

(1999) 05 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1051 of 1998

Board of Technical Education and Another

APPELLANT

Vs

Anupama Goyal and Another

RESPONDENT

Date of Decision : 14-05-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1999 Raj 280 : (2000) 1 RLW 298 : (1999) 3 WLC 377

Hon'ble Judges : R.R. Yadav, J;G.S. Misra, J

Bench : Division Bench

Advocate : Bharat Vyas, for the Appellant;

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—By filing this Special Appeal, the appellants question the legality and propriety of the order dated 23-11-98 passed by the learned single Judge of this Court in S.B. Civil Writ Petition No. 1665 of 1997 whereby the writ petition was allowed and impugned show cause notice dated 11-3-97, Ex. 4 to the writ petition issued by the Registrar, Board of Technical Education, Rajasthan, Jodhpur for cancelling admission of petitioner-respondent No. I for Diptoma Course in Modern Office Management at Government Women Polytechnic College was quashed.

2. The facts of the instant case lie within the very narrow compass and two short points of law have been raised before us by the learned counsel for the appellants Mr. Bharat Vyas.

3. The petitioner-respondent No. 1 passed her B.Sc. Examination in the year 1990 from University of Rajasthan and M.Sc. Examination in the year 1992 from Mohan Lal Sukhadiya University, Udaipur. She pursued her Research work from 28-5-93 and submitted her Thesis on 17-6-96, which was evaluated and approved on 3-2-97. She applied for admission to Three Years Diptoma Course in Modern Office Management and was admitted by the Director, Technical

Education, Rajasthan, Jodhpur. She passed her First Year Examination of Modern Office Management Course during academic session 1995-96. It is borne out from record that while she was prosecuting her studies in Second Year Examination of the said Course, she received a show cause notice along with covering letter dated 11-3-97, Ex.4 to the writ petition calling her explanation as to why her admission in Modern Office Management for Three Years Diploma Course should not be cancelled for violation of Condition No. 9(Ja) of the Brochure attached to the application form, which forbids appearance in any other examination conducted by any other Board or any other University.

4. Petitioner-respondent No. 1 immediately sent her reply to the show cause notice as the Annual Second Year Examination of Modern Office Management Course was scheduled to commence from 31-3-97 but no final order was passed. Petitioner-respondent No. 1 was scared and she filed the present writ petition challenging the impugned show cause notice dated 11-3-97, Ex. 4 to the writ petition on the ground inter alia that Award of Ph.D. Degree is not taking up examination as forbidden by the Board, similarly situated students are being allowed to continue their studies whereas she is being subjected to show cause and allegations of mala fides were leveled against respondent No. 2.

5. Sheet-anchor of the case of the appellants before the learned single Judge was that Condition No. 9 (Ja) of the Brochure accompanying application form for admission in Modern Office Management Course provides that student would not be permitted to appear in any other examination conducted by any other Board or University during the period he/she remained in the study with the Board or University and that if it is found that the student has appeared in any examination held by any other Board or University, then his/ her admission and enrolment is liable to be cancelled. According to the appellants, while petitioner-respondent No. 1 was pursuing her Diploma Course in Modern Office Management. she was simultaneously studying and appearing for the examinations for the award of Ph.D. Degree and thus, the terms and conditions No. 9(Ja) of the Brochure has been violated. The appellants have also alleged that petitioner-respondent No. 1 did not divulge this information while she was filling her admission form for Three Years Diploma Course in Modern Office Management. Thus, she is guilty of material concealment of facts. It was contended by the appellants before the learned single Judge that the impugned show cause notice Ex. 4 has not been issued to petitioner-respondent No. 1 at the behest of respondent No. 2 as alleged by her.

6. Respondent No. 2 in his separate reply, has denied to have any thing to do with the impugned show cause notice- He has also denied that he is annoyed with petitioner-respondent No. 1, and as such, he is instrumental in issuance of the show cause notice Ex. 4 to the writ petition.

7. In the rejoinder, petitioner-respondent No. 1 has reiterated her averments made in the writ petition with better particulars and emphasised that similarly circumstanced students are allowed to appear in the examination of Three Years

Diploma Course of Modern Office Management by the appellants whereas they are simultaneously appearing in other examinations.

8. It is borne out from perusal of the order of the learned single Judge that he considered the rival contentions raised before him and found that Award of Ph.D. Degree cannot be held to mean that the petitioner-respondent No. 1 appeared in another examination conducted by the University. Learned single Judge did not find case of mala fide proved against respondent No. 2. It is held by the learned single Judge that the writ petition against the impugned show cause notice dated 11-3-97, Ex. 4 is maintainable.

9. We have heard the learned counsel for the appellants at length and perused the materials available on record with his assistance.

10. From perusal of paragraph 9 of the writ petition its reply filed by the respondents and rejoinder filed by appellant-respondent No. I, it is crystal clear that the procedure prevalent in the Government Polytechnic College, Jaipur had never followed Condition No. 9(Ja) of the Brochure from its inception. It is also borne out from perusal of the record that on the one side, a show cause notice was issued to petitioner-respondent No. 1 but on the other side, there were many students who are named in paragraph 9 of the writ petition are being allowed to appear in various examinations of the Board or University though they are regular students of Modern Office Management Course and other faculties. It is not believable that seven students named in paragraph 9 of the writ petition were not known to the appellants prior to filing of the present writ petition by petitioner-respondent No. 1.

11. From the aforesaid facts, it appears that the appellants have never raised any objection in respect of other students appearing in two examinations simultaneously except in case of the petitioner. It is borne out from the record that one Mrs. Neelam Rajpurohit was appointed as Lecturer, Costume Designing and Dress Making, who had passed two examinations i.e. B.A. and Costume Designing in one session. The aforesaid appointment leads towards an irresistible conclusion that she was appointed after examining her original educational records. If the appellants intended to implement Condition No. 9(Ja) of the Brochure supplied to every student then they should not have appointed Mrs. Neelam Rajpurohit who had passed two examinations in one session as stated hereinabove. Thus, it is proved that except in case of the petitioner, no objection was ever raised before 14-3-1997 giving show cause notice Ex. 4 to the petition for implementing Condition No. 9(Ja) of the Brochure supplied to every student along with admission form.

12. A pointed question was asked to the learned counsel for the appellants Mr. Bharat Vyas as to whether Condition No. 9(Ja) of the Brochure has a statutory force either under the Rajasthan University Act or Rules framed thereunder or Statutes or Ordinances issued by the University from time to time but it could not be brought to our notice that Condition No. 9(Ja) of the Brochure mentioned

hereinabove has statutory force. It is further asked from the learned counsel for the appellants what is the nexus of Condition 9(Ja) of the Brochure forbidding appearance in any other examination by any other Board or University? It is urged by the learned counsel for the appellants that our country is already facing paucity of resources and adequate opportunities to millions of masses to undergo proper technical courses. Technical Education Courses run by the appellant-Board receives a huge financial aid from the Government as well as external agencies, therefore, the appellant-Board is required to spend a huge sum on each and every student admitted into courses run by it. Keeping in view the aforesaid object Condition No. 9(Ja) of the Brochure was framed, according to which, a student undergoing a course of Diploma with the Board should not be permitted to simultaneously take up any other course of study leading to appearance at the examination by any other Board or University.

13. In the present case, when show cause notice Ex. 4 was given to petitioner-respondent No. 1, she had already passed her First Year Examination and at the fag end while she was about to appear in the Second Year Examination of Modern Office Management of Three Years Diploma Course, show cause notice Ex. 4 was given to her. By the order of the Court, she was allowed to appear in the said examination and she has been declared to have passed her Second Year Examination of Modern Office Management and now she is completing her final year of the said Three Years Course. At this juncture it is not possible to replace any other student on her place and a huge amount spent by the Board in completing her studies will go waste on technical grounds raised by the appellants especially when she has already obtained her Ph.D. Degree long back in the year 1997.

14. We are of the view that in the present case, equally a duty was cast upon the appellants to see within reasonable time that admission norms are complied with by all the students seeking admission in Three Years Diploma Course of Modern Office Management in the institution. 11" neither the Head of the Department nor University Authorities had cared to scrutinize admission forms within reasonable time then holding petitioner-respondent No. 1 responsible for suggestion false or suppression very is not tenable. We are of the view that there was ample time and opportunity to the Head of the Department and University Authorities to have found out defects within the reasonable time and if they failed to do so, this objection cannot be allowed to be raised when petitioner-respondent No. 1 is about to complete her Three Years Diploma Course in Modern Office Management. It is held that where an institution on whom misrepresentation is alleged to have been committed in seeking admission for prosecuting higher studies is found to be in a position to discover the truth by due diligence but it failed to do so within reasonable time, in such situation, cancellation of admission of a student who is about to complete his/her final year course is not conducive to the concept of justice and fair play. Fairness is an important component of justice and it is always to be taken into account in administration of justice to all with even-handed, justice-oriented approach.

Fairness has not set form or procedure. It depends upon the facts of each case.

15. From the discussion made hereinabove, in our considered opinion, once petitioner-respondent No. 1 was allowed to appear in First Year and Second Year Examinations of Three Years Diploma Course in Modern Office Management and now prosecuting her final year course, the appellants had no jurisdiction to cancel her admission in the said course who failed to discover the truth by due diligence within reasonable time.

16. It is strenuously urged by the learned counsel for the appellants Mr. Bharat Vyas before us that the impugned judgment passed by the learned single Judge is vitiated on the ground that the writ petition was not maintainable against show cause notice, especially, where the mala fides were not proved. We are not satisfied with the afore said arguments in view of the decision rendered by the Supreme Court in case of Union of India (UOI) and Another Vs. Brij Fertilizers Pvt. Ltd. and Others, wherein Hon"ble R. M. Salia, J. then speaking for the Court ruled which reads thus :--

"8. Failing in his effort to assail the order on merits the learned Additional Solicitor General vehemently urged that the department was not precluded from issuing show cause notice and requiring the manufacturers to appear and explain their claim. It was urged that the High Court was not justified in quashing the show cause notice and issuing directions for paying the subsidy without giving an opportunity to the department to verify if the respondents had in fact complied with Control Order. True, the High Court should normally not interfere at the stage of show cause notice. But where, from the facts it is apparent that there was no material available with the department to doubt the statement on behalf of the respondents and their own officers at every point of time had issued the certificate the correctness of which could not be disputed or doubted except by raising unfounded suspicion or drawing on imagination it would be tailing to exercise jurisdiction if the Court does not discharge its constitutional obligation of protecting the manufacturers who, as is apparent from the counter-affidavit filed in this Court and the various letters issued from different authorities are in perview condition as they are not able to meet their liabilities to pay to financial institutions and various other , authorities and are facing proceedings on various counts and have virtuously closed their unit, We are pained to say that authorities did not realise either the purpose of granting subsidy or the harassment to which the manufacturers have been exposed. | Entire litigation appears to be a sad plight for those who have set up small-scale units in the hope that they will stand on their own on the manufacturing fertilisers in much more than the price fixed by the Government for which it assured to pay subsidy."

17. It is next contended by the learned counsel for the appellants that the learned single Judge has completely failed to appreciate the Award of Ph.D. Degree is an outcome of appearance at the examination conducted by the University. It is also urged by him that the learned single Judge was not correct to arrive at the conclusion that no written examinations in ritualistic manner

were held by the University while awarding Ph.D. Degree and viva voce does not play a dominant role in such system, therefore, research work cannot be said to be examination. It is submitted that the expression "examination" in its literal sense as per P. Ramnath Iyyer's Law Lexicon means "a weighing, balancing, search, inspection, investigation, inquiry, an investigation made in order to form a judgment". He also referred Wharton's Law Lexicon, wherein, the expression "examination" means an act of eliciting by questions a person's knowledge of facts or science. According to the learned counsel, every process which takes into its fold an act of weighing, balancing through eliciting by questions a person's knowledge of facts or science or by any other means of embarking upon such inquiry in order to form a judgment is an examination.

18. We are of the opinion that the aforesaid argument raised by the learned counsel for the appellants assumes characteristic of pure academic question leading to an empty formality in view of the facts and reasons discussed hereinabove.

19. The judgment passed by the learned single Judge is hereby affirmed on the grounds given by him and also on the additional grounds discussed in the preceding paragraphs of this judgment.

The up-shot of the aforesaid discussion, is that the instant Special Appeal lacks merit and it is hereby dismissed in limine.