

(1984) 09 GUJ CK 0002

In the Gujarat High Court

Case No : Special Civil Application No. 2283 of 1984

Pradip Rasiklal Shukla

APPELLANT

Vs

The Gujarat University and Others

RESPONDENT

Date of Decision : 18-09-1984

Acts Referred:

Evidence Act, 1872 — Section 115

Gujarat University Act, 1949 — Section 22, 30

Citation : AIR 1985 Guj 99

Hon'ble Judges : D.H. Shukla, J;B.K. Mehta, J

Bench : Division Bench

Advocate : N.J. Mehta, for the Appellant; S.N. Shelat, for the Respondent

Judgement

B.K. Mehta, J.—The petitioner, who is aggrieved by the refusal on the part of the respondent-authorities to allow the petitioner to complete his final examination of Part 1, M.Sc. (Geology), has moved this Court for appropriate writs, orders and directions to quash and set aside the order cancelling his admission to the said examination since respondent No. 1-University has refused vide its letter of April 12, 1984 to recognise the first term as validly kept by the petitioner. The impugned order was conveyed to the petitioner by the letter of respondent No. 3 dated April 17, 1984. The petitioner has further prayed for the directions enjoining the respondent authorities to grant the petitioner first term and to allow him to appear at the practical examination commencing from April 30, 1984 of M.Sc.(Geology) Part 1, and also to declare the result of the petitioner of the said examination, A few facts need be noticed in order to appreciate the challenge to the impugned order.

2. The petitioner holds a degree of B.Sc. of the Gujarat University and graduated from the said University in 1983 by securing distinction at the said examination. He had applied for admission to the I.I.T., Bombay for post-graduation in Geology where he was duly admitted for M.Sc.(Geology) Programme for the years 1983 to 1985. He attended the classes at the said Institute from July, 1983 to Sept.

1983 which has been accordingly certified by the Head of the Department of Earth Science of the said Institute vide his certificate of Nov. 9, 1983. Unfortunately, however, the petitioner was not keeping good health at Pavai where the Institute is situated and was, therefore, Required to be brought back to Ahmedabad. The petitioner's father wrote a letter to the Vice-Chancellor of the Gujarat university-respondent No. 2 herein on Sept. 26, 1983 stating that the petitioner had passed his B.Sc.(Geology) Examination from M,. G. Science Institute securing about 72%, of marks and had obtained the second rank in the University, and since he could obtain admission at the I.I.T., he opted for that Institute, particularly because admissions for postgraduate centre at M. G. Institute for the Master's course were delayed. It was further stated in the said letter that the Bombay climate was not suitable and congenial to the petitioner and, therefore, it became absolutely necessary to shift to Ahmedabad and get him admitted at the M. G. Science Institute. It was also pointed out in the letter that two seats in M.Sc.(Geology) were vacant at the relevant time. The petitioner claimed that his father met the Vice-Chancellor on the same day along with the said letter for making personal arrangement of the admission of the petitioner at the M. G. Science Institute and at that time he was assured by the Vice-Chancellor that the deficiency in attendance of the petitioner in the first term would be condoned since only a few days of the first term were left by that time, and that he would be allowed to appear at the final examination of M.Sc. (Geology), Part I provided he obtained a certificate from the I.I.T., Bombay to the effect that he had kept the term regularly at the said Institute for the period during which he was there. His father was also assured according to the petitioner that the term kept by the petitioner at the I.I.T. Bombay would be taken into consideration for this purpose. Ultimately the petitioner was intimated by respondent No. 3, who was the Head of Geology Department, Post-Graduate Centre (Geology), M. G. Science Institute, Ahmedabad by his letter of Sept. 28, 1983 that respondent No. 2 had granted permission of admission of the petitioner in the first term of M.Sc.(Geology), Part 1. The petitioner completed the formalities for admission at the M. G. Science Institute and was thereafter enrolled and admitted by the said Institute for the Master's Programme in Geology, Part 1. The petitioner was also required to obtain eligibility certificate from the University which was obtained and submitted to the college authorities vide certificate of Jan 6, 1984. He thereafter regularly attended the classes in the Second Term also at the said Institute.

3. The petitioner filled his examination form M.Sc., Part I examination sometime in the month of Jan. 1984 which was duly forwarded by the M. G. Science Institute to the respondent- University for necessary action. He also paid necessary examination fees of Rs. 79,-/. On acceptance of the application form, respondent No. 1-University also allotted to the petitioner seat No. 737 for M.Sc. (Geology), Part I Examination held in April, 1984. He appeared at the Theory Examination which commenced from April 11, 1984 to April 16, 1984 on seat No. 737 allotted to him by the University. However, the practical examinations were

scheduled to be held on April 30, 1984, 1st May 1984 and 2nd May 1984. The petitioner was surprised and shocked when he was intimated by the letter of April 17, 1984 from respondent No. 3 that his admission to the examination of M.Sc., Part I was cancelled by the University as stated aforesaid. Respondent No. 3 personally delivered this letter to the petitioner with the result that the petitioner immediately moved this Court for appropriate writs, orders and directions as aforesaid on April 27, 1984.

4. This Court issued Rule the service whereof was waived by Mr. S. N. Shelat, learned Advocate for the University, and the Court by its order of even date, that is, April 27, 1984 granted ad interim relief of injunction directing the respondent-University to permit the petitioner to appear at the practical examination of M.Sc. (Geology) Part I commenced from April 30, 1984 and to keep his result at the said examination in abeyance in sealed cover subject to the result of the petition Rule was -made returnable on 27th June, 1984.

5. In response to this Rule, the Registrar of the University-respondent No. I has filed his reply affidavit resisting the petition and contending, inter alia, that no assurance was given by the Vice-Chancellor to the father of the petitioner as claimed by the petitioner, nor was he told that the term kept by the petitioner at the I.I.T., Bombay, would be recognised for purposes of the petitioner's eligibility for appearing at Part I examination in the Gujarat University. It was pointed out that the Vice-Chancellor is authorised to condone the deficiency in attendance of a candidate caused on account of illness or any other reason deemed satisfactory on receiving an application in that behalf, provided the deficiency in both the terms taken together does not exceed 15% of the total requirement as laid down from time to time, and since the present case the deficiency in attendance was about 41 %, if the attendance of both the terms is considered, the Vice-Chancellor was not authorized to condone the terms. The acceptance of the application form and the allotment of seat number to the petitioner for April Examination of M.Sc. Part I was subject to the student satisfying the over all requirement of attendance in both the terms and, therefore, the acceptance was not a final acceptance but was provisional and under the Rules, the authorities were perfectly within their power to cancel the admission once given by the University on finding that the student had failed to keep the requisite terms. According to this reply affidavit, the attendance kept by a student at any other University cannot be considered under the University Ordinance, and any eligibility certificate which is for limited purpose of the eligibility of the candidate for admission to a course would not entitle him as a matter of course to the condonation of deficiency in attendance as alleged, and the final eligibility to the examination is always subject to the various Ordinances of the University. If, therefore, the petitioner did not fulfill such requirement, the University was perfectly justified in refusing him permission to appear at the examination or for that matter cancel his provisional admission since no authority of the University much less Vice-Chancellor could have condoned the deficiency assuming that there was sufficient cause.

6. It is in context of these rival contentions that we have to consider whether the petitioner is entitled to any relief as prayed for.

7. On behalf of the petitioner, three contentions were urged. In the first place, it was urged that the respondent-University could not have cancelled the admission once granted to the petitioner when a seat number is allotted at the April Examination of M.Sc. Part I and particularly when he had been allowed to appear and had been through all the papers of Theory Examination and the University was estopped from preventing the petitioner from appearing at the Practical Examination. Secondly, it was urged that the Vice-Chancellor failed to exercise his jurisdiction under Post Graduate R. 3-A by treating the term which the petitioner had kept at the I.I.T. at Bombay for which appropriate certificate had been obtained from the competent authority of that Institute. In the alternative, it was urged that R. 3-A read with Ordn. 83 was arbitrary, discriminatory and violative of the petitioner's fundamental rights under Art. 14 of the Constitution and since the I. I.T., Bombay was recognised as equivalent Institute, the petitioner's attendance at the said Institution ought to have been taken into consideration and given credit in respect thereof: In the third place, it was contended that the competent authority to decide as to whether the petitioner's deficiency in attendance of term should be condoned or not was the Academic Council which was entitled under Regulation 4 framed in exercise of the power under S. 22(x) of the Gujarat University Act, 1949, and in as much as the impugned order has been made without the matter being considered by the Academic Council, the same is without jurisdiction, authority or power.

8. We will deal with the contentions in the same seriatim order in which they have been raised. In *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, in context of Clause 2(b) of Ordn. X of Kurukshetra University Calendar Vol. 1, the Supreme Court ruled 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. It is further held that if neither the Head of the Department nor the University authorities took care to scrutinize the admission form, then in not disclosing the shortage of percentage in attendance, it could not be said that the student, committed any fraud and when the candidate was allowed to appear at Part 11 Law Examination in May 1973, the University authorities had no jurisdiction to cancel his candidature for that examination. Mr. Mehta strongly relied on this decision in support of his first contention. We are afraid that the reliance is not well founded since Clause 2(b) of Ordinance X of the Kurukshetra University inter alia provided as under:

"B- that he has attended regular course, of study for the prescribed number of academic years. Certificate (b) will be provisional and can be withdrawn at any time before the examination if the applicant fails to attend the prescribed course

of lectures before the end of his term."

It is in that context that the Supreme Court ruled as above. On plain reading of that clause, it is clear that the power of the University to withdraw provisional admission to examination on the ground of not attending the prescribed course of lectures was before the examination commenced. There was no power under the said Ordinance of Kurukshetra University to withdraw the certificate after a student was allowed to appear at the examination. The power of the Gujarat University is in very wide term in this behalf and is not limited as was the case in Kurukshetra University. Ord. 83-A is a relevant provision which governs the situation before us. It reads as under "0. 83-A :

Notwithstanding anything contained in the Ordinances, it shall be competent for the Principal of a college to withdraw the application of a student of his college for admission to a University examination on the ground of unsatisfactory progress of the student concerned. Such withdrawal shall be permitted only if the intimation of the Principal reaches the University Office and is made at least one week before the commencement of the examination in the case of F.Y. (Pre-University) and Intermediate examinations and within five clear days after the close of term in the case of all other examinations. On such intimation being received by the University Office, the name of such student shall be deemed to stand cancelled from the list of candidates appearing at the University examination, and thereupon the student concerned shall not- appear at the examination, and in case of his appearance at the examination. His result shall not be declared. The examination fees paid by such a student shall be refunded in full."

If any of the terms is not duly kept by a candidate, as per requirement of the University for the relevant courses of studies, he shall not be, permitted to appear in the examination concerned and in the event of his appearance, his name shall be deemed to be cancelled from the list of candidates for the examination and his fees shall be refunded in full. "

The proviso confers the power of widest amplitude in the University, if a candidate has not kept duly his terms as per. the requirement of the University for the relevant courses of studies. The later part of the proviso enjoins that in the events of appearance of such a candidate who has not kept duly the required terms, his name shall be deemed to be cancelled from the list of candidates for the examination and his fees shall be refunded in full. In other words, even if the irregularity in the terms has not been noticed at the time when the admission form is accepted, and it comes to the light after a student goes through the examination, even then on such an infirmity being found, his name is deemed to be cancelled from the list of candidates for the examination. In the present case before us -the petitioner had not completed the examination since lie was still to appear at the practical examination and, therefore, it cannot be-contended that on account of the omission on the part of the authorities to take proper care in the matter of the petitioner having not kept regular terms and by the acceptance

of the application form for admission and allotment of the seat number and consequent appearance of the petitioner in Theory Examination, the University is estopped by acquiescence in canceling the name of the petitioner from the list of the candidates permitted to appear in the examination. The first contention, therefore, should be rejected.

9. The second contention also, in our opinion, has no merit in it. The reasons are obvious. Ord. 83-B provides that no candidate for post-graduate degree examination shall be allowed to appear at the said examination, unless

(1) he/she has attended minimum number of lectures in each term as per P. G. Rule in. this behalf

OR

The deficiency, if any, in attendance has been duly condoned as per P. G. Rule

(2) the attendance reports of the candidates have been received in accordance with P. G. Rule.

The said Ordinance further provides that in the event of non-compliance of any one or more of the conditions stated therein, the name of the candidate shall be deemed to stand cancelled- from the list of candidates appearing at the relevant examination and thereupon the candidate concerned shall not appear at the examination and in case of his appearance at the examination, the result shall not be declared and that the examination fees shall be refunded in full. Now the relevant P. G. Rule in that behalf has been annexed to the reply affidavit of the Registrar of the University. P. G. R. 3-A comprises of two parts which deals with the condonation of deficiency in attendance. Cls. (1) and (2) provide for deficiency in attendance in any of the two terms in Part I and/or Part 11 examination. Clause (1) of R. 3-A empowers the Professor-incharge, or Head of the Department, of a Post Graduate Centre in the subject concerned in the respective University school to condone the deficiency in attendance of a candidate caused on account of illness in any one of the two terms for Part I and/or Part II subject to the application in that behalf supported by a medical certificate and the candidate having attended not less than 50% of total number of lectures delivered during the said term. Clause (2) of the said Rule empowers the Vice-Chancellor to condone deficiency in attendance in any of the two terms for Part I and/or Part 11 caused on account of illness or any other special reasons, provided the candidate has attended not less than 40% or more of the total number of lectures delivered during the term and his application for condonation being supported by a medical certificate. The Vice-Chancellor has been further empowered to condone the deficiency in attendance caused on account of illness or special reason in both the terms of Part I and Part 11 provided the deficiency in both the terms taken together does not exceed 15%. It is, therefore, difficult to agree with the learned Advocate for the petitioner that the Vice-Chancellor could have exercised the power of condoning the deficiency. Having realised this difficulty, the learned Advocate relied on Ord. 71 for urging

that the positive mandate contained in the proviso or Ordn. 71 does not disentitle the University authorities from recognizing the term of a student migrating from any University in the State of Maharashtra which does not recognise the term kept by a student of Gujarat University. Ordn. 71 it should be noted enjoins that the term of a student migrating from any of the other Universities in Gujarat shall be recognised for the purposes of keeping terms for appearing at any examination of Gujarat University subject to the conditions specified in the Ordinance. However, this benefit would not be available to a student migrating from any of the Universities other than Gujarat which does not grant similar privilege to the students of Gujarat University. It is this proviso which is material for purpose of determining the contention urged on behalf of the petitioner. The said proviso reads as under:

"Provided further that if any of the Universities in the State of Maharashtra recognises the term or terms kept by students at this University, the term or terms kept by a student at that University shall be recognised on a reciprocal basis."

The learned Advocate for the petitioner urged that this does not disentitle the University authorities to exercise their discretion in favour of a student migrating from any of the Universities in the State of Maharashtra from recognising the term or terms even if that University may not be recognising the term or terms kept by a student 9th the Gujarat University. It is no doubt settled on matter of principle and authority that the enactments expressing negative and prohibitory language are not always being treated absolute nor enactments expressing merely in affirmative language are always being treated as directory .In each case one must look to the subject matter, the importance of the provision and the relation of that provision to the general object intended to be secured by that. And then decide whether the enactment is imperative or directory (see Craies on Statute Law. Seventh Edition, page 262). It is not necessary for us to decide whether this provisions imperative or directory. in nature since in the ultimate analysis we have to find out as to which is the authority which has a power to condone the deficiency and what are the limitations on the power. We have examined the power so far as the Head of the Department or the Vice-Chancellor is concerned in relation to P. G. Rule 3-A. The learned Advocate for the petitioner, therefore, advanced alternative contention that the provisions contained in R. 3-A read with Ordn. 83-B are arbitrary, discriminatory and violative of the petitioner's fundamental right under Art. 14 of the Constitution. It was also urged that the I.I.T. having been recognised as an equivalent Institute, the petitioner's attendance at that Institute should be recognised by the Gujarat University. Now which examinations of the other Universities and Bodies have been recognised as equivalent to corresponding examinations of the Gujarat University have been prescribed under Regulation 5 framed by the Academic Council in exercise of its power under S. 22 of the Gujarat. Universities Act. Under Regulation I of these Regulations the recognition conferred by Regulation 5 is available only to those Universities and examining bodies which

reciprocate with the Gujarat University and applicable only to such students as have attended regular course of studies laid down for the examination at a college affiliated to the said University or at an Institute recognised by the Examining Body concerned. It is Regulation 4 which is relevant for our purposes which reads as under :

"R. 4. Notwithstanding anything contained in the foregoing Regulations, Academic Council shall have power on the recommendation of the Standing Committee on equivalence of examinations on the merits of each individual case to recognise a term or terms kept by a student in another University or Board for any examination, as equivalent to the corresponding terms at a college or colleges affiliated to this University, provided that the terms are of the same duration and that the migration of the student is due to communal disturbances, civil commotion or other causes of like nature."

Regulation 4 opens with a non obstante clause. Therefore, whatever has been provided in Regulations 1, 2 and 3 would not fetter the power of the Academic Council to recognise the term or terms kept by a student in another University or Body for any examination as equivalent to corresponding terms at a college or colleges affiliated to Gujarat University, provided the terms are of the same duration and the migration of the student is due to communal disturbances, civil commotion or other causes of like nature. It is in view of this provision that the third contention was urged by the learned Advocate for the petitioner. The effect of the conjoint reading of Regulations 1 to 4 is that the benefit of recognition granted to the examinations of other statutory Universities as equivalent to the corresponding examinations of the Gujarat University provided that such Universities reciprocate with the Gujarat University is subject to the overriding power given to the Academic Council to recognise a term or terms kept by a student at any other University which has no reciprocity with the Gujarat University as equivalent to the corresponding terms kept at the college of the Gujarat University, provided, however, the migration of the student is due to a cause of a general nature as that of communal disturbances, civil commotion or the like. The controversy is, whether the term "other causes of like nature" is to be, interpreted ejusdem generis. Mr. Mehta, learned Advocate for the petitioner, urged that the words "other causes of like nature" should not be construed as ejusdem generis since there is neither any common genus running through these named cases nor could they be placed in one single category on any rational basis and phrase "ejusdem generis" is merely not of the constructions and not a substantive law. On the other hand, on behalf of the respondents, it was urged by the learned Advocate Mr. Shelat that there is a clear indication in the category of specific causes mentioned in the Regulation that the case of migration should be a situation of disturbance or commotion affecting a large number of persons who may find it difficult to pursue their ordinary vocation or calling in life including studies. The very fact that the general words, namely other causes qualified by words "of like nature" clearly evinced the legislative intent that the cause of migration must have necessarily the characteristic of its impact being

far and wide involving disturbed condition in a locality or area. In Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , it is held that unless there is a genus or category, there is no room for application of the ejusdem generis doctrine. The rule of ejusdem generis is intended to be applied where the general words have been used following particular and specific words of the same nature on established rule of construction that the Legislature intended to use the general words in a restrictive sense as belonging to. Some genus or category as particularly specified. A restricted meaning is to be given in the context of the requirement of the whole scheme of the Act but where the context and the object of the this chief of the enactment do not require such a restricted meaning to be attached to the words of general import, it becomes the duty of the Court to give those words their plain and ordinary meaning. See: Lilavati Bai Vs. The State of Bombay, and Jage Ram and Others Vs. State of Haryana and Others, . It is in light of this settled legal position that we have to examine as to whether the other causes are to be interpreted according to the earlier specified restrictive causes or without regard to the earlier words. It is no doubt true that the general words "other causes" are qualified by words , of like nature. It is possible to argue as was sought to be done on behalf of the respondents that the nature of the cause must be disturbed conditions having wide ranging repercussions on the people in the locality. On the other hand it was contended that there is an inherent indication in the very Regulation 4 itself that words "other causes of like nature" should not be interpreted in light of the specified causes preceding them. Our attention was invited to the fact that the Regulation provides that the Academic Council shall act on the recommendation of the merits of each individual case by the Standing Committee on equivalence of the examination. It was emphasised on behalf of the petitioner that it is the merit of each individual case which has to be examined and determined upon in light of the recommendation of the Standing Committee of the equivalence of examination. The question of considering the merit of individual case would not prima facie arise, if its individual cause is not to be examined. It was, therefore, urged that the merits of each individual case is to be considered and examined. The words "other causes of like nature" are not restrictive- to the situation like civil commotion or communal disturbances. We do see some force in the contention of the petitioner. However, the matter has not been examined by the Academic Council which is the authority to recognise the term or terms of a student migrating from a University which has no reciprocal relationship with the Gujarat University. The third contention urged on behalf of the petitioner appears to have some merit in it, though we are not expressing any final "opinion over it. It would, therefore, be necessary to remit the matter to the Academic Council which shall decide, having regard to the recommendation of the Standing Committee about the merit of the individual case of the petitioner as to whether the petitioner was required to migrate on account of the cause prescribed in Regulation 4 and, therefore, entitled to his term kept at the I.I.T. at Bombay which is recognised as equivalent Institute to the Gujarat University under Regulation 5. The Academic Council shall, determine this question after giving an

opportunity to the petitioner to make a written representation, if he is so desirous, within two weeks from the date of this judgment and order, and in case it decides to recognise the term, declare the result of the petitioner which has been kept in the sealed cover pursuant to the interim order made by this Court.

10. Rule is made absolute accordingly with no order as to costs.

11. Order accordingly.