

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No. D- 2550 of 2019

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Petitioners : Mohsin Ali and others through M/s. Imdad Ali Unar & Faizan Ahmed Memon, advocate

Respondent No.1 : Province of Sindh through Mr. Allah Bachayo Soomro, Addl.A.G.

Respondents 2 & 3 : through Mr. Jhamat Jethanand, advocate along with Ghulam Murtaza Siyal, Controller of Examination, University of Sindh Jamshoro

Respondent No.4 : Sindh Law College, Hyderabad, through its Principal Mr.Nisar Ahmed Durrani, advocate.

Respondent No.5 : Jinnah Law College, Hyderabad, through its Principal Syed Nasir Ali Shah.

Respondent No.6 : Everest Law College through its Principal Mr. Ayaz Latif Palejo, advocate

Dates of hearing : 15.11.2019 and 12.12.2019.

Date of Decision : 24.12.2019

ORDER

ADNAN-UL-KARIM MEMON, J : This writ petition has been filed by the students of various law colleges of Hyderabad Division complaining that University of Sindh Hyderabad shifted and fixed the examination center in the University premises for conducting LLB Part I, II and III examinations, which is situated at considerable distance from the vicinity of Hyderabad City. They have urged that location of examination center at a distance is contrary to the guidelines laid down in the Code of Sindh University. It is contended that the said examination center has been changed on the basis of apprehension of mass-copying on the report submitted by Dean, Faculty of Law who is also a Senior Advocate of this Court. According to the petitioners such apprehension / opinion is erroneous and cannot be a basis for changing / shifting of the examination center. They further submitted that there are other examination centers in Province of Sindh, where mass-copying has been reported by the Flying

Squad of the University; but no action was considered and taken, except that examination Center for law colleges situated in Hyderabad were changed and shifted to the University Campus at nick of time causing great inconvenience to the students, who come from far-flung areas of Sindh; therefore, the decision of Controller of Examinations of the Respondent-University, without seeking approval of the competent authority, is arbitrary and discriminatory in nature. The prayer made in the writ petition is for direction to the respondents to allocate / fix examination center in close vicinity of the University as per provisions of its code. The University of Sindh has issued a schedule laying down the norms for designating institutions as examination centers for conducting the examinations. Much emphasis has been laid on allotting an examination center in close vicinity of the institution at a possible short distance and in case of non-availability of an institution in the vicinity, does not make it feasible to allocate an examination center within the University premises. They referred to the examinations conducted by the University during previous years. They lastly contended that there are other premises available within the vicinity of Hyderabad city, where the examinations under reference can be conducted. Therefore, they prayed that the examination center be shifted to some other suitable place instead of University premises.

2. We have heard learned Counsel for the parties and perused the material available on record.

3. From the record it is clear that the petitioners, being students should have no grievance on shifting of their examination center. It is well considered opinion of this Court that the petitioners' contention that they being students of Law Colleges of Hyderabad City, have a right to approach this Court by means of present writ petition against shifting of their examination center, is misconceived and they have no locus standi to question the authority of University to change / shift the examination center of students of a particular college and the petition is not maintainable. Even otherwise, it is apparently clear from the decision taken by the Controller of Examination of the Respondent-University dated 7th November, 2019, that for conducting free and fair examination, the University changed / shifted the examination center of the students of law colleges situated in Hyderabad to its premises and this Court agrees with contention of the University, and the grounds for filing of the petition under Article 199 of the Constitution are not sustainable.

4. The University, which conducts the examination, has to ensure that the examinations are held in a free and fair manner without any malpractice creeping in and at the same time, to also make necessary arrangement for pick and drop facility of the students as already directed by this Court vide consent order dated 15.11.2019 in the instant petition. An excerpt of the same is reproduced as under :

“Learned counsel for respondents 2 and 3 files reply to the main petition and counter affidavit to the listed application, which are taken on record, copies whereof have been received by learned counsel for the petitioners.

Learned counsel for the parties have been heard at considerable length. Without prejudice to the merits of their respective cases, they have agreed that as a interim measure eight (08) buses shall be provided by the University of Sindh for the students to appear in the subject annual examinations commencing from today ; and, the buses shall be provided at Thandi Sarak in front of Hyderabad Gymkhana at 12:00 noon and the students will be dropped back at the same place on the same day immediately after completion of examinations.”

5. Record does not reflect that after the aforesaid interim arrangement any major objection / complaint was reported except that very few female invigilators were present in the female section and some male invigilators were seen inside the female section. In response to this complaint, it was stated by the Controller of Examination that sufficient number of female invigilators were deputed during the examinations.

6. As regards the contention of learned counsel representing the respondent-university that the Courts may not interfere with the policy matters of University, we completely agree with the said contention of learned counsel. This proposition of law is enunciated by the Hon’ble Supreme Court in the case of Government College University, Lahore through Vice Chancellor and others Vs. Syeda Fiza Abbas and others.(2015 SCMR 445).

7. We have noted that the colleges who have been cited as respondents 4, 5 and 6 in this petition, have not criticized or objected to the shifting of examination centers.

8. In the light of forgoing clear provisions of the policy of the respondent-university contained in the university code, letter dated 6.11.2019 and dictum laid down by the Hon’ble Supreme Court of Pakistan in the case of Ghulam Rasool Vs. Government of Pakistan and others (PLD 2015 SC 6) that ordinarily the Courts should refrain from

interfering in the policy making domain of the executive, we are not inclined to interfere in the impugned policy decision / matter of the respondent-university.

9. There is no material placed before us, by which, we can conclude that discretion has been wrongly exercised by the respondent-university by shifting the examination center in the University premises for conducting LLB Part I, II and III examinations-2018 or such decision is based on discrimination, or the same has infringed any fundamental right of the students.

10. It is a settled principle of law that for the purpose of maintaining a Constitution Petition it is the duty and obligation of the petitioner to point out that the impugned action is in violation of his fundamental rights. In the present case, the petitioners have failed to point out any such violation and as such have failed to make out their case for discrimination as well.

11. We do not find any substance in the contention of the learned counsel for the petitioners for interference in policy making domain of the respondent-university unless the policy ipso facto seems to be violative of mandate given to the Courts by the Constitution of the Islamic Republic of Pakistan, 1973, which aspect in our view in the present petition is totally lacking and has not been demonstrated that the policy in any manner is mala fide or arbitrary which is across the board for all students of law colleges situated in Hyderabad City.

12. It is well settled that the persons in charge of educational institutions must be given the fullest authority viz-a-viz their students in the same manner as a parent or guardian as the educational institutions are the best judges of their Rules and Regulations. This Court in the exercise of its constitutional jurisdiction normally does not interfere in such like matters as its jurisdiction cannot be invoked for obtaining decisions on merits which the functionaries alone are entitled to take under the law. The jurisdiction of this Court under Article 199 of the Constitution is principally meant for correcting jurisdictional errors in the orders and proceedings of tribunals, subordinate courts and executive authorities.

13. Before parting with this order, it may be observed that respondent-university is required to safeguard the interest of students by making necessary arrangement for pick and drop facility of the students as per the above-quoted interim arrangement agreed by the parties and shall take all necessary arrangements for deputing sufficient number of female

invigilators to cater the needs of all female students. Controller of Examination, University of Sindh, Jamshoro, who is present in Court, undertakes to ensure that the strength of female invigilators shall be increased in future to cater the needs of all female students for conducting examinations in a free and fair manner in order to achieve better results.

14. The subject examination has already been conducted vide consent order dated 15.11.2019 in the instant petition and purpose of filling of the present lis is over. However, it is expected from the respondent-university that the examinations are held in future in such manner that the concerns and apprehensions of the students, if any, are addressed and resolved without any bad taste and / or recourse to any legal proceedings.

15. In result of foregoing discussion, the instant Petition stands disposed of in the above terms along with pending application(s).

Judge

Judge

Karar_hussain/PS*