

(2012) 07 BOM CK 0227

In the Bombay High Court

Case No : Writ Petition (L) No. 2119 of 2011 with Notice of Motion No. 134 of 2012 in Writ Petition (L) No. 2119 of 2011

Amit Sanjay Gaurollu

APPELLANT

Vs

University of Mumbai and Others

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 5 ALLMR 568 : (2012) 114 BOMLR 2882

Hon'ble Judges : R.D. Dhanuka, J; D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Mihir Desai, for the Appellant; Rui A. Rodrigues for Respondent No. 1, Mr. Ashutosh Gavnekar instructed by . Mr. Mandar Soman for Respondent No. 3 and Ms. Sindhu Shreedharan, AGP, for the Respondent

Judgement

Dr. D.Y. Chandrachud, J.—In these proceedings the Petitioner has sought a direction to :

(i) allow him to attend the Seventh semester of the Bachelor of Engineering Degree course which commenced on 25 July 2011; (ii) declare his results of the Fifth and Sixth semesters; and (iii) allow the Petitioner to appear for the Seventh and Eighth semesters examinations which were to be conducted in or about May 2012.

The Petitioner passed his Higher Secondary Certificate Examination in June/July 2008 and after appearing for the common entrance test, was admitted to Vidyalkar Institute of Technology (the Fourth Respondent) for the B.E. Degree Course. In December 2008, the Petitioner appeared for the First semester examination and was declared to have failed in all the subjects. Upon revaluation, he was declared to have passed in the subjects of Physics and Mechanics. In March 2009, the Petitioner appeared for the Second semester examination and cleared all the subjects. In May 2009, he appeared as a repeater in respect of those subjects of the First semester course, which he had

failed earlier, save and except for Physics and Mechanics for which he had applied for revaluation. He cleared one subject in the repeat examination (Chemistry) but not the others.

2. In July 2009, the Petitioner was admitted to the Second year under Ordinance 3709. In December 2009, he appeared for the Third semester examination and passed in two subjects and failed in three subjects. In March 2010, the Petitioner appeared for the Fourth semester examination and while he passed in four subjects, he failed in two subjects.

3. At the end of the Fourth semester, the admitted position is that the Petitioner had still not cleared the First semester since he had failed to pass in Applied Mathematics I. The Petitioner applied for revaluation of his marks in Applied Mathematics I on or about 21 October 2010. Now, it is an admitted position that the Petitioner had secured 15 marks out of 100 in Applied Mathematics-I and he was, therefore, ineligible to seek revaluation. The relevant rule in that regard provides that a candidate can apply for revaluation only if he or she has secured atleast twenty percent of the marks in that subject or forty percent of the marks required for passing in that subject whichever is less. There is no dispute about the fact that the Petitioner, in order to apply for revaluation, would have been required to obtain atleast 16 marks in Applied Mathematics I, whereas he secured only 15 marks.

4. Ordinance 3709 of the University provides as follows :

O.3709 : A candidate who has passed Semester I to Semester IV examination will be permitted to enter upon the course for Semester V. However, a candidate who has failed in not more than 5 heads of passing of Semester III and Semester IV examinations considered together will also be permitted to enter upon the course for Semester V provided he/she has passed Semester I and Semester II examination.

5. In the present case, the Petitioner had not passed the First semester examination and was, therefore, ineligible to seek admission to the Fifth semester. The revaluation rules inter alia provide that provisional admission can be granted to a student to the next higher class pending the process of revaluation to which he could have been admitted if the student has passed in the examination or had been granted an A.T.K.T. for the admission to the next class. Such an admission is, however, provisional and would automatically stand cancelled on receipt of the result of the revaluation if the student is not declared as passed. The relevant provision in that regard in Rule 42 is thus :

42. Pending the process of revaluation, and subject to the availability of the seats in the college, the student may be admitted to the next higher class to which he could have been admitted if he/she had passed in the said examination or had been granted A.T.K.T for admission to the next class in the original examination as per the rules applicable for the stream and faculty of his education, as per the following norms :

(i) The student may be admitted to the next higher class to which he could have been admitted if he/she had passed in the said examination or had been granted A.T.K.T. for admission to the next class in the original examination as per the rules applicable for the stream and faculty if he/she had originally obtained required passing marks in the papers in which he/she had applied for revaluation,

(ii) The college shall be entitled to charge fees of Rs. 500/-at the time of granting admission to such students to the next class before declaration of the result of the revaluation,

(iii) Such admission shall be provisional; and automatically stands cancelled on receipt of the result of revaluation process, if the student is not declared passed in the requisite number of the subjects on revaluation which would entitle him/her to take admission in the next higher class, and in such case the fees originally collected by the college or any part of the same shall not be refunded.

6. The Petitioner completed the Fifth and Sixth semester examination. In June 2011, he was stopped from attending the classes. During academic year 2011-2012 the Petitioner did not attend classes since he was not granted admission. It was only in December 2011 that the Petitioner passed the examination in Applied Mathematics I of the First semester.

7. Ordinance 3709 of the University makes it patently clear that a candidate, in order to take admission in the Fifth semester, has to have passed semesters I to IV. A candidate who has failed not more than five heads of passing of the Third and Fourth semester examinations considered together is also permitted to enter upon the course for the Fifth semester provided the student has passed the First and Second semester examinations. Clearly the Petitioner was ineligible to seek admission to the Fifth semester. Admittedly, when the Petitioner was admitted to the Fifth semester, he had still not passed the First semester. The Petitioner was admitted to the Fifth semester on the basis that he had applied for revaluation of the marks of the First semester. The Petitioner could have Applied for revaluation in Applied Mathematics I only if he had obtained atleast 16 marks. Since the Petitioner did not fulfill that bench mark, the application for revaluation itself could not have been made. In the affidavit filed by the University, a copy of the revaluation application is annexed. From a bare perusal it is evident that the marks which read as 15 out 100 were interpolated as 16 out of 100 by the Petitioner. The Petitioner applied for revaluation on the basis of a false representation that he was eligible to apply.

8. In this view of the matter, the basis on which the Petitioner obtained admission to the Fifth and Sixth semester examinations was contrary to law. The performance of the Petitioner at the Fifth and Sixth semester examinations is, therefore, invalid. It is in December 2011, that the Petitioner has now cleared the First semester. It is only thereafter that he would be eligible for admission to the Fifth semester. Hence, we are unable to subscribe to the contention of the Petitioner that he ought to be allowed to appear in the Seventh semester; that

the result for the Fifth and Sixth semesters be declared and that he should be allowed to appear for the Seventh and Eighth semesters. If the Petitioner is otherwise eligible to seek admission to the Fifth semester after passing semesters I to IV, he would be at liberty to apply for the admission afresh to that Semester.

9. We grant an opportunity to the Petitioner to apply to the Fourth Respondent College for admission to the Fifth semester of the B.E. Degree Course. Counsel appearing on behalf of the Fourth Respondent states that admission would be granted to the Petitioner. Counsel appearing on behalf of the Petitioner submitted that there are equities in his favour and that the Court should take cognizance of the fact that the Petitioner has appeared for the Fifth and Sixth semester examinations and passed those semesters. Moreover, it is urged that the Petitioner has already suffered a loss of one year, academic year 2011-12, when he was not granted admission.

10. We are of the view that no such relief can be granted by the Court. The basis on which the Petitioner sought admission to the Fifth semester was contrary to the law. The Petitioner applied for revaluation after an act of interpolation. But for that he would have not been entitled to revaluation. In the absence of an application for revaluation, validly made, the Petitioner would not have been entitled to admission to the Fifth semester. This Court in exercise of jurisdiction under Article 226 of the Constitution would not be justified in passing an order to protect an admission which has been secured on the basis of a misrepresentation and in a manner contrary to law.

11. Before concluding, we would take note of the fact that initially the Fourth Respondent had not appeared in these proceedings. A Division Bench of this Court passed an order dated 8 May 2012, recording that in spite of notice, the Fourth Respondent had not bothered to appear and that prima facie, this was not a mistake or inadvertence on the part of the College, but a calculated effort to favour the Petitioner for reasons best known to the Management of the College. The University was called upon to state as to whether there were other cases reported from this college of similar breaches of the Ordinance. Subsequent thereto, the College has appeared in these proceedings. In the affidavits filed by the University in these proceedings it has been stated that a gazetted copy of the result was forwarded to the College by the University. Despite this the College strangely accepted a revaluation form and forwarded it to the University without verifying as to whether the Petitioner was entitled to revaluation. Though the gazetted copy of marks which was sent to the College indicates that the Petitioner had obtained only fifteen marks and not sixteen marks as mentioned in the revaluation form, the College, at the least, forwarded the revaluation form without a due verification. We are of the view that the conduct of the College leaves much to be desired. During the pendency of these proceedings, a decision has been taken by the Board of Examinations on 6 July 2012 to recommend to the Management Council to impose a penalty of Rs. One Lakh on the College for

having incorrectly granted admission to the Petitioner for the Fifth and Sixth semesters and for forwarding a form of revaluation with altered /forged marks. The Court has been informed by Counsel appearing for the University that the proposal of the Board of Examinations will be placed before the Management Council for appropriate decision.

12. For the aforesaid reasons, we are of the view that the reliefs which have been sought in the Petition cannot be granted. However, subject to due verification of the fact that the Petitioner has passed semester I to IV examinations for the B.E. Degree course and has fulfilled all other academic requirements, the Petitioner would be entitled to take admission to the Fifth semester. Subject to the aforesaid, the Writ Petition is dismissed. There shall be no order as to costs. In view of the disposal of the Writ Petition, nothing survives in the Notice of Motion and shall stand disposed of.