

(2001) 06 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 2756 of 2001

Ajit Vitthal Karanje and Others

APPELLANT

Vs

Shivaji University, Kolhapur and Others

RESPONDENT

Date of Decision : 18-06-2001

Acts Referred:

Citation : AIR 2002 Bom 15 : (2001) 3 ALLMR 646 : (2001) 4 BomCR 333 : (2002) 1 MhLj 747

Hon'ble Judges : B.P. Singh, C.J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : Amit Sale, for the Appellant; R.G. Ketkar and R.D. Rane, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

B. P. Singh, C. J.

1. The petitioners herein 3 in number, have filed the instant Writ Petition for a Writ of Mandamus directing respondent No. 1, Shivaji University, Kolhapur, to permit them to take the examination scheduled to be held on 19th June, 2001 of the IIInd Year B. Pharmacy Course. It appears that subsequently petitioner No. 1 has been permitted to take the examination and, therefore, this Writ Petition was pressed only on behalf of petitioners Nos. 2 and 3.

2. The facts of the case are not in dispute. The petitioners herein were admitted to the B. Pharmacy Course in the Government College of Pharmacy at Karad, which was then affiliated to the Maharashtra University of Health Sciences, Nashik (hereinafter referred to as "the Health University"). They were admitted in July 1999 to the said course, and they took the 1st Year Examination in June 2000. Unfortunately, petitioners Nos. 2 and 3 failed to clear four papers and were, therefore, declared failed. It is not in dispute that in the Health University, there is no provision for "A.T.K.T.", which is the abbreviation for "Allowed to Keep Terms". A.T.K.T. is, however, permissible in other Universities, subject to the

candidates fulfilling the conditions of A.T.K.T. Since the petitioners failed to clear four papers, they again appeared in December, 2000, and petitioners Nos. 2 and 3 again failed to clear all the papers. We were told by Counsel for the petitioners that they cleared two papers, but failed in two. According to him, the Shivaji University Rules permit A.T.K.T. in the case of candidates securing 40% marks and failing in not more than two papers. It would, thus, appear that as in January, 2001, petitioners Nos. 2 and 3 had failed to clear all the papers of the 1st Year B. Pharmacy Course, and in the absence of provision for A.T.K.T. they, in the normal course, could not be promoted to the B. Pharmacy IInd Year.

3. It appears that the Government of Maharashtra, by its Resolution dated January 19, 2001, de-affiliated the B. Pharmacy Courses from the Health University and the various Pharmacy Colleges were affiliated to the Traditional (non-agriculture) Universities within whose territorial jurisdiction they fell having regard to the location and regions wherein the colleges were situated. So far as the Government College of Pharmacy, Karad, is concerned, it was affiliated to Shivaji University. It is not disputed that in Shivaji University, there is provision for A.T.K.T. and a student having secured required aggregate marks, if he failed in not more than two subjects, is permitted to keep terms and is promoted to the next higher class.

4. The case of the petitioners is that since A.T.K.T. Rules applied to Shivaji University, and the University decided to apply the said Rules to the students of the colleges earlier affiliated to the Health University, and which colleges had come under its jurisdiction by affiliation, in February 2001, the petitioners took admission in IInd Year B. Pharmacy in respondent No. 2-College. It is the case of the petitioners that all the students of the Health University who had failed in the examinations conducted in June 2000 and December 2000 were given admission by extending the benefit of A.T.K.T. It is also their case that they attended extra lectures and extra practicals conducted by the respondent-university. They submitted in April 2001 their examination forms for the IInd Year Examination Scheduled to be held in June, 2001. However, at a meeting of the authorities of the Health University and Principals of all Pharmacy Colleges, it was decided that only those students would be given the benefit of A.T.K.T. who had failed in the examination conducted in June 2000 but were eligible for A.T.K.T. By application of the Rules of Shivaji University for A.T.K.T. those who had failed in the examination conducted in December, 2000 were not given the benefit of A.T.K.T. The petitioners represented, but with no result, and, therefore, they were compelled to move this Court for appropriate orders.

5. An affidavit-in-reply has been filed on behalf of the respondent Shivaji University. From the said affidavit, it appears that though the Government Resolution de-affiliating the Pharmacy Colleges from the Health University and affiliating them to other Universities was actually issued on 19th January, 2001, it was anticipated that the Government would take such a step in near future, and as early as in August 2000, such discussions were taking place in the

University circles. Though the actual decision was taken by the Government on 19th January, 2001, the principals of various colleges proceeded on the footing that the rules and regulations of the Shivaji University would be made applicable to the candidates who took the examination in June 2000. Accordingly, they had given provisional admission to those students who were eligible for A.T.K.T. to take admission to the IInd Year and IIIrd Year B. Pharmacy Course in or about August 2000. This matter was the subject-matter of discussion by the University's Board of Studies in the meeting held on 14th March, 2001, which was also attended by the Principals of the various Pharmacy Colleges. The issue was again discussed at the meeting on 23rd May, 2001 when the Principals of the colleges gave an assurance to the University that they would give requisite undertaking to the effect that they have given provisional admission only to those students who became eligible and would be extended the A.T.K.T. facility in accordance with the rules and regulations of Shivaji University on the basis of the result of the examination conducted in June 2000. They also assured that those students had actually put in 75% attendance out of the actual working days of two terms and that they had completed daily lectures, practicals and journals. Such an undertaking was also given by the Principals of the petitioner's College.

6. It is submitted on behalf of the University that petitioners Nos. 2 and 3 had failed in four subjects in the examination conducted in June 2000 and in accordance with the rules and regulations of Shivaji University, they were not eligible to get admission in IInd Year B. Pharmacy even by application of A.T.K.T. Rules. They had not put in 75% attendance of actual working days of two terms as required under Ordinance 31 of Shivaji University, and therefore, they are not entitled to appear in ensuing examination which is scheduled to commence from 19th June, 2001. The University had taken a decision to permit only those students to take the examination who appeared in June 2000 examination conducted by the Health University and who on the basis of the rules and regulations of Shivaji University were eligible to take admission in the IInd Year and IIIrd Year B. Pharmacy, applying the A.T.K.T. Rules. Since petitioners Nos. 2 and 3 were not eligible, they could not be permitted to appear in the examination.

7. From the facts and circumstances of the case, it is quite clear that the petitioners took the examination conducted by the Health University in June 2000, but failed in as many as four subjects. Since speculation was rife that the Pharmacy courses will be excluded from the jurisdiction of the Health University, and the colleges will be affiliated to the traditional, non-agriculture Universities, the principals of the various Pharmacy Colleges permitted those candidates to take provisional admission in the IInd Year and IIIrd Year of the B. Pharmacy Course who, in terms of the rules and regulations of Shivaji University, were entitled to the benefit of A.T.K.T. The petitioners were not so entitled, because they had failed in four subjects, and, therefore, the petitioners again took the examination in December, 2000. In their second attempt, they managed to clear two papers, and, therefore, if at all, they became eligible under the A.T.K.T. Rules for provisional admission to the higher class only in January 2001 when their

results were declared. During this period, they, possibly, could not have attended classes, because the affidavit of the respondent-university clearly goes to show that only those students, in terms of the rules and regulations of Shivaji University, who were entitled to the benefit of A.T.K.T. were granted provisional admission. It is, no doubt, true that those students who were so entitled and students, like the petitioners, who were not entitled, were all formally admitted to the course sometime in February 2001 after the Government Resolution dated 19th January, 2001 was issued. There is, however, a basic difference between those students who failed but who satisfied the eligibility condition for application of A.T.K.T. Rules and those students who also failed but were not eligible for the benefit of A.T.K.T. under the Rules of Shivaji University. These two categories of students who failed in the examination conducted in June 2000 stand on different footing. Those who were eligible for A.T.K.T. were granted provisional admission and attended classes thereafter. Those who were not eligible for A.T.K.T. had to take examination again which they did in December, 2000. There is, therefore, no discrimination because those who have been allowed to take the examination are those candidates who though failed in the examination conducted by the Health University in June 2000 were eligible for admission to the next higher class by application of A.T.K.T. Rules. Candidates, like the petitioners, also failed in the examination held in June 2000, but having failed in four subjects, they were not entitled to the benefit of A.T.K.T. They, therefore, were not given provisional admission and, therefore, cannot claim to fall in the same category as others who were granted provisional admission as they were found entitled to the benefit of A.T.K.T.

8. It is true that the A.T.K.T. Rules must be applied prospectively. In June 2000, the College of Pharmacy, in which the petitioners and others were studying, was affiliated to the Health University, and examination was, therefore, conducted in accordance with the rules, regulations and statutes of the Health University. It is, indeed, surprising that the Principals of different Pharmacy Colleges, anticipating that the Government may again affiliate these colleges to the traditional Universities, granted provisional admission in higher classes to those candidates who failed in June 2000, applying the A.T.K.T. Rules. However, the provisional admission so granted is not the subject-matter of challenge before us. The facts, however, make it clear that the petitioners did not fall in that category of students who failed in June 2000, but were entitled to the benefit of A.T.K.T. Rules even if the Rules of Shivaji University were applied to their cases.

9. We, therefore, find no merit in the submission that petitioners Nos. 2 and 3 should also be allowed to take the examination which is scheduled to commence on June 19, 2001, for the B. Pharmacy IInd Year Course. The Writ Petition must be dismissed, and is, accordingly, dismissed.

10. Before parting with this Order, we would like to draw the attention of the State Government to the fact that all students who were studying in Pharmacy Colleges earlier affiliated to the Health University, and which colleges are now

affiliated to other Universities pursuant to the Government Resolution dated 19th January, 2001, must be treated as one class and it should not be that, after the affiliation of their colleges to different Universities, they are treated differently by different Universities. We make this observation because we were told by Counsel for the petitioners that while they are not being permitted by Shivaji University to take the B.Pharmacy IInd Year examination, in some other Universities, students such as petitioners Nos. 2 and 3 are being permitted to take the examination. We believe and trust that the Government will look into this aspect of the matter, and see to it that there is no discrimination in such matters.