Supreme Court of India
K. John Koshy And Ors. vs Dr Tarakeshwar Prasad Shaw on 5 February, 1996
Equivalent citations: (1998) 8 SCC 624
Bench: A Ahmadi, M Mukharji, K Venkataswami
ORDER

1. Special leave granted.

2. The Government of India, Ministry of Health and Family Planning by its order dated 20-1-1976 approved the West Bengal Government's proposal for upgrading the Postgraduate Training and Research Department (Kayachikitsa) on certain conditions including that the college should be affiliated to a recognised university, the upgraded Department should have an all-India character and 50% seats should be reserved for outside candidates, if forthcoming. With a view to maintaining a high standard, the Department decided to admit candidates strictly on merit to be determined on academic achievements and results in written and viva voce tests for selection. A committee of experts was entrusted the task of selecting the candidates for admission. That Committee had accepted minimum 50% marks as the norm for selection.

3. In 1988-89, for six seats advertisement was issued and intending candidates applied. The respondent who hailed from outside the State applied in the quota reserved for such candidates. All the outside State candidates competed for the three seats reserved for them and appeared for the selection test. None of those who appeared met the minimum requirement. In order that the three seats may not go waste, the minimum marks were reduced from 50% to 30% and the Selection Committee undertook a review to ascertain how many met this diluted norm. It was found that two candidates from the State and one candidate studying in West Bengal but otherwise from outside the State qualified. The respondent did not qualify even according to the reduced standard. Surprisingly, even before the final selection list was out, he moved a writ petition in the High Court. The High Court by its order dated 22-11-1990 ordered his admission in the quota for outside students provided he succeeded in the selection test. The respondent was not successful. He moved a second writ petition. A learned Single Judge by an interim order dated 22-2-1991 directed his provisional admission. On the present appellants making an application for vacating the said interim order, the learned Single Judge by order dated 3-4-1991 directed notice to issue (suo motu) to show cause why action for contempt should not be taken. Being aggrieved, the appellants filed an appeal FMAT No. 1036 of 1991 questioning the interim order of 22-2-1991. The Division Bench admitted the appeal and stayed the operation of the said interim order.

4. Pending the above appeal, the original writ petition was finally heard on 11-11-1991 by the learned Single Judge and the judgment was reserved. However, without notice to the counsel for the appellants herein, the learned Single Judge passed an interim order on 15-1-1992 requiring the Department to examine the writ petitioner. Feeling aggrieved, an appeal FMAT No. 285 of 1992 was carried to the Division Bench. Thereafter, the writ petition was finally disposed of on 21-1-1992 holding that the refusal to grant admission was illegal and unjustified and directed that the candidate be admitted forthwith. Against the said mandate, an appeal FMAT No. 392 of 1992 was filed before the Division Bench. The appeal was admitted and stay granted.

5. During the pendency of the three appeals, the original writ petitioner moved for vacating the interim order on the plea that the Calcutta University had issued a notice dated 30-8-1993 inviting applications for admission to the three-year MD course in Ayurveda and he was likely to get admission if the interim order was vacated. The said application was fixed for hearing on 13-3-1995. Since the Bar Association had given a call for strike, neither the advocate for the appellant nor for the respondent could appear, but the Division Bench heard the candidate in person and modified the order of stay. Thereafter, the candidate moved a contempt petition, CR No. 711 of 1995, for violation of the said order. The rule was made returnable on 23-6-1995 and Appellant 1 herein was directed to personally present himself on that day. It is against the said order that the present appeals are filed.

6. The respondent herein has in his counter-affidavit averred that for the 1988-89 course, he was selected for admission and again for the 1989-90 course also he had secured selection but he could not join the course because of the interim orders of the Division Bench and therefore he moved for vacating/modifying the same which the Division Bench was pleased to do by the order of 13-3-1995. However, the fact that there was a lawyers' strike and neither side counsel was present and heard before the said order was passed, is not denied but it is pointed out that the matter was urgent since his admission was held up.

7. We do not propose to express any opinion in regard to the merits of the case nor do we desire to dwell on events preceding the making of the order dated 13-3-1995, We also do not desire to say anything on the question whether circumstances did or did not exist for making the order of 13-3-1995. It is an admitted fact that since the members of the Calcutta Bar were on strike, the counsel for both sides were absent and hence the Court passed the order after hearing the respondent. If the matter was urgent and the respondent who was present in person insisted on being heard and orders being passed on his application as his career was at stake, could the Court refuse to take up his application for hearing and refuse to pass an appropriate order on merits? The answer must obviously be in the negative because to do so would tantamount to the Court becoming privy to the strike. The court is under an obligation to hear and decide cases brought before it and cannot shirk that obligation on the ground that the advocates are on strike. Therefore, the Division Bench was fully justified in proceeding to hear the respondent and in passing orders on merits. We must also mention that at the relevant point of time, the interim order passed by this Court in the Common Cause, A Regd. Society v. Union of India, pending in this Court against lawyers proceeding on strike was in force whereunder the Bar Associations were precluded from dismembering any member of the Bar who appeared in court despite the strike call. Under the circumstances the fear of being debarred from membership also did not exist. We are, therefore, of the opinion that despite the same if counsel did not appear, they are only to blame. The Court in the circumstances did the right thing to proceed to hear the case.

8. However, the next question is whether the order of 13-3-1995 can be sustained on merits? The order is not a speaking order, in that, no reasons are given in support of the order. The court could certainly pass an interim order if the merits of the case so demand and to contend otherwise is clearly misconceived. However, it must be noticed that by the interim order granting or permitting provisional or tentative admission, the Division Bench was virtually reviving the interim order of the

learned Single Judge dated 22-2-1991 which it had stayed while admitting the appeal directed against it, FMAT No. 1036 of 1991. By granting the tentative admission to the respondent herein, the Court was virtually imposing its decision on the management. If the averments of the respondent were correct and if he was in fact selected for admission, the most the Court should have stated was that the interim orders will not preclude the management from granting admission if the candidate had been selected for admission. That would have been the appropriate order to pass on the averment of the candidate that he had been selected for admission in the relevant academic year. The Court issued a directive to grant him tentative admission which was not correct. If the candidate was selected and the management found it difficult to grant him admission on account of the prevailing interim orders of the Court, the proper thing to do was to lift the stay and leave it to the management to grant admission if the candidate was selected for admission. In the present case, it must be realised that the management had not found any difficulty in granting admission because if it was so, it would have moved the Court for clarification which it did not. If the management had selected the candidate for admission, it would have had no objection to tentatively admitting the candidate to the MD course for the relevant year. The fact that the management is resisting raises a doubt about the correctness of the statement of Respondent 1 but be that as it may, we think that the most appropriate order to pass was to leave it to the management to grant admission if the averments made by the respondent candidate were correct.

9. We, therefore, set aside the order of 13-3-1995 on merits and substitute it by an order to the effect that the management would be at liberty to admit the candidate notwithstanding the interim orders of the Division Bench of the High Court in the earlier proceedings if the management has found the candidate fit for admission in the relevant year. If, however, the management has not selected and found him fit for admission, the management should convey the same to the candidate so that the candidate knows his position. Since we are setting aside the order of 13-3-1995, the subsequent order of 28-6-1995 cannot be allowed to stand. We set it aside also. The appeals will stand disposed of accordingly with no order as to costs.