

(1988) 05 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 14400 of 1981

Haradi Ragavendra Pai

APPELLANT

Vs

University of Mysore and Others

RESPONDENT

Date of Decision : 24-05-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka State Universities Act, 1976 — Section 60
Penal Code, 1860 (IPC) — Section 363, 366, 376

Citation : AIR 1989 Kar 176

Hon'ble Judges : P.P Bopanna, J

Bench : Single Bench

Advocate : K. Radesh Prabhu, for Tukaram S. Pai, for the Appellant; N. Devadas, Govt. Pleader and H.K. Vasudeva Reddy, for the Respondent

Judgement

1. The petitioner who, was at the relevant time the Assistant Manager, Syndicate Bank having its Branch Office at Dharwad has called in question the correctness of the order passed by the 3rd respondent Vice -Chancellor of the 1st respondent-University withdrawing the degree conferred on him by the 1st respondent / University on the ground that he had committed fraud which disentitled him to hold the degree conferred on him. The relevant provisions of the Karnataka State Universities Act, 1976 (in short the Act) under which action was taken against the petitioner read as under:

"60. Withdrawal of Degree or Diploma(1) The Senate may on the recommendation, of the Syndicate withdraw any, degree, diploma or privilege conferred on or granted to any person by a resolution passed by a majority of the total membership of the Senate and by a majority of not less than two thirds of the members of the Senate present and voting at the meeting, if such person has been found convicted by a Court of law for an offence which, in the opinion of the Senate, involves moral turpitude or if he has been guilty of gross misconduct.

(2) No action under this section shall be taken against any person unless he has been given an opportunity to show cause against the action proposed to be taken.

(3) A copy of the resolution passed by the Senate shall be immediately sent to the person concerned.

(4) Any person aggrieved by the decision taken by the Senate may appeal to the Chancellor through the State Government within thirty days from the date of receipt of such resolution.

(5) The decision of the Chancellor on such appeal shall be final."

It is common ground that action was taken against the petitioner under the second ground available for the University to withdraw the degree conferred on the petitioner, i.e., if he is guilty of gross misconduct. Such withdrawal of the degree should be preceded by a show cause notice to the, person concerned and he must be given an opportunity to show cause against the action proposed to be taken against him.

2. It transpires that the petitioner at the relevant time was working as the Assistant Manager of the Syndicate bank, Dharwad. But all the same he sought admission to Udupi Law College and was admitted as a student in that Law College. The duration of the course for obtaining Law Degree in that college which was affiliated to the Mysore University is 3 years and, therefore, the petitioner was expected to put in the requisite attendance during the aforesaid period before he could take the University examinations prescribed for the Law degree course. The petitioner did appear for all the 3 examinations held during the years 1971 to 1974 and he obtained the LL. B. Degree of Mysore University in the convocation held after the academic year 1974-75. However, sometime in the year 1976, one S. G. Dambal claiming to be a person interested in the purity of academic standards to be maintained by the, University gave a complaint to the Vice-Chancellor, i.e., the 3rd respondent herein, bringing to the notice of the Vice-Chancellor the alleged illegalities practised by the petitioner in obtaining the law degree and he requested the Vice Chancellor to take suitable action against the petitioner. He had stated in the complaint that the petitioner was working as the Assistant Manager in the Syndicate Bank for the last 5 years. But, while doing so, he kept terms as a regular student of Udupi Law College which is at a distance of 320 km. from Dharwad for a period of 3 years; that he appeared for the final year Law examination in April 1974 and had successfully completed the examination and he was conferred with the degree by the University; that a minimum of 70% of physical attendance for the classes was required to admit a student for any examination; that the petitioner being an Assistant Manager in the Syndicate Bank, Dharwad, which was located at a distance of 320 k.m from Udupi, it was physically impossible for him to attend the College and to obtain legally the necessary attendance. He has further stated in the complaint that the petitioner had not taken prior permission from the Syndicate Bank, i.e., his employer, for pursuing the Course in Udupi College and in the absence of such

permission from his employer, the petitioner had committed gross misconduct. He also implicated the petitioner's father, Haradi Ramanatha Pai who was an Honorary Lecturer in the Udupi Law College at the relevant time and accused him of helping the petitioner in getting a certificate of physical attendance for 3 years culminating in the final year examination in which he appeared in April, 1974.

3. On the basis of this complaint, the Registrar of the 1st respondent/University issued a notice (Annexure-B) to the petitioner asking him to furnish replies to the following questions:

"1. Were you a student of the Udupi Law College, Udupi during the years 1971-74?

2. When did you appear for the Final LL. B. and pass it?

3. Did you receive the above degree in a Convocation? If so, in what year?

4. Did you actually attend the Law course during the above period? Had you taken leave from the Bank during that period?

5. From how long are you an employee of the Syndicate Bank at Dharwad?

6. In case you had not obtained leave from your Employer to attend the Course in question, how did you manage to get the required attendance all through those three years?"

The petitioner's reply is produced as Annexure-C in the writ petition and that reply on the face of it is an evasive reply and did not fully meet the requirements of the questionnaire issued to the petitioner by the Registrar under Annexure-B. What the petitioner stated in the reply is that the allegation made against him is baseless; that the college had produced the necessary certificates for his attendance for all the three years before he appeared for the examination and in the usual course he had appeared for all the examinations and taken the degree and he had also migrated to Karnataka University for the M.A. Degree examination for the academic year 1974-75. This explanation of the petitioner being wholly unsatisfactory and evasive the Controller of Examinations who is the Specially Empowered Authority under the Act issued a charge sheet to the petitioner on 1-5-1976 specifically alleging that he had manipulated the attendance records with the help of his father Haradi Ramanath Pai who was a part time Professor in the said Law College and thus abetted by his father, he had cheated the University and thus committed gross misconduct; that he while working as an Assistant Manager of the Syndicate Bank, Dharwad Branch, enrolled himself as a student of the LL. B. Course at the Udupi Law College, Udupi, during the years 1971-74 without obtaining proper sanction of the authorities of the Bank for such enrolment and he managed to have his attendance marked to his advantage in order to satisfy the attendance requirements of the University whereas he had not taken leave from his post for a time long enough to make such attendance possible. The petitioner was given a reasonable opportunity to answer the aforesaid charges.

4. An enquiry was held into these charges after complying with the requirements of the principles of natural justice. The petitioners reply to the aforesaid charge sheet is found at Annexure-E and the report of the Enquiry Officer is found at Annexure-F. The Controller of Examinations after holding a detailed enquiry and after considering all the possible defences raised by the petitioner came to the conclusion that the petitioner's claim on attendance could not be accepted as true and credible and to quote his own words:

"..... His arguments are not logically sound and he could not have attended the classes more than 15% of the time each year and he must have known it. Pleading ignorance of attendance requirement rule

cannot be an excuse for applying for the examination and taking the examination on the strength of the certificate of attendance given by the Principal which he himself knew about and quoted as an argument in support of his denial of his committing any kind of fraud or of cheating the University in any way. He has quoted senior students as saying that attendance was not compulsory. He must have preferred to join the Udupi Law College rather than a college at Dharwad itself because of the knowledge that he could have certain special advantages there."

5. Learned Counsel for the petitioner, Mr. Prabhu, has taken me through the entire records of the proceedings before me. He very fairly did not attack the procedure ,adopted by the Enquiry Officer since the Enquiry Officer has complied with all the requirements of the principles of natural justice. But he attacked the findings of the Enquiry Officer on the ground that his report is vitiated by the absence of the evidence against the petitioner on the specific charge that he committed fraud or cheated the University by illegally keeping the terms of attendance in all the 3 years for taking the Law Examinations during the relevant period. No, doubt, in the absence of any record which ought to have been produced by the Law College to support the charges framed by the University against the petitioner , the Enquiry Officer had to rely on certain other circumstantial evidence to sustain the charges against the petitioner. In the course of the evidence, the complainant S. G. Dambal was not co-operative and he appears to have remained unconcerned with the complaint made by him. The Principal of the Law College, D. G. Deshpapde, denied his personal knowledge of the alleged misconduct and pleaded his inability to confirm the petitioner's attendance at the relevant point of time. He has stated in his letter to the Controller of Examinations that the details of percentage of the old students' attendance in different papers for all the three years were not available at that stage, as the matter was very old. He also admitted that his office had not taken care to preserve the records since it was not a permanent record. His attitude was not very helpful to the University authorities presumably because he did not want to expose the father of the petitioner who was a part time Professor in his College. But those facts by themselves would not exonerate the petitioner since he was working in Dharwad as, an Assistant Manager in the Syndicate Bank at

the relevant time and, therefore, a heavy burden was cast on the petitioner to establish that he was in a position to put in the minimum attendance required under the University Regulations for taking all the 3 University examinations. The distance between Udupi and Dharwad is about 400 km.

It is not the case of the petitioner that he was on study leave and by taking advantage of the study leave he kept terms in Udupi College. His case was that he used to visit Udupi on official work every now and then and attended the college at that time and thus he was able to put in the minimum attendance required for taking the examinations. This contention was rightly rejected by the Enquiry Officer, since the -petitioner did not produce any evidence to show that he was in Udupi on official work long enough to meet the requirements of minimum attendance. The other defence of the petitioner was that it was possible to keep the terms by making trips from Dharwad to Udupi by the car or scooter. This defence is wholly incredible and absurd. The petitioner had neither a car nor a scooter which would have enabled him to make trips from Dharwad to, Udupi. The petitioner had absolutely no defence at all apart from saying that the College authorities had permitted him to take the examinations and the University authorities on the basis of such permission awarded the degree as he had passed in all the 3 examinations. So, his defence rested on making the college and the University the scapegoats.

6. In my view, notwithstanding the fact the college authorities did not co-operate with the University in establishing the misconduct committed by the petitioner, the fact that the petitioner was working at Dharwad as the Assistant Manager in the Syndicate Bank coupled with the fact that he did not take permission from the Bank authorities to go on leave for sufficiently long periods in order to put in the minimum attendance in the college proved beyond all doubt that the petitioner had not kept the minimum terms of personal attendance during the years 1971 to 1974. This would amount to gross misconduct since a person holding a responsible job in a nationalised Bank should not have falsely alleged that he was able to keep the terms for a period of 3 years by putting in the necessary physical attendance in the college in question knowing the same to be false. The degree obtained by him by committing such gross misconduct was rightly withdrawn by the University authorities on the basis of the report of the Enquiry Officer.¹ The Vice-Chancellor and the Chancellor who had the benefit of perusing the said report rightly found that the petitioner had to suffer the penalty prescribed u/s 60 of the Act. However, Mr. Prabhu strongly relied on the decision of the Supreme Court in *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, . The facts in that case require to be noticed in order to appreciate the applicability of that decision to the case on hand.

7. The appellant therein was a teacher and he was admitted to evening classes of 3 years Law degree course of Kurukshetra University. Under the University Statute a student of Faculty of Law was given the option to clear certain subjects in which he may have failed in one of the examinations before completing the

three-year course. The students were to appear in six papers each year. In April, 1972 the appellant appeared in the annual examination of Part I but failed in three subjects. Subsequently, he was promoted to Part-II which he joined in the year 1972. Under the University Statute the appellant was to appear in Part-II Examination in April, 1973. On April 26, 1973, the appellant applied for his Roll Number to the University in order to re-appear in the subjects in which he had failed and to clear them but he was refused permission and according to the appellant without any reason. The annual examination for Part-II was to be held on May 19, 1973 and the appellant approached the University for granting him provisional permission to appear subject to his getting permission from his employer to attend the Law Faculty. In between it appears that the appellant had been prosecuted for offences under Sections 376, 366 and 363 I.P.C. and was suspended during the period when the case was going on against him. The appellant was, however, acquitted and was reinstated by his employer on August 22, 1972. It would thus appear that on May 18, 1973 as also on April 25, 1973, when he had applied for his Roll Number to clear the subjects, the stigma of criminal case had been completely removed.

The appellant approached the University on May 18, 1973 and wrote a letter to the University Authorities giving an undertaking that if he was not able to get the requisite permission from his employer to join the Law Classes, he would abide by any order that the University may pass. It appears that on the basis of this understanding he was allowed to appear at the Part-II Examination on May 19, 1973. On June 20, 1973 the appellant wrote to the University authorities that the condition on which he was to get the permission was not at all necessary and that his results may now be announced. On June 26, 1973 the respondent informed the appellant that since his percentage was short in Part-I, his candidature stood cancelled. Thereafter, there was a series of correspondence between the appellant and the University authorities but the appellant was refused admission to LL. B. Part III Class. The appellant then filed an appeal before the Vice-Chancellor of the University "on September 26, 1973 which was also rejected on November 3, 1973. Thereafter, the appellant approached the High Court of Punjab and Haryana for a writ of certiorari to quash the order of the respondent cancelling the candidature of the appellant. But the High Court after issuing notice to the other side and perusing the application form rejected the writ petition in limine and matter was taken to the Supreme Court by special leave. The defence of the University before the Supreme Court was that the appellant was involved in a criminal case and, therefore, the Head of the Institution could not give the certificate in the prescribed form to the effect that the appellant bore a good moral character. Secondly, the appellant was short of the requisite percentage in LL.B. Part-II, and therefore, he could not insist on his being admitted to the Part-II Examination, and lastly, the Evening Law Classes were held for the benefit of the members of the Services and it was incumbent on the appellant to have obtained permission of his superior officers and as he did not do so, the University was within its rights in refusing him permission to

appear at the Part-II Examination or in not admitting him to Part-III Law Course.

8. The defence taken by the University was considered by the Supreme Court and the Supreme Court observed that - if the University authorities had acquiesced in the infirmities which the admission form contained and allowed the candidate to appear in the Examination, then force of the University Statute the University had no power to withdraw the candidature of the candidate.

9. In my view, the decision of the Supreme Court in Kurukshetra University case rested on a different matrix of facts. The relevant provisions of the Act, did not arise for consideration before the Supreme Court. In

our case, the power to withdraw the degree conferred on a candidate on the ground that he was guilty of gross misconduct is conferred on the University u/s 60 of the Act. So, the short point before us is whether the petitioner has committed gross misconduct. The petitioner did not take the plea of acquiescence either before the Enquiry Officer or before this Court. He only relied on the decision of the Supreme Court in Shri Krishnan Vs. The Kurukshetra University, Kurukshetra,

Even on facts no acquiescence could be brought home against the University in respect of the gross misconduct committed by the petitioner. The University had no hand in marking the attendance of the petitioner and they only relied on the certificates given by the College authorities. The college authorities had not supported the case of the petitioner but they only stated that they are not in a position to establish from the records available whether the petitioner had put in the requisite percentage of attendance by his physical presence in the College during the relevant period. As noticed earlier, a heavy burden was cast on the petitioner to prove that he had put in the terms by his physical presence. The two defences taken by him before the Enquiry Officer were properly considered by the Enquiry Officer and they were rightly rejected by the Enquiry Officer. The Enquiry Officer had found that the petitioner must have known the attendance rule and the fact that he had not attended enough classes to satisfy the attendance requirement shows that he must have knowingly, taken advantage of the situation in the college or sought definite advantage for himself through means which could not now be established without his co-operation. Though the Enquiry Officer has not said in so many words that the petitioner had committed gross misconduct, the inference that could be drawn from the facts proved is that the Enquiry Officer was satisfied that the petitioner had committed such misconduct. The gist of the show cause notice issued to the petitioner which I have excerpted in the earlier part of this order brings out the misconduct against him. As regards the punishment, the Enquiry Officer recommended that the matter maybe referred to the Legal Adviser and after taking the opinion of the Legal Adviser, the University Authorities could impose the penalty of withdrawal of the degree conferred on the .petitioner in terms of Section 60 of the Act.

10. Mr. Prabhu made a grievance about the order of the Chancellor which is

produced as Annexure-M in the writ petition. His grievance is that the order of the Chancellor u/s 60(4) of the Act is not a speaking order. I have been taken through that order also. The Chancellor has relied on the observation of the Enquiry Officer that it was impossible from a distance of about 320 kms. to attend the Law College in Udupi and that the petitioner could not have attended the college for enough number of days without taking leave or obtaining the specific permission of the Bank Manager and so his claims on attendance could not be accepted as true or, credible. The appellate order in the nature of affirmation of the order of the authorities below need not be a detailed order. It is sufficient if the order shows that the Chancellor had applied his mind to the facts and circumstances of the case and satisfied himself about the correctness of the order made by the Enquiry Officer. Hence, the order of the Chancellor is not bad in law on the ground that he had not written a detailed order.

11. Lastly, it was contended by Mr. Prabhu that the University authorities are deemed to have condoned the shortage in attendance of the petitioner by issuing the Hall Ticket for taking the examinations. In view of the finding of the Enquiry Officer that the petitioner had committed fraud on the authorities concerned by taking the examinations without physically putting in the attendance required by him for the relevant years, the petitioner cannot be permitted to take advantage of his own fraud and plead that the University is deemed to have condoned his shortage of attendance. It is well settled that the party cannot take advantage of its own fraud and this Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution should not aid the party. A Division Bench of this Court in *D. Ramanujam V. The Dean, Bangalore Medical College* ILR (1973) Mys 955 has observed :

"The evidence in these, cases discloses a disturbing state of affairs. There is a clear evidence that the marks cards obtained by the petitioners do " not represent the real marks secured by them in their examinations. On

the strength of these fraudulent marks cards, the petitioners have secured admission in the Medical College. The authorities have correctly taken action in cancelling their seats. The contention for the petitioners that the University has not cancelled or withdrawn the marks cards given to the petitioners and therefore the College authorities are bound to act upon them, cannot be accepted: We are satisfied that there has been a fraud committed by somebody in order to secure admission of the petitioners to the Medical College. It is not necessary for us to hold as to who is responsible for that fraud. The fact remains that the petitioners are the beneficiaries of the fraud and the jurisdiction of this Court under Article 226 of the Constitution cannot be invoked for the benefit of the beneficiaries of the- fraud."

In my view, the above observations are apposite to the facts of this case.

12. For these reasons there is no good ground to interfere with the orders of the authorities under the Act. The decision of the Supreme Court in *Kurukshetra*

University is not applicable to the facts of this case in the light of the defence taken by the petitioner in the "show cause notice".

13. Therefore, this petition fails and is dismissed.

14. Parties to bear their own costs.

15. Petition dismissed.