

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 14999 of 2014
Reserved on: 06.10.2015
Date of decision: 21.10.2015

Rajeshwar Verma

....Petitioner(s)

Versus

Maharshi Dayanand University, Rohtak & another

...Respondent(s)

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

Present: Mr.Rajesh Garg, Senior Advocate
with Mr.Saurabh Dalal, Advocate, for the petitioner.

Mr.Amit Rao, Advocate, for
Mr.Anurag Goyal, Advocate, for respondent No.1.

G.S.SANDHAWALIA, J. (Oral)

Petitioner seeks the relief of continuation of his studies into the next year in the course of Bachelor of Technology, which is a 4 years Engineering course.

It is the case of the petitioner that in the year 2011, he cleared the Intermediate (Class 12) Examination from Board of Secondary Education, Madhya Bharat, Gwalior and secured 1st division. In the year 2012, he took admission in the respondent No.2-Institute in the batch for 2012-16 and was allotted the University Registration Number and the College Roll Number. His certificates were duly examined and he was permitted to give both his semester examinations of the 1st year and admitted to the 2nd year course. In December, 2013, he passed his 3rd semester examination and in June, 2014, he attended the 4th semester classes. But his admit cards were not issued for taking the examination for the 4th

semester by the respondents though even the fees for the 5th semester had been collected to the tune of Rs.78,526/-. On 23.05.2014, he was informed that his admission has been cancelled on account of the fact that his Class 12 certificate was from a Board which was found to be fake and thus, he was going to lose two precious years. It was averred that at the time of admission, the respondents should have checked and verified the documents of the petitioner since the Board was not in the list of the fake Boards.

In the written statement, filed by the University, it was submitted that the Board of Secondary Education, Madhya Bharat, Gwalior had not been recognized and therefore, admission granted by respondent No.2 was illegal and contrary to the instructions contained in the prospectus/information brochure. The person was required to pass the +2 examination with 45% marks in aggregate from a Board which was recognized by the University. It was admitted that the registration form was received by the University on 29.09.2012 and the list of equivalent examinations, recognized by the Board of School Education, Haryana, Bhiwani and approved by the University, was appended as Annexure R1/1. Vide orders dated 05.12.2013, permission had been granted by the University to the candidates to appear in the 1st semester examination of B.Tech courses, who had been wrongly admitted to the higher course by the Principals of the few affiliated colleges. Subsequently, vide the resolution dated 29.04.2014 (Annexure R1/2), the Academic Council had not agreed with the Vice-Chancellor and resolved to cancel the admission which was, accordingly, conveyed to the petitioner on 02.05.2014. The permission to study in the 2nd and 3rd semesters was on the presumption that the candidates were eligible and the colleges had duly scrutinized the documents. The petitioner had sat in the 2nd and the 3rd semesters in connivance with respondent No.2-College and therefore, was not entitled to any

Learned Senior Counsel, appearing on behalf of the petitioner, has submitted that the University has, now, stopped the petitioner from continuing with the course after having allowed him to sit in the examination of the 3rd semester and placed reliance upon the principle of promissory estoppel and the instructions of the University since it is admitted that the documents from the petitioner's college had been received on September, 2012 and formal decision was only conveyed on 02.05.2014. It has further been pointed out that the name of the Board of Secondary Education, Madhya Bharat, Gwalior figured in the list of the affiliated colleges due to the wrong inclusion of the service provider, namely, NYSA Service Provider Ltd. and a fine has also been imposed upon the said agency and it was in such circumstances, the Academic Council had resolved that the admissions be not regularized.

It is, thus, apparent that the Board from which the petitioner completed his +2 studies was shown in the list of equivalent examinations, recognized by the Board of School Education, Haryana. During the year 2011, the name of the said Board was not in the updated list but had been included during the session 2012-13, on the University panel. This is apparent from the resolution dated 29.04.2014 (Annexure R1/2) and thus, the Vice-Chancellor had permitted those students to appear in the examinations, while enquiring into the issue. That at a subsequent point of time, 2 years thereafter, the said decision was not ratified and the petitioner continued and was never debarred from continuing the studies. The said decision was only communicated to the petitioner on 02.05.2014 (Annexure R1/3). The resolution dated 29.04.2014 reads as under:

“MAHARSHI DAYANAND UNIVERSITY ROHTAK

Copy of extract of Reso. No.21 of Academic Council's meeting held on 29.04.2014.

Regularisation of admissions of 85 students who passed their qualifying examination (10+2) from Madhya Bharat Secondary Education Board, Gwalior (MP).

Considered the action taken by the Vice-Chancellor, in anticipation approval of the Academic Council, in regularising the admissions of 85 students (Annexure A/29) pages 233-236, already circulated) who passed their qualifying examination (10+2) from Madhya Bharat Secondary Education Board, Gwalior (MP), made by the Principals of the various affiliated Colleges during the session 2012-13 due to wrong inclusion of the said Board on the University panel.

(SEE RESOLUTION AT THE END of the NOTE)

NOTE:

The Academic Council vide Resolution No.48 of its meeting held on 14.12.1998 resolved that all exams. of various Boards etc. upto the level of 10+2 exams. recognized by the Board of School Education Haryana, Bhiwani shall stand recognized by the University. Accordingly, the list of various Boards conducting exams. upto 10+2 level received from Board of School Education Haryana, Bhiwani is included in the recognition/equivalent list of the exams of various University/Boards, which is issued to all Departments and Colleges affiliated to this University from time to time. In the updated list issued during 2011, the name of Madhya Bharat Secondary Education Board, Gwalior (MP) was not available, whereas the NYSA Communication Pvt. Ltd. at its own included the name of this Board in the panel prepared for online submission of Registration Return by the Colleges, without consulting the Academic Branch or the Registration Branch.

On a complaint, received from Principal, GGDSD College, Palwal, the matter was taken up with the Project Manager, NYSA and after receiving the reply on this issue alongwith the list of students admitted in various Colleges, a detailed report was submitted to the Vice-Chancellor, who while constituting a Committee comprising of Prof. S.S.Chahar, Prof. Jagdish Nandal and Incharge (Academic) to enquire into the whole matter, regularized the admissions of as many as 85 students in various courses (Annexure A/29 pages 233-236, already circulated) as a special case in anticipation approval of the Academic Council, as the students were not at fault. Accordingly, the students were allowed to appear in the examinations. Simultaneously, the said Enquiry Committee conducted an enquiry in which NYSA Communication Pvt. Ltd. was given due opportunity to defend their point of view. After considering the reply given in writing by NYSA, the Committee recommended imposition of penalty of Rs.Ten lacs on the said

agency and as per orders of the Vice-Chancellor, the Finance Officer and the Nodal Officer have been asked to recover the said amount from the NYSA.

The Vice-Chancellor has ordered to place it before the Academic Council for consideration.

RESOLUTION

[The Council took a very serious note of these irregular admissions.

In view of the above, it was:]

RESOLVED THAT THE ADMISSIONS AS ABOVE BE NOT REGULARISED.

RESOLVED FURTHER THAT IT MAY BE ENSURED THAT THE AMOUNT OF PENALTY HAS BEEN RECOVERED FROM M/S. NYSA COMMUNICATION PVT. LTD.”

Thus, from the resolution, reproduced above, it is apparent that students who had studied from the said Board had been permitted to continue and have lost 2 precious academic years due to the Board not being recognized. The students who had taken admission on the basis of the list, thus, could not be prejudiced. The University also, for two long years, from September, 2012 till 29.04.2014, took no action and therefore, now, cannot turn around to deny the petitioner continuation in the course. Reliance can be placed upon *Shri Krishan Vs. The Kurukshetra University, Kurukshetra 1976 (1) SCC 311* whereby it was noticed that once the student was allowed to appear in the examinations, rightly or wrongly, then the statute, which empowers the University to withdraw the candidature, works itself out and the student could not be refused admission, subsequently, if any infirmity, which could have been looked into before giving the permission to appear. The relevant observations read as under:

“The last part of this statute clearly shows that the University could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be

refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear. It was, however, submitted by Mr. Nandy learned counsel for the respondent that the names of the candidates who were short of percentage were displayed on the Notice Board of the College and the appellant was fully aware of the same and yet he did not draw the attention of the University authorities when he applied for admission to appear in LL.B. Part II Examination. Thus the appellant was guilty of committing serious fraud and was not entitled to any indulgence from this Court.

7. It appears from the averments made in the counter- affidavit that according to the procedure prevalent in the College the admission forms are forwarded by the Head of the Department in December preceding the year when the Examination is held. In the instant case the admission form of the appellant must have been forwarded in December 1971 whereas the examination was to take place in April/May 1972. It is obvious that during this period of four to five months it was the duty of the University authorities to scrutinise the form in order to find out whether it was in order. Equally it was the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirements of law. If neither the Head of the Department nor the University authorities took care to scrutinise the admission form, then the question of the appellant committing a fraud did not arise. It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of *suggestio falsi*, or *suppressio veri*. The appellant never wrote to the University authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the University authorities to have found out the defect. In these circumstances, therefore, if the University authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I Examination in April 1972, then by force of the University Statute the University had no power to withdraw the candidature of the appellant. A somewhat similar situation arose in *Premji Bhai Ganesh Bhai Kshatriya v. Vice-Chancellor, Ravishankar University, Raipur and others*(ii) where a Division Bench of the High Court of Madhya Pradesh observed as follows:

"From the provisions of ordinance Nos. 19 and 48 it is clear

that the scrutiny as to the requisite attendance of the candidates is required to be made before the admission cards are issued. Once the admission cards are issued permitting the candidates to take their examination, there is no provision in Ordinance No. 19 or ordinance No. 48 which would enable the Vice-Chancellor to withdraw the permission. The discretion having been clearly exercised in favour of the petitioner by permitting him to appear at the examination, it was not open to the Vice-Chancellor to withdraw that permission subsequently and to withhold his result."

We find ourselves in complete agreement with the reasons given by the Madhya Pradesh High Court and the view of law taken by the learned Judges. In these circumstances, therefore, once the appellant was allowed to appear at the Examination in May 1973, the respondent had no jurisdiction to cancel his candidature for that examination. This was not a case where on the undertaking given by a candidate for fulfilment of a specified condition a provisional admission was given by the University to appear at the examination which could be withdrawn at any moment on the non-fulfilment of the aforesaid condition. If this was the situation then the candidate himself would have contracted out of the statute which was for his benefit and the statute therefore would not have stood in the way of the University authorities in cancelling the candidature of the appellant."

The said judgment was followed by the Apex Court in *Sanatan Gauda Vs. Berhampur University & others 1990 (3) SCC 23* wherein it was held that at the time of the declaration of the result, the University could not raise the objection of the so-called ineligibility of the candidate. The relevant observations read as under:

"11. This is apart from the fact that I find that in the present case the appellant while securing his admission in the Law College had admittedly submitted his marks-sheet along with the application for admission. The Law College had admitted him. He had pursued his studies for two years. The University had also granted him the admission card for the Pre-Law and Intermediate Law examinations. He was permitted to appear in the said

examinations. He was also admitted to the Final year of the course. It is only at the stage of the declaration of his results of the Pre-Law and Inter-Law examinations that the University raised the objection to his so-called ineligibility to be admitted to the Law course. The University is, therefore, clearly estopped from refusing to declare the results of the appellant's examination or from preventing him from pursuing his final year course."

A Division Bench of this Court in *Ajeet Kumar Tripathi Vs. State of Haryana 1998 (4) S.C.T. 73* also held to the same effect that when the admission was cancelled after a long period of study on the ground that the marks obtained was less than 50% in aggregate, it was held, that once there was no fault of the candidate and he had studied for many years, he should be allowed to study in the said course. It was held that in such ambiguous situation, it is not proper to cancel the admission at such a late stage since the clock had moved on.

Reliance can also be placed upon a Division Bench judgment of this Court in *Ashu Singla Vs. Punjabi University, Patiala & another 2004 (2) RSJ 720* wherein also, the students had been declared ineligible in the second year on the principle of promissory estoppel. This Court held that in the absence of any concealment of any documents from the respondents or misrepresentation, the admission was to be regularized. Similar view has also been taken by this Court in *Jaswinder Kaur Vs. State of Punjab & others 2013 (3) PLR 128* wherein it was held that once the University had permitted the candidate to appear in the examination of the final year. It was unwarranted on the part of the University to issue DMC on the ground that the petitioner was ineligible. In *Shri Guru Govind Singh Khalsa College & others Vs. Panajb University, Chandigarh & another 2014 (3) RSJ 499*, similar relief was granted by holding that in the absence of any fraud or misrepresentation on the part of the students and on the failure of the College to inform them about their ineligibility, the admission was to be

Thus, keeping in view the settled principle and in view of the fact that the University was itself responsible on account of the fault of its service provider and failed to decide the issue for 2 long years and permitted the student to continue with his course, the candidate cannot be made to suffer for the said lapse. Accordingly, the present writ petition is allowed. The petitioner will be permitted to continue in the B.Tech course from the stage where he was denied permission to sit in the 4th semester examination.

21.10.2015
sailesh

(G.S. SANDHAWALIA)
JUDGE