

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4401 OF 2016

Sanchita Sunil Bhadani	)	
age adult Occupation: Student	)	
of Thane Indian Inhabitant residing	)	
at First Floor, Vishram Baug Scty	)	
Sector 6, Nr.Ayyappa Temple,	)	
Shreenagar, Thane (West) – 400 604.	)	.. Petitioner

vs

1. The Principal	)	
Ramrao Adik Institute of Technology	)	
a College recognised by the University of	)	
Bombay, Ramrao Adik Education Society	)	
Dr.D.Y.Patil Vidyanagar, Sector 7,	)	
Nerul, Navi Mumbai-400 706.	)	
	)	
2. Maharashtra State Board of Technical	)	
Board, Mumbai Sub-Region through its	)	
Director, Mumbai Sub Region	)	
2 nd Floor, Govt.Polytechnic Bldg	)	
49, Kherwadi, Mumbai-400 051.	)	
	)	
3. University of Mumbai, a University	)	
under the Maharashtra Universities Act, 1994)	)	
Fort, Bombay.	)	
	)	
4. The Directorate of Higher and Technical	)	
Education, State of Maharashtra,	)	
3 Mahapalika Marg, Opp Metro Cinema,	)	
Bombay-400 001.	)	.. Respondents

Mr.Mukesh Vashi Sr.Counsel with Mr.Yatin Shah and Mr.Harsh Shah for
Petitioner.

Mr.Neel Helekar for Respondent no.1.

Ms.Ujwala Sawant i/b Mr.R.V.Govilkar for Respondent no.2.

Mr.Mohammed Asadullah Shaikh i/b Mr.Rui Rodrigues for Respondent no.3 University.

Ms. Sushma Bhende Assistant Government Pleader for Respondent no.4

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**CORAM: S.C.DHARMADHIKARI &
G.S.KULKARNI, JJ**

**RESERVED ON: 15th APRIL, 2016
PRONOUNCED ON: 18th APRIL, 2016**

JUDGMENT : (Per G.S.Kulkarni, J)

1. The petitioner who is a student of the Engineering Course in the faculty of Information and Technology (for short “the said Course”) being pursued at the Respondent No.1 – Institution has filed this Petition under Article 226 of the Constitution of India, seeking a writ of mandamus against the Respondents for the following reliefs :-

“(a) (i) allow the Petitioner to appear for the Viva Voce examinations for the sixth semester in the engineering course in the Information Technology faculty (CBGS) to be held on 18.4.2016 and the written examinations to be held on 10.05.2016;

(ii) to direct the Respondents to declare results, issue mark sheets and allow the Petitioner to continue studies by giving admission in the seventh and thereafter in the eighth semester in the engineering course in the Information Technology faculty (CBGS);”

2. The Engineering Course in question is a four years degree course. Each year is divided into two semesters. On completion of her 12th Standard, the Petitioner obtained an admission for the first year of the said Course for the academic year 2012-13. The following would have been the normal pattern of academic years if the Petitioner was to pass each of the two semesters in the respective academic years.

Academic Year	Semesters
2012-13	I st & II nd Semester
2013-14	III rd & IV th Semester
2014-15	V th & VI th Semester
2015-16	VII th & VIII th Semester

3. However it appears that academically there were quite some failures affecting the normal pursuit of the course. As can be seen from the petition, during the first year the Petitioner In December 2012, appeared for the first semester and failed in one subject namely

in 'Applied Chemistry' which she reappeared and cleared in the examination held in May,2013. Also in May 2013, she appeared for the second semester examination and in which she failed in one subject namely 'Applied Mathematics'. Thereafter, the Petitioner was granted admission to the Second Year (IIIrd and IVth Semesters), for the academic year 2013-14. In November 2013, the Petitioner appeared in the 'Applied Mathematics' paper of the Second Semester in which she again failed. Thereafter, she again appeared in May 2014 in the said backlog paper but failed in this third attempt.

4. Accordingly, upto May,2014 when the Petitioner would in the normal course be admitted to the Third Year (Vth and VIth Semester), she had not cleared the backlog of the IInd Semester in the subject of 'Applied Mathematics'. At this stage, it would be appropriate to make a reference to the relevant Ordinance of the University which would govern the admission of the students to a Third Year. The Ordinance is Ordinance No.3709 which reads thus:-

“O.3709: *A candidate who has passed Semester I to Semester IV examinations will be permitted to enter upon the course of Semester V, however, a candidate who 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 for Semester V*

provided he/she has passed Semester I and Semester II examinations.

(emphasis supplied)

A plain reading of the above ordinance makes it clear that to be eligible for admission to the Third Year (V & VI Semester), a candidate would be required to pass Semester I to Semester IV and the candidate who has failed in not more than 5 heads of passing of Semester III and Semester IV examination considered together also be permitted to be admitted to Semester V provided the candidate has passed Semester I and Semester II examination.

5. What is relevant for the purpose of the present case is the eligibility of the Petitioner for admission to the Third year (i.e. Semester V and VI) on account of the Petitioner not passing Semester II examination upto May 2014, when the Petitioner had approached for admission to the third year of the course.

6. It appears that nonetheless the petitioner was granted admission to the 3rd year (Vth & VIth Semester) by Respondent No. 1 college, despite the petitioner not clearing the backlog in the subject of Applied Mathematics of the IInd Semester, as per the requirement of Ordinance 3709. The Petitioner was also permitted to keep terms

(A.T.K.T.) as she had also failed in some subjects in the IIIrd and IVth Semesters which she cleared later during the academic year. However, the fact remains that although the Petitioner appeared for III and IV semester examination upto May,2015, the Petitioner did not clear the backlog/failed subject of the II semester (applied mathematics). It was only in November, 2015 when the Petitioner reappeared for the IInd semester, backlog paper in 'Applied Mathematics' she cleared the same. Nonetheless, Respondent No. 1, at the college level contrary to the University rules, had permitted the petitioner to appear for the Vth and VIth semester examinations upto period May,2015. The petitioner however appears to have realized this position, that her appearance for the Vth and VIth Semester was contrary to rules and now attempts to reappear without a lawful admission to the third year namely the VIth Semester as the prayers show, and accordingly has approached the Court by this petition.

7. It is clear that the backlog of the first year (IInd Semester- Applied Mathematics) subject, was cleared by the Petitioner only in November,2015 and before passing the same was granted admission to the Third year (Vth and VIth semester) which was wholly impermissible. Respondent no.2 College and the University, for

this reason have refused to allow the petitioner to appear for the viva-voce examination of the VIth semester which is to be held on 18th April, 2016 and her form was not accepted.

8. Learned Senior Counsel for the Petitioner submits that the action on the part of Respondent no.1 College and the University is unfair and arbitrary for the reason that the Petitioner was permitted by Respondent No. 1, to appear for the Vth and VIth Semester examination as held in November, 2014 and May, 2015. It is submitted that although this may not be permissible under the rules / ordinance, however the Petitioner had made an endeavour to reappear for the examination of VI semester in April 2016, at which point of time, she is being prevented from appearing at the examination by Respondent No. 1 College and the University. It is submitted that Petitioner having been so permitted to appear in the said Vth and VIth Semester examinations the College and the University are estopped from not permitting the petitioner to reappear for the VI semester examination to be held in April 2016. In support of his submission, learned Counsel for the Petitioner has placed reliance on the decision of the Supreme Court in the Case of '**Srikrishnan Vs. The Kurukshetra University, Kurukshetra**' (1976) 1 SCC 311" and the Division Bench Judgment of

this Court in the case **“Aishwarya V.Jain Vs. Maharashtra State Board of Technical Board, Mumbai Sub-Region & Ors., dated 31st March,2016 in Writ Petition (L) No.883 of 2016.”**

9. On the other hand, the learned Counsel for the University would submit that the provisions of Ordinance No.3709 are clearly attracted in the present case, inasmuch as the Petitioner who had failed in the subject applied mathematics of the IInd semester - First Year which she attempted for the first time in May,2013, was not cleared by the Petitioner upto November,2015. Relying on the ordinance it is submitted that unless this backlog of the II semester was cleared by the Petitioner, the Petitioner could not have been permitted by the College to appear for the V and VI semester examination. It is submitted that it was a legal obligation on the part of the College to adhere to the norms, rules/ ordinances of the University in permitting the candidates to appear for the examination. It is submitted that Vth and VIth semester examination are undertaken by the concerned colleges and only the Ist and the IInd semester (First Year of the course) and the VIIth and VIIIth semester examinations (Fourth Year of the Course) are conducted by the University. It is therefore, submitted that it was the fault of Respondent No.1 College in permitting the Petitioner to

appear for the Vth and VIth semester examination, when under the said Ordinance the Petitioner was clearly barred from being admitted to the Vth and VIth semester (Third year) for not having cleared the backlog of the II semester. The learned Counsel for Respondent No.1 College has also conceded to this position and supported the submissions as made on behalf of the University. Learned counsel for the College has drawn our attention to a Chart which gives a birds eye view of the academic pursuit of the petitioner for the said course, which categorically demonstrates that the admission of the petitioner for the third year (Vth and VIth semester) was a provisional admission as the petitioner had failed in three subjects of the IVth semester and also had a backlog of the IInd Semester.

10. We have heard the learned Counsel for the parties and with their assistance we have perused the documents as placed on record as also the relevant Ordinances of the University. Having considered the submissions as made by the learned Counsel for the Parties, we are of the clear opinion that this Writ Petition does not deserve any interference and is required to be rejected for the reasons we would immediately set out.

11. The requirement of the Ordinance 3709 of the University was clear namely that a candidate to be eligible to obtain an admission for the Third Year (V & VI semester) should have passed Semester I and II examination. Admittedly when the Petitioner approached for admission to third year (V and VI semester) in the Academic Year 2014-15 she had not cleared the IInd semester examination namely the subject 'Applied Mathematics' in which she had failed. Moreover the Petitioner having initially failed in the said subject in May,2013, attempted to clear the same in November,2013, May,2014 and failed at these attempts. She did not attempt at the next chance that is in November,2014. She again attempted in May,2015 and again failed. The Petitioner cleared the same only in November,2015 examination. However the Petitioner at the level of the College was permitted to appear for the Vth and VIth semester despite being not eligible for admission and clearly contrary to the Ordinance (supra). The Petitioner appears to be well aware about this position and in fact having cleared the VI semester intends to reappear for the VI semester in April,2016, on the basis that her admission though is against the provisions of the Ordinance, be considered as valid. This submission obviously cannot be accepted.

12. Admittedly, the admission of the petitioner was provisional for the Vth and VIth semester not creating any vested legal right. If this be the position, it is surprising as to on what basis the Petitioner can claim that her admission for academic year 2014-15 be held to be valid and that she should be now permitted to appear for the VI semester examination. Ordinance 3709 in this regard is clear and unambiguous. The University has prescribed these academic standards which are required to be strictly adhered by the affiliated institutions and maintain the academic discipline. It is a settled principle of law that normally the Court would not interfere in academic matters. The wisdom of the experts in framing academic rules would command full respect. The submission as made on behalf of the petitioner if accepted would go contrary to the express provisions of the Ordinance resulting in diluting the academic discipline.

13. Further the Petitioner's provisional admission to the Third Year (V and VI semester) (2014-15), which was even otherwise illegal, cannot create any vested right much less any legal right in the Petitioner to insist that the Petitioner be permitted to appear for the VIth semester when admittedly under the said Ordinance the Petitioner was not eligible. In fact, provisional admission is a concession which is

granted to a student and the same cannot be elevated to a position of a creating a vested legal right. In this context we may usefully refer to the decision of the Division Bench in the case of “**Arya Sudhir Sudhan Vs. The University of Mumbai & Ors., (Writ Petition No.303 of 2016) dated 11th February,2016**”, of which one of us (S.C.Dharmadhikari J) is a member, wherein it was observed thus:-

“1] After having heard Mr. Chandrachud, learned Counsel appearing for the Petitioner, we are not inclined to exercise our writ jurisdiction for the simple reason that the policy of the University appears to be that if a candidate fails in the initial or first year, he can continue his studies for the subsequent year of the academic course on a concessional basis. He is allowed to keep terms for the subsequent year and in succession on the assurance that he would clear all the remaining subjects, and in which he or she was unable to pass, before a given period or time or at least before the studies and the education career come to an end in that particular faculty or course.

2] Once it is a pure concession, then no vested right can be founded on it. Secondly, there cannot a vested right or a legal right claimed in failure or a concession. If the condition is that the terms kept would be allowed to be kept, but the candidate must clear the subjects in which he or she fails and in this case all the subjects of the initial year, then, the affidavit in reply discloses this is a academic policy. The University cannot be expected to lower the standards of passing or to compromise with academic standards or otherwise.

3] The analogy given and the argument that the requirement to pass all subjects would mean a subject unrelated with the chosen faculty would have to be cleared, has no nexus with the object sought to be achieved is clearly without merit.

4] There cannot be a argument that the candidate having failed, he would clear or would be required to clear the failed subject or paper of his choice

and not all those prescribed would mean that the University would be forced to compromise and lower the academic standards. There is no violation of the mandate of equality enshrined in Article 14 of the Constitution of India, once the controversy is understood in the above perspective. A failure ordinarily results in reappearance in the exam or the failed subject again. The entry to the next or higher class is not permitted unless the first exam is successfully cleared. However, the University allowed the Studies in a degree course to be continued despite partial success in the first year. Once no right flows or is created by the University's Concessional Act, then, there is no discrimination or arbitrariness in the terms set for such continuation of studies. Accepting Mr. Chandrachud's argument means continuation of studies and obtaining the degree without clearing the exams prescribed for the course.”

14. In a similar situation this Bench in the case of “**Aishwarya V. Jain Vs. Maharashtra State Board of Technical Board Mumbai Sub-region & Ors.**” in Writ Petition (lodg) No.883 of 2016 dated **31.3.2016** has observed thus:-

“10. Having heard learned counsel for the parties as also having perused the Rules and relevant documents as placed on record of this writ petition, we find that there is much substance in the submissions as urged on behalf of respondent no.1-Board. The Rules for making admissions to the third year course, as we have set out hereinabove are clear. The requirement under the Rules for admission to third year is three-fold; that a candidate should pass in the first year examination or a candidate should either pass or have a ATKT in the second year, further, the result status in the Mark sheet of PLY (Pending Lower Year) shall not be eligible for admission to the third year of the said course. Admittedly, the Petitioner had not cleared her First year when she sought admission

to the Third year course. Despite this deficiency, respondent no.2 granted admission to the Petitioner and permitted her to pursue the course. This was wholly impermissible and in the teeth of the admission Rules (supra). It is only when the petitioner went to make an application for appearing for the final examination, through a computerized method, her form was not accepted, because of the deficiency of having not cleared the first year at the time of admission to the third year. If this system was to be manual perhaps even respondent no.1-Board may not have noticed this deficiency with so much of accuracy, as noticed in the computerized system, probably ending up in the petitioner mistakenly appearing at the examination. This was very well averted. The examination form of the Petitioner therefore, was rightly not accepted as the admission itself was faulty and contrary to Rules. The Petitioner therefore, cannot seek a writ of this Court which would go contrary to the admission Rules framed by the respondent no.1 and binding on all institutions affiliated to it. The Rules cannot be rendered nugatory and/or of no consequence.”

15. We now refer to the decision as relied on behalf of the petitioner in the case of “***Srikrishnan Vs. The Kurukshetra University, Kurukshetra***” (1976)1 SCC 311). In our opinion this decision would not assist the petitioner as the facts are totally uncomparable. This was a case where the Appellant a Government servant was pursuing the LLB Course as an evening student. He was granted admission to the Part I of the course and had disclosed all the information. He failed in three subjects at the Part I examination but was promoted to Part II with an option to clear those subjects. He was however later refused permission for Part II examination which was ultimately given to him on his giving

an undertaking to secure his employer's permission. After the examination, the appellant had demanded that his result be declared on the ground that the employer's permission was not necessary. However, the appellant was informed that since his percentage for admission to Part I was short his candidature stood cancelled. In this situation, the Court had made observations that there was no fraud committed and that the University was completely aware of the position / infirmities and had acquiesced in the same by accepting the admission form and permitted the appellant to appear for examination in April, 1972 and the appellant was permitted to undertake examination for the second year. In this situation the Supreme Court held that it was not permissible for the University to take a position that his percentage in Part I was short and cancel his candidature. The Supreme Court however categorically observed it was not a case of a provisional admission given by the University on a specified condition which could be withdrawn at any moment on non fulfillment of any of the condition. The observations of the Supreme Court in paragraph 7 which become relevant in the present context read thus:-

“This was not a case where on the undertaking given by a candidate for fulfillment 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-fulfillment 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 facts in the case in hand thus are completely different. Indisputedly, the admission of the Petitioner was provisional for the Third Year Court (V and VI semester). Further the petitioner admittedly had a un-cleared backlog of the Semester II, when she approached for admission for the third year admission (Vth and VIth semester) in the academic year 2014-15. In fact, the backlog was cleared after the academic year 2014-15 was over i.e. in November,2015. The petitioner therefore, clearly was not eligible for admission to the Vth and VIth semester for the academic year 2014-15. Further this admission was not made by the University as in the Kurukshetra's case. Her appearances for the Vth and VIth semester were therefore, wholly invalid and this position appears to be fairly accepted by the Petitioner looking at the prayers as made in the Writ Petition.

16. We would be failing in our duty if we do not sound a note of caution in such cases which would be in the interest of the institutions and the students. We are at pains to see number of such cases coming to the court at the fag end when the examination is about

to commence. This is routinely happening. Many times it is seen that the institution is at fault for not scrupulously enforcing norms of the University in respect of matters which the University would want the institution to do. The students also many times being aware of the rules try to exploit the situation and try to create equities, and then approach the court at the fag end. In all these situations the students may ultimately suffer huge loss in terms of their academic career. Such situations which are not conducive to anyone are required to avoided. All mischief's if any at which ever level are required to arrested and remedied at the threshold. This would result in maintaining of academic standards. It is least expected that the students and the institutions waste their time in litigation in Courts . We therefore direct the State Government and the respective Universities in the State of Maharashtra to evolve a mechanism by which the students at the beginning of the academic year are informed about the ineligibility of their admission and are prevented from unnecessary pursuing the course when not eligible. If the institutions and colleges are guilty of making such admissions/ when are against the rules stern action should be taken against such colleges which would be deterrent to these colleges to deviate from the binding academic rules.

17. In view of the foregoing reasons, the Writ Petition is dismissed. No costs.

18. A copy of this order be forwarded to the Registrars of all the Universities/deemed Universities in the State of Maharashtra.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)