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

WRIT PETITION NO. 303 OF 2016

Arya Sudhir Sudhan ... Petitioner
Vs.
The University of Mumbai and ors. ... Respondents

Mr. Abhinav Chandrachud a/w. Ms Jyoti Sinha i/b Negandhi
Shah & Himayatullah for the Petitioner.
Ms Pranali Dixit i/b Mr. Rui Rodrigues for Respondent No.1.

**CORAM : S.C. DHARMADHIKARI &
M. S. SONAK, JJ.**
DATE : 11 FEBRUARY 2016.

P. C.

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.

5] We see, therefore, no basis in the challenge also for the reasons indicated in the affidavit of the University. However, since the Petitioner has been allowed by the interim order to appear for the examination, the College/Institution is agreeable to release the mark-sheet. Once the mark-sheet is released and if the Policy permits the Petitioner to seek revaluation of the marks assigned in a particular subject, the Petitioner is free to avail that opportunity of revaluation in accordance with the

provisions of law or any statutes or ordinance of the University. Beyond this, we do not think any relief can be granted in this petition. The petition is devoid of merits and therefore dismissed. No costs.

[M. S. SONAK, J.]

[S.C. DHARMADHIKARI, J.]