

**HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR**

WRIT PETITION NO.6278 OF 2014

**Pratush Kumar Sharma & ors
Vs.
State of Madhya Pradesh and ors**

Shri JP Mishra and Shri Gaurav Mishra, learned counsel for the petitioners.

Shri Praveen Newaskar, learned Government Advocate for respondents 1,2 and 6.

Shri Anil Sharma, learned counsel for respondent No.3.

Shri SS Bansal, learned counsel for respondents 4 and 5.

Present : **HON'BLE MR JUSTICE ALOK ARADHE
HON'BLE MR JUSTICE ANAND PATHAK**

**O r d e r
(01st July, 2016)**

Per Alok Aradhe, J.

In this petition under Article 226 of the Constitution of India, the petitioners *inter alia* seek a direction to the respondents 4 and 5 to accept admission of the petitioners in M.Tech (Civil- Structural Engineering) course. The petitioners have also *inter alia* prayed for a direction to respondents No.4 and 5 to pay a sum of Rs.five lakhs by way of compensation on account of loss sustained by the petitioners. The petitioners also seek a direction that respondent No.6 namely Superintendent of Police, Gwalior be directed to take action against respondents No.4 and 5. Background facts leading to filing this writ petition, briefly stated, are mentioned hereinafter :

2. An advertisement was issued by Rajeev Gandhi Prodyogik Vishwavidyalaya, Bhopal (hereinafter, referred to as the “University”) in which name of the respondent No. 4 namely Vikrant Institute of Technology and Management, Gwalior was mentioned as affiliated and approved college for the course of M.Tech (Civil-Structural Engineering). The petitioners after going through online prospectus of the Institute, contacted respondent No. 5 namely Vice President, Vikrant Group of Institute and were informed about the procedure for taking admission. The petitioners deposited the requisite fee required for course namely M.Tech (Civil- Structural Engineering) and also paid a sum of Rs.1560/- to MP Online Kiosk for conducting online counselling for the course of M.Tech (Civil - Structural Engineering). The counselling was conducted by the Director of Technical Education, namely respondent No. 2. The petitioners filled the application forms for admission in M.Tech (Civil-Structural Engineering) for the academic session 2014-15 and thereafter process of off-line campus counselling was initiated. The documents submitted by the petitioners were duly verified by the Director of Technical Education which is evident from Annexure P/5. The petitioners opted in the online counselling for admission in the Institute

namely respondent No.4. However, on 16/8/2014, petitioners were informed by respondent No.4 that their admissions have been cancelled as the Institute is not having affiliation with the University for conducting M.Tech (Civil-Structural Engineering) course. The petitioners thereupon submitted a representation to the Director, Technical Education, Bhopal on 3/9/2014 which failed to evoke any response. Petitioners also filed a complaint on 17/9/2014 to the Superintendent of Police, Gwalior and Incharge, Police Station, Gole Ka Mandir, Gwalior to take action against the Director of respondent No.4 as well as respondent No.5 for the offences u/ss 420, 467,468, 471 and 120 of IPC, failed to evoke any response. In the aforesaid factual background, the petitioners have approached this Court.

3 Learned Counsel for the petitioners while inviting attention of this Court to the prospectus issued by respondent No.4 Institute submitted that in the prospectus the course of M.Tech (Civil- Structural Engineering) was shown to be an approved course having intake capacity of 24 students. It is further submitted that process of counselling was conducted by the Director of Technical Education, Bhopal, and in the list of the Director of Technical Education, respondent No.4 Institute was shown

as an Institute for conducting the course of M.Tech (Civil-Structural Engineering) with intake capacity of 24 students. In this connection, attention of this Court has been invited to Annexure R/2 annexed with the return filed on behalf of the State Government. It is fairly stated by the learned counsel for the petitioner that so far as first relief, i.e. relief of admission to M.Tech course in Civil Structural Engineering is concerned, the same cannot be granted in to the petitioners at this point of time due to efflux of time. However, it was argued that the respondents 4 and 5 be directed to make payment of compensation to the tune of Rs.Five lakhs each to the petitioners and respondent No.6 be directed to take necessary action against respondents 4 and 5. It is urged that this Court has ample power under Article 226 of the Constitution of India to award compensation where the students suffer for no fault on their part. In support of aforesaid submissions, learned counsel for the petitioners has placed reliance on the decisions in ***Abhyudya Sanstha Vs. Union of India and ors, (2011) 6 SCC 145, Asha Vs. Pt.B.D.Sharma University of Health Sciences and ors, (2012) 7 SCC 389, Chandigarh Administration and anr. Vs. Jasmine Kaur and ors, (2014) 10 SCC 521 and S.Nihaal Ahamed Vs. The Dean, Velammal Medical College Hospital and Research Institute and ors, (2016) 1 SCC 662*** as well as Division

Bench decision of this Court in ***Chanchal Modi Vs.State of MP, 2014 (3) MPLJ 84***, Division Bench decision in ***Konsal Kishore Chaturvedi and ors Vs. State of MP (WP 946/2014 decided on 9/10/2014 at Gwalior)***. In the alternative, he placed reliance on a decision rendered by the Division Bench of this Court in ***Seema Yadav Vs. State of Mpand ors, (WP 6155/014, decided on 13/5/2014 at Jabalpur)***.

4. On the other hand, learned Government Advocate for respondents 1,2 and 6 submitted that no relief of compensation has been sought against respondents 1 and 2. However, it was fairly submitted by the Government Advocate that respondent No.6 shall take appropriate action against respondents 4 and 5 in accordance with the law laid down by the Constitution Bench of the Supreme Court in the case of ***Lalita Kumari Vs. State of MP and ors, (2014) 2 SCC 1***. Learned counsel for the respondents No.4 and 5 submitted that the Institute shall refund the amount deposited by the petitioners along with interest at the rate of 6 percent, if the amount has not been refunded to the petitioners.

5. We have considered the rival submissions made at Bar. Admittedly, from perusal of the record, we find that in the prospectus which was issued by respondents 4 and

5, the course of M.Tech (Civil- Structural Engineering) is shown to be an approved course with an intake capacity of 24 students for academic session 2014-15. From perusal of Annexure R/2 annexed with the return of the State Government, we find that respondent No.4 - Institute is shown to be an approved Institute for M.Tech (Civil- Structural Engineering) course with an intake capacity of 24 students. It is the case of the petitioners that they have participated in the counselling which is held by the Director of Technical Education. The aforesaid stand has been controverted by the State Government and it has been stated that the petitioners have directly approached respondent No.4 Institute and have deposited the fee in the Institute. However, aforesaid contention has been rebutted by the petitioners in their rejoinder in paragraphs 2 and 3.

6. Learned counsel for the petitioners has fairly stated that on account of efflux of time, the first relief claimed by the petitioners, i.e. relief of admission to the M.Tech (Civil- Structural Engineering) course cannot be granted to the petitioners at this point of time. In view of the statement made by the learned Government Advocate that respondent No.6 namely Superintendent of Police, Gwalior shall take appropriate action against respondents

4 and 5 in view of the complaint made by the petitioners by taking into account the decision of the Supreme Court in ***Lalita Kumari*** (*supra*), we deem it appropriate to direct respondent No.6 Superintendent of Police, Gwalior to take action against respondents 4 and 5 in the light of the law laid down by the Supreme Court in the case of ***Lalita Kumari*** (*supra*) in quite promptitude.

7. In view of the statement made by the learned counsel for respondents 4 and 5 that the amount deposited by the petitioners, if not already refunded to the petitioners, shall be refunded to them, we deem it appropriate to direct respondents 4 and 5 to refund the amount the amount of fee deposited by the petitioners, if not already refunded, along with interest @ 6 percent till the amount is refunded to the petitioners.

8. At this stage, only question which survives for adjudication in this writ petition is whether in a proceeding under Article 226 of the Constitution of India and in a case where the petitioners have been granted admission on mis-representation of facts in M.Tech (Civil-Structural Engineering) course in a private Institution, which admittedly does not receive any Grant-in-aid from the State Government, this Court can award compensation to the petitioners.

9. Three-Judge Bench of the Supreme Court in the case of ***Hindustan Paper Corpn. Ltd Vs. Ananta Bhattacharjee and ors, (2004) 6 SCC 213*** has held that public law remedy for the purpose of grant of compensation can be resorted to only when fundamental rights of a citizen under Article 21 of the Constitution of India is violated and not otherwise. It has further been held that it is not every violation of the provisions of the Constitution or a statute which would enable the Court to direct grant of compensation. It has also been held that power of the Court of judicial review to grant compensation in public law remedy is limited. In other words, power to grant compensation is confined to cases of violation of fundamental rights.

10. In the case of Municipal Corporation of ***Delhi Vs. Uphaar Tragedy Victims Association and ors, (2011) 14 SCC 481***, the Supreme Court has held that public law causes of action to claim compensation for breach of fundamental rights is described as “constitutional torts” and in such cases, the Constitutional Courts are expected to vindicate the parties constitutionally, compensate them for resulting harm and also to deter future misconduct. However, this public law power / constitutional power to grant compensation is seldom exercised merely due to

violation of some statutory provisions resulting in monetary loss to the claimants. In most of the cases, such power is exercised where there is intense serious violation of personal liberty, right to life or violation of human rights.

11. In the case of ***Rajendra Singh Pathania and ors Vs. State (NCT of Delhi) and ors, (2011) 13 SCC 329***, the Supreme Court has held that the Court can award compensation for violation of fundamental rights against the State Government or its servants only after making proper enquiry. From the aforesaid enunciation of law, it is evident that in a proceeding under Article 226 of the Constitution of India public law remedy for the purpose of grant of compensation can be resorted to only in a case of violation of fundamental rights of citizen under Article 21 of the Constitution of India.

12. Now we may deal with the decisions referred by the learned counsel for the petitioner. In the case of ***Asha (supra)***, the Supreme Court was dealing with the case of admission of MBBS/BDS/BHMS course to the University in which the candidate was not admitted to the course. In that context, following observations were made in para 38.3 of the judgment which reads as under :

“Wherever the court finds that action of the authorities has been arbitrary, contrary

to the judgments of this Court and violative of the rules, regulations, and conditions of the prospectus, causing prejudice to the rights of the students, the court shall award compensation to such students as well as direct initiation of disciplinary action against the erring officers/officials.....”

Aforesaid decision, in our considered view, is not applicable to the obtaining factual matrix of the case for the simple reason that in the instant case, respondent No.4 Institution is a private Institution which does not receive any Grant-in-aid. Similarly, in the case of **Chandigarh Administration** (*supra*) the Supreme Court was dealing with the case of a candidate who ought to have been granted admission in MBBS course, but could not be granted admission as the time limit for admission to the MBBS course had expired. In the aforesaid context, following observations were made by the Supreme Court in para 33.2 of its judgment :

“Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate, i.e. the candidate has pursued his or her legal right expeditiously without any delay and that there is fault only on the part of the authorities or there is an apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right to equality and equal treatment to the competing candidates and the relief of admission can be directed within the time schedule prescribed, it would be completely just and fair to provide exceptional reliefs to the candidates under such circumstance

alone.”

The aforesaid decision is also not applicable to the obtaining factual matrix of the case, as in the present case, it is not the case of the petitioners that they have not been admitted to the course despite the fact that they were eligible. On the same analogy case of **S.Nihaal Ahamed** (*supra*) is of no assistance to the petitioners as decision in the aforesaid case has been rendered by placing reliance on the case of **Chandigarh Administration** (*supra*).

13. Now we may deal with the decision of the Supreme Court in the case of **Abhyudya Sanstha** (*supra*) where the Supreme Court has awarded compensation to the tune of Rs.one Lakh to each of the students. Relevant extraction of the judgment i.e. para 25 is reproduced below for ready reference :

“The appellants are directed to pay Rs.1 lakh to each of the students by way of compensation in lieu of the injury inflicted upon them by way of misrepresentation about their entitlement to admit the students to DEd course.”

From perusal of para 25 of the judgment, it is evident that compensation has been awarded by the Supreme Court in exercise of powers under Article 142 of the Constitution of India. This Court does not have any

power akin to the powers under Article 142 of the Constitution of India, therefore, aforesaid decision is also of no assistance to the petitioners.

14. The Supreme Court in the case of ***Buddhist Mission Dental College and Hospital Vs. Bhupesh Khurana and ors, (2009) 4 SCC 473*** has held that misrepresentation on behalf of the Institution tantamounts to an unfair trade practice and such action clearly falls within the purview of deficiency as defined in Consumer Protection Act, therefore, action of the Commission in holding the same to be deficiency in service and awarding compensation was upheld.

15. We are afraid that the decision rendered by the Division Bench of this Court in the case of ***Konsal Kishore Chaturvedi (supra)*** is *per incuriam*. The aforesaid decision does not take note of any decisions of the Supreme Court referred to above and does not deal with the issue of competency of this Court to award compensation where a candidate is granted admission by misrepresentation of facts in M.Tech (Civil- Structural Engineering) course and, therefore, aforesaid Division Bench decision is of no assistance to the petitioners in the facts of the case.

16 In view of the preceding analysis, it is evident that public law remedy seeking compensation can be

resorted to in proceeding under Article 226 of the Constitution of India. However, in our considered opinion, in the facts of the case in hand, we cannot award any compensation to the petitioners in a proceeding under Article 226 of the Constitution of India, as the petitioners have sought the relief of compensation against the private educational institution which does not receive any Grant-in-aid from the State Government, and the remedy resorted to by the petitioners cannot be treated as public law remedy. However, needless to state that the petitioners shall be at liberty to approach respondent No.4 Institution to claim compensation and in case petitioners approach respondent No.4 Institution seeking compensation, same shall be dealt with in accordance with law by a speaking order by respondent No.4 within a period of one month from the date of receipt of such representation. Thereafter, the petitioners would be at liberty to take recourse to such remedy as may be available to them under the law for claiming compensation against respondents 4 and 5.

17. At the cost of repetition, we may reiterate that respondent No.6 Superintendent of Police, Gwalior shall take action against respondents 4 and 5 in quite promptitude in view of the law laid down by the Supreme

Court in *Lalita Kumari's* case (*supra*). The respondent No.4 shall refund the amount deposited by the petitioners along with interest at the rate of 6% from the date of deposit till the date of its actual payment, if not already paid, within one month from today. It is made clear that this Court has not expressed any opinion on the merits of the case. The Costs of the petition is quantified at Rs.5,000/- (Rs.Five thousand) which shall be payable by respondents 4 and 5 and shall be deposited by respondent No.5 within one month from today.

18. With the aforesaid directions, the petition stands disposed of.

(Alok Aradhe)
Judge

(Anand Pathak)
Judge

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