

PETITIONER:
MAHARISHI DAYANAND UNIVERSITY

Vs.

RESPONDENT:
M.L.R.SARASWATI COLLEGE OF EDUCATION

DATE OF JUDGMENT: 13/09/2000

BENCH:
M. JAGANNADHA RAO J. & DORAISWAMY RAJU J.

JUDGMENT:

M. JAGANNADHA RAO, J.

Leave granted.

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This appeal has been preferred by the Maharishi Dayanand University against the judgment of the Punjab & Haryana High Court dated 16.8.99 in CWP No.9452 of 1999 allowing the writ petition filed by the 1st respondent College. The said College is a B.Ed. College affiliated to the appellant University.

The point in issue in this appeal is as to whether the 1st respondent College is right in adding to the Faculty, eight ad hoc Lecturers w.e.f. 1.5.99 recruited by a selection Committee not consisting of the representatives of the University and of the Director of Higher Education and whether the College could claim, on that basis, admission of 80 additional students.

The following are the facts:

The NCTE is a statutory body established under the National Council of Teacher Education Act, 1993. As per the general instructions issued by NCTE on 1.5.97, in regard to B.Ed. Colleges, the student-teacher ratio ought to be 1:10. The 1st respondent College admitted 60 students after recruiting 6 members in its faculty as regular Lecturers. Those six lecturers were selected in accordance with the procedure required. Later on, the NCTE allowed, in its general instructions, the Principal/Physical Instructor of the College to be treated as a faculty member. On account of this directive, ten more students could be admitted. In view of the above, the authorised number of admissions of the respondent College stood at 70 students.

The respondent College wanted to increase the number of its students but this required appointment of more lecturers. It then approached the High Court of Punjab & Haryana in CWP 16061/98 to permit intake of students upto 200 contending that the NCTE could not require it to obtain 'No Objection Certificates' from the State Government or the admission agency. In the said writ petition, the College did not implead the University or the State of Haryana. The High Court, by an order dated 5.11.98, directed NCTE to treat the said CWP as a representation and to consider the

questions relating to dispensing with the requirement of NOC.

Much earlier, on 13.6.97, the NCTE wrote to the State Government seeking its views on ad hoc appointments. It felt that some times, Lecturers posts fell vacant in some Colleges and it became necessary for making adhoc appointments to fill up those vacancies. It, therefore, sought the views of the Haryana State. There is no evidence as to the response of the State or of the University for this proposal. But, the respondent-College appears to have gone ahead on the assumption that the above proposal had been accepted by the State and the University.

There appears to be some correspondence between the College and NCTE, particularly a letter dated 20.4.99 of the NCTE, Regional Director, Jaipur to the College on the subject of 'adhoc lecturer's appointment' and we only have a reply by the College to the said officer of NCTE, quoting the said letter and stating that interviews will take place on 1.5.99 for 'adhoc' appointments of Lecturers. On the assumption that the letter dated 13.6.97 of the NCTE, which contained only proposals, implied permission for extra adhoc appointments, the College appears to have unilaterally selected 10 lecturers on an 'adhoc basis' on 1.5.99. Neither the representative of the University nor the representative of the Director of Higher Education were present at the said selection on 1.5.99. The proceedings of the Selection Committee show only the presence of Mr. Ram Kishan Gupta, Ex. MP, the Principal of the College, 2 Members nominated by the Governing body, and one nominee by the Principal. No representative of the University or of the Director of Higher Education were called or were present. The College sent up the list of lecturers to the NCTE, including those selected on an adhoc basis on 1.5.99. The College took advantage of the order of the High Court dated 5.11.98 that the NCTE should consider the request of the College. As already stated, the University was not a party to that Writ petition.

It is rather surprising that the NCTE, though it had earlier insisted in its letter dated 13.6.97 (referred to in the order of the High Court dated 5.11.98) that the NOC from the State and University were necessary, it permitted 80 more students on the basis of the additional 8 ad hoc lecturers selection.

The NCTE wrote to the appellant University on 11.6.99, giving a list of the Colleges and the number of seats approved. The respondent College was at serial No.10 and the number of seats permitted was shown as 150 rather than 70, thus permitting 80 more students proportionate to the eight adhoc lecturers recruited.

The University was taken by surprise and its Dean immediately wrote to NCTE on 25.6.99 that it (the University) was religiously following the guidelines of the NCTE earlier issued (i.e. on 1.5.97) and that additional seats could not have been permitted by NCTE "without reference to the University". On 30.7.99 the NCTE sent the list of teachers as given by the College to the University. The said list included the 10 additional adhoc lecturers recruited on 1.5.99. By another letter dated 30.7.99, the NCTE informed the University that the permission for additional students was on the basis of the list of ad hoc

lecturers sent up by the College.

Meantime, on 6.7.99, the College wrote to the University that the NCTE had 'sanctioned' 150 students (70 plus extra 80) for the B.Ed. course for the 1999- 2000 session. The College requested the University to permit admission of 150 students. The University felt that this was not permissible according to its statutes/rules because the student strength could not be increased on account of addition of adhoc lecturers. It did not therefore grant permission for the extra 80 students.

As the University stood as an obstacle, the College approached the High Court by way of a fresh Writ petition, CWP 9452/99. This time it impleaded the University alone as respondent and not the NCTE. The High Court allowed the writ petition under the impugned judgment dated 16.8.99. The High Court gave various directions. It was fully conscious that the additional lecturers were appointed by the College outside the prescribed procedure and contrary to clause 9 of the University Statutes. At the same time, the High Court stated that once the NCTE had exercised powers under sections 14, 15 of the NCTE Act, 1993 and issued orders on 16.8.99 sanctioning 150 students to the respondent College "there was no justification in the action of the University in reducing the intake capacity of the College". It therefore issued a direction to the University that it must permit admission of extra 80 students and not merely for 70 students for the year 1999-2000 and these extra 80 seats should be allotted within one week subject however to the condition that the University could satisfy itself if the 10 adhoc teachers had the required qualification. It was stated:

"Adhoc appointment will not be questioned solely on the ground that those were made without approach of the University in terms of clause 9 of the statutes of the University."

The High Court also directed the College to make regular recruitment of Lecturers on or before 31.12.99. The adhoc appointees would also be entitled to compete for regular selection.

It is against the judgment that the University had filed this appeal by special leave.

In this appeal, we have heard the submission of Mr. Nidesh Gupta for the appellant-University and of Mrs. Dr.Meera Aggarwal for the 1st respondent College.

The following points arise for consideration:

(1) Whether the proposal contained in the letter of NCTE dated 13.6.97 to the State Government to permit adhoc appointments of Lecturers without following due procedure, remained only a proposal or was accepted by the State of Haryana or the appellant-University?

(2) Whether the College could have selected 10 additional Lecturers, 'adhoc', without the participation of a representative of the University and of the Director of Higher Education, on 1.5.99?

(3) Whether the University could be directed by the High Court to sanction admission of the extra 80 students on the basis of the letter of the NCTE?

(4) Whether the University could be faulted for not releasing the results of the examination of these extra 80 students? Whether, results should be directed to be released?

Point 1:

Reliance was placed for the College on the letter of the NCTE to the Government dated 13.6.97 wherein it was stated that the procedure for selection of Lecturers was taking time and proposing adhoc appointments to be made till regular staff was selected. But, as pointed out earlier, this remained only a proposal. There is no material to say that any such proposal was accepted by the State or the appellant-University. The assumption of the College that the letter permitted ad hoc appointments outside the prescribed procedure, cannot be accepted. Point 1 is decided accordingly.

Points 2 and 3:-

According to the 'Norms and Standards for Teacher Education Institutions Secondary', it is clearly stated in para 2.5:

"The core teaching staff shall be appointed on full time and regular basis. Supporting academic administrative and technical staff may be appointed on part-time basis in the beginning. In all cases properly constituted selection Committees as per UGC/University/Government rules will select the candidates."

In para 3.1.0 the UGC notification regarding standards, 1990, it is stated:

"The direct recruitment to the post of Lecturers, in the Universities and Colleges shall be made on the basis of merit through all India advertisement and selections by the duly constituted Selection Committees to be set up under the Statutes/Ordinances of the concerned University. Such Committees should have a minimum of three experts, the head of the concerned department and the Principal of the concerned College (in case of selection of College teachers)."

The guideline 3.3.0 also speak of the qualification and minimum requirement of 55%. Para 4.4.1 deals with qualification of Lecturers including Lecturers in Education.

The appellant University has also prescribed

qualifications for the posts of Lecturers in Colleges/Universities. Para 2 deals with lecturers in College of Education.

The procedure for appointment of Lecturers appears to be contained in para 9 of the University Statute as appears from the judgment under appeal.

The appellant University had, in fact, issued directions to all Principals of Colleges on 24.3.99 that vacancies should be duly advertised in two National Dailies/Newspapers (one in English & one in Hindi) of which one must have national circulation and other, a regional circulation. The applicants for the post were to send application to the College with copy to the Dean, College Development Council, M.D.University, Rohtak. The Committee would consist of nominee of University/Vice-Chancellor. There must be sanction from the department of Higher Education, Haryana and para 4 states:

"the date of interview should be fixed after consultation with the University/Vice-Chancellor's nominee."

and para 6 says that:

"the proceedings of the Selection Committee may be sent to the University immediately after the interview."

Para 7 says:

"In no case, appointment letter be issued to the candidates thus selected unless the proceedings of the Selection Committee are approved by the University/DHE."

Para 9 states that:

"Approvals sought for appointment have to be accompanied also by the sanction of the Director of Higher Education, Haryana."

In the light of the above procedure prescribed, the selection dated 1.5.99 must be held to be bad.

It is also clear to us from the proceedings of the Selection Committee dated 1.5.99 (p.18/n of the Paper Book) that only the Chairman, Principal, two nominees of the Governing Body and one nominee of the Principal were present at the selection on 1.5.99. Admittedly, no request was even sought from the University to send its representative to be on the Selection Committee. The prescribed proforma, in fact, required presence of the nominee of the University and also a nominee of the Director of Higher Education and no such nominees were present on 1.5.99. It is not also the case of the College that any advertisement was published for this interview of 1.5.99 in two newspapers as required. At any rate, no such material has been filed. Nor were the Committee proceedings and list of candidates sent to the University after the selection was over, as required.

In fact, the College filed the first WP 16061/98 against NCTE, obtained the first order on 5.11.98 from the High Court to the NCTE to consider its representation. In that writ petition the University was not impleaded. In the present writ petition, it impleaded the University but not the NCTE.

Once the selection dated 1.5.99 was made - without following procedure - it wrote directly to the NCTE for permission to increase its strength and ignored the University altogether. The NCTE, on the basis of the addition of adhoc lecturers, sanctioned 80 seats extra and sent its decision to the University on 11.6.99. It was only then that the University came to know about the fait accompli and wrote on 25.6.99 to the NCTE and on 31.8.99 to the College that the whole selection was contrary to the prescribed procedure.

In fact, there is also clear documentary evidence to show that the Principal was pressurised to collect extra amounts of fees from the students by management, that the students protested, that the Principal informed higher authorities and for that reason, she was removed. She went to Court and succeeded in a writ petition and re-joined the College on 2.9.99.

Once the University did not grant permission for the admission of the additional 80 students (over and above the sanction number of 70 students), the respondent-College, which had no choice, tried to get over the problem by filing a writ petition. The High Court passed the impugned judgment on 16.8.89 directing the University to grant approval for admission of 80 students.

The High Court, in our view, was in error in allowing increase in the admission of 80 students by assuming that the adhoc selection of teachers dated 1.5.99 was sufficient to permit increase into students. The selection of these adhoc Lecturers - addition to the existing regular staff - was done, without proper advertisement, without the candidates sending copies of application to the University, and without the participation of the nominees of the University and the Director of Higher Education. No list of such selected staff was sent by the College to the University as required. If we may say so, it was a selection in total violation of the procedure. The University was kept in dark till after permission was obtained from the NCTE for admission of extra 80 students. The College reversed the entire process by first going to the NCTE and then to the University. The selection of the adhoc lecturers in our view cannot enable the College to compel the University to permit admission of these 80 students.

Though NCTE is not before us, we are constrained to observe that the NCTE ought to have verified from the University whether the University had received applications of the candidates who had applied for selection on 1.5.99, whether a date for interviews was fixed in consultation with the University and whether the nominee of the University or the DHE participated in the selection and whether the College had informed the University after the selection.

Apart from this the question regarding the satisfaction of the other infrastructural facilities also appears to have eluded the attention of the NCTE. The NCTE allowed itself to be misled by the College.

We are, therefore, clearly of the view that the selection of adhoc teachers on 1.5.99 was illegal and the College could not seek extra students on basis of extra adhoc teachers and without satisfying the norms relating to the other infrastructural facilities too. The High Court's direction is, contrary to the guidelines of the NCTE, procedure in clause 9 of the University Statute. Points 2 and 3 are decided accordingly.

Point 4:

During the pendency of this appeal, the College has sought release of the result of examination of these 80 students. We are conscious that the students who have undergone this course are not before us.

This Court has laid down in several cases, that the Courts cannot issue directions contrary to the rules.

In State of Maharashtra Vs. Vikas Sahebrao Roundale (AIR 1992 SC 1926), while dealing with certain directions issued by the Bombay High Court, this Court observed:

"The directions to the appellants to disobey the law in subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc."

Again, in State of Punjab Vs. Renuka Singla (AIR 1994 SC 595), this Court observed:

"The High Court or Supreme Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students.The High Court cannot disturb the balance between the capacity of the institutions and number of admissions, on 'compassionate ground'. The High Court should be conscious of the fact that in this process they are affecting the education of the students.....".

More often, as pointed in the above judgments, Colleges or schools which violate the rules, either plead for the students or set up the students to file cases in the Courts in the belief that the courts can be persuaded to grant orders to jump over the rules. This tendency has been on the increase. Commercialisation of education is the reason. This Court has been insisting on discipline and obedience to rules. Where even the High Courts have been granting orders in favour of the institutions/students, this Court has been setting aside those orders.

The question is whether, on the facts of this case, the results of the examination can be directed to be released?

In the normal course, the answer could only be that the results cannot be allowed to be released. But there are, in our opinion, two circumstances which cannot, however, be disregarded. One is that there was an order of the NCTE - though, as stated above, the NCTE was not right in giving permission - permitting additional students. Unfortunately, the NCTE is not a party before us and therefore we are not able to set aside its orders. Secondly, these extra 80 students have completed the two year course, and paid the examination fee. The University which is the appellant before us has accepted the fee from these students and allowed them to take the examination. Question is whether, in such circumstances, we should permit the University not to release the results?

Though this Court has, almost uniformly been refusing to show any concession in favour of students or the institutions, we have felt in the peculiar facts of the case and in view of the circumstances mentioned above, the results could be directed to be released.

We may point out that by an order passed on 16.8.2000 this Court restrained the College from making any extra admission for the year 2000-2001. Counsel invited our attention to the various subsequent proceedings of the Selection Committee for regular selection of lecturers. We do not want to go into the said selection. Learned counsel for the University argued that even the latter regular selection dated 23.4.2000 was made by the College in haste, without giving adequate time to the University to send its representative and that the College sent a letter to the University on 8.4.2000 deliberately fixing 10.4.2000 as the date of selection and that it conveniently went ahead with the selection without a nominee from the University on the selection Committee. We do not want to go into the validity of this latter selection.

We however direct the College not to admit any extra students beyond 70 unless there is a proper regular selection of lecturers by a Committee in which the nominee of the University and of the DHE are present and unless the University also approves such appointments and grants permission, of course after verifying about the other infrastructural facilities required to justify any further increase of the student strength.

So far as the 80 students of 1999-2000 are concerned, in view of the above circumstances referred to above, we direct the University that their results be released.

It is time that the courts evolve a mechanism for awarding damages to the students whose careers are seriously jeopardised by unscrupulous management of colleges/schools which indulge in violation of all rules. This is not the occasion to go deep into that aspect but one day it has to be done.

With these remarks, we allow the appeal, set aside the judgment of the High Court, direct result of the examination in B.Ed. to be released, we restrain the College from admitting the extra students beyond 70 unless regular selection of lecturers is made in accordance with prescribed procedure and accepted by the University and unless the University permits extra students to be admitted. The Appeal is disposed of accordingly. No costs.