
(2000) 03 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2320 of 1998

Maharshi Dayanand University and Others	APPELLANT
Vs	
Ashok Malik and Others	RESPONDENT

Date of Decision : 15-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2000) 126 PLR 755 : (2000) 3 RCR(Civil) 338

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Vikrant Sharma, for the Appellant; R.S. Surjewala, for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

M.L. Singhal, J.—This is civil revision filed by Maharshi Dayanand University (M.D.U.), Rohtak and two others against the order dated 7.5.1998 of Additional District Judge, Rohtak whereby he maintained order dated 19.1.1998 of Additional Civil Judge (Senior Division), Rohtak directing the Registrar/Controller of Examinations of this university as well as the University itself to issue to the plaintiff Ashok Malik, through mandatory injunction ad-interim, B.A. degree having obtained it, as a consequence of examination, held in April, 1993 vide roll No. 174771 registration No. 90-CHN-123 and return to him the original detailed certificate, original detailed marks card with this rider that the degree granted to him shall be purely provisional and he will keep the provisional B.A. degree and DMC No. 3536 in safe custody and would surrender these immediately to the university in case this suit was ultimately dismissed.

2. Facts:

Ashok Malik filed suit for mandatory injunction directing the MDU Rohtak and two others to issue him BA degree obtained by him as a consequence of his successful appearance at BA-II degree course examination held by the university

in April 1993 and also to return the original detailed marks card bearing Sr. No. 3536 dated 27.12.1993 and the migration certificate deposited with them and for damages to the tune of Rs. 20,000/- on account of loss of reputation, mental harassment and agony. He appeared at that examination as a bona fide student of Govt. College, Meham in April, 1992 and was placed in compartment in English and Economics. He applied for re-evaluation. On re-evaluation, he was declared pass. Detailed Marks card bearing No. 3536 dated 27.12.1993 was issued to him. He appeared as a private candidate for MA (Hindi) previous under roll No. 15651. Vide letter sent by Superintendent Result-1 dated 28.10.1994 he was informed regarding withholding of the result on account of default in payment of fee as per column No. 3 of the said letter. He changed his mind and joined LL.B. course at Nehru Memorial Law College, Hanumangarh. Migration certificate was issued by MDU, Rohtak to him on 24.10.1994 after verification of the necessary formalities. He passed LL.B. course. He was to apply to the Bar Council for obtaining licence to practice as an advocate. He was in need of BA degree certificate. He approached the university for giving him BA degree and the concerned official got the original DMC from him representing that the same was required for the issuance of BA degree certificate. He repeatedly sent reminders through ordinary mail and also personally met the concerned officials but the officials did not properly respond and ultimately a legal notice dated 6.9.1997 was sent through O.P. Moudgil, Advocate but to no effect. He was entitled to BA degree certificate when he had passed BA examination successfully. University's act of not issuing BA degree certificate to him saying that the DMC issued to him was forged was without any basis and unwarranted when DMC had been received by him through post from the university. It was alleged in the plaint that he was suffering acute mental agony and hardship due to this unwarranted and illegal act of the university of not issuing to him BA degree which is required by him for being enrolled as an advocate with the Bar Council. He claimed damages to the tune of Rs. 20,000/- on this score. Along with the plaint, plaintiff made application under Order 39 Rules 1 and 2 read with Section 151 CPC for the grant of temporary injunction ad-interim in mandatory form in his favour.

3. Civil Judge (Junior Division), Rohtak allowed him temporary injunction in mandatory form as prayed for by him vide order dated 19.1.1998. Appeal of the university was dismissed by the Additional District Judge, Rohtak vide order dated 7.5.1998 of course with the rider which does not at all further the interest of the university. University has come up in revision against this order before this court.

4. I have heard the learned counsel for the parties and have gone through the record.

Learned counsel for the petitioner university submitted that respondent Ashok Malik appeared at BA-I examination held in April, 1991 against roll No. 41602. He was fail in English and Economics. He was, therefore, declared as fail by the university in BA-I examination held in April, 1991. He was required to appear in

all subjects of BA-I in April, 1992 but by manipulation, he appeared in Economics only under roll No. 71621 and through manipulation, he was shown to have appeared in English, Economics, Geography, Hindi and was "pass". It was submitted that as a matter of fact BA-I April, 1992 result should not have been declared because the result was not scrutinized by any one and his result was also RLE. Without determining eligibility, the result was declared and DMC Sr. No. 62269 was shown as issued to him in the result sheet. He appeared at BA-II examination in April, 1992 against roll No. 138800. There was manipulation/interpolation in his score at that examination. In Hindi, his score was 31 marks but he was shown to have secured 36 marks. In Geography, he had scored 48 marks but he was shown to have secured 49 marks through manipulation. In English, he was getting 26 marks. In Economics, he was getting 27 marks. He was required to reappear in English and Economics (actual fail and RL (Lower) as per computer result sheet. It was done by the dealing hand Shri Mam Chand who had put his initials whereas the computer showed him as fail with the plea that these 05 marks were increased due to reevaluation whereas the fact was that the Secrecy Branch intimated that no such re-evaluation was done. Similarly, one mark in the Geography was increased in the marks sheet making the total 49 marks instead of 48. Accordingly, DMC was issued against Sr. No. 43704. From the verification of the stock register of R-2 branch, DMC of this very serial number i.e. 43704 was issued to Shri Mam Chand, Clerk of R2 branch by the store keeper on 29.6.1993 whereas the dealing hand writes as 13.2.1993 date of his result sheet. Accordingly, DMC was issued on 13.2.1993. It was submitted that Ashok Malik sought admission in Govt. College, Meham in session 1992-93 in the BA-III examination by showing roll No. 716221 on the basis of BA-II examination of MDU whereas factually the roll number issued to him was 138800. The series of this wrong roll number is different to that of the series used by other candidates. He was declared re-appear in BA-II in April, 1992 in the subjects of English and Economics through manipulation whereas he was actually fail. It was submitted that he reappeared in these subjects in April, 1993 instead of appearing in full subjects being fail. It was submitted that the matter was enquired into by the university and the fact finding report showed that the posting of result of BA-II compartment subjects of 1993 under roll No. 049841, computer showed his marks as 158 not 163 by carrying forward the old marks and accordingly DMC against serial No. 41312 was also issued on 21.7.1993 whereas the total marks were not shown as 174 marks by the computer. This was evident from the result sheet. It was submitted that it was the result of hanky panky committed in the result of BA-I and II during July, 1993. It was submitted by the learned counsel for the petitioner that the fact finding enquiry brought out similar dismal picture about the result of BA-III examination. DMC was issued vide Sr. No. 23499 of 21.7.1993 though under roll No. 174771 in respect of Ashok Malik the actual result was reappear in English and Economics. When he came to the office for obtaining BA degree by showing DMC issued vide Sr. No. 23449, during verification, it transpired that he was shown "reappear" in two subjects and was not ""pass" and as such the question of issuing degree did

not arise. He showed fake DMC to the dealing hand containing Sr. No. 3536 against Roll No. 174771 which showed 522 marks out of 1200 marks with the plea that he passed his BA examination in re-evaluation in two subjects. Marks of re-evaluation were verified and it was found that there was no change in re-evaluation. Only one mark was increased in Economics and one mark was decreased in English in re-evaluation result making no change in the result, vide case No. 156. He was informed that the DMC shown by him Sr. No. 3536 against roll No. 174771 had never been prepared by Piare Lal and checked by Surender Verma and the seal of the Controller of Examinations on this DMC did not pertain to the office of Controller of Examination. He was informed that he had played fraud by forging the signatures of Piare Lal and Surender Verma. Learned counsel for the petitioner submitted that if such was the state of affairs, could the respondent Ashok Malik plead any equity in his favour and inequity on the part of the university. It was submitted that how could Ashok Malik be given BA degree certificate when he had not passed either BA-I or BA-II or BA-III.

5. Learned counsel for the petitioner-university submitted that if the respondent has passed LL.B. examination, that is of no consequence because if LL.B. rests on BA degree which has no existence in the eye of law. LL.B. is a mere waste paper and he cannot be allowed to be enrolled as an advocate. It is as if he got admission to LL.B. course though he was not fulfilling the basic eligibility criteria. Learned counsel for the petitioner-university submitted that students are the future hope of the nation. If their academic achievements are based on fraud and under-hand means, the nation should thank its stars. It was submitted that in this case, there was height of fraud and the use of under-hand means by the respondent-plaintiff Ashok Malik when he had passed neither BA-I, nor BA-II nor BA-III but had been able to secure "pass" in these examinations by surreptitious and fraudulent means. On fact finding enquiry by the university, the use of surreptitious and fraudulent means came to the surface. It was submitted that the court should imagine the plight of those who engage him for pleading their causes in courts if he is allowed to be enrolled as an advocate when his being an advocate will be founded out and out on fraud. It was submitted that court should imagine whether he will ever value what is truth what is falsehood, what is honesty and what is corruption. It was submitted that the court should imagine whether he will be ever able to stand for a righteous and just cause in court and in his private life. It was submitted that examinations are the best judge of the intellectual level of a candidate if they are fairly and honestly conducted and they are fairly and honestly taken by the students. Examinations tell whether you are eligible to be promoted to the next higher class/degree. If temporary injunction allowed to Ashok Malik by the courts below is allowed to ensure, that would suggest the induction of a person in the profession of law who has sought to thrive not on honesty but on fraud and surreptitiousness. It was held in *Guru Nanak Dev University Vs. Parminder Kr. Bansal and another*, by the Hon'ble Supreme Court that interim order should not be passed without adjudication of basic issues. Admissions to educational institutions should not be provided by

means of interim directions with regard to the eligibility of the candidates.

6. Faced with this position, learned counsel for the respondent submitted that it will be highly unjust and inequitable on the part of the university to refuse issuance of BA degree certificate to Ashok Malik respondent now when much water has flown under the bridge. He had earlier taken admission in MA (Hindi previous) of the MDU. When he took admission in MA (Hindi) of the MDU, no such dispute was raised. He gave up admission in MA (Hindi) and took admission in LL.B. at Hanumangarh and passed LL.B. successfully. During all this period, no such dispute was raised. It was submitted that if BA degree certificate is not issued to him now, that would mean setting the clock back. He will have to start from BA-I now and he will have to spend the same number of years over again to pass LL.B. which he had taken earlier after 10+2. That may be so but if BA degree certificate is ordered to be given to him, that would mean perpetuating fraud and surreptitiousness which the university says was committed by him during BA-1, BA-II and BA-III though he had not passed any of these examinations. It was further submitted that the university should have been careful when DMC was issued to him showing him pass in BA-III examination. Suffice it to say, fraud remains fraud. Fraud is not obliterated if it is detected sometime after. If the university gave him DMC showing pass in BA-II examination which was later on found fake based on fraud and surreptitious practice, no estoppel can operate against the university to say that the university is barred from questioning its genuineness now because fraud and surreptitiousness vitiate every transaction. After all universities are seats of learning. Future hope of the nation rests on what sort of students are turned out by them for serving the nation. Can the reigns of nation be allowed to be handled by a person like Ashok Malik who has scant regard for truth and honesty. Learned counsel for the respondent submitted that it is a case of grave hardship and the court should weigh this case from that point of view. Suffice it to say, it may be a case of grave hardship but there is no equity in favour of the respondent. Respondent should have been equitable towards the nation.

For the reasons given above, this revision succeeds and is accepted and the impugned orders passed by the two courts below are set aside and the mandatory injunction granted to Ashok Malik ad-interim by the two courts below is vacated.