

(2003) 08 UK CK 0016

In the Uttarakhand High Court

Case No : Writ Petition No. 324 (M.S.) of 2002

Bharat Bhusan

APPELLANT

Vs

G.B. Pant University of Agriculture and Technology and
Another

RESPONDENT

Date of Decision : 25-08-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Govind Ballabh Pant University of Agriculture and Technology for Admission, Enrolment and Continuance of Students Regulations — Regulation 44, 46

Uttar Pradesh Krishi Evam Prodyogik Vishavidyalaya Adhiniyam, 1958 — Section 30

Citation : AIR 2005 Utt 12

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : B.P. Upadhyay, for the Appellant; Rajendra Dobhal, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard Sri B. D. Upadhyay for the petitioner and Sri Rajendra Dobhal for the respondents.

2. By this writ petition, the petitioner has sought the following relieves :

"A writ, order of direction in the nature of certiorari to call for the record of the case and quash the order dropping the petitioner from the University as endorsed in the mark sheet of the first semester of the academic year 2001-2002 and order dated 11-5-2002 passed by the respondents contained in Annexure 3 and 5 respectively to this writ petition.

3. A writ order of direction in the nature of1 mandamus commanding the respondents to determine the C.G.P.A. of the petitioner in accordance with Regulation 40 of the regulations framed by the University and permit him to study in next semester."

4. According to the petitioner he has qualified the entrance test conducted by the university for admission in B.Sc. (Agriculture) for the academic year 2000-2001. Although he has passed the entrance test in the month of May-June of 2000 but he was admitted on 19-1 -2001 in the second semester of the academic year 2000-2001 which started from January 2001, According to the petitioner, criteria for giving promotion to the next academic year is known as cumulative Grade Point Average (hereinafter called C.G.P.A.). The petitioner has passed his second semester and his C.G.P.A. was 3.684. Thereafter the petitioner was permitted to take admission in the first semester of the academic year 2001-2002 and his C.G.P.A. in the said examination was 4.528. The respondent University after considering the points secured by the petitioner in the second semester of the academic year 2000-2001 determined the C.G.P.A. of the petitioner and it was found that the C.G.P.A. of the petitioner was 4.528 which was less than the prescribed standard 5.000. Therefore, the petitioner was dropped from the University on the ground of poor academic performance.

5. The grievance of the petitioner is that he was dropped from the University after calculating his C.G.P.A. in the second semester of 2000-2001 as his C.G.P.A. was less than 5.000 and according to the University authorities the petitioner has a poor academic performance being below the average CGPA. Surprisingly the petitioner was dropped from the University in the middle of academic year 2001-2002 on the ground of poor academic performance.

6. After filing the petition the petitioner was granted ad interim order to the following effect on 21-8-2002.

"Heard Sri B. D. Upadhyay, learned counsel for the petitioner and Sri R. Dobhal learned counsel for the G.B. Pant University of Agriculture and Technology.

The petitioner be provisionally allowed to continue and prosecute his studies. This will be subject to the decision of this writ petition."

7. Aggrieved by the aforesaid order the respondents preferred SLP to Appeal No. 18804 of 2002 in which the Apex Court has passed order to the following effect;

"This matter arises out of an interlocutory order made by the High Court. In the facts and circumstances, we think it is not a fit case for our, interference. The SLP is, therefore, dismissed. It would be appropriate for the High Court to dispose of the matter as expeditiously as possible."

8. As will appear from the aforesaid order that SLP was dismissed but direction was issued for expeditious hearing of the case. After the order was passed by the Apex Court, supplementary affidavit was filed by the petitioner and in Paragraph 7 of supplementary affidavit the petitioner has given his academic performance which reads as under :-"

"That in the first semester of the next academic year i.e. 2002-2003 the petitioner secured 99.230 points and in the second semester of the same academic year 116.990 points and total credits in the first and second semester

of the academic year are 38 as such the C.G.P.A. of the petitioner comes to 5.68 which is more than the required C.G.P.A."

9. The grievances of the petitioner is that the university authorities have dropped the petitioner in the midst of the academic year. He has filed the copy of mark sheet owing the poor academic performance on the basis of first semester of 2001-2002.

10. The University authorities have framed regulations. Chapter III of the Regulations is for admission, enrolment and continuance of students. Regulation 44(a) reads as under :

"The academic year shall be from July to June."

11. Regulation of University regarding performance and dropping from the University is 44(a) which reads as under :

44 (a) If any under graduate student fails to attain cumulative grade point average 5.000 at the end of academic year he shall be dropped from the University for poor academic performance with the right to petition for the admission. The following categories of first degree students shall, however, be finally dropped with no right to petition.

I. If any undergraduate student fails to attain a DGPA of 5.000 at the end of the first academic year. In case a student has been permitted to drop Ist or 2nd semester of his Ist academic year, his CGPA at the end of first two semesters of his stay in the University will be counted for this purpose,

II. If any under-graduate student fails to attain a CGPA of 5.000 in his second year onward.

12. As will appear from the aforesaid regulation right has been given to the students for further admission, which may be called re-admission.

13. Both the parties have also brought to my notice the amended instructions dated 9-11-1998. It reads asunder:

"If any undergraduate student fails to attain CGPA of 6.00 at the end of academic! year he shall be dropped from the University for poor academic performance with the right to petition for re-admission. The following categories of first degree students shall however be finally dropped with no right to petition for re-admission.

I) If any undergraduate student fails to attain a CGPA of 5.500 at the end of the first academic year. In case a student has been permitted to drop I or II Semester of his I academic year; his CGPA at the end ;of first two semesters of his stay in the University will be counted for this purpose.

If any undergraduate student fails to attain a CGPA of 5.250 in his second year onwards."

14. Regulation 46 also contained a clause for re-admission of dropped students, which is known as make-up examination. Performance of a student shall be judged on the basis of the results already available. The Vice-Chancellor has been given authority in this connection.

15. The learned counsel for the petitioner has argued that CGPA has not been recorded at the end of academic year and, therefore, dropping in the midst of academic year 2001-2002 is illegal. The authorities concerned were required to count CGPA for two semesters of academic year.

16. On behalf of respondents No. 1 and 2 it was admitted that the petitioner was given admission in the second Semester of 2000/2001 where he has secured CGPA to the extent of 3.684 at the end of second semester. Since the petitioner was promoted in 2nd year i.e. 2001 -2002 and as such there cannot be any fault of the petitioner. He was deprived of the admission in the first semester of 2000-2001 and further improving of CGPA does not arise at all. Respondents No. 1 and 2 have given a chart along with Paragraph 5 of the supplementary counter affidavit. It reads as under :

"That in reply to the contents of Paragraph Nos. 7, 8 and 9 of the supplementary affidavit, it is stated here the petitioner was given admission in 2nd semester 2000-2001 and he secured C.G.P.A. 3.684 at the end of 2nd semester 2000-2001 and he was registered in 1st semester 2001-2002 with total credits of 18 and the report card was issued to him after calculating the total credits offered by him during the 2nd semester 2000-2001 and 1st semester 2001-2002 with $21 + 18 = 39$ credits and his C.G.P.A. is 4.527 and as per academic Regulation 44(a)(1) Chapter III, he was dropped from the university on account of poor academic performances on the basis of his 1st two semesters stay in the University.

2nd semester 2000-2001 credit 21 point 77.365 CGPA 3.684

1st semester 2001-2002 credit 18 point 99.190 CGPA 4.527

2nd semester 2001-2002 credit 20 point 116.990 CGPA 4.976

17. In paragraph No. 7 of the supplementary affidavit filed by the petitioner it has been stated that in 2002-2003 petitioner has secured CGPA of 5.68 which is more than the required CGPA. Looking to the facts and circumstances of the case since it is a case of student who was given admission in the B.Sc. Ag. for the academic year 2000- 2001 after qualifying entrance test conducted by the respondents. He has passed his first year (second semester) and thereafter 1st semester in 2nd year and thereafter he was provisionally admitted by this Court vide order dated 21 -8-2002 and SLP having been dismissed by the Apex Court vide order dated 9-1 -2003. I find no reason to discontinue the studies of the petitioner at the midst of the session.

18. Admittedly the petitioner was not given admission in the first semester of 2000-2001. So far his performance in the academic year 2001-2002 is concerned his performance was judged only with regard to the first semester of 2000-2001.

Regulation 14 (a) (1) has not been complied with in the form as stated in the regulation. Right of re-admission, therefore, is available to the petitioner under Regulation 40 and the Vice Chancellor cannot deprive a student to complete his full academic year.

19. It is a case where doctrine of fairness has to be applied. Once the petitioner was given admission to 2nd year on the basis of report of 2nd semester of 2000-2001, and therefore simply on the basis of the result of one semester of 2001-2002 he cannot be dropped. Further the doctrine of legitimate expectation also applies to the facts of the case. Once the University authorities have promoted the petitioner on the basis of 2nd semester alone, it cannot be expected from the University authorities to drop him after 1st semester of 2001-2002.

20. In the case of Miss. Mohini Jain Vs. State of Karnataka and others, right to education has been held to flow directly from right to life. The observations of the Apex Court are quoted below (Paras 12, 13 & 14 of AIR) :

"Right to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot, be assured, unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens.

The fundamental rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

The "right to education" therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institution must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society.

21. The aforesaid view has been followed in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . Their Lordships of the Supreme Court, after relying upon the observations in Mohini Jain Case, has held as under (Para 40 of AIR) :

"If life is so interpreted as to bring within it right to education. It has to be interpreted in the light of directive principles. This Court has uniformly taken the view that harmonious interpretation of the fundamental right vis-a-vis the directive principles must be adopted."

22. A perusal of the entire record establishes that the University authorities are

fully aware regarding the career of the students and as such they have introduced Regulation 40 i.e, right to re-admission. Right to re-admission is based on the fundamental principal of equity. An rightly pointed out in the case Kumaon Mandal Vikas Nigam Ltd.. v. Girja Shaukar Pant, JT 2000 (Suppl. 2) (SC) 200 : AIR 2001 SC 24, where the Apex Court has observed as under (Para 20 of AIR) :

"It is a fundamental requirement of law that the doctrine of natural Justice be complied with and the same has as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country."

23. Therefore. induction of Regulation 46. qualifies the doctrine of natural justice. It, therefore, applies to a student who cannot succeed up to a level of CGPA as required by the University concerned. In the Judgment Kuinaon Mandal Vikas Nigam (supra) the Apex Court has relied upon the case of Russell v. Duke of Norfolk, (1949) 1 All ER 109 to the following effect :

"The requirement of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject matter that is being dealt with and so forth."

24. The University authorities are. therefore, required to adopt an atmosphere of reformatory rather than a punitive so that students may reform themselves. In the case A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others, their Lordships of Hon"ble Supreme Court have relied upon a passage from Riguveda. It emphasised the divine qualities of a person should be forgiveness, compassion and service. If University adopts this idea the students will get moral support in their future career as rightly pointed out by the Apex Court to the following effect (Para 67 of AIR):

"Behave with others as you would with yourself. Look upon all the living beings as your friends, for in all of them there resides out; soul. All are but a part of that universal soul. A person who believes that all are his soul mates and loves them all alike never feels lonely. Divine qualities of such a person such as forgiveness. compassion and service will make him lovable in the eyes of his associates. He will experience intense joy throughout his life."

25. The Yajurveda states :

fe=L; ek p{kq"kk lZok.kh Hkwrkfu leh{kUrkeA fe=L;kgA

p{kq"kk lZokf.k Hkwrkfu lfe{kSA fHkizL; p{kq"k egsAA

"May all beings look on me with the eyes of a friend. May I look on all beings with the eyes of a friend. May we look on one another with the eyes of a friend."

26. University authorities must follow the principal as enumerated in Dhagwat Geeta (16-2).

vfgalk lR;e?ks/kjR;kx% "kkfUrjiS"kqueA

n;k Hkwrs"oyksyqIRoa eknZoa ghjpkiyeAA

eu] ok.kh] vkSj "kjhj ls fdlh izdkj Hkh fdlh dks d"V u nsuk] ;FkkFkZ vkSj fiz;
Hkk"k.k] viuk vidkj djus okys ij Hkh ?ks/k dk u gksuk] :eksZu dokZiu ds vfHkeku
dk R;kx] vUr%dj.k dh vijfr vFkkZr fp= dh papyrk dk vHkko] fdlh dh Hkh fuUnkfn
u djuk] lc Hkwrizkf.k;ksa esa gsrqjfr n;k] bUnzh;ksa dk fo"k;ksa ds lkFk la;kx
gksus ij Hkh muesa vklfDr dk u gksuk] dksekyrk] yksd vkSj "kkL= ls fo:/n vkpj.k
esa yTtk vkSj O;FkZ ps"Vkvksa dk vHkkoA

27. The. right to life and the dignity of an individual cannot be fissured unless It is accompanied by the right to education. In my opinion University authorities should impart education to the students with the aim of nation building.

28. In the result the writ petition is allowed and order dated 11-5-2002 passed by the respondent is quashed. The respondents are directed to consider re-admission of the petitioner in the light of observations made in the body of Judgment and in accordance with Regulation 46 as well as amended instruction dated 9-11-1998.