

(2003) 01 OHC CK 0067
In the Orissa High Court
Case No : OJC No. 10290 of 1999

Miss Ajanta Naik APPELLANT

Vs

Sambalpur University and Others RESPONDENT

Date of Decision : 21-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 95 CLT 731 : (2003) 1 OLR 310

Hon'ble Judges : P.K. Misra, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : U.K. Samal, B.R. Barik and C.D. Sahoo, for the Appellant; R.K. Mohapatra, R.K. Dash, A. Misra, U.C. Mohapatra and N.K. Sahoo, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—The petitioner after completing +2 Science took admission in the Government College, Sundargarh in +3 Science Course. After completing 3-year course, she took final degree examination in 1996 of the Sambalpur University with Roll No. 2496 MPH 02. The result of the said examination as published and mark-sheet dated 13.2.1997 was issued by the Sambalpur University to the petitioner. The relevant columns of the said mark-sheet dated 13.2.1997 are extracted herein below :

Subjects Full Marks Pass Marks Marks Secured Total

1 2 3 4 5

Foundation Course

1. English 50 15 ?

2. M.I.L. (O) 50 15 ?

Ancillary/Applied course Elect 100 30 ? 60

Core-I (Pass)

Physics Theory

Paper-I 75/100 23/30 08

Paper-II 75/100 23/30 20

Pract. 50/100 20/40 30

Core-II (Pass)

Chem. Theory

Paper-I 75/100 23/30 27

Paper-II 75/100 23/30 27

Pract. 50/100 20/40 36

Core III (Hons.)

Math. Theory

Paper-I 75/100/50 23/30/15 50

Paper-II 75/100/50 23/30/15 04

Paper-III 75/100/50 23/30/15 45

Paper-IV 75/100/50 23/30/15 33

Hons. Marks Secured in First Examination (Theory/Pract.) 400 120/140 132 132

Marks Secured in Final Examination (excluding Hons.) 600/400

Marks Secured in First Examination (excluding Hons, FC and AC) 600/400 148 148

Grand Total 1200/1600 340 (Three Four Zero)

The aforesaid mark-sheet discloses that the petitioner had secured 8 marks out of 75 in Physics paper-I and 20 out of 75 in Physics Paper-II, which were less than the pass mark of 23 out of 75. The aforesaid extracts of the mark-sheet would further show that the separate marks were not mentioned as against English, M.I.L. and Ancillary/ Applied courses, but total marks of 60 awarded in the Foundation Course, in which the aforesaid three subjects are included. Since by the aforesaid mark-sheet dated 13.2.1997 issued by the Sambalpur University, the petitioner was not shown to have failed in English or in any other subjects except Physics Papers-I & II, the petitioner took compartmental examination only in Physics Paper-I & II in the year 1997. But in the said compartmental examination also he failed in Physics Papers-I & II having secured 12 out of 75 in Physics Paper-I and 23 out of 75 in Physics Paper II. In the circumstances, the petitioner again took compartmental examination in the

year 1998 in Physics Papers-I & II and this time she secured 18 out of 75 in Physics Paper-I, 30 out of 75 in Physics Paper - II and 30 out of 50 in Physics Practical paper. The petitioner, therefore, expected that the Sambalpur University will declare her as having passed in the said 3-year degree examination. But, in stead, the Sambalpur University intimated the Government College Sundargarh that the petitioner had not passed in English Paper having secured 10 out of 50 marks, whereas the pass mark was 15 out of 50. Aggrieved, the petitioner has filed this writ petition under Article 226 of the Constitution with a prayer for a direction to the opposite parties to declare the petitioner as having passed in the 3-year degree course.

2. Mr. U. K. Samal, learned counsel for the petitioner submitted that in the mark-sheet dated 13.2.1997 issued by the Sambalpur University, the petitioner was not shown to have failed in English. On the other hand, consolidated marks of 60 were awarded to the petitioner in Foundation course and 60 marks in Foundation course would mean that the petitioner had passed in the Foundation course. For this reason, the petitioner took the examination only in Physics Papers-I & II and Practical in the year 1997 and in the year 1998 and did not repeat the examination in English which was a paper in Foundation course. The petitioner has already lost two valuable years and also two chances for taking compartmental examination available to her under the University regulation and the University authorities are estopped at this stage from saying that the petitioner had not passed in English having secured only 10 out of 50 marks in the examination held in 1996. Mr. Samal cited the decision of the Supreme Court in *Sanatan Gauda v. Berhampur University and Ors.* (1990(I) OLR 541} in support of his contention that in such cases the University authorities are estopped by their own conduct or representation.

3. Mr. N. K. Sahoo, learned counsel appearing on behalf of Shri R. K. Mohapatra, learned Sr. Counsel for the University, on the other hand, relied on the averments made in the counter affidavit filed on behalf of the opposite parties 1 and 2. In the said counter affidavit, it has been stated that the mark-sheet dated 13.2,1997 issued by the Sambalpur University did not mention either the marks given to the petitioner in Foundation course Paper-I English or in Foundation course Paper-II M.I.L. (O). It is further stated in the said counter affidavit that only total of 60 marks were indicated in the column relating to Foundation course. But in order to pass in the two papers in Foundation course, the petitioner had to secure minimum 15 marks in English and 15 marks in M.I.L. in the two individual papers. Since the petitioner had secured 10 marks in English and 18 marks in M.I.L.(O), the petitioner had failed in English. It has been further stated in the said counter affidavit that due to over-sight 60 marks were indicated in the column for Foundation course in the said mark-sheet and that sometimes due to over-sight such mistakes occur which are not deliberate or intentional and it is the duty of the student to go to the office of the University and find out the reason of non-mention of Individual marks in the blank column. In this case, Mr. Sahoo submitted that the petitioner has not gone to the office of

the University and found her individual marks in English and M.I.L. (O) and the petitioner having actually failed in English, cannot be declared as having passed. Mr. Sahoo, learned counsel for the University submitted that in any case the principle of promissory estoppel will apply only if on the basis of representation or conduct of the University authorities, the petitioner had altered her position. But in this case even if there was mistake in the mark-sheet dated 13.2.1997 issued by the University, the petitioner had not altered her position on the basis of the said mistake.

4. We are not convinced by the argument of Mr. Sahoo that the Petitioner had not altered her position on the basis of the aforesaid mistake in the mark-sheet dated 13.2.1997 showing 60 marks to have been awarded to the petitioner against Foundation course. The Foundation course comprises of English and M.I.L. (O) and Ancillary course. If the petitioner had failed in English having only secured 10 marks against the column relating to English, the marks secured by her should have been clearly mentioned so that the petitioner would have taken compartmental examination in the year 1997 or in the year 1998 in English along with Physics Papers-I & II. But the said 10 marks stated to have been secured by the petitioner in English was not indicated in the mark-sheet dated 13.2.1997 issued by the Sambalpur University and in stead, consolidated mark of 60 was indicated in the three Foundation course subjects so as to give an impression to the petitioner that she had passed in Foundation course subjects including English. On account of the aforesaid marks indicated in the mark sheet dated 13.2.1997 issued by the Sambalpur University, the petitioner altered her position in the sense that she did not take compartmental examinations in English in the year 1997 and in the year 1998 and, instead, took compartmental examinations in Physics Papers-I and II and practical paper. Several years have passed since the said mistake occurred. At no previous stage the petitioner was informed by the authorities of the Sambalpur University that there was an inadvertent mistake in the mark-sheet dated 13.2.1997. When the petitioner took the compartmental examination in the year 1997 and was issued with the marks for only Physics Papers-I & II, the University authorities would have detected the mistake and informed the petitioner that she had also failed in English having secured 10 marks out of 50. The University authorities did not intimate the petitioner even after she took the compartmental examination in the year 1997 only in Physics Papers-I & II and Physics Practical. The petitioner was not informed at any stage even before she took the compartmental examination in 1998 in Physics Papers-I & II that she was also required to take compartmental examination in English having failed in the said subject. At this stage, when the petitioner had availed both the chances for compartmental examination and had finally passed in Physics Papers-I & II and Practical, the University authorities cannot be allowed to say that the petitioner had not passed in English in the very first examination taken by her in the year 1996.

5. In *Sanatan Gauda v. Berhampur University* (supra) the Supreme Court found that the appellant in that case while securing his admission in the Law College

had admittedly submitted his mark-sheet along with the application for admission. The Law College had admitted him. He had pursued his studies for two years. The University had also granted him the admission card for the Pre-Law and Intermediate Law Examinations. He was also admitted to the Final year of the course. It is only at the stage of declaration of his results of the pre-Law and Inter-Law examinations that the University raised the objection to his so-called ineligibility to be admitted to the Law course. P.B. Sawant, J. held that, the University was clearly estopped from refusing to declare the results of the appellant's examination or from preventing him from pursuing his final year course. L.M. Sharma, J. concurred with the Judgment of P.B. Sawant, J. in a separate judgment and held inter alia that it was the bounden duty of the University to have scrutinized the matter thoroughly before permitting the appellant to appear at the examination and not having done so, it cannot refuse to publish his results.

6. In the present case, we hold that it was the bounden duty of the authorities of Sambalpur University to have clearly indicated in the mark-sheet dated 13.2.1997 that the petitioner had secured only 10 marks out of 50 in English so that the petitioner could have taken compartmental examinations in English in the year 1997 and 1998. Having failed to do so, at this stage when the petitioner has taken the compartmental examinations only in Physics Papers and passed therein the Sambalpur University cannot take a stand that the petitioner had not passed in English paper and cannot be declared as having passed in 3-year degree course.

7. For the aforesaid reasons, we allow this writ petition and direct the opposite parties to declare the petitioner as having passed in the 3-year degree examination (Science) within 15 days from receipt of certified copy of this order by the opposite party No. 2.

P.K. Misra, J.

I agree.