
(2023) 09 CAL CK 0060
In the Calcutta High Court
Case No : W.P.A. No. 11002 Of 2021

Madhupia Bar

APPELLANT

Vs

University Of Burdwan And Others

RESPONDENT

Date of Decision : 15-09-2023

Acts Referred:

Citation : (2023) 09 CAL CK 0060

Hon'ble Judges : Kausik Chanda, J

Bench : Single Bench

Advocate : Vivekananda Bose, Rahul Kumar Singh, Ratikanta Pal, N. C. Bihani, P. B. Bihani, Soumyajit Ghosh, Soumya Mukherjee, Gourav Purkayastha, Pradeep Pandey, Md. Musharrof Hossain

Final Decision : Allowed

Judgement

Kausik Chanda, J

1. It is the case of the petitioner that she was admitted to Shukla Devi Academy (hereinafter referred to as, the college) for B.Ed. course for the academic session 2016-2018. The said college is affiliated with the University of Burdwan (in short, the university). After admission, the college submitted her enrollment and registration form to the university on September 20, 2016, along with the necessary fees. Accordingly, the university allotted the petitioner a roll number, but no registration was granted to her.

2. The petitioner submitted a representation to the university on November 28, 2016, asserting, inter alia, that her qualification, "Sangeet Bhaskar" from Pracheen Kala Kendra, Chandigarh, in Music, is equivalent to a Master's Degree in Music from other universities and requested registration.

3. While the university did not respond to the representation, it permitted the petitioner to appear in all four-semester examinations for the B.Ed. course. The college on July 31, 2018, communicated to the petitioner that she had successfully completed the B.Ed. course. The university, however, did not issue

the mark sheet for the final semester.

4. On September 20, 2018, the university informed the college that its Executive Council, in a meeting held on August 29, 2018, considered the petitioner's application for registration and regretted its inability to accommodate her prayer.

5. The petitioner made repeated representations to the university seeking registration and publication of her result which remained unanswered. The said representations were not responded by the university.

6. It has been submitted by Mr. Vivekananda Bose, learned advocate appearing for the petitioner that under the "University Ordinances Relating to Doctoral Degrees", there is no bar to treat a diploma qualification as equivalent to an under graduate degree. The said ordinance expressly prohibits treating diplomas or certificates as post-graduate degrees for admission.

7. Mr. Bose has posited that the university cannot decline to treat the petitioner's diploma as equivalent to a degree. Under the aforesaid Ordinance, a student may gain admission upon the production of a certificate of a recognised body. Such a student is entitled to appear in an examination only upon being enrolled at the university. The university did not rescind the enrolment of the petitioner in any of the four academic semesters and, therefore, could not cancel her candidature.

8. Furthermore, he has submitted that the petitioner did not suppress any information regarding her educational qualification in her admission form. She on her own accord, made the representation dated November 28, 2016, to the university disclosing her qualifications. After receiving the letter dated November 28, 2016, it was open for the university to reject the registration request. Mr. Bose has argued that it is iniquitous to decline registration and withhold the degree after her successful completion of the B.Ed. course.

9. To support this submission, Mr. Bose has relied upon the judgment reported at (1976) 1 SCC 311 (Shri Krishnan v. Kurukshetra University, Kurukshetra) and (2009) 1 SCC 610 (Guru Nanak Dev University v. Sanjay Kumar Katwal).

10. Conversely, the university has contended that the petitioner was admitted to the college for the B.Ed. course under the management quota and not through centralised university-level counselling. There was no occasion on the part of the university to verify the educational credentials of the petitioner at the time of her admission. Generally, once candidates are admitted to a college or institution, the said institution applies for registration of its students. Once the documents are checked and found to be in order by the registration department of the university, the respective college/institution is intimated for collection of the registration certificate.

11. For the B.Ed. session 2016-2018, the college admitted a total of 100 students 40 of whom were from the home university. One student applied for restoration of registration, leaving the college to request registration for the remaining 59 students.

12. Regarding the registration of the petitioner, the objection was raised by the university on two grounds: non-submission of the original migration certificate and the fact that Pracheen Kala Kendra, wherefrom the petitioner obtained her diploma in Music, was not included in the list of UGC approved institutions. The college was aware that registration had not been granted to the petitioner when it collected the registration certificates for the other students of the college on December 20, 2016.

13. Mr. N.C. Bihani, appearing on behalf of the university, pointed out that the University Grants Commission by its letter dated March 18, 1980, had clarified that institutes like Pracheen Kala Kendra were not considered as universities under the University Grants Commission Act, 1956. The said website of Pracheen Kala Kendra under the head "Recognition", provides a list of universities that have granted recognition to the qualification of "Sangeet Visharad" and "Sangeet Bhaskar" awarded by the said institute. The University of Burdwan does not feature on the said list.

14. He has further submitted that the Pracheen Kala Kendra is also not included in the approved list of Burdwan University. As per Clause 16 of the Information Sheet with regard to admission in a two-year B.Ed. programme, selected candidates must produce all testimonials in original at the time of admission. Mere provisional recommendation of any candidate through counselling does not by itself ensure admission; a candidate's original testimonials should be in order.

15. Mr. Bihani has emphasised that the university has the right to exclude any name for any suppression of facts on the part of the applicant or if any mistake in calculation of grade point is detected at any stage before and after admission. The petitioner was well aware that Burdwan University did not feature in the list of universities granting recognition to the qualifications of Pracheen Kala Kendra, yet she went ahead with the admission by suppressing the facts. Such deliberate suppression and misrepresentation constitute fraud and the act of fraud vitiates everything. In support of his submission, Mr. Bihani has relied upon the judgments reported at (2005) 7 SCC 605 (Bhaurao Dagdu Paralkar v. State of Maharashtra), (2010) 8 SCC 383 (Meghmala v. G. Narasimha Reddy), (2003) 8 SCC 311 (Ram Preeti Yadav v. U.P. Board of High School & Intermediate Education) and (2012) SCC OnLine Cal 8701 (Kartick Ruidas v. State of West Bengal).

16. Mr. Bihani has further submitted that a student cannot be allowed to continue and complete the course when he does not possess the requisite eligibility criteria. In support of his submission, Mr. Bihani has relied upon the judgment reported at (2008) 17 SCC 611 (Mahatma Gandhi University v. GIS Jose).

17. Mr. Bihani suggests that rules and regulations cannot be allowed to be defeated merely because a student was allowed to be admitted to any college and no right accrues on the basis of the same. In this regard, he has relied upon the judgment reported at (2010) 11 SCC 159 (Maharshi Dayanand University v.

Surjeet Kaur) to contend that a student, who is not entitled to join the course and has signed a declaration in the admission form, is bound by the declaration and not entitled to any relief. Mr. Bihani has placed reliance upon a judgment reported at (2011) SCC OnLine Del 369 (Rohit Rakesh v. Indira Gandhi National Open University). Additionally, he has placed reliance upon a judgment reported at (2008) SCC OnLine Del 370 in this regard.

18. It is imperative to underscore that the Information Sheet issued by the university for admission to the two-year B.Ed. programme for the academic year 2016-2018 prescribed, inter alia, the following eligibility criteria:

"Eligibility : Candidates (both Fresh & Deputed) with at least 50% marks either in the Bachelor's Degree and/or in the Master's Degree in Science/Social Science/Humanity/Commerce, or Bachelor's in Engineering or Technology with specialization in Science and Mathematics with 55% marks, or any other qualification equivalent thereto, be eligible for application. There shall be relaxation of 5% marks in favour of SC, ST and PwD (Persons with disabilities) categories.

N.B.: 50% or 45% marks (as the case may be) in Bachelor's degree with Hons. may be determined either on the basis of Hons. marks only or on the basis of Hons. marks and marks of the elective subjects taken together."

(emphasis added)

19. It is important to emphasise that the qualification, "Sangeet Bhaskar" from Pracheen Kala Kendra is not inherently incapable of being treated as equivalent to a degree granted by a recognised university.

20. First of all, it has to be noticed that the University Grants Commission by a letter dated March 18, 1980, addressed to the Secretary of Pracheen Kala Kendra clarified as follows:

"Sir,

I am directed to refer to your letter No.PPK/10 10 17/79 dated the 17th December, 1979 on the above subject and to say the institutions like yours which are not considered as Universities within the U.G.C. Act are not competent to award degrees and use the name 'University'. However institutions like yours are competent to award certificates and diplomas. No advice has been given by the U.G.C. to any University to the effect that they should not appoint persons who have taken diplomas or certificates from non-university institutions which may be considered by the universities as equivalent to degrees awarded by universities.

Yours faithfully,

Sd/- illegible

(O.M. Ramachandran)

Under Secretary "

21. Importantly, it has not been disputed by the parties that many universities across the country treat the certificates and diplomas issued by Pracheen Kala Kendra on par with their degrees for employment as well as for taking admission to higher course of study. The website of Pracheen Kala Kendra prominently displays a list of such universities.

22. The Burdwan University did not take any definitive stance on the recognition of the qualifications obtained from Pracheen Kala Kendra before the petitioner completed the B.Ed. Course.

23. It is also an admitted fact that the petitioner in her application form submitted to the college duly disclosed her qualifications. It is also not disputed by the university that in her representation dated November 28, 2016, the petitioner again forthrightly disclosed her qualification obtained from Pracheen Kala Kendra and requested the Registrar of the University to grant registration based on her qualification. The university abstained from rendering any decision with regard to the recognition of the said qualification but allowed the petitioner to participate in all four-semester examinations. The university by a resolution dated August 29, 2018, "regretted its inability to accommodate the prayer" of the petitioner only after she had successfully completed the course.

24. The university was aware of the petitioner's qualifications and it refrained from registering the petitioner, while concurrently granting registration to the other 58 students of the college. It is reasonable to presume that the university, cognizant of these circumstances, deliberately permitted her to participate in all the semester examinations, culminating in a successful course completion.

25. The university retained the prerogative to determine the equivalence of the petitioner's qualifications to a degree qualification. Remarkably, the university opted to exercise this discretion in a manner adverse to the petitioner, only after it had afforded her the opportunity to complete her course. The university's failure to make a timely determination regarding the recognition of the petitioner's qualifications, following her representation dated November 28, 2016, effectively precluded any challenges to her eligibility subsequent to her successful completion of the course.

26. In case of Kurukshetra University, it was held as follows:

"6. ...

The last part of this statute clearly shows that the university could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the university to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear.

...

7. ...

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."

27. The relevant paragraph of Guru Nanak Dev University (supra) is quoted below:

"19. The first respondent was informed that he was not eligible only after he took the first semester examination. He has, however, also been permitted to continue the course and has completed the course in 2007. He has succeeded before the High Court. Now after four years, if it is to be held that he is not entitled to admission, four years of his career will be irretrievably lost. In the circumstances, it will be unfair and unjust to deny the first respondent the benefit of admission which was initially accepted and recognised by the appellant University.

...

22. Having regard to the above we are of the view that irrespective of the fact that MA (English) (OUS) degree secured by the first respondent from Annamalai University through distance education, may not be recognised as an equivalent to the Master's degree of the appellant University, his admission to the law course should not be cancelled. The appellant University is directed to treat the admission as regular admission and permit the first respondent to appear for the law examination, and if he has already appeared for the examination, declare his result. The appeal is disposed of accordingly."

28. The petitioner's case, in fact, enjoys a more favourable standing. As previously noted, the petitioner was not an intrinsically ineligible candidate.

29. In view of the aforesaid facts, the judgments cited by Mr. Bihani had no relevance since there was no suppression or misrepresentation of her qualification and the ineligibility of the petitioner was determined by the university after she had successfully completed the course.

30. This writ petition is accordingly allowed with a direction upon the university to grant the petitioner registration and issue the mark sheet and the certificate in her favour within two weeks from the date of communication of this order.

31. Accordingly, W.P.A. No.11002 of 2021 is allowed.

32. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.