

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3973 OF 2021

NAMAN SANJAY GUPTA,
Indian, residing at Hill Gardens Row House
no. 41, Near Tikuji Ni Wadi, Manpada,
Thane West, Pin Code 400 610

... PETITIONER

~ VERSUS ~

- 1. RA PODAR COLLEGE OF
COMMERCE AND ECONOMICS,**
LN Road, Matunga (CR), Mumbai 400
019
- 2. UNIVERSITY OF MUMBAI,**
Mahatma Gandhi Road, Fort, Mumbai
400 032

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER

Mr Ashish Kamat, Senior
Advocate, with Mohit Khanna,
i/b Preet Chheda.

FOR RESPONDENT NO.1

Mr Mahendra Agvekar, with
Shraddha Chavan.

FOR RESPONDENT NO. 2

Mr Prahlad Paranjpe, i/b Manish S
Kelkar.

ASHWINI
HULGOJI
GAJAKOSH

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**CORAM : G.S.Patel &
Neela Gokhale, JJ.**

DATED : 14th March 2023

ORAL JUDGMENT (Per GS Patel J):-

1. **Rule.** There are Affidavits in Reply and Rejoinder. By consent, Rule made returnable forthwith and the Petition is taken up for hearing and final disposal.

2. The Petitioner is a young student of the B. Com degree course. The only prayer he seeks in this Petition is a mandamus to the 2nd Respondent, the University of Mumbai, to release the Petitioner's printed mark sheets for the 5th and 6th semester B. Com examination results. These were withheld in a certain factual context.

3. After carefully considering the material on record, and in particular two circulars of 2009 and 2014, we believe that the action of the 2nd Respondent cannot be sustained, and Rule will have to be made absolute. Our reasons follow.

4. The 1st Respondent is the RA Podar College of Commerce and Economics where the Petitioner is a student. In May 2013, the Petitioner appeared for what is called the International Baccalaureate ("IB") Diploma Programme examination, equivalent to standards 11th and 12th, while a student of the NES International School. The IB Diploma typically awards points and not

percentages or marks. The maximum possible number of points is 42. There is no specific pass or fail strictly speaking and as we know it in other examinations. An IB Diploma is awarded to those who get 24 points out of a possible maximum of 42. Others below 24 get what is called an IB Course Certificate, namely a certificate saying that they did the IB Course.

5. On 1st August 2013, the Petitioner received an IB Course Certificate. He had obtained a total of 21 points across six subjects out of a maximum possible of 42. In that very year, the International Baccalaureate issued a migration certificate to the Petitioner saying it had no objection to the Petitioner joining any college or university in India. On 5th July 2013, the IB issued a transcript of the Petitioner's grades showing that he had scored 21 points across the six subjects with a "Standard Level" or SL in all six subjects. This transcript, a copy of which is at Exhibit "C" at page 24 to the Petition notes as follows:

"Result: DP Course awarded".

6. The NES International School issued the Petitioner a school leaving certificate on 23rd August 2013. This leaving certificate has a remark

"Passed IBDP-II (Grade XII) in first attempt".

7. In 2013, the University issued a provisional statement of eligibility to the Petitioner for admission to the B. Com course. He was considered prima facie eligible for admission but this was said to be:

“subject to final decision of equivalence committee”

It also stated that the Petitioner had to

“pass full IB Diploma”.

8. There is no issue raised in the Petition or in the Replies before us of an equivalence committee decision so we will not delay over that aspect of the matter.

9. Having obtained admission, the Petitioner began studying in the B. Com course. He appeared for the 5th semester examination conducted by the University of Mumbai in October 2017. He cleared the 5th semester exam. But no mark sheet was released to him. The Podar College told the Petitioner that it had not received the mark sheet from the University. Notably, the Petitioner had been given a hall ticket for appearing in the 5th semester examination. In March 2018, the Petitioner appeared for the 6th semester B. Com examination conducted by the University. Again, the University sent no mark sheet to the Podar College. The Petitioner was given a hall ticket for the 6th semester examination. It was only then that the Petitioner was orally informed by the University staff that he had been found ineligible for admission to the B. Com course in the first place. This was the first such communication at the end of six semesters, i.e., three years of study. On 19th May 2020, the Petitioner wrote to the 2nd Respondent asking that his mark sheets for the 5th and 6th semester be released. The very same day there was a response from the University saying that on account of the

Covid pandemic the issue he raised would be taken up after the situation improved.

10. On 14th December 2020, the Petitioner again wrote to the 2nd Respondent raising a grievance about the non-release of his mark sheets. This is the factual background in which the Petition comes to be filed.

11. What falls for consideration are the two circulars of the 2nd Respondent. There is, first, a circular dated 8th May 2009 which is part of a compilation given to us by Mr Kamat, learned Senior Counsel for the Petitioner. It is a short circular and we quote it from pages 1 and 2 of the compilation.

“UNIVERSITY OF MUMBAI

Eligibility & Migration Section

Dr Babasaheb Ambedkar Bhavan

Vidyanagari, Santacruz (E)

Mumbai 400 098.

C I R C U L A R

No. Elg./C/5411 of 2009

In continuation of this office circular No. Elg/C/1501 of 2006, dated 9th May, 2006, the Director/Head of the University Departments/Principals of the constituent affiliated Colleges/Heads of the Departments/recognized Institutions and the Director, Institute of Distance Education are hereby informed that the Academic Council at its meeting held on 13th February, 2009 vide Item No. 7.12 in the matter of accepting predicted grades and

extending the facility to the students those who have passed Higher Level Standard Levels issued by the International Baccalaureate (IB) and O Levels/ AS Levels/ A Levels issued by the Cambridge International Schools (C.I.E.) are considered eligible for admission to the first year degree course of studies in the affiliated and constituent Colleges/Institutions and University Departments. The Academic Council after consideration resolved as under:-

“Resolved that the Circular be sent to all affiliated colleges/University Departments regarding acceptance of predicted grades and various levels of subject i.e. Higher Level — Standard Level issued by the International Baccalaureate (IB) and O Levels/ AS Levels/ A Levels issued by the University of Cambridge (CIE) for admission to First Year of various courses in various Faculties in the University of Mumbai”.

The various levels of subjects in International Baccalaureate (I.B.) and Cambridge (C.I.E.) are as under:-

“I.B. Diploma with Physics and Maths at Higher Level and Chemistry at Standard Level (3 HL and 3 SL) be made eligible for Bachelor of Engineering (except Chemical Engineering) and Maths, Chemistry at Higher Level (HL) and Physics at Standard Level (SL) (3HL and 3 SL) be made eligible for Bachelor of Chemical Engineering courses. As regards to the B.Pharm Course, it was Resolved that the I.B. Diploma with Chemistry, Maths at HL and Physics/Biology at SL be made eligible for B.Pharm. (3 HL and 3 SL). **It was further Resolved that I.B. Certificate holder be made eligible for various courses under the faculty of Arts/Commerce/Science subject to the conversion of grades into percentage**”.

Student who has passed Mathematics, Physics at “A” Level and Chemistry at “AS” Level will be considered eligible for Bachelor of Engineering (except Chemical

Engineering) and a student who has passed Mathematics, Chemistry at “A” Level and Physics at “AS” Level will be considered eligible for Bachelor of Chemical Engineering”.

As far as Bachelor of Pharmacy (B.Pharm.) is concerned, the student who has passed Mathematics, Chemistry at “A” Level and Physics/Biology at “AS” Level will be considered eligible for B.Pharm Course”.

In addition to above, it is necessary to pass 5 or 4 papers at “O” Levels and English at “AS” Level.

They are therefore requested to note the contents of the circular while admitting the students for various Undergraduate/Professional Courses in the affiliated colleges/recognized Institutions/ University Departments etc. from the academic year 2009-10. They are also requested not to admit any student without Provisional Statement of Eligibility Certificate.

Registrar

Place: Mumbai

Date: 8th May, 2009”

(Emphasis added)

12. The University on the other hand places reliance on a circular of 20th August 2014. A copy of this circular is part of the University’s Affidavit in Reply at page 55. If only for a comparison with the 2009 circular, it is necessary to quote this two page circular as well.

“UNIVERSITY OF MUMBAI

NO. Elg./C/1652 of 2014.

CIRCULAR:

In continuation of this office circular No. Elg./C/5411 of

2009, dated 8th May, 2009, the Director / Head of the University Departments / Principals of the constituent affiliated Colleges / Heads of the Departments / recognized Institutions and the Director, Institute of Distance Education are hereby informed that the academic Council at it's meetings held on 22nd October, 2013 vide item No. 01 and Management Council on 07/07/2014 vide item No. 24 in the matter of accepting the change of terminology of the I.B. Certificate changed to IB Courses. According to the letter dated 9th October 2013 from the IB, "Successful IB diploma candidates receive an IB Diploma and the transcript with Diploma Results stating "Diploma Awarded". In order to receive the IB Diploma, students must complete examinations in six subject areas and successfully complete the core requirements of Extended Essay (EE), Creativity Action Service (CAS) and Theory of Knowledge (TOK). An IB diploma candidate who fails to satisfy the requirements for the award of an IB Diploma will receive Diploma Programme Results and a transcript stating "Diploma Programme Courses awarded".

1. It was resolved that all students registered for the full IB Diploma with core requirements (Theory of Knowledge (TOK), Extended Essay (EE) and Creativity, Action and Service (CAS)) with either Diploma awarded or Diploma Programme Courses awarded and minimum of 24 points will be considered for determining eligibility.

The various levels of subjects required for IB students are as under:-

2. IB Diploma or IB Diploma Programme courses with 3 HL and 3 SL awarded with 24 points holder be made eligible for various courses under the faculty of Arts, Commerce, Science, Law.

3. Students need to have Math and Physics at Higher Level (HL) and Chemistry at Standard Level (SL) (3HL &

3 SL) to be made eligible for Bachelor of Engineering (except Chemical Engineering).

4. Maths and Chemistry at Higher Level (HL) and Physics at Standard Level (SL) (3HL & 3SL) to be made eligible for Bachelor of Chemical Engineering courses.

5. As regards to the B. Pharm Course it was resolved that the IB Diploma with Chemistry and Math Higher Level (HL), Physics/Biology at Standard Level (SL) (3HL & 3SL) is made eligible for B.Pharm.

6. I.B. Diploma, after 10 years of schooling, with not less than 50% marks in aggregate, and with Mathematics as compulsory subject of examination (3HL & 3 SL) has also been approved by the Council of Architecture as a qualifying examination be made eligible for B.Arch Course.

It was also Resolved that for admission purposes the colleges should take into consideration percentage of the best five subjects (full pass i.e. 35/100 for each subject) as they do for other boards of education (Maharashtra board and CBSE).

They are therefore requested to note the contents of the circular while admitting the students for various Undergraduate/Professional Courses in the affiliated colleges/recognized Institutions/University Departments etc. from the academic year 2014-15. They are also requested not to admit any student without *Prima Facie Letter* from Eligibility & Migration Section.

Registrar

Place: Mumbai.

Date: 20th August, 2014.

(Emphasis added)

13. There are two reasons not to accept the submission on behalf of the University that it is the 2014 circular that will govern. It simply cannot because the Petitioner's admission to the B.Com course predated the 2014 circular by at least a year. There is no possibility of making the 2014 circular apply retrospectively. Paragraph 2 of the 2014 circular speaks of a requirement of an IB Diploma with three higher level or three standard level awarded with 24 credit points for various courses in Arts, Commerce, Science and Law. But this is a material departure from the 2009 circular that we have also quoted above. As the emphasized portion of the 2009 circular shows, for Arts, Commerce and Science, an *IB Certificate holder* is eligible subject to the conversion of grades into percentages. For commerce, which is the subject with which we are concerned, there is no requirement in the 2009 Circular of an IB Diploma but only a IB Certificate. This the Petitioner undoubtedly holds, and held in 2013. It is unquestionably the basis on which the 2nd Respondent held him to be provisionally eligible. That provisional eligibility cannot be negated by the introduction of the subsequent circular after the date of admission.

14. On this brief analysis of the matter, we are unable to see why the mark sheets of the Petitioner for the 5th and 6th semester examinations should be withheld. He is undoubtedly entitled to those and is also entitled to all other requirements or entitlements whether these take in the form of certificates, scrolls etc.

15. Prayer clause (a) reads thus:

“(a) that the Honourable Court will be pleased to

issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ, order or direction ordering and directing the respondent no. 2 to forthwith release the petitioner's printed mark sheets for the fifth and sixth semester B.Com examination results."

16. For the reasons given earlier, the Petition succeeds. It is made absolute in terms of prayer clause (a), but with the further clarification that the entitlement of the Petitioner is not restricted to the 5th and 6th semester examinations mark sheets but extends also to all other entitlements, awards, certificates etc that accompany the passing of those examinations.

17. The Petition is disposed of in these terms. There will be no order as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)