

(1995) 08 KAR CK 0060

In the Karnataka High Court

Case No : Writ Petition No's. 8968, 9367, 9893, 11746 to 11748, 12886 to 12890 and 13174 of 1995

Harish

APPELLANT

Vs

University of Agricultural Sciences

RESPONDENT

Date of Decision : 25-08-1995

Acts Referred:

Constitution of India, 1950 — Article 19 (1), 21

University of Agricultural Sciences Act, 1963 — Section 13, 13 (2)

Citation : (1996) ILR (Kar) 499 : (1996) 2 KarLJ 451

Hon'ble Judges : A.J. Sadashiva, J

Bench : Single Bench

Advocate : K. Gopal Hegde, V.A. Mohan Rangam, N.S. Hiremath, L.T. Mantagani and P. Natarajan, for the Appellant; A.V. Sreenivasa Reddy, Government Advocate and D.N. Nanjunda Reddy, H.K. Vasudeva Reddy, for the Respondent

Judgement

Sadashiva, J.—The petitioners have presented the first set of Writ Petitions for a Writ of Certiorari to quash Notifications dated 15.3.1995 and 13.3.1995 produced at Annexures "D" to "H" in the said Writ Petitions. Similarly Notification dated 13.3.1995 produced at Annexure "A" in W.P.No. 9367/95, Notification dated 13.3.1995 produced at Annexure "F" in W.P.No. 9893/95, Notification dated 11.3.1995 produced at Annexure "F" in W.P.No. 8968/95, Notification dated 11.3.1995 produced at Annexure "F" in W.P.No. 13174/95 and Notifications dated 15.3.1995, 13.3.1995 and 13.3.1995 produced at Annexures "B", "C" and "D" in W.P.Nos. 11746-748 of 1995 are also sought to be quashed.

2. The petitioners in all these Petitions except the petitioner in W.P.No. 13174/95, are the students studying in various classes/semesters in the University of Agricultural Sciences for various courses. The petitioner in W.P.No. 13174/95 has completed his under-Graduate course in Bachelor in Veterinary Sciences.

3. By the impugned Notifications, the admission of the petitioners to various courses in the respondent-University were cancelled with immediate effect, on

the recommendation of the Enquiry Committee constituted by the University, as the petitioners were found to have secured admission to various courses by producing fake marks cards.

4. The brief facts of these Cases are as follows:

(a) It appears that a local newspaper of Shimoga published a news item about one S.K. Sunilraj, securing admission to I year B.Sc., (Agri.) in the Agricultural College, Shimoga, on the strength of a fake Pre-University marks card. Pursuant to the said news, the local Police appeared to have investigated into the matter and reported to the University that the said Sunilraj did secure admission by producing a fake marks card. Upon receipt of this report about Sunilraj, the respondent-University appeared to have decided to take up verification of all the Pre-University marks cards produced by all the students, who have secured admission and prosecuting their studies in the University. Accordingly the University appeared to have requested the Director of Pre-University Board to take the task of verification of all the Pre-University marks cards and to check the marks entered in the marks cards produced by the students with reference to the original Marks Register maintained by the Board. Upon detailed verification of all the marks cards submitted to the respondent- University, by the students, the Pre-University Board appeared to have reported to the University that, 52 students studying in various courses in the respondent-University have secured admission by producing the fake marks cards.

(b) On receipt of such report, the respondent-University issued notices to all the 52 students to show cause as to why action should not be taken against them for securing the admission to various under-Graduate courses by producing fake marks cards, for which the students appeared to have filed their objections. The University having not been satisfied with the explanation offered by the students, issued a Notification dated 21.11.1994 cancelling the admission of all such students, on the ground that they secured admission by producing fake marks cards. Some of the students including the petitioners, having been aggrieved by the said Notification, filed Writ Petitions before this Court questioning the validity of the said Notification. This Court by order dated 20.12.1994 allowed W.P.Nos. 33531/94, 33811/94, 34350 to 34356 of 1994 and quashed the Notification impugned therein, in so far as it relates to the petitioners, on the ground that the Notification was issued in violation of the principles of Natural Justice, inasmuch as the petitioners therein were not provided a reasonable opportunity of being heard and no enquiry of whatsoever nature was conducted. However in view of the gravity of the situation this Court further directed the first respondent to pass appropriate orders after holding a fresh enquiry in accordance with law, within 8 weeks from the date of the order. By the said order this Court has also specified the date for appearance of the petitioners before the University. Following the said Judgment, the Writ Petitions filed by some other students were also allowed and the University was directed to hold an enquiry.

(c) Pursuant to the order of this Court, the respondent-University constituted an

Enquiry Committee presided over by the Registrar of the University and all the Heads of various faculties were members of the said Committee. The enquiry was conducted by the Committee on 16.1.1995, 30.1.1995, 16.2.1995, and 21.2.1995. After conducting the enquiry the Committee recorded a finding that the petitioners "after taking the marks cards from the concerned College have played fraud in obtaining fake marks cards in order to obtain admissions to various degree courses in the University. Subsequently irresistible conclusion that can be drawn is that the manipulation has taken place after the marks cards left the College and produced before the University. The conclusion is irresistible since the marks entered by the Pre-University Education Board and the marks reported by the Principals of the respective college tally". Therefore the Committee unanimously resolved to recommend to the University for cancellation of the admission of the students appeared before the Enquiry Committee. The said report/resolution was approved by the Vice-Chancellor on 9.3.1995 and in pursuance thereof the impugned Notifications have been issued cancelling the admission of the petitioners.

5. Sri K. Gopal Hegde, learned Counsel appearing for some of the petitioners, assails the impugned Notification on the following grounds-

- (i) The impugned Notifications do not indicate as to which authority of the University has passed the order cancelling the admission of the petitioners and therefore it is invalid and inoperative;
- (ii) The impugned Notifications appeared to have been issued in pursuance of the approval of the recommendation of the Enquiry Committee by the Vice-Chancellor, who either under the Act or under the statute has no sanction of law to impose punishment in respect of the discipline or otherwise of the students;
- (iii) The Enquiry Committee did not conduct the enquiry in accordance with the direction issued by this Court in its order dated 20.12.1994 and, therefore the entire enquiry is vitiated for non-compliance with the direction;
- (iv) The enquiry is also, bad and illegal, as no reasonable opportunity of being heard was given to the petitioners inasmuch as the Director of Pre-University Board was not called for being cross-examined by the petitioners;
- (v) The enquiry report is also illegal, invalid and inoperative as the same is not based on relevant materials; and
- (vi) The recommendation of the Enquiry Committee is illegal and invalid for want of any evidence of probative value, relating to the fraud alleged to have been committed by the petitioners.

Sri K. Gopal Hegde, the learned Counsel appearing for some of the petitioners, has further submitted that even if this Court were to hold that the University has established the allegations against the petitioners, the extreme penalty of cancellation of admission of the petitioners to the University is too harsh resulting in ruination of their career in view of the fact that some of them have

already completed, some of them are in the final year and some of them in the half way through the course. In these circumstances the Court should judge the case sympathetically on the principles of equity and condone the mistake if there is any and excuse their omission and commission on the ground that the petitioners are not parties to the fraud for there is no evidence as to the fraud committed by the students.

6. The learned Counsel appearing for the petitioners in the other Petitions while adopting the arguments advanced by Sri K. Gopala Hedge, have pleaded for sympathetic consideration of the case of the petitioners.

7. Sri D.N. Nanjunda Reddy, learned Counsel appearing for the respondent-University, has contended that it is not necessary that the respondent-University should prove that the petitioners are parties to the fraud and it is sufficient if it is shown that they are the beneficiaries of the fraud. The University, after the disposal of the Petitions, conducted the enquiry on four different dates; allowed the petitioners to examine the marks cards produced by them and compared the same with the Marks Register maintained by the Pre-University Board and they were also allowed to go through the reports received from the Principals of the respective Colleges; some of the petitioners were also represented by the Counsel of their choice; That, at the enquiry it was found that the marks entered in the Marks Register maintained by the Pre-University Board and the respective Colleges tally with each other; whereas the marks cards produced by the petitioners did not tally with the marks entered in the Register maintained by the Pre-University Board and their Colleges; the petitioners have no explanation for the discrepancy except stating that the marks cards produced by them are genuine as they contain the signatures of the Director and the Heads of the respective Colleges; the enquiry conducted by the University is therefore in accordance with the direction of this Court. It was further contended by Sri Reddy that in such a case, the enquiry need not be in the nature of a criminal trial and the degree of proof need not be beyond all reasonable doubts but on preponderance of probabilities. Hence it is sufficient if reasonable opportunity of being heard is given to the students to have their say in respect of the allegations and the documents upon which such allegations are based. From the documents available on record, the only irresistible conclusion that may be deduced is that, the petitioners have produced marks cards which do not tally with the marks entered in the Marks Register maintained by the Pre-University Board and Marks Register maintained by respective Colleges and, therefore, the marks cards produced by the petitioners are fake marks cards and they are the result of fraud, whether or not the petitioners are parties to the fraud since they are the beneficiaries of the fraud, the action of the respondent-University in cancelling the admissions of such beneficiaries is just, legal and valid. He further contended that no prejudice was caused to the petitioners on account of non-examination of the Director of Pre-University Board. Even otherwise when the authorised representative of the Director of Pre-University Board was present before the Enquiry Committee with all the documents, no request was made by

the Advocates for the petitioners to cross-examine him and in the absence of such a request being made, it is now not open to the petitioners to contend that the non-examination of the Director of Pre-University Board has resulted in grave injustice to the petitioners. It is the further contention of Sri Reddy that in a case like this, the principle of Natural Justice should not be applied with mathematical precision and it is sufficient if an opportunity is given and the documents on which the University relies are brought to the notice of the petitioners and they were allowed to inspect and submit on the basis of those documents. In the matter of educational discipline and purity of admission to the University, the principle of Natural Justice shall not be applied with golden scales and there can be no straight jacket formula in application of such principle.

8. Refuting the plea of the petitioners for consideration of their case on principles of equity, it was contended by Sri Reddy that a person who seeks equity shall come to the Court with clean hands; inquiry breeds inequity and not equity. Principles of equity cannot be extended to the cases of fraud, more particularly where the deserving students were deprived of admission on account of such fraud. In these circumstances, he pleads for dismissal of these Petitions.

9. In view of the aforesaid contentions, the following Questions would arise for Consideration:

- (1) Whether the respondent-University has conducted the enquiry in compliance with the direction issued by this Court in the earlier Writ Petitions?
- (2) Whether the enquiry conducted by Enquiry Committee is just and proper? And
- (3) Whether the impugned Notifications have been issued by the authority empowered to issue and if not what are the consequences.

POINTS 1 AND 2:

10. In order to examine Points 1 and 2, which are intermixed with each other, it is necessary to read the order of this Court made in the earlier Writ Petitions, the relevant portion of which reads thus :

"4. The petitioners are directed to treat the impugned notification and also the show-cause notices already received by them as show-cause notices and to file their objections if they have not filed any and they are further permitted to file additional objections if they so desire within 10 days from today and the enquiry shall commence from 16.1.1995 and the petitioners shall appear before the Registrar of first-respondent University on 16.1.1995 or before such authority as may be directed by the Registrar without insisting for further notice.

5. the Petitioners are entitled to examine the documents upon which the respondents rely at the time of enquiry and they shall be permitted to do so whenever a request is made."

11. Sri K. Gopal Hegde, learned Counsel for some of the petitioners, would submit that the Enquiry Committee conducted the enquiry without having any

regard to the principles of Natural Justice. The petitioners were not allowed to cross-examine the Director of Pre-University Education Board, and the report of the Enquiry Committee was not furnished to the petitioners and even the Vice-Chancellor merely accorded approval to the recommendation of the Enquiry Committee without applying his mind. The order is liable to be quashed as the Vice-Chancellor failed to take a conscious decision in the matter and even the report of the Enquiry Committee is not based on any material of any probative value. The Enquiry Committee merely relied on the alleged report of the Principals of various Colleges and the entries in the Marks Register maintained by the Pre-University Board. Where the petitioners contend that, the marks cards produced by them before the respondent-University were the marks cards issued to them by their Colleges, it was incumbent upon the University to prove that the marks cards produced by the petitioners were not the marks cards issued by their Colleges and therefore the non-examination of the Director of Pre-University Board and the reliance on the mere report of the Principals is in direct violation of the order made by this Court in the earlier Writ Petitions. He has further contended that as observed by this Court, in para-5 of the order made in W.P.No. 33531/94 and connected Petitions, the petitioners have acquired a right to pursue their studies, to practice the profession of their choice consistent with the human dignity and decorum. The right to study the course of their choice and practice any profession is guaranteed by Articles 19(1) and 21 of the Constitution of India and they cannot be deprived of their right on the strength of the recommendation made pursuant to an enquiry held in violation of principles of Natural Justice. He further submitted that, the Enquiry Committee should have provided all the opportunities to the petitioners to establish their innocence in the case.

12. It is well settled that the applicability of principles of Natural Justice is not a rule of thumb or straight jacket formula as an abstract proposition of law. It depends upon the facts of the case, nature of the enquiry and the effect of the order on the right of the persons concerned.

13. In order to examine the contentions of the parties, it is necessary to extract any one of the impugned Notifications, as all the impugned Notifications contain the same contents excepting the number of the Writ Petition and the name and the same reads as under -

"UNIVERSITY OF AGRICULTURAL SCIENCES.

No. R/SA-2/UG.Admn./94-95

Office of the Registrar, G.K.V.K. Campus, Bangalore-65,

dated 15.3.95.

NOTIFICATION:

Sub: Cancellation of admission of Mr. K. Hareesh B.S.c.,gril. Degree Programme in the University of Agricultural Sciences, Bangalore, made during the academic

year 1992-93,

Ref: 1. Report of the Director, Pre-University Board vide No. 94-95-2 17/24.10.94.

2. This Office Notification No. R/SA-2/UG Admn./93-94 dated 21.11.1994.

3. Orders of the Hon"ble High Court of Karnataka in W.P.No. 34352/94 dated 20.12.1994.

4. Report of the Principal, First Grade College, Oorigum, KGF.

5. Notification No. R/SA-2/UG/ADm/PUC marks/93-94 dated 4.1.1995."

6. Report of the Enquiry Committee dated 8.3.1995.

7. Orders of the Vice-Chancellor dated 9.3.1995.

In pursuance of the orders of the Hon"ble High Court of Karnataka, dated 20.12.1994 in the W.P.No. 34352/94, the University constituted an Enquiry Committee vide reference cited at Sl.No. 5 above. The Enquiry Committee conducted the enquiry on 16.1.1995 and again on 16.2.1995. Mr. K. Hareesh, I.D.No. AJ 2045, III Year B.Sc., (Agri.). student was given an opportunity to see the original marks registers maintained by the PUC Board and also the letter received from the Principal, indicating marks secured by him as per the registers maintained in the College where he studied the Pre-University. The marks secured by Mr. K. Hareesh, as entered in the original marks register of the Pre-University Board tallied with the marks reported by the Principal of the First Grade College, Oorgum, K.G.F. where he had studied the PUC, whereas the marks indicated in the PUC marks cards (which is now confirmed as fake marks card) which he had submitted at the time of his admission to I B.Sc., (Agri.) degree programme in the UAS, Bangalore do not tally with that of the marks secured by him as per the Pre-University Board Registers and the records maintained in the College where he had studied.

Thus he has obtained admission in the UAS, Bangalore violating the declaration signed by him and by his parent in original application No. 1162 dated 20.7.1992 submitted by him at the time of his admission in this University.

The Enquiry Committee has recommended for cancellation of his admission since he has played fraud in obtaining admission by producing fake PUC marks card to this University at the time of his admission .

Therefore, on the recommendation of the Enquiry Committee Report dated- 8.3.1995, the admission of K. Hareesh, I.D.No. AJ-2045 in the University to First Year B.Sc., (Agri.) during the academic year 1992-93 is cancelled with immediate effect.

By Order Sd/ A. Bomme Gowda, Registrar."

14. In view of the fact that the impugned Notification was issued on the

recommendation of the Enquiry Committee for cancellation of the admission of the petitioners, it is also necessary to extract the relevant portion of the Report of the Enquiry Committee, a copy of which is produced by respondent-1 at Annexure R-3, which read thus -

"xxx xxx xxx In pursuance of the orders of the Hon"ble High Court of Karnataka dated 20.12.1994, directing the University to hold an enquiry, the following enquiry committee was constituted by the University vide Order No. R/SA-2/U.G. Admn./93-94 dated 4.1.1995:

1) Registrar .. Chairman 2) Director of Instructions (BS&H) .. Member 3) Director of Instruction(PGS) .. Member 4) Director of Instruction (Vety) .. Member 5) Director of Instruction (Agri) .. Member 6) Director of Instruction (D.Sc.) .. Member.

The above Committee met on 16.1.1995 at 11 00 A.M. in Dean's Committee Room, G.K.V.K. Bangalore and examined the following students:

1. M/s-

- 1) Mahesh, C., ID.No. VJ 126, IV B.V.Sc.,
- 2) Srinivasa Gowda, G.V., I.D.No. VJ 254
- 3) Sonne Gowda, I.D.No. VJ 255
- 4) Manjunatha, B.V., I.D.No. VJ 326, II B.V.Sc.,
- 5) K.M. Shamanna, I.D.No. VJ 348, II B.V.Sc.
- 6) Mahalingappa H. Karigar, I.D.No. VII 9020, Final year, B.V.Sc., Completed.
- 7) Jayapala Reddy, T.N., I.D.No. VJ 319, II B.V.Sc.,
- 8) Maruthi, M.S., I.B.No. VJ 131, IV Year B.V.Sc.,
- 9) K. Harish, I.D.No. AJ 2045, B.Sc., (Agri.)
- 10) Chinnikrishna Rao, B., I.D.No. AJ 2029, B.Sc., (Agri) III Year.
- 11) J. Madhusudhana, I.D.No. HJ 108, Final B.Sc., (Hort).

II. The following students did not attend the Enquiry Committee.

1) A.R. Jagadeesh Kumar, I.D.No. VII 9012 Final B.V.Sc., 2) Netravathi, I.D.No. DJ 311, I Year B.Tech (D.Tech) 3) George Rajesh, I.D.No. AJ 206 II B.Sc., (Agri).

III. Sri George Rajesh, has represented that he would withdraw the case from the Court and requested dropping the further proceedings.

The students (I) were given full opportunity to verify their relevant records (marks cards etc.) and application submitted by them and all the PUC marks entered therein. During the course of enquiry, the students viz. Mr. Sonnegowda, I.D.No. VJ 255, Mr. Srinivasa Gowda, G.V., I.D.No. VJ 254, Mr. B.V. Manjunath,

I.D.No. VJ 326, II B.V.Sc., K.M. Shamanna I.D.No. VJ 348, II B.V.Sc., Mr. M.S. Maruthi, I.D.No. VJ 131, IV Year B.V.Sc., and Mr.B. Chinnikrishna Rao, I.D.No. AJ 2029, B.Sc., (Agri) III Year requested the Enquiry Committee to permit them to engage advocates to defend their cases and also that the Director, Pre-University Board to be present in that meeting. Accordingly, all the students were given another opportunity on February 6, 1995 asking them to appear in person or through an Advocate to cross-examine the Director, Pre-University Board or authorised person and to inspect the records, if any. The Director of Pre-University Board was also requested to be present in the meeting on 16.2.1995 along with relevant records.

Three students viz., Bhadra, P.N., I.D. No. AJ 3009, II B.Sc., (Agri). Devaraj, S.P., I.D.No. AJ3019, Final B.Sc. (Agri) and N.C. Prakash, I.D.No. VJ 134, IV B.V.Sc., were examined on 30.1.1995.

The marks mentioned in the application to each student were verified with the actual marks produced by Pre-University Board. The detailed tabular statement is enclosed herewith.

Again on 16.2.1995 a meeting of the Enquiry Committee was held in the staff meeting hall, Nayak Bhavan, GKVK. Bangalore. Sri Akhil Mirza, Section Officer, Pre-University Board, Bangalore was present on behalf of the Director of the Pre-University Board. The Advocates viz., 1) Sri Rudrappa 2) Sri S.C. Pandit and Sir Jayakumar represented the students noted hereunder :

Sri Rudrappa, -M/S N.C. Prakash, Bhadra Advocate. P.M. and Devaraj, S.P. Sri S.G. Pandit -M/s Maruthi, M.S..B. Chinnikrishna Rao, Sonne Gowda, Srinivasa Gowda, S.V. Manjunatha and K.M. Shamana. Sri Jayakumar, -Sri J. Madhusudhan, Advocate.

The Chairman explained the whole issue in detail to the Enquiry Committee, the students and their Advocates. He requested the students and the Advocates to see the Pre-University Board records and also the records obtained from the respective Principals regarding the real marks secured by the students in comparison with the original marks card, which is considered as fake, along with the documents (on the marks) of the Pre-University Board and the documents (on marks) obtained from the respective Principals and also the original Marks Cards submitted by the students at the time of their admission in the University of Agricultural Sciences, Bangalore, which are now considered as fake.

With this introduction, the Chairman requested the Advocates to verify in person these documents which were produced by the representative of the Pre-University Board. Further they were also requested to say "whether they accept the marks as recorded in the Pre-University Board records or the original marks cards submitted by the students during their admission (now considered as fake)".

The learned Advocates Sri Rudrappa, Sri S.G. Pandit and Sri Jayakumar

representing some students have seen personally the Pre-University Marks Registers as produced by the Director of the Pre-University Board and also the Marks Cards which the students had submitted to the University at the time of their admission (which is now considered fake).

The learned Advocates were also provided with photo copies of Pre-University marks cards produced at the time of admission (which is considered as fake).

The advocate Sri Rudrappa, Sri S.G. Pandit and Sri Jayakumar who were present before the Committee insisted to record their statement that the marks card produced by their clients above are the original marks card and that their clients have not produced any fake marks card at the time of their admission.

It is rather surprising as to how the learned Advocates who were present before the Committee could presume that the marks card produced by their clients are genuine marks cards especially when the statement of marks contained in the fake marks cards are clearly contrary to what is reflected in the marks register maintained - by the Pre-University Board and the concerned college.

The students viz., M. Gopalkumar, I.D.No. AJ 3028, Yogesha, R., I.D.No. AJ 1157, Vivek Raj, I.D.No. AJ 3139, Devaiah, C., I.D.No. AJ 3024, and Anandamurthy have been examined on 21.2.1995. They are the Writ Petitioners on Writ Petition Nos. 2882 to 85/95.

CONCLUSION:

The Committee after critical examination and detailed verification of relevant records, the report of the Director, Pre-University Board and also reports of the Principals of College and also after detailed consideration of the statements given by the students and the views expressed by their Advocates, have come to the conclusion, that all the above mentioned students, after taking the marks cards from the concerned college, have played fraud in obtaining the fake marks cards in order to obtain their admission to various degree programmes in the University. Subsequently irresistible conclusion that can be drawn is that the manipulation has taken place after the marks cards left the college and produced before the University. The conclusion is irresistible since the marks obtained by the Pre-University Board and the marks reported by principals of the respective college tally.

Therefore, the Committee unanimously resolved to recommend to the University for cancellation of admission of the following students in various degree programmes in the University of Agricultural Sciences, Bangalore.

SI. No. Name I.D. No. Class

1.

Mahesh C.

VJ126

IV B.V.SC.,

2.

Srinivasa Gowda G.V.

VJ254

II B.V.Sc.,

3.

Sonne Gowda

VJ255

II B.V.Sc.,

4.

ManjunathaS.V.

VJ326

II B.V.Sc.

5.

K.M. Shyamanna

VJ 348

II B.V.SC.,

6.

Mahalingappa H. Kurigar

VH 9020

Final Year B.V.Sc.,

7.

JayapalaReddyT.H.

VJ319

II B.VSc.,

8.

MaruthiM.S.

VJ131

IV B.V.Sc.,

9.

K. Harish

AJ 2029

V Semester B.Sc., (Agri)

10.

Chinnikrishna Rao B

AJ 2029

III B.Sc., (Agri)

11.

J. Madhusudhana

HJ108

Final B.Sc., (Hort)

12.

Bhadra P.H.

AJ 3009

II B.Sc., (Agri).

13.

DevarajaS.P.

AJ3019

Final B.Sc., (Agri)

14.

N.C. Prakash

VJ134

IV B.V.Sc.,

15.

Gopal kumar H

AJ 3028

I B.Sc., (Agri)

16.

Ananda Murthy H

AJ 3003

I B.Sc., (Agri)

17.

Yogesha R.

AJ 1 1 57

III B.Sc., (Agri)

18.

Vivek Raj

AJ 31 39

I B.Sc., (Agri)

19.

Devaiah C.

AJ 3024

I B.Sc., (Agri)

20.

A.R. Jagadeesh Kumar

VII 9012

Final B.V.Sc.,

21.

Netravathi

DJ211

I B.Tech (D.Tech.)

22.

George Rajesh

AJ 2036

II B.Sc., (Agri).

Note: All the committee members have already signed the draft copy of the report which is enclosed herewith.

Therefore, this may please be approved.

Sd/ Sd/ B. Bomme Gowda, Director of Instruction Registrar (Agri). UAS. GKVK.
Sd/ Sd/ Director of Instruction Director of Instructions (Vety) Hebbal. (BS & H)
UAS, GKVK Sd/ Sd/- Director of Instruction Director of Instruction (PGS) UAS,

15. It is seen from the Report that the petitioners appeared before the Enquiry Committee on 16.1.1995. They were also given full opportunity to verify the relevant records such as marks cards, applications submitted by them and also the marks Register maintained by the Pre-University Board. Some of the students, who appeared pursuant to the order made in the earlier Writ Petitions have also requested the Enquiry Committee to permit them to engage Advocates to defend their case and also wanted the Director-Pre-University Board to be present in the meeting. The students were accordingly given an another opportunity on 6.2.1995 asking them to appear either in person or through their Advocates to cross-examine the Director, Pre-University Board or his authorised person and to inspect the records. Some of the petitioners appeared on 30.1.1995 and they were also examined on that day and the marks mentioned in the applications of each of them were verified with the actual marks entered in the Marks Register produced by the Pre--University Board. On 16.2.1995 another meeting of the Enquiry Committee was held. Three Advocates appeared for three different sets of the petitioners and at that meeting the Chairman explained the whole issue in detail. He requested the students and their Advocates to see the Pre-University Board's records and also the records obtained from the respective Principals regarding the marks secured by the students in comparison with the originals of the marks cards produced by them. The students' personal files were also offered to be examined. The Advocates representing the petitioners perused the documents of the Pre-University Board and the documents of marks obtained from respective Principals and also the marks cards produced by the petitioners at the time of their admission. Thereafter they Were requested to say which of the marks - the one as entered in the Pre-University Board's records or the one found in the marks cards produced by them at the time of their admission - to be true. The Advocates appearing for some of the petitioners stated to have insisted to record their statements that the marks cards produced by their clients are the original marks cards and they have not produced any fake marks cards at the time of their admission. The Enquiry Committee after examining and verifying the report of the Director of Pre-University Board have held, that the marks produced by the petitioners do not tally with the marks entered in the Marks Register maintained by the Pre-University Board and the marks reported to have been entered in the Registers of the respective Colleges. The Committee has further held that the manipulation in the marks cards must have occurred after the original marks cards left the Colleges and the marks cards produced by the petitioners at the time of their admission is the result of fraud and therefore the Enquiry Committee recommended for the cancellation of the admission of the petitioners with immediate effect as they secured admission on basis of fake marks card. The Vice-Chancellor approved the recommendation and the Registrar issued the impugned Notifications.

16. Sri K. Gopal Hegde, learned Counsel appearing for some of the petitioners, has contended that the enquiry was not held in accordance with law, there is a

gross-violation of Natural Justice in not securing the Director of Pre-University Board for cross-examination as assured by the Enquiry Committee at its sitting on 16.1.1995. The marks cards produced by the petitioners contain the signature of the Director of Pre-University Board and that of the Principals of the respective Colleges. The petitioners are not aware of the marks entered in the Register maintained either by the Pre-University Board or by their Colleges and they are not responsible for any variation in the marks cards produced by them as the same was issued from their respective Colleges. In the absence of any material to show that those marks cards do not contain the signature of the Director of Pre-University Board and also the Principals of the respective Colleges, the conclusion of the Enquiry Committee that the petitioners have produced fake marks cards is without any basis, the impugned Notification is therefore invalid.

17. It is no doubt true that each of the marks cards produced by the petitioners, there is a facsimile of the signature of Director of Pre-University Board and the signature of the Principal of the College from whom the petitioners have passed. There is no evidence that the signature in the marks cards have been forged or they must have been obtained by fraudulent means in connivance of the petitioners. However this material itself is not a sufficient factor to hold that the marks cards produced by the petitioners are genuine marks cards or not fake marks cards. There is no dispute that the marks entered in the Marks Register maintained by the Pre-University Board tally with the report of the Principals of the respective Colleges with respect to the marks entered in the Registers maintained by such Colleges, it is also not in dispute that the marks cards produced by the petitioners at the time of their admission do not tally with the marks as entered in the Registers of the Pre-University Board and the report of the Principals of the respective Colleges. It is well settled that any act done by an officer in the regular course of discharge of his official duty may be presumed to have been done in accordance with law. It is admitted that the Pre-University Board maintains a Marks Register containing the marks as secured by all the students appearing for the II Year Pre-University Examinations. It is not the case of the petitioners that the Pre-University Board does not maintain the Marks Register, nor is it their case that the entries made in the Marks Register are not correct. It is also not their case that the College from which they hail do not maintain any Marks Register. It is also not their case that they have passed Pre-University examination from a different College, Some of the petitioners were also represented by advocates of their choice before the Enquiry Committee. They were allowed to examine and verify the marks cards produced by them with reference to the Marks Register produced by the Pre-University Education Board and also the marks report submitted by the principals of various Colleges. There is nothing on record to show that they disputed the entries found either in the Marks Register maintained by the Pre-University Education Board or the marks report of the Principals of the respective Colleges. It is also admitted that there is a variation of marks between the marks as entered in the marks cards produced by the petitioners and the marks as entered in the Register maintained by the

Pre-University Board and in the marks report of the Principals of the respective Colleges. When the marks as entered in the Register maintained by the Pre-University Board tally with the marks report of the Principals of respective Colleges and do not tally with the marks cards produced by the petitioners, it is obvious that the marks cards produced by the petitioners do not reflect the true position as regards the marks secured by them at the qualifying examination. It must necessarily be a fake marks card. It is true that there is no direct evidence as to the actual perpetration of the fraud by the petitioners. However the fact remains that they are the beneficiaries of the fraud, by whomsoever it might have been committed.

18. From the facts stated above, it is clear that the petitioners produced a marks card as the genuine marks card which in fact is not genuine, and the petitioners did not have any reason to believe it to be genuine. The said marks cards were produced in order to gain admission to a professional course. The University having believed the marks cards to be true and genuine admitted the petitioners. In these circumstances, it is not necessary that action should be taken only against the persons who are parties to the fraud, even the beneficiaries of such fraud are also liable for appropriate action.

19. The contention of Sri K. Gopal Hegde, the learned Counsel appearing for some of the petitioners, that the non-production of the Director, Pre-University Board for cross-examination as assured by the Enquiry Committee has resulted in miscarriage of justice, and the cross-examination of the Director of Pre-University Board would have demonstrated the fallacy of the allegation, is liable to be rejected. First of all the Enquiry Committee did not assure the petitioners that the Director, Pre-University Board, would be present for cross-examination. From the report it is clear that the Director of Pre-University Education Board or his authorised nominee would be present for cross-examination. Admittedly the authorised nominee of the Director was present on 16.2.1995. No request was made on behalf of the petitioners to cross-examine the authorised nominee. Even otherwise, the non-examination of the Director, Pre-University Board, in my considered view, did not prejudicially affect the interest of the petitioners, as the entire case depends upon the marks entered in the Register maintained by the Pre-University Board in its regular course of official duty and marks report of the Principals of the respective Colleges from which the petitioners have passed their qualifying examination, and the marks cards actually produced by the petitioners at the time of their admission.

20. Sri K. Gopal Hegde, learned Counsel appearing for some of the petitioners, mainly relies on the signature of the Principals and facsimile of the signature of the Director and contended that it is not possible for the petitioners to produce a different marks card containing the very signatures.

21. In W.P.Nos. 9367/95, 9893/95 and 8965/95, the petitioners have produced xerox copy of the marks cards, the original of which were stated to have been produced at the time of their admission to the various courses in respondent-

University. According to Annexure-C produced by the petitioner in W.P.No. 9367/95, he has secured 41 marks in Kannada, 30 in English, 35 in Physics, 39 in Chemistry, 35 in Mathematics and 35 in Biology. It contains the facsimile of the signature of the Director of Pre-University Board and also the signature of the Principal of the College from which he has passed the qualifying examination. The learned Counsel for the respondent has produced the original, marks card produced by the petitioner at the time of his admission to B.Sc., (Hort.) and the said marks regard shows that the petitioner has secured 41 marks in Kannada, 31 in English, 55 in Physics, 69 in Chemistry and 75 in Mathematics and 65 in Biology. The said marks card also contains the facsimile of the signature of the Principal of the College from which he has passed the qualifying examination.

22. Similarly the petitioner in W.P.No. 9893/95 has also produced xerox copy of the marks card, the original of which was stated to have been produced at the time of his admission to B.Sc., (Vet.Science) At Annexure-A. the marks card at Annexure-A indicates that he has secured 39 marks in Kannada, 37 in English, 36 in Physics, 39 in Chemistry, 39 in Mathematics and 35 in Biology, whereas the marks card produced by this petitioner at the time of admission shows that he has secured 51 marks in Kannada, 46 in English, 79 in Physics, 76 in Chemistry, 78 in Mathematics and 80 in Biology. This marks card also contains the facsimile of the signature of the Director of the Pre-University Board and that of Principal of the College from which the petitioner has passed his qualifying examination.

23. In W.P.No. 8968/95, the petitioner has produced xerox copy of his marks card at Annexure-A, the original of which was stated to have been produced at the time of his admission to B.Sc., (Vet.Science.) It also indicates that he has secured 71 in Kannada, 41 in English, 60 in Physics, 57 in Chemistry, 79 in Mathematics and 67 in Biology, whereas the marks card produced by him at the time of his admission shows that he has secured 67 in Kannada, 56 in English, 94 in Physics, 88 in Chemistry, 96 in Mathematics and 94 in Biology. Both the marks cards contain the facsimile of the signature of the Director of Pre-University Board and also the signature of the Principal of the College from which he has passed his qualifying examination.

24. From the perusal of these marks cards, it is clear that the signature of the Principal of the college from which the petitioners have passed the Pre-University examination appears to be similar even though there is variation in marks and in these circumstances, the contention of Sri K. Gopal Hegde, learned Counsel appearing for some of the petitioners, that the non-examination of the Director, Pre-University Board has prejudicially affected the case of the petitioners is liable to be rejected and accordingly it is rejected.

25. Sri Gopal Hegde, has next contended that there is no proper enquiry and the report of the Enquiry Committee was not given to the petitioners and therefore the Impugned Notifications are liable to be quashed. In this context, he placed reliance on the Decisions of the Hon"ble Supreme Court in S.L. Kapoor Vs. Jagmohan and Others, , Olga Tellis and Others Vs. Bombay Municipal Corporation

and Others, and management of Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others, , wherein it was held that "the non-observance of nature justice is itself a prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary." In Volga Tellis's case the Supreme Court has held that,

"It must further be presumed that, while vesting in the Commissioner the power to act without notice, the legislature intended that the power should be exercised sparingly and in cases of urgency which brook no delay. In all other cases, no departure from the Audi Alteram Partem rule ("hear the other side") could be presumed to have been intended. Section 314 is so designed as to exclude the principles of natural justice by way of exception and not as a general rule. There are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like, time, place, the apprehended danger and so on. The ordinary rule which regulates all procedure is that, persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence."

26. There are no two opinions about the aforesaid proposition of law. The question in this case is, whether there was any enquiry held in compliance with the order made by this Court in the earlier Writ Petitions. The earlier Writ Petitions were allowed as no opportunity of being heard was given to the petitioners and others with a direction to hold a fresh enquiry. Pursuant to the order made in the earlier Writ Petitions, the University constituted an Enquiry Committee. The said Committee was presided over by the Registrar of the University. They held the enquiry. They heard the students and their Advocates. The students were allowed to examine and verify the marks cards produced by them with reference to Marks Register produced by the Pre-University Board and also the marks report of the Principals of the respective Colleges. After examination and verification of the documents, the Enquiry Committee has held that there is a discrepancy between the marks in the marks cards produced by the petitioners and the marks as entered in the Register of Pre-University Board and marks reports of the various Colleges and on account of this discrepancy the Enquiry Committee has further held that the only irresistible conclusion that may be arrived at is that a fraud has been committed after the original marks cards left the Institutions. In view of the said finding the Committee recommended for cancellation of the admission. It is therefore clear that the enquiry was, in fact, conducted pursuant to the order of this Court in the earlier Writ Petitions. The manner in which the enquiry was conducted may be not in the manner in which the petitioners wanted. What is material is whether the petitioners were given an opportunity to have their say in the matter in respect of the allegations made

against them, whether the petitioners had the opportunity to examine and verify all the documents produced on behalf of the University and whether they were properly represented before the Enquiry Committee. In view of the fact that the petitioners were represented by the Advocates of their choice and they were allowed to examine and verify all the documents, it is not possible to hold that the enquiry was conducted in violation of the Natural Justice and the impugned Notifications have been made without there being any evidence of any probative value.

27. In U.P. Junior Doctors" Action Committee Vs. Dr B. Sheetal Nandwani and Others, . the Supreme Court has held that when an admission to a College secured by fraud, opportunity of hearing is not necessary to cancel such admission. It was a case where certain students secured admission on the strength of a fake order alleged to have been passed by a learned Single Judge of Allahabad High Court in W.P.No. 5267/90, which was later found to be fake one. Dealing with such situation, the Supreme Court has held as follows:

"5. From the report it is manifest that a fake order in a non-existent writ petition was produced before the Lucknow Bench of the Allahabad High Court for securing the order dated 4.6.90. It also transpires that on the basis of alleged order dated 25.5.90 and the subsequent order of 4.6.90 some admissions have been secured in some of the medical colleges. Those who have taken admission on the basis of such orders, that is on the basis of the M.B.B.S. result without going through a selection examination cannot be allowed to continue in the Post-graduate courses. We are satisfied that there is a deep-seated conspiracy which brought about the fake order from Allahabad, the principal seat of the High Court and on the basis thereof a subsequent direction has been obtained from the Lucknow Bench of the same High Court. The first order being non-existent has to be declared to be a bogus one. The second order made on the basis of the first order has to be set aside as having been made on the basis of misrepresentation. We are alive to the situation that the persons who have taken admission on the basis of the M.B.B.S. results are not before us. The circumstances in which such benefit has been taken by the candidates concerned do not justify attraction of the application of rules of natural justice of being provided an opportunity to be heard. At any rate now we have at the instance of the U.P. Government ordered the selection examination to be held, admission on the basis of M.B.B.S. results cannot stand. We accordingly direct that admissions, if any, on the basis of M.B.B.S., results granted after the impugned orders of the High Court shall stand vacated and the Principals of the Medical Colleges of U.P. are directed to implement the direction forthwith. A copy of this order shall be communicated to each of the Principals of the seven Medical Colleges in the State of U.P. for compliance."

28. The Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, . has held that -

"37. It is thus well settled law that strict rules of the Evidence Act, and the

standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc., seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adopt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstances to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred with as much practical as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation of conjecture. Therefore, when an inference of proof that a fact in dispute been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt "but" the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a straight jacket formula, No mathematical formula could be laid on degree of proof. The probative value could be gazed on facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries."

Dealing with the application of principles of Natural Justice, the Supreme Court in the same case has held that -

"22. From this perspective, the question is whether omission to record reasons vitiates the impugned order or is in violation of the principles of natural justice. The omnipresence and omniscience of the principle of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a straight formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances. It is seen from the record and is not disputed, that all the students admitted, the factum of fabrication and it was to his or her advantage and that the subject/subjects in which fabrication was committed belong to him or her. In view of these admissions the Inquiry Officer obviously did not find it expedient to reiterate all the admissions made. If the facts are disputed, necessarily the authority or the Inquiry Officer on consideration of the material on record, should record reasons in support of the conclusion reached. Since the facts are admitted, the need to their reiteration

was obviated and so only conclusions have been stated in the reports. The omission to record reasons in the present case is neither illegal, nor is violative of the principles of natural justice. Whether the conclusions are proved or not is yet another question and would need detailed consideration."

28. In Karnataka Public Service Commission and others Vs. B.M. Vijaya Shankar and others, ., the Supreme Court has observed that -

" ** Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending it to situations where it would cause more injustice than justice. Even though the procedure of affording hearing is as important as decision on merits yet urgency of the matter, or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bona fide or innocence but for being otherwise arbitrary or against rules. Present is a case which, in our opinion, can safely be placed in a category where natural justice before taking any action stood excluded as it did not involve any misconduct or punishment."

29. It is clear from the records that the petitioners have produced certain marks cards as genuine marks cards in order to secure admission to various Courses in the respondent-University. It is also clear that the Pre-University Board enters the marks in the Marks Register as secured by each candidate appearing for II Year Pre-University Course and it is also clear that at the time of issuing marks cards the respective Colleges from which the students appeared for the qualifying examination also enters the marks in its Registers as entered by the Pre-University Board in the marks cards sent to the respective College. The marks entered in the Register maintained by the Pre-University Board and marks report submitted by the Principals of the respective Colleges tally with each other in these Cases. However the marks cards produced by the petitioners to secure admission to the various Courses in the respondent-University do not tally with the marks as entered in the Register maintained by the Pre-University Board and the marks reports of the Principals of the respective Colleges. The variation is not minor. This variation clearly establishes that the marks cards produced by the petitioners before the respondent-University to secure admission to professional courses are not the genuine marks cards issued to them by their respective institutions. The Enquiry Committee arrived at this decision not on conjectures and surmises but on the verification of relevant documents after affording a reasonable opportunity of being heard to the petitioners. In these circumstances, as held by the Supreme Court, the degree of proof is not the proof beyond reasonable doubt, but with all preponderances of probabilities tending to draw an inference that the fact must be probable. I find no reason to disagree with the

finding by the Enquiry Committee. Point Nos. 1 and 2 are therefore answered in the affirmative.

POINT No. 3

30. Sri Gopal Hegde, learned Counsel appearing for some of the petitioners next contended that, the impugned order was issued pursuant to the order of the Vice-Chancellor. The Vice-Chancellor has no authority of law to make any order in respect of the probation and dismissal of the students. It is only the Academic Council which is competent to make any order in relation to probation and dismissal of the students under the provisions of the University of Agricultural Sciences Act and the Statute framed thereunder. As the impugned Notifications did not have the approval of the Academic Council of the respondent-University, it is void and inoperative.

31. In order to examine this contention, it is necessary to examine the relevant provisions of the Act and that Statute. Section 13 deals with the powers and duties of the Vice-Chancellor. Section 28 deals with the powers of the Academic Council, Section 13 reads as under:

"13. POWERS AND DUTIES OF THE VICE CHANCELLOR:

The Vice-Chancellor shall be the principal executive and academic officer of the University and the ex-officio Chairman of the Board and the Academic Council. He shall, in the absence of the Chancellor, preside at a Convocation of the University and shall confer degrees on persons entitled to receive them.

(2) The Vice-Chancellor shall exercise general control over the affairs of the University and shall be responsible for the due maintenance of discipline in the University.

** ** *

**. (The other provisions are not relevant for the purpose of this case).

Section 28 which deals with the powers of the Academic Council, reads as under:

"28. POWERS OF THE ACADEMIC COUNCIL.-

The Academic Council shall, subject to the provisions of this Act and the Statutes, have the power, by Regulations, of prescribing all courses of study and of determining curricula and have general control on teaching, research, and extension education within the University and be responsible for the maintenance of standards thereof. It shall have power to make Regulations consistent with this Act and the Statutes relating to all matters subject to its control and to amend or repeal such Regulations.

(2) In particular and without prejudice to the generality of the foregoing power:-

(a) to advise the Board on all academic matters, including the control and management of libraries;

(b) to make recommendations for the institution of Professorships, Associate

Professorships, Readerships and Teacher ships and other teaching posts and in regard to the duties and emoluments thereof;

(c) to formulate, modify or revise schemes for the constitution or reconstitution of Departments of teaching, research and extension education;

(d) to make regulations regarding the admission of students to the University;

(e) to make regulations regarding examinations conducted by the University and the conditions on which students shall be admitted to such examinations;

(f) to make regulations relating to courses of study leading to degrees, diplomas and certificates;

** ** *

Statute 44 deals with the qualifications for admission of students. It provides that the minimum academic attainment for admission to a faculty of the University shall be recommended by the Council and shall not be below a pass in the higher secondary school. Statute 47 deals with the students probation and dismissal. It reads :

"47. Student Probation, Dismissal. The Regulations and procedures governing student probation and dismissal shall be drawn by an appropriate Committee to be appointed by the Vice-Chancellor and the recommendations shall be approved by the Academic Council."

Placing reliance on Section 28 of the Act read with Statute 47, Sri Gopal Hegde has contended that it is the Academic Council which is empowered to make regulations regarding the admission of students to the University and to make regulation relating to courses of study leading to Degrees, Diplomas and Certificates and Statute 47 provides that regulation and procedure governing students probation and dismissal shall be drawn by an appropriate Committee to be appointed by the Vice-Chancellor and the recommendation shall be approved by the Academic Council. He further contended that the impugned Notifications have not been approved nor made by the Academic Council. It is therefore without the authority of law.

32. Per contra Sri D.N. Nanjunda Reddy, learned Counsel for the University, has contended that by virtue of the power vested in the Vice-Chancellor under Sub-section (2) of Section 13 of the Act, the Vice-Chancellor is the sole repository of powers for due maintenance of discipline in the University. The discipline in the University includes the admission of students to various degree courses by fair and just means. Wherever unfair means have been adopted to secure admission detrimental to the interest of other deserving students, it constitutes indiscipline and the Vice-Chancellor is empowered by the Act to take action. It is true that the Act and the Statute provide that the Academic Council is empowered to frame regulations regarding admission of students to the University and regulation relating to course of study leading to Degrees, Diplomas and

Certificates and any action relating to students probation and dismissal must be in accordance with the regulation and procedure framed by the appropriate Committee to be appointed by the Vice-Chancellor which shall be approved by the Academic Council. It is nobody's case that such a regulation has been framed. Perhaps the University never anticipated such a situation as in these Cases. In these circumstances, in my considered view, the only provision that comes to the aid of the University to deal with the discipline of the students is the power of Vice-Chancellor conferred by Section 13 of the Act. Dealing with a similar provision under the Karnataka State Universities Act, 1976, which is almost similar to Section 13(2) a Division Bench of this Court in BANGALORE UNIVERSITY v. RAMNARAYAN SAH PRABHAT ILR 1985 KAnt 3292 has held "that if in the opinion of the Vice-Chancellor there exists an emergency in which he has to act immediately, though according to the provisions of the Act, decision on the topic arising for consideration has to be taken by a specified authority of the University, he could exercise the powers of such authority forthwith and later in the normal course get it ratified by the designated authority."

33. In view of the absence of any provision empowering any of the Authority of the University to take action in respect of discipline of the students, I am of the view that it is appropriate for the Vice-Chancellor to exercise his power u/s 13(2) of the Act. I find no illegality in the exercise of such power. In this view of the matter, I hold that the impugned order has been passed by the Appropriate Authority of the University.

34. The next contention of Sri Gopal Hegde, Sri Hiremath, Sri L.T. Manthagani and Sri V.A. Mohanrangam, learned Counsel appearing for the petitioners, is that, the petitioners after having secured admission, have spent more than two years in the University and at this distance of time, even if they are found to be guilty, they may be given an opportunity to reform themselves by permitting them to continue their studies. They further contended that the seats secured by the petitioners may not be available to any other students and nobody would be benefitted by the cancellation of the admission of the petitioners and there is no complaint of whatsoever nature against them by the University during their stay at the University and they are performing extremely well at their examinations and therefore they appeal that this Court must take a sympathetic view of the matter and permit them to continue their studies on equitable grounds. In this context they derive support from the Decisions of the Supreme Court in -

(i) Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others,

(ii) Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another,

(iii) A. Sudha Vs. University of Mysore and Another,

(iv) Sanatan Gauda Vs. Berhampur University and others,

(v) Dr. Ajay Kumar Agrawal and others Vs. State of U.P. and others,

In Sanjay Gulati's case, even though the Supreme Court found that the admission of students were contrary to the Regulations, while deprecating the irregular admissions has held as follows:

"4. Cases like these in which admissions granted to students in educational institutions are quashed raise a sensitive human issue. It is unquestionably true that the authorities who are charged with the duty of admitting students to educational institutions must act fairly and objectively. If admissions to these institutions are made on extraneous considerations and the authorities violate the norms set down by the rules and regulations, a sense of resentment and frustration is bound to be generated in the minds of those unfortunate young students who are wrongly or purposefully left out. Indiscipline in educational institutions is not wholly unconnected with a lack of sense of moral values on the part of the administrators and teachers alike. But, the problem which the Courts are faced with in these cases is, that it is not until a period of six months or a year elapses after the admissions are made that the intervention of the Courts comes into play. Writ Petitions involving a challenge to such admissions are generally taken up by the High Courts as promptly as possible but even then, students who are wrongly admitted finish one or two semesters of the course by the time the decision of the High Court is pronounced. A further appeal to this Court consumes still more time, which creates further difficulties in adjusting equities between students who are wrongly admitted and those who are unjustly excluded. Inevitably, the Court has to rest content with an academic pronouncement of the true legal position. Students who are wrongly admitted do not suffer the consequences of the manipulations, if any, made on their behalf by interested persons. This has virtually come to mean that one must get into an educational institution by means, fair or foul: Once you are in, no one will put you out. Law's delays work their wonders in such diverse fashions.

5. We find that this situation has emboldened the erring authorities of educational institutions of various States to indulge in violating the norms of admissions with impunity. They seem to feel that the Courts will leave the admissions intact, even if the admissions are granted contrary to the rules and regulations. This is a most unsatisfactory state of affairs. Laws are meant to be obeyed, not flouted. Some day, not distant, if admissions are quashed, for the reason that they were made wrongly, it will have to be directed that the names of students, who are wrongly admitted should be removed from the rolls of the institutions. We might have been justified in adopting this course in this case itself, but we thought that we may utter a clear warning before taking that precipitate step. We have decided, regretfully, to allow the aforesaid sixteen students to continue their studies, despite the careful and weighty finding of the High Court that at least eight of them, namely, the seven wards of employees and Ashok Kumar Kaushik, were admitted to the Engineering Course in violation of the relevant rules and regulations.."

In the case of Rajendra Prasad Mathur & Others, the Supreme Court, even

though held that, the appellants were not eligible for admission to the Engineering Degree Courses of the Karnataka University and their admission was contrary to the Ordinance prescribing the conditions of eligibility, still allowed the students to continue their studies, as the fault of their admission lie more upon the Engineering Colleges which granted them admission. It is material to note the relevant passage in the said Decision which reads as follows;

"8. We accordingly endorse the view taken by the learned Judge and affirmed by the Division Bench of the High Court. But the question still remains whether we should allow the appellants to continue their studies in the respective Engineering Colleges in which they were admitted. It was strenuously pressed upon us on behalf of the appellants that under the orders initially of the Learned Judge and thereafter of this Court they have been pursuing their course of study in the respective Engineering Colleges and their admissions should not now thrown out after a period of almost four years since their admission their whole future will be blighted. Now it is true that the appellants were not eligible for admission to the Engineering Degree course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission must lie more upon the Engineering Colleges which granted admission than upon the appellants, it is quite possible that the appellants did not know that neither the Higher Secondary Education of the Secondary Education Board, Rajasthan nor the first year B.Sc., examination of the Rajasthan and Udaipur Universities was recognised as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year B.Sc., examination of the Rajasthan or Udaipur University or in any event the High Secondary Examination of the Secondary Education Board, Rajasthan they are eligible for admission. The fault lies with the Engineering Colleges which admitted the appellants because of Principals of these Engineering Colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these Engineering Colleges. We would therefore notwithstanding the view taken by us in this judgment allow the appellants to continue their studies in the respective Engineering Colleges in which they were granted admission."

In *A. Sudha Vs. University of Mysore and Another*, the appellant's admission was found to be contrary to Karnataka Medical Colleges (Selection of Candidates for admission to 1st M.B.B.S.) Rules, inasmuch as she did not secure the prescribed percentage of marks at the qualifying examination. She was however admitted on the basis of her B.Sc., Degree. It was found that she was in no way responsible for her irregular admission. In those circumstances the Supreme Court has held as follows :

"18. The facts of the instant case are, more, or less, similar to the *Rajendra*

Prasad Mathur Ors. Vs. Karnataka University and Another, It has been already noticed that on the appellant's query, the Principal of the Institute by his letter dated February 26, 1986 informed her that she was eligible for admission in the First Year MBBS Course, It was, inter alia, stated in the letter that the candidate should have obtained 50% marks in the optional subjects in the B.Sc., Examination. There is no dispute that the appellant had obtained 54% marks in those subjects in the B.Sc., Examination. The appellant was, therefore, quite innocent: and she was quite justified in relying upon the information supplied to her by none else than the Principal of the Institute in the said letter in regard to the eligibility of the admission in the First Year M.B.B.S., Course. In the circumstances, we do not think that we shall be justified in penalising the appellant by not allowing her to continue her studies in the MBBS Course. Prima facie it was the fault of the Principal of the institute but, in our view, the statement that was made by him in his said letter to the appellant as to the eligibility of the appellant for admission in the MBBS Course, was on a bona fide interpretation of the regulations framed by the Mysore University for admission to MBBS Course for the academic year 1985-86, which to some extent suffer from ambiguity. The regulations should have been more clear and specific. Be that as it may, following the decision of this Court in Rajendra Prasad Mathur's case (supra) while we dismiss the appeal, we direct that the appellant shall be allowed to prosecute her studies in the MBBS Course, and that her result for the First Year MBBS Examination be declared within two weeks from date."

In Sanathan Gowda's case, the Supreme Court after recording a finding in favour of the appellant that he was duly qualified to be admitted to the Law Course, has further held that :

"10. This is apart from the fact that I find that in the present case the appellant while securing his admission in the Law College had admittedly submitted his mark-sheet along with the application for admission. The Law College had admitted him. He had pursued his studies for two years. The University had also granted him the admission card for the Pre-Law and Intermediate Law examinations. He was permitted to appear in the said examinations. He was also admitted to final year of the course. It is only at the stage of the declaration of his results of the Pre-Law and Inter-Law examinations that the University raised the objection to his so-called ineligibility to be admitted to Law course. The University is, therefore, clearly estopped from refusing to declare the results of the appellant's examination or from preventing him from pursuing his final year course."

In Dr. Ajay Kumar Agarwal and Ors. v. State of UP. and Ors., the Supreme Court considering the hardship that may be caused to the students, has waived the requirement of completion of the internship as a condition precedent to admission into the Post-graduate degree. They were cases concerning with the selection of candidates for several specialities in the Post-graduate Courses in seven Medical Colleges in the State of Uttar Pradesh. It was found by the

Supreme Court that on account of irregular steps - inspite of earlier Decisions of the Supreme Court - taken by the Government a group of candidates have been invited to sit at a selection examination before they have acquired the requisite qualification and have been selected for admission contrary to the scheme of the Act and the Regulations made thereunder. However the Supreme Court, while classifying the arrangement in the State as another indiscipline action, has passed the order as follows :

"13. We cannot lose sight of the fact that on account of the irregular steps taken by the State of Uttar Pradesh, a group of candidates have been invited to sit at a selection examination before they have acquired the requisite qualification and have been selected for admission. These candidates who are before us have been anxiously waiting for their admission. Similarly there is a group of students who have had the full qualification and has been selected.

14. Specialisation is the main basis of Post Graduate Study. Every candidate has indicated his or her preference in regard to specialisation. We are of the view that the admissions in respect of about 549 seats said to represent 75% of the State quota in the seven Medical Colleges for the session 1990-91 should, therefore, be completed on the basis as indicated below :

(1) Those candidates who have had the requisite qualification i.e., had become full-fledged degree-holders on or before 2.5.1990 and have been selected for admission should be put into Category-A. Admission to them shall be given first with their preferred speciality;

(2) Those candidates who had not completed their internship by 2.5.1990 and have, in the meantime, completed or are going to complete the same by 31.12.1990 and have been found qualified for admission in the selection examination shall be put into the second list and on the basis of availability of seats as also the preference given by them for speciality on comparative merit basis shall thereafter be admitted.

15. Keeping their respective merit in view, we have waived the requirement of completion of the internship as a condition precedent to admission into the Post Graduate Degree. We would like to make it clear that hereafter no one shall be admitted without complying with the requirement of the Act, the Rules and the Regulations referred to above and no State Government or authority running Medical College would be permitted to avoid compliance of the law."

34.A. It has been the common knowledge that, during these days, getting admission to various Professional Colleges by dubious ways and means is alarmingly on the rise. To get admission by dubious methods and then to approach the Courts for regularisation of their illegal admission on humanitarian grounds has, almost become the order of the day. This situation has emboldened the erring students in violating the norms of admission with impunity. The moral fabric of the educational discipline is being gradually eaten away. As, was observed by the Supreme Court, in Sanjay Gulati's case, the time has come to

direct the names of wrongly admitted students to be removed from the rolls of the Institution, to ensure strict obedience to law for the maintenance of educational discipline. Time has also come to enforce the law regarding admission to Educational Institutions, in its letter and spirit, to lift the morale of the student community from the depth of despair and degeneration. If such frauds are condoned and actions are postponed in the name of "humanitarian consideration" the Rule of Law would be reduced to mockery and the day is not too far, that the University would be converted into a market-yard for sale of degrees, diplomas, etc.,

35. Sri D.N. Nanjunda Reddy, the learned Counsel appearing for the University would submit that there are no two opinions as to the principles laid down by the Supreme Court to grant relief on equitable and humanitarian considerations. However he submitted that such relief would be granted on the facts and circumstances of each case. It is in his case that, in the aforementioned cases, the Supreme Court allowed the students to continue their studies despite their irregular admission, as they were found to be not responsible for such irregular admission. He therefore submitted that, if the students are responsible for irregular or illegal admission by their conduct and acts, they are not entitled for any relief on the principles of equity as they would secure benefits either by suppressing material facts or by producing false materials. Sri Reddy referring to the facts of these Cases, contended that the petitioners have secured admission to various Courses by producing fake marks cards or having reason to believe it to be so. The petitioners are therefore not entitled to take advantage of their fraudulent acts to plead equitable estoppel against the respondent-University. In support of his contention, Sri Nanjunda Reddy relied on Decisions of Supreme Court in -

(i) A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another,

(ii) Guru Nanak Dev University Vs. Parminder Kr. Bansal and another,

(iii) Gurdeep Singh Vs. State of Jammu and Kashmir and others,

It is true that, the Courts, as pleaded by the learned Counsel appearing for the petitioners, do and should adopt a sympathetic and human approach to all matters and that is the essence of Justice. It is equally true that the Courts should also enforce the Rule of Law in public interest. It is the fundamental duty of all to maintain, preserve, protect and enforce the Rule of Law for the common benefit of all. In the maintenance and enforcement of law, the majesty of law shall not be sacrificed in the guise of human approach. Obedience to Rule of Law is the fundamental duty of all persons. Ignorance of law is no excuse and deliberate flouting of Rule of Law results in either civil or penal consequences. Any person who violates the law, more so deliberately, shall pay the penalty, it is therefore well settled that no person who is guilty of laches shall be allowed to take advantage of such laches to his benefit. Similarly no person, who is guilty of

fraud, is entitled for any relief, on the grounds of equitable estoppel.

36. The petitioners in these cases, even if they are held to be not parties to the fraud, they are beneficiaries of the fraud. When they are beneficiaries of fraud, are they entitled to claim any relief on the ground of equitable estoppel?

37. In *AP. Christians Medical Education Society v. Government of Andhra Pradesh*, the appellant without being affiliated to the University and despite strong protests and warnings of the University admitted students to the Medical College in the First Year MBBS course in total disregard of the provisions of the relevant Statute. Some students who were admitted to the Medical College, filed Writ Petition before the Supreme Court, The Supreme Court while dismissing the Writ Petition of the students observed as follows :

"Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interest of the students. We do not think that we can possibly accede to the request made by Sri Venugopal on behalf of the students. Any direction of the nature sought by Sri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the Statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the laws."

The Supreme Court has further observed that -

"We regret that the students who have been admitted into the college have not only lost the money which they must have spent to gain admission into the college, but have also one or two years of precious time virtually jeopardising their future careers. But that is a situation which they have brought upon themselves as they sought and obtained admission in the college despite the clear warnings issued by the University from time to time."

In the case of *Guru Nanak Dev University*, the question that came up for consideration was, whether the High Court was right in directing regularisation of the admission of the students into Post-graduate courses, who were admitted to such courses, by virtue of an interim order in total disregard of the Regulations. The Supreme Court took exception for the same and observed as follows :

"6. Sri Gambhir is right in his submission. We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage

cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The Courts should not embarrass academic authorities by itself taking over their functions."

Again the Supreme Court in the case Gurdeep Singh while considering the case of the appellant, who obtained admission on the basis of last minute inclusion of "mountaineering" as an additional sports activity for selection of students from sports quota has held as follows :

"What remains to be considered is whether the selection of respondent No. 6 should be quashed. We are afraid, unduly lenient view of the courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in Courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tenancy of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself; engender cynical disrespect towards the judicial process and in the last analyses embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the Court. Such instances reduce the jurisdiction and discretion of Courts into private benevolence. This tendency should be stopped. The selection of respondent No. 6 in the sports category was, on the material placed before us thoroughly not justified. He was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion is misuse of power. While we have sympathy for the predicament of respondent No. 6 it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes, we should quash the selection and admission of respondent No. 6, We do so though, however, reluctantly."

38. If was contended by the learned Counsel for the petitioners that they have not committed any act of fraud and they produced the marks cards, which were given to them by their Colleges, at the time of their admission to various Courses in the respondent-University and if there is any variation in the marks between the marks as found in their marks cards and the marks as entered in the Marks Register of Pre-University Board, they are not responsible for the same and therefore they may be permitted to continue their studies as they are eligible for admission to various Courses in the respondent-University. As already held the contention of the petitioners that they have produced the marks cards as given to them by their Colleges at the time of their admission is liable to be rejected.

39. In the light of the various Decisions of the Supreme Court aforementioned, it is now to be examined whether the petitioners are entitled for any order to continue their studies in view of the fact that they have already completed more than two years in the respective Courses. While considering the question of estoppel and granting permission to continue the studies to the students, who were irregularly admitted to various Courses, the Supreme Court had taken the conduct of the students, the conduct of the management of the Educational Institutions and the marks secured by the students at the qualifying examinations and the period of their study, into account. The Supreme Court in all the Cases cited on behalf of the petitioners permitted the students to continue their studies as they were not at fault and the fault lie with the Educational institutions or the authorities concerned. It is not so in these Cases. The Case against the petitioners in these Cases is one of fraud and the allegation is that they secured admission by producing fake marks cards. In the Cases where the students secured admission by stratagem and trickery, the Supreme Court came down heavily upon the students and refused to permit such students to continue their studies.

40. In view of the Decision of the Supreme Court in the case of Dr. Ajay Kumar I feel it is appropriate to consider the case of each of the petitioner with reference to marks secured by them as entered in the Register of the Pre-University Board to decide whether they could be permitted to continue their studies. In order to consider their case, it is necessary to set out the particulars of marks secured by each of the petitioners as entered in the Marks Register of Pre-University Board and the marks as entered in the marks cards produced by them, which are as under :

SI. No.

W.P.No.

Marks as entered in Pre-University Board.

Marks as entered in the marks card produced by the petitioners

Difference

1

2

3

4

5

1.

12886/95 5th semesters B.Sc., (Agri)

Kan.

35

53

Eng.

23

49

Phy.

15

68

Che.

11

75

Maths

08

71

Bio.

10

62

276

2.

12887/95 III Year B.V.Sc.

Kan.

60

76

Eng.

16

65

Phy

30

88

Che.

37

87

Maths

37

91

Bio

43

79

263

3.

12888/95 3rd Semester (B.Sc., (Agri)

Kan.

41

69

Eng.

47

72

Phy.

25

89

Che.

42

91

Maths

35

93

Bio.

50

92

266

4.

12889/95 IV Year B.V.Sc.,

Kan.

30

30

Eng.

60

60

Phy.

54

84

Che.

50

86

Maths

45

92

Bio.

43

83

153

5.

12890/95 II Year 3rd semester B.Sc., (Agri)

Kan.

61

62

Eng.

54

61

Phy.

35

81

Che.

38

79

Maths

69

86

Bio.

36

83

159

6.

9367/95 IV Year B.Sc., (Vet)

Kan.

41

41

Eng.

30

31

Phy.

35

55

Che.

39

69

Maths

35

75

Bio.

35

65

121

7.

9893/95 IV BVSc.,

Kan.

39

51

Eng.

37

46

Phy.

36

79

Che.

39

76

Maths

39

78

Bio.

35

80

8.

8968/95 IV Year

Kan.

71

67

Eng.

41

56

B.V.Sc.,

Phy.

60

94

Che.

57

88

Maths

79

96

Bio.

67

94

9.

13174/95 completed

Kan.

64

64

Eng.

36

86

Phy.

40

98

Che.

50

98

Maths

72

92

Bio.

43

93

10.

11746/95 IV Year B.V.SC.,

Kan.

65

65

Eng.

51

51

Phy.

56

79

Che.

64

82

Maths

42

91

Bio.

62

84

112

11.

1 1 747/95 II Year B.Sc., (Agri)

Kan.

50

50

Eng.

35

35

Phy.

35

85

Che.

34

84

Maths

37

73

Bio.

36

76

176

12.

11748/95 II Year B.Sc., (Agri)

Kan.

41

66

Eng.

30

40

Phy.

35

62

Che.

39

75

Maths

35

79

Bio.

35

75

79

I am of the view that in view of the fact that one of the petitioners has completed the course and few of them have already been in final year of their course, it is appropriate to grant relief on equitable grounds to those students who satisfy atleast the eligibility prescribed by the University to apply for a seat in various Courses in the respondent-University.

40A. It is clear from the aforesaid particulars that the petitioners in W.P.Nos. 12886, 12887 and 12888 of 1995 though failed at the qualifying examination, still managed to secure admission by producing fake marks cards. In view of the fact that they have failed at the qualifying examination, I am of the view, that the Rule of Law would be reduced to mockery if these petitioners are permitted to continue their studies. Similarly the petitioners in W.P.Nos. 12889, 12890, 9367, 9893, 11747, 11748 of 1995 are also not entitled for any order to continue their studies as they have secured the minimum marks for a pass class at the qualifying examination. They did not even secure the marks eligible to apply for seats in any of the faculty in the respondent-University. However the case of the petitioners in W.P.Nos. 8968, 13174 and 11746 of 1995 stand on a different footing. The eligibility prescribed by the University to seek admission for a seat in any faculty was that the student seeking admission should have obtained atleast 55% of the marks in the II Year of the two year Pre-University examination or an equivalent examination. It is seen from the particulars stated above that the petitioners in W.P.Nos. 8968/95 and 11746/95 have secured more than 55% and they have been studying in the IV Year B.V.Sc. In these circumstances I am of the view it is just and proper to permit them to continue their studies applying the principles of Equitable Estoppel. The petitioner in W.P.No. 13174/95 is stated to have completed his course in Bachelor in Vet. Science. He got admission in 1988 and he had secured just less than 51% at the II Year Pre-University examination. In view of the fact that he has secured more than 50% of the marks at the qualifying examination and has completed the Course successfully, I feel it is inappropriate to cancel his admission at this distance of time.

41. That in view of the facts and circumstances hereinbefore stated, I find no legal infirmity in the impugned Notifications and hence W.P.Nos. 12886-990/95, 9367/95, 9893/95 and 11747-748/95 are liable to be dismissed. Accordingly

they are dismissed. Rule is discharged.

42. However in view of the reasons stated in paragraph-40A of this order, I am of the view that the Notifications impugned in W.P.Nos. 8968/95, 11746/95 and 13174/95 are required to be modified, even though the petitioners are beneficiaries of the fraud. Accordingly, Notification No. R/SA-2/UG/Admn./94-95 dated 11.3.1995 produced at Annexure-F in W.P.No. 8968/95; Notification No. R/SA-2/UG. Admn./94-95 dated 15.3.1995, produced at Annexure-B in W.P.No. 11746/95; and Notification No. R/SA-2/UG.Admn./94-95 dated 11.3.1995, produced at Annexure-F in W.P.No. 13174/95 are hereby modified quashing the Notification only in so far as they relate to cancellation of the admission of the petitioners therein, without disturbing the other findings.

43. The petitioners in W.P.Nos. 8968/95, 11746/95 and 13174/95 are entitled to all benefits of admission as they are permitted to continue their studies. These three Petitions are disposed of accordingly.

44. In the circumstances of the case, there will be no order as to costs.