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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7409/2016, CM No. 30439/2016

LAMNEILUN KHAUTE

..... Petitioner

Through: Mr.Arvind K.Nigam, Sr. Adv. with
Mr.Manoj Ohri, Sr. Adv.,
Mr.Arunabh Chowdhury, Mr.Vaibhav
Tomar, Mr.Karma Dorjee, Ms.Shruti
Choudhry, Mr.Mikhil Sharda, Advs.

versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Through: Mr.Amit Bansal, Adv. with
Ms.Seema Dolo, Adv. for Delhi
University
Mr.Pranav Kumar Jha, Adv. for R2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **22.05.2017**

1. Mr. Amit Bansal, learned counsel for the respondents 1, 3 and 4 would submit that he has instructions to argue the matter.
2. Heard the learned counsel for the parties.
3. Mr. Arvind Nigam, learned Senior Counsel for the petitioner would submit that the petitioner was a regular student of BA (Honours) History in respondent No.2 College i.e Satyawati College affiliated to Delhi University

In the second year of the said B.A. (Honours) Course, the petitioner opted for Economics as his subsidiary subject comprising of Paper-I (Micro Economics) and Paper-III (Economic Development in India). He states, the petitioner had not opted for Paper-II (Macro Economics).

4. The petitioner did not sit for the examination in his subsidiary papers, (Paper-I and Paper-III) in the examination held in the year 2008. The mark sheet, that was issued by the respondent No.1 dated February 13, 2009 bearing Serial No. 163 marked the petitioner absent in his subsidiary papers.

5. According to Mr. Nigam, the petitioner in the final year of his B.A. (Honours) degree course appeared in the two subsidiary papers, which he had abstained from in the second year. After the results were declared by the respondent No.1 University, the petitioner was issued the mark sheet bearing Serial No.739 wherein with regard to subsidiary papers in which the petitioner had duly appeared, the petitioner was given 12 marks in Paper-I and was wrongly shown as absent in Paper-II, which the petitioner had not opted. According to Mr. Nigam, the respondent No.1 however, while issuing the mark sheet for the final year B.A. degree course dated August 3, 2009 made an endorsement to the effect that the petitioner was eligible for a B.A. (Pass) degree without division instead of B.A. (Honours) degree.

Though, the petitioner still had one year to reappear in the subsidiary papers, he opted to accept B.A. (Pass) degree instead of B.A. (Honours) degree and also gave an undertaking to the respondent No.2 College that he would not reappear in any of the subsidiary papers. The respondent No.2 accordingly, issued a Provisional Certificate on August 25, 2009 to the petitioner declaring the petitioner successful of having passed B.A. (Pass) degree course from the respondent No.1 University. Based on the mark sheet issued by the respondent No.1 dated August 3, 2009 and the Provisional Certificate dated August 25, 2009 by the respondent no.2, the petitioner proceeded to pursue his higher education by enrolling himself in the LL.B. degree course, which he has completed in 2014.

6. Mr. Nigam also states that the petitioner approached the respondent No.2 to collect his B.A. (Pass) degree, when the College authorities checked the records and could not locate his degree. Mr. Nigam states, when the petitioner again visited the respondent No.2 College on July 31, 2015 to collect his B.A.(Pass) degree certificate, the petitioner was asked to fill an application form and come after 25 days. When the petitioner visited the College in the month of August, 2015, he was shown a copy of letter dated August 8, 2015 addressed to the Principal of respondent No.2 College by the

Deputy Controller of Examination, wherein it was inter-alia stated that the candidate is not eligible for B.A. (Pass) without division degree. They have asked the College to provide a copy of the result notification with an indication that the student is eligible for B.A. degree without division certificate.

7. Mr. Nigam states, the petitioner met the Deputy Controller of Examination and requested him to issue him B.A. (Pass) degree certificate. The Deputy Controller of Examination informed him that he was not eligible for B.A. (Pass) degree on account of non clearance of subsidiary papers, which stand according to Mr. Nigam is at variance with the endorsement by the University on the mark sheet dated August 3, 2009 that the petitioner is eligible for B.A. (Pass) degree without division. Mr. Nigam also draws my attention to the representation made by the petitioner to National Commission for Scheduled Tribes and the pleadings made by the parties before the said Commission. In this respect, it is necessary to state that the respondent No.3 herein admitted that there was a mistake in the mark sheet issued to the petitioner on August 3, 2009. Mr. Nigam would rely upon the following judgments in support of his contention that the respondent no.1 cannot now deny the petitioner the BA (Pass) without division degree, when

the petitioner has pursued his further education and has acquired LLB Degree also. He states, the impugned action shall result in the petitioner loosing BA (Pass) degree and also LLB Degree which is unsustainable.

(i) W.P.(C) No. 249/1985 T.H. Srinivasa v. Bangalore University decided on January 29, 1985;

(ii) W.P.(C) No. 2023/2012 Parvesh Kumar v. University of Delhi decided on May 22, 2013.

8. Mr. Amit Bansal, learned counsel appearing for respondents 1, 3 and 4 has taken the objection that the present petition is barred by delay and laches. That apart, he states that a degree of B.A. (Pass) without division is awarded to a student subject to fulfilment of eligibility conditions prescribed by the University. As the petitioner had failed in subsidiary Papers, i.e., Paper-I and III of Economics, he could not have been awarded B.A. (Pass) degree. As per the Rules, it is required that a student to be eligible for award of B.A.(Pass) degree to clear all parts i.e I, II and III and score at least 25 out of 100 in any one of the subsidiary subjects, which the petitioner had not scored. Further, he states that the petitioner has not appeared in the supplementary examination in the subsidiary papers despite having failed in the same and span period of completing B.A. (Honours) is five years from the date of admission, which period has lapsed in the year 2009. Hence, the

petitioner is not eligible to reappear in the examination to pass the subsidiary papers. He concedes that the endorsement on the mark sheet of the petitioner dated August 3, 2009 was not in consonance with the Rules and Ordinance of the University and the same was in the knowledge of the petitioner. It is his submission that the petitioner cannot take any benefit of the endorsement on the mark sheet as there cannot be estoppel against the Rules and Regulations.

9. Having heard the learned counsel for the parties, the facts are not disputed. It is also not disputed that an endorsement was made on the mark sheet dated August 3, 2009 issued to the petitioner to the effect, “*he was eligible for the grant of B.A. (Pass) without division or to reappear in EC failed.*”

10. If that be so, it was a sufficient representation by the University to the petitioner that he can be awarded B.A. (Pass) degree. The reliance placed by Mr. Amit bansal on the judgment in ***LPA No. 473/2014 Bidisa Chakraborty v. Indira Gandhi National Open University (IGNOU) decided on August 01, 2014*** that there is no estoppel against the Rules & Regulations is concerned, there is no dispute on the said preposition but the facts in this case would become relevant, inasmuch as the petitioner after

obtaining the degree of B.A. (Pass) without division, has pursued LL.B. course and completed it. During this period, the respondent / University did not make any attempt to recall its representation to the petitioner by stating he was not entitled to BA Pass Degree. The date of the mark sheet is August 3, 2009. Seven years have passed thereafter. During this period, the span period has also elapsed. If the respondents stand needs to be agreed to, the petitioner would lose his BA pass Degree so also LLB Degree, that apart the span period having expired, the petitioner cannot write his supplementary papers, i.e., Paper I and Paper III now. In so far as the reliance placed by Mr. BanasI on the judgment of the Division Bench of this Court in ***Bidisa Chakraborty (Supra)*** is concerned, there the Court was concerned with the facts that the appellant therein prior to appearing in the examination on 9th June, 2012 had checked her admission status on the website of the respondent University and it was showing her admission year as July, 2004 and her admission is valid up to June, 2012. It was further the case of the appellant that she had, prior to appearing in the Examination on 9th June, 2012 also met the Assistant Regional Director of the respondent University in the month of December, 2011 and in which meeting also she was assured that since her registration was valid till June, 2012 she could appear in the

examination in the said paper in June, 2012. It was her case that after she had filled online form on 11th March, 2012, she was issued admit card and was allowed to take the examination. Learned Single Judge dismissed the writ petition by observing that the University had a window of 21 days to issue all admit cards and the same are issued on the basis of self-certification by the candidates of they being eligible to take the examination. Thus, the admit card issued was only provisional and complete scrutiny of particulars is done before declaration of results and not before issuance of admit card and that oral assurance or issuance of admit card or estoppel shall not apply to a written stipulation restricting the maximum duration of the course to 8 years and that since the span period of 8 years for completion of MBA Course had expired in December, 2011, the University was justified in not declaring the appellant's results. The Division Bench in the Appeal relied upon the Judgment of the Supreme Court in the case of *Maharshi Dayanand University vs. Surjeet Kaur 2010 11 SCC 159*, wherein the Supreme Court has unequivocally reiterated, the promissory estoppel does not apply against the statute and the Government authorities cannot be barred from enforcing the statutory provisions. It was also held by the Supreme Court that the conduct of the University in allowing the students to

pursue the course even though the student had no statutory or vested right to pursue the same cannot by any logic be treated to be a conduct which can confer any such right on the student. The Division Bench of this Court noted that it is not disputed that the appellant took admission in January, 2004. It is not the case of the appellant that the Rule regarding maximum period in which she could complete the course was not known to her, as per which the period in which she could complete the course expired in December, 2011 / January, 2012. The appellant still filled the form for taking examination on a date after the expiry of the said period. The appellant clearly acted in violation of the Rule of the respondent University. It was known to her and is thus equally guilty. The Division Bench also held that the object of the principle of estoppel which is sought to be invoked is to prevent fraud and secure justice between the parties by promotion of honesty and good faith. Suffice to state on facts the judgment of the Division Bench of this Court is distinguishable inasmuch as it was on the basis of representation of the University, the petitioner had decided to accept the BA Pass Degree without Division. He proceeded further in life and pursued the LLB Course, and completed the same in the year 2014.

11. There is no representation on behalf of the petitioner which resulted in

the University issuing BA Pass Degree without division. Nor it is the case of the respondents that the petitioner has played fraud. The petitioner has acted in good faith. No doubt the University Rules and Regulations stipulates that BA Pass Degree can be issued if the petitioner had secured 25 out of 100 marks in one of the subsidiary subjects. Concedingly, the petitioner does not have 25 marks. The question would arise whether on this ground and in these facts, petitioner shall not be entitled to BA (Pass) degree without division.

12. This Court is of the view that in the facts of this case, such an action cannot be resorted to as that would be a case of manifest injustice leaving the petitioner high and dry without a qualification of BA (Pass) and LLB at this point of time in life.

13. Mr. Nigam, would rely upon the judgment of the Karnataka High Court in the case of *T.H. Srinivasa (supra)*, wherein the Karnataka High Court was dealing with the facts where the petitioner therein appeared for the first year B.Sc. degree examination of the Bangalore University in the year 1977. According to the mark sheet, the petitioner has passed in all the subjects except Kannada and Physics Theory. He appeared for the two failed subjects in October, 1977. According to the mark sheet of March 05,

1978, he passed in both the subjects having secured 43 and 45 marks respectively (35 marks were required for Pass). The petitioner appeared for the IInd year B.Sc. examination held in April, 1978. According to the mark sheet dated February 28, 1979 he failed in the subjects, in which he has secured only 28 marks. He appeared for the said subjects once again in October 1978 examination. According to the mark sheet dated January 15, 1979, he passed the examination. Thereafter, the petitioner appeared for the final year degree examination in April 1979. According to the mark sheet dated June 14, 1979, he passed in all the subjects except in Chemistry as he secured only 27 marks. He appeared for the said subject in October 1979 examination. According to the mark sheet, the petitioner passed the said subject and in the remarks column it was entered as "*COMPLETES*". The petitioner thereafter, joined the B.Ed. degree course and appeared for the B.Ed. degree examination of the Bangalore University held in June 1984, which exam he passed in second class. Thereafter, he was appointed as teacher in a High School, Gandhinagar, Kolar. For the purpose of approval of his appointment, he was required to produce the degree certificate. When he sought for the B.Sc. degree certificate from the Bangalore University an endorsement dated December 9, 1984 was issued, inter-alia stated that the

petitioner in that case has not passed English paper in I year B.Sc held during April, 1979. Hence, his application for issue of degree certificate cannot be considered. The application for degree certificate was returned. It was in that background that the petitioner therein filed a case before the High Court of Karnataka. The Karnataka High Court, in paras 8, 9 and 10 held as under:-

*“8. In my opinion, this is a case in which the principle of equitable estoppel should come to the rescue of the petitioner to prevent manifest injustice to the petitioner as indeed the doctrine of equitable estoppel incorporated in Section 115 of the Evidence Act is, to prevent manifest injustice to one who had acted on the basis of the representation of facts made by the other. (emphasis supplied) The effect of applying the principle of equitable estoppel does not mean that the University would be compelled to issue a degree certificate to a student who has failed, contrary to its regulations. The principle is that the University would be prevented from going behind the marks card according to which the petitioner had passed in English, at this distance of time and after the petitioner had passed the final degree examination as also the Post-Graduate degree course. In other words the University would be prevented from taking a stand on a question of fact, contrary to what it held out as existing, for all these years, on which basis both the University and the petitioner have acted. **It is a rule of***

evidence incorporated in Section 115 to prevent manifest injustice.(emphasis supplied). Undisputedly the petitioner had acted on the basis of the marks card and appeared for the subject of Kannada once again and passed in October 1977 examination. If the correct marks secured by him was entered in the marks card, instead of appearing for Kannada, he would have appeared for English. Apart from that, the following events have subsequently taken place :

- (1) The petitioner passed the II year degree examination in 1978.
- (2) The petitioner passed the final year degree examination in 1979.
- (3) The petitioner got himself admitted to the post-graduate B.Ed. degree Course in the academic year 1983-84.
- (4) The petitioner passed the B.Ed. degree examination in II Class in June 1984.
- (5) The petitioner has also been appointed as a teacher, for which not only the degree qualification but also degree in education are the minimum qualifications required according to the Rules now in force.

9. After all these events had happened and after more than 7 years has elapsed from April, 1977, the University cannot be permitted to make a somersault and say that the marks card issued by it as early as on 20th May, 1977 (Annexure-A) is no evidence of the petitioner's passing the English paper in I year degree course.

10. The above principle is laid down by the Madras High Court in *Registrar, University of Madras v. Sundra Shetti and others*, AIR 1956 Madras 309. The Division Bench of the Madras High Court disposed, of three cases by a common Judgment. In two cases the candidates though they had actually failed in the S.S.L.C examination were declared to have passed in the examination. On the basis of the said result, they joined intermediate class. After they passed the first year inter-mediate examination and when they were studying in the second year intermediate class, they were told that they had failed in the S.S.L., examination and, therefore, they were required to appear for S.S.L.C, examination once again and consequently their admission to the college also stood cancelled. They questioned the legality of the decision. In the third case also though the candidate had failed in the S.S.L.C. examination and there was a declaration to the effect that he had passed in the examination, shortly there-after within about 3 months after his joining the intermediate class, the mistake was noticed and the earlier declaration was cancelled and he was declared to have failed in the examination. Chief Justice Rajamannar speaking for the Bench, while upholding in principle the power of the University to rectify any mistake made in announcing the result or issue of certificate, accepted the plea of equitable estoppel in the first two cases as by the time the mistake was sought to be corrected, the two candidates had already passed the Junior Intermediate class and were studying in the Senior Intermediate

class and rejected it in the third case, as the mistake was rectified within a reasonable time. The ratio of the first two cases applies with greater force to this case.”

14. From the above, it is noted that even the Karnataka High Court has held that University cannot be compelled to issue a Degree Certificate to a student who has failed, contrary to its regulations. The High Court has also held that doctrine of equitable estoppel is to prevent manifest injustice to one who had acted on the basis of the representation of facts made by the other. The Supreme Court also in *Maharshi Dayanand University (supra)* has held similarly inasmuch as there can be no estoppel / promissory estoppel against the legislature in the exercise of the legislative function nor can the Government or public authority be debarred from enforcing a statutory prohibition. The Supreme Court also held that promissory estoppel being an equitable doctrine must yield when equities so requires. As noted above, in the case in hand, it is on the representation of the University that the petitioner has accepted the BA Pass degree without division. It is not the case of the respondents that the petitioner has played fraud. The facts of the case are similar to the one noted by the Karnataka High Court and the Karnataka High Court in order to prevent injustice has held in favour of the petitioner in that case and allowed the writ petition directing the Bangalore

University to issue B.Sc. Degree Certificate to the petitioner.

Similarly in the facts of this case, this court is of the view that to prevent manifest injustice, a direction needs to be issued to the respondents to issue BA Pass Degree Certificate without division to the petitioner. I may also simultaneously note that during the course of his submissions, Mr. Nigam had stated that the petitioner is still ready and willing to appear in the subsidiary papers of Economics i.e. Paper I & III. This Court is of the view that no Mandamus can be issued to the respondent University to conduct a fresh examination in the subsidiary papers of Economics, i.e., Paper I and Paper III, that too after the span period has elapsed. It is for the petitioner to make such a request and the respondent University to consider such request. If the petitioner is desirous to make a representation then it should be made on or before 10th July, 2017, which shall be considered by the respondents in accordance with Rules and Regulations and if the decision is taken in favour of the petitioner, the examination in the subsidiary papers, i.e., Paper I and Paper III be held in the month of September, 2017. If it is otherwise, then the petitioner should be contented with BA pass Degree, without division.

15. In view of my conclusion above, the petition is disposed of. No costs.

CM No. 30439/2016

Dismissed as infructuous.

V. KAMESWAR RAO, J

MAY 22, 2017/ak

