

(1994) 01 P&H CK 0082
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 16314 of 1990

Manoj Sisodia

APPELLANT

Vs

Maharshi Dayanand University and others

RESPONDENT

Date of Decision : 28-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 376

Citation : AIR 1995 P&H 158

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : J.S. Manipur, for the Appellant; Ashok Aggarwal and Vikrant Sharma, for the Respondent

Judgement

1. Petitioner Manoj Sisodia, a student of Ayurveda 5th year studying in Gaur Brahman Ayurvedic College, Rohtak, seeks setting aside of order dated April 18, 1992 vide which respondent-Maharash Dayanand University, Rohtak, declared him ineligible for admission to B.A.M.S. 1st year course for the session 1987-88 as also for B.A.M.S. 2nd, 3rd, 4th and final year classes cancelling letter dated July 16, 1990 vide which his candidature was registered with the University. Whereas, the plea of petitioner is based upon equitable and compassionate grounds as he has completed almost entire course, the respondent-University vehemently objects to the relief asked for by him on an equally forceful ground that petitioner cannot be permitted premium on fraud. Which of the two stands deserves to be upheld, in my view, shall depend on the facts of the case, in particular, relating to the way and manner in which petitioner secured admission.

2. Petitioner states his case by pleading that he took admission in B.A.M.S. degree course in Gaur Brahman Ayurvedic College, Rohtak in the year 1987. He was enrolled in the University vide registration No." 87-GAC-25. He was given admission after competing and qualifying of the examination which was held by the University. BAMS degree is five years" course and petitioner had attended his

classes regularly and appeared in the examination of first year in the year 1988. He passed the same in first attempt by securing good marks. Admission to the next higher class is given to a candidate automatically on completion of annual examination and the student is only asked to deposit fee of the college. In the manner aforesaid petitioner got admission in second year and once again regularly attended the classes and appeared in the examination which commenced from April, 1989. Due to his ill health, he could not clear all the papers and was placed in compartment in Physiology. As per Regulation 12 he was promoted in 3rd year class of the Course and he was allotted Sr. No. 59. He once again attended his classes and appeared in supplementary examination of second year which Commenced in the month of September, 1989. His result was, however, withheld by the University on the ground that as per report of the Secretary; Intermediate Education Parishad, Uttar Pradesh, Allahabad his original marks sheet of Intermediate examination had been found fake and accordingly a First Information Report was lodged against him with the police through the Legal Cell of the University. Petitioner made representation but he was told that as the result had been withheld for the aforesaid-mentioned ground, nothing could be done in the matter. Further, the result of petitioner of the first year which he had already passed, was cancelled in the month of October, 1989 and his registration was also cancelled. Once again he addressed representation to the Assistant Registrar (Registration Branch) on October 6, 1989 praying for declaration of his result of B.A.M.S. IInd year. It was, inter alia, pleaded by him that re-verification of the matter should be done from the Secretary, Intermediate Education Parishad, Allahabad (U.P.). This request of petitioner, perhaps was accepted and it is pleaded that on re-verification from the Secretary of the said Parishad the intermediate certificate furnished by him to the respondent University was found to be correct and accordingly he was eligible for admission to B.A.M.S. course for the session J 987-88 and his registration card was also restored. On July 16, 1990 when on re-verification correct information was available with the respondents, the Examination Branch of the University declared the result of petitioner, although after about six months when the same was due. He was declared pass in B.A.M.S, IInd year which was conducted in September, 1989. When in spite of all this petitioner was not allowed to take his 3rd year examination, he filed the present writ in this Court. Vide order dated December 18, 1990 he was permitted to sit in 3rd year examination B.A.M.S. (Supplementary). His writ was admitted, and a direction was further issued to the respondents to declare his result. Further, as per orders passed by this Court in Civil Misc. No. 3880-A of 1991, petitioner was allowed to appear in 4th year B.A.M.S, examination held on June 10, 1991. Further directions were- issued on August.19, 1991 to the respondents to declare his result of B.A.M.S. 4th year subject to the decision of writ petition and allow him to sit in 5th year examination. However, on March 28, 1992 show cause notice was issued to petitioner wherein it was mentioned that further investigations had revealed that his DMC of Intermediate examination was fake and bogus. He was asked to explain his position to the Principal of the College with regard to the submission

of fake DMC. Reply to the show-cause notice was submitted in which, inter alia, it was pleaded that till such time letter dated June 12, 1990 said to have been issued by the U.P. Board is given to him, he was not in a position to give reply. Thus, request was made to supply copy of letter aforesaid. It is pleaded that without visualising the situation and seeing the career of the student, respondent-Board issued direction to the College to cancel his admission of B.A.M.S. 1st, IIInd, IIIrd, IVth and final year classes vide order dated April 18, 1992. With a view to challenge the orders aforesaid, writ was amended.

3. On the facts as have been mentioned above, learned counsel for the petitioner, Mr. Manipur vehemently contends that petitioner took admission in B.A.M.S. for the year 1987-88 in the College. He had submitted original marks-sheet of his Intermediate examination in the college itself. He had also paid donation to the tune of Rs. 20,000/- to the Managing Committee of the College and he had never mentioned in the application form that he had secured 259 marks. All that he had mentioned was that he had secured 2nd division and it was for the University to verify this fact before allowing him to appear in the first year B.A.M.S. examination and further appearing in the second year examination. When he had been so permitted to take first and second years' examination and when later examinations were taken by him a account of interim orders passed by this Court, it was not open to the respondents to cancel his candidature. It is further argued by learned counsel that if the orders challenged in the present writ are not set aside, the whole career of petitioner would be ruined as five years study that he has already put in besides spending a lot of money in getting education would go totally waste.

4. The Cause of petitioner has been vociferously opposed. Petitioner is stated to have procured admission on the basis of forged certificate. Not only that, it is pleaded and so argued by learned counsel that petitioner even forged letter from the U.P. Board when on re-verification of the matter a letter was received in which it was recorded that petitioner had not submitted any certificate that might have not been issued by the Board. Registrar of Maharashi Dayanand University, Rohtak on behalf of respondent Nos. 1 and 2 by way of preliminary objections pleads that petitioner took admission in respondent-College in B.A.M.S. Ist Year for the session 1987-88 on the basis of Entrance Test. He had submitted a certificate of Intermediate examination from U.P. Board by tampering the original marks of the said qualifying examination from 237/500 to 259/500 to fulfil the requisite percentage of marks that were required to appear in the examination i.e. 50% marks in aggregate of the qualifying examination. As per University Rules, the Principal of the College concerned submits registration return in respect of the candidates selected for admission on the basis of Entrance examination along with original documents for the purpose of their registration which is done by the University after scrutiny of the authenticity of original documents within one month from the last date of admission otherwise penalty @ Re. 1 / - per day is chargeable as per Clause 6 of the Ordinance known as "Registration of Regular/Private candidates. Accordingly, the Principal submitted

his registration return along with other students with original certificates/ documents for registration vide letter dated December 31, 1987. On receipt of documents of petitioner, his original DMC of the Intermediate examination was sent to U.P. Board, Allahabad for authentication vide letter dated April 21, 1988 along with other candidates. In the meanwhile, to avoid hardship to petitioner, this provisional admission was made and accordingly the Principal of the College concerned was informed vide letter dated October 28, 1988. Thereafter, number of reminders were issued to the U.P. Board to expedite the report on the documents. The report was received from the U.P. Board vide letter dated December 29, 1988 wherein it was clearly mentioned that petitioner passed Intermediate Examination with 237 marks out of 500. It was on the basis of the said report that the matter was put up before the Vice-Chancellor for orders. Inasmuch as petitioner was patently ineligible to appear in the Entrance Examination on the basis of his original marks secured in qualifying examination and the fact that he had got admission on the basis of tampered document, the Vice Chancellor declared petitioner ineligible for admission to B.A.M.S. 1st Year course for the session 1987-88 and further ordered that an F.I.R. be lodged against him and his result of B.A.M.S. 1st year already taken by him purely on provisional basis be also quashed. Accordingly, petitioner was declared ineligible for admission to BAMS Ist year course for the session 1987-88 and the Principal of the College was informed vide letter dated September 29, 1989 and simultaneously his result of BAMS Parts Ist and 2nd taken on provisional basis was quashed vide notification dated October 4, 1989. University, however, received yet another report from the U.P. Board, Allahabad vide letter dated June 12, 1990. Since this report was favourable to the petitioner, the matter was again put up to the Vice Chancellor, who declared the petitioner to be eligible for admission to BAMS and the FIR got registered against him was also ordered to be withdrawn. The University, however, made request to the U.P. Board, Allahabad vide letter dated June 21, 1991 to intimate as to which of the verification report sent by them was genuine as there was an obvious contradiction in the reports dated December 29, 1988 and June 12, 1990. Since no reply was being received, eight reminders on different dates were sent, the last being by way of D.O. letter dated February 20, 1992. Despite that, the Board did not respond and the University was compelled to depute an employee so as to get the report expedited at personal level along with letter dated March 21, 1992. The U.P. Board, Allahabad in response to the letter aforesaid, vide letter dated March 23, 1992, stated that report sent vide letter dated December 29, 1988 was genuine and the same was confirmed on the basis of original record and the other report received by the University vide letter dated June 12, 1990 was false and forced as the same had not been despatched from the Board. It was also stated that the said report bears forged signatures of the Officer concerned. It was on receipt of the report aforesaid that the case was reopened and examined in the light of the circumstances of the case and the University decided to issue show-cause notice to petitioner before taking any decision in the matter. Accordingly, show-cause notice was issued to him through registered

post. He was given 15 days time to explain his position with a clear stipulation that in case he failed to reply within the said period, it would be presumed that he had nothing to say and ex-parte action against him shall be taken. He failed to explain his position within the stipulated period. That being so his case was considered on the basis of available record by the University Authorities and it was decided to declare him ineligible for admission to BAMS Ist year for the session 1987-88 as well as for subsequent examinations taken by him during the course of time i.e. for BAMS Part 2nd, 3rd, 4th and 5th year courses.

5. Before amending his petition challenging the impugned order, Annexure P-11, petitioner filed civil suit for declaration and mandatory injunction praying therein that letters dated March 28, 1992 and April 18, 1992 be declared as illegal, void and without jurisdiction. During the currency of the civil suit, he also prayed for an interim injunction but he failed to obtain the same. He failed to obtain the relief from the trial Court as his application was rejected. Dissatisfied, he carried an appeal which too was dismissed. Thereafter, he withdrew the suit even without seeking permission to file fresh on the same cause of action or to challenge the orders impugned in the suit by amending his writ petition. In fact, he did not disclose about the pendency of the writ before this Court when he filed the civil suit aforesaid. It is pleaded that the civil suit was withdrawn simply because petitioner was unable to obtain interim stay from the court of Subordinate Judge or from the Court of District Judge. Having failed in his aforesaid suit, he amended the petition and insofar as orders challenged in the said suit are concerned, it is pleaded that no writ can be issued to set-aside the said orders as the petitioner had withdrawn his suit without seeking permission to file fresh on the same cause of action.

6. After hearing learned counsel for the parties and going through the records of the case, whereas from the facts given in the petition this Court was of the view that if petitioner is not granted the necessary relief, he will be a victim of untold miseries but such an impression was completely washed out when the defence, as projected in the written statement, was convincingly read over. There is no denial of the fact that insofar as power to cancel the candidature of a student and scrapping his result is concerned, the same amply vests with the University under Clause 32 of the Ordinance (General Rules for i Examination). The same reads thus :--

"CLAUSE 32 :

The vice chancellor shall have power to. quash the result of a candidate after it has been declared if :

- (i) he is disqualified for using unfair means in the examination; or
- (ii) a mistake is found in his result; or
- (iii) he is found ineligible to appear in the examination."

It is not even disputed that petitioner had secured only 237 marks out of 500

marks in Intermediate examination and he was, thus, not even eligible to take the entrance test for admission to BAMS. He had necessarily to obtain 50% marks which in his case would have been at least 250, aggregate marks being 500 in Intermediate examination. The only question which, thus, arises is as to whether under the facts and circumstances of this case his candidature should be regularised and he should be declared pass in all the examinations he has already taken and a further direction should be given to declare the result of the examination which he has taken. Howsoever compassionate the grounds may be available and howsoever the loss a candidate might suffer, this Court is of the clear view that if such admissions have been obtained by fraud by forging eligibility certificates, no sympathy can at all be shown. The Civil Court while dealing with the stay matter, after hearing the parties to the litigation, observed as follows :--

"It is also not in dispute that then subsequently the plaintiff produced a letter before the MDU, Rohtak authorities purported to have been written by the Secretary, Intermediate Education Parishad, U. P., Allahabad informing that the Intermediate certificate produced by the plaintiff before MDU, Rohtak, was genuine. Then the MDU, Rohtak sent a special messenger to the Education Parishad U.P., Allahabad with a letter seeking exact information regarding genuineness of the intermediate certificate of the plaintiff. The Education Parishad then reported through that special messenger that the intermediate certificate produced by -plaintiff was fake and that they had not written any letter informing the MDU, Rohlak that the said certificate was genuine. They confirmed their earlier report.

Civil Court has also observed :

"The contention is not tenable because the entire matter becomes crystal clear from the letter dated 23-3-1992 received from Education Parishad, U.P., Allahabad. The perusal of the letter shows that the plaintiff is a master forger and indulges in such illegal activities at any given opportunity so as to secure benefit in his favour."

The Appellate Court, while dealing with the appeal of the petitioner also held thus :--

"Plaintiff-appellant had committed two forgeries, one in the detailed marks certificate showing his marks as 259 out of 500 instead of 237 out of 500 and again by producing letter dated 12-6-1990, the contents of which were found to be false and the signature thereon were found to be bogus and the said letter was never issued by the office of the Secretary of the Education Board, U.P., Allahabad. In this manner, it would be clear that from the very beginning, the plaintiff appellant was trying to secure admission in BAMS by forging his detailed marks certificate and when it came to the notice of the University that the said certificate was bogus, the plaintiff-appellant obtained a forged verification report about the marks obtained by him in Intermediate examination and producing the

forged; verification to the University and obtained by registration as BAMS student."

7. This Court after hearing learned counsel for the parties and perusing the records has, independently of the opinion expressed by the learned Subordinate Judge and District Judge, come to the conclusion that petitioner had in fact forged his certificate by mentioning 259/500 marks instead of 237/ 500 marks. It was by this method alone that he could be eligible and the contention of learned counsel for the petitioner that the said forgery, if any, was done by the college authorities, is totally devoid of merit. Whatever donation petitioner was to give to the College, if at all the same was given, the College authorities could not possibly help him if petitioner had not obtained qualifying marks making him eligible to take the entrance test for admission to BAMS course. There was no derth for the college authorities to have taken donation from eligible person instead of taking from a person who was totally ineligible, There could have been no derth of students who had been eligible and simply because petitioner had given donation of Rs. 20,000/-, it cannot be said that the college authorities substituted the total marks obtained by him from 237 to 259. Assuming that the College authorities were also party in it i.e. in substitution the total marks of petitioner from 237 to 259, the same could not have been without connivance and active participation of petitioner. It had to be at his behest and for his benefit. There is no manner of doubt that petitioner also forged a letter dated June 12, 1990 as the same could not help anyone other than him. Such a student, who has far exceeded his limits and has gone to the extent of forging original documents so as to clothe him with eligibility criteria, in considered view of this Court, deserves no leniency. Learned counsel appearing for the petitioner, however, relies upon a decision of the Supreme Court in *Krishnan v. Kurushetra University*, AIR 1976 SC 376 for the proposition that once the candidate is 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 candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear, but the same is not applicable in the present case. The facts of the reported case reveal that Sri Krishan was a teacher in the Government High School Dumarkha. The University of Kurukshetra was running law classes for three-years Course and had extended the facility to persons who were in service to attend the evening classes and complete the three years course in that manner. Sri Krishan took benefit of the facility given by the University and joined the LL.B Part-1 classes sometime in the year 1971. According to the University statute a student of the Faculty of law was given the option to clear certain subjects in which he might have failed at one of the examinations before completing the three years course. The students were to appear in six papers each year. In April, 1972 he appeared in the annual examination of Part I but failed in three subjects, namely, Legal Theory, Comparative Law and Constitutional Law of India. Subsequently he was

promoted to Part II which he joined in the year 1972. Under the University Statute, Sri Krishan was to appear in Part II Examination in April, 1973. On April 26, 1973 he applied for his Roll Number to the University in order to re-appear in the subjects in which he had failed and to clear them but he was refused permission and according in Sri Krishan without any reason. The annual examination for Part II was to be held on May 19, 1973 and Sri Krishan approached the University for granting him provisional permission to attend the law Faculty. In between he had been prosecuted for offences u/s 376, I.P.C. etc. and was suspended during the period when the case was going on against him. He was, however, acquitted and was reinstated by his employer on August 22, 1972. When he had applied for his Roll Number, the stigma of criminal case had been completely removed. He had approached the University on May 10, 1973 and had given an undertaking that if he was not able to get the requisite permission from his employer to join the Law Classes, he would abide by any order that the University may pass. He was, thus, allowed to appear in Part-II examination. On June 20, 1973 he addressed a letter to the University authorities that the condition on which he was to get permission was not at all necessary and that his results may now be announced. On June 26, 1973 the respondent -- University informed him that since his percentage was short in Part I, his candidature stood cancelled. He filed an appeal against the orders aforesaid to the Vice Chancellor of the University which was rejected. Thereafter, he approached the High Court for writ of certiorari to quash the orders of University "cancelling his candidature but the same was rejected in limine.

8. On the facts aforesaid it was argued before the Supreme Court that once a candidate was allowed to appear in LL.B. Part II Examination, his candidature could not be withdrawn for any reason whatsoever in view of the mandatory provisions of Clause 2(b) of the Kurukshetra University Calender Vol. I, Ordinance X under which the candidature could be withdrawn before the candidate took the examination. Secondly it was argued that the order of University was mala fide because the real reason for cancelling the candidature of the candidate was the insistence of the District Education Officer that the Sri Krishan should not have been admitted to the Law Faculty unless he had obtained the permission of his superior officers. Clause 2 of the Ordinance runs as follows :--

"2. The following certificates, signed by the Principal of the College/Head of the Department concerned, shall be required from each applicant :--

(a) that the candidate has satisfied him by the production of the certificate of a competent authority that he has passed the examinations which qualified him for admission to the examination; and

(b) that he has attended a regular course of study for the prescribed number of academic years."

Interpreting the clause aforesaid, it was held, "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, thus, 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 can not be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear." The facts of the reported case have, thus, no parity with the facts of the case in hand. Herein, it is not even disputed that the Vice Chancellor or the authorities constituted under Ordinance 32 had jurisdiction to cancel the candidature if he was not eligible for admission. There is no *pari-materia* clause as was available under Kurukshetra University Calendar, as has been reproduced above. That apart, there was no chance whatsoever with the respondent-University to have looked into the certificate right on the day it was submitted and objection to the candidature of the petitioner. As per procedure, the applications are submitted before the College Authorities in due course of time. As and when the matter came to the notice of University Authorities and it may be mentioned that the same came to their notice only when the petitioner had already taken examination of Part I of BAMS course that the action was taken. However, the proceedings that were sought to be taken against the petitioner were stalled on account of the fact that he was able to produce a forged letter from U.P. Board, Allahabad. The Vice Chancellor in these circumstances did well to permit the petitioner to continue studies and take examination and even withdrew the First Information Report lodged against him. Thereafter, a number of letters were written to the U.P. Board, Allahabad and "it was only when special messenger was sent that it came to the notice of the University Authorities that even the, letter aforesaid (dated June 12, 1990) was forged by petitioner. Meanwhile, petitioner instead of explaining his position before the authorities in consequence of the show cause notice issued to him, after simply giving reply, chose rather to come to this Court under Article 226 of the Constitution of India. He obtained interim orders for continuing his studies as also for appearing in the subsequent examinations and for declaration of his result which were all subject to the decision of this Writ petition and some of the orders were even passed by specifically observing that interim relief granted to him would be at the risk and responsibility of the petitioner and interim orders alone would not vest any right whatsoever in him.

9. Learned counsel appearing for the petitioner also relies upon judgment of Supreme Court in *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, but for that he has necessarily to make out a case that admission granted to the petitioner, even though he was not eligible, was on account of the fault of the College Authorities. As mentioned in the earlier part of the judgment; the plea taken by the petitioner that his intermediate certificate, if at all was forged, Was so done by the College Authorities, has already been negated. It is true that the Supreme Court in *Rajendra Prasad Mathur Ors. Vs. Karnataka*

University and Another, did permit the students to continue their studies for various reasons, like, that they had pursued their course of study in the respective Engineering Colleges and that if they were thrown out after a period of almost four years since their admission, their whole future would be blighted. But in the aforesaid case a finding was returned that the students did not know that the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the first year B.Sc. examination of the Rajasthan and Udaipur University was recognised as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore. The petitioners " of the said case being young students from Rajasthan, it was concluded, might have presumed that since they had passed the first year B.Sc. examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan, they were eligible for admission. The fault, it was held, was of the Engineering Colleges which admitted the petitioners because the Principals of those Engineering Colleges must have known that the petitioners were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to them. In the present case, as said earlier, petitioner clothe himself with eligibility for admission on the basis of forged certificate and not only that he later forged a letter from the U.P. Board, Allahabad.

10. In *Gurdeep Singh Vs. State of Jammu and Kashmir and others*, the Supreme Court while dealing with similar situation held thus (at p. 2641) :--

"What remains to be considered is whether the selection of respondent No. 6 should be quashed. We are afraid, unduly lenient view of the Courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in Courts of law. Courts do and should take human and sympathetic view of the matters. That is the very essence of justice. But consideration of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself, engender cynical disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the Court. Such instances reduce the jurisdiction and discretion of Courts into private benevolence. This tendency should be stopped. The selection of respondent No. 6 in the sports category was, on the material placed before us thoroughly unjustified. He was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion, is misuse of power. While we have sympathy for the predicament of respondent No. 6, it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes, we should quash the selection and admission of respondent No. 6. We do so, though, however,

reluctantly."

The sympathy which the petitioner, thus, evoked for having completed entire course cannot have precedence. The predicament in which he finds himself is the result of his own making and the way and manner in which he has made the same, needs to be deprecated in strongest words.

11. For the reasons recorded above this petition fails and is dismissed. However, the parties are left to bear their own costs.

12. Petition dismissed.