

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1367 OF 2021

Kafil Ahmed Vakil Ahmed Farooqui .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Rajendra S. Deshmukh, Senior Advocate i/by Shri Devang R. Deshmukh and Shri Amol R. Joshi, Advocates, for the Petitioner.

Shri S. B. Yawalkar, Addl.G.P. for the Respondent No. 1.

Shri S. S. Thombre, Advocate for the Respondent No. 2.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

CLOSED FOR ORDER ON : 11.08.2022

ORDER PRONOUNCED ON : 18.08.2022

FINAL ORDER (*Per Sandeep V. Marne, J.*) :-

. The petitioner is aggrieved by the decision of the respondent No. 2/university in not selecting him for Ph. D. programme for the subject Urdu under the faculty of Humanities for the year 2017-2018. The petitioner has sought following prayers :

A] This Civil Writ Petition may kindly be allowed.

B] Record of the Ph. D. selection round held by the R. 2 University for the subject Urdu in the year 2017/2018 may kindly be called for.

C] By issuance of a Writ of Mandamus or any other writ of like nature :-

i] The letter dated 31.07.2019 **[EXHIBIT-I]** issued by the Deputy Registrar, R.2 University thereby refusing to allot Research Guide to the Petitioner

And

ii] the result of the Ph. D. dated 15.01.2019 declared by the R. 2 for the subject of Urdu in so far as it is based on the so called assessment by the R.A.C. may kindly be quashed and set aside and instead the R. 2 may kindly be directed to declare the Petitioner as selected for the Ph. D. course in Urdu subject, with retrospective effect, on the basis of his performance and marks secured at the PET Written Examination.

D] By issuing a writ of Mandamus or any other writ of like nature the R.2 University may kindly be directed to modify the IV Ph. D. Entrance Test (PET) certificate No. B2017_2403 **[EXHIBIT-K]** issued to the petitioner and instead to issue a revised Ph. D. certificate to the Petitioner which is valid for two consecutive Ph. D. Programs, in accordance with Rule B (b) 1 (i) of the U. G. C. Regulation, 2016 **[EXHIBIT-I]**.

2. In support of his petition, the petitioner has raised only following four grounds :

A] The University ought not to have scheduled the Interaction before the R.A.C. when the whole performance could be assessed by solely relying on the marks secured at the Written Examination. As per the 2016 UGC Regulation, the power of the Research Approval Committee was restricted to only recommending suitable modifications in the proposed research works presented before it. It had not right

to re-calibrate the comparative merit of the candidates, based on the performance at Viva voce. The Petitioner has excelled the Written Examination and therefore his performance was up to the mark which could solely be recokned with for purpose of declaring him successful. The D.R.C./R.A.C./R.R.C. could not have superseded candidates' performance at the Written Examination. It had no business to weigh the oral performance of the candidates.

- B]** The exercise of conduct of RRC was in violation of the Judgment of the Hon'ble Delhi High Court in *Students Federation of India and ors Vs. Union of India and ors* W.P. (C) 3032/2017, C. M. APPL 13252/2017 dated 01.10.2018.
- C]** The S.37 (2) (b) [I] casts a limited power on the Research and Recognition Committee to - Approve the topic of thesis or dissertation in the subject. There is no adjudicatory power vested in the R.R.C. to decide the merits of a candidate.
- D]** In the case of ***ABL International Ltd. and another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*** (2004) 3 SCC 553, the Supreme Court held as under :-

"It is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution. Therefore, once the State or an instrumentality of the State is a party, it has an obligation in law to act fairly, justly and reasonably to a contract which is the requirement of Article 14 of the Constitution."

3. So far as prayer clause C-(ii) is concerned, the petitioner has questioned the result of the Ph. D. programme dated 15.01.2019. By the said result eight candidates from open

category (to which the petitioner belongs) came to be selected in the Ph. D. admission process. However none of the eight candidates, whose selection is questioned in the present petition are impleaded as parties to the present petition. This is the first impediment that we find in entertaining prayer Clause C-(ii) of the petition.

4. The university has filed affidavit in reply producing the merit list as well as the marks obtained by the petitioner in the selection process. It is *inter alia* contended by the university in its affidavit in reply that the last candidate who is admitted for Ph. D. course in open category has secured 67.4 marks, whereas the petitioner could secure only 48.8 marks. It is, therefore, contended by the university that the petitioner could not be included in the select list in respect of eight vacancies on account of securing lessor marks in the selection process.

5. Perusal of the scheme of marking produced by the university in respect of the petitioner at Exhibit R – 3 to the affidavit in reply shows that the selection process consisted of 50 marks which were converted to 100 by multiplying by factor of two. The marking scheme consisted of marks for various attributes such as marks obtained in graduation and post graduation, research papers, experience, etc. For oral presentation only 10 out of 50 marks (20%) were allotted. The petitioner secured 24.4 marks and after multiplying same by factor of two, the petitioner is shown to have scored 48.8 marks in the selection process. The selection committee consisted of

four members headed by the Pro-Vice Chancellor. The petitioner has not made any allegations of *mala fides* against the members of the selection committee, nor has impleaded them as party in the present petition. We, therefore, cannot go into the issue of correctness of marks allotted to the petitioner by the selection committee. Consequently, we cannot interfere with the select list prepared by the university. The non selection of the petitioner in the selection process, cannot be faulted. Therefore, prayer Clause C-(ii) seeking setting aside of the result of Ph. D. programme is required to be rejected.

6. So far as prayer clause C-(i) is concerned, the petitioner has challenged letter dated 31.07.2019 by which the university has refused to allot research guide to the petitioner. Perusal of the letter dated 31.07.2019 shows that the request of the petitioner for allotment of research guide is rejected on the ground that the his name was not included in the select merit list. Thus, prayer Clause C-(i) is consequential to prayer Clause C-(ii). Since we have arrived at the conclusion that prayer clause C-(ii) cannot be granted in favour of the petitioner, there is no question of grant of prayer clause C-(i). Therefore, prayer clause C-(i) also deserves to be rejected.

7. Now we come to prayer Clause D by which the petitioner is seeking modification of PET certificate No. B2017_2403 (Exhibit – K) and for issuance of revised certificate valid for two consecutive Ph. D. programmes. Said prayer is sought for by the petitioner by relying upon the provisions of Rule B (b) 1 (i) of the

U. G. C. Regulation, 2016. True it is that the said provision specifies that the PET certificate will be valid for two consecutive Ph. D. programmes. However, the rule further provides that the candidate should apply for Ph. D. registration, failing which, it shall be inoperative. The impugned PET certificate (Exhibit – K) was issued to the petitioner on 13.10.2017 stating that the same was valid for academic year 2017-2018 only. Though the certificate does not appear to be in consonance with Rule B (b) 1 (i) of the U. G. C. Regulation, 2016, we find that prayer Clause D in the petition has now become academic. Nothing is brought on record by the petitioner to show that the petitioner made an attempt to participate in the next consecutive Ph. D. programme or that he was not allowed to participate on account of validity of PET certificate being restricted to academic year 2017-2018 only.

8. In fact Mr. Thombre, learned advocate appearing for the university submitted before us that after the Ph. D. programme 2017-2018, the university has conducted multiple Ph. D. programmes. In absence of any proof by the petitioner to the effect that he attempted to participate in the subsequent Ph. D. programme, no purpose would be served by considering or granting prayer Clause D. This is because Rule B (b) 1 (i) of the U. G. C. Regulation, 2016 clearly provides that failure to apply for Ph. D. registration makes the certificate inoperative. Therefore, even if the certificate dated 13.10.2017 is deemed to be valid for two consecutive Ph. D. programmes, on account of failure of the petitioner to apply for next Ph. D. programme, the certificate even otherwise has become inoperative.

9. Thus none of the prayers sought for by the petitioner can be granted.

10. We do not find any merit in the petition and the same is accordingly dismissed without any order as to costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Aug. 22