

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13490 OF 2023

Janhavi Sunil Gite,
Age-21 yrs, Occ- Students,
F/7, Aksharpushpa, Behind Dental
College, Kevdiban, Tapovan,
Panchvati, Nashik- 422 003.

... Petitioner.

V/s.

1. University of Mumbai
through its Chancellor/Vice Chancellor,
Fort, Mumbai.
2. Sardar Patel College of Engineering,
Through its Principal, Azad Nagar,
Andheri (W)- 400058.
3. Sardar Patel College of Engineering,
Through its Dean of Academy,
Azad Nagar, Andheri (W)- 400058.

... Respondents.

SANJAY
KASHINATH
NANOSKAR

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SANJAY KASHINATH
NANOSKAR

Date: 2023.12.15
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Mr.Sanjeev Bapu Deore for the Petitioner.

Mr.Rui Rodrigues for Respondent No.1.

Ms.Satyapriya Rao for Respondent No.2.

**CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.**

DATE : 12 December 2023.

JUDGMENT : (Per Nitin Jamdar, J.)

The petitioner appeared for the CET examination conducted for the B-Tech Four Years Civil Engineering Course. After qualifying the examination, the petitioner was admitted to the respondent college for the Four Years Engineering Course for the academic year 2020-24. However, the petitioner did not clear the subject of Surveying and Geo Matics in the fourth semester. Despite this, the petitioner was permitted to take admission in B-Tech third year, where she still had a backlog of the subject Surveying and Geo Matics from the fourth semester. The petitioner appeared for the Kept Term examination to address this backlog and secured 33 marks, falling seven marks short of the passing marks of 40. Consequently, the petitioner was declared failed. The petitioner has filed this petition seeking direction for the grant of grace marks to pass the subject.

2. The petitioner appeared for the CET examination conducted for the B-Tech Four Years Civil Engineering Course. After qualifying the examination, the petitioner was admitted to the respondent college for the Four Years Engineering Course for the academic year 2020-24. However, the petitioner did not clear the subject of Surveying and Geo Matics in the fourth semester. Despite

this, the petitioner was permitted to take admission in B-Tech third year, where she still had a backlog of the subject Surveying and Geo Matics from the fourth semester. The petitioner appeared for the Kept Term examination to address this backlog and secured 33 marks, falling seven marks short of the passing marks of 40. Consequently, the petitioner was declared failed. The petitioner has filed this petition seeking direction for the grant of grace marks to pass the subject.

3. Heard Mr.Deore for the Petitioner, Mr.Rodrigues for Respondent No.1 and Ms.Satyapriya Rao for Respondent No.2.

4. The Petitioner, firstly, contends that since the Respondent- College is affiliated with the Respondent- University, the ordinance issued by the University followed by the circulars are binding on the Respondent- College. The Petitioner contends that the Circular No.UE-112/2015 issued by the Respondent- University is under Ordinance 229-A which is issued under section 54(1) of the Maharashtra Universities Act, 1994 and this Circular and Ordinance state that 10 grace marks can be awarded in addition to the marks secured. Therefore, based on this provision, it is contended that the Petitioner is entitled to grace marks. The Respondent-College has taken a stand that the Ordinance regarding grace marks is not adopted by the Respondent-College. The guidelines issued by the University Grant Commission for autonomous colleges are placed on record. These guidelines refer to the objectives and freedom

available to the autonomous colleges in which the autonomous colleges have to evolve methods of assessment of student performance, the conduct of examinations and notification of results. As regards the Ordinance regarding grace marks and the Circulars issued by the University are concerned, the learned counsel for the Respondent- University has pointed out to us that the same is not *ipso facto* binding on the Respondent- College and the college has to adopt the same. The learned counsel for the Respondent- University submits that since the Ordinance and Circulars regarding grace marks are not adopted by the Respondent- College, it cannot be forced to grant grace marks. There is, therefore, no statutory basis for the Petitioner to seek a writ of mandamus for the grant of grace marks.

5. Grace marks are not an inherent right but a privilege. In this context, the reliance of the Petitioner on the decision of this Court in the case of *Ajay Prakash v. University of Pune*¹ is misplaced. This was a case where the Petitioner had prayed for a direction to the University to enforce its own Ordinance which provided for grace marks, which is not the case in the present matter.

6. The Petitioner has sought to rely upon section 122(4) of the Maharashtra Public Universities Act, 2016 which states that autonomous institutions will have full academic and administrative autonomy subject to the statutes and guidelines issued by the University Grant Commission from time to time. The Petitioner has

¹ 2007 (2) ALL MR 804

not led before us any mandatory directions by the University Grant Commission that the grace marks must be awarded based on which the Petitioner can claim that even though the rules and regulations of the Respondent-College do not provide for grace marks, it must be mandated to do so.

7. The Petitioner then sought to contend that as per the statutory requirements, the Respondent- College is required to upload the necessary information on its website and in pursuance to that the Respondent- University has uploaded the information regarding grace marks to be awarded and the Petitioner has placed on record a screenshot in that regard. The learned counsel for the Respondent-College has disputed this position contending that this may be a screenshot of the period before the Respondent-College became an autonomous institution and the information in the screenshot is not displayed on the portal of the Respondent-College.

8. Even otherwise, unless there exists a specific provision to grant grace marks, a writ of mandamus cannot be issued, especially, when instead of granting grace marks and passing the students the Respondent- College emphasizes academic excellence by further learning and developing the skill set for the subject.

9. Therefore, there is no merit in the petition. The writ petition is accordingly dismissed.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)