

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5267 OF 2014**

Ms. Meenal Prabhakar Dhotre

Age- Adult, Occ. Service,
Residing at 85, Mayur Colony, Opp. Jog High
School, Kothrud, Pune 411 038

...Petitioner

Versus

1. Shivaji University Kolhapur

Kolhapur- 416 004
(Through its Registrar)

2. State of Maharashtra

Department of Higher Education,
Maharashtra State, Mantralaya Annexe,
Mumbai 400 032
(Through its Secretary)

...Respondents

APPEARANCES

FOR THE PETITIONER

**Mr. Subhash Langote, i/b Mr. V. A.
Madane.**

FOR THE 1ST RESPONDENT

Mr. Amit B. Borkar

FOR THE 2ND RESPONDENT

Mr. P. G. Sawant, AGP.

CORAM

**: S.C. Dharmadhikari
& G.S. Patel, JJ.**

DATED

: 2nd March 2016

P.C.: (Per G.S. Patel, J.)

1. The Petitioner is presently employed as an Assistant Professor of Management at the Vishwakarma Institute of Management, Pune from August 2007. In this Petition filed under Article 226 of the Constitution of India, she assails two communications issued by the 1st Respondent, Shivaji University, Kolhapur. The first of these is dated 26th December 2012.¹ The second is dated 14th February 2014.² The second communication is basically a reiteration of the first. By these two communications, the 1st Respondent informed the Petitioner that she was ineligible for admission to the Ph.D. Programme of Shivaji University. Both letters were sent to the Petitioner after Shivaji University provisionally admitted the Petitioner, accepted her thesis proposal, allowed her to complete research and even allowed her to appear for her final viva or oral defense of her thesis. The Petitioner claims that she was found successful at the completion of the Ph.D. course, and as far back as on 30th November 2011 she was orally informed that she had cleared the necessary requirements for the award of Ph.D. It is in these circumstances that the Petitioner seeks quashing of these two communications and further asks that Shivaji University be directed to issue a Ph.D. degree to her.

2. We make it clear that while, for the reasons follow, and having regard to the submissions of Mr. Langote for the Petitioner and Mr. Borkar for the 1st Respondent and after having, with their assistance, considered all the material, including scanning a copy of the Petitioner's Doctoral Thesis, we are inclined to grant some relief

¹ Petition, *p.* 21

² Petition, *p.* 22

to the Petitioner, we have necessarily had to mould that relief and to confine it to the facts of this particular case. We emphasize that we do not propose in this order to lay down any legal principle that would bind Shivaji University in future cases.

3. It is necessary to note some of the background facts. The Petitioner passed her SSC examination in the year 1988, and two years later in 1990 she passed her HSC examination. In 1992, the Petitioner obtained certificate in Diploma in Electronics and Radio Engineering. This was a two years' Engineering Diploma. The eligibility criteria for this is HSC passing. Between 1997 and 1999, the Petitioner took a Diploma in Business Management (“**DBM**”). This, according to the Petitioner, is a two-year post graduate Diploma, the eligibility for which is the HSC, a two-years Technical Diploma and a minimum of one year's work experience, making a total of five years after the SSC. Between 1999-2000, the Petitioner then obtained a Masters of Management Sciences Degree with distinction (“**MMS**”). This course is now renamed as Masters in Business Studies (“**MBS**”). It is a one year degree course following the two year DBM course, and the eligibility criteria is that the candidate must have a two year DBM from any of the specified universities.

4. We note here, for the sake of completeness, that the Petitioner belongs to the Open Category and there is no question of any reservation or reserved seat.

5. According to the Petitioner, in 1993 Pune University issued a Circular that the Masters in Management Sciences (“**MMS**”)

degree was equivalent to a Masters in Business Administration (“MBA”) degree.

6. Some time in 2007-2008, the Petitioner learnt of a Ph.D. Course being offered by the Shivaji University. She came to know of this from the Ordinance for admission issued by that University. The Ordinance, a copy of which is at Exhibit “H”,³ sets out the eligibility criteria. This criteria include that Open Category candidates must have 55% marks at a post-graduate examination or they must have a post graduate degree with a passing declaration in faculties where there is no provision of grade or class or the candidates must have done a Masters degree by research or obtain an M.Phil. The Petitioner believed that she had the necessary qualifications. She applied for a Ph.D. in Commerce and Management. She paid the necessary registration fees on 23rd June 2008. There is no doubt or dispute about any of this.

7. On 22nd August 2008, Shivaji University’s Head of Department of Commerce and Management directed the Petitioner to present her Ph.D. Proposal to the Scrutiny Committee. A copy of this communication is Exhibit “J”.⁴ She was asked to attend a meeting with her guide to present her Ph.D. Research/proposal. The Petitioner did so.

8. On 11th December 2008, Shivaji University’s Deputy Registrar wrote to the Petitioner saying that she had been provisionally admitted to the Ph.D. Degree programme in Business

³ Petition, *Pp.* 29-30

⁴ *P.* 32

and Management in the University's Faculty of Commerce with effect from 1st July 2008 under the guidance of Dr. Sarang Shankar Bhola. The Petitioner was asked to make some payments, which she did.⁵ Copies of all the documents submitted by the Petitioner are also annexed to the Petition.

9. The Petitioner had completed her Post Graduate degree from Pune University. She submitted the original Migration Certificate to Shivaji University, indicating and signifying that the Pune University had no objection to her continuing of her further studies of degree course work with Shivaji University.

10. From 2008 onwards, the Petitioner was engaged in research. On 13th December 2009, the Petitioner was allowed to sit for M.Phil/pre-Ph.D. Examination. The Petitioner passed this examination. The Petitioner then continued her research under the supervision of Dr. Bhola of Shivaji University's Department of Commerce and Management. The Thesis was entitled "Analytical Study of the Impact of Celebrity Endorsements on Purchase of Consumer Durables in Pune City".

11. On 24th December 2010, the Petitioner submitted a draft copy as well as a compact disc of her Ph.D. Thesis to the Shivaji University. This was acknowledged. On 1st February 2011, a few months later, the Head of the Department of Commerce and Management of Shivaji University directed the Petitioner to attend

⁵ Exhibit "K", *Pp.* 33-34

a meeting on 23rd February 2011 to present her Ph.D. Research work before the Committee.⁶

12. The Petitioner attended this meeting on 23rd February 2011 of the Departmental Scrutiny Committee. She presented her Ph.D. Thesis in the title we have mentioned earlier. A few weeks later on 10th March 2011, the Petitioner submitted five copies of her final thesis to the Shivaji University. On 19th November 2011, the Petitioner was asked to remain present for her open defence (Ph.D. Final viva) scheduled on 30th November 2011. On that day, the Petitioner appeared at the viva and defended her thesis. The Petitioner says in paragraph 4(19) at page 9 of the Petition that she was orally told that she was successful and would soon be conferred with her Ph.D. Degree. There seems to be no denial of this. There was also a External Referee who suggested that the Petitioner's thesis be published.

13. On 5th January 2012, the Petitioner submitted attested copies of all her educational qualifications. It is at this stage that matters took an unfortunate turn for the Petitioner. On 14th August 2012, having waited for a considerable period of time, the Petitioner filed an application under the Right to Information Act, 2005 seeking *inter alia* to know when she could expect to have the result of her Ph.D. (Open Defence) notified. On 26th December 2012, and this is the first of the impugned communications, the Registrar of Shivaji University informed the Petitioner that she was not eligible for registration of Ph.D. at all. On 2nd January 2013, the Petitioner received a response to a further R.T.I. query asking her to note that

⁶ Exhibit "P", P. 39

her Ph.D. Admission had been cancelled.⁷ The Petitioner sought a clarification by her letter dated 13th February 2013.⁸ On 21st March 2013, Pune University wrote to the Petitioner that the MMS degree course that the Petitioner had undertaken was equivalent to an MBA course.⁹

14. On 21st October 2013, Shivaji University's Deputy Vice Chancellor informed that she had been previously told that her Ph.D. Admission had been cancelled. The Petitioner made a representation on 7th November 2013,¹⁰ in which she sets out all the necessary facts. On 14th February 2015, by the second impugned letter, the Shivaji University stated that it stood by its previous decision. Annexed to the Petition are also copies of the Petitioner's several representations to Shivaji University, a summary of her publications, book reviews, awards, recognitions as also a summary of the facts relating to her thesis process.¹¹ We need only note one fundamental question posed by the Petitioner: Whether there is any explanation at all for the Shivaji University's delay of four and half years in the matter of the Petitioner's eligibility?

15. The Petitioner's submission is that even at the time of admission, the 1st Respondent did not in its admission materials specify any particular name or nomenclature of the post graduation degree. All that was stated was that the candidate should have a post

⁷ Exhibit "S", P. 47

⁸ Exhibit "T", P. 48A

⁹ Exhibit "U", P. 49

¹⁰ Exhibit "W", P. 53

¹¹ Exhibit "X", Pp. 59-61

graduate degree or should have a minimum of 55% marks for the Open Category at the post-graduate examination. Further, it was never communicated to the Petitioner from the date of her admission in July 2008 till December 2012, i.e., for a period of four years, that her qualifying or eligibility degree was not recognized by the Shivaji University for admission to the Ph.D. Course. In those four years Shivaji University led the Petitioner to believe that although her admission was provisional throughout, there was no difficulty in her undertaking her research work, submitting her thesis and even appearing at the final stage for the Viva examination. The eligibility for an MMS course, certified by Pune University to be the equivalent of a MBS course, is the completion of a two year diploma in the business management. This the Petitioner had from 1997-1999. The Petitioner also avers that the Shivaji University accepts the MBA degree from Pune University for Ph.D. admission. Now the Pune University itself has, as we have noted earlier, certified in a later addressed to the Petitioner that the diploma that she obtained is the equivalent of an MBA degree.¹² It is difficult to see, the Petitioner submits, how in view of this equivalence, the Petitioner could be said to be unqualified. The Pune University has clearly stated that its MMS degree is equivalent to the MBA degree. The Petitioner also submits that non-receipt of the Ph.D. degree is extremely prejudicial to the Petitioner and has caused her extensive loss and professional damage. This will not only affect her promotional carrier but will prevent her for even applying her senior positions or even working as a research guide.

¹² Exh. "U", P. 49.

16. It is on this basis that the two communications from the Shivaji University referred to above are challenged. The Shivaji University has filed an Affidavit in Reply of one Shivaji Chandrappa Ghadage. We have considered this reply. In paragraph 3(i), the eligibility criteria are reiterated. Then, in paragraph 4 the Affidavit purports to deal with the factual position in relation to the Petitioner. Here a defence is sought to be taken that at the initial stage the Petitioner had failed to produce the Migration Certificate. It is however noted that this Migration Certificate was later made available on 2nd February 2009. At this stage the Affidavit says:

"it was noted that the Petition was not eligible for Ph.D. programme as she was not holding required qualifications. The MMS course passed by the Petitioner was of one year duration which in view of standing committee is not equivalent of MBA of Respondent University. Meantime in other case (Anita Patil) the issue of MMS equivalence was kept for the decision of the standing committee on equivalence."

17. This paragraph does not explain the 1st Respondent's conduct at all. It does not explain why it took the University four years to come to this realization, nor why, during that period, it allowed the Petitioner to continue with the Ph.D. programme. The Affidavit then straightaway jumps four years to December 2012 as if nothing had happened in the interregnum. For the University to say now that there is a violation of UGC norms is at the very least misleading.

18. We find that there is a comprehensive rejoinder as well. In this, the Petitioner has dealt with the various contentions raised by the 1st Respondent in its Affidavit in Reply. The Petitioner correctly points out that she had at no point withheld or concealed any part of her previous qualifications, degrees or diplomas or other eligibility particulars. There is also no case against the Petitioner, as she also points out, of having resorted to any illicit means or subterfuge. The Petitioner makes a significant point¹³ when she says that the correspondence initiated by Shivaji University commenced only after her final viva was completed and after she was orally told that she would shortly be awarded the Ph.D. degree. Indeed we must note that there is no specific denial that we can find that of this averment made not once or twice, viz., that the Petitioner was informed that she would be given her Ph.D. Degree.

19. We have considered the material on record. We have also being shown a copy of the Petitioner's Ph.D. Thesis. This is a very substantial volume of work. It is a 264 page thesis with analysis, research work, tabulations and methodology set out and a total of approximately 340 sources cited, of which 272 are publications (books and research articles), 30 are various newspapers article and a further 38 are online materials. This is hardly the kind of work that can be said to be trivial or something that can be generated without considerable thought, effort, research and study. That this is the Thesis submitted to the 1st Respondent University is also not in doubt for the volume shown to us bears the rubber stamp of the University as also the endorsement of Dr. S. S. Mahajan, Head,

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Department of Commerce and Management of Shivaji University along with his signature on 10th March 2011.

20. In our view, being a Court of Justice and of Equity, it is difficult to refuse the relief sought by the Petitioner. We are unable to accept Mr. Borkar's submission that it is necessary that the Shivaji University's refusal by its two communications be upheld and that the Petitioner be denied her Ph.D. Degree. In our view, nothing could be more inequitable or unjust or a more palpable violation of arbitrary action. In a given case, even prolonged inaction is as arbitrary as deliberate wrongful action. The 1st Respondent University has allowed four and a half years of the Petitioner's life to be spent on this Thesis. It cannot be allowed to be wasted. The University is in no position to restore the *status quo ante*. All of this work and all of this time will only be squandered. This will be for no fault of the Petitioner. As we have noted there is no case against the Petitioner of having withheld any information, concealed any material or of having mislead the University at any stage. The only fault that we are able to find, is that of the University itself in not acting with the necessary efficiency and speed. In our view, the University should have examined the question of equivalence before it allowed the Petitioner to embark on the Ph.D. programme. It is not reasonable to expect a Court to uphold or to give its sanction to any such conduct where the University permits the student or a doctoral candidate to go through four years of research, all of this supervised, appear for and pass the viva, only to be told that all of this counts for nothing. The University has only itself to blame for the state of affairs. It cannot visit the consequences of its own inaction on the Petitioner. Hence, we are unable to agree with Mr.

Borkar that this Court may direct any Competent Authority (including the U.G.C.) to examine the issue of Petitioner's equivalence and take a expeditious decision.

21. We cannot after such a stand of the Respondent No. 1 and a considerable unexplained delay permit such examination. The University cannot seek to brush aside the delay and set the clock back to 2008-2009. That means the Petitioner's efforts till date are set at naught. Hence, we unhesitatingly reject this request of Respondent No. 1.

22. That said, we are not prepared in this order to widen the scope of the matter by making any observations about the correct equivalence. We also do not intend that this order should serve as a precedent for any future cases, nor is it our intention that in future other candidates with the Petitioner's qualifications or ones even similar to those should be admitted, or should consider themselves entitled to be admitted, to the Ph.D. programme of the Shivaji University (or any other university for that matter). We confine ourselves to the facts of this particular case. We do so only on the grounds of justice, equity and good conscience. We find that it is not possible to uphold the Shivaji University's refusal to award the Ph.D. Certificate for the Ph.D. degree to the Petitioner. In the result we pass the following order:

- (a) The two communications that are personal to the Petitioner and annexed as Exhibit "A" to the Petition are quashed and set aside;

- (b) The 1st Respondent is directed to confer on the Petitioner the Ph.D. Degree and to issue the necessary certificates and all the documentation in that regard within a period of four weeks' from today.

23. There will be no order as to costs.

(G. S. Patel, J.)

(S. C. Dharmadhikari, J.)