

(2013) 04 GUJ CK 0054

In the Gujarat High Court

Case No : Special Civil Application No. 15958 of 2012

Krupa Shirishkumar Modi

APPELLANT

Vs

Charotar University of Science and Technology and Others

RESPONDENT

Date of Decision : 12-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 04 GUJ CK 0054

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Bharat T. Rao, No. 1, for the Appellant; Swapneshwar Goutam, AGP No. 3 and Mr. Jigar M. Patel, Advocate No. 1-2, for the Respondent

Judgement

K.M. Thaker, J.—In view of the decision taken by the respondent University and respondent College during the meeting held on 29th March 2013, learned counsel for petitioner submitted that petitioner will make a representation to the respondent University and the respondent College which may be considered by the respondent University and the respondent College. On earlier occasion, the respondent University and the respondent College had agreed to consider the request of the petitioner and for that purpose meeting was convened on 29th March 2013. From the minutes of the meeting it appears that the case of the petitioner has been considered and after elaborate discussion, the respondent College and respondent University have taken the decision which is recorded in minutes of the meeting convened on 29th March 2013.

2. Following decision has been taken during the said meeting:

i) Ms. Krupa Modi (Id No. 10BPH030) of fifth sem B.Pharm has not cleared first year course PH 106 and has got many other backlogs. Hence the committee recommended not to accept her request to appear at the University exam of fifth semester as per prevailing rules of the University.

3. It has emerged from the record that the petitioner has been detained in fifth

semester and aggrieved by the said decision and action of the respondents the petitioner has preferred present petition.

4. The petitioner has prayed that the respondents may be directed to hold special examination for her wherein she may be allowed to appear in examination of fifth semester. The petitioner has also prayed that the State Government may be directed to amend the Gujarat Private Universities act, 2009 so as to cast obligation on the Universities to get Government's approval before framing regulations.

5. So far as the said second part of relief prayed for in the petition is concerned, such request cannot be considered and cannot be granted. This Court, in exercise of writ jurisdiction cannot direct State Government to frame any particular law so as to impose obligation on the University to seek Government's approval before framing its own regulations. The Act permits the University to frame its own regulations in the manner prescribed under the Act. It is purely in the domain of Legislature to enact the appropriate statute and similarly it is in the realm of Universities to frame appropriate regulations.

6. So far as first part of the relief prayed for by the petitioner is concerned, it is relevant to take into account the factual backdrop in light of which the respondent University seems to have compelled to take decision of detaining the petitioner in fifth semester. The factual backdrop is mentioned by the respondent University in para 4(A) to 4(H) and para 5 of the reply affidavit which read thus:

4(A) The petitioner was admitted to 1st Year of B.Pharm Course in the set up of respondent no. 2 college in the academic year 2010-2011. The said course leading to the educational qualification of B.Pharm is having the duration of 4 years comprising in all 8 Semesters at the rate of 2 Semesters per year.

(B) The issue arising in the present petition is in respect of 5th Semester (i.e. 1st half of 3rd year). The said 5th Semester commenced with effect from 25.06.2012.

(C) As per regulation no. 8.2 of Academic Regulations framed by respondent no. 1 university for its respondent no. 2 constituent college, the petitioner was ineligible to enter the 5th Semester (i.e. 3rd Year) of B.Pharm Course in as much as the petitioner had not cleared all the subjects of 2nd Semester (1st Year). Hereto annexed and marked as Annexure "I" is the true copy of Academic Regulations framed by respondent no. 1 university.

(D) Even the petitioner was conscious about the aforesaid position and therefore, the petitioner made an oral request to the Principal of respondent no. 2 constituent college of respondent no. 1 university seeking permission to enter the 5th Semester.

(E) At the relevant point, when the aforesaid oral request was made by the petitioner, respondent no. 1 university was contemplating to relax the criteria for eligibility to enter various semesters of the said B.Pharm Course for current academic year 2012-2013. As such, for the very purpose, it was decided to

convene a meeting of the concerned committee of respondent no. 1 university. In view of this, the petitioner was permitted to enter the 5th semester so that if ultimately, the petitioner was to fit in the relaxation in the criteria for eligibility to enter the concerned semester as and when decided by the concerned committee of respondent no. 1 university, the petitioner can take avail the benefit of the same.

(F) Thereafter, there was the meeting of the concerned committee of university for the aforesaid purpose on 10.07.2012. In the said meeting, it was inter alia decided to relax the criteria for 5th semester of 3rd year of the said course of B.Pharm only for the current academic year 2012-2013. As per the same, it was decided that in order to enter 5th Semester of the said B.Pharm Course, the concerned student should not have backlog of more than 4 subjects in 3rd and 4th Semester together at the time of commencement of the said 5th Semester for the current academic year 2012-2013. Hereto annexed and marked as Annexure "II" is the true of copy of the minutes of the meeting convened on 10.07.2012.

(G) The petitioner is not falling within the scope and purview of the aforesaid relaxation in the criteria for the current academic year 2012-2013 for entering into the 5th Semester in as much as the petitioner was having at the time of commencement of 5th Semester for the current academic year 2012-2013 in all the backlog of 7 subjects in 3rd and 4th Semesters together. Thus, the petitioner was not eligible to enter 5th Semester. A list showing the candidates who were detained for the 5th Semester is annexed herewith vide Annexure "III".

(H) The aforesaid relaxation in the criteria was made known to all the students by placing an appropriate notice in this regard on notice board of respondent no. 2 college. Even, the names of all the students who were emerging as not eligible to continue with 5th Semester were notified on the notice board of respondent no. 2 college on 12.9.2012. Since, some of the students desired to have clarification with regard to their detention, a hearing was given to them by respondent no. 2 college on 20.9.2012.

5. Thus from the facts set out herein above, it is apparent that before commencement of examinations for 5th semester on 27.11.2012, the petitioner was fully aware about the fact that she would not be in a position to appear at the said examination as she was ineligible to enter 5th Semester. The mere fact that the petitioner continued to attend the classes for the said 5th Semester would not have the effect of making the petitioner eligible for the said 5th Semester. It is needless to mention that the eligibility to enter the 5th Semester depends upon the relevant academic regulations in this regard framed by respondent no. 1 university and not on the attendance in the class room under some misconception up to particular point. However, regardless of this and without prejudice to the averment made herein above to the effect that all the concerned students were made aware about their ineligibility to continue with the 5th Semester even after the aforesaid relaxation in the academic regulation, the

fact remains that even as per the say of the petitioner she was specifically not permitted by respondent no. 2 college to attend the classes for 5th semester after 26.09.2012. Therefore, with effect therefrom even as per the say of the petitioner, she was knowing that she was ineligible to continue with 5th Semester. Therefore, there was no need for the petitioner to wait up to 27.11.2012, being the date on which the examination for 5th Semester was scheduled and thereafter to move the present petition belatedly before this Hon"ble Court on 30.11.2012 on the premise that she was astonished to when she was not permitted to appear at the said examination for the 5th semester.

7. It has emerged that actually the petitioner was ineligible to enter 5th semester i.e. third year of B.Pharm because the petitioner has not cleared all subjects of 2nd semester i.e. first year. The petitioner was conscious about the said aspect. In the first year the petitioner cleared only 12 papers out of 14 papers and in the 2nd year i.e. in the 3rd and 4th semester the petitioner cleared only 7 papers out of 14 papers. Thus, in all petitioner had backlog of 9 papers (7 papers of 2nd year and 2 papers of 1st year). However, since at the relevant time the University was contemplating to further relax the criteria for eligibility to enter various semesters, petitioner"s request for allowing her to enter 5th semester was considered and accordingly the petitioner was allowed to enter 5th semester. However, the said relaxation, which was granted pending the decision by the University, cannot be misused by the petitioner to claim that after having allowed her to enter 5th semester she cannot be detained on the ground that she has backlog of 9 papers from 1st and 2nd year more particularly when the applicable regulation prescribed that a student must not have backlog of more than 4 papers in 3rd and 4th semester together at the time of commencement of 5th semester. Despite such factual position, at the request of petitioner the respondent University and respondent College agreed to consider the case of the petitioner and accordingly the matter appears to have been placed before the Committee in the meeting convened on 29th March 2013.

8. However, as mentioned above, after having considered the entire facts of the case the committee has disapproved the request.

9. In the facts and circumstances of the case the decision of the respondent University and respondent College and/or the committee does not appear to be arbitrary or contrary to regulation. When the rules provide that a student cannot be permitted to prosecute studies in next semester unless the backlog is cleared, the Court, in exercise of discretionary jurisdiction under Article 226 of the Constitution of India, cannot interfere with the decision of respondent University. Such issues are purely in the realm of respondent University and unless the decision is found to be colourable exercise or arbitrary, Court cannot interfere.

10. In view of the facts and circumstances of the case and in light of the said decision, now, learned counsel for petitioner submitted that at this stage the petitioner desires to again make a representation to the respondent University and the respondent College to reconsider the decision, if possible, in light of the

facts and circumstances of the case.

11. In view of the said submission and request made by learned counsel for petitioner, petition is disposed of at this stage so as to enable the petitioner to make a representation for reconsideration of the decision. Accordingly, in view of the submission and statement made by learned counsel for petitioner, the petition is disposed of. Notice is discharged. If any ad-interim relief is in operation the same shall stand vacated.