

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3035 OF 2018

Bhagyshree Vijay Patil

.... Petitioner

Vs.

R.P. Gogate College of Arts & Science
and R.V. Jogalekar College of Commerce
& 3 Others

.... Respondents

Mr. Suresh M. Sabrad with Mr. Rahul Karnik for the
Petitioner.

Mr. R.D. Suryawanshi for Respondent Nos.1 & 2.

Mr. Rui A. Rodrigues for Respondent No.3-UoM.

Mr. M.M. Pable, AGP, for Respondent No.4-State.

CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.

DATE : NOVEMBER 18, 2019

P.C:

1. By this writ petition under Article 226 of the Constitution of India, the petitioner is seeking a direction to the respondents to allow her to file the examination form for Semesters-V and VI of the Bachelor of Science (Physics) Course conducted by respondent No.3.

2. The action, which according to the petitioner resulted in not allowing her to file the examination form, briefly stated is that, the 1st and the 2nd respondent, respectively, are the college and the Management conducting the college

whereas the 3rd respondent is the University of Mumbai and the 4th respondent is the State of Maharashtra.

3. The respondent Nos.1 to 3 are the academic bodies and the petitioner was enrolled for this graduation course in the 1st respondent from the Academic Year 2015-2016. The petitioner is a resident of Mumbai. The petitioner says that, there are communications addressed to the father of the petitioner whereby it is revealed that the petitioner attended Physics practical in June, July and August, 2017 and September and October, 2018. The petitioner had the requisite attendance as well. Thus up till the Academic Year 2017-2018, there was never an issue with regard to the legality and validity of her admission. The petitioner was also allowed to use the hostel facility. The petitioner was issued a temporary Identify Card. She has thus been considered as a *bona fide* student. The examination fees for the 5th Semester were also accepted. Like any other student, she was given a hall ticket. When that was issued, she noticed that the spelling of her mother, Mrs. Varsha Vijay Patil, was wrongly recorded. She thought that her hall ticket should not contain this error and, therefore, she approached the concerned college faculty. It appears that the petitioner was requested to handover the hall ticket issued by the University for the 5th Semester so that the college can rectify the name of her mother. She was also requested to

handover the original fee receipt for all the three academic years as well as the mark-sheets. Thus, all original records pertaining to her admission were directed to be handed over. The petitioner handed over a folder containing the documents. However, the college kept the documents and returned the empty folder. Later on, the Warden of the hostel called the father of the petitioner and brought to his notice the fact that the petitioner is not a student of the college. Her admission itself is not genuine and valid. Therefore, the hostel facility had to be withdrawn.

4. The petitioner and her father made inquiries with the college Principal who claimed that the petitioner had not cleared the First Year of the Bachelor of Science (“**B.Sc.**”) Course. She could not, therefore, have been admitted in the Second and the Third Year. The petitioner denies this fact and says that there is no truth in this allegation for she was regularly attending the course and the classes, participating in the extra-curricular activities and residing in the hostel. She was also allowed to take benefit of other academic activities. The petitioner also says that the original documents do not reveal any interpolation or over-writing. The petitioner has filed a police complaint and therefore on the strength of all these, she prays that she should be allowed to pursue the course.

5. After perusal of the writ petition and the annexures thereto, so also the affidavits filed on record, it is not possible for us to grant any relief in writ jurisdiction.

6. The communication at Exhibit "A" (page 24 of the paper-book) dated 4-12-2017, from the 1st respondent college to the father of the petitioner, says that the petitioner was not admitted as a regular student. She obtained a false temporary Identity Card with Roll No.214 and sat for the T.Y.B.Sc. lectures in the concerned class room. In fact Roll No.214 is assigned to one student who is studying in Microbiology course. The petitioner, however, on the strength of this card, was claiming to be a *bona fide* student of B.Sc. (Physics) Course. She was every time giving an explanation that her original Identity Card is lost. Some time she would say that she has forgotten the same at her residence. Then, when the falsity of her claim was revealed and it was brought to her notice that such conduct was not expected from a student, she gave a writing, voluntarily, and in that writing she says that she was aware that she could not have been admitted to this course as she was ineligible. She and her parents realised that she may have to sit at home. It is because of this fear that she indulged in the act attributed to her. She has now been admitted to this course in the said college. It is in these circumstances and on obtaining the knowledge from the petitioner, her father was summoned.

She accepted that she gave this statement in her handwriting. It was also voluntary. However thereafter, she turned around and made further false allegations. The college brought to the notice of the petitioner and her parents that such an act ought not to have been committed by a student. The college has provided every assistance to her but on realising that her whole claim was not genuine and false so also her admission was bogus, that the college decided to take a serious view of the matter. It is in these circumstances that her appearances in the prior examinations were treated as erroneous, illegal and invalid and they were cancelled. She was declared as an ineligible student. It is in these circumstances, the petitioner was called upon to produce the genuine documents with regard to her admission. The documents which the petitioner produced revealed that there is no contemporaneous record with regard to her admission. The petitioner could not produce any document admitting her in the Second Year. She took admission on the strength of a fee receipt but a scrutiny thereof reveals that it evidences payment of fees for the First Year Course. She, therefore, could not have been admitted in the Second Year Course. She has not been admitted in the Third Year as well. There is no proof of her admission for the Second and Third Year. The petitioner has produced copies of the results for the First and Second Years. The petitioner does not state that she appeared for the 1st Semester in the First Year twice, and in the

2nd Semester of the First Year but she had failed. She could not have been, therefore, admitted in the Second Year. Yet the petitioner claims to have cleared the Second Year, but the Second Year's 1st Semester examination hall ticket has not been produced. There is no mark-sheet issued by the college as well. The petitioner has misled the college by producing a fee receipt but that shows that she had obtained the facility (ATKT) for the First Year 1st Semester. As far as the hostel is concerned, that facility was not extended by the college to her. The petitioner claims that she has taken the practicals but it is clear that as far as these practicals are concerned, the records in relation thereto are not maintained after six months.

7. The petitioner goes on challenging this assertion of the college by filing an affidavit in rejoinder. The college, consistent with this communication, filed an affidavit in reply. That affidavit in reply deals with the case of the petitioner as projected in the memo of the writ petition. The college terms the petitioner to be guilty of forgery and cheating. It has up till now taken a lenient view. However, if the permission to appear for the examination had not been denied to her, she would have continued and brought disrepute to the institution as well as the University. The college has denied that it issued to the petitioner a temporary Identity Card. That is again a forged document, according to this college. The college relies upon the

apology tendered by the petitioner in her own hand-writing on 12-11-2017. However, the petitioner admits, in the affidavit in rejoinder, that she got an ATKT in the 1st Semester of the First Year but she appeared for her 2nd Semester, reappeared for 1st Semester and was declared passed for the First Year Course. That is how she says she was eligible for admission in the Second Year. Then she says that she has cleared successfully the 3rd and 4th Semesters (Second Year of the B.Sc. Course) from the 1st respondent college securing "O" grade. However, the original documents were taken away by the staff representative. Thus the petitioner says that she is not guilty of any fraud or forgery. Thus according to the petitioner, she has attended the college as a *bona fide* student. The petitioner has given an explanation but she does not say anything in the first affidavit in rejoinder about the writing relied upon by the college dated 12-11-2017. The petitioner says that she has filed a complaint against the staff representative Ms Shirgaonkar and the college in the concerned police station at Ratnagiri. The college, however, says in the affidavit in reply filed in this petition that this Course is of three years. The petitioner may claim that she has entered the college as a *bona fide* student. However, the petitioner has no proof of having cleared the requisite examination for admission to the Third Year of the B.Sc. (Physics) Course. The annexures to the petition which have been relied upon clearly indicate that the petitioner did not

clear the First Year of the Course. The petitioner failed to clear the ATKT examination for the First Year, thereby rendering herself ineligible for admission to the Second Year Course. Thus as per the Rules and Regulations framed by the University, the petitioner was not eligible to be admitted to the course.

8. Therefore, there is no question of allowing her to appear in the Semester-V examination.

9. The petitioner goes on denying this fact by filing an affidavit in rejoinder but what we find is that her participation in some events or academic activities are not enough to disregard the serious allegations against her. The petitioner's assertion would not falsify the case of the Management against her. Even the admission in the hostel, to our mind, is not a conclusive proof of the petitioner being a *bona fide* student.

10. To our mind, the petitioner realising that she has accepted the guilt, executed a writing on 12-11-2017 admitting the allegations against her, as an after-thought, filed this writ petition. She has also filed affidavits in rejoinder. We find that the petitioner could not have faulted the college by approaching the police. The conduct of the petitioner is such that she ought to be proceeded against as an accused rather than she putting the college and the academicians in the dock.

11. Such a student does not deserve any sympathy nor any relief in our discretionary and equitable jurisdiction under Article 226 of the Constitution of India. This jurisdiction is extraordinary and is utilised to promote truth, honesty and justice. Therefore, there is no merit in this petition and it is dismissed.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)