

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.931 OF 2023

Between:

K. Pramod

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 30.10.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.931 OF 2023

% 30.10.2023

Between:

K.Pramod

... Petitioner

And

\$ The State of Telangana and others

... Respondents

< Gist:

> Head Note:

! Counsel for the Petitioners : Mr B.Akash Kumar

**^ Counsel for Respondents : G.P. for Education, for
R1 and R3 and
Mr.Ch.Jaganadha Rao,
for R.2**

? Cases Referred:

- (1) (2023) 2 SCC 636
- (2) (1984) 3 SCC 161
- (3) (2021) SCC Online SC 3433
- (4) (2002) SCC Online SC 1036

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. NO. 931 OF 2023****ORDER:**

Heard Mr. B. Akash Kumar, learned counsel for the petitioner, learned Government Pleader for Education appearing on behalf of Respondent Nos.1 and 3 and Mr.Ch.Jaganatha Rao, learned Standing Counsel appearing on behalf of the 2nd Respondent.

2. The petitioner has approached the Court, seeking the following relief:

"To issue a writ, or order or direction, more particularly one in the nature of Writ of Mandamus, declaration and direction, thereby, declaring the Notification No.956/UG/Sem/Exams/2022 dated 05.12.2022 issued by the Respondent No.2 insofar as it imposes penal fees of Rs 10,000/ per paper for students of academic year 2017-18 for clearing backlog papers, as arbitrary, unjust, violative of Articles 14 and 21 of the Constitution of India and set aside the same and consequentially direct the Respondent No.2 to collect reasonable penal fees from the students for clearing backlog papers."

PERUSED THE RECORD.

3. Counter affidavit has been filed by the 2nd Respondent, in particular, paras 5, 6, 7 & 8 as it is read as under:

"5. In response to the para 16 of the affidavit I submit that the penal charges of Rs. 10,000/- per paper has been given as per the University Standing committee of the Academic Senate Order vide letter No.870/Acad. I/2022, dated: 14-11-2022 to facilitate the students to complete their course. It is also submitted that the one-time chance is given by the University beyond the regular duration with an intention to help the students to clear their backlogs. However, the University has to incur huge expenditure for conducting these examinations by way of paying remuneration to preparation and verification of examination application forms (EAF), scrutiny and approval of EAF's preparation of Hall Ticket, D-Forms, Attendance sheets, question paper setting (Two sets), Translation, printing, moderation, proof reading, constituting centers, centre charges, remuneration to Chief Superintends, Stationery, Invigilators, Sitting Squad, Flying Squad, observer, logistic charges, paper receivers, scanning, valuation of answer scripts, results processing, certificates printing, etc. As the number of students appearing for these examinations is less comparatively with those of regular examinations the scale of expenditure is high for these examinations, to bear the increased expenditures, the University has to collect additional charges.

6. In response to the para 17 & 18 of the affidavit I submit that while conducting Annual Backlog Examinations during the Annual year 2022, initially the examination fee notification was issued only to the eligible candidates, Fee Notification No.716/UG/CBCS/Semi VI/Reg/Back/Exams/2022, dated: 21.05.2022. However, on the requests of various stake holders, the University has extended and notification to 2016-2017 batch including YWS to Sem Re-admitted candidates Fee Notification No.717/UG/CBCS/Sem-I-VI/Backlog/Exams/2022, dated 02.06.2022 to clear their backlog examinations. Keeping in view of **CORONO PANDEMIC** period time during the 2020 to 2022, which is catastrophic event caused economically huge losses to every individual and families. Sympathetically looking into this situation, the penal fee of Rs.1000/- per paper was charged in 2022 by the University, Examination fee notification No. 717/UG/CBCS/Sem-I-VI/Backlog/Exams/2022, dt.02.06.2022. Whereas, for the annual year 2023 examinations the situation was normalized from PANDEMIC, subsequently the notification No.956/UG/Sem/Exams/2022 dated 05.12.2022 was issued with a penal fee of Rs.10,000/- per paper as per the University Standing Committee of Academic Senate orders in the year 2023 to extend the chance to clear backlog exams for the students those who have crossed (5) years, i.e., 3+2 years as a one-time chance vide letter No.870/Acad.I/2022, dated 14.11.2022.

7. In response to the para 19 of the affidavit I submit that the action of University in charging penal fee is not contrary to the Judgment of Hon'ble Supreme Court, in fact the University is charging very low examination fee for Regular Examinations. However, for conducting the one-time chance examinations which required huge expenditure, the University is imposing penal fee as per the University Standing Committee of Academic Senate Vide Letter No.870/Acad.I/2022, dated 14.11.2022.

8. In response to the para 20 to 22 of the affidavit I submit that as per the existing rules of the University the Six-Semester three-year course should be completed by a student within 5 year (3+2) as per the guidelines of UGC approved by Osmania University Standing Committee of the Academic Senate on 28.1.2016."

DISCUSSION AND CONCLUSION.

DISCUSSION:

4. It is the specific case of the Petitioner that the Petitioner belongs to Schedule Caste community, and hails from a very poor financial background. The Petitioner had joined the 3rd Respondent College which is affiliated to Respondent No.2 from the academic year 2017-18 for pursuing B.Sc. (MBBTC) (Bachelor of Science – Micro Biology, Bio-Chemistry and Bio-

Technology). The said course is for a period of 3 academic years which runs into 6-semesters and out of 9 subjects in semester I the Petitioner could clear only 7 subjects and could not clear 2 subjects i.e., Chemistry-I and Bio-Technology-I. In semester-II Petitioner cleared all the subjects. In semester-III out of 9 subjects Petitioner could not clear 2 subjects i.e., Bio-Technology-III, Chemistry-III. Out of 9 subjects in semester-IV Petitioner could not clear 2 subjects i.e, Chemistry-IV, Micro Biology-IV. Out of 14 subjects in semester-V Petitioner could not clear 5 subjects i.e., Computer Science, Information Technology-I, Micro-Biology-V, Chemistry-VI, Micro-Biology-VI, Micro-Biology Practical's-VI. Out of 14 subjects in semester-VI Petitioner could not clear one subject i.e., Chemistry-VII. The Petitioner took backlog exams in the year 2021 (4th attempt) and could clear only 3 subjects and could not clear 9 subjects and as on today a total of 9 subjects i.e., Chemistry-I, Bio-Technology-I, Bio-Technology-III, Chemistry-III, Chemistry-IV, Micro-Biology-V, Micro-Biology-IV, Chemistry-VI, Chemistry-VII are to be cleared by the Petitioner.

It is further the case of the Petitioner that the Respondent No.2 issued the impugned notification No.956/UG/Sem/Exams/2022, dated 05.12.2022 wherein it is stated that the students of

UG (CBCS) B.A./B.Com./B.Sc./BBA/BSW Semester – I to VI who are admitted in the academic year 2016-17 and 2017-18 are permitted to clear their backlog papers after the stipulated period i.e., within 5 year (3 + 2) by appearing in the ensuring examination with a penal fee of Rs.10,000/- per paper in addition to normal exam fee as a one time chance. Challenging the said notification dated 05.12.2022 issued by the 2nd Respondent in so far as it imposes exorbitant penal fees of Rs.10,000/- per paper for students for the academic year 2017-18 for clearing backlog papers on the ground that the Respondent No.2 while conducting backlog exams in the year 2022 for students of academic year 2016-17, which was their 6th attempt in the year 2022 has imposed a penal fee of Rs.1,000/- only, whereas while conducting backlog exams in the year 2022 for students of academic year 2017-18 (which will be their 6th attempt this year) the 2nd respondent University is imposing an exorbitant penal fee of Rs.10,000/- per paper through the impugned notification. The Petitioner contends that the action of the 2nd Respondent is highly discriminatory and in violation of Article 14 of the Constitution of India and therefore the writ petition should be allowed as prayed for.

5. The learned Counsel appearing on behalf of the Respondent No.2 on the other hand placing reliance upon the averments made in the counter affidavit and in particular paras 6 to 8 (referred to and extracted above), takes a specific plea and contends that during Corona period taking a sympathetic view penal fee of Rs.1,000/- per paper was charged in the year 2022 by the University, but taking into consideration the fact that for conducting one time chance examinations huge expenditure is involved, the University imposed penal fee as per the University Standing Committee of Academic Senate vide Lr.No.870/Acad.I/2022, dated 14.11.2022, and further that as per the existing rules of the University the Six-Semester 3 year course should be completed by a student within 5 year (3 + 2) as per the guidelines of UGC approved by Osmania University Standing Committee of the Academic Senate on 28.01.2016, and therefore the Petitioner cannot find fault with the decision of the 2nd Respondent in imposing penal fees of Rs.10,000/- per paper for students of academic year 2017-18 for clearing backlog papers and therefore contends that the writ petition needs to be dismissed.

CONCLUSION :

6. The Apex Court in its recent judgment dated 07.11.2022 in Narayana Medical College Vs. State of Andhra Pradesh & Others reported in (2023) 2 SCC 636 dealing with G.O. issued by State Government enhancing tuition fee at an exorbitant rate of Rs.24 lakhs per annum i.e., almost 7 times tuition fee notified for previous block period for block years 2017-2020 and held that enhancement of fee unilaterally would be contrary to the objects and purpose of Education Act and further observed that education is not the business to earn profit and the tuition fee shall always be affordable. This Court opines that the same principle would apply in respect of the impugned notification dated 05.12.2022 issued by the 2nd Respondent insofar as it imposes penal fees of Rs.10,000/- per paper for students of academic year 2017-18 for clearing backlog papers which is not only arbitrary and unreasonable but also without any justification in violation of Articles 14 and 21 of the Constitution of India.

7. The Apex Court in the case of Bandhua Mukti Morcha vs. Union of India and Ors., (1984) 3 SCC 161 has held follows at para 10 of its judgment, observed as under :

"10. It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullin case [Francis Coralie Mullin v. Administrator, UT of Delhi, (1981) 1 SCC 608 : 1981 SCC (Cri) 212] to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State — neither the Central Government nor any State Government — has the right to take any action which will deprive a person of the enjoyment of these basic essentials."

8. The Apex Court in judgment reported in (2021) SCC Online SC 3433 in Farzana Batool Vs. Union of India, dated 09.04.2021 at para 9 observed as under :

“Given that the issue raised in this case concerns access to education, albeit at the professional level, we would like to take this opportunity to underscore the importance of creating an enabling environment to make it possible for students such as the petitioners to pursue professional education. While the right to pursue higher (professional) education has not been spelt out as a fundamental right in Part III of the Constitution, it bears emphasis that access to professional education is not a governmental largesse. Instead, the State has an affirmative obligation to facilitate access to education, at all levels”.

9. The Apex Court in the judgment reported in (2002) SCC Online SC 1036 in the case of T.M.A. Pai Foundation Vs. State of Karnataka very clearly observed that education has been held to be essentially a charitable object, a kind of service to the community and at para 20 of the said judgment it is observed as under :

“20. Article 19(1)(g) employs four expressions viz. profession, occupation, trade and business. Their fields may overlap, but each of them does have a

content of its own. Education is per se regarded as an activity that is charitable in nature (see State of Bombay v. R.M.D. Chamarbaugwala [AIR 1957 SC 699 : 1957 SCR 874]). Education has so far not been regarded as a trade or business where profit is the motive. Even if there is any doubt about whether education is a profession or not, it does appear that education will fall within the meaning of the expression "occupation". Article 19(1)(g) uses the four expressions so as to cover all activities of a citizen in respect of which income or profit is generated, and which can consequently be regulated under Article 19(6). In Webster's Third New International Dictionary, at p. 1650, "occupation" is, inter alia, defined as "an activity in which one engages" or "a craft, trade, profession or other means of earning a living".

10. This Court take's note of the fact of the specific averments made at para 8 of the counter affidavit that as per the existing Rules of the University the Six-Semester three-year course should be completed by a student within 5 year (3+2) as per the guidelines of the UGC approved by Osmania University Standing Committee of the Academic Senate on 28.01.2016 and further the fact that payment of examination fee at respective college with a late fee already expired on 17.01.2023 itself.

11. Taking into consideration the afore said facts and circumstances of the case and duly taking into consideration the observations of the Apex Court in the Judgments (referred to and extracted above) (i) Narayana Medical College Vs. State of Andhra Pradesh & Others reported in (2023) 2 SCC 636, (ii) Judgment reported in (2021) SCC Online SC 3433 in Farzana Batool Vs. Union of India, dated 09.04.2021, (iii) Judgment reported in (2002) SCC Online SC 1036 in the case of T.M.A. Pai Foundation Vs. State of Karnataka, the writ petition is disposed of directing the Respondent No.2 to consider the case of the Petitioner to pay the regular exam fee for each backlog subject without insisting for the penal fee of Rs.10,000/- (Rupees ten thousand only) without referring to the impugned notification No. 956/UG/Sem/Exams/2022, dated 05.12.2022, duly taking note of the fact that education is the foundation, which shapes the future of a student and which in turn shapes the future of the society in general, duly taking into consideration the observations made by the Apex Court in the three judgments (referred to and extracted above), within a period of one week from

the date of receipt of the copy of the order and duly communicate the decision to the petitioner. The 2nd respondent is further directed to re-consider its decision pertaining to imposing penal fees as per the University Standing Committee of Academic Senate vide letter No.870/Acad.I/2022, dated 14.11.2022 duly taking into consideration the observations of the Apex Court in the Judgments (referred to and extracted above) within a period of four (04) weeks from the date of receipt of a copy of this order and duly communicated the decision to the petitioner.

MRS. JUSTICE SUREPALLI NANDA

Date: 30.10.2023

Note : L.R. Copy to be marked.
(B/o) *Yvkr*