

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11050 OF 2018

Anil K. Sharma

.. Petitioner

Versus

Narsee Monjee Institution of
Management Studies and ors

.. Respondents

...

Mr. Kishor Patil with Amol Mhatre and Abhijit Patil for the petitioner.

Ms.Manorama Mohonty with A.P. Singh I/b S.K. Srivastava for respondent no.1.

Mr.S.B. Kalel, AGP for respondent no.2 State.

**CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 24th NOVEMBER 2018

P.C:-

1 This Writ Petition under Article 226 of the Constitution of India prays for the following two reliefs :

- (a) Be please to issue appropriate writ or direction whereby directing, calling for the record and proceedings with respect to the inquiry conducted by “Unfair Means Inquiry Committee” of respondent no.1.

- (b) Be please to issue appropriate writ or direction whereby directing, the Hon'ble Court may be pleased to direct Respondent No.1 to act upon on representation dated 18.08.2016 (Exh.M) made by petitioner and take appropriate action.

2 The petitioner says that the impugned communication proceeds on the footing that the petitioner has admitted the guilt and, therefore, the petitioner is not entitled to an opportunity of hearing. The argument is that the principles of natural justice have been breached and violated. This argument belies the fact that the petitioner's son on his own saying was admitted in the first respondent University for the MBA Technical (Information Technology) Course. The petitioner's son is a student of the Second Year course. The petitioner has proclaimed that his son has throughout been a meritorious student with a good academic record. The petitioner says in the writ petition itself that he had filed a Writ Petition No.9073 of 2017 in this Court and when that petition was placed before this Court, it came to be withdrawn.

3 The petitioner has relied in paragraph no.10 of this petition on the Rules and Regulations and particularly the ATKT and promotion Rules. The petitioner's son was declared failed because he resorted to Unfair Means. The petitioner says that the earlier Writ Petition was withdrawn after a statement was made that the petitioner's son would be allowed to prosecute his studies and can appear at a re-examination. It is claimed in the writ petition itself that the petitioner's son appeared for a re-examination, but in that he was falsely failed in a cheating offence and implicated. The entire incident is narrated in paragraph nos.17 and 18.

4 The petitioner is aware of a show cause notice issued to him, a copy of which is at Exhibit-D to the petition.

5 The petitioner also appeared before the Unfair Means Inquiry Committee and later on, was visited with a penalty. Once that was served, the petitioner instituted the earlier writ petition. The petitioner had approached the Vice Chancellor prior to filing of that writ petition and to our mind,

that writ petition having been withdrawn by the petitioner himself, disentitles him now to question the action of the University.

The petitioner then claims that the impugned communication of 24th August 2018 informs him that his son is not eligible to be promoted to the next term/year of the programme in the Academic Year 2018-19.

6 This, according to the petitioner's Advocate, gives him a right to approach this Court again. This is a subsequent development and providing therefore a fresh cause of action.

7 In the affidavit in reply, it has been pointed out that the petitioner has not set out the true and correct facts. The petitioner's son is the student of the First Respondent in this MBA course which is of five year duration. Each year has Two Semesters. The son appeared for the II Semester of the First Year in May 2017 for 7 subjects but he failed in two. Then, he appeared in the re-examination for the two subjects of that

Semester and he passed in Computer Programming-II, but failed in Engineering Mathematics-II. He approached the Grievance Redressal Cell of the first respondent. However, that Cell declared him failed. Again, he appeared for a re-examination held in May 2018 for this remaining subject but could not succeed. He again approached that very Grievance Cell and there was no change in the marks. Later on, he appeared for a re-examination in July 2018 and was declared pass. Thus, he passed in all subjects of both semesters of First Year of the said course. Then, he appeared for 9 subjects of the third Semester of Second Year held in December 2017. Out of said nine subjects, he failed in three and this time, he did not approach the Grievance Cell. He appeared for eight subjects in the subsequent-IV (Semester) of the Second Year and this examination was held in May 2018. He failed in two subjects i.e. Computer Network and Micro Processor and Micro Controller. He applied to the Grievance Redressal Forum for change of marks, but he was not declared pass in these two subjects and hence, he took re-examination for the two subjects of the Second Year Semester IV in May 2018. This was the

exam at which the petitioner's son was found to have used Unfair Means. The Unfair Means Committee, in the meeting held on 8th June 2018, recommended Annulment of Performance in full i.e. all papers of the re-examination. It is in these circumstances that the petitioner's son was informed and it is pertinent to note that this action could have been challenged in the earlier writ petition but was not challenged then.

8 Today, it is submitted that this action is contrary to the principles of natural justice, but it is evident that the petitioner's son was allowed to appear for a re-examination in the two subjects held in July 2018 but he again failed. Thus, it is a case of the petitioner blowing hot and cold. The petitioner's son cannot be allowed to enter the third year of the said course as he has failed in more than three subjects of the Second Year. Now, re-examination of the third and fourth semester of the Second Year is to be held in November 2018 and May 2019.

9 We are of the firm opinion that in such academic matters and when the petitioner is aware of the Rules and Regulations and the required standards which have to be maintained, this is not a fit case for interference in our extraordinary, equitable and discretionary jurisdiction under Article 226 of the Constitution of India.

10 All the more, there are no denials of the factual assertions on behalf of first respondent University in its affidavit in reply dated 9th October 2018.

11 As a result of the above discussion, we do not find any merit in this writ petition and it is dismissed.

12 No order as to costs.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)