

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WA.No. 1319 of 2014 ()

WP(C) 20811/2013 of THIS HONOURABLE COURT

APPELLANTS/RESPONDENT NOS. 1 & 2 :

- 1. MAHATMA GANDHI UNIVERSITY,
REP BY ITS REGISTRAR, PRIYADARSINI HILLS,
ATHIRAMPUZHA, KOTTAYAM-686560**
- 2. THE CONTROLLER OF EXAMINATIONS,
MAHATMA GANDHI UNIVERSITY, PRIYADARSINI HILLS,
ATHIRAMPUZHA, KOTTAYAM-686560**

**BY ADVS.SRI.VARUGHESE M.EASO, SC, M.G.UNIVERSITY
SRI.VIVEK VARGHESE P.J., SC, M.G.UNIVERSITY**

RESPONDENTS/PETITIONER :

**MR.REJIN C.A.,
CHELAMALAYIL HOUSE, PEZHAKKAPPILLY P. O.,
MUVATTUPUZHA, ERNAKULAM DIST, PIN-686674**

BY SRI.ALEXANDER JOSEPH

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 13-02-2015,THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S ANNEXURES :

**ANNEXURE 1: COPY OF LETTER CONTAINING QUERY NO. MAA/027/375(7)2011
(MGU 033) DT 13/12/2011.**

**ANNEXURE 2: COPY OF PROVISIONAL CERTIFICATE SHOWING THE DATE 28/6/2011
SAID TO HAVE BEEN SUBMITTED BY THE RESPONDENT CLAIMING
PASS IN BBA.**

**ANNEXURE 3: COPY OF THE FINAL YEAR MARK LIST DT 28/6/2011 SAID TO HAVE
BEEN SUBMITTED BY THE RESPONDENT CLAIMING A PASS IN BBA.**

ANNEXURE 4: COPY OF THE FORMAT OF PROVISIONAL CERTIFICATE.

**ANNEXURE 5: COPY OF THE COUNTERFOIL OF THE CERTIFICATE DT 28/6/2011
BEARING THE SAME BOOK NUMBER AND SERIAL NUMBER BUT WITH
A DIFFERENT REGISTER NO. 20031 AND NAME - NADIRSHA T NASSER.**

**ANNEXURE 6: COPY OF THE COMPLAINT DT 17/4/2012 FILED BEFORE THE POLICE
AGAINST THE RESPONDENT STUDENT.**

**ANNEXURE 7: COPY OF THE COMMUNICATION DT 20/6/2013 BY THE APPELLAT
UNIVERSITY TO THE RESPONDENT REJECTING THE
REPRESENTATION.**

ANNEXURE 8: COPY OF UNIVERSITY ORDER NO. 2731/A1/2007/ADMN DT 22/11/2007.

**ANNEXURE 9: EXTRACT F THE PAGE 21, PARAGRAPH 80, FROM THE NOTE FILE OF
THE MG UNIVERSITY.**

**ANNEXURE 10: COPY OF CHAPTER 14 OF THE EXAMINATION MANUAL OF THE MG
UNIVERSITY.**

**ANNEXURE 11: COPY OF JUDGMENT IN RP 2226/14 IN WPC 20811/2013 DT 26/6/2014
OF THIS HON'BLE COURT.**

RESPONDENT'S ANNEXURES : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

ASHOK BHUSHAN, Ag.C.J.

&

A.M. SHAFFIQUE, J.

W.A. No.1319 of 2014

Dated this the 13th day of February, 2015

JUDGMENT

Shaffique, J.

Heard the learned Standing Counsel for the appellants as well as the learned counsel appearing for the Respondent.

2. This appeal is filed against the judgment dated 06.11.2013 in W.P.(C) No.20811/2013. The writ petition is filed by the respondent herein, who is hereinafter referred to as 'the petitioner'. The writ petition was filed seeking to quash Ext.P4 and for a direction to the Respondents to publish the result of "Business Economics" for the B.B.A 2nd Semester supplementary examination and B.B.A 6th Semester examination held in March, 2011.

3. The facts involved in the writ petition would disclose that the petitioner has completed the three year B.B.A Course in the

Mahatma Gandhi University as a regular student. He passed in all the subjects in the previous Semesters except 'Business Economics' of the 2nd Semester. He had written the examination as well. However, the University withheld the results of the supplementary examination and the mark list of the 6th Semester was also not issued.

4. On enquiry, the petitioner was informed that the University had received complaints regarding the copies of mark list and certificate of the petitioner submitted by an agency. According to the petitioner, he had approached an agency for getting admission for M.B.A Course in Singapore. It was alleged that some forgery had been detected and a criminal case was pending. Later, the petitioner was arrested in Crime No.607/2012 of the Muvattupuzha Police Station and it is submitted that a case had been charge sheeted against the petitioner, which is pending consideration. In the mean time, the petitioner submitted an application as Ext.P2 on 28.09.2012 before the Registrar of the University requesting to publish his results and to provide him with the mark list. But the same came to be rejected as per order dated 20.06.2013 as Ext.P4. In Ext.P4, the University had taken a

view that his request for publication of result of the 2nd Semester examination cannot be granted as it is withheld since he is suspected of forgery/fabrication of University certificates.

5. The learned Single Judge, by the impugned judgment, directed the University to declare the results of the petitioner and provide him with the published result of the examination written by the petitioner, after setting aside Ext.P4. It was observed that no materials had been produced to indicate that the results could be withheld, though the petitioner is involved in a criminal case.

6. The appellant preferred a review petition as R.P.No.226 of 2014, in which the University had produced various materials to indicate that the University has the right to cancel the results and also to withhold the result. However, the learned Single Judge observed that the proceedings issued by the University has to be found to be bad for the violation of the principles of natural justice. It was also held that the order withholding the result was never communicated to the writ petitioner. The review petition was thereafter dismissed.

7. The learned counsel for the appellant relies upon various documents produced in the appeal, which, *inter alia*

includes the rule regarding the malpractices in University examinations. One of the provisions relating to types of malpractices is shown as tampering the University records and the punishment that can be imposed is permanent debarring and withdrawal of pass certificate/degree/diploma already awarded. The main contention urged by the learned counsel for the respondent is that there is no material to indicate that the mark list as well as certificates of University have been forged. The question to be considered is whether the petitioner was involved in any such forgery or not. This is a matter which requires enquiry. Apparently, a criminal case is pending before the trial court. However, the University has to form an independent opinion as to whether the petitioner was involved in tampering of any University records. The relevant provision in Chapter 14.1 of the Regulations reads as under:

"14.1 Malpractices in the University Examinations includes any act or acts by a candidate or by his/her agents performed with the intention of gaining undue advantage in the evaluation resorting to unfair means during the examination or afterwards. Causing obstruction of the smooth conduct of examination, preventing others from appearing for the examination, causing interruption in their performance at the

examination and tampering with the records of the examination are also included within the purview of malpractice. The Chief Superintendent or Additional Superintendent or invigilator as the case may shall inform the Police in working if there is once malpractice of any criminal act is noticed inside and outside of the examination hall."

"14.2 Different types of malpractices and the punishments for them are given below:

Sl.No	Types of Malpractice	Punishment
	xxxxxxx	Xxxxxxx
	xxxxxxx	Xxxxxxx
1	<u>Tampering the University Records</u> <i>Willful tampering of mark list to promote own interests such as getting admission, etc.</i>	<i>*Permanent debarring and withdrawal of pass certificate/degree/ diploma already awarded.</i> <i>*Report to the Police</i>

8. Perusal of records does not indicate that a fair opportunity had been granted to the petitioner to substantiate his grievances.

9. The learned counsel for the respondent submits that as far as 6th Semester is concerned, he has passed in all the subjects and he had acquired more marks than what has been indicated in the alleged forged document. It is evident from the documents produced before the learned Single Judge that as far as the petitioner is concerned, he had only entrusted an

agency to enquire whether he will get an admission in M.B.A Course in Singapore. It is argued that he was not involved in any forgery at all, and he was not informed about any enquiry made by the Singapore University with the Controller of Examinations, as shown in Annexure-I.

10. It is therefore clear that no explanation has been called for from the petitioner with respect to the above incident.

11. Under such circumstances, when the University is entitled to take appropriate action, as per the rules of the University, on any malpractices done by a student, they have absolute right to take necessary decision in that regard. But, they have to comply with the principles of natural justice, which has not been apparently done in this case. Under such circumstances, we are of the view that a decision in this regard shall be taken only after a proper enquiry is conducted by the University in the matter. To that extent, the judgment of the learned Single Judge is set aside.

12. Hence, we dispose of the writ appeal with the following directions:

(i) The Vice-Chancellor of the University shall issue a proper notice to the petitioner to show cause why action shall not be taken as contemplated by the University with all the relevant materials. The respondent shall be given sufficient opportunity to explain the show cause notice and thereafter the University shall take appropriate decision after giving an opportunity of hearing.

(ii) This shall be done within a period of four months from the date of receipt of a copy of this judgment.

The Writ Appeal is disposed of accordingly.

Sd/-
**ASHOK BHUSHAN,
ACTING CHIEF JUSTICE.**

Sd/-
**A.M. SHAFFIQUE,
JUDGE.**

//true copy//

P.S. to Judge

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