This request was rejected following the policy enunciated by the Government of Uttar Pradesh that no one from outside the State shall be permitted to be transferred to a medical college within the State. Thereupon the respondent approached the High Court of Allahabad by way of the present writ petition. On April 2, 1992, it appears, the learned Standing Counsel for the State of Uttar Pradesh was asked to obtain instructions in the matter. Within five days, i.e., on April 7, 1992, the writ petition came up again for orders before S.C. Verma, J. The learned Judge observed that though the learned Standing Counsel was asked to obtain instructions, he has neither filed a counter-affidavit nor has obtained any specific instructions to oppose the writ petition. The learned Judge granted him three more weeks to file a counter-affidavit and at the same time made the following direction:

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D

E

"The Respondent No. 3 is directed to provisionally admit the petitioner to second professional M.B.B.S. course. The petitioner may be allowed to presume (pursue?) her studies in the said course. The result of the examination shall not be declared until further orders of this court.

F

The provisional admission is required to be made on 5 percent vacancies in accordance with the provisions of Regulations framed under the Indian Medical Council Act."

G

The order speaks for itself. To expect the Standing counsel to obtain instructions in the matter within five days was really not practicable nor was the matter of such urgency that it could not wait for three more weeks

H

- A which was granted to the learned Standing counsel on that date to file the counter-affidavit. The learned Judge has not even indicated *prima facie* that the policy of the Uttar Pradesh Government not to permit transfer of students from outside the State is bad and, if so, why. Assuming that such a transfer is permissible, the question would arise, who among all the applicants is more deserving. No effort was made by the learned Judge to find out whether there are any other students similarly placed who may be seeking such transfer and who among them is more deserving or more meritorious, as the case may be. A mandatory Interim order, which had the consequence of displacing the students from a private college in Karnataka to a government college in Allahabad was passed as a matter of routine. This court has emphasised in several decisions that passing of interim orders - more particularly of a mandatory nature like the present one - is neither a matter of course nor a matter of charity. The power to grant interim orders is coupled with the duty to consider all the relevant facts and legal principles relevant in that behalf. Admissions to educational institutions should not be granted by interim orders - at any rate, not without fully hearing the respondents.

The writ petition ultimately came up before V. Bahuguna, J. on November 12, 1992. The writ petition was allowed under a short order which reads thus:

- E "Heard learned counsel for the parties. The State Government allowed the transfer of the petitioner, consequently the Principal passed an order on 13-8-1992 admitting the petitioner in MLN Medical College, for the II Professional Course of MBBS. This order of State Government has been passed in subsequent to the order of this court dated 7.4.1992. This court has permitted a provisional admission to the petitioner with the right to appear in the examination. As the State Government has permitted the petitioner to pursue her studies in aforesaid course in the college and she also appeared in aforesaid examination her result shall be declared under the aforesaid observations. The writ petition is disposed of."

- A reading of the order shows that the main reason for allowing the writ petition is the permission granted by the State Government to the respondent (writ petitioner) to pursue her studies in the Allahabad college.

The learned Judge has himself recognised that the said order of the Government was passed "subsequent to the order of this court dated 7.4.1992". In other words, the learned Judge was conscious of the fact that the said order of the Government was in obedience to the aforesaid interim orders of the High Court and yet such permission was made the basis for allowing the writ petition. In this order too, there is no reference to the government's policy. Nor was any effort made to find out many others have applied for such transfer and who among them is more deserving. Again the matter appears to have been dealt with as a matter of course without reference to the relevant legal principles governing the power of judicial review vested in High Court by Article 226 of the Constitution.

In view of the above, it is not possible to sustain either of the orders aforesaid. Both the orders are accordingly set aside.

Sri Sunil Gupta, learned counsel for the respondent submitted that the respondent was admitted in Allahabad college as far back as April, 1992, that she is about to complete her course and that it would not be just and proper to disturb her at this stage. We are not impressed by this plea. The respondent has invited the said orders and she has to take the consequences flowing from their invalidation. Be that as it may, similar matters are being heard by the Allahabad High Court now and it is but proper that this matter too is remitted to the High Court for an appropriate decision on merits in accordance with law.

The appeal is allowed with costs. The High Court shall dispose of the writ petition in accordance with law. Appellants' costs assessed at Rs. 5000 consolidated.

G.N.

Appeal allowed.