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

WRIT PETITION (L) NO. 2047 OF 2016

Darshil Rajesh Thakkar	]	
Age-20 years, Occ.- Student,	]	
Residing at 28 H/5, Model Town Gat No.1,	]	
B. R. Road, Mulund (W), Mumbai-80.	]	..Petitioner

Versus

1.	The Principal	]	
	R. A. Podar College of Commerce &	]	
	Economics, Matunga, Mumbai - 400 019.	]	
2.	The State of Maharashtra	]	
	Through its Higher and Technical Education	]	
	Department, 4th Floor, Mantralaya Annex,	]	
	Madam Cama Road, Nariman Point,	]	
	Mumbai - 400 032.	]	
3.	University of Mumbai	]	
	Through its Chancellor and Registrar,	]	
	University of Mumbai, M. G. Road,	]	
	Fort, Mumbai - 400 032.	]	.. Respondents

Mr. Zaid Ansari a/w. Mr. Amin Solkar, M. Solkar, Mr. M. Sanket Joshi, Mr. Mangesh Kokare for the Petitioner.

Mr. Mahendra Agavekar for Respondent No.1.

**CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**
DATE : 28th JULY, 2016

ORAL JUDGMENT : (Per Dr. Shalini Phansalkar-Joshi, J.)

1. By this Writ Petition filed under Article 226 of the Constitution of India, the petitioner is invoking discretionary and equitable jurisdiction of this Court in the matter of cancellation of his admission in the T. Y.B.Com. course offered by respondent No.1 College in affiliation with respondent No.3 University of Mumbai. According to him, the said action of respondent No.1 is patently illegal and hence needs to be quashed and set aside.

2. This relief is claimed in the following circumstances:

The petitioner is a national and a citizen of India. Respondent No.1 is the Principal of R. A. Podar College of Commerce & Economics in which the petitioner has enrolled for Bachelor for Commerce degree program. Respondent No.2 is the State of Maharashtra acting through its Higher and Technical Education Department, which is tasked with responsibility of overseeing the smooth implementation and imparting of higher and technical education, such as B.Com. degree program, in the State of Maharashtra. Respondent No.3 is the University of Mumbai with which the college of respondent No.1 is affiliated.

3. The petitioner has enrolled himself for Second Year B. Com.,

Semester-IV class for the academic year 2015-16 and has appeared for Business Law Paper II examination, which was conducted on 12.03.2016. According to him, after the examination was over, in a personal search of all the students, mobile phones were found on the person of 12 students, including the petitioner, which came to be confiscated. On 02.04.2016, the petitioner along with his father remained present before the College Committee wherein it was alleged that the petitioner has indulged in copying through the mobile phone. In the said meeting, the petitioner was given an option that if at all he intended to continue his studies in the said college and to seek leniency in the matter, then he should admit in writing that during the course of aforesaid examination, he had copied an answer using his mobile phone and in addition thereto, the petitioner should also pay a fine of Rs.500/-, which shall be imposed on him for carrying a mobile phone into the examination hall. The petitioner was also assured by the College Committee that in the event he complies with the aforesaid conditions, an arrangement would be worked out, whereby although in the final mark sheet he would be shown as having failed the Business Law Paper-II examination, he would nevertheless be permitted to take admission in the Third Year B. Com. class under the ATKT Regulations. On the basis of this assurance, the petitioner gave in writing admitting that he had copied an answer using his mobile phone.

4. It is further case of the petitioner that, in pursuance of this

arrangement arrived at with College Committee, in the result of Semester-IV examination declared on 25.04.2016, he was shown as absent for Business Law Paper-II examination but given benefit of ATKT Rules. Accordingly, on 28.04.2016 he took admission for Semester-V class and paid fees of Rs.4455/-.

5. Subsequent thereto, on 10.05.2016 he was called in the office of the Vice Principal of the College and informed that there has been some mistake in the mark sheet issued to him and that he also needs to make payment of fine of Rs.500/- towards penalty and return of the confiscated mobile phone and that after making such payment, the amount of Rs.500/- needs to be added in the fee receipt for the T.Y.B.Com. class, already issued to him. The petitioner was, therefore, directed to surrender his mark sheet as well as admission fee receipt for rectification and was further directed to address and submit a letter to respondent No.1 thereby requesting for cancellation of his admission for T.Y.B.Com. Accordingly, the petitioner issued a letter and also paid fine amount of Rs.500/-.

6. The grievance of the petitioner is that despite such assurance and understanding given to him by the College Committee in its meeting dated 02.04.2016, in the new mark sheet handed over to him on 14.06.2016, it was shown that he had obtained zero marks in all the subjects including the Business Law Paper-II. The petitioner made inquiry

about the same but there was no response. Despite the repeated requests made by him, the College Authorities refused to budge and pleaded their inability to do anything to save his academic year.

7. The petitioner is, therefore, constrained to approach this Court seeking relief that the new mark sheet issued to him be declared as illegal and respondent Nos.1 & 3 be directed to act upon the earlier mark sheet issued to him so as to allow the petitioner to keep terms in the ensuing T.Y.B.Com. class for the academic year 2016-17.

8. On this petition at the stage of admission itself we have heard the learned counsel for the petitioner. He has taken us through the earlier mark sheet and the new mark sheet issued to the petitioner and produced in the papers at Exhibits 'B' & 'G' respectively. He has also drawn our attention to the fee receipt Exhibit 'C' and the letter of the petitioner Exhibit 'D' submitting his mark sheet. Further, he has pointed out the letter given by the petitioner, produced at Exhibit 'E' for deposit of the amount of Rs.500/- towards confiscation of mobile phone.

9. On the basis of these documents, submission of learned counsel for the petitioner is that, the College Authorities of respondent No.1 have arrived at some arrangement with the petitioner, on the basis of which the petitioner was allowed to keep the terms, though he was

declared fail in Business Law Paper-II. It was done under the ATKT Rule and now the College Authorities of respondent No.1 are going back on the said assurance and arrangement and showing the petitioner has failed in all the subjects. It is submitted that, when the petitioner has already acted on assurance and arrangement made by the College Committee to save his academic year, he cannot be deprived of the advantage of such arrangement so as to lose his academic year. It is urged that there is absolutely no material with the College Authority to show that the petitioner has copied any answer from his mobile phone. Merely because the mobile phone was found on his person, he cannot be penalised by declaring him as failed in all the subjects and giving him zero marks.

10. We are, however, not at all impressed by this submission advanced by the learned counsel for the petitioner. Needless to state that whatever arrangement was arrived at between the College Committee and the petitioner, it is totally against the rules and regulations of the University of Mumbai. As a result the University of Mumbai is not bound by such arrangement. An unfair mean used by the petitioner and the College Authority to condone the act of the petitioner of carrying mobile phone in the examination hall, even assuming that he has not copied answer therefrom, to save his academic year can, in no way be binding on the University of Mumbai. It has to act according to law. Illegality committed by one cannot bind another authority so as to repeat the illegal act by

adopting unfair mean.

11. We, therefore, do not find any fault in the impugned action of respondent No.1 in cancelling the earlier mark sheet and issuing of the new mark sheet to the petitioner, in which he is declared to have secured zero marks in all the papers. Impugned action of respondent Nos.1 & 3 cannot be, even on the face of it, called as illegal so as to invoke the benevolent, discretionary and equitable jurisdiction of this Court.

12. The Writ Petition is, therefore, devoid of any merits and hence stands dismissed.

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