
(2016) 03 BOM CK 0217
In the Bombay High Court
Case No : Writ Petition (L) No. 883 of 2016

Aishwarya V. Jain

APPELLANT

Vs

Maharashtra State Board of Technical Board and Others

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Constitution of India, 1950 — Article 142, Article 226

Citation : (2016) 3 AIRBomR 523 : (2016) 5 ALLMR 229 : (2016) 6 BCR 721 :
(2016) 5 MhLJ 176

Hon'ble Judges : S.C. Dharmadhikari and G.S. Kulkarni, JJ.

Bench : Division Bench

Advocate : Mihir Desai, Senior Counsel i/b Devyani Kulkarni, for the Appellant;
R.V. Govilkar, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Kulkarni, J.—1. The Petitioner who is a third year student pursuing Diploma in Interior Design and Decoration Course (for short the "said course") at the respondent no. 2-college, by this Petition, has challenged the action of respondent nos. 1 and 2 in denying the petitioner appearance for third year annual examination to be held in April, 2016.

2. Respondent no. 2-Rachana Sansad College School of Interior Design is stated to be recognized and affiliated to the Respondent no. 1-Maharashtra State Technical Board. The Diploma course is of three years with a pattern of an annual examination. The Petitioner was admitted for the First year of the said course for the Academic year 2013-14. First year examination was held in March 2014. The Petitioner cleared all subjects except the subject of "Interior Design Theory". As the rules permitted, the Petitioner was granted admission to the second year of the Diploma course as a ATKT (Allowed to keep term) student.

3. In October, 2014 Petitioner appeared for the ATKT examination for the subject of Interior Design in which she had failed. However, Petitioner did not pass. In

March/April 2015 Petitioner appeared for the second year Final examination and cleared all the subjects. However, the said back log in respect of the first year examination in the subject Interior Design Theory could not be cleared by the Petitioner even by March/April, 2015 examination. The Petitioner however, approached the respondent no. 2-College for admission to the Third year of the said course.

4. At this stage, it may be appropriate to note that the examination regulations of Maharashtra State Board of Technical Education. These Regulations are framed under the powers conferred on respondent no. 1 under Maharashtra Act 38 of 1997. Regulation 2 provides for "Rules of Admission" to the course. As regards the eligibility for admission to the third year of the said course the following requirement is stipulated:

B Yearly Pattern Courses

5. The stipulation of the above Rule is therefore that a candidate is required to have passed in the First year or pass / have a ATKT in the second year and lastly a candidate having remark "PLY" (Pending lower year) in the mark sheet shall not be eligible for admission to the third year course. Notwithstanding the above clear requirement of the Rule, the Petitioner was granted admission by the Respondent no. 2-College for the third year course.

6. The Petitioner claims that she accordingly pursued the Third year in the present Academic year 2015-16 as also in October 2015 appeared for the back-log paper of First year in which the Petitioner had failed and cleared the same. A Mark sheet to that effect, dated 15th January 2016 is annexed at Exhibit-I page 48 of the paper Book.

7. On 13th February, 2016 the Petitioner was informed by the Principal of Respondent no. 2-College that there were problems with the on-line examination form of the Petitioner for Third year and for this purpose Respondent no. 1-Board was contacted. Respondent no. 1 informed the Principal that the Petitioner will not be able to appear for the third year examination as the Petitioner had not cleared ATKT subject of the first year at the time of taking admission for Third year being the requirement under the rules. The Petitioner thereafter tried to persuade Respondent nos. 1 and 2, however, no response was received in that regard. On 13th February, 2016, Petitioner met the Deputy Secretary (Technical) of Respondent No. 1 who informed the Petitioner, that the Petitioner will not be able to appear for the examination as per Rules of respondent no. 1 as the admission of the Petitioner itself was illegal having not cleared First year examination so as to become eligible for admission to the Third year. Petitioner states that she has future plans of undertaking Master's Program in Interior Designing at Florence Design Academy in Italy, after she completes Third year for which she has already paid annual fees and therefore, it is thus imperative for her to appear for third year final examinations.

8. Mr. Desai learned senior counsel for the petitioner would urge that the

Petitioner is not at a fault as despite PLY (Pending lower year) she was granted admission by respondent no. 2-Institution for the third year course and thus, she has bonafide pursued the Third year course. Thus, at this stage respondent no. 2 as also Respondent no. 1-Board, cannot deny the petitioner from appearing at the third year final examination. Petitioner was not informed about the Rules and contrary to the same she was granted admission by Respondent no. 2. There is no wrong or malafides on the part of the Petitioner and therefore, she cannot be disallowed to appear for the examination. There was an inadvertent mistake on the part of Respondent no. 2-Institution in making admission of the Petitioner for the Third year course, oblivious of the requirement of the Rules. Though admission of the Petitioner is contrary to the Rules nonetheless this Court should interfere and grant reliefs to the Petitioner to permit her to appear for the examination by issuing a writ of Mandamus directing respondent no. 1 to issue admit Card to the Petitioner for ensuing oral examination commencing from 31st March 2016 and for written examination to be held from 13th April 2016 to 18th April 2016 and permit her to appear for all these examinations. In support of the submissions, Mr. Desai learned senior counsel has placed reliance on the following decisions:

(1) , 1986 (Supp) Supreme Court Cases 740 (Rajendra Prasad Mathur vs Karnataka University & anr).

(2) , (1989) 1 Supreme Court Cases 399 (Ashok Chand Singhvi vs University of Jodhpur & ors).

(3) Division Bench decision of this Court in Writ Petition (Lodging) No. 462 of 2011 dated 20th April 2011 (Raunak Gordon Denoronha vs University of Mumbai & anr).

(4) , 2003 (5) Bom.C.R.464 (Ganesh R.Baheti vs University of Pune & anr)

9. Mr. Govilkar learned counsel for the respondent no. 1 in opposing the writ petition submits that the reliefs as prayed by the Petitioner cannot be granted in view of the clear mandate of the admission Rules which required the Petitioner to clear the First year of the course in seeking admission to the third year course. A prayer contrary to the rules is not sustainable. Mr. Govilkar would urge that contention of the Petitioner that it is an inadvertent mistake on the part of respondent no. 2 also cannot be accepted in as much as, the entire admission as also the examination process is computerized and therefore, there is no scope for any error to be committed by the respondent no. 2-Institution. It is submitted that it cannot be accepted that respondent no. 2-college is not aware about the rules and regulations of respondent no. 1 which are binding on respondent no. 2-college in making admissions. It is therefore, urged that this writ petition does not call for any interference of this Court in its extra-ordinary jurisdiction under Article 226 of the Constitution.

10. Having heard learned counsel for the parties as also having perused the Rules and relevant documents as placed on record of this writ petition, we find

that there is much substance in the submissions as urged on behalf of respondent no. 1-Board. The Rules for making admissions to the third year course, as we have set out hereinabove are clear. The requirement under the Rules for admission to third year is three-fold; that a candidate should pass in the first year examination or a candidate should either pass or have a ATKT in the second year, further, the result status in the Mark sheet of PLY (Pending Lower Year) shall not be eligible for admission to the third year of the said course. Admittedly, the Petitioner had not cleared her First year when she sought admission to the Third year course. Despite this deficiency, respondent no. 2 granted admission to the Petitioner and permitted her to pursue the course. This was wholly impermissible and in the teeth of the admission Rules (supra). It is only when the petitioner went to make an application for appearing for the final examination, through a computerized method, her form was not accepted, because of the deficiency of having not cleared the first year at the time of admission to the third year. If this system was to be manual perhaps even respondent no. 1-Board may not have noticed this deficiency with so much of accuracy, as noticed in the computerized system, probably ending up in the petitioner mistakenly appearing at the examination. This was very well averted. The examination form of the Petitioner therefore, was rightly not accepted as the admission itself was faulty and contrary to Rules. The Petitioner therefore, cannot seek a writ of this Court which would go contrary to the admission Rules framed by the respondent no. 1 and binding on all institutions affiliated to it. The Rules cannot be rendered nugatory and/or of no consequence.

11. It is a settled principle of law that this Court in exercise of its writ jurisdiction would not interfere in academic matters. The Rules in question set out academic standards in education and are framed by experts in the field. The standards cannot be interfered and/or diluted and ought to command highest respect from all stakeholders. Students are clearly bound by these rules and the standards contained in it, in pursuing such courses of such high academic value.

12. We now refer to the decisions as relied on behalf of the Petitioner. Reliance on behalf of the Petitioner on the decision of the Supreme Court in the case of "Rajendra Prasad Mathur Vs. Karnataka University & Anr. , 1986 (Supp) Supreme Court Cases 740, in our opinion, would not assist the Petitioner. In this decision the Supreme Court has categorically held that the condition of eligibility laid down by the Karnataka University is valid and binding and that it would not be correct for the Court to sit in judgment over the decision of the University in relation to the academic question of equivalence, as the Court would not possess expertise. Having observed so, only because the concerned students in the said case were continued in their course of study in the Engineering College under the interim orders of the High Court and thereafter the Supreme Court and that their admission should not be disturbed after a period of four years, the Supreme Court in the facts of the case and exercising its jurisdiction under Article 142 of the Constitution held that though the students were not eligible for admission to the engineering degree course and that they had no legitimate claim to such

admission, permitted the students to continue their studies.

In exercise of our jurisdiction under Article 226 of the Constitution, we are bound by the mandate of law laid down in this judgment and also it would be our endeavour to see that the Respondent No. 1 is held by the standards as contained in the Rules. A reliance on this decision on behalf of the Petitioners is thus completely misplaced.

13. The decision of the Supreme Court in the case of "Ashok Chand Singhavi Vs. University of Jodhpur & Ors." , (1989) 1 Supreme Court Cases 399 would also not assist the Petitioner. The facts in the said case are totally incomparable to the facts of the present case. In that case the application of the candidate was entertained when the Resolution of the University Syndicate was in vogue. The Vice Chancellor had directed admission of such candidates when the Resolution of the University-Syndicate was kept alive and in that situation the Supreme Court had observed that the candidate had disclosed all the material. It was held that the decision of the Vice Chancellor which though may be a mistake, should not cause prejudice to the candidate. Moreover, the candidate had secured more than 60% of the marks in aggregate in Diploma examination and was not disqualified from the admission on that count. In the present Writ Petition admittedly the Petitioner was not qualified as per the Rules for an admission to the third year course. This decision therefore, is of no avail to the Petitioner.

14. The Division Bench decision of this Court in "Ganesh R.Baheti Vs. University of Pune & Anr." , 2003 (5) Bom.C.R. 464 was in a case where the University had accepted the examination form and permitted the Petitioner to appear for the examinations and thereafter, the University had taken an action to cancel the examination for the fourth and fifth year of the B.Arch course on the ground that the Petitioner could not have been permitted to keep the fourth and fifth year terms. As the Petitioner was permitted to appear for examination by the University, it was held that the University cannot withhold the result. However, the situation is completely different in the present case. The Respondent No. 1 has rightly at the threshold objected on the admission of the Petitioner which is illegal and contrary to the Rules and accordingly, has not accepted the examination form of the Petitioner.

15. In "Raunak Gordon Denoronha Vs. University of Mumbai & Anr."¹, the Division Bench was concerned as regards the eligibility of a migrated student who was issued a letter dated 9th August, 2010 by the University, informing that his application for eligibility was under process. The Petitioner therein was not informed that he is not eligible. The Petitioner had contended that such a letter was the usual form and a eligibility certificate, which was not disputed by the University in the affidavit in reply and on the basis of this fact the Court permitted the candidate to pursue the studies for which admission was granted. These being the facts, then the reliance on the decision of the Division Bench is totally unfounded in the context of the present case.

16. We may usefully refer to a recent decision of the Division Bench of this Court in the case of "Oneil Sandeep Bhapkar Vs. Savitribai Phule Pune University & Ors." (Writ Petition No. 2506 of 2016, dated 26th February, 2016) to which one of us (S.C. Dharmadhikari, J.) was a member. The case pertained to the admission to BSL LLB course wherein a prayer was made for declaration of result of 7th Semester of the Course. Since the Petitioner did not clear the third year examination held in April, 2015 namely 1/3rd of the total subjects thereat, the Petitioner was not held eligible for the fourth year examination. Similar contentions as raised in the present case were urged, that it was not the fault of the petitioner that he was granted admission for fourth year examination. Repelling the contentions as urged by the Petitioner and distinguishing the decision of the Division Bench of this Court in the case of "Ganesh R.Baheti" (supra), the Division Bench observed as under:-

"13. Ms. Aparna Dhavale could not convince us that the Petitioner possesses either a fundamental or a legal right as a failed student to get more opportunities to appear for the next year or the next semester and with an admitted backlog. Once the Petitioner appeared for the subject/s more than once, could not clear it, and even on revaluation the result was not altered, then, any provisional admission does not confer a right in the Petitioner to seek the Writ of Mandamus as claimed. A failed student allowed to keep terms cannot claim a higher right than what the permissible academic policy is. If the academic policy is that a student can clear the backlog together with the fresh examination subjects, then to avail of that policy, the Petitioner must establish that he is entitled to continue the studies as not only the backlog but the fresh examination subjects have all been cleared in terms of such policy....."

17. For the foregoing reasons, there is no room for any doubt in our mind that this writ petition ought to fail. The Writ Petition is accordingly dismissed. No order as to costs.

1Writ Petition (lodg) no. 462/11 dated 20.4.2011