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In the Bombay High Court

Case No : Writ Petition No. 6353 of 2012

Ku. Renu — APPELLANT

Vs

Rashtrasant Tukdoji Maharaj Nagpur University and Yeshwantrao Chavan College of Engineering — RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:
Constitution of India, 1950 — Article 226
Maharashtra Universities Act, 1994 — Section 31(2)

Citation : (2013) 4 ABR 94 : (2013) 4 ALLMR 849 : (2013) 5 BomCR 194 : (2013) 3 MhLj 909

Hon'ble Judges : B.P. Dharmadhikari, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : R.R. Inamdar, for the Appellant; P.B. Patil, counsel for Respondent No. 1 and Shri P.D. Meghe, counsel, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—By consent of learned counsel appearing for the parties, the matter is heard finally. By this petition filed under Article 226 of the Constitution of India, the petitioner-student seeks declaration that she is entitled to appear for 7th Semester Examination in the course of Engineering in view of clearing of backlog of 3rd and 4th Semester subjects in Summer Examination-2012, as per the result of the re-valuation declared on 8.12.2012 and 1.12.2012. It is not in dispute that respondent No. 2-College, gave her provisional admission to Fourth Year of Engineering, which comprised of 7th and 8th Semesters, on 6.6.2012.

2. The petition came to be filed on 24.12.2012 and on that day, the Vacation Court issued notice. On 26.12.2012, this Court after hearing other side, by way of interim order, directed respondents to allow the petitioner to appear for Winter Examination-2012 for 7th Semester scheduled to commence from next day. The petitioner accordingly has appeared for that examination. The Examination of 8th

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Semester, is now scheduled on 16.4.2013.

3. The facts are not much in dispute. The chronology of events given by the petitioner can be safely relied upon for the purposes of present dispute:

4. In the light of above chronology by placing reliance upon provisions of Ordinance No. 6 of 2010, the petitioner contends that after declaration of result of re-valuation of 3rd Semester Summer Examination-2012, on 8.12.2012, as she succeeded in the said examination, she became eligible for admission to 7th Semester.

5. By relying upon very same provisions, respondent No. 1-University submits that the facility of provisional admission can be availed only in relation to performance in immediately two preceding qualifying Semester Examinations. As on 6.6.2012 the petitioner had not cleared 3rd and 4th Semester Examinations completely, she could not have been given provisional admission to 4th Year i.e. 7th and 8th Semesters. They relied upon very same Ordinance as amended vide Ordinance No. 6 of 2010. It is sufficient to reproduce paragraph nos. 4 and 5 of their submissions, filed before this Court, to note this defence, which is depended upon Clause-10 of the said Ordinance. Those paragraphs, are reproduced below:

In view of the aforesaid position the petitioner was not entitled for getting admission in 7th semester. It appears that the petitioner was admitted for 5th semester as she was having backlog of earlier two preceding semesters i.e. 3rd and 4th. Therefore, the petitioner was not entitled to get admission for 7th semester in June 2012, because her backlog of 3rd and 4th semester was not cleared by that time. The result of revaluation of 3rd semester was declared on 08-12-2012 and the result of revaluation of 4th semester was declared on 01-12-2012.

The petitioner alleges that she was admitted by Respondent No. 2, College for 7th semester on 06-06-2012. However, in view of aforesaid legal position, the petitioner was neither eligible nor entitled for admission in 7th Semester in June 2012. Therefore, the alleged admission given by college was itself illegal.

6. The re-joinder petitioner has pointed out that because of pendency of this dispute, her result of 7th Semester Examination has been declared as "withheld" on 22.3.2013. A separate Civil Application (CAW) No. 910 of 2013, has been filed in this background, seeking permission to appear in 8th Semester Examination and to declare the result of 7th Semester Examination.

7. The controversy, therefore, needs to be viewed in the background of provisions contained in Ordinance No. 27 of 2008 as amended by Ordinance No. 6 of 2010. Similar provisions are considered by this Court in the case of Ku. Nikita Vs. Rashtrasant Tukdoji Maharaj Nagpur University and Priyadarshini Institute of Engineering and Technology . There validity of Clause No. 15 and Direction No. 9 of 2008, which restricted the benefit of such provisional admission only qua the immediately preceding two Semester Examinations was

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assailed as leading to hostile discrimination. The Division Bench has not accepted this contention. In the case of Forum for Fairness in Education and Others Vs. University of Mumbai and Others, , the Division Bench in paragraph nos. 17 and 18 has held that general rule governing performance of a student in examination expects him to pass the entire examination i.e. all subjects together. The provisions which permit him to carry backlog and allow to keep terms (A.T.K.T.) are by way of exception to this rule.

8. Ordinance No. 27 of 2008 is to provide for provisional admission of the students subject to result of re-assessment. The same is issued by the Board of Examinations u/s 31(2) of the Maharashtra Universities Act, 1994. Clause No. 10 therein, stipulates that facility of provisional admission is restricted to candidate who has failed in one examination and has applied for re-assessment. A candidate who has failed in two or more examinations though he may have applied for re-assessment in respect of subjects of such examinations, is declared not entitled to claim, the benefit of provisional admission. Vital provision is Clause No. 16 which stipulates that if for some reasons, result of re-assessment is not declared prior to the commencement of next higher examination for which the provisional admission is taken, the candidate will not be eligible to appear for such higher examination on the strength of the provisional admission.

9. The statement of objects and reasons of Ordinance No. 6 of 2010, reveals that as Ordinance No. 27 of 2008, essentially dealt with course having yearly pattern, need to amend the same was felt. By this Ordinance, after paragraph no. 7, paragraph nos. 8 to 12, have been inserted in Ordinance No. 27 of 2008. Similarly, paragraph no. 10 of Ordinance No. 27 of 2008, has been substituted by a similar paragraph to cover Semester Pattern. This substituted paragraph no. 10, stipulates that facility of provisional admission is restricted to one preceding qualifying examination for yearly pattern course and to two preceding qualifying Semester Examinations for Semester Pattern Course. It expressly stipulates that in the event, such a candidate has additional backlog of still earlier year or semesters, he will not be eligible for provisional admission "in any event." Thus, this Clause No. 10, enables the petitioner to seek benefit of provisional admission to 7th Semester, only if, she has backlog of two preceding qualifying Semester Examinations i.e. 5th and 6th Semesters. Backlog of subjects of any earlier Semesters, like 3rd or 4th Semesters in present matter, dis-entitles her to provisional admission. The rule is emphatic in-so-far as extension of concession of provisional admission to students is concerned.

10. Paragraph no. 8(a) of Ordinance No. 6 of 2010, stipulates that for provisional admission in the next higher examination i.e. either 3rd, 5th, 7th or 9th Semesters, candidate who has failed in one or two preceding Semesters, in such number of heads and has applied for challenge to valuation/reassessment in prescribed maximum four papers (two in each semester), will be eligible for provisional admission. If, he clears those subjects in re-assessment, he becomes

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eligible for that admission on the basis of A.T.K.T. Rules. This Clause is followed by an illustration where it has been stated that reference to admission for 5th Semester, the existing eligibility is passing in all the heads of 3rd and 4th Semesters, except maximum four heads taken together. Thus, candidate can have backlog of maximum of four heads taken together of 3rd and 4th Semesters, if he is seeking provisional admission for 5th Semester. The next clause therein which has no. (i), stipulates that if the candidate has failed in maximum eight heads in 3rd and 4th Semesters, four in each Semester and has applied for re-assessment in maximum four heads (two in each Semester), then only he is eligible for provisional admission. In paragraph no. 9 of this Ordinance, respondent No. 1-University, has given various combinations to point out the eligibility. Said paragraph no. 9 along with chart, reads as under:

9. Therefore the eligibility of provisional admission to the next higher semester (3rd, 5th, 7th, or 9th) will be determined as per the following formula.

11. Paragraph no. 10 of this Ordinance No. 6 of 2010, clarifies that for provisional admission, the eligibility in Semester Pattern Courses is thus maximum total number of heads of failure prescribed in the governing Ordinance for the purposes of benefit of A.T.K.T. plus maximum two heads of failure in each Semester provided the candidate has applied for reassessment/re-valuation. Paragraph no. 11 points out that if, the candidate clears in requisite number of subjects/heads after reassessment and thereby acquires the eligibility prescribed in the governing Ordinance/Direction at least to the extent of getting the benefit of A.T.K.T. Rules, then alone his provisional admission would be regularized. Paragraph no. 12, stipulates that otherwise his provisional admission automatically stands cancelled.

12. Perusal of above provisions, therefore, shows that a student who fails to clear maximum of eight heads in 3rd and 4th Semesters (four in each semester) and applies for re-valuation in maximum four heads (two in each semester), only becomes eligible for provisional admission. The provisional admission has to be to the next higher Semester immediately following/after such two Semesters. Thus, backlog in 3rd and 4th Semesters, enables the petitioner to seek provisional admission in 5th Semester. If even after 5th Semester Examination that backlog continues, she cannot seek an admission provisionally to 7th Semester. Only on the basis of her performance "in 5th and 6th Semesters" and subject to facility supra she can claim provisional admission to 7th Semester, not otherwise.

13. In present facts, admission to 4th Year of Engineering, has been given to the petitioner on 6.6.2012. On that day, though she had cleared 5th Semester Examination, her result of 6th Semester was not out. She had already failed in 3rd and 4th Semester Examinations in Winter-2011 and had reappeared for those Semesters along with 6th Semester Regular Examination in Summer-2012. On 22.6.2012, she was declared as "fail" in 6th Semester Examination, on 24.6.2012 she failed in 4th Semester and on 30.6.2012 she failed in 3rd

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Semester. Chronology mentioned above, shows that this result has been declared after respondent No. 2-College gave her provisional admission to 7th and 8th Semesters on 6.6.2012.

14. Had the petitioner cleared 3rd and 4th Semester in Summer Examination-2012, there would not have been any backlog of prior Semesters to enable the authorities to deny her admission to 7th or 4th Year of Engineering Course. As respondent No. 2-College made admission before declaration of result in the interest of student and obviously at her risk, respondent No. 2-College admitted her provisionally to 7th and 8th Semesters on 6.6.2012. Had the results been declared prior to 6.6.2012, the petitioner would not have been eligible for provisional admission to 7th Semester "in any event." She then sought re-valuation or re-assessment of her 3rd and 4th Semesters performance. Only to give her a fair chance, respondent No. 2-College extended to her an opportunity to prosecute her studies further but then that prosecution depended solely on out-come of her performance in Summer Examination-2012 in 3rd and 4th Semesters Course.

15. Perusal of paragraph no. 16 of Ordinance No. 27 of 2008, shows that in such a situation, a candidate can be admitted provisionally but cannot be permitted to appear for such next higher examination if the result of the re-assessment is not declared prior to commencement of such higher examination. Our attention has also been invited to a notification issued on 8.11.2012, where because of delay in declaration of result of re-assessment of various examinations, the last day for admission was extended. This notification obviously does not modify the provisions of Ordinance Nos. 27 of 2008 or 6 of 2010. It is also important to note that a candidate who has got additional backlog of prior Semesters i.e. Semesters prior to immediately preceding two Semesters, is not entitled to claim benefit of provisional admission. Thus, mere fact that the petitioner applied for re-assessment of her Summer Examination-2012 performance in-so-far as 3rd and 4th Semester Examinations are concerned did not enable her to seek admission to 7th Semester. Her successfully passing said examination as a result of re-valuation on 1.12.2012 or 8.12.2012 also does not enable her to regularization of her admission in 7th Semester. The concession of provisional admission after application for re-assessment or re-valuation is expressly restricted only to two immediately previous Semester Examinations. In this situation, the admission of the petitioner to 7th Semester could not have been continued after 24.6.2012 when she was declared "fail" in 4th Semester.

16. It is, therefore, obvious that prayer of the petitioner to regularize her admission in 7th Semester or to declare the result of her 7th Semester Examination, cannot be granted.

17. We, therefore, find no merit in the challenge as presented. No case is, therefore, made out warranting interference. Writ Petition is accordingly rejected, consequently Civil Application (CAW) No. 910 of 2013 is also rejected. Rule is discharged. There shall be no order as to costs.

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