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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.1151 OF 2015

1. Ms.Shruti Ranjan Chike,
Age 22 years, Sharda Apt.,
A/C-16, Opp. Ramkali School,
Ashok Kedare Chowk, Gadhav
Naka, Bhandup (W),
Mumbai - 400 078APPELLATE JURISDICTION
2. .
2. Hiteshri Shrikant Gawade,
Age 22 years, 235/9201,
Kannamwar Nagar-2,
Vikhroli (E), Mumbai-400 083.
3. Gaurav Subhash Sawant,
Age 22 years,
2, Sawji Bhoir Sadan,
Pratap Nagar, Bhandup (W),
Mumbai-400 078. ..Petitioners.

V/s.

1. MGM College of Engineering &
Technology, through its Principal,
Kamothe, Navi Mumbai-410 209.
2. Mahatma Gandhi Mission Trust
through its Chairman, Plot Nos.1, 2,
Sion-Panvel Expressway, Sector No.18,
Kamothe, Navi Mumbai-410 209.
3. University of Mumbai,
through its Registrar, Kalina,
Kamothe, Mumbai. ..Respondents.

Mr. Mihir Desai, Senior Advocate with Mr.Chetan Mali for the petitioners.

Mr.A.Y.Sakhare, Senior Advocate with Ms.Smita Gaidhani for respondent Nos.1 and 2.

Mr.Rui Rodriques for respondent No.3.

CORAM : ANOOP V. MOHTA AND V.L.ACHLIYA, JJ.

RESERVED ON : 23RD JULY, 2015

PRONOUNCED ON : 7TH SEPTEMBER, 2015

JUDGMENT (PER V.L.ACHLIYA, J.)

1. Rule. Rule, returnable forthwith. By consent of the parties, the petition is heard finally.

2. By this petition, the petitioners have approached this Court against the refusal of the respondents to declare their result of third year and to admit them to the fourth year B.E. course (Bio-Techonology).

3. The petitioners have filed this petition raising various grounds as set out in detail in the petition. They have challenged the impugned action of the respondents mainly on the ground that the respondents have allowed them to appear

for the Vth and VIth semesters of third year B.E. course, in spite no change was recorded in the results of their revaluation. The respondents ought to have cancelled their provisional admission after declaration of result of revaluation. But no such action was taken on their part and they were allowed to appear for the Vth and VIth semesters of third year B.E. course. However, while declaration of result they showed them as candidates whose admissions are cancelled. Petitioners have claimed the following reliefs :-

- “(a) that this Hon'ble Court be pleased to issue a writ of Mandamus or a writ, order or direction in the nature of mandamus or any other appropriate Writ, order or direction thereby directing the Respondents to declare the results of the Petitioners for V and VI semesters of 3rd year of B.E. course and permit them to pursue their studies for the 4th year of B.E. course in academic year 2015-16 in old syllabus with all consequential requirements;
- (b) that pending the hearing and final disposal of the petition this Hon'ble Court be pleased to direct the Respondents to declare the results of the petitioners for V and VI semesters of 3rd year B.E. course and permit them to pursue their studies for the 4th year of B.E. course in

academic year 2015-16 in old syllabus with all consequential requirements. ”

4. The petitioners have approached with a case that in the academic year 2010-11 they were admitted in the first year of four year B.E. (Bio-Technology) course in respondent No.1 college. In the year 2010-2011, petitioner No.1 could not clear 6 subjects, petitioner No.2 could not clear 9 subjects and petitioner No.3 could not clear 7 subjects of the two semesters (i.e. I and II) of the first year B.E. course. They were not entitled to take admission in second year B.E. course as they failed in more than six subjects in the first year as per rules of ATKT framed by respondent No.3 University. Therefore, they were required to take a drop in the academic year 2011-12. In the academic year 2011-12, petitioner No.1 cleared 4 subjects, petitioner No.2 cleared 5 subjects and petitioner No.3 cleared 3 subjects of the first year. Thus, during the academic year 2011-12, petitioner No.1 has still not cleared 2 subjects, petitioner No.2 has not cleared 4 subjects and petitioner No.3 has not cleared 4 subjects of the first year B.E. course. In accordance with the rules of ATKT framed by respondent No.3 University, the petitioners had to clear minimum 5 subjects of the first year so as to take admission

and appear for examination of second year of B.E. course for the academic year 2012-13 and to simultaneously appear for the subjects of the first year in which they were failed, as per the rules of ATKT framed by the University. In the academic year 2012-13, the petitioners appeared for the second year B.E. course and in said examination, petitioner Nos.2 and 3 cleared all the subjects of the second year and petitioner No.1 failed in two subjects. By the end of the academic year 2012-13, petitioner Nos.1 and 2 had to clear one subject of first year B.E. course and petitioner No.3 had to clear 3 subjects of first year B.E. course. The petitioners filed applications for revaluation of some subjects in which they were declared as failed. Pending revaluation of the results, the petitioners applied for grant of provisional admission to third year of B.E. course for the academic year 2013-14, on the pretext that their applications for revaluations are pending and results are awaited. Accordingly, the petitioners were provisionally permitted by respondent No.1 to attend the classes and appear for examination for the third year B.E. course (Vth and VIth semesters). On the strength of provisional admission, the petitioners appeared for the third year B.E. course. Subsequently, in the result of revaluation declared in the

month of December, 2013, no change was recorded as to their earlier results of examinations and the petitioners continued to be shown as failed in the subjects for which they applied for revaluation. However, on the basis of the provisional admission secured, the petitioners appeared for Vth and VIth semester of third year B.E. course. But the result of both the examinations i.e. Vth and VI semesters were not declared and on the display board of the college against the names of the petitioners it was shown as "ADC" i.e. admission cancelled. In the year 2013-14 petitioner Nos.1 and 2 cleared all the subjects of first year B.E. course. Petitioner No.3 cleared 2 subjects of first year B.E. course. Petitioner No.1 still not cleared 1 subject of second year of B.E. course.

5. In the background of the facts narrated in foregoing paras, the petitioners have approached with a case that as they have already appeared in examination of third year of B.E. course the result of which was not declared by respondents and petitioner Nos.2 and 3 have cleared all subjects of first year, they are eligible to take admission for the fourth year of B.E. course. It is further case of petitioner No.1 that as she has cleared all subjects except one subject

from second year, she is entitle to take admission in the fourth year B.E. course as per rules of ATKT. According to petitioners, they have already suffered great hardship as they lost two academic years. According to the petitioners, if it is found they had cleared more than six subjects of third year, they are entitle to take admission to fourth year of B.E. course.

6. The petition was circulated during the vacation. On 13th May, 2015, the Vacation Court (Coram S.C.Gupte and A.K.Menon, JJ) passed the following order:-

“ S.O. to 15 May 2015. The first Respondent college is directed to submit the result of the Petitioner for third year examination for the academic year 2013-14 in a sealed envelope before the Court on the next date.”

7. On the next date of hearing i.e. on 15th May, 2015 the Vacation Court (Coram S.C.Gupte and A.K.Menon, JJ) passed the following order: -

“In the peculiar facts and circumstances of the case, the Petitioners shall be permitted to appear for the AT-KT Examination to be conducted by the Respondent University for the 3rd Year students of

Biotechnology on and from 18 May 2015, as indicated below :

(I) Petitioner No.1 shall be permitted to appear for the Theory Paper of Enzymes Engineering Semester VI Biotechnology Examination.

(ii) Petitioner No.2 shall be permitted to appear for the Theory paper of Fermentation Technology Bioconversion for Semester V Biotechnology Examination.

(iii) Petitioner No.3 shall be permitted to appear for the Theory Papers of Bioinformatics-I and Fermentation Technology Bioconversion of Semester V Biotechnology Examination and the Theory Papers of Bioinformatics-II and Genetic Engineering and Technology of Semester VI Biotechnology Examination.

2. The Petitioners shall pay the fees for the 3rd year of Biotechnology Engineering within a period of one week from today.

3. The appearance of the students at the examination and payment of fees shall be subject to further orders that may be passed in the petition. Neither of the students shall claim any equity on the basis of this order.

4. It is made clear that this order is passed

in the peculiar facts and circumstances of the case and shall not be treated as a precedent for any future case.

5. *The result sheets of the Petitioners for the examinations of Semester V and Semester VI of Biotechnology submitted by the Respondents for the perusal of this Court, are being returned to the Respondents.*

6. *The result of the AT-KT Examination, which the Petitioners are permitted to appear at by virtue of this order shall not be declared without further orders of this Court.*

7. *Stand over to 16 June 2015.*

8. *Parties to act on the copy of this order duly authenticated by Private Secretary of this Court."*

8. Respondent No.1 has contested the petition by filing affidavit-in-reply. In nutshell, it is the say of respondent No.1 that the petitioners have approached this Court in gross suppression of material facts. In view of the applications for revaluation made by the petitioners, respondent No.1 admitted them provisionally for third year B.E. course in the academic year 2013-14. It was done in accordance with the

circular issued by respondent No.3 bearing No.Exam./Photo & Rev./Univ./VCD/4637 of 2010. The petitioners were allowed to appear for the Vth semester of third year as the result of applications made for revaluation of examination conducted in the month of May, 2013, was declared on 9th December, 2013 which was much after the commencement of Vth semester which started on 21st November, 2013. In the result of revaluation for first year May, 2013 exams, the University has declared the petitioners as failed. Accordingly, respondent No.1 has not declared the result of petitioners of semester Vth & they were shown as "ADC" (Admission cancelled). Then, petitioners informed respondent No.1 that they have submitted application to Revaluation Grievance Committee of respondent No.3 against result of revaluation. On the request of the petitioners, respondent No.1 allowed the petitioners to continue with the VIth semester course on provisional basis. Subsequently, it was revealed that the revaluation grievance result of petitioner No.1 was informed to her by respondent No.3 but she has deliberately not informed the same to respondent No.1 as she was fully aware of the consequences that it would automatically result in cancellation of her provisional admission. It was also transpired that though

petitioner Nos.2 & 3 have not filed any application for grievance with respondent No.3 still wrongly misrepresented respondent No.1 that they had also applied before grievance committee against the result of revaluation. The petitioners have suppressed this material fact and misled respondent No.1 by pretending that their revaluation grievance was pending with the University. On inquiry made by respondent No.1 with respondent No.3, they received a communication dated 11th June, 2015 whereby respondent No.3 has informed respondent No.1 that only petitioner No.1 had made revaluation grievance and her grievance result has been sent to her address on 11th December, 2013 with remarks "no change". It was further informed that the grievance application of petitioner No.1 and 2 was not found in their office record. Thus, in nutshell, it is the say of respondent No.1 that the petitioners have filed the present petition in gross suppression of true and correct facts. So also, they appeared for Vth and VIth semesters on the basis of false representation made to respondent No.1 that their requests for revaluation grievance is pending. In this factual background, respondent No.1 has prayed for dismissal of the writ petition.

9. Petitioner Nos.1, to 3 have filed affidavits-in-rejoinder in reply to affidavit filed by respondent No.1. Admittedly, petitioner No.1 has not disputed the fact that in third week of December, 2013 revaluation result was displayed on the notice board of the college in which she was shown failed in "Engineering Mechanics". She has further stated that she has communicated to respondent No.1 college that she had applied for verification of answer book of the said subject with the Grievance Committee of respondent-University and the Grievance Committee replied to her application by communication dated 11th December, 2013 received on 26th December, 2013 informing her that no fault was found in assessment and verification of answer book on the said subject. She has denied that she was allowed to attend the V semester lectures as well as examination on the basis of false representation.

10. Similarly, petitioner Nos. 2 & 3 have filed affidavit-in-rejoinders and denied that they were allowed to attend VIth semester lectures as well as exams on the basis of false representations made to respondent No.1 college that their applications are pending before the Grievance Committee of

Mumbai University.

11. Mr.Desai, learned senior counsel appearing for the petitioners vehemently argued that the petitioners were allowed to attend the lectures and also allowed to appear for examination of the Vth and VIth semester by respondent No.1 college. Respondent No.3 University has also accepted the examination forms of the petitioners for the Vth and VIth semesters and also allowed to appear for the Vth and VIth semester exams although fully aware that no change is found in their result on consideration of their application for revaluation. Their provisional admission was also not cancelled. In this backdrop, it is contended that for no fault on the part of the petitioners and mistakes committed by the respondents, the petitioners cannot be made to suffer by treating their admission as cancelled and withholding for their result for Vth and VIth semesters after they attended and appeared for examination of Vth and VIth semesters of third year B.E. course. It is further contended that now petitioner Nos.2 and 3 have cleared all the subjects of first year and second year B.E. course and petitioner No.1 has to clear only one subject. In this background, it is submitted that the

petitioners be permitted to take admission and appear for the fourth year of B.E. course by directing respondents to declare their results for Vth and VIth semesters. Mr.Desai further submitted that the respondents have not communicated to petitioners that their admission has been cancelled in view of 'no change' recorded in the result of revaluation and, therefore, the petitioners cannot be made to suffer for lapses on the part of the respondents. In support of contention that for the fault on the part of the College / University, the students cannot be made to suffer and their admission cannot be cancelled, the learned counsel has relied upon following rulings :-

1. Ashok Chand Singhvi V/s. University of Jodhpur and Ors. [(1989) 1 Supreme Court Cases 399];
2. Swanand Jayant Agharkar V/s. The University of Mumbai and Anr. [Writ Petition No.9008 of 2010 of Bombay High Court dated 6th December, 2010];
3. Swanand Jayant Agharkar V/s. The University of Mumbai and Anr. [Writ Petition No.9008 of 2010 of Bombay High Court dated 21st December, 2010];
4. Nitasha Paul V/s. Maharishi Dayanand University,

Rohtak and Ors. [(1996) 2 Supreme Court Cases 103];

5. Aniket Madhukar Kamble V/s. The University of Mumbai and Ors. [Writ Petition No.807 of 2011 of Bombay High Court dated 4th March, 2011];
6. Rajendra Prasad Mathur V/s. Karanataka University and Anr. [A.I.R. 1986 Supreme Court 1448];
7. K.Sujatha V/s. Marthawada University [1995 (Suppl.1) SCC 155];
8. Ruark Gordan Denoronha V/s. University of Mumbai and Anr. [Writ Petition (L) No.462 of 2011 of Bombay High Court dated 20th April, 2011];
9. Ganesh R. Bahati V/s. University of Pune and Anr. [2003 (4) Mh. L.J. 140];
10. Sunil s/o. Gopalkrishna Tuvlare and Anr. V/s. Principal, Sou. Vasudhatai Deshmukh Krishi Vidyalaya, Akola and Ors. [2004 (2) Mh. L.J. 99];
12. On the other hand, Mr.A.Y.Sakhare, learned senior counsel appearing for respondent Nos.1 & 2 countered the submission advanced by the learned counsel for petitioners by referring to circular dated 5th April, 2011 issued by the University bearing No.Exam./Photo & Rev./UNIV./VCD/ 4637 of

2010, the University Ordinance No.0.3706 and 0.3709 and communication dated 11th June, 2015 received from the University in respect of the petitioners. It is contended that pursuant to the said circular dated 15th April, 2014, the petitioners were provisionally admitted and allowed to appear for the Vth semester and subsequently permitted to appear for the VIth semester on the representation made by the petitioners that they have applied for revaluation and the result of the same is awaited and thereafter made grievance against revaluation. Pursuant to said representation, the petitioners were allowed to attend the lectures and also permitted to appear for the examination. The petitioners have not communicated the result of their revaluation which they were communicated by respondent No.3 in the month of December, 2013. In view of the fact that 'no change' was recorded in the result after revaluation, they were not entitled to appear for the Vth and VIth semesters of third year B.E. course. In accordance rule 45, the provisional admission of petitioners automatically stands cancelled on their result of revaluation as no change was recorded after revaluation. It is submitted that in this background, the petitioners were put in the category of 'admission cancelled'. It is submitted that in

view of the fact that the petitioners have not approached this Court with clean hands and they appeared for the Vth and VIth semesters by deliberately suppressing the true facts of their result of revaluation, the petitioners are not entitled for any reliefs. In support of the contention that in the facts and circumstances, the petitioners are not entitled to claim any reliefs in exercise of writ jurisdiction under Article 226 of the Constitution of India so also by virtue of rule 47, the results of their appearance in examinations of Vth and VIth semesters becomes null and void on their failure to clear the subjects in revaluation. Learned Senior Counsel has placed reliance on the decision of the Division Bench of this Court in the case of *Amit Sanjay Gaurollu V/s. University of Mumbai and Ors.* [Writ Petition (L) No.2119 of 2011 with Notice of Motion No.134 of 2012 decided 25th July, 2012 (Coram: Dr.D.Y. Chandrachud and R.D. Dhanuka, JJ.).

13. Mr.Rodriques, learned counsel appearing for respondent No.3 University invited our attention to the rules and procedure provided for revaluation of answer-books to the examinees framed by respondent No.3 University duly circulated to all concerned on 5th April, 2010. The learned

counsel has pointed out as per rule 45, pending revaluation and subject to the availability of the seats in the college, a student can be provisionally allowed to be admitted in next higher class otherwise to which he / she could have been admitted if he / she had passed in the said examination or had been granted ATKT and admitted to the next class in the original examination subject to outcome of result of revaluation. It is pointed out that clause (iii) of rule 45 specifically provides that admission of such student to a higher class shall be provisional and shall automatically stand cancelled on receipt of result of revaluation process if the student is not declared pass in the requisite number of the subjects on revaluation which would entitled him / her to take admission in the next higher class. It is further pointed out that as per rule 47, pending the declaration of the result of revaluation, the students who have taken admission to next higher class, can be allowed to appear at the examination of the next class and their results of the next examination shall be declared only on their passing in the requisite number of subjects on revaluation and in case the students do not succeed in passing in such requisite number of subjects, their admission to the examination of the next class, their

performance and results of the same shall be treated as null and void. It is, therefore, contended that in the background of the facts of the present case, the provisional admission obtained by the petitioners was automatically cancelled on declaration of the result of revaluation as “no change” and also their appearance for examination of Vth and VIth semesters on the basis of provisional admissions also becomes void. results of examination cannot be declared.

14. We have thoroughly considered the submissions advanced by learned counsel representing the parties in the light of the rival pleadings, documents referred and relied in support of their respective contentions as well as the rules of procedures for revaluation and ordinance as referred and relied upon by the learned counsel representing both the sides.

15. We are of the considered opinion that the petitioners are not entitled to any reliefs as claimed in the petition. It is an admitted fact that as the petitioners could not cleared the minimum number of subjects of first and second semesters of the first year B.E. course, they could not

secure admission to second year of B.E. course in the academic year 2011-12. They were required to take a drop during that year to appear for the subjects of first year in which they were declared as failed. Only after they passed the requisite number of subjects as per rules of ATKT, the petitioners got admission in the second year of B.E. course in the academic year 2013-14. It is also not in dispute that though the petitioners got admission in the second years as per the rules of ATKT, they had not cleared the subjects in which they were declared as failed in the first year of the four year degree course when they appeared for examination held in the year 2012-13. In accordance with the Ordinance No.0.3709, the petitioners were not entitled to take admission for third year degree course as they have not cleared all the subjects of first year degree course. It is also an admitted fact that the petitioners secured provisional admission for the third year degree course by taking recourse to the circular Exam/Photo & Rev/UNIV/VCD/4637 of 2010 on the ground that their applications for revaluation were pending with the University and the results were awaited. Thus, the admission of the petitioners in Vth and VIth semesters of the third year degree course was provisional and subject to outcome of

result of the revaluation of the subjects of the first year of B.E. course as applied by the petitioners. So also it is an admitted fact that in the revaluation, the University has communicated to the petitioners that on revaluation of their answer books “no change” has been recorded and they continued to be shown as failed in those subjects of first year B.E. course.

16. In the context of contentions raised by learned counsel appearing for both the sides and controversy involved in the matter, it is necessary to refer Rules 45 to 47 of the said of Circular No.Exam./Photo & Rev./Univ./VCD/4637 of 2010 dated 5th April, 2010. The relevant rules read as under :-

“ 45. Pending the process of revaluation, and subject to the availability of the seats in the college, the student may be admitted to the next higher class to which he could have been admitted if he/she had passed in the said examination or had been granted A.T.K.T. for admission to the next class in the original examination as per the rules applicable for the stream and faculty of his education, as per the following norms:-

(i) The student may be admitted to the next higher class to which he could have been admitted if he/she had passed in the said

examination or had been granted A.T.K.T. for admission to the next class in the original examination as per the rules applicable for the stream and faculty his/her education, if he/she had originally obtained required passing marks in the papers in which he/she had applied for revaluation,

(ii) The college shall be entitled to charge fees of Rs.500/- at the time of granting admission to such students to the next class before declaration of the result of the revaluation,

(iii) Such admission shall be provisional; and automatically stands cancelled on receipt of the result of revaluation process, if the student is not declared passed in the requisite number of the subjects on revaluation which would entitle him/ her to take admission in the next higher class, and in such case the fees originally collected by the college or any part of the same shall not be refunded.

46. In case if the student is declared pass in the requisite number of the subjects on revaluation which would entitle him/her to take admission in the next class as per the Ordinances / regulations,

the provisional admission will be regularized in the college:-

(i) In case of the reserved category student or other students who are entitled to get the fee concession, on appropriating the amount equal to the amount of fees which the College can collect from the student and the balance amount shall be refunded to the student at the time of confirmation and continuation of his/her admission. (ii) In case of other students, the said amount shall be deducted from the total fees which the College or the institution is entitled to collect from the student as per the rules applicable.

47. Pending the declaration of the result of the revaluation, the students who have taken admission to next higher class, as mentioned above, shall be allowed to appear at the examination of the next class and their results of the next examinations shall be declared only on their passing in the requisite number of the subjects on revaluation which would entitled them to take admission in the next class; and in case the students does not succeed in passing in such requisite number of subjects, their admission to the examinations of the next class, their performance and results of the same shall be

treated as null and void. “

It is also useful to refer to Ordinance No.03709 which provides for admission to Vth semester. The relevant provision reads as under :-

“0.3709 : A candidate who has passed Semester I to Semester IV examinations will be permitted to enter the course for Semester V, however, a candidate has failed in not more than 5 heads of passing of Semester III and Semester IV examinations considered together will also be permitted to enter upon the course of Semester V provided he / she has passed Semester I and Semester II examinations. ”

17. Above quoted rule 45 (iii) clearly provides that the provisional admission secured by the student on the ground that his / her request for revaluation is pending, the admission shall automatically stand cancelled on receipt of receipt of the result of revaluation process if the student is not declared passed in the requisite number of subjects on revaluation which would entitle him / her to take admission in the next higher class. The rule as applicable in the matter is very much clear and provides in clear words that on declaration of the

result of revaluation, if the student is declared failed, the admission of such student to the higher class stands automatically cancelled. Thus, the declaration of result of revaluation of student as failed or 'no change' automatically leads to cancellation of provisional admission of such student. The rule nowhere contemplates any further steps to be taken by the college or the University to cancel such provisional admission.

18. So also, Rule 47 of said rule is concerned, it further provides that pending the declaration of the result of the revaluation the students who provisionally got admitted to next higher class shall be allowed to appear for the examination of the next class. However, the result of such examination shall be declared only after passing of examination in the requisite subjects on revaluation. It further provides that on failure of students to clear requisite number of subjects in revaluation, the admission of such student/s to the next class, performance and result of same shall be treated as null and void. Thus, in view of rule 47 also the petitioner cannot claim the declaration of their result in Vth and VIth semesters and to regularise their admission to third

year of B.E. course.

19. Thus, on the failure of petitioners to clear the requisite number of subjects in revaluation as provided under rules 45 and 47 of said rules, the provisional admission of the petitioners stands automatically cancelled and so also their appearance in examination of Vth and VIth semesters also becomes null and void. The rules nowhere contemplates any steps to be taken in that behalf on the part of the college or University to cancel the admission and make communication in that behalf to students. Since the petitioners have obtained provisional admission on the pretext that their request for revaluation was pending with the University and fact about their result of revaluation was well within their knowledge, the petitioners cannot claim that for want of communication from respondent Nos.1 to 3 as to cancellation of their provisional admission, they attended and prosecuted studies of Vth and VIth semesters and also appeared for examination. We are, therefore, unable to accept the submission of learned counsel for the petitioners that for want of communication on the part of the respondents as to cancellation of their provisional admission, the petitioners attended for Vth and VIth semesters

of third year B.E. course and respondents alone are responsible.

20. We have gone through the citations as referred and relied upon by the learned counsel for the petitioners. We are of the view that the citations as relied are not applicable to the facts of the present case. In the cases relied, the decision was rendered on the premise that there was no suppression of fact or any act attributable to the students which leads to cancellation of their admissions. The Court found the admissions of students were cancelled for the mistakes committed by the authorities granting admissions. The facts of this case are altogether different. We have discussed in the foregoing paras that there was gross suppression of facts on the part of the part of the petitioners while securing admission as well as appearing for examination of Vth and VIth semesters for the third year B.E. course. Although the petitioners were fully aware that they have not cleared all the subjects of the first year B.E. course and their admission was provisional and subject to clearance of subjects in which they applied for revaluation and the University has communicated them “no change” result on revaluation, still continued to prosecute Vth

and VIth semesters and appeared for examination though their provisional admission was automatically cancelled. Respondent No.1 was misrepresented by the petitioners that their grievance in respect of revaluation is pending in the University. Thus, the petitioners have not approached this Court with clean hands. In view of rules providing for provisional admission lay down in clear terms that on declaration of results of revaluation, if the student was declared failed the admission stands automatically cancelled, the petitioners could not have continued to appear for Vth and VIth semesters and so also to appeared for said examinations.

21. Mr.Sakhare, learned senior counsel appearing for respondent Nos.1 and 2 has placed reliance on the decision of the Division Bench of this Court in the case of **Amit Sanjay Gaurollu (supra)**, wherein in the case based on identical facts, the Division Bench of this Court has dismissed the petition. In para 11, the Court has observed as under:-

“11 We are of the view that no such relief can be granted by the Court. The basis on which the Petitioner sought admission to the Fifth semester was contrary to the law. The Petitioner

applied for revaluation after an act of interpolation. But for that he would have not been entitled to revaluation. In the absence of an application for revaluation, validly made, the Petitioner would not have been entitled to admission to the Fifth semester. This Court in exercise of jurisdiction under Article 226 of the Constitution would not be justified in passing an order to protect an admission which has been secured on the basis of a misrepresentation and in a manner contrary to law. “

22. In view of the discussions made in the foregoing paras, we are not inclined to grant any relief in favour of the petitioners as the provisional admission secured by the petitioners was automatically cancelled on declaration of result of revaluation. The continuation of the petitioners to prosecute studies and appear for the Vth and VIth semester examination was itself contrary to rules framed by respondent No.3 University. Petitioners though aware that their provisional admission was cancelled on declaration of their result continue to prosecute study and appear for examination by making false representation that their grievance against revaluation result was pending with respondent No.3 University. In the light of ordinance No.0.3709 and rules 45 and 47 framed by

respondent No.3 University, the petitioners are not entitled for any reliefs claimed in petition. Petitioners have approached the Court in gross suppression of facts. They appeared for Vth and VIth semester examination by making false representation their grievance against revaluation result is pending with the University. Therefore, taking into consideration overall facts of the case, we are not inclined to invoke jurisdiction under Article 226 of the Constitution of India to protect the admission as well as their appearance to Vth and VIth semester examination as same being contrary to law. We are, therefore, inclined to dismiss the petition.

23. At this stage, the learned counsel for the petitioners submits that now the petitioners have cleared all the subjects of first and second year B.E. course and now they are entitled to take admission to third year B.E. course. In view of the statement made, we clarify that dismissal of the petition would not come in the way of petitioners to secure admission for third year B.E. course. We further direct respondent Nos.1 and 3 that, delay if any, to apply for admission, the same be considered sympathetically.

24. In the result, the petition is dismissed with no order as to costs. Rule discharged.

(V.L.ACHLIYA, J.)

(ANOOP V. MOHTA, J.)

C E R T I F I C A T E

I certify that this Judgment / Order uploaded is a true
and correct copy of original signed Judgment / Order.