

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.1669 OF 2016

Akshay Pradeep Bhatia

.... Petitioner

V/s.

The University of Mumbai,
Through its Vice Chancellor & Ors.

.... Respondents

Mr. H. Toor, a/w. Mr. Subhash G. Bane, i/by M/s. S.B. Legal, for the
Petitioner.

Mr. Rui Rodrigues for Respondent No.1.

Mr. Abhay L. Patki for Respondent Nos.2 and 3.

CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 1ST JULY 2016.

P.C. :

1. By this Petition, under Article 226 of the Constitution of India, the
Petitioner challenges the letter / communication dated 6th June 2016, by
which Respondent Nos.2 and 3 informed him of the decision of the 1st
Respondent that the Petitioner is ineligible for admission to First Year
B.Com. (B + I) Course by virtue of Ordinance No.O.5209. The Petitioner
states that originally he resided at Bahrain and thereafter when he came
to India, he cleared his Higher Secondary School Certificate Examination

(H.Sc.) in August, 2011 from Central Board of Secondary Education. Relying upon a copy of the certificate of the Central Board of Secondary Education certifying that the Petitioner has cleared the examination and with an endorsement therein "C", it is submitted that the Petitioner has not cleared this examination at one and the same sitting. He did not get the minimum percentage. He was not able to obtain the minimum percentage of the marks in the subject of Physics. After two months, he repeated that subject and cleared the same with 61 marks and that is how the certificate certifies that the Petitioner has cleared the examination.

2. Apart therefrom, what is submitted is that on the strength of such a certificate, Respondent Nos.2 and 3 - College admitted him to the Bachelor of Banking and Insurance Degree Course. He has attended four semesters of that course. Meaning thereby, he has completed two years of studies. There is only one year left and when he applied for his mark-sheet for the fourth semester examination in March 2016, the College has not issued it. The College is also not allowing him to prosecute his further studies in the said course. The College places reliance upon an Ordinance of the University of Mumbai, which is numbered as "O.5209". That reads as under :-

O.5209 : A candidate for being eligible for admission to the Bachelor of Commerce (Banking and Insurance) Degree Course should have passed XII Std. Examination of the Maharashtra State Board of Secondary and Higher Secondary Education, Pune, or its equivalent and secured not less than 45% marks in aggregate (40% in the case of reserved category candidates) at one and the same sitting. Every candidate admitted to the Degree Course in the affiliated colleges conducting the course shall have to register enroll himself/herself with the University.”

3. It is submitted by Mr. Toor, learned advocate appearing for the Petitioner, that having understood this Ordinance and knowing its implications, the Respondent-College proceeded to admit the Petitioner initially provisionally. Thereafter he continued his studies in the second year. Thus, in all, four semesters have been completed, which is a two years' study. Now at the fag end of his educational career, the Petitioner is informed that in view of this Ordinance, he could not have been admitted to the Degree Course at all. Thus, his admission itself is without authority of law and contrary to this Ordinance.

4. The argument of Mr. Toor is that all the Respondents acquiesce in this situation and once having allowed the Petitioner to continue the

studies in view of the principle, which has been applied in the two decisions of the Hon'ble Supreme Court; one in the case of ***Sanatan Gauda Vs. Berhampur University and Others, AIR 1990 SC 1075***, and another in the case of ***Guru Nanak Dev University Vs. Sanjay Kumar Katwal and Anr., (2009) 1 SCC 610***, which are followed and applied by a Division Bench of this Court sitting at Nagpur to the identical cases and circumstances, we should issue the writ, as prayed for.

5. On the other hand, Mr. Rodrigues appearing on behalf of Respondent No.1-University, would submit that the Ordinance has been issued as far back as on 17th November 2004. It is enforceable till that date. Its legality and validity has not been challenged. The Petitioner as also the Respondent-College is deemed to have knowledge of the Ordinance and which is peculiar to the University of Mumbai. It may be that in some other University, there is no insistence, as is to be found in the subject Ordinance, but on that ground alone, the academic decision taken by the experts in the field of education should not be doubted, much less, struck down. Once the Ordinance is clear and its plain language does not permit any admission to be taken in the manner done, then, this Court in its writ jurisdiction cannot pass an order contrary to it. Eventually, an order of this Court, even in writ jurisdiction, cannot contravene the law. He would submit that the Writ Petition be dismissed.

6. Mr. Patki appearing on behalf of the Respondent-College submitted that the College was throughout informing the Petitioner that no admission can be granted contrary to this Ordinance and, at best, it would be provisional. The Petitioner was informed that he cannot be admitted once the XII Standard Examination was not passed at one and the same sitting. Initially, nothing conclusive emerged from the mark-list issued by CBSE. Hence, additional details and particulars were called for. Therefore, a provisional Certificate of Admission was issued. The College was not aware of all the certificates and was calling upon the Petitioner to produce the same. It is only when the College was in a position to scrutinize and verify the certificates, that it decided to apply the Ordinance. The College cannot be expected to act contrary to the Ordinance and dilute the academic standards. In the circumstances, this Court should not interfere in writ jurisdiction and the Petition be dismissed.

7. In the case of ***Sanatan Gauda (Supra)***, the Hon'ble Supreme Court found that the Appellant before it had passed the M.A. Examination in July 1981 and he secured more than 40% of the total marks. Thereafter he secured admission in 1983 for Three-Years Law Course. At the time of his admission, he had submitted his mark-sheet along with his M.A. Degree Certificate. The Appellant completed his first year law course and was

promoted to the second year. In 1985, he appeared for the Pre-Law and Inter-Law examination held by the Respondent-University, to which the College was affiliated. Having cleared the examination, he was admitted to the Final Law Course. Though admitted to the Final Year Law Course, his results for Pre-Law and Inter-Law examinations were not declared. That is how he made representations to the Bar Council of India. In the year 1986, and to be precise on 30th October 1986, the University replied that since the Appellant had secured less than 39.5% marks in his M.A. Degree Examination, he was not eligible for admission to the Law Course. Thereafter he made a representation pointing out that he has secured more than 40% marks in the said examination and that is how his admission was in accordance with law. The University's Academic Body had recommended that those students who had passed M.A. Examination and had secured more than 40% of the total marks should be considered eligible for admission to the Law Course even though they had secured less than 20% marks in any one of the papers in the said examination. Despite all this, the University did not take any steps to announce the result of the academic year. That is how he approached the Orissa High Court challenging the non-declaration of his result and refusal of the University to permit him to appear in the Final Law Course. The Writ Petition was dismissed. Against the said decision, Appeal was filed in the

Hon'ble Supreme Court of India. By an interim order, the Appellant was permitted to continue to Final Law Course and appear for examination. His result was also directed to be declared. That is how the University's Ordinance was the subject matter of scrutiny by the Supreme Court. The Regulation 1 of Chapter VIII, which lays down qualification for admission to the Law Course is reproduced in Para 6 thereof, which reads as under :-

“1. Any registered candidate may be admitted to the Degree of Bachelor of Laws, if (a) he passes the examination for the Degree of Bachelor of Arts, Bachelor of Science, Bachelor of Commerce, Bachelor of Oriental Learning, Bachelor of Medicine and Bachelor of Surgery, Bachelor of Science (Engineering), Bachelor of Science (Agriculture), Bachelor of Veterinary Science and Animal Husbandry, B. Pharma or any other examination recognized by the Bar Council of India and the Academic Council as equivalent thereto securing 40% or more than 39.5% of marks in the aggregate of such examination or any other higher degree examination passed after graduation.

Provided that relaxation to the extent of 5% of marks in the qualifying examination be allowed to the Scheduled Caste and Scheduled Tribe candidates.

Provided further that in case of physically or the paedically handicapped candidates, relaxation up 5% of marks in the qualifying examination may be given on production of a certificate of disability from any Government Medical Officer to the satisfaction of the authority concerned.....”

8. There is a clear reference that the students should have secured more than 40% marks and which was secured in that case, but in one paper Group-2, Sanatan Gauda had secured only 36% marks out of 100, which were less than 25% and that is how the University contended that the percentage falls short of 40%. Analyzing this Ordinance and finding that its language was not identically worded, as the Ordinance before us, that the Hon'ble Supreme Court in the facts and circumstances of that case reversed the view of the Orissa High Court. In doing that, the Hon'ble Supreme Court held as under :-

“9. Mr. Misra appearing for the respondents, however, contended firstly that the qualifying marks for admission as per Regulation 1 of Chapter VIII even for post-graduate students was 40 per cent or more than 39.5 per cent and since the appellant admittedly did not secure more than 39.5 per cent marks after deducting from the aggregate 13 marks secured in one of the papers, he

was not eligible for being admitted to the Law Course. I have pointed out hereinabove that the plain reading of the said Regulation shows that the qualifying marks laid down there do not apply to the post-graduates. They apply only to graduates. As far as the post-graduate are concerned, it is enough that they are passed their examination. Secondly, he has also obtained the marks as required by the said Regulation 10 of Chapter V which is applicable to the appellant, viz. 39 per cent when the minimum marks laid down by the said Regulation is only 36 per cent. Mr. Misra then relied upon the prospectus of the Ganjam Law College which had laid down as follows :

“1. and 2.....

3. Eligibility for admission

1. Pre-law class.

a) An aggregate of 40 per cent and above, in the B.A., B.Sc., B.Com. Or any other University Degree of Higher University examination recognized by Berhampur University.....”

and contended that even if a candidate has a higher degree than B.A., B.Sc., B.Com., he has to have an

aggregate of 40 per cent minimum marks. As I read the said prospectus, I find that it is on par with the qualification for admission given in University Regulation 1 in Chapter VIII quoted above. The aggregate of 40 per cent and above marks is required only for graduates and there is no requirement of any percentage of marks prescribed for the post-graduates. Resolution No.123/1984 of the Bar Council of India passed on October 30, 1984 and which is Annexure 'K' to the respondent-University's counter-affidavit also shows that for admission to three-year Law Course the qualification of minimum of 39.5 per cent marks is meant only for graduates. That Resolution does not speak of the requirement of marks for examination of post-graduate level. I am also of the view that this distinction between graduates and post-graduates made in the matter of the qualifying marks is as it ought to be, since graduates and post-graduates cannot be treated equally. A post-graduate student has a minimum of two years more of academic pursuit to his credit than the graduate before he seeks admission to the Law Course. Obviously, therefore, they cannot be treated equally, and that is what the University and the Bar Council of India have rightly done. It is the interpretation placed by the University on its own Regulations and the Resolution of the Bar Council of India which is at fault and not the Regulations or the Resolution.

10. 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 mark-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."

9. Thus, this was a case where the Appellant was found to be innocent and totally unaware of the process by which he was admitted. The College was also equally unaware from what appears in the foregoing paragraphs. There was no question of a provisional admission. The principle of estoppel was, therefore, invoked and applied when the College sought to deprive him of his entitlement, only at the stage of declaration of results. In such circumstances, we do not think that this decision in any way assists the present Petitioner. The decision in Sanatan Gauda does not rest on estoppel alone. It is firstly a decision interpreting the Ordinance

and then additionally relying on the above principle. It is entirely distinguishable on facts.

10. In the case of ***Guru Nanak Dev University (Supra)***, what one finds is that, the Government of Punjab authorized Punjab University to conduct a Common Entrance Test for selection of students for admission to the Three-Year LL.B. (Professional) Course for the session commencing from 2004-2005, for the various colleges affiliated to or run by the University, including the Appellant-University. The student appeared for the entrance test and was declared successful. He attended the counselling session and was selected and admitted to the Law College at Jalandhar, affiliated to the Appellant University. He paid tuition fees and attended the College regularly. The final examinations of the first semester were held in December 2004. After scrutinizing the records relating to the student, what was discovered was that the Appellant registered the first respondent for the examination by assigning him roll number. He appeared for the first semester examination. Thereafter the University wrote a letter informing the College that the student's basic Degree was M.A. (English) from Annamalai University through distance education, which was not recognized by it and, therefore, his admission to the L.L.B. Course should be cancelled. A detailed representation was submitted, but the University

did not agree. It proceeded to inform the student that his admission will have to be cancelled by the College. That is how a Writ Petition was filed and the question, therefore, essentially was of equivalence of the Degree obtained by taking the distance education course and by not attending a regular University or affiliated college or not by attending the lectures of University or Department of affiliated college. The question involved was, *'Can a Degree obtained by a distance education programme be equated with correspondence course?'* The prescription essentially was that of a Master Degree not less than 45%. It is on the basis of interpretation of the subject Ordinance that the Punjab & Haryana High Court concluded that the student was entitled to the relief. Though the University's appeal was allowed by the Supreme Court by a finding and conclusion that the High Court could not have established the equivalence and in the manner done, what happened thereafter is a peculiar thing. It is in the peculiar facts of that student that the Hon'ble Supreme Court found that having been admitted to the College, the student not being guilty of any suppression, but the confusion was in the University itself as to whether distance education course attended was the same as the correspondence course which was recognized, that this student should not suffer. It is in these circumstances that by relying upon the principle that if the Academic Bodies are confused, then, for their mistake or confusion, a bonafide

student ought not suffer, particularly because the Supreme Court was scrutinizing the matter in 2009, that the claim of the student was upheld. The Course was completed in the year 2007. After the success before the High Court, more than four years had lapsed. Therefore, it would be unfair and unjust to deny the relief. Hence, relying on the earlier principles and which again are peculiar to the facts of the case brought before the Hon'ble Supreme Court, the relief was granted. Thus, this decision is also distinguishable on the facts.

11. In the decision before the Nagpur Bench, a declaration was sought that the Ordinance itself is inapplicable. On facts, it was found that the entire course was completed. The students had gone much ahead, then four semesters and rather they had put in many more years. Some students were admitted directly to the third semester. It is in these circumstances that the cancellation was not upheld. The cancellation of the admission was based on an Ordinance and which Ordinance is reproduced in Para 6. it was the requirement under the Ordinance to have completed the Graduate Degree in any discipline with minimum 50% marks and Mathematics upto 10 + 2 level. The Petitioner passed Post B.Sc. Diploma in Computer Science and Applications examination. The only question was whether the Petitioner was also required to possess

50% in the Graduation Exam, as prescribed in sub-clause (a) of Clause 3 of the Ordinance. It is in these circumstances that the principle in the Supreme Court Judgment was invoked and applied.

12. We must take immediate note of the later submissions, that are normally and ordinarily canvassed in such matters, that these Judgments are precedents for future cases and, therefore, we must apply them. We must then also follow the Principle of Estoppel, even if that goes contrary to a Statute. It is well settled that the principles that are sought to be invoked cannot frustrate and defeat a valid Statute and/or an Ordinance of the University. The peculiar cases and where the Court found that the student was not at fault, had, therefore, resulted in the eventual directions in favour of the students. In the present case, the student was aware that his admission was provisional. He may have been allowed to complete two semesters and was enrolled in the third semester. However, when he applied for issuance of the fourth semester mark-sheet, that he was informed by the College about the deficiency and defect in the basic qualification or requirement for admission to the First Year. The student before us is admittedly not fulfilling the criteria or requirement in the Ordinance. He has to blame himself.

13. True it is that there was some delay in arriving at the conclusion that the College arrived on the basis of the Ordinance. The College, however, has clarified that the Petitioner had secured admission to the Bachelor Degree Course for the Academic Year 2014-15. He submitted the relevant documents amongst others, the 12th Standard mark-sheet. That time itself the College noticed that he obtained two mark-sheets. Thus, the exam was not cleared at one and the same sitting. If that is the clear, plain and unambiguous language of the Ordinance, which we must be interpreted as it stands, then the College cannot be faulted. Further, based on the documents submitted, including only one mark-sheet, at that time and other disclosures, the admission form was accepted and a provisional admission was granted. It was clarified that it was subject to approval and acceptance by the University of Mumbai. The provisional eligibility from the University was received on 30th December 2014. Since the final eligibility was not received, the University was again approached by the College after waiting for some period on 10th January 2016. It is in these circumstances the results were withheld but in or about March 2016. An oral intimation was received from the University pursuant to which the College authority approached the Deputy Registrar of the University. He sorted out the whole issue and stated that the admission could not have been granted as the Petitioner was ineligible.

14. In the circumstances, we do not think that it is necessary to scrutinize and verify the position particularly whether the Petitioner was responsible for any concealment or suppression of facts. Once the admission was provisional, then, neither any rights nor any equities can be claimed. Our order cannot be contrary to law, in this case, a valid and binding Ordinance of the University. In this behalf, we can usefully refer to the following observations in the decision of the Hon'ble Supreme Court, reported in ***AIR 1986 S.C. 1490 [A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Anr.]***. At page 1497 in para 10, the Hon'ble Court held as under :-

“10..... Shri. Venugopal suggested that we might issue appropriate directions to the University to protect the interests of the students. We do not think that we can possibly accede to the request made by Shri. Venugopal on behalf of the students. Any direction of the nature sought by Shri. Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws.”

15. As a result of the above discussion, we find no merit in the Petition and the same is dismissed. No costs.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]