
(1999) 05 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15678 of 1994

Dr. Ashok Kumar Shaliey

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 123 PLR 45

Hon'ble Judges : Harjit Singh Bedi, J

Bench : Single Bench

Advocate : G.K. Chatrath and Alka Chatrath, for the Appellant; Ashok Aggarwal Ajai Jain and Devinder Singh, for the Respondent

Final Decision : Allowed

Judgement

Harjit Singh Bedi, J.—The petitioner passed his matriculation examination in the year 1981 and his 10 + 1 examination in the year 1984 both from the Punjab School Education Board and on that basis got admission to the B.A.M.S. four years course for the session 1984-88 in the Shri Krishna Government Ayurvedic College, Kurukshetra, which is affiliated to the Kurukshetra University, as a domicile of the State of Haryana, as the admission was confined to the domiciles of the State. He also passed the final year examination in April, 1990 and after having completed six months of internship was duly issued certificate, Annexure P-5 dated 5.3.1993 to that effect as also a provisional certificate, Annexure P-6, dated 11.2.1991 indicating that he had cleared the B.A.M.S. Course. He was thereafter registered as an Ayurvedic Practitioner under Sr. No. 3257 as per registration certificate, Annexure P-7, dated 23.5.1991. As the formal degree certificate had not been issued to the petitioner, he approached the respondent-College for the same and was told by the Principal that an enquiry had been initiated against him on the ground that the domicile certificate Annexure P-3 that he had produced at the time of admission in the year 1984, was in fact a forged document as he was not a domicile of the State of Haryana. A show cause

notice, Annexure P-8, dated 10.5.1993, was accordingly issued to the petitioner by the Principal of the respondent-College. The petitioner sought more time to reply to the notice vide letter, Annexure P-8/1, dated 9.6.1993 and on his request, the matter was once again referred to the Deputy Commissioner, Kurukshetra. The Deputy Commissioner referred the case to SDM/Tehsildar/Halqa Patwari for verifying the fact with regard to the petitioner's domicile and the Halqa Patwari reported that the petitioner and his family had been residing in the locality known as Mohan Nagar in a rented accommodation. The report of the Halqa Patwari was put before the Tehsildar, Thanesar, who verified the same as per Annexure P-10, dated 18.3.1993 by noting that the petitioner and his mother were residing at different places within Thanesar from 1978 to 1990 and that the petitioner's name also appeared in the ration card and the voter lists. It is the petitioner's case that despite these communications in his favour, the Registrar of the Kurukshetra University vide his letter dated 6.5.1994, Annexure P-12, informed him that as the Principal of the respondent-College had already cancelled his admission to the course, the question of issuing the formal degree did not arise. The petitioner has accordingly impugned the order, Annexure P-12, in the present writ petition.

2. On notice of motion, various replies have been filed on behalf of the respondents and while admitting the fact that the petitioner had passed out of the respondent-College, it has been pleaded that on a complaint received about the petitioner's domicile in the year 1989 the Deputy Commissioner, Kurukshetra had been requested vide letter dated 27.9.1989 to verify the certificate and that he had vide Annexure R-1 dated 6.11.1992 (appended with the written statement filed on behalf of respondents 1 and 3) informed the College that the petitioner was not a domicile of the State of Haryana on which a show cause notice had been issued to the petitioner vide letter dated 10.5.1993 and despite ample time having been given to him, he had submitted no reply with the result that his admission had been cancelled vide order dated 10.11.1993, Annexure R-3. Reliance has also been placed on Clause 22 of the Ordinance for Examinations appearing at page 437 of the Kurukshetra University Calender Volume II, 1991, to plead that the controller of examination of the University had the authority to cancel the petitioner's result.

3. A replication has been filed by the petitioner controverting the stand taken by the respondents in the written statements.

4. Mr. G.K. Chatrath, the learned Senior Advocate, has urged that the petitioner had joined the four years course in question in the year 1984 and had cleared the same in April, 1990 and as the petitioner's candidature had been rejected by the Principal on 10.11.1993 long after the petitioner had ceased to be a student, the same was not justified and not in accordance with law. He has also urged that the Principal had made the order, Annexure R-3, on the basis of the report, Annexure R-1, and as this report had been recorded without notice to the petitioner, the action was unsustainable. In this connection, he has highlighted

the fact that the averments made in the writ petition that the petitioner's certificate had been re-verified by the Halqa Patwari and Tehsildar, Thanesar and the domicile certificate had been found to be genuine, had not been denied but the reasons which had weighed with Deputy Commissioner in giving a negative report had not been brought on record. He has finally argued that as the petitioner had obtained the provisional certificate on 11.2.1991 and on that basis had been registered and had been practicing as an Ayurvedic Doctor since 1991, it would not be proper in equity to turn the clock back at this stage.

5. On the other hand, the learned counsel for the respondents have urged that as the petitioner was not a domicile or resident of the State of Haryana and had produced a certificate, which was found to be wrong, he was not entitled to any relief at the hands of this Court.

6. After hearing learned counsel for the parties, I am of the opinion that this petition deserves to succeed. The broad facts have not been disputed. It is the admitted position that the petitioner had joined the course in the year 1984, completed the same in the year 1990 and had subsequently been registered as an Ayurvedic Practitioner and has been practicing since 1991 and it was only at the stage when he had sought the formal B.A.M.S. degree, that he had been faced with a problem. The matter needs to be examined, with this background.

7. It is apparent from Annexure R-3, the order made by the Principal that it is based almost exclusively on the report of the Deputy Commissioner, Annexure R-1. The same is reproduced below:

Annexure R-1

From:

Sh. R.R. Banswal, I.A.S. Deputy Commissioner, Kurukshetra.

To

The Principal, Sh. Krishna Govt. Ayurvedic College, Kurukshetra.

No. 10380/M.A. dated 6.11.1992 Sub Regarding enquiry of Domicile certificate - Shri Ashok Kumar. Memo:

Refer to your letter No. ACA/613 dated 25.4.91 on the subject cited above.

Shri Ashok Kumar son of Shri Haridev is not eligible to be considered for issuance of permanent Haryana Domicile Certificate based on the report of S.D.O. Civil Thanesar. Legal action, therefore, should be taken against him.

Sd/- for D.C. Kurukshetra. 27.11.1992."

8. It is not disputed by the respondents that this order had been made by the Deputy Commissioner without notice to the petitioner. It is not the respondents' case now that the certificate is a forged one. It is also clear that Annexure R-1 is a directive to the Principal that as the petitioner's domicile certificate had been

found to be wrong, action should be taken to cancel his admission. To my mind, no option had been left with the Principal but to follow this directive. As the order, Annexure R-1, had been without notice to the petitioner, the order Annexure R-3 must also suffer on that account.

9. Mr. Chatrath's alternative argument with regard to Clause 22 must also be examined. This Clause is reproduced below:

"22. The Controller of Examination shall have authority to cancel the candidature of a candidate for any University Examination on the grounds of his ineligibility after he had actually appeared in it and to file his result."

10. A bare reading of Clause 22 would show that it refers to the cancellation of the candidature of a candidate for any University Examination after he had appeared in it on the ground of his ineligibility. This Clause cannot be read to mean that the degree awarded to a candidate can also be cancelled after he had cleared the Course in question. As already stated above, the petitioner had cleared the B.A.M.S. Course in the year 1990 and had also obtained a provisional certificate to that effect. The word "for any University Examination" obviously refers to a particular examination and not to the entire Course. It also pre-supposes that the cancellation would be between the date of appearance in the examination and the declaration of the result and not at a stage thereafter.

11. For the reasons recorded above, no other point needs to be gone into. This writ petition is accordingly allowed the orders, Annexure P-12 dated 6.5.1994 and Annexure R-3 dated 10.11.1993 with the reply of respondents 1 and 3 are quashed. It is accordingly directed that the University will issue the formal B.A.M.S. Degree to the petitioner forthwith.

No costs, Dasti order.