

Prateek Sharma And Anr vs Union Of India & Anr on 29 June, 2020

Author: Hima Kohli

Bench: Hima Kohli, Subramonium Prasad

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IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) 3199/2020 & C.M. Nos. 11121/2020 & 11708/2020

PRATEEK SHARMA AND ANR

..... Petitioners

Through

Mr. Kapil Sibal, Sr. Advocate with
Mr. Nizam Pasha and Ms. Diksha
Singh, Advocates

versus

UNION OF INDIA & ANR.

..... Respondents

Through

Mr. Ripudaman Bhardwaj, CGSC
with Mr. Kushagra and Mr. Shikhar
Kishor, Advocates for R-1 and R-2.
Mr. Apoorv Kurup and Ms. Nidhi
Mittal, Advocates for R-3.
Mr. Sachin Dutta, Sr. Advocate with
Mr. Mahinder J.S. Rupal with Mr.
Hardik Rupal, Advocates for
R-4/Delhi University with
Professor Vinay Gupta,
Dean (Examination).

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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29.06.2020

HEARD THROUGH VIDEO CONFERENCING.

1 The present petition was listed on 26.06.2020, on which date,

arguments were addressed at length by both sides and after hearing the submissions made by Mr. Sachin Dutta, learned Senior Advocate appearing for the respondent No.2/Delhi University, on receiving instructions from Professor Vinay Gupta, Dean (Examination), Delhi University who was present in the virtual hearing, we had stated that we proposed to dispose of the petition as it appeared to us on the basis of the submissions made before us that the respondent No.4/Delhi University was thoroughly geared up to conduct the Open Book Examinations that were to

commence on 01.07.2020. We had also stated that we were not inclined to accede to the request made by Mr. Kapil Sibal, learned Senior Advocate appearing for the petitioners that the exams ought to be cancelled or deferred for students in the PWD category more so when it was specifically averred by the Delhi University in its affidavit that 95% of the PWD category students had already applied to sit in the examinations.

2 Indicating this view, we had informed learned counsel that the order would be passed in the course of the day and thereafter, it will be uploaded on the website of the High Court. On the next date i.e. on 27.06.2020 which was a Saturday and also a working day in the High Court, after the order had been dictated but before it could be uploaded on the website, one of us (Hima Kohli, J) came across a press report to the effect that the respondent No.4/Delhi University had decided to postpone the exams, scheduled on 01.07.2020, for 10 days and reason for doing so was "in view of the prevailing situation of COVID-19 pandemic". This came as a surprise to us, when just a day before, the respondent No.4/Delhi University had shown its complete preparedness for conducting the OBE w.e.f. 01.07.2020. It is also noteworthy that learned counsel for the petitioners had pointed out difficulties being faced by the PWD students due to the COVID-19 situation and pointed out that both CBSE and ICSE had informed the Supreme Court that they had cancelled the Board examinations for the same reasons and decided to assess the students on the basis of an Assessment Scheme.

3. One of us (Hima Kohli, J) had called up the Court Master on 27.6.2020 and requested her to contact Mr. Rupal, learned counsel for the respondent No.4/Delhi University so as to verify the factual position. The Court Master got back stating that Mr. Rupal needed time to verify the correct position. Thereafter, learned counsel confirmed issuance of the press release to the Court Master in the evening.

4. We may also note that on 27.06.2020, the petitioners' counsel had also sought to move an application in this matter and had approached the Court Master. At that time, this Court was not aware of the aforesaid developments. Without the said application coming on record or notice being issued therein, the respondent No.4/Delhi University has proceeded to file a reply thereto and under the garb of the said reply has tried to justify its conduct in failing to inform this Court about the developments that took place in less than 24 hours of the hearing in the petition, on 26.06.2020. The said reply has been e-mailed to the Court Master only this morning and in turn, forwarded to us.

5. On inquiring from Mr. Sachin Dutta, learned Senior Advocate appearing for the respondent No.4/Delhi University as to why has the said reply been filed when the application filed by the petitioners is not even on record, he submits that in the reply, an explanation has been offered for the deferment of the exams by 10 days. When the application has not been placed on record, where is the question of the respondent No.4/Delhi University filing a reply thereto and under the garb of the said reply, trying to justify its decision that too, after we had informed all the counsel through the Court Master that this petition will be relisted today for us to enquire from the respondent No.4/Delhi University as why were we not informed of the said development on 26.6.2020 itself.

6. Professor Vinay Gupta is present in the hearing along with Mr. Rupal, Advocate and Mr. Sachin Dutta, Senior Advocate and the only explanation offered by him, which is not a part of any press release, is that the mother of Dr. S. Rangabhasham, Deputy Registrar (Secrecy) was suspected of suffering from COVID-19 infection on 24.07.2020 and it was discovered in the afternoon of 26.06.2020 at 02:20 PM, that she was COVID-19 positive.

7. We may note that the High Court functions up to 04:30 PM, as a matter of routine and the hearing in this case had virtually got over at around 2.00 PM. In other words, if the stand of the respondent No.4/Delhi University is correct that because a family member of Dr. S. Rangabhasham, Deputy Registrar (Secrecy) had gone down with COVID-19 infection and the University came to know that the entire family had to be quarantined only after the matter was over, then there was enough time for the respondent No.4/Delhi University to have reverted back to this Court on the same day or at least the next morning and apprise us of the said developments and the decision taken to defer the examinations by 10 days. This did not happen till we asked the Court Master on Saturday evening to inform all the parties that a hearing will take place in the matter today.

8. In view of the aforesaid conduct, we are prima facie of the opinion that contempt proceedings ought to be initiated against the respondent No.4/Delhi University and its officers for withholding material information from the court and trying to mislead the court.

9. Issue notice.

10. Mr. Rupal, learned counsel for the respondent No.4/Delhi University accepts notice.

11. Reply be filed by the respondent No.4/Delhi University and Professor Vinay Gupta within three days with a copy to the counsel for the petitioners. The petitioners are permitted to respond to the said reply within two days thereafter.

12. List on 06.07.2020.

HIMA KOHLI, J SUBRAMONIUM PRASAD, J JUNE 29, 2020 A