

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 14956 of 2014
Reserved on: 13.08.2015
Date of decision: 02.09.2015

Vikas Sharma

....Petitioner(s)

Versus

Guru Jhambheshwar University, Hisar and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Kunal Dawar, Advocate,
for the petitioner.

Mr. Ramesh Hooda, Advocate,
for respondent no. 1.

Ms. Charu Sharma, Advocate,
for Mr. Amandeep Rana, Advocate,
for respondent no. 2.

G.S.SANDHAWALIA, J.

Challenge in the present writ petition filed under Article 226 of the Constitution of India is to the order dated 22.10.2013 (Annexure P-13) whereby, the respondent-University has cancelled the admission of the petitioner in Masters in Architecture (Face to Face) in the session 2011-12. The reasoning given for taking such a drastic step is that the petitioner had passed his qualifying examination B.Tech (Civil Engineering) from Janardhan Rai Nagar Rajasthan Vidhyapeeth (Deemed) University, which is not the prescribed qualification for the purpose of admission to M.Arch of Council of Architecture and could not be treated as equivalent to Bachelor of Architecture.

The necessary facts which arise for determination are culled out

as under:-

The petitioner was given admission in the course in December, 2011 since he had done his Matric from Haryana Board in the year 1994 and thereafter, completed his 10+2. He did his three years' diploma in Architecture from Government Polytechnic, Ambala City in the year 2001 and thereafter, took admission in the B.Tech (Civil Engineering) in Janardhan Rai Nagar, Rajasthan Vidhyapeeth (Deemed) University in 2008 and completed B.Tech in the year 2010. Respondent no. 2-institute was given approval on 17.06.2011 (Annexure R-1/1) to start the two years' Masters in Architecture Programme with intake of 20 students from the academic session 2011-12 by the Council of Architecture and the eligibility for admission was Bachelor of Architecture or its equivalent. As per the prospectus, however, the required qualification was clearly only Bachelor of Architecture from recognized university with at least 50% marks and the fees for the said course was ₹75,000/- per annum for the two years' course. On the basis of the said prospectus, the petitioner got himself enrolled as a regular student in spite of the fact that he knew that the qualification was otherwise though, it is the case of the petitioner that respondent no. 2-institute had clarified that the petitioner was eligible for the said course. Accordingly, the fees was paid to the tune of ₹80,000/- in October and December 2011 and the petitioner cleared his Ist semester examination in December, 2012. Thereafter, he sat in the IInd semester examination and got a reappear, which he cleared later on.

For the IIIrd semester, sum of ₹1,00,000/- was paid towards tuition fee and university charges and he cleared IIIrd semester in December, 2012. Charges for the IVth semester to the tune of ₹38,000/-

was paid in January, 2013, which also he cleared but the result card was not issued. It is thus, the case that the sum of ₹1.68 lacs was taken and he was allowed to appear in the examinations which were conducted by the respondent no. 1-university that he had duly passed. The respondent-University was thus estopped from not declaring his result on account of the fact that it permitted him to sit in the said examinations and result for three semesters had also been declared and that he had never misrepresented at any point of time. His application had never been rejected on account of ineligibility and there was ample time for the respondents to have found out the petitioner's ineligibility. Resultantly, placing reliance upon the judgments of the Apex Court in *Shri Krishan vs. The Kurukshetra University, Kurukshetra, AIR 1976 SC 376*; *Rajendra Parsad Mathur vs. Karnataka University, AIR 1986 SC 1148*; *Sanatan Gauda vs. Berhampur University, 1990 (2) RSJ 55*, the judgments of this Court in *Ashu Singla vs. Punjabi University, Patiala and another, 2004 (2) RSJ 720* and *Smt. Giyarshi vs. Kurukshetra University and others, 2010 (3) SCT 456*, counsel for the petitioner has vehemently argued that the university was estopped and now cannot turn around to deny the final result after having received a huge sum of money from the petitioner. Even otherwise, the petitioner had lost his two valuable years, which could not be compensated by way of money.

Respondent no. 1-University's defence was based on the approval letter dated 17.06.2011 by the Council of Architecture whereby, it had been provided that the qualification was a Bachelors degree in Architecture or its equivalent. It was the case of the university that the qualification was checked by respondent no. 2-Institute at the time of the

admission and his case alongwith other students was submitted with the university without the prescribed fee for registration. It was sent to the academic branch by the registration branch to check his qualification whether his degree in Engineering was equivalent to the Bachelor Degree of Architecture. The Director (Technical Education) was requested to supply the list of recognized diploma of other states. Vide letter dated 17.04.2013, information was given that there was no such list of approved diploma courses of other university. The Academic Branch informed that the degree of B.E. (Civil Engineering) is not a prescribed qualification for the purpose of admission to the Masters Course and could not be treated as equivalent. Accordingly, admission was cancelled on 22.10.2013 and the college was asked to cancel the admission. The candidate had been found ineligible and was not entitled for the relief under the extraordinary jurisdiction. Counsel has placed reliance upon the judgment of the Apex Court in ***Mahatma Gandhi University and another vs. Gis Jose and others, 2009 (1) RSJ 438*** to contend that once the basic qualification is missing, there could be no misplaced sympathy.

The question thus, arises as to whether after permitting the petitioner to study from the year 2011 onwards to the two years' course, whether the authorities are justified in ordering the cancellation since admittedly, the petitioner has cleared all his exams by the time the order was passed.

From the above sequence of events, it would be clear that the petitioner himself is to blame for the mess he has landed himself in. It is not his case that his degree was, at any time, equivalent to the one which had been prescribed in the prospectus. The prospectus was very clear. It only

refers to requisite degree being the degree of Bachelor of Architecture from a recognized university. The relevant clause reads thus:-

“M. Arch
(Master of Architecture)

Sanctioned Seats
20 seats

Eligibility Conditions

B. Arch from recognized university with at least 50% marks.

Admission Criteria

- . ***Direct admission on the basis of merit, portfolio review (Maximum 10 pages) followed by an interview.***
- . ***Candidate with valid GATE score will be preferred.***

Fees

Fee for M.Arch. course is Rs.75000 p.a.”

In such circumstances, for the petitioner to allege that respondent no. 2 was responsible as it had assured the petitioner that he had equivalent degree is not acceptable. However, the fault lies upon the respondent-university and the institute that the petitioner's two precious years have been wasted for which necessary relief to whatever extent is permissible will be given and the discussion of which would take subsequently.

In *Shri Krishna's case (supra)*, reference was made to the Statute in question and it was factually noticed that the student had never written to the university that he had attended the prescribed number of lectures and in spite of shortage, he had been allowed to attend classes and there was ample time and opportunity for the university authorities to find out the defect and they had permitted him to give the examination and then could not deny him the benefit of the result. It was recorded that no fraud was proved in that case.

The reliance by the petitioner upon *Rajendra Prasad Mathur's*

case (supra) wherein, the Apex Court held that it is not for it to sit in judgment over the decision of the university regarding the equivalence of the examinations which was best left to the experts. However, in that said case, due to interim orders passed by the Court, the students had been allowed to continue their studies for four years due to which permission was given apart from the directions that action should be taken against the management of the Engineering Colleges, who had given admission for the sake of capitation fees.

In the present case, no interim orders have been passed by the Court and, therefore, the judgment is not applicable.

In *Sanatan Gauda's case (supra)*, the issue was regarding the admission to the final law classes when the result of pre-law examination and inter-law examination were not declared. The appellant had secured less than 39.5% marks in M.A. Degree and his admission was being denied as 40% was the requirement. An interim order had been passed by the Apex Court whereby, the petitioner had been permitted to continue his final law course and Apex Court finally held that the requirement of 39.5% marks was only for Graduates of Bachelor of Arts and not to the higher degree examination, taking into consideration the rules and accordingly, keeping in view that the student had studied, the appeal was allowed. Further directions were also issued that it was the bounden duty of the university to scrutinize the matter thoroughly before permitting the appellant to appear in the examination. It was not a case where the petitioner did not have the requisite eligibility right from day one.

Reliance upon the Division Bench judgment in *Ashu Singla's case (supra)* also would be of no avail as the student was allowed to take

BCA Part I examination though he had got a reappear in the paper of English and he was not eligible as he had not passed his 10+2 examination. The issue thus, was whether he should have cleared all the papers and not that he did not have the requisite qualification itself. As noticed, in the present case, the petitioner does not have the degree of Bachelor of Architecture but has one of Engineering and that from a Deemed University in a period of 2 years by way of a distant mode which would be clear from the provisional certificate issued on 06.08.2012 (Annexure P-3).

The judgment of this Court in *Smt. Giyarshi's case (supra)* also pertains to the fact that the candidate did not have the requisite number of marks which were 45% and on account of ineligibility and the failure of the university who had ample time, the writ petition was allowed.

The weight of the precedents by the Apex Court in the favour of the university in cases where the basic qualifications are missing is far heavier which this Court is bound to follow. Reliance can be placed upon the judgment of the Apex Court in ***Regional Officer, CBSE vs. Kumari Sheena Peethambaran, 2003 (7) SCC 719***. In the said case, it was held that condoning lapses and overlooking legal requirements on the question of sympathy was not permissible. In the said case, reliance was placed upon the earlier judgment in ***Guru Nanak Dev University vs. Parminder Kumar Bansal, 1993 (4) SCC 401*** that the lack of discipline was leading to serious impasse in academic life. Reliance was also placed upon the earlier judgment in ***A.P. Christians Medical Educational Society vs. Government of Andhra Pradesh, 1986 (2) SCC 667*** wherein, it has been held that the university cannot be directed to disobey the Statute to which it owes existence. Similarly, in ***Central Airmen Selection Board vs. Surrender***

Kumar Das, 2003 (1) SCC 152, which was followed by Division Bench of this Court in ***Manmeet Sharma vs. State of Haryana and others, 2008 (4) SLR 498***. The judgment in *Ashu Singla's case (supra)* was noticed and it was held that the principle of promissory estoppel cannot be invoked in such cases as it is based on equitable principles and where there is misrepresentation and the authority has been misled, benefit cannot be given. In *Central Airman's case (supra)*, the person had been selected on the ground that he had possessed 10+2 qualification but was not eligible as on account of the upper age limit. Relaxation had been given as per the rules but it was found that he had failed in his Chemistry subject in his 10+2 examination and was not justified in claiming the exemption. The Apex Court set aside the judgment of the Division Bench of the High Court which was based on the principle of promissory estoppel by holding as under:-

“7. The question, therefore, is whether in a case of this nature the principle of promissory estoppel should be invoked. It is well known that the principle of promissory estoppel is based on equitable principles. A person who has himself misled the authority by making a fake statement, cannot invoke this principle, if his misrepresentation misled the authority into taking a decision which on discovery of the misrepresentation is sought to be cancelled. The High Court has proceeded on the basis that the petitioner had not made any misrepresentation in his application to the effect that he had passed the Intermediate examination. As we have found above, this finding of the High Court is erroneous, contrary to record and therefore must be set aside. In his application, the respondent had claimed that he had passed the Secondary examination as well as the Higher Secondary +2 examination, and it is clear

from the counter affidavit filed on behalf of the appellants that his candidature was considered on the basis that he had passed the Higher Secondary +2 examination, as in that case he was entitled to claim relaxation in the matter of age. However, the mark sheet annexed to the application disclosed that the respondent had failed in the subject Chemistry and therefore, his claim in the application, that he had passed the Higher Secondary +2 examination, was factually incorrect and a clear misrepresentation. In these circumstances we are satisfied that the respondent could not be permitted to invoke the principle of promissory estoppel, and the High Court was clearly erred in law in invoking the said principle in the facts of this case. The judgment and order of the High Court therefore cannot be sustained.”

Recently, the Apex Court in ***Priyadarshini College of Computer Science and another vs. Manish Kumar and others, 2013 (11) SCC 802*** held that every candidate is required to go through the terms of advertisement thoroughly failing which he/she cannot claim any benefit for his/her own wrong. The relevant observations read thus:-

“10) It has to be kept in mind that every candidate applying for a particular course in any College is expected to go through the advertisement thoroughly including the eligibility criteria prescribed for each course and after fulfillment of the required conditions, state the correct particulars in the application form failing which he/she cannot claim any benefit for his/her own wrong.”

Thus, keeping in view the settled position, this Court is of the opinion that in the absence of the basic requirement, the decision of the

University cannot be faulted with. If the plea of the petitioner is to be accepted, then admissions of all such ineligible candidates will have to be accepted amounting to persons who do not have the basic qualifying skills to get higher degrees and colleges would get licenses to violate such mandatory eligibility conditions for financial gains and only would amount to lowering the academic standards.

Coming to the second issue, as noticed that the petitioner has paid ₹1,68,000/- to the college, part of which has been returned by the university to the college, this Court is of the opinion that there was a serious lapse on the part of both the college and the university which failed to process the admission papers and scrutinize them in due time. The admission was taken in October, 2011 and for a period of two years, the petitioner kept on studying and attending classes and completed his education. The requirement was missing as per the terms of the prospectus itself which should have caught the eagle eye of the scrutinizers and two precious years of the petitioner got wasted for their lapse.

Thus, a good case is made out for directing the college to refund the fees of ₹1,68,000/- paid to it. In addition to that, the petitioner is also entitled to compensation to the tune of ₹1,00,000/- each from both the university and the institute for the loss of two years that has been caused to the academic life of the petitioner. The petitioner would further be at liberty to seek further damages by approaching appropriate Court of Law if he is in a position to show that the damage which has been caused to him is much more than what this Court has awarded. The amount of damages which has been awarded is on account of the loss of the valuable years of the life of the petitioner and due to laxity in processing the factum of his basic

qualification to seek admission in the said course.

With the above said observations, the present writ petition is thus partly allowed while dismissing it for the relief of direction to award the degree of Masters in Architecture.

02.09.2015
shivani

(G.S. SANDHAWALIA)
JUDGE

