

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11851 OF 2016
WITH
CIVIL APPLICATION NO.803 OF 2019
AND
CIVIL APPLICATION NO.113 OF 2019
IN
WRIT PETITION NO.11851 OF 2016
(MODIFIED AS PER ORDER DATED 11TH APRIL 2019)

Lotus College of Optometry ... Petitioners

v/s.

University Grants Commission & ors. ... Respondents

Mr. Mihir Desai, Sr. advocate i/b. Mr.S.K.Mogili for the petitioner.

Mr. R.A. Rodrigues for respondent no.1.

Mr. V.M. Mali, AGP for respondent no.2.

Mr. Mihir R. Govilkar a/w. Ms. Kinjal Jani for respondents 3 and 4.

CORAM : B.R. GAVAI &
DAMA SESHADRI NAIDU, JJ

3rd APRIL 2019.

P.C.

Rule. Rule made returnable forthwith. Heard finally by consent
of the parties.

2. Heard Shri Desai, the learned Senior Counsel for the petitioners, Shri Rodrigues for respondent no.1, learned AGP for respondent no.2 and Shri Govilkar for respondents 3 and 4.

3. The petition arises out of peculiar facts and circumstances. The petitioner-college has been running a course namely Bachelor of Science in Optometry (B.Sc (Optom.)) from 2006 onwards. However, as per the directions of respondent no.1-University Grants Commission (UGC), the course was initially affiliated to respondent no.3 Yashwantrao Chavan Maharashtra Open University (Open University). However, the UGC on 5th July 2016 decided that the said course will be discontinued from the jurisdiction of Open University and would be under the control of the respondent no.4 Maharashtra University of Health Sciences (Nashik).

4. It is the contention of the petitioners that during the intervening period between 5th July 2016 till the admissions for the academic year 2016-17 were complete, there was a confusion as to whether the course came under the control of the Open University or University of Health Sciences. It is submitted that in the meantime, the Registrar of Open University had formed a group of the Principals of the colleges running B.Sc.(Optom.) course. It is submitted that on the basis of the whatsapp

messages given by the Registrar of the Open University, the petitioners completed the admissions and the course was started on 1st August 2016. It is further submitted that as per the practice prevalent, the admissions were directly undertaken by the College and thereafter the names of the selected candidates were online sent to the University for upgrading the record of the University. It is submitted that on this premise, the impugned communication dated 10th August 2016 issued by the State of Maharashtra cancelling the admission of 40 students will not be sustainable in law.

5. Shri Govilkar, the learned Counsel who has the advantage of appearing on behalf of both the Universities, submits that the petitioners could not have admitted the students directly. He submits that the admission could have been done only through the online process and, as such, the admissions made by the petitioners-College are illegal.

6. It may be pertinent to note that by various orders passed by various Benches in various civil applications, the students who have been admitted in the said course have been permitted to continue the said course. And they are also permitted to appear for the examination. Their results are also directed to be declared. Thus the students have reached the third academic year of their course.

7. As already pointed out, the petition arises out of peculiar facts and circumstances. It is not in dispute that right from 2006 the course of B.Sc (Optom) was affiliated to the Open University. For the first time the UGC has addressed a communication to the Open University. It will be pertinent to refer to clause-7 of Paragraph-3 of the said communication:-

“The programmes in Engineering and Technology e.g.B.E./B.Tech/Diploma and courses in Medicines/ Nursing/Physiotherapy etc. are not allowed and the University will not be offering the same.”

8. Perusal of the said clause would reveal that the UGC has informed the Open University that the programmes in Engineering and technology like B.A., B.Tech, Diploma courses in medicine, nursing, physiotherapy etc., are not allowed; and University would not be offering the same. It could thus be seen that the said clause does not specifically mention the course in optometry and only refers to the degrees of B.E., B.tech, Diploma, etc. Not only that, the annexure to the said communication listing the courses to be continued with Open University shows the following course at sr. no.30: ‘Bachelor of Science’. It could thus be seen that the communication of the UGC is

not clear as to whether petitioner could have continued with the course of B.Sc. (Optom.) or not.

9. Besides that, but the confusing situation has been made more complicated by then Registrar of Open University namely Shri Dr.Abhay Patil. It will be relevant to refer to whatsapp message which is sent by him on 25th July 2016 at 5.19 p.m. It reads as under:

“ Heartiest congratulations to you all, your efforts and prayers have been approved. Our B.sc. Opto and Dota got permission from UGC, VC sir gave the message of approval from delhi, will clear in details latter.”

It could thus be seen that the message sought to be given is clear that the B.Sc. (Optom.) and Biotech shall continue with the Open University. It gives an impression that the Vice Chancellor of the University gave a message of approval from Delhi. The further message given by the same Dr. Patil on 29th July 2016 at 2.38 p.m.

“ Yes we can go ahead with B.Sc. Opto. & DOTA Fresh admissions, online process will take some time (8 days) approx. to restructure the program.”

The message is clear enough to give an indication to the colleges that they can go ahead with the admission for B.Sc. (Optom.) and Biotech. It further states that on-line process would take sometime i.e. approximately 8 days to re-start the programme. The case turned around for the first time on 24th August 2016 at 2.43 p.m. when said Dr. D Patil gave following message:

“ Dear Friends as per the instructions from New VC B.sc optometry and B S.c. LT admissions are stopped as UGC has not issued letter to University yet. We have tried our level best.”

10. For the first time the message is given to the colleges that inspite of the best efforts at the behest of Open University, the UGC has not allowed the B.Sc (Optom.) course to be continued with Open University. As already discussed, the admissions were completed in the month of June, July 2016. The admissions were made by the petitioner college on the basis of instructions as could be found in whatsapp message of Dr.Abhay Patil, the then Vice Chancellor, to the effect that colleges were free to go ahead with admissions for B.Sc. (Optom.) course. He has further informed that online process would take sometime i.e. approximately 8 days.

11. It is a specific case of the petitioner that after the admissions were conducted for the year 2016-17, the petitioner has not admitted any students till it granted affiliation for the academic year 2018-19 onwards.

12. It could thus be seen that there arose a confusion, to which the UGC, the Registrar of the Open University and the earlier Vice Chancellor and subsequent Vice Chancellor of the open University have greatly contributed. The petitioners were under impression that they can go ahead with admission. It is only on 24th August, 2016 that the then Registrar informed the petitioner college that inspite of best efforts by the Vice Chanellor, he could not have the course continued with Open University.

13. In this premises, we are of the considered view that petitioners who have acted on the representations of the Registrars of the Universities and in view of the apparent confusion in the communication of the UGC, admittedly the students cannot be blamed. Moreover, the students should have bonafidely taken admission in a course which was continuously running from 2006 onwards on the basis of approval of open university. They cannot be penalised on account of confusion created by aforesaid action. In the peculiar facts

and circumstances of the case, we are inclined to allow the petition. The admissions given by the petitioners to students for the academic year for the year 2016-17 for the course of B.Sc. (Optom.) are directed to be regularised. Rule made absolute in the aforesaid terms. No order as to costs.

14. Needless to state that all consequences shall follow.

15. In view of the order passed in writ petition, nothing survives for consideration in the civil applications. Both Civil Applications stand disposed of.

(DAMA SESHADRI NAIDU, J)

(B.R.GAVAI, J)

L.S. Panjwani, P.S.