
(1982) 06 MP CK 0004

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 162 of 1982

Jogendra Singh

APPELLANT

Vs

Vikram University, Ujjain and Others

RESPONDENT

Date of Decision : 28-06-1982

Acts Referred:

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 15(2)

Citation : AIR 1982 MP 202

Hon'ble Judges : K.N. Shukla, J;G.G. Sohani, J

Bench : Division Bench

Advocate : V.S. Kokje, for the Appellant; L.P. Bhargava, for the Respondent

Final Decision : Allowed

Judgement

Sohani, J.—This is a petition under Article 226 of the Constitution of India.

2. The material facts giving rise to this petition are as follows:--

The petitioner appeared at the LL. M. Part I examination conducted by respondent No. 1 in the year 1981. The petitioner was declared unsuccessful when the result was declared, but on an application by the petitioner for revaluation, the petitioner was declared successful. On 8-12-1981, the petitioner was informed by the Upkulsachiv of the respondent University that respondent No. 2 had cancelled the LL. M. Part I examination of the petitioner as the petitioner was found to have attended only 5% of the number of lectures delivered during the relevant calendar year. Aggrieved by this order, the petitioner has filed the petition.

3. Shri Kokje learned counsel for the petitioner contended that respondent No. 2 had no jurisdiction to cancel the examination of the petitioner on the ground that he had failed to attend the prescribed course of lectures when the petitioner was allowed to appear for the examination and when the petitioner had not made any misrepresentation as regards the number of lectures attended by him. It was further contended that in any event, the action taken by respondent No. 2

deserved to be quashed as no notice to show cause was given to the petitioner before taking the action. In reply, Shri Bhargava, learned counsel for the respondents stated that respondent No. 2 had jurisdiction to cancel the examination u/s 15(2) of the M. P. Vishwavidyalaya Adhiniyam 1973 (hereinafter referred to as the Act).

4. Having heard learned counsel for the parties, we have come to the conclusion that this petition deserves to be allowed. Section 15 (2) of the Act reads as under:--

"It shall be the duty of the Kulpati to ensure that this Act, the Statutes, the Ordinances and the Regulations are faithfully observed and he shall have all powers necessary for this purpose".

The aforesaid provision, in our opinion, does not empower the Kulpati to cancel the examination of a candidate on the ground that he had failed to attend the requisite number of lectures. The Executive Council of the University, no doubt, has power under Clause 23 (f) (iii) of Ordinance No. 6 to cancel the examination of a candidate, if it is discovered afterwards that the candidate had obtained admission to the examination by misrepresentation of facts or by submitting false certificate or forged documents. In the instant case, however, the Executive Council has not taken any action under the aforesaid provision. It was not disputed before us that it was the duty of the authorities to scrutinize the admission form of the petitioner and find out as to whether petitioner had fulfilled the condition as regards the attendance. In this connection we may usefully refer to the following observations made by the Supreme Court in *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, (at p. 381):

"If neither the Head of the Department nor the University authorities took care to scrutinize the admission form, then the question of the appellant committing fraud did not arise. It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of *suggestio falsi*, or *suppressio veri*. The appellant never wrote to the university authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the University authorities to have found out the defect. In these circumstances, therefore, if the University authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I Examination in April 1972, then by force of the University statute the University had no power to withdraw the candidature of the appellant. A somewhat similar situation arose in *Premji Bhai Ganesh Bhai Kshatriya Vs. Vice Chancellor, Ravishankar University and Others*, where a Division Bench of the High Court of Madhya Pradesh observed as follows:--"From the provisions of Ordinances Nos. 19 and 48 it is clear that the scrutiny as to the requisite attendance of the candidates is required to be made before the admission cards are issued. Once the admission cards are issued permitting the candidates to take their examination, there is no provision in Ordinance No. 19 or Ordinance No. 48 which would enable the Vice-

Chancellor to withdraw the permission. The discretion having been clearly exercised in favour of the petitioner by permitting him to appear at the examination, it was not open to the Vice Chancellor to withdraw that permission subsequently and to withhold his result."

"We find ourselves in complete agreement with the reasons given by the Madhya Pradesh High Court and the view of law taken by the learned Judges. In these circumstances, therefore, once the appellant was allowed to appear at the Examination in May, 1973, the respondent had no jurisdiction to cancel his candidature for that examination."

In view of the aforesaid observations, it must be held that the order passed by the respondent No. 2 cancelling the LL. M. Part I examination of the petitioner cannot be sustained in law.

5. For all these reasons, this petition is allowed. The order passed by respondent No. 2 cancelling the LL. M. Part I Examination of the petitioner is quashed. In the circumstances of this case, parties shall bear their own costs. The amount of security deposit, if any, be refunded to the petitioner.