

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

417

CWP-28175-2013

Decided on : 07.12.2016

Gurinder Pal Singh Chhina

... Petitioner

Versus

PEC University and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.Rupinder S. Khosla, Sr.Advocate with
Ms.Ishrat Phulka, Advocate
for the petitioner.

Mr. R.S. Bains, Advocate for respondents No.1 to 3.

G.S.Sandhawalia, J. (Oral)

Petitioner challenges the order dated 23.10.2013 (Annexure P/3) passed by respondent No.2 whereby registration for 3rd Semester was cancelled. Challenge has also been raised to the decision of the Senate dated 08.11.2013 (Annexure P/5), wherein it was noticed that he would be allowed to move further in the programme only if the conditions are fulfilled after the valuation of the course. He was to be valued during the current semester after covering all components without attending the classes. Accordingly, the said order was also conveyed to him on 18.11.2013 (Annexure P/6).

It is the admitted case of the parties that he had taken admission in July, 2012 in the course of Master of Civil Engineering Program. He passed in all four courses of 1st Semester but he secured marginal points i.e. D grade in the subject of Advanced Mathematics.

He was allowed to improve in the said subject along with course of 2nd semester. He improved his score for the subject of Advanced Mathematics, and secured 08 marks out of 10 marks. Resultantly, his grade from 'D' went up to 'B'. Initially, his CGPA while counting his result at the end of both semesters was 5.25, however, after improvement, it went up to 5.75. He was thereafter given admission in the 3rd Semester and continued attending the classes. Thereafter, he was informed by the impugned communication that he was not eligible as such for moving further on, as the improved marks obtained by him, were not taken into consideration, and he did not have the required *Cumulative Grade Points Average* (CGPA). It is also to be noticed that vide interim order dated 13.02.2014, he was allowed to continue the course and the final result was however, subject to the decision of the writ petition.

Now it is brought to the notice and is not in dispute that petitioner has also been given the degree of Master of Engineering in Civil Engineering (Structures) in September, 2014. Photocopy of the degree awarded alongwith detail marks card have been placed on record.

It is case of the respondents that as per academic rules of M.E. Program, the petitioner cannot register for the same course to improve his CGPA after 1st Semester, which is greater than 4.5 and thus his improved grade B for the course of M.A. 503, is nullified. It is thus, the stand of the respondent that a student cannot register for the

3rd Semester unless he has CGPA greater than 5.5. Resultantly, registration of the petitioner for 3rd Semester was cancelled.

It is apparent to notice that Senate has itself noticed and had come to the conclusion that there was delay on the part of the respondents as such in decision making and therefore, he should be allowed to move in the programme. The relevant part of the discussion which had taken place reads as under:

Item No.	Item	Decision
1.	Improvement case of Mr.Gurinder Pal Singh, SID 1220400, M.E. Structures	The members endorsed the decision Taken by the Dean Academic Affairs office to cancell the Registration of Mr.Gurinderpal Singh China, SID 12204007 in the course MA 503 for the semester 12132. However, it was felt that the student has been put to disadvantage due to delay in taking this decision. It was, therefore, decided that since the student had already done the course in the previous semester, he may be evaluated for this course during the current semester covering all components of evaluation, vis. Mid-term and end-term examinations, assignments, quizzes etc. without attending the classes. But this should not be set as precedence. He shall be allowed to move further in the programme only if all conditions for the same are fulfilled after the evaluation of this course.

Thus, it is apparent that institute had itself allowed the petitioner to move on to the 3rd Semester in spite of the fact the existing rules did not permit so.

Counsel for the petitioner has placed reliance upon the judgment of the Apex Court in *Shri Krishan Vs. The Kurukshetra University, Kurukshetra 1976 (1) SCC 311* whereby it was noticed that once the student was allowed to appear in the examinations, rightly or wrongly, then the statute, which empowers the University to withdraw the candidature, works itself out and the student could not be refused

admission, subsequently, if any infirmity, which could have been looked into before giving the permission to appear. The relevant observations read as under:

“The last part of this statute clearly shows that the University could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear. It was, however, submitted by Mr. Nandy learned counsel for the respondent that the names of the candidates who were short of percentage were displayed on the Notice Board of the College and the appellant was fully aware of the same and yet he did not draw the attention of the University authorities when he applied for admission to appear in LL.B. Part II Examination. Thus the appellant was guilty of committing serious fraud and was not entitled to any indulgence from this Court.

It appears from the averments made in the counter-affidavit that according to the procedure prevalent in the College the admission forms are forwarded by the Head of the Department in December preceding the year when the Examination is held. In the instant case the admission form of the appellant must have been forwarded in December 1971 whereas the examination was to take place in April/May 1972. It is obvious that during this period of four to five months it was the duty of the University authorities to scrutinise the form in order to find out whether it was in order. Equally it was the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirements of law. If neither the Head of the Department nor the University authorities took care to scrutinise the admission form, then the question of the appellant committing a fraud did not arise. It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of suggestio falsi, or suppressio veri. The appellant never wrote to the University authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the University authorities to have found out the defect. In these circumstances, therefore, if the University authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I Examination in April 1972, then by force of the University Statute the University had no power to withdraw the candidature of the appellant. A somewhat similar situation arose in Premji Bhai Ganesh Bhai Kshatriya v. Vice-Chancellor, Ravishankar University, Raipur and others(ii) where a Division Bench of the High Court of

Madhya Pradesh observed as follows:

"From the provisions of ordinance Nos. 19 and 48 it is clear that the scrutiny as to the requisite attendance of the candidates is required to be made before the admission cards are issued. Once the admission cards are issued permitting the candidates to take their examination, there is no provision in Ordinance No. 19 or ordinance No. 48 which would enable the Vice-Chancellor to withdraw the permission. The discretion having been clearly exercised in favour of the petitioner by permitting him to appear at the examination, it was not open to the Vice-Chancellor to withdraw that permission subsequently and to withhold his result."

We find ourselves in complete agreement with the reasons given by the Madhya Pradesh High Court and the view of law taken by the learned Judges. In these circumstances, therefore, once the appellant was allowed to appear at the Examination in May 1973, the respondent had no jurisdiction to cancel his candidature for that examination. This was not a case where on the undertaking given by a candidate for fulfilment 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-fulfilment 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 said judgment was followed by the Apex Court in

Sanatan Gauda Vs. Berhampur University & others 1990 (3) SCC

23 wherein it was held that at the time of the declaration of the result,

the University could not raise the objection of the so-called ineligibility

of the candidate. The relevant observations read as under:-

"11.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 marks-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."

A Division Bench of this Court in **Ajeet Kumar Tripathi Vs. State of Haryana 1998 (4) S.C.T. 73** also held to the same effect that when the admission was cancelled after a long period of study on the ground that the marks obtained was less than 50% in aggregate, it was held, that once there was no fault of the candidate and he had studied for many years, he should be allowed to study in the said course. It was held that in such ambiguous situation, it is not proper to cancel the admission at such a late stage since the clock had moved on.

Keeping in view the overall circumstances and the fact that the petitioner has now passed out, this Court is of the opinion that the interim protection is liable to be confirmed.

Accordingly, in the peculiar facts and circumstances, the impugned order dated 23.10.2013 (Annexure P/3) and the subsequent communications dated 08.11.2013 & 18.11.2013 (Annexures P/5 & P/6) are quashed. The admission of the petitioner is regularized and he is entitled for the final degree.

The writ petition stands allowed accordingly.

[G.S. SANDHAWALIA]
JUDGE

07.12.2016
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes