

(2003) 08 GUJ CK 0010

In the Gujarat High Court

Case No : Special Civil Application No. 10370 of 2002

Ishwarbhai Sankarbhai Rabari

APPELLANT

Vs

Gujarat University and Another

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 08 GUJ CK 0010

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : G.M. Joshi, for the Appellant; Mitul K. Shelat and Yogesh S. Lakhani, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr. Mitul Shelat, learned Counsel for respondent no.1, and Ms. Kreena Thakkar for Mr. S. Lakhani, learned Counsel for respondent no. 2, waive service of Notice of Rule and with the consent of the parties, the matter is taken up for final hearing today.

2. The only question which is required to be considered in this petition is whether the stand taken by the University while considering the matter for granting of the marksheet and consequently, the degree, is absurd and perverse.

3. The short facts of the case are that the petitioner appeared in IIIrd LL.B. Monsoon Semester (Old Course) Examination in May-1987 and he was declared as fail. The petitioner, thereafter, appeared in December-1991 in the very IIIrd LL.B. Monsoon Semester (Old Course) Examination and cleared all subjects of the IIIrd LL.B. Monsoon Semester (Old Course). The petitioner had to clear two subjects of Winter Semester of IIIrd LL.B. (Old Course) and, therefore, he had filled up the form for appearing in May-1999. However, due to unavoidable circumstances, he remained absent and he was declared absent. Thereafter, the petitioner also made an attempt in May-2001 to appear in Winter Semester of

IIIrd LL.B. (Old Course), but he could not pass. The petitioner, in March-2002, applied for appearing in the two subject of Winter Semester of IIIrd LL.B. (Old Course). The application was accepted for such purpose by the College Authorities and the petitioner was also allowed to appear in the examination. It is the case of the petitioner that the petitioner has appeared in the said two subjects of the Winter Semester of IIIrd LL.B. as per the Old Course and the petitioner has also answered such questions pertaining to the Old Course. The University has issued the marksheet for both the aforesaid subjects wherein in the subject of Drafting, etc., the petitioner has scored 60 marks out of 100 and in the subject of English for Lawyers, the petitioner has scored 33 marks, which are passing marks, out of 100. Therefore, in both the subjects, the petitioner has passed. As per the petitioner, so far as the earlier subjects of the Monsoon Semester of IIIrd LL.B (Old Course) are concerned, the petitioner has passed in all three subjects and a copy of the marksheet is produced for such purpose on page-12 at Annexure-A. Therefore, the case of the petitioner is that since the petitioner has passed all subjects of the Monsoon Semester and the Winter Semester of IIIrd LL.B. (Old Course), the petitioner ought to have been declared as passed and the marksheet also ought to have been shown as that of pass. However, the result shown in the marksheet is shown as "failed" and, therefore, this petition.

4. Heard Mr. M.J. Shelat for Mr. G.M. Joshi, learned Counsel for the petitioner, Mr. Mitul Shelat, learned Counsel for the University, and Ms. Kreena Thakkar, learned Counsel for the College Authorities.

5. It is the stand of the University that with a view to protect the term of the students, who appeared in the examination of LL.B. (Old Course), but, failed, as a last opportunity, they were allowed to appear in the examination of April-2002. But, it is further the case of the University that such students had to appear under the new syllabus and the circular for such purpose was also issued by the University on 13/03/2002. Perusal of the said circular shows that it has been mentioned that the opportunity given of IIIrd LL.B. (Old Course) is over, however, those students, whose both the terms of old course are granted or one is granted out of two, have to appear in the examination as per the new syllabus. It is further mentioned that for the IIIrd LL.B. (Old Course), it is decided to give one additional opportunity in April-2002 and the Director of Examination has instructed all College Authorities to notify the same on the Notice Board. It is the case of the College, respondent no.2 herein, that the petitioner belonged to IIIrd LL.B. (Old Course) and it had sent the names of 16 students of IIIrd LL.B. (Old Course), including the petitioner along with the forms of examination to the University on 20th April, 2002. The College Authorities have stated that the Circular No.17 was received at the fag end and the same could not be communicated since the students of the old course were sizeable in number. However, pertinent aspect is that the respondent-College, at paragraph-4 in the affidavit-in-reply, has stated as under :

"... .. the schedule of the examination of all the years of LL.B examination including third year LL.B examination for the year 2002, it is specifically mentioned old course and new course (near the name of the place), a copy of the same is produced hereto and marked as Annexure R-II to this reply. I further submit that the University had also prepared the question paper of IIIrd year LL.B. examination for the old course students, the copy of the examination question papers are produced hereto and marked as Annexure R-III (collectively). Therefore looking to the documents produced along with this reply go to suggest that, that the University had conducted examination of IIIrd LL.B., of the old course for the year May-2002. I further submit that because of the above mentioned fact and looking to the documents it can be said that the petitioner was a student of the old course and had passed the examination in the old course as required and therefore the respondent college has requested the University to inquire in the case of the petitioner vide letter dated 08.08.2002 which is at Annexure-F to the petition."

The stand of the University additionally is that when the application forms for appearing in the examination of the students were received from the concerned College, it was already communicated, as per the communication dated 24th April, 2002, that the application forms are submitted of the old course and in view of the Circular No.17, since the term of the old course is over, these students have to pass the examination in new course and the application forms for such purpose are converted in the new course and the same may be intimated to the students. Therefore, it is the case of the University that so far as the petitioner is concerned, his application form was converted for the new course of IIIrd LL.B. and since the petitioner has passed the examination of two subjects of Winter Semester in IIIrd LL.B. (New Course), the petitioner need to pass the examination of the subjects of Monsoon Semester in IIIrd LL.B. (New Course), and, therefore, the marksheet is declared as that of `fail". It is the case of the University that if the petitioner passes examination of the subjects of Monsoon Semester in IIIrd LL.B. (New Course), the marksheet can be declared to the petitioner as of `pass" and the degree can be conferred upon the petitioner consequently.

6. In view of the above facts" situation of the case, it is required to be taken note of that there is no dispute on the point that the petitioner has passed the Monsoon Semester of IIIrd LL.B. (Old Course) and there is also no dispute on the point that the petitioner has successfully cleared the subjects of Winter Semester of IIIrd LL.B. (Old Course), whereas the University gives the title to such as IIIrd LL.B. (New Course). Admittedly, the petitioner did not file any application form for appearing in the subjects of Monsoon Semester of IIIrd LL.B. either of the new course or of the old course for appearing in April-2002/May-2002. It was, as such, not even required for the petitioner to submit any application because when he had already passed in all the subjects of Monsoon Semester of IIIrd LL.B. (Old Course), there was no occasion for the petitioner for appearing again in the subjects of Monsoon Semester, which he has passed in IIIrd LL.B. (Old

Course).

7. So far as the subjects of the Winter Semester are concerned, it is the case of the petitioner that the application was for Winter Semester of IIIrd LL.B. (Old Course). It is also the case of the College Authorities that the petitioner was treated as to appear in the Winter Semester of IIIrd LL.B. (Old Course). It is also the case of the College Authorities and even the record, which is produced before this Court goes to show that question papers were also drawn by the University while conducting the examination for IIIrd LL.B. (Old Course) as well as IIIrd LL.B. (New Course) by identifying the same separately and by also providing a different requirement for answering the questions. Even the College Authorities have declared before the Court that the petitioner did appear as the student of Winter Semester of IIIrd LL.B. (Old Course) and the petitioner has also submitted before the Court that he has answered the questions of the subjects of the Winter Semester as IIIrd LL.B. (Old Course). The University has processed such answer sheets and has given marks, which have been referred to herein above, which shows that the petitioner has passed in both the subjects of the Winter Semester of IIIrd LL.B. (Old Course). Therefore, in my view, when the student has appeared in the Winter Semester of IIIrd LL.B. (Old Course), when the College has also allowed him to appear as a student of Winter Semester of IIIrd LL.B. (Old Course), when the University has also allowed, at the time of examination, to the petitioner to appear in Winter Semester of IIIrd LL.B. (Old Course), when the questions papers are also processed accordingly as that of IIIrd LL.B. (Old Course), when the assessments of answer sheets are also made as that of Winter Semester of IIIrd LL.B. (Old Course), and when the petitioner has scored the requisite marks for passing, it would be perverse on the part of the University to treat or contend that the petitioner has appeared as in the subject of IIIrd LL.B. (New Course) or that the petitioner has cleared the subjects of Winter Semester of IIIrd LL.B. (New Course). The aforesaid stand, in my view, is absolutely not supported by the record, but, from the record produced before this Court, position is reverse as referred to herein above, and, therefore, the University cannot be heard to say that the petitioner-student has passed Winter Semester of IIIrd LL.B. (New Course) inasmuch as even the answer sheets are accordingly processed as that of Winter Semester of IIIrd LL.B. (Old Course).

8. So far as the insistence of the University for the petitioner to clear the subjects of Monsoon Semester of IIIrd LL.B. (New Course) is concerned, in my view, it is contrary to the stand of the University itself inasmuch as the University, in its own circular, has mentioned that for IIIrd LL.B. (Old Course), one opportunity is given in April-2002. There is no dispute on the point that the term of the petitioner was granted. If the term is granted to the student, as per the decision of the University itself, one additional opportunity was to be given in April-2002. The petitioner had already cleared Monsoon Semester of IIIrd LL.B. (Old Course) and, therefore, there was absolutely no occasion for the petitioner to even apply for appearing in the examination of Monsoon Semester of IIIrd LL.B. (New Course) and it is not even the case of the petitioner that any such

application was made for that purpose. When there was no such application for appearing in the Monsoon Semester of IIIrd LL.B. (New Course), there was no occasion for the University to convert such application in the Monsoon Semester of IIIrd LL.B. (New Course), which was in reality for Winter Semester of IIIrd LL.B. (Old Course). As such, when the petitioner has not at all applied for such purpose, there was no question of converting the application by the University into the new course.

9. In view of the aforesaid facts and circumstances, it does appear that the petitioner did pass in all the subjects of the Monsoon Semester of IIIrd LL.B. (Old Course). Similarly, the petitioner has successfully cleared in all the subjects of Winter Semester of IIIrd LL.B. (Old Course). Therefore, when the petitioner has already cleared all the subjects of IIIrd LL.B., including Monsoon and Winter Semester, in my view, issuance of the marksheet showing the petitioner as 'fail' and non-issuance of the marksheet showing the petitioner as 'pass' is arbitrary and capricious. As observed earlier, it is also perverse to the record of the case.

10. It is true that normally this Court, while exercising powers under Article-226 of the Constitution of India would not interfere in educational matters and it would normally be left to the academicians to decide modalities for such purpose. But, the University as well as the College Authorities, while dealing with the educational matter of any student, cannot take the matter so lightly and in so cavalier fashion. It is required to be borne in mind that they are, as such, dealing with the career of the students. A unilateral action on the part of the University converting the application as that in the new course, without even the student having applied for such purpose, can hardly be justified under such circumstances. The stand taken by the University upon the directions of the Bar Council of India, in my view, is as vague as anything. In the affidavit-in-reply, there is only a reference of the directions of the Bar Council of India and no details are mentioned as to how and in what manner, those directions are to be made applicable and what are the exact directions. It is not borne out from the record that the Bar Council of India has prohibited the attempt to appear to the students, who are already undergoing LL.B. ongoing course. Even if there is any direction, question is required to be considered that whether it would apply prospectively to the new students or to the existing students, who are ongoing their studies. Normal circumstances would be that when any curricular course or activity or syllabus is changed, it would not be changed in such a manner which would frustrate the right or the situation which has conferred any benefit to the students of successfully passing in the said examination and, therefore, even when the University had to act upon the directives of the Bar Council of India, it would apply to the students, who have yet not passed the examination and who have also yet to apply for such course. In the present case, the petitioner had already passed Monsoon Semester of IIIrd LL.B. (Old Course) and neither the petitioner has appeared in the new syllabus nor it is even the case of the petitioner that he has appeared in the new syllabus, but, the case of the petitioner is that he has successfully passed the syllabus of Winter Semester of

IIIrd LL.B. (Old Course) for which one opportunity was already given and he has successfully captured the said opportunity. Therefore, in my view, the University could not have declared the petitioner as failed and the University ought to have issued the marksheet declaring the petitioner as passed.

11. In view of the aforesaid circumstances, the petition succeeds. The University is directed to issue the marksheet to the petitioner of passing IIIrd LL.B. (Old Course) Examination within a period of four weeks from today and consequently, the degree certificate thereafter. Rule is made absolute accordingly. Considering the facts and circumstances of the case, no costs.

Direct Service is permitted.