

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3298 OF 2017

Deepak Agrawal	... Petitioner
v/s	
University of Mumbai and another	... Respondents

Mr Sunny Shah with Ms Nishita Mohanty i/b Mr K.S. Garg for Petitioner.

Mr Rui A. Rodrigues for Respondent No.1.

Mr M. Bohra for Respondent No.2.

Mr C.P. Yadav, AGP for Respondent State.

**CORAM : SHANTANU S. KEMKAR &
B.P. COLABAWALLA, JJ.**

Reserved on : APRIL 19, 2017

Pronounced on : APRIL 25, 2017

Prod.Board dtd.18.04.2017

Sr.No.517.

JUDGMENT [PER B. P. COLABAWALLA J.]:-

1. Though this matter was on our production board, by consent of parties we have heard it for admission.

2. By this Writ Petition filed under Article 226 of the Constitution of India, the Petitioner seeks a writ of mandamus or any other appropriate writ, order or direction against the Respondents to

confirm the Petitioner's admission in the third and final year of the Three Year Degree Course as a law student with Respondent No.2 – College for the academic year 2016-2017.

3. After the Petition was filed, an amendment was sought to be made pursuant to an order passed on 10th April, 2017. Now, the Petitioner also seeks a writ of mandamus or any other appropriate writ, order or direction declaring Respondent No.1's letter / order dated 3rd April, 2017 as null and void. By virtue of this letter (dated 3rd April, 2017), Respondent No.1 – University has inter alia informed the Principal of Respondent No.2 – College that the admission and appearance of the Petitioner in Semester V of LL.B. be treated as null and void as per the VCD and Regulation No.4469.

4. The brief facts giving rise to the present controversy are that the Petitioner is enrolled as a law student in the three year course with Respondent No.2 – College. Respondent No.2 is affiliated with Respondent No.1 – University. The Petitioner claims that he has successfully obtained his masters (M.Com.) Degree from Agra University.

5. In the year 2014, the Petitioner enrolled as a law student

in the three year degree course with Respondent No.2. In the first year (Semesters I and II), the Petitioner appeared for the examination of the aforesaid two semesters in December 2014 and April 2015 respectively. The Petitioner successfully passed all the subjects of Semester I on 23rd January, 2015. As far as Semester II is concerned, except for one subject ('Law of Crimes'), the Petitioner passed all the subjects of Semester II.

6. In the second year of the three year degree course (i.e. Semesters III and IV) the Petitioner appeared for the examination in November 2015 and April 2016 respectively. In Semester III, the Petitioner failed in the subjects 'Administrative Law' as well as the 'The Transfer of Property Act and Easements Act'. As far as Semester IV was concerned, the Petitioner has passed all the subjects. In the second year of the course, the Petitioner also appeared for the examination of 'Law of Crimes' (during Semester III and IV) but failed both times. The Petitioner then applied for revaluation of the results for 'Law of Crimes' which he gave in the IVth Semester.

7. At the time of seeking admission in the Third Year of the Course (i.e. Semesters V and VI), in view of the revaluation pending

in respect of the subject 'Law of Crimes', the Petitioner was granted provisional admission to the Third Year of the Course. In November 2016, the Petitioner was permitted to give the examination for Semester V and also for the subject of 'Law of Crimes'. In the said examination, the Petitioner passed the subject of 'Law of Crimes' and thus successfully passed Semester II of the Course while the Petitioner was in Semester V. Thus, according to the Petitioner, as on date, he has successfully passed all the subjects of Semester I to IV and except for one subject, namely, 'Public Interest Litigation and Human Rights', the Petitioner has passed all subjects of Semester V. It is therefore the case of the Petitioner that he is eligible for admission to the Third Year of the Course and further eligible to give the examination of Semester VI.

8. It is in these circumstances that the Petitioner, after successfully clearing all the subjects of Semesters I to IV, approached the Respondents to confirm his admission to the Third and Final Year of the Course and also submit examination forms for Semester VI. The Petitioner further sought to apply for revaluation of the result that was declared in the subject 'Public Interest Litigation and Human Rights'. However, the Petitioner was denied the same on the ground that the Petitioner was not entitled to sit for

the examination for Semester V itself as the Petitioner had not passed the subject 'Law of Crimes' in the revaluation. In other words, the petitioner was told to reappear for all the examinations of Semester V. It is being aggrieved by this action of the Respondents that the Petitioner is before us in our writ jurisdiction seeking a direction against the Respondents to confirm the Petitioner's admission in the Third and Final Year of the Course for the academic year 2016-2017 as well as for a declaration that the Respondent No.1's letter / order dated 3rd April, 2017 be declared as null and void.

9. In this factual backdrop, Mr Shah, learned counsel appearing on behalf of the Petitioner submitted that the action of the Respondents was wholly illegal and untenable in law. Mr Shah submitted that the Petitioner has today completed and cleared all the subjects in Semesters I to IV. He further submitted that even as far as Semester V is concerned, he has passed all the subjects with the exception of one namely, 'Public Interest Litigation and Human Rights'. This being the factual position, Mr Shah submitted that it was highly unfair for the Respondents to insist that the Petitioner does not qualify to be admitted to the Third Year of the Course and that he would have to reappear for Semester V examination all over

again. In these circumstances, Mr Shah submitted that the Respondents be directed to confirm the Petitioner's admission in the Third and Final Year of the Course for the academic year 2016-2017; be permitted to submit the examination form for Semester VI of the Course; and be allowed to appear for the examination for Semester VI.

10. On the other hand, Mr Rodriques, learned counsel appearing on behalf of Respondent No.1, submitted that the Petitioner was not entitled to appear for the Semester V examination and the result of the same was declared null and void because the Petitioner had not cleared all the subjects of Semesters I to IV viz. 'Law of Crimes'. He submitted that before the Petitioner could get admission in the Third Year (Semester V) or give the examination thereof, it was mandatory for the Petitioner to clear all the subjects of the First Year viz. (Semesters I and II). In the facts of the present case, he submitted that admittedly this was not done as the Petitioner had failed to clear the subject 'Law of Crimes' (subject in Semester II) either in Semester II or Semester III or even in Semester IV. It was only because the Petitioner had submitted his 'Law of Crimes' paper for revaluation that he was granted provisional admission into Semester V as per the Rules framed in

that regard. Not having cleared the subject, as per the Rules, Respondent No.1 was fully justified in declaring the results of Semester V of the Petitioner as null and void and asking him to reappear for Semester V examinations all over again. He submitted that there was nothing illegal or untenable about the decision taken by the Respondent No.1 and hence no interference was called for by us in our extraordinary, equitable and discretionary jurisdiction under Article 226 of the Constitution of India. Consequently, he submitted that the Writ Petition is devoid of any merit and should be dismissed with costs.

11. We have heard the learned counsel for the parties at length and have perused the papers and proceedings in the Writ Petition. It is not in dispute that the Petitioner had failed in the subject 'Law of Crimes' in Semester II. As per the rules, he was still allowed to take admission into Semester III and in the examination held in November 2015 he once again attempted and failed in subject 'Law of Crimes'. Alongwith this, the Petitioner had also failed in the subjects 'Administrative Law' as well as 'The Transfer of Property Act and the Easements Act' (in Semester III). Thereafter, in Semester IV, the Petitioner passed in the subjects 'Administrative Law' and 'The Transfer of Property Act and the Easements Act' but

failed in the subject 'Law of Crimes'. As far as the other subjects of Semester IV are concerned, it is the case of the Petitioner that he cleared all the subjects.

12. It is therefore clear that the subject 'Law of Crimes', and which was the subject in Semester II (in the First Year Course), had not been cleared by the Petitioner even at the end of the Semester IV (by the end of Second Year Course). This being the position, under normal circumstances, the Petitioner could not be given admission in Semesters V and VI (the Third Year of the Course). This is clear from Rule 4469 of the *Ordinances and Regulations and Syllabus for the 3 years and 5 years Law Degree Course by Semester System*. Rule 4469 reads thus :-

"Fifth Semester of 3 years LL.B. Course

R.4469: A Candidate for being eligible for admission to Fifth Semester of 3 years LL.B. Course - must have passed in all the Papers of First and Second Semesters, and must have either passed in the Third and Fourth Semesters or must have got exemption in at least six Papers (excluding Practical Training Paper) of the Third and Fourth Semesters."

13. As this rule clearly stipulates, a student has to clear all papers of Semester I and II and must have either passed Semesters

III and IV or must get an exemption in at least six papers of Semesters III and IV, before he can get admission in the Vth Semester.

14. Thereafter, the University framed *Rules and Procedure for providing the Photo / Xerox copies of assessed answer-book/s to the examinee and Process of Revaluation of the Answer-book/s of the examinee who apply for the revaluations*. Part II of these Rules deal with the procedure for revaluation of answer-books. Rule 45 inter alia provides that pending the process of revaluation, and subject to the availability of the seats in the college, the student may be admitted to the next higher class to which he could have been admitted as if he / she had passed in the said examination or had been granted A.T.K.T. for admission to the next class in the original examination as per the rules applicable for the stream and faculty of his / her education, as per certain norms that were to be followed as set out in the said Rule. This Rule categorically states that such admission shall be provisional, and automatically stands cancelled on receipt of the result of revaluation process, if the student is not declared passed in the requisite number of the subjects on revaluation which would entitle him / her to take admission in the next higher class. For the sake of convenience, Rule 45 is

reproduced hereunder and reads thus :-

"45. Pending the process of revaluation, and subject to the availability of the seats in the college, the student may be admitted to the next higher class to which he could have been admitted if he / she had passed in the said examination or had been granted A.T.K.T. for admission to the next class in the original examination as per the rules applicable for the stream and faculty of his education, as per the following norms :-

- (i) The student may be admitted to the next higher class to which he could have been admitted if he / she had passed in the said examination or had been granted A.T.K.T. for admission to the next class in the original examination as per the rules applicable for the stream and faculty of his / her education, if he / she had originally obtained required passing marks in the papers in which he / she had applied for revaluation,**
- (ii) The college shall be entitled to charge fees of Rs.500/- at the time of granting admission to such students to the next class before declaration of the result of the revaluation,**
- (iii) such admission shall be provisional, and automatically stands cancelled on receipt of the result of revaluation process, if the student is not declared passed in the requisite number of the subjects on revaluation which would entitle him / her to take admission in the next higher class, and in such case the fees originally collected by the college or any part of the same shall not be refunded."**

15. On a plain reading of the aforesaid provisions viz. Rule 4469 of the *Ordinances and Regulations and Syllabus for the 3 Years and 5 Years Law Degree Course by Semester System* as well as Rule 45 of the *Rules and Procedure for providing the Photo / Xerox copies of assessed answer-book/s to the examinee and Process of*

Revaluation of the Answer-book/s of the examinee who apply for the revaluations, what is clear is that ordinarily the Petitioner could not have taken admission into Semester V without clearing all subjects in Semesters I and II. In the facts of the present case, admittedly the Petitioner at the time of taking admission into Semester V had not cleared the subject 'Law of Crimes' in Semester II. Despite two other attempts in Semesters III and IV, the Petitioner had not cleared the said subject. Ordinarily, if Rule 45 was not there, the Petitioner could not have taken admission into the Semester V at all. However, Rule 45 carved out an exception that where a student had applied for revaluation of the subject in which he had failed, then, he was to be granted provisional admission, and it would stand automatically cancelled if he did not pass in the revaluation.

16. In the facts of the present case, admittedly, the Petitioner gave the examination for the 'Law of Crimes' in Semester IV and did not clear the same. Thereafter, he applied for revaluation wherein he failed again. This being the case, the provisional admission that was given to him in Semester V, as per Rule 45, automatically stood cancelled. This being the case, we find that Respondent No.1 - University was fully justified in issuing the impugned communication dated 3rd April, 2017 under which the University

informed the Principal of Respondent No.2 - College tht since the Petitioner had failed to clear his Semester II, his admission and appearance in Semester V be treated as null and void as per VCD and Regulation No.4469. We find that this decision of the University cannot be faulted on any ground as it is strictly as per the Rules and Regulations reproduced by us earlier. It makes little difference that the Petitioner has now appeared and passed in the subject 'Law of Crimes'. At the time when he took admission in Semester V, admittedly, the Petitioner had not cleared 'Law of Crimes' and neither was he successful when the revaluation process was done. In these circumstances, we fully agree with Mr Rodriques, learned counsel appearing on behalf of the University, that the action taken by the University in issuing the impugned communication dated 3rd April, 2017 is fully justified and cannot be faulted.

17. In view of the foregoing discussion, we find no merit in this Writ Petition. It is accordingly dismissed. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

(B. P. COLABAWALLA, J.)

(SHANTANU S. KEMKAR, J.)