

(2001) 07 RAJ CK 0114
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2787 of 2001

Miss Parul Agarwal

APPELLANT

Vs

University of Rajasthan and Others

RESPONDENT

Date of Decision : 10-07-2001

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 2002 Raj 70 : (2002) 1 RLW 675 : (2002) 5 WLC 824 : (2002) 1 WLN 571

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : A.K. Bhandri, Ajeet Bhandari, Pradeep Chaudhary, Yogesh Kumar Sharma and B.K. Sharma, for the Appellant; Ajeet Kumar Sharma, Bharat Vyas and Ashok Mishra, for the Respondent

Final Decision : Allowed

Judgement

Sharma, J.—The allegations against the Private Educational institutions in the instant writ petitions are that their only aim is to make money, driving a hard bargain, exploiting eagerness to acquire a professional degree which would be a passport for employment in our country rampant with unemployment. The facts of the writ petitions remind me a popular couplet of Sanskrit Poet BHARTHAR1 HARI. who in his "NEETISHATAKAM, consisting of the hundred couplets, wrote (English translation).

"Education is the teacher of the teacher; Education is God incarnate; Education secures honour at the hands of the State, not money, A man without education is equal to animal."

In the life of an individual the right to education has been treated as one of transcendental importance. These writ petitions relate to the right of the petitioners to take the examination of Master of Business Administration.

2. Common questions that arise for consideration in all these four writ petitions

are:

(i) Whether after allowing the candidate to take the examination rightly or wrongly, the University can subsequently withdraw his candidature and refused his admission?

(ii) Whether compelling the University to overlook the ineligibility of the candidate in view of the principles of promissory estoppel, will be subversive of academic discipline leading to serious impasse in academic life?

3. Contextual facts depict that the petitioner Miss Parul Agarwal while studying in III Year B.A. had occasion to see an advertisement issued by the University of Rajasthan for admission in the course of Master of Business Administration (M.B.A.). All those candidates who were studying in III Years B.A. and likely to appear in the final examination of B.A. III year were also eligible for submitting applications for M.B.A. For the purpose of admission to M.B.A. Mohan Lal Sukhadia University of Udaipur in January 1999 conducted Rajasthan Management Aptitude Test (RMAT). Parul Agarwal appeared in the test and was declared successful. In February 1999 she also qualified the interview held in Poddar Institute of Management Jaipur. She applied for admission in India International Institute of Management (HIM) and was given admission in M.B.A. Part I against the paid seat under NRI quota after charging from her Rs. 1.25 lakhs for tuition fees and other expenses for one year. The result of the HI Year B.A. examination was not declared before commencement of the academic session of M.B.A. Part I as such she joined HIM as a regular student in anticipation of the result. In the month of August 1999 the result of III Year B.A. Examination was declared. Though she was declared successful in the examination yet she was not satisfied with the marks allotted to her and she applied for revaluation. The result of revaluation was not declared till July 2000. In the meanwhile the examinations for M.B.A. Part I were declared to be held from July 4, 2000. The HIM forwarded the enrolment form to the University of Rajasthan. The University permitted Parul Agarwal provisionally to appear in M.B.A. Part I examination and allotted her Roll No. 2176 with enrolment No. 96/45057. Parul Agarwal appeared in the examinations of M.B.A. Part I. Nearing the completion of examination she received the revaluation Marks sheet of HI Years B.A. which demonstrated that she obtained 48.6% marks.

As required by the syllabus of MBA Parul Agarwal attended summer training and submitted her project report on November 2, 2000. The result of M.B.A. Part I was declared in December 2000 and published in the news papers but the result of the petitioner was withheld. The HIM permitted Parul Agarwal to continue her study in II Year M.B.A. despite the fact that her result of M.B.A. Part I was withheld. However Parul Agarwal did not pay HIM the fee for admission in II Year M.B.A. The examinations of M.B.A. Part I were scheduled to commence from June 20, 2001 but Parul Agarwal was not permitted to appear in the said examination. Under these circumstances Parul Agarwal has instituted the instant writ petition seeking direction to allow her to appear in II Year M.B.A.

examination and to declare her result of M.B.A. Part I.

4. The petitioner Vivek Sharma passed B.Sc. examination in 1997 securing 49.93% marks (674 out of 1350). With a view to acquire higher qualification for better job prospects in future the petitioner took admission in two year future the petitioner took admission in two year course of M.B.A. In Deepshikha College of Technical Education Jaipur (for short Deepshikha). At the time of admission Vivek Sharma submitted his marks sheet of B.Sc. Examination. Deepshikha admitted Vivek Sharma against the payment scat and he deposited a sum of Rs. 45,000/- as admission fee. Vivek Sharma was allowed to study uninterruptedly in the entire first year of M.B.A. At the end of the session he submitted his examination form alongwith marks sheet of qualifying examination i.e. B.Sc. which were sent to the University of Rajaslhan. Admission card to appear in the examination of M.B.A. Part I was issued to Vivek Sharma by the University of Rajasthan and he was allotted Roll No. 2069. Vivek Sharma appeared in the examination. Thereafter Vivek Sharma took admission in M.B.A. Par II and deposited admission fee in the sum of Rs. 40,000/- with Deepshikha. He attended all the classes of MBA Part II without interruption and submitted his examination form and deposited examination fee. As per the scheme of the University of Rajasthan the examinations were going to be commenced from June 20, 2001. When on June 8, 2001 Vivek Sharma visited Deepshikha for collecting his admission card he was intimated vide written communication date June 6, 2001 by Deepshikha that his admission in M.B.A. Part I was cancelled in pursuance to the letter dated May 29, 2001 of the Deputy Registrar (Exam-1) University of Rajasthan on the ground that he did not secure 50% marks in his graduation. Vivek Sharma has filed the instant writ petition seeking quashing of communication dated May 29, 2001 and June 6, 2001 and direction to allow him to take the examination of M.B.A. Part II and declare the result.

5. The petitioner Gajendra Pareek passed B.Sc. Examination in 1999 also securing 49.93% marks (674 out of 1350). He took admission in two year course of M.B.A. In Deepshikha. Admission card to appear in the examination of M.B.A. Part 1 was issued to Gajendra Pareek by the University of rAjasthan and Roll No. 2033 was allotted to him. He appeared in the examination but his result was withheld. He was admitted thereafter in M.B.A. Part II and submitted his examination form for the examination of M.B.A. Part II to be commenced from June 20, 2001. Deepshikha wrote a letter to the Vice Chancellor University of Rajasthan on May 24, 2001 to issue marks sheet of M.B.A. Part 1 examination to Vivek Sharma and Gajendra Pareek and to provisionally permit them to take the examination of MBA Part II on the basis of rounding up of 49.93% marks secured by them as 50% in their qualifying examinations. By the admission of Gajendra Pareek in M.B.A. Part I was also cancelled vide letters dated May 29, 2001 and June 6, 2001. Gajendra Pareek seeks to quash the said communication and prays to allow him to appear in M.B.A. Part II examination and also to declare the result.

6. The petitioner Ajeet Kumar Rathi passed B.Com. Examination in 1997 securing 48.5% marks (867 out of 1800). In 1999 he passed M.Com (ABST) examination and secured 66% marks. Thereafter he took admission against the payment seat in two year course of M.B.A. In Deepshikha and deposited a sum of Rs. 45000/-. Admission card to appear in the examination of M.B.A. Part 1 was issued to him by University of Rajasthan and Roll No. 2021 was allotted to him. Ajeet Kumar Rathi appeared in the examination but his result was withheld. Despite the fact that the result of his M.B.A. Part 1 examination was withheld, Deepshikha admitted Ajeet Kumar Rathi in M.B.A. Part II course and charged Rs. 40,000/- against admission fee. Ajeet Kumar Rathi submitted his examination form for the examination of M.B.A. Part II to be commenced from June 20, 2001. The Deputy Registrar of University of Rajasthan vide letter dated June 1, 2001 cancelled his examination form of M.B.A. Part II and directed Deepshikha to cancel his admission in M.B.A, course on the ground that he did not secure 50% marks in qualifying examination (graduation) and thus was not eligible for taking admission in M.B.A. Part 1. Pursuant to the direction of the University Deepshikha vide letter dated June 6, 2001 cancelled his admission. Ajeet Kumar Rathi is the permanent resident of Nepal and for the purpose of study he came to India. When Ajeet Kumar Rathi sought admission in the Indraprastha University in M.B.A. Course, Embassy of Nepal issued no objection certificate. Ajeet Kumar Rathi seeks to set aside the communications dated June 1, 2001 and June 6, 2001 and prays to allow him in M.B.A. Part II examination and to declare the result.

7. In the reply to show cause notice the respondent University averred that the petitioners do not fulfill the basic condition of eligibility for admission to M.B.A. course as they have not secured 50% marks in the aggregate in graduation examination. In regard to petitioner Parul Agarwal it was stated that she did not secure admission on the basis of merit in RMAT but managed to get admission against the paid seat under NRI quota. In regard to other petitioners Vivek Sharma, Gajendra Pareek and Ajeet Kumar Rathi the University pleaded that all of them lack basic condition of eligibility for admission to M.B.A. course. Neither they secured 50% marks in the graduation examination nor they appeared in RMAT. Admission secured by the petitioners in HIM and Deepshikha were patently illegal. It was further averred in the reply that when the fact of illegal admission in M.B.A. course by the Educational Institutions came to the notice of the University of Rajasthan during 1999-2000, the Academic Council of the University vide its Resolution No. 20 constituted a Fact Finding Committee in regard to such admissions under the Convenorship of Professor (Mrs.) Pavan Surana. After due deliberations the Committee made its suggestions for admission against the vacant and dropout seats and for future admission. Report of the Committee was accepted by the Board of Inspection of the University. The Committee suggested that such students of M.B.A. who have been given admission against the Rules and whose graduation percentage was less than the prescribed percentage, their admission must be cancelled. On the

recommendation of the Committee an office order dated Feb. 22, 2001 was issued by the University notifying the amount of penalty imposed upon the institutions which had granted irregular admission. However, the Syndicate in its meeting held on March 31, 2001 passed the following resolution-

(1) Letter dated 22.2.2001 issued by the University to the Management Institution be withdrawn.

(2) The admission of ineligible candidates be cancelled and the Institutions be asked to refund fee to the candidates concerned. Such institutions be also given notice on this issue and action be taken against them in accordance with University rules and legal procedures.

(3) The Committee constituted under Resolution No. 3 of these minutes may consider all the representations received from the Management Institutions regarding irregular admission and recommended amount to be deposited by the Institutes as it deems fit, and

(4) Comprehensive guidelines be framed by the University as proposed in Prof. Pavan Surana Committee for such admission in future.

The respondent University further stated in he reply that he petitioners were provisionally admitted in the MBA Part I examination and after examining their eligibility to the admission their candidature was cancelled. Though the result of the MBA Part I was declared in January/April 2001 yet the petitioners did not approach his court at that stage and deliberately filed the writ petitions couple of days before the MBA Part II examination. The University can not be held liable for the conduct of HIM and Deepshikha and it cannot be compelled to overlook the ineligibility of the petitioners and allow them to appear in the MBA Examination.

8. The matters were heard finally with the consent of learned counsel for the parties.

9. The fact situation deduced from the averments of the writ petitions may be summarised thus-

(i) Petitioner Parul Agarwal while studying in III Year B.A. submitted application seeking admission to M.B.A. She appeared in the R.M.A.T. and was declared successful. She also qualified the interview. She got admitted in HIM against the paid seat under NRI quota and she paid Rs. 1.25 lakhs to HIM. she joined M.B.A. Part I course as regular student in anticipation of the result of graduation examination. She was provisionally permitted by the University to take the M.B.A. Part I examination. She secured 48.6% marks in the revaluation marks sheet of the graduation examination.

(ii) Petitioner Vivek Sharma in the graduation examination secured 49.93% Marks. He did not appear in RMAT. He was admitted in M.B.A. Part 1 by Deepshikha and University permitted him to appear provisionally in M.B.A. part I

examination.

(iii) Petitioner Gajendra Pareek also secured 49.93% marks in the graduation examination. Deepshikha admitted him in MBA Part I and the University permitted him to appear in the M.B.A. part I examination provisionally. He did not appear in RMAT.

(iv) Petitioner Ajeet Kumar Rathi secured 48.5% marks in the graduation and 66% in Post Graduation examination. He was admitted by Deepshikha in MBA Part I and University permitted him to appear provisionally in the MBA Part 1 examination. He did not appear in RMAT.

10. I have carefully considered the rival submissions and closely scanned the material on record as well as the report of Prof. Surana Committee. The Committee in its report made suggestions for the irregular admissions made by the professional colleges during he session 1999-2000. The Committee in the report suggested that the admission of such students of MBA who have been given admission against the rules where graduation percentage is less then the prescribed percentage i.e. 50% (in case of reserved category candidates less than 45%) should be cancelled with immediate effect. For the candidates who were otherwise eligible but had been admitted without entrance lest, the Committee made suggestions to regularise their admissions but for such regularisation the HIM and Deepshikha shall pay Rs. 1,00,000 each and they shall not recover the amount from the students.

11. I deem it appropriate at this juncture to refer to Ordinance 250-B (1) published in the Hand Book of the University of Rajasthan which provides thus-

"250-B CD -A candidate seeking admission to first year of M.B.A. shall be required to possess a Bachelor's degree in any discipline (Engineering and Technology, Science, Arts, Social Science, Commerce, Agriculture, Medicine and Pharmaceutics etc.) with atleast 55% marks in aggregate or Master's degree with atleast 50% marks in the aggregate at each of the Bachelor as well as Master's degree. Such candidates as have appeared at the Final Year of the qualifying examination may also apply for admission provisionally at their own risk subject to the condition that they shall be required to submit the marks sheet of the qualifying examination by the date and time to be determined and notified by the Institute each year failing which their candidature shall be cancelled. If the candidate has move then one Bachelor's degree for determining eligibility, the first degree will be taken into account."

Though no amendment in Ordinance 250-B (1) was brought to my notice but looking to the suggestions made by Prof. Surana Committee it appears that to become eligible for admission to First year of M.B.A. atleast 50% marks in graduation examination in necessary. Admittedly petitioners Vivek Sharma and Gajendra Pareek secured 49.93% marks in graduation,examination and petitioner Ajeet Kumar Rathi obtained 57.25% marks *48.50 % +66%) in the aggregate at each of the Bachelor as well as Master's degree. In the marks

sheets of graduation examination issued by the University of Rajasthan to Vivek Sharma and Gajendra Pareek it was indicated in Note-5 that if the marks worked out are infraction the same shall be raised to the next higher whole number.

In *Ghanshyam Sharma v. The Principal St. Patricks Vidya Bhawan* (1), those students who secured 60% or above marks were given provisional admission and the student who obtained 59.5% marks was given the benefit of round figure of 60%. Both the petitioners Vivek Sharma and Gajendra Pareek in the instant case as already stated secured 49.93% marks and the University of Rajasthan ought to have given them the benefit of round figure of 50% by raising the fraction to the next higher whole number. The petitioners Vivek Sharma, Gajendra Pareek and Ajeet Kurnar Rathi, Submitted their marks sheets with the examination forms and they are not guilty of suppressing any fact.

12. In my considered opinion petitioners Vivek Sharma, Gajendra Pareek and Ajeet Kumar Rathi were otherwise eligible but had been admitted without entrance test (RMAT) by Deepshikha therefore in view of suggestions made by Prof. Surana Committee their admissions to MBA Part 1 ought to have been regularised and their result of MBA Part 1 examination ought to have been declared. They were entitled to take examination of M.B.A. Part II.

13. Coming to the case of petitioner Parul Agarwal as already noticed she qualified RMAT and was admitted against the paid seat of NRI. While appearing at the Final Year of qualifying examination she was entitled to apply for admission to first year of M.B.A. She got her revaluation marks sheet when the M.B.A. Part I examinations were nearing completion. No condition was fixed by HIM for submitting the marks sheet of qualifying examination. She is also not guilty of suppressing any fact and was admitted by HIM after she qualified RMAT. However she only secured 48.5% marks in, qualifying examination. While screening her examination form the University did not ask for her marks sheet of qualifying examination.

14. In *Shri Krishan v. Karukshetra University* (2), three Judge Bench of the Hon'ble Supreme Court propounded 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. If the University authorities acquiesced in the infirmities which the admission form contained and allowed the candidate to appear in the Examination then by force of the University Statute the University had no power to withdraw the candidature of the candidate.

It was further held that if neither the Head of the Department nor the University authorities took care to scrutinise the admission form, then the question of candidate committing a fraud did not arise as it is well settled that where a person on whom fraud is committed is in a position to discover the truth by the

due diligence fraud is not proved. 11 is neither as case of *suggeslio falsi* or *suppressio veri*.

In the instant case petitioner Parul Agarwal did not append marks sheet with the examination form but still the University allotted her Roll Number and permitted her to appear in the MBA Part 1 examination. As the University authorities acquiesced in the infirmities which the admission form contained and allowed Parul Agarwal to appear in the Examination then by force of Prof. Surana Committee report or Ordinance 250-B(1) the University had no power to withdraw the candidature of petitioner Parul Agarwal. Even the marks sheet appended by the petitioners Vivek Sharma, Gajendra Pareek and Ajeet Kumar Ralhi were not scrutinised by the University authorities and they were allowed to take MBA Part I examination. In their cases also the University acquiesced in the infirmities which their admission forms contained.

15. In *Rajendra Prasad Mathur v. Karnataka University* (3), the Hon"ble Supreme Court while dismissing the appeals of the students on the ground that they were not eligible for admission in the engineering colleges, still allowed them to continue their studies in the respective engineering colleges in which they were granted admission. It was observed that-

".... The fact lies with the engineering Colleges which admitted the appellants because the Principals of these engineering colleges must have know that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sines of the managements of these engineering colleges. We would, therefore, notwithstanding the view taken by is in this judgment allow the appellants t continue their studies in the respective engineering colleges in which they were granted admission."

16. The ratio of *Rajendra Prasad Mathur's* case (*supra*) is squarely applicable to the instant matters. Here also the fault lies with the managements of the HIM and Deepshikha as the petitioners were admitted by them against the paid seats and a huge amount was charged by them from the petitioners in the name of admission fee. No blame can be put on the petitioners for this situation. The petitioners have not only spent money to gain admission hut have also lost two years of precious time virtually jeopardising their future careers.

17. I am unable to agree with the submissions advanced before me by the learned counsel appearing for the University of Rajasthan. The ratio of the case law cited by the learned counsel is distinguishable. In *C.B.S.E. v. P. Sunil Kumar* (4), the question for consideration before the Two Judge Bench of Hon"ble Supreme Court was : Whether students studying in institutions not affiliated to the Board of Secondary Education can be permitted by the High Court by an interim order to appear at the examination conducted by the Board and ultimately can the Board be compelled to issue certificates to those students who have appeared at the examination pursuant to the interim direction of the court

notwithstanding the fact that the institutions where the students were prosecuting their study have not yet received affiliation of the Central Board of Secondary Education?

The Hon''ble Supreme Court deprecated the practice of the Courts in allowing students by interim orders and then ultimately regularising the same by taking a sympathetic view of the matter.

18. Hon''ble Supreme Court in yet another case *Guru Nanak Dev University v. Parminder Kumar Bansal* (5), interfered with the interim order passed by the High Court to allow students to undergo internship course even without passing the MBBS examination. It was observed thus - (Para 7)

"We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does not service to any one. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence, this is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life."

19. In the instant matters no relief was granted to the petitioners at the interim stage. They were not allowed to appear in the MBA Part I examination by the orders of the court. It is the University of Rajasthan who permitted them to appear in the examination and ultimately cancelled their admission in MBA Part I course on the basis of Prof. Surana Committee report which was not in existence, when the petitioners took admission in IIIM and Deepshikha and appeared in the examination. The report of Prof. Surana Committee was made applicable with retrospective effect and without providing any opportunity to the petitioners their admission was cancelled. It is no doubt true that admission cards were issued to the petitioners by the University provisionally but no reason was assigned as to why they were allowed provisionally. On the admission cards of the petitioners a seal was put by the University with the remark "Permitted provisionally for want of....".

20. Having examined the instant matters from all the angles no other option is left with me except to follow the ratio indicated by the Hon''ble Supreme Court in *Shri Krishan v. Kurukshetra University* (supra) and to hold that after allowing the petitioners to appear in the MBA Part I examination the University authorities had acquiesced in the infirmities which the admission forms contained and now on the basis of subsequent report of Prof. Surana Committee or by force of the University Ordinance the University has no power to withdraw the candidature of the petitioners. The act of University in cancelling the admission of the petitioners is arbitrary and violative of article 14 of the Constitution of India.

21. In view of what I have discussed herein above I allow the writ petitions and quash the impugned communications of the respondents whereby the admission of the petitioners in M.B.A. Part I course was cancelled. I direct the respondent

University of Rajasthan to declare the result of the petitioners MBA Part I examination. If the petitioners qualify MBA Part I examination, the respondent University shall allow them to take the examination of MBA Part II after publishing a fresh examination programme. One month time is granted to the University of Rajasthan to implement his order. Costs easy.