
(2017) 03 MP CK 0020
In the Madhya Pradesh High Court
Case No : Writ Petition No.1149 of 2016

Pritma Joshi

APPELLANT

Vs

Barkatullah Vishwavidyalaya

RESPONDENT

Date of Decision : 23-03-2017

Acts Referred:

Citation : (2017) 2 JLJ 6 : (2017) 3 MPLJ 86 : (2017) CJ 1068 (MP)

Hon'ble Judges : Shri R.S. Jha and Shri A.K. Joshi, JJ.

Bench : Division Bench

Advocate : Shri Sanjay K. Agrawal, Advocate, for the Petitioners; Shri Mahendra Patariya, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Shri R.S. Jha, J.—The petitioners conjointly have filed this petition being aggrieved by order dated 14.3.2015 by which the petitioners have been informed that the thesis submitted by them for award of Ph.D Degree has been rejected under Clause 17(C) of Ordinance 14 prevalent in the respondent University.

2. The impugned order has been challenged on the assertion that the petitioner no.1 applied for and was permitted to undertake research work on the topic Genetic Analysis of Patients with Sex Linked Disorders/Characters (G6PD Deficiency, Hemolytic Anemia and Neonatal Jaundice in Bhopal) under the Department of Anatomy from Gandhi Medical College, whereas petitioner no.2 applied for and was granted permission to undertake research work for award of Ph.D on the topic Genetic Analysis on progenies of MIC Gas Exposed Individuals from the Department of Anatomy in the faculty of Medicine from Gandhi Medical College, Bhopal.

3. Shorn of verbiage and the other irrelevant facts mentioned by the petitioners. It is stated that the petitioners ultimately submitted their thesis for award of Ph.D Degree on 7.9.2012 along with the necessary fees. It is stated by the petitioners that during the entire period that they were pursuing their research

work several impediments were created by the authorities on account of which the petitioners had to approach this Court on three previous occasions. It is stated that ultimately, only on account of the contempt notice issued by this Court, the respondent authorities sent the thesis to two expert examiners for their opinion. It is stated that while one examiner recommended acceptance of the thesis submitted by the petitioners the second examiner recommended that it be rejected. It is stated that since there was a difference of opinion between the two expert examiners, the matter was thereafter referred to a third external examiner who has submitted a report.

4. The petitioners submit that the respondent authorities, by the impugned communication, informed the petitioners that the thesis which had been submitted by them had been rejected by the third examiner also, however when the petitioners obtained the opinion of the third examiner, they found that the third examiner had in fact not recommended rejection of the thesis but had recommended that the thesis be revised and an opinion of the genetic expert be obtained. It is submitted that the petitioners approached the authorities for appropriate relief in this regard but as their request fell on deaf ears, they have approached this Court by filing the present petition.

5. The learned counsel for the petitioners has taken this Court extensively through the report submitted by the third examiner which have been annexed along with the petition on pages 55 to 62 of the petition in respect of petitioner no.1 and pages 74 to 81 of the petition in respect of petitioner no.2. The learned counsel for the petitioners has also taken us through the note affixed by the third examiner on page 60 of the petition in respect of petitioner no.1 and page 79 of the petition in respect of petitioner no.2 wherein the third examiner has appended a note in the column dealing with recommendation of the thesis for revision.

6. The learned counsel for the petitioners pointed out that a bare perusal of the note in the case of both the petitioners that has been made by the third examiner makes it apparently and abundantly clear that the third examiner has given an opinion that both the thesis should be sent to some Genetic expert examiner for expert opinion. It is submitted that in such circumstances, as the third examiner has not rejected the thesis of the petitioners but has recommended the same for revision and as the opinion of the third subject expert is final and binding as provided under Clause 17(C) of the Ordinance, therefore, the authorities should in fact have sent the thesis of the petitioners back to the petitioners for revising the same and submitting it afresh instead of issuing the impugned order rejecting their thesis.

7. The learned counsel for the petitioners points out that this Court on the previous occasion, finding ambiguity in the opinion of the third examiner, had directed the respondent University to file an affidavit of the third examiner clarifying her opinion but no such affidavit has been filed and in such circumstances the thesis filed by the petitioners be allowed and the respondent

University be directed to permit the petitioners to revise their thesis and resubmit the same in accordance with the recommendation of the third examiner.

8. The learned counsel for the respondent University, per contra, submits that as there was a difference of opinion between the two examiners, the matter was referred to the third subject expert under Clause 17(C) of Ordinance No.14 of the University. It is stated that a bare perusal of the opinion and recommendation submitted by the third subject expert on page 57 of the petition in respect of petitioner no.1 and page 76 to the petition in respect of petitioner no.2, makes it clear that in respect of both the petitioners, the third examiner has specifically stated that the thesis are not recommended for acceptance or award of Ph.D degree. The learned counsel for the respondent University submits that even if the notes on which reliance has been placed by the learned counsel for the petitioners are examined, it is evident that the third examiner in respect of both the petitioners has stated that the thesis suffers from several deficiencies and that in the present state the thesis is not recommended for acceptance or award of Ph.D Degree. It is also stated that the perusal of the note made by the third examiner also indicates that the third examiner has also not recommended the thesis for revision as submitted by the learned counsel for the petitioners.

9. It is also stated that as the thesis of the petitioners were not recommended for acceptance by the third examiner, therefore, the authorities have rejected the same and communicated this fact to the petitioners vide the impugned order which cannot be found fault with. It is submitted that in such circumstances no case is made out for interference by this Court in the present petition.

10. We have heard the learned counsel for the parties at length. Before we deal with the facts and documents on record, it is pertinent to take note of the fact that this Court had directed the respondent University to obtain a clarificatory affidavit of the third examiner, pursuant to which it is informed by the learned counsel for the respondent University that letter and communication dated 27.1.2017 and other letters were issued to the third examiner Dr. Alka Udainta, Assistant Professor, Anatomy. It is stated that in spite of repeated requests to the said Professor, she has not sent any clarificatory affidavit to the University on the ground that she was not a party in the present petition.

11. The learned counsel for the respondent University submits that as the University was not able to obtain a clarificatory affidavit from the aforesaid third examiner in spite of their best efforts, they have filed an affidavit of the Deputy Registrar of the University to the effect that the third opinion submitted by the third examiner has been examined and as there is no recommendation for award of Ph.D Degree to the petitioners, therefore, the same has been rejected.

12. In the aforesaid facts and circumstances, we proceed to examine the matter on the basis of the facts and documents on record.

13. The only issue involved in the present petition relates to understanding the import of the expert opinion given by the third examiner. For this purpose we

have carefully read and examined pages 57 and 60 of the petition which relates to the recommendation made by the third examiner in respect of the petitioner no.1 and pages 76 and 79 of the petition which relate to recommendation of the third examiner in respect of petitioner no.2. On pages 57 and 76 the third examiner, in the cases of both the petitioners, has clearly stated that the thesis is not recommended for award of Ph.D Degree by writing a categorical "No" in respect of both the petitioners. After writing "no" regarding recommendation for award of thesis, the third examiner has stated that the number of cases examined by both the petitioners is less and the study undertaken by the petitioners in their thesis is very old nor are the tests applied by the petitioners, for arriving at their conclusion, up to date. While stating the aforesaid, the examiner has also stated that the thesis requires an expert opinion by a Genetic expert.

14. As far as the contention of the petitioners in respect of the note made by the third examiner in the column relating to recommendation for revision in respect of both the petitioners on pages 60 and 79 of the petition in respect of petitioner nos.1 & 2 respectively is concerned, it is clear that in respect of petitioner no.1, the examiner has again reiterated the same deficiencies in the thesis as stated by her on page no.56 of the petition and has thereafter given an opinion that the matter should be sent to a Genetic expert. Ironically, the third examiner has not given any recommendation for revising the thesis, though this note is written in the column relating to revision. On the contrary, as far as the recommendation for grant of Ph.D Degree is concerned, the third examiner on page 57 relating to petitioner no.1 has categorically stated that the thesis is not recommended for award of Ph.D Degree.

15. As far as petitioner no.2 is concerned, in her case also the third examiner has not recommended the thesis for award of Ph.D Degree on the ground that it requires expert opinion by a Genetic expert, number of case are less, study is very old, test used are not upto date and it does not have clinical co-relation as is evident from page 76 of the petition. At the same time, while making a note in the column relating to revision, which is on page 79 of the petition, the third examiner has again pointed out the same defect mentioned by her in the thesis submitted by petitioner no.2 on page 76 and at the same time she has clearly stated that at present this thesis is not fit for Ph.D. Award. In the case of petitioner no.2 also, the third examiner while doing so has stated that in her opinion, it should be sent to some Genetic expert also for his valuable suggestions.

16. However, as in the case of petitioner no.1, the third examiner has not recommended the thesis for revision nor has she deferred from the specific opinion given by her that the thesis is not recommended for award of Ph.D by stating "no" in her recommendation which is evident from a perusal of page 76 of the petition.

17. In the backdrop of the aforesaid facts and circumstances, when the opinion

of the third expert is extensively examined, it is observed that the third examiner has clearly stated that the thesis submitted by the petitioner is not fit for award of Ph.D Degree. It is also evident from the recommendation of the third examiner that she has also not recommended the thesis submitted by the petitioners for revision as stated by the learned counsel for the petitioners as there is no opinion in respect of revising the thesis in the report of the third examiner. It is also apparent from a perusal of the report of the third examiner that while she has expressed the opinion that the matter should be examined by a Genetic expert, however, in spite of voicing the said opinion, she has not recommended revision, nor has she deviated or explained her opinion to the effect that the thesis are not recommended for award of Ph.D Degree.

18. It is pertinent to note that in the instance case, all the three examiners who have examined the thesis of the petitioners were Professors and Head of Departments in the subject of Anatomy and in fact are Supervisors under which the petitioners undertook preparation of the thesis were also Professors in the subject of Anatomy and in such circumstances we fail to understand as to why and for what reason did the third expert express the opinion that the matter should be referred to a Genetic expert, when all concerned have the same qualifications, were competent and experts in the field.

19. We would be failing in our duty if we do not record the fact that in spite of our specific orders, the third examiner did not submit a clarificatory affidavit or furnish information in that regard to the respondent University for placing before this Court. This fact when read with the kind of confusion that she has created compels us to observe that the respondent University is required to seriously think as to whether they should utilize the service of such an examiner in future as it has caused unnecessary confusion and hardship to the parties involved moreso as in spite of seeking a clarification from her and sending a written report to her, she has failed to submit any such clarification.

20. Be that as it may, in view of the facts on record, as we are of the considered opinion that the third examiner has not recommended revision of the thesis and has in fact clearly stated that the thesis is not fit for being recommended for award of Ph.D., no fault can be found with the impugned order issued by the respondent University rejecting the thesis submitted by the petitioners.

21. In view of the aforesaid analysis and in view of the facts and circumstances of the case, the petition, filed by the petitioner, being meritless is accordingly dismissed.

There shall be no order as to costs.