
(2000) 12 AHC CK 0028
In the Allahabad High Court
Case No : Special Appeal No. 603 of 2000

Pravesh Kumar

APPELLANT

Vs

Vice-Chancellor, B.H.U. and others

RESPONDENT

Date of Decision : 15-12-2000

Acts Referred:

General Clauses Act, 1897 — Section 3(56)
Income Tax Act, 1922 — Section 23, 26A

Citation : (2001) 1 AWC 498 : (2001) 1 UPLBEC 432

Hon'ble Judges : G.P. Mathur, J; Bhagwan Din, J

Bench : Division Bench

Advocate : A.P. Sahi, G.K. Singh and R.N. Singh, for the Appellant; V.K. Upadhyay, for the Respondent

Judgement

G. P. Mathur, J.—Having failed before the learned single Judge to get any relief, the writ petitioner has preferred the present special appeal.

2. Banaras Hindu University (hereinafter referred to as the University) has an Institute of Medical Sciences which imparts instructions for M.B.B.S. course. Post Graduate Courses for M.D. and M.S. degrees and super specialities leading to D.M. and M.Ch. degrees. There are 55 general seats besides 4 seats for foreign nationals in the M.B.B.S. course. The admission to M.B.B.S. course is done on the basis of a competitive examination known as Pre-Medical Test (for short PMT). The appellant claims to have applied and appeared in PMT-2000. The result of the said examination was declared on June 25, 2000 in which his name stood at serial No. 29 in the merit list. He was issued a call letter to appear for counselling on July 25, 2000. The admission committee, which consisted of five members of the Institute, found substantial difference in the handwriting on the application form submitted by the appellant with the handwriting on the documents which the appellant had filled in and signed at the time of counselling. The appellant was asked to explain the said discrepancy who gave in writing in his own hand that the application form had not been filled in by him

but had been filled in by his friend Mohd. Vakil Khan and it was he who had signed on the application form and admit card. The appellant was called again on July 18, 2000 and meanwhile opinion from a handwriting expert was obtained who opined that the handwriting on the aforesaid documents were of different persons. Thereafter the Director and Chairman of the Admission Committee of the Institute of Medical Sciences passed an order on July 21, 2000 cancelling the candidature of the appellant. This order was challenged by the appellant by filing the writ petition which was dismissed by the learned single Judge on August 24, 2000.

3. Sri R. N. Singh and Sri A. P. Shahi learned counsel for the appellant have submitted that the appellant having been allowed to appear in the entrance examination, the University was estopped from taking a plea that the writ petitioner Pravesh Kumar son of Sabhajit Singh did not himself appear in the examination and as such, the cancellation of his candidature is illegal. Learned counsel have also submitted that opinion of the handwriting expert was obtained behind the back of the appellant and the same was not shown to him and, therefore, the principles of natural justice have been violated. Lastly, it has been urged that University should have held an enquiry as to whether the appellant Pravesh Kumar had himself appeared in the entrance examination or someone else had impersonated for him and in absence of such an enquiry, the cancellation of his candidature was not proper.

4. Sri V. K. Upadhyay learned counsel for the University has, on the other hand, submitted that the appellant had himself admitted in writing that he had not filled in the application form and this fact was also admitted in the writ petition and, therefore, his candidature had been rightly cancelled. Learned counsel has also submitted that the admission committee obtained the opinion of the handwriting expert by way of abundant caution and it was not at all necessary to confront the appellant with the said opinion before taking the decision of cancellation of his candidature. Sri Upadhyay has further submitted that the principles of estoppel can have no application in a case where a fraud has been committed and an impostor had appeared in examination.

5. The application form for appearing in PMT-2000 examination of the University was contained in an Information Booklet and anyone desirous of appearing in the said examination had to obtain the said Information Booklet on payment of a prescribed fee of Rs. 500 which included the examination fee. Para 10 of the booklet contains instructions for filling in the application form and para 10.1 reads as follows :

"All the particulars in the application form must be written carefully and legibly by the candidate in his/her own handwriting and should be accompanied with the following ;"

The application form contains separate sheets which have been described as Form "A", Form "B". Form "C" and Form "D". The first sentence in the Forms "A"

and "B" are identical and they are being reproduced below in the same manner (including bold letters) :

"To be filled by the candidate in his/her own hand writing by ball point pen (please read the Information Booklet and the forms carefully before filling in)."

On the back of both these Forms, there is a column described as "Undertaking by the Candidate" which is being reproduced below in the same manner in which it is printed in the Forms :

"I.....declare that I have read the rules as given in the Information Booklet and that all the Information furnished herein are true. All attested/certified true copies of certificates/marks sheets are attached. In case any Information furnished by me as above is found wrong, my candidature for the PMT/PAT Examination/Selection to the Course may be cancelled outright and disciplinary action taken against me. I declare that I am an Indian National.

Date

Place

Full Signature of the Candidate

(To be signed by the candidate only)"

Thereafter there is a column enumerating the order in which the Forms and certificates, etc. have to be annexed and below that there is space for full signature of the candidate with the rider-to be signed by the candidate only--as provided beneath the undertaking.

Form "C" in the application form is the Registration Card and on the top of the Form there is a writing to the following effect :

"All entries below are to be filled in completely by candidate in his/her handwriting by Ball Pen."

Column 9 of this Form is as under :

"Specimen Signature of the candidate (do not sign in capital letters)".

Column 10 which has to be filled in the examination hall is a blank space where a candidate has to put his/her signature during the entrance test. In Form "D" after filling in 13 blank spaces, an undertaking is to be given by a candidate and the same is being reproduced in the manner it is printed in the Form :

"I hereby declare that all the particulars stated above have been filled in my own handwriting and that the informations given by me in the application are true and no relevant fact has been suppressed. I have read the information booklet and satisfied myself that I fulfil all the PMT/PAT-2000 eligibility requirements.

Full Signature of Candidate"

As shown above, the column 10.1 of the Information Booklet clearly provides that all the particulars in the application form must be written by the candidate in his own handwriting. This was reiterated in Form "A", Form "B" and Form "C". The words "own handwriting" have been printed in bold letters in the Forms. On the back of Forms "A" and "B", the candidate has to give an undertaking and has to put his full signature at two places in both the Forms. In Form "D" the candidate has to give declaration that all the particulars had been filled in by him in his own handwriting and had to sign the said declaration.

6. When the admission committee found difference in the handwriting and the signature of the appellant in the Forms and the documents which he had filled in at the time of counselling on July 15, 2000 from that on the application form (Forms "A", "B", "C" and "D") and also the signature of the candidate which was obtained during the entrance test, the appellant was confronted with the said fact and he was asked to explain the same. He then gave an application in writing and the relevant part of the same reads as follows :

"Respectfully I beg to say that I was preparing for entrance exam. in Delhi, as the last date to submit B.H.U. Form was 15.3.2000 and unfortunately I could not get B.H.U. Form in Delhi. So on my request, my friend Mohd. Vakil Khan filled up my form in his own handwriting and signed for me on the admit card and application form....."

In para 4 of the writ petition, it is stated as under :

".....At this place, it is relevant to point out that the petitioner did not fill up the application form in his own handwriting. His application was filled up by one of his friends...."

The admitted case of the appellant, therefore, is that he did not fill up the application form nor signed the same and it was filled in by a third person who wrote the name of the appellant Pravesh Kumar at all the relevant places where the candidate was required to put his signature. Para 17 of the Information Booklet provides that if it is detected that there is something against the candidate which would have prevented him/her from being admitted to the concerned institute for providing false information, his candidature shall not be considered and his provisional admission shall be liable to be cancelled. In Form "D", a declaration is required to be given by the candidate that all particulars stated therein had been filled in his own handwriting and the informations given in the application form are true. This declaration is also required to be signed by the candidate. It is, therefore, not in dispute that the appellant had neither filled in the form in his own handwriting nor had put his signature at any of the six places in the application form. The declaration contained in the application form is, therefore, completely false and in view of para 17 of the Information Booklet, the candidature of the appellant was liable to be cancelled. The appellant was afforded an opportunity to explain the difference in handwriting which he did by giving his explanation in writing. He has admitted both in his explanation as also

in the writ petition that the application form was neither filled in by him in his own handwriting nor was signed by him. In view of this clear admission, there was no requirement of giving him any further opportunity and no breach or violation of principles of natural justice have been committed. The admission committee was, therefore, perfectly justified in cancelling the candidature of the appellant.

7. The problem can be examined from another angle. The requirement of the application forms (Forms "A", "B", "C" and "D") was that a candidate had to put his full signature at six places. It was also emphasised therein that it had to be signed by the candidate only. The word "signature" has not been defined in any statute and, therefore, it will be useful to refer to the dictionary meaning of the word which is as follows :

Wharton's Law Lexicon

written by himself either in full or by initials as regards his Christianfull as regards his sir name or by initialsonly;

Black's Law Dictionary

The act of putting ones name at the end of an instrument to attest its validity ;

Words & Phrases

Signature mentions person's name as se down by himself ; th name of a perso written by himself, an thus to be nearly an< exact synonym o autograph :

Webster's Third New International Dictionary

The name of a person written with his own hand to signify that writing which precedes accords with his wishes or Intentions ; the act of signifying one's name.

The dictionary meaning of the word "signature", therefore, shows that in order to constitute a signature, one has to write his own name with his own hand. If someone's name is written by a third person, it cannot amount to his signature.

8. In Vol. 80 Corpus Juris Secundum in the Chapter dealing with "Signature" the definition of the term is given in para 1 which is as under :

"The word "sign" used as a verb, may be defined to mean to affix a signature ; to ratify by hand or seal ; to subscribe in one's own handwriting. The word "signature" may be defined as a name, mark or sign affixed to, or made on, an instrument or document in token of knowledge, approval, acceptance, or obligation.....

.....A signature consists both of the act of writing the person's name and of the intention of thereby finally authenticating the instrument."

In Para 5, it has been stated that a signature may be made by hand of the purported signer either by his unaided effort or with the aid of another. It seems

that the position world over is that in order to constitute a valid signature, it must be in one's own handwriting. Writing of someone's name by a third person can in no case amount to his signature.

9. Section 3(56) of the General Clauses Act, defines "sign" and it reads as under :

"3 (56) "Sign", with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions."

In Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal, , the Court examined the validity of a return by an illiterate assessee which was signed by the pen of his son, with reference to Section 24 of the Bengal Agricultural Income Tax Act and requirement of clause (a) of footnote to Form No. 5 of the Act which specifically required that declaration in the return shall be signed "in case of an individual by the individual himself", i.e., personally and not by an agent. Though it was a wholly bona fide act of the son, but Court held that it was not a return by the assessee. In Paras 20 to 22 of the reports, following observation was made :

".....The omission of a definition of the expression "sign" so as to include the signature of an agent, the presence of the provisions permitting only certain specified acts, other than signing, to be done by or through an authorised agent are significant and indicate that the intention of the Legislature is not to permit signature by an agent.....

.....Accordingly, the declaration in the form of return signed by the illiterate assessee by the pen of his son, when there is no physical contact between the assessee and the signature on the return, cannot be treated as properly signed and a valid return.....

.....It is quite true that when signature by an agent is permissible, the writing of the name of the principal by the agent is regarded as the signature of the principal himself. But this result only follows when it is permissible for the agent to sign the name of the principal. If on a construction of a statute signature by an agent is not found permissible then the writing of the name of the principal by the agent however clearly he may have been authorised by the principal cannot possibly be regarded as the signature of the principal for the purpose of that statute. If a statute requires personal signature of a person, which includes a mark, the signature or the mark must be that of the man himself. There must be physical contact between that person and the signature or the mark put on the document."

10. In M/s. Hindustan Construction Company v. Union of India. AIR 1965 SC 526 , it was observed that Section 3(56) of General Clauses Act has not defined the word "sign" but has extended its meaning with reference to a person who is unable to write his name to include "mark" with its grammatical variations and cognate expressions and this provision indicates that signing means writing

one's name on some document or paper. In *Ravula Subba Rao and Another Vs. The Commissioner of Income Tax, Madras*, it was held that object of Section 2 of Power-of-Attorney Act, 1882 is to effectuate the instrument executed by an agent and it presupposes that agent has the authority to act on behalf of the principal and protects acts done by him in exercise of that authority but in his own name. It was further held that as the Indian Income Tax Act, 1922 was a self-contained Code, a firm to get the benefit of Section 23 [5] (a) of the Act must be registered u/s 26A in accordance with the conditions laid down in that section and the rules framed thereunder and as per those rules and regulations, the application had to be signed by the partner in person, the signature by an agent on his behalf was invalid. The legal position is therefore, well-settled that where the law permits an agent to act on behalf of his principal, the signature of such an agent in that capacity will be deemed to be that of the principal and will bind him but where the law does not permit such a course of action, the signature must be of the person himself which implies that there must be physical contact between that person and the signature or the mark put on the document.

11. In the case in hand, the information brochure and the application form emphasised in bold letters that the forms should be filled in by the candidate himself in his own handwriting and bear his signature. The word "only" after the expression--to be signed by the candidate--clearly implies that it was the candidate alone who could sign the form and nobody else. Thus there was no question at all of a third person signing the application forms. Since on the own admission of the appellant, he did not put his signature on the application form, the application form purporting to have been submitted by Pravesh Kumar son of Sabhajit Singh cannot be accepted as an application form by the appellant himself. In law it would mean that the appellant never filled in the forms and never applied for admission to the M.B.B.S. course. In this view of the matter, the appellant who filed the writ petition and has preferred this special appeal was never a candidate for getting admission in the course. Consequently, the relief claimed by the appellant that a writ of mandamus be issued commanding the respondents to grant him admission in 1st year M.B.B.S. course cannot be granted.

12. Learned counsel for the appellant has submitted that the photograph of a candidate is affixed on the application form and, therefore, it is not possible for someone else to appear in the entrance test. Sri Upadhyay learned counsel for the University has submitted that after the examination is over, change of photograph in the admission form in the office of the University or in some other centre in connivance with some lower staff is not a very difficult job especially for those who were adopting dubious methods and fraudulent means to get admission. Medicine is a very sought after course of study in India as it is a very lucrative and secure profession. The seats available for general candidates in the State run Medical Colleges is very small and consequently, the competition for such seats is extremely tough. It is well-known that on account of this feature,

some private Medical Colleges charge fabulous money as capitation fee which is anything between Rs. 10 lacs to Rs. 30 lacs, besides a very heavy tuition fee every year and hostel charges. The newspapers and media often come out with reports regarding bungling in the entrance examinations held for the purpose of admission to State Medical Colleges. The entrance examination conducted for admission to the State Medical Colleges in U. P. have been cancelled several times in the past on account of wrong methods adopted by the people at the highest level to grant admission to undeserving candidates. The Institute of Medicine of B.H.U. has been rated as the third best amongst all the Medical Colleges in the country in terms of research output and publication in prestigious journals in a survey published in British Medical Journal and National Medical Journal of India (page 2 of the Information Booklet). The Institute has an added advantage on account of its reservation policy. There are 55 seats in M.B.B.S. course but 84 seats in Post Graduate Courses for M.D., M.S., etc. and after excluding twenty-five per cent seats for all India quota, there are 63 seats left for internal candidates. This policy came up for consideration before a Division Bench of which one of us [G. P. Mathur, J.] was a member in Banaras Hindu University and another Vs. Dr. Deepak Kumar Singh and another, Thus everyone securing a M.B.B.S. degree from B.H.U. is automatically assured of admission in a post graduate course which is otherwise very difficult admission to such a course is made on the basis of a Post Graduate Medical Entrance Examination. Thus there is considerable force in the contention of Sri Upadhyay that for a candidate like the appellant the replacement of photograph in the office of the University or examination centre after the examination is over is not a very difficult job as many things can be achieved in this country by spending money.

13. As mentioned in the earlier part of the judgment, the admission form emphasised at many places that it should be filled in by a candidate himself and he was also required to put his signature at five places. The reason for such a requirement is that handwriting is a far surer method to prevent impersonation and foul play at the time of entrance examination than a photograph which can be conveniently replaced. The members of the admission committee and also the handwriting expert were of the opinion that handwriting of the appellant Pravesh Kumar son of Sabhajit Singh does not tally with that on the answer sheets. It may also be mentioned here that in the explanation given before the admission committee on July 15, the appellant stated that he was preparing for the examination in Delhi and as he could not get a B.H.U. form in Delhi and the last date was March 15, he requested his friend Mohd. Vakil Khan to fill up the form who did it in his own handwriting. The advertisement published in the newspaper mentioned that the admission forms would be available in the branches of Banaras State Bank Ltd. at Connaught Place and Daryaganj in Delhi. In Para 5 of the counter-affidavit (filed along with the application dated November 22, 2000 in the special appeal), it is stated that many unsold admission forms were returned by the banks at Delhi to B.H.U. It is also noteworthy that the application form of the appellant bears the date "7.3.2000" and the place where it was filled

in and signed as "Delhi". It is also not understandable as to how Mohd. Vakil Khan, who was in Allahabad, had in his possession the photographs, copies of High School certificate, intermediate mark-sheets and good conduct certificate, etc. of the appellant, which were attached along with the application form. These facts completely belie the case set up by the appellant.

14. The contention raised on the principle of estoppel has hardly any substance. The handwriting and also the signature of the candidate which were obtained at the time of the entrance examination do not tally with the handwriting of the appellant. It has been submitted by the learned counsel for the University that the entrance examination was conducted at large number of centres in different places and in different cities as the number of candidates ran in thousands. By the mere fact that someone was allowed to appear in the examination impersonating as Pravesh Kumar son of Sabhajit Singh, it cannot be said that University made any such representation on account of which the appellant altered his position to his disadvantage. Fraud vitiates most solemn transaction and estoppel, which is a principle of equity, would not come into play in such circumstances. Similarly the contention of the appellant that he lost opportunity of getting admission in Bharti Vidyapeeth, Pune, which appears to be a donation college, can be of no avail to the appellant.

15. The case of the appellant is based upon fraud and forgery. The appellant did not rest content after discovery of the fraud by the admission committee and chose to file a writ petition. He did not rest content even after dismissal of the writ petition and chose to file the present special appeal and dragged the University into litigation. We do not mean to say that the University should not follow the law or that it is above the law but at the same time, it should not be unnecessarily dragged into litigation. A University is an institution of higher learning providing facilities for teaching and research and is authorised to grant academic degrees. It expands knowledge across the entire spectrum of disciplines and is needed for imaginative solutions to the problems of society. In fact the future of country very much depends upon the quality of education being imparted and research being carried out in the Universities. If academic Institutions of eminence are compelled to defend large number of court cases, it is bound to affect the research and teaching which is their primary object as the Director of the Institute and others will have to spend their time and energy in defending cases. This case, therefore, calls for a serious view being taken and some exemplary punishment being imposed. However taking a lenient view, we dismiss the special appeal with cost of Rs. 10,000 which shall be paid by the appellant within two months. If the appellant does not pay the cost within the aforesaid period, it will be open for the University to apply to the Collector. Varanasi to recover the amount from him as arrears of land revenue.