Union Of India vs Era Educational Trust & Another on 5 April, 2000

Equivalent citations: AIR 2000 SUPREME COURT 1573, 2000 AIR SCW 1281, 2000 ALL. L. J. 958, 2000 (4) LRI 1331, 2000 (5) SCC 57, 2001 (1) BLJR 725, (2000) 4 JT 241 (SC), 2000 (4) JT 241, 2000 (5) SRJ 86, 2001 BLJR 1 725, (2000) 2 UPLBEC 1485, (2000) 2 RAJ LW 364, (2000) 2 ESC 1106, (2000) 3 MAD LJ 32, (2000) 3 SCALE 123, (2000) 3 SUPREME 195, (2000) 3 PAT LJR 25, (2000) 2 SERVLR 628, (2000) 2 SCT 474

CASE NO.:
Special Leave Petition (civil) 3360 of 2000

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
ERA EDUCATIONAL TRUST & ANOTHER

DATE OF JUDGMENT: 05/04/2000

BENCH:
APRIL 5, 2000

JUDGMENT:

Shah, J.

L...I...T.....T.....T.....T.....T.....T.....T..J Leave granted.

Heard learned counsel for the parties exhaustively.

These appeals are filed by the Union of India and the Medical Council of India respectively. It is to be stated that Medical Council has not recommended for grant of permission to establish medical college, yet Medical Council was not joined as a party respondent in the petition before the High Court.

Normally, this Court would hesitate to interfere with an interlocutory order, but in a case where prima facie it appears that the said order cannot be justified by any judicial standard, the ends of

justice and the need to maintain judicial discipline requires us to do so and to indicate the reasons for such interference without prejudice to the rights of one side or the other.

It is unfortunate that the High Court of Allahabad (R.H. Zaidi and Bhanwar Singh, JJ) exercised the extra-ordinary jurisdiction under Article 226 of the Constitution of India, in an extra-ordinary manner by granting interim mandatory relief to run Medical College, despite the fact that the Central Government has rejected such permission, after obtaining recommendation from the Medical Council twice. The extra-ordinary powers under Article 226 are to be exercised for rendering justice in accordance with law. Medical College cannot be established except with the previous sanction of the Central Government as provided under the Indian Medical Council Act, 1956 (102 of 1956). Unfortunately, by granting this interim mandatory order, without allowing the respondents therein time to file counter affidavit, the Court not only violated the norms for grant of interim relief, but has also violated the principles of natural justice and has allowed the petition on the date of its admission. It is apparent that on the day when the petition was presented, the Court straightaway granted mandatory order permitting respondent No.1 to establish the Medical College. Learned counsel who appeared on behalf of the Union of India sought an adjournment for filing an affidavit in reply after obtaining instructions from the concerned Department, but the same was refused. This unusual relief was granted in a case where respondent No.1 filed an application for consent of the Central Government to establish the Medical College at Lucknow in January, 1997. That application was considered, re- considered and the Medical Council had carried out the inspection twice and finally on 04.6.1999 application was rejected by the Central Government. In hot haste, in a case where there was no urgency, the High Court by the impugned order dated 11.10.1999 directed that operation of the impugned order dated 04.6.1999 passed by the Central Government shall be stayed and the State of U.P. was directed to allocate the students to the medical college for the purpose of admission. As such, it is to be stated that by granting stay of the order passed by the Central Government it is difficult to hold that that would amount to a permission to establish the medical college.

May be that Order XXXIX of the C.P.C. would not be applicable at the stage of granting interim relief in a petition under Article 226 or 227 of the Constitution, but at the same time various principles laid down under Order XXXIX for granting ad interim or interim reliefs are required to be taken into consideration. In the case of Morgan Stanley Mutual Fund v. Kartick Das [(1994) 4 SCC 225], after considering the various authorities this Court laid down the guiding principles in relation to grant of an ad interim injunction which are as under:

> As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ should weigh with the Court in the grant of ex parte@@ JJJJJ injunction are:
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> (a) whether irreparable or serious mischief will ensue to the plaintiff.
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> (b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;

(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application;

(f) even if granted, the ex parte injunction would be for a limited period of time.

(g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.

Apart from Order XXXIX even with regard to the Medical education, there are various decisions of this Court laying down the principle that normally Court should not interfere and even if interference is required in a case of unsustainable order, the authority should be directed to re-consider the case on the norms prescribed under the Act and/or the Rules. In Shivaji University v. Bharti Vidyapeeth and Others [(1999) 3 SCC 224], after considering the order passed by the University, the Court directed the University to re-consider the question in the light of the observations made in the judgment. In similar set of circumstances, in Civil Appeal Nos.5045 and 5046 of 1998 in Medical Council of India, New Delhi v. State of H.P. and Another, this Court on 16.2.2000 observed that since the refusal was based on deficiences for running a Medical College, it would have been appropriate for the High Court to have remitted the matter to the Medical Council of India or the Union of India for reconsideration, even if it was of the opinion that the order of the Medical Council of India deserved to be set aside and the Court ought not to have issued a writ of Mandamus directing grant of permission. Further, in Andhra Pradesh Christian Medical Educational Society v. Government of Andhra Pradesh and another [(1986) 2 SCC 667], it was held that even in a case where students were admitted in the Medical Colleges and who had continued their studies for more than a year, this Court refused to recognise such admission and observed:

We regret that the students who have been admitted into the college have not only lost the money which they must have spent to gain admission into the college, but have also lost one or two years of precious time virtually jeopardising their future careers. But that is a situation which they have brought upon themselves as they sought and obtained admission in the college despite the warnings issued by the University from time to time.

The Court further observed:

Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its

existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws.

Similarly in Krishna Priya Ganguly and Others v. University of Lucknow and others [(1984) 1 SCC 307], for granting interim order, this Court cautioned thus:-

that whenever a writ petition is filed provisional admission should not be given as a matter of course on the petition being admitted unless the court is fully satisfied that the petitioner has a cast-iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible.

The Court further observed:

Unless the institutions can provide complete and full facilities for the training of each candidate who is admitted in the various disciplines, the medical education will be incomplete and the universities would be turning out doctors not fully qualified which would adversely affect the health of the people in general.

In the present case, this type of situation has arisen because of interim order passed by the High Court without taking into consideration various judgments rendered by this Court for exercise of jurisdiction under Article 226. It is apparent that even at the final stage the High Court normally could not have granted such a mandatory order. Unfortunately, mystery has no place in judicial process. Hence, the impugned order cannot be justified by any judicial standard and requires to be quashed and set-aside.

However, it appears that after passing of the impugned order, respondent No.1 has started the Medical College. At the time of admission and hearing of these matters, on 6.3.2000, this Court passed the following order:

The learned Additional Solicitor General of India submits that the facts of these cases require a stay order to be passed today. On the other hand, learned senior counsel appearing for the students submits that the matter may be taken up next Monday 13.3.2000 so that they can file their counters. It is however, made clear that while we are granting an adjournment today even if it is by one week this order will not be treated as a refusal of granting stay. The respondents cannot claim any equity in their favour on account of the fact that stay was not granted today. Whenever the interlocutory application is to be taken up, it will be disposed of on the basis of the facts as existing today.

Hence, considering the fact that the respondent No.1 has started the college, students are admitted and that we are setting aside the impugned order passed by the High Court, but as a specific statement is made by learned counsel for respondent No.1 that all other infrastructure requirements under the Regulations framed by the

Medical Council are/or will be complied with, and that 300 bedded hospital is likely to be ready within a period of six months, we direct as under:-

(1) The Medical Council of India shall inspect within one month from today whether other infrastructural requirements contemplated by the Regulations are complied with by respondent No.1. If any deficiency is found, the Medical Council would intimate respondent No.1 and respondent No.1 would see that the deficiencies are removed;

(2) As soon as respondent No.1 is in a position to complete the 300 bedded hospital, it would intimate the Medical Council and the Central Government for carrying out inspection as required under the Regulations. Thereafter within 15 days from the receipt of the said communication, the Medical Council would carry out the necessary inspection and if there is compliance with the conditions prescribed by the Medical Council of India for commencement of the Medical College, it would recommend the Central Government for grant of permission. If the recommendations are favourable, within seven days from the receipt of such recommendations, the Central Government would grant the necessary permission.

The Medical Council would carry out the inspection without waiting for the inspection fees which could be recovered subsequently;

(3) In the event permission under section 10A of the Medical Council of India Act is granted by the Central Government, the students who have been admitted to this College after the passing of the impugned order by the High Court, shall stand allotted to the first year MBBS Course of that college and the 1st MBBS Course will commence therefrom;

(4) In the intervening period, if respondent No.1 College wants to carry on classes for teaching the students, it may do so but this will not give any right to the students or the College to claim credit for the said period prior to the date on which permission under section 10A is accorded;

(5) Students will not be entitled to appear in any examination until they complete the prescribed minimum period of studies after the permission is granted under section 10A;

(6) No further admissions will be allotted to the first batch of MBBS course of respondent No.1 Trust except on vacancies arising from any of the students now allotted or refusing to pursue their studies further;

(7) In the event of respondent No.1 failing to comply with the MCI requirements including a 300 bed hospital and not being accorded the permission under section 10A by the Central Government, this order will not create any equities in favour of the respondent-Trust or those students who have been admitted pursuant to the impugned order of the High Court.

With the aforesaid directions, appeals are allowed and the impugned order dated 11.10.1999 in Civil Writ Petition No.4387 (MB) of 1999 passed by the High Court of Allahabad is hereby quashed and set aside.

Ordered accordingly.