

(1998) 10 MAD CK 0139

In the Madras High Court

Case No : Writ Petition No. 9086 of 1998 and W.M.P. No's. 13860 and 13861 of 1998

L. Baba

APPELLANT

Vs

The Registrar, Madras University, The Controller of Examinations, Madras University and The Principal, Islamia College, Vaniyambadi Muslim Educational Society

RESPONDENT

Date of Decision : 23-10-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 10 MAD CK 0139

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : P. Srinivas, for the Appellant; Jothimani, for Respondents 1 and 2 and Fiaz Hussain, for 3rd Respondent, for the Respondent

Final Decision : Allowed

Judgement

S.S. Subramani, J.—Petitioner has come to this Court for the issuance of a Writ of Certiorarified Mandamus calling for the records of the first Respondent relating to his proceedings in Cr.III/Reioin/B. Sc/94-95/875 dated 8.5.95 and the proceedings of the Controller of Examinations in his Official Memorandum No. E3/BSC/415/ER/1421 dated 18.3.98, quash the same and consequently direct the Respondents to release the marks statement of Clinical Bio-Chemistry-ORA of Petitioner and consequently direct the Respondents to issue provisional certificate and Degree Certificate.

2. After completion of Plus II examinations, Petitioner joined Bachelor of Science (Bio-Chemistry) during the academic year 1987-88 in Islamia College at Vaniyambadi. The duration of the course is three years, viz., 1987-88, 1988-89 and 1989-90. Petitioner had completed the first two academic years, 1987-88 and 1988-89. After Petitioner joined third year degree course, he became ill, as a result of which he could not attend the college regularly. He had obtained only

55% attendance. Petitioner appeared for theory as well as Written examinations in each academic year according to his eligibility and he has passed few papers. After completion of the third academic year during March 1990, Petitioner had remitted fees for the examinations for all the arrear papers from first to third year as well as fees for practical examinations for the papers which he had not passed in the earlier examinations. Petitioner was permitted to appear for practical examination during March 1990 after having satisfied about the attendance possessed by the Petitioner during the third academic year. Subsequently when the turn arose for the written examinations during April 1990, the Petitioner was permitted to write all the examinations viz., first year, second year and third year. But while writing the third year theory paper, Petitioner was sent out of the examination hall on the ground of lack of attendance.

3. The results were published during March 1990 in which the Petitioner was declared passed in the Practical Examinations of third year. Even though the results of the theory papers for the third year shows as passed in the grade sheet, the same was subsequently deleted. Due to lack of attendance, Petitioner approached third Respondent for readmission so as to enable him to complete due attendance to write third year Theory papers. Third Respondent also permitted the Petitioner to rejoin third year course during the academic year 1990-91. Petitioner was attending the college regularly from June 91.

4. After joining the course applications were invited for supplementary examinations during September 1991. Petitioner enquired the third Respondent as to whether he was eligible for writing theory papers in the supplementary examinations during September 1991. Third Respondent sought the permission of the University of Madras as to whether Petitioner can be permitted to write examinations during September 1991. Petitioner was made to understand that the first Respondent gave permission permitting the Petitioner to appear for supplementary examination during September 1991. Petitioner paid necessary examination fees for the arrear papers of previous years as well as for the arrear papers of third year course. Thereafter Petitioner appeared for examinations and passed few papers in the second year course and one paper in the third year course viz. General Physiology and Nutritional Bio-Chemistry Code MRE. Since Petitioner had not completed all subjects, he appeared for arrear examinations during subsequent examinations held in March 1992, September 1992, March 1993 and March 1994 and passed all the subjects.

5. The last paper written by the Petitioner was in respect of the third year during March 1994 in Clinical Bio-Chemistry, Code ORA. After passing all the subjects, Petitioner approached the University and requested to release the Marks Sheet for final year examination viz. Clinical Bio-Chemistry. For the said representation, he was informed by the first Respondent that the Statement of Marks for the said paper will not be released unless the Petitioner surrenders the Grade Sheet for the third year paper viz. General Physiology and Nutrition Bio-Chemistry which

he appeared during September, 1991, on the ground that the Petitioner lacked attendance for his appearance during September, 1991. Though Petitioner made repeated representations and requests to release the Marks sheet, the same were not successful.

6. In the meanwhile, third Respondent College also wrote a letter to the University stating that the Petitioner has possessed the requisite attendance and there was no lack of attendance in so far as written theory paper during September 1991. On receipt of the letter from the college, first Respondent by his communication dated 8.5.1995 informed the third Respondent that the Petitioner lacked attendance for his appearance during September 1991 and the papers already declared pass in respect of theory paper in General Physiology and Nutrition Bio-Chemistry Code No. MRE should be treated as cancelled. Petitioner was also served with the copy of the order. On receipt of the said communication, Petitioner made representations to various persons but there was no reply. Finally, second Respondent by his letter dated 18.3.1998 reiterated the stand taken by the first Respondent and directed the Petitioner to surrender the Marks Sheet for the examinations written in September 1991 and Petitioner was further informed that only after receiving the Mark Statement, the Marks Statement for the last examination passed by the Petitioner during March 1994 viz., Clinical Bio-Chemistry ORA will be released. It is the said proceeding that is challenged in the Writ Petition.

7. In various grounds taken in the affidavit, it is said that the letter dated 8.5.1995 issued by the first Respondent was without notice to him and the same violates the Principles of Natural Justice. It is further stated that once he paid the fees and was allowed to write examinations, the same cannot be recalled thereafter. It is further said that from 1991 till 1995, first Respondent remained silent and during those periods, Petitioner has written various examinations and he had passed all the subjects. After completing all the subjects cancelling the examination of paper which he has written in September 1991 for the third year is improper and illegal. At any rate, the long delay on the part of the first Respondent in passing the impugned order has prejudiced and put the Petitioner in great hardship. If only Petitioner was informed in September 1991 itself, he could have at least written the examinations in March 1992. When he was allowed to write examinations and results were also declared as passed, the same cannot be cancelled. The principle of Estoppel will bar the first Respondent and it should not be permitted to cancel the examinations.

8. When the Writ Petition came up for admission, notice of motion was ordered and the standing counsel for the University entered appearance. He argued the matter on instructions. The third Respondent, who is the Principal of Islamisa College also entered appearance through Counsel and submitted that he has no objection in allowing the Writ Petition.

9. The learned Counsel for the Respondents 1 and 2 seriously oppose the claim of the Petitioner. The learned Counsel submitted that even according to the Writ

Petitioner, he had only 55% attendance during the third year. If only Petitioner had obtained not less than 62.5% attendance, some exemption would have been granted. Since he has only 55% attendance, even the University has no jurisdiction to give him exemption and therefore he had to undergo the third year course in full. The further argument is that even according to the Petitioner, he rejoined the third Respondent college only in June 91. When he did not undergo the entire course for third year, he is not entitled to write the examinations in September, 1991. The defect which the Petitioner had earlier is still there when he wrote the examination in September 1991. The learned Counsel for the Respondents 1 and 2 therefore submitted that the action of the University cancelling the examinations of the Petitioner is only justified. But since the mark sheet has been issued and the Petitioner has been declared as passed, he has been directed to surrender the same. According to the counsel there is no ground for interference, under Article 226 of the Constitution of India.

10. After hearing both sides, I do not think that the stand taken by the University could be accepted. Petitioner who has written the examination in September, 1991, was given his mark sheet and was also declared as passed for the subject he has written in that year. During the same month, he has also written other subjects for the first year and second year. In some other subjects he was successful and for the arrear subjects for the first year, second year and third year, he again wrote examinations in March 92, September 92, March 93 and March 94. The last paper written by him was in respect of third year during March 94 and he wrote the examination Clinical Bio-Chemistry-Code ORA. Petitioner wanted the mark sheet for the examination he wrote in March 1994 and it was at that time, Petitioner was informed that he must surrender the grade sheet issued to him for the subject General Physiology and Nutrition Bio-Chemistry Code MRJE, one of the papers of third year for which Petitioner wrote examination during September, 1991. Till then the University did not open its mouth. If only the Petitioner was informed that he is not eligible to write the examinations in September, 1991 in time, he would have written that paper at least in March-April 1992. The long silence on the part of the Respondents made the Petitioner believe that the result which he obtained for the examination written in September 1991 is valid. By the long silence on the part of the Respondents, Petitioner was also made to believe that he was eligible to write examinations in September, 1991.

11. In this connection a decision of the Honourable Supreme Court reported in Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, has some importance. In paragraph 7 of the judgment, Their Lordships considered this question and held thus,

...In the instant case the admission form of the Appellant must have been forwarded in December 1971 whereas the examination was to take place in April/May 1972. It is obvious that during this period of four to five months it was the duty of the University authorities to scrutinise the form in order to find out

whether it was in order. Equally it was the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirements of law. If neither the Head of the Department nor the University authorities took care to scrutinise the admission form, then the question of the Appellant committing a 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*, at p. 197 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. This was not a case where on the undertaking given by a candidate for fulfilment of a specified condition a provisional admission was given by the University to appear at the examination which could be withdrawn at any moment on the non-fulfilment of the aforesaid condition. If this was the situation then the candidate himself would have contracted out of the statute which was for his benefit and the statute therefore would not have stood in the way of the University authorities in cancelling the candidature of the Appellant.

12. In this case also, the definite case of the Petitioner is that the third Respondent already intimated the University that the Petitioner has the required attendance to write examinations during September, 1991. The same is also supported by a letter admittedly written by the third Respondent to the University dated 24.4.1995. It was in pursuance to that letter the University

wrote on 8.5.1995 with a copy to the Petitioner that the examination written in September 1991 for the third year has been cancelled. Petitioner paid the examination fee and he was allowed to sit for the examination. The University cannot simply say that it had acted as postman and approved the list of candidates as sent by the college. The University has the responsibility to verify whether the candidates listed by the college are eligible to appear for examination. Even after receipt of the list of candidates, the University did not act immediately. Petitioner was allowed to sit for the examination. The results were also published. Thereafter he was allowed to write subsequent examinations on various occasions. There is no question of any fraud committed by the Petitioner. The University should have verified if only it was serious in discharging its duties. Having permitted the Petitioner to write the examination and after having published the results also I do not think that the University is justified in cancelling the examinations.

13. Before passing the impugned orders, Petitioner is entitled to be heard. Even according to the counsel for the Respondents 1 and 2, no prior notice was issued to the Petitioner.

14. The cancellation of examination after the declaration of result and that too after a period of more than four years is too harsh. The hardship of the Petitioner cannot be compensated in any way. As was held in Sri Krishan case, when once Petitioner was allowed to take examination rightly or wrongly, then the applicant cannot be refused subsequently for any infirmity which should have been looked into before giving applicant permission to appear.

15. In the result, the Writ Petitioner entirely succeeds. I hold that the Respondents 1 and 2 are not entitled to cancel the examination of theory papers in General Physiology and Nutrition Bio-Chemistry Code MRE, which the Petitioner wrote examination in September, 1991 for which he has already been declared pass and Respondents 1 and 2 are also not entitled to direct the Petitioner to surrender those grade sheets for releasing Marks Statement for Clinical Bio-Chemistry Code ORA, for which the Petitioner appeared during March 1994. I direct the Respondents 1 and 2 to release the Mark Statement of the Petitioner in Clinical Bio-Chemistry Code ORA within a period of three weeks from today.

16. The Writ Petition is allowed as above. No costs. Consequently, W.M.P. Nos. 13860 and 13861 of 1998 are closed.