
(1998) 12 BOM CK 0082

In the Bombay High Court

Case No : Writ Petition No. 1074 of 1998

Bhavya Sitaram Dubey

APPELLANT

Vs

Board of Technical Examination, M.S., Bombay and Another

RESPONDENT

Date of Decision : 02-12-1998

Acts Referred:

Citation : (1998) 12 BOM CK 0082

Hon'ble Judges : V.P. Chapalgaonker, J;D.D. Sinha, J

Bench : Division Bench

Advocate : N.S. Badhe, for the Appellant; N.S. Jog, Asst. G.P., for the Respondent

Judgement

N.P. Chapalgaonker, J.—Heard Shri Badhe, learned counsel for the petitioner, and Smt. Jog learned Assistant Government Pleader for the respondents 1 and 2. Respondent No. 3 stands deleted with the leave of the Court.

2. This is a petition by a student who was admitted to Diploma in Pharmacy - a course conducted by the Board of Technical Examination of Maharashtra State. Rules for admission to post H.S.S.C. diploma courses in Engineering and Technology in Technical Institutions/Polytechnics in Maharashtra for the year 1997-98 also contain rules regarding admissions to the diploma course in Pharmacy. Rule 4.4 of the Rules prescribes that the minimum qualification for admission to the first year or semester of the Diploma Course in Pharmacy shall be pass in XIIth Standard (Higher Secondary School Certificate Examination of Maharashtra State Board of Higher Secondary Education) or any other examination declared by the said Board to be equivalent thereto with and in (1) Physics, (2) Chemistry, (3) Biology or Mathematics and (4) English. The petitioner was declared to have been passed in the qualifying examination, but he had not passed in Physics. He had scored less than 40% marks, which were the minimum marks prescribed by the Board, which examined the petitioner in qualifying examination. Though an examination is held to be equivalent, there may be difference in the subjects, standard of passing and also rules regarding

requirement of passing in number of subjects out of the subjects in which the candidate was examined. Under the rules applicable to the Board, which examined the petitioner, i.e. Council for the Indian School Certificate Examination, New Delhi, if a student passes in four subjects, he can be declared to have been passed despite the fact that he had failed in other subjects. The petitioner's admission has been cancelled on the ground that he was not eligible for being admitted since he had failed in Physics subject, which was one of the necessary passing subjects. In Physics, petitioner secured marks less than minimum required.

3. It is contended by Shri Badhe, learned counsel for the petitioner, that since petitioner has passed the qualifying examination, he stands to the test under the rules and it is not necessary for him to show that he had passed all these four compulsory subjects. The standard for passing was decided by the Board, which examined the petitioner and it need not be gone into by the Board in which the petitioner is now seeking admission. Shri Badhe relies on a note of case in Special Civil Application No. 2608/76 wherein a student declared to have been passed in a subject from Poona Board was admitted in a course of Nagpur University and the Nagpur University after verifying the position that minimum marks for passing fixed by Poona Board were lesser than those prescribed by Nagpur University, cancelled his admission. This Court held that if Nagpur University merely says that a particular examination is equivalent and if a student is declared to have passed the said examination, then the University has no right to go into the question of minimum marks prescribed. In the instant case, we find that the Board, which examined the petitioner, has declared him to have failed in Physics subject. The rule requires that he should have passed the examination with Physics, Chemistry, Biology or Mathematics and English meaning thereby, he should have passed in all these four subjects. According to the standard of the Board, which examined him in the qualifying examination and which has been accepted to be an equivalent examination, the petitioner does not stand to this test and case cited does not help him. Respondent Board is not substituting minimum marks fixed by New Delhi Institution by its own standard. It is only examining whether candidate has passed according to standard prescribed by that examination body.

4. The second part of contention raised by Shri Badhe is based on a judgment of Division Bench of Delhi High Court in Sangeeta Shrivastava Vs. U.N. Singh and Others, wherein a student was admitted to M.A. (Part I) class though she had not secured minimum number of marks making her eligible for admission. However, by oversight she was admitted. She studied throughout the year and, therefore, applying the principle of equitable estoppel, the learned Judges of Delhi High Court held that she is entitled to be continued despite the fact that she was not eligible under the rules.

We respectfully disagree with the observations of the learned Judges. The academic standard is not a matter, which can be compromised applying the

principle of equitable estoppel. It is true that the Colleges and Universities will have to be more vigilant, as their negligence causes irreparable loss to the students, who are wrongly admitted and are discontinued. It may give rise to some other action but would not justify admission. With respect, therefore, we disagree with the judgment cited by the learned counsel and hold that the Court should be slow in watering down the standards of education and if somebody is admitted wrongly, that by itself will not give rise to right of continuation of his studies on the principle of equitable estoppel. We do not find any merit in the petition and, therefore, we dismiss the same. Interim stay stand vacated.

5. Before we part with the judgment, we wish to observe that we are confronted with many such cases like the present case wherein not only inadvertence, but also negligence in the duties on the part of the persons, who are responsible for giving admissions to the students, is causing great loss, for which this Court cannot really compensate the students, who lose their valuable year of life merely because they are given to understand that they are eligible and admitted. It is the duty of all such concerned to examine whether candidate is eligible or not and at the threshold tell him whether he can be admitted or not. We hope such incidents will not occur again. We direct the learned Assistant Government Pleader to send a copy of this judgment to the Secretary of the Department of Technical Examination and he should forward the same to all Colleges, who are recognised by the Department and erring officers should be warned so that there should not be any recurrence of such cases.