

(1981) 09 AHC CK 0017

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8154 of 1979

Satish Kumar Rao and Others

APPELLANT

Vs

Gorakhpur University

RESPONDENT

Date of Decision : 01-09-1981

Acts Referred:

Evidence Act, 1872 — Section 101, 102, 103, 104, 115

Citation : AIR 1981 All 377

Hon'ble Judges : V.K. Khanna, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : R.S. Misra and R.P. Misra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agrawal, J.—These 13 petitioners in this petition have sought Mandamus directing the Gorakhpur University to allow them to appear at the 5th semester examination of LL. B. Part III conducted by the said University and to declare their results.

2. The petitioners joined LL. B. course of the Gorakhpur University in Sant Vinoba Degree College, Deoria, which was affiliated to the Gorakhpur University, Gorakhpur. They appeared at the LL. B, Part I examination of the Gorakhpur University in 1977. On the declaration of the result, petitioners 1 to 11 were found to have failed while petitioners 12 and 13 were found eligible to appear at the supplementary examination in one of the papers. Petitioners 1 to 11 claimed that a joint application was filed by them to the Registrar, Gorakhpur University, for revaluation of their answer books of the subjects in which they had failed. Petitioners 12 and 13 appeared at the supplementary examination. The petitioners' assertion made in the writ petition was that by the revaluation petitioners 1 to 11 were found to have passed LL. B. Part I examination and, as such, were issued fresh mark sheet whereas petitioners 12 and 13, who had appeared at the supplementary examination, were also supplied fresh mark

sheets showing them having succeeded in the supplementary examination. On the basis of their results in LL. B. Part I, the petitioners joined LL. B. Part II in Sant Vinoba Degree College, Deoria, and appeared at the 3rd and 4th semester examination of LL. B. Part II in 1978. They had passed LL. B. Part II, the result of which was declared in May, 1979. After passing LL. B. Part II, the petitioner took admission in LL. B. Part III and paid the examination fee for appearing at the 5th semester examination of LL. B. Part III.

3. In the first week of October 1979, the petitioners, excepting petitioner 12, received notices from the Registrar, Gorakhpur University, calling upon them to show cause why the permission granted to them for appearing in LL. B. Part III examination be not cancelled, on the ground that they had not passed LL. B. Part I, and, as such, were not qualified to appear at LL. B. Part III examination. A similar notice was received by petitioner 12 on 10-10-1979. The petitioners, excepting petitioner 12, submitted their explanation on 5-10-1979 and refuted the charge that they had not passed the LL. B. Part I examination. Petitioner 12 submitted his explanation subsequently.

4. These petitioners, thereafter, filed the present writ petition on 12-10-1979 along with an application for stay. The writ petition was admitted on the aforesaid date and the respondent Gorakhpur University was directed to permit the petitioners to appear at the 5th semester examination of LL. B. Part III. In pursuance of the said stay order, the petitioners appeared at the LL. B. Part III examination.

5. Two counter-affidavits have been filed in this writ petition; one by the Principal of the Sant Vinoba Degree College, Deoria, and the other by the Deputy Registrar on behalf of the Gorakhpur University. The University has controverted the petitioners' allegations made in the writ petition and has denied that the petitioners had passed LL. B. Part I examination. The allegations made in this counter-affidavit were that petitioners 1 to 11 had wrongly alleged in the writ petition that they had filed a joint application for revaluation of their marks. About petitioners 12 and 13, the University admitted that they had appeared at the supplementary examination of LL. B. Part I in the year 1977, but they again failed in it. The stand of the University was that the copies of petitioners 1 to 11 were never revalued and that they had never been supplied fresh mark sheets different from those initially given declaring these petitioners as having failed at the LL. B. Part I examination. Regarding petitioners 12 and 13, the stand of the University was that they failed even at the supplementary examination, and hence there was no question of their being supplied mark sheets declaring them as having passed LL. B. Part I examination. With regard to the mark sheets on which the petitioners have built up their entire case, the University alleged that an enquiry was launched by the University and it was found that :

"On the basis of these forged mark sheets, an enquiry was set up and after enquiry it was found out that the petitioners had manufactured certain signatures on the alleged letters authorising the Principal of Sant Vinoba Degree College,

Deoria, to issue duplicate mark-sheets after correcting the marks of the petitioners. However, in the University records there is nothing to the effect that the University had sent any letter to the Principal of the College for issuing corrected mark-sheets to the different petitioners. In the said enquiry it was further detected that the petitioners had used the University letter heads and had forged the signatures of the University officials, and on the basis of these letters had obtained the mark sheets from the Principal of Sant Vinoba Degree College, Deoria. The photostat copies of the said letters would be produced before this Hon"ble court at the time of hearing of this writ petition.

It is further stated that the alleged mark sheets which were obtained from the College do not declare the petitioners to have passed the LL. B. Part I examination of the year 1977. The alleged mark sheets appear to have been fabricated and got manufactured. In the University record, the tabulation chart of the results of the petitioners shows that in fact, they had been declared to have failed in the LL. B. Part I examination. Annexures 1 to 13 filed along with the writ petition do not give any right to the petitioners inasmuch as these mark sheets are the results of forgery and manipulation."

6. During the course of enquiry, it was further revealed that the above mark sheets were issued by the two officials of the University, namely, Gyan Bajpai and Gopi Krishna, but these officials informed the University that their signatures had been forged. From the dispatch section of the University office, it was also revealed that in the despatch register no entry of such letters was made.

7. With regard to petitioners 12 and 13, Brijesh Kumar and Awadhesh Singh respectively, who appeared at the supplementary examination of LL. B. Part I in the year 1977, the averment of the University was that since they had failed in the supplementary examination there was no question of issuing any mark sheets to them showing that they had passed LL. B. Part I examination. Their marks obtained in the tabulation chart of the supplementary examination showed that they had not succeeded in securing marks which could entitle them to be declared as having passed in the examination.

8. These averments made in the counter-affidavit have been denied in the rejoinder-affidavit by the petitioners by asserting that they had no hand in procuring of the new mark sheets, and that petitioners 1 to 11 had applied for revaluation.

9. Having heard counsel for the parties, the first question that is required to be considered is whether the petitioners 1 to 11 had been issued fresh mark sheets declaring them as having passed at the examination of LL. B. Part I, The fact that the petitioners could be eligible to appear at the LL. B. Part II and LL. B. Part III examinations only when they had passed LL. B. Part I, could not be and was not disputed before us. The petitioners relied upon the mark sheets which, according to them, had been issued by the Sant Vinoba Degree College. The petitioners' counsel urged that the said Degree College, which was affiliated to the

Gorakhpur University, was the agent of the University and even if the mark sheets issued by the Degree College were wrong, the respondents were estopped from making representation different than that which had been made by issuing fresh mark sheets to the petitioners. The argument, in fact, was that of estoppel against respondent 1.

10. We may first consider the factual aspect of the controversy which had been raised in this petition. The said controversy, as stated above, was whether respondent 1 had issued fresh mark sheets to the petitioners on the strength of which they had appeared at the LL. B. Part II examination and were thereafter entitled to appear at the LL. B. Part III examination.

11. Section 7 of the U. P. State Universities Act, 1973, deals with the powers and duties of the University. Sub-section (4) of the aforesaid section entitles the University to hold examination and to grant and confer degrees, diplomas and other academic distinctions to and on persons who have pursued a course of study in in the University or an affiliated College. In pursuance of this power the examinations are held by the University and. all the affiliated Colleges are required to follow the instructions and guidance in that connection given by the University to which it is affiliated from time to time. The Gorakhpur University had framed its Ordinances. Ordinance 23 deals with scrutiny. It lays down that any candidate who has appeared at an examination conducted by the University, could apply to the Registrar for the scrutiny of marks and rechecking of his result. All such applications are required to be accompanied by a fee of Rs. 10/-.

12. In the instant case, the petitioners claimed that petitioners 1 to 11 had filed a joint application to the Registrar for revaluation. The stand of the petitioners 1 to 11 that they had filed a joint application is false and untrustworthy. There is no procedure for filing a joint application. Each one of the students appearing at the examination has his right independent of others. He is required to move an application separately if he desires revaluation of his marks. The application has to be accompanied by a fee of Rs. 10/-. There is nothing in the petition stating that any fee had been deposited by petitioners 1 to 11. It is unbelievable that the petitioners 1 to 11 had made a joint application and that too without payment of fee.

13. Regarding issuing of the mark sheets after revaluation, we have quoted in extenso the averments made by the University in the counter-affidavit. It is clear from the facts stated in the counter-affidavit that the marks of the petitioners 1 to 11 had not been revalued and that there was therefore, no question of issuing fresh mark sheets declaring them to have passed. The stand of the University that the petitioners had got duplicate mark sheets issued from the Principal of the College on the basis of forged letters, appears to be correct and trustworthy. It was on the basis of the forged letters issued on the letter heads of the University to the Principal that the petitioners succeeded in getting fresh mark sheets declaring them to have passed. The Gorakhpur University had not issued any mark sheets different from that initially given to these petitioners. In fact, as

no revaluation had been made, there was no question of fresh mark sheets being given to the petitioners on that basis.

14. So far as petitioners 12 and 13 are concerned they had appeared at the supplementary examination. They failed in the supplementary examination. The tabulation chart of the supplementary examination maintained in the University showed that these two petitioners had not passed at the supplementary examination. There was, therefore, no question of issuing any mark sheets to these two petitioners showing that they had passed LL. B. Part I examination.

15. Having cleared the factual aspect of the matter we come to the legal arguments raised by the petitioners' counsel. The submission was based on estoppel which the petitioners' learned counsel chose to call as promissory estoppel.

16. The estoppel relied upon is a product of an equitable doctrine. In Commissioner of Income Tax (Central) Vs. B.N. Bhattacharjee and Another, , Krishna Iyer, speaking for the Court said:-- (at p. 1738)

"What in essence, is estoppel? Estoppel is a rule of equity which forbids truth being pleaded or representation, on which faith, another has acted to his detriment being retracted. Even extending the rule into the newfangled empire of promissory estoppel, it cannot go beyond the limits of the Law Revision Committee in England which Lord Denning allowed to blossom in the High Trees case (1947) 1 KB 130, also see "Discipline of Law by Lord Denning" P. 202.

"We therefore recommend that a promise which the promisor knows, or reasonably should know will be relied upon by promisee, shall be enforceable if the promisee has altered his position to his detriment in reliance on the promise."

17. Estoppel presupposes equity in the represented. The further requirement is that he who raises an equitable estoppel must do equity himself. In a recent New Zealand case Re Goile Ex. P Steelbuild Agencies Ltd. (1963) NZLR 66, (CA), a debtor arrived at an arrangement with his creditor whereby the creditor undertook to release him on payment forthwith of a sum smaller than due under the agreement. The debtor did not fulfill his part of the obligation despite persistent request of the creditor. Thereupon, the creditor issued bankruptcy proceedings founded upon the original debt. This was opposed by the judgment debtor and promissory estoppel was attempted to be set up in defence. The New Zealand Court held that the promise which was submitted as supporting the estoppel could not avail the judgment debtor who had failed to perform his part of the bargain. He who seeks equity must do equity. As the judgment debtor was found not to have acted in accordance with the promise, his defence was repelled.

18. What follows from the decision mentioned above, is that he who wants to rely on the principle of estoppel on the basis that he acted upon the representation of the other side must come to the court of law with clean hands. As observed by the Supreme Court in Commissioner of Income Tax (Central) Vs.

B.N. Bhattacharjee and Another, , the soul of estoppel is equity, not facility for inequity. It is from this aspect of the matter, that we are required to consider the present case. The petitioners relied upon the promissory estoppel on the fact of issuing of the new mark sheets by the Gorakhpur University and contended that since acting upon those mark sheets the petitioners got themselves admitted in LL. B. Part II and thereafter in LL. B. Part III and spent money and time in prosecuting their studies, the University was estopped under the law from taking a course prejudicial to the petitioners. The petitioners asserted that they had acted on the assurance of the University to their detriment.

19. For the above purpose we need only to refer to the fact that the University did not promise or give an assurance to the petitioners which is necessary for the foundation of a true estoppel. The University had not issued the new mark sheets declaring the petitioners as having passed in the LL. B. Part I examination. As there was no representation on behalf of the University or any assurance given on which promissory estoppel could be founded, the petitioners' claim of getting the relief of Mandamus in this petition is liable to fall down on that ground. It is true that the old theory that estoppel did not bind the State is ill-founded, but for applying the estoppel against the State or a statutory body created by a Statute, it is necessary that representation was made by the person or on his behalf with the intention of affecting the legal position obtaining between the person making the representation and the person to whom it is made. Since the representation was not established in this case, the question that University was estopped from withdrawing from it, does not arise.

20. The other aspect of the matter was that the petitioners were themselves party to the fraud on the basis of which their claim for estoppel had been set up. We have dealt with the facts of the present case above. On the facts stated we have given our finding as well that the petitioners were a party to the forged letter being issued by the University on the basis of which the new mark sheets were given to them. On the strength of these new mark sheets, the petitioners had joined LL. B. Part II and had appeared at the said examination. It was subsequently detected by the University, when the petitioners were going to appear at the LL. B. Part III examination, that fraud had been played on the University, For this purpose, the University had given a show cause notice to each one of the petitioners and had thereafter found the charge established. The rule of law is that estoppel should be resorted to solely for preventing injustice and should not be permitted to defeat the administration of the law or to accrue an undue advantage or accomplish a wrong. In American Jurisprudence, Volume 28, Paragraph 3 at page 601, it is noted that:

"It is, moreover, recognised that the doctrine of estoppel when misapplied may be almost effective weapon for the accomplishment of injustice.

21. In the instant case, we are satisfied that as the petitioners themselves were responsible for the fraud played upon the University, they are not entitled to any right having accrued to them on the basis of mark sheets issued subsequently.

22. It is true, as was argued by the the petitioners" learned counsel, that the general rule is that he who pleads fraud must establish the same positively. Counsel urged that in the absence of any direct or circumstantial evidence to prove that the petitioners had a hand in the issuing of new mark sheets, no fraud could be presumed. The submission made by the learned counsel for the petitioners is not correct. The general rule is that he who alleges fraud has the burden of establishing it. But, the law equally settled is that inferences of fraud may be drawn from the circumstances inasmuch as production of direct evidence is not possible. It is for this reason that direct evidence is not insisted upon for proving it. Fraud is a transaction which may be proved by inferences reasonably drawn from an intrinsic evidence respecting the transaction itself. Elements of fraud are such as are not susceptible of proof by direct evidence, as it is not demonstrable physically. For that reasons, it must of necessity be proved by circumstances shown to have been involved in the transaction in question.

23. In the instant case, the facts stated in the counter-affidavit and that revealed on enquiry showed that the petitioners had not even applied for revaluation. As there were no applications made by the petitioners 1 to 11, there was no occasion for the University to have done the revaluation suo motu. The petitioners have not filed any evidence of making the payment needed for scrutiny. The fact that they did not apply for scrutiny or revaluation is a strong circumstance weighing against them. The University has stated that the mark sheets had not been changed at its end. The signatures of the officials had been forged. A forged letter was got issued to the Principal of the Degree College. We have no reason to doubt the correctness of the statement made on these facts by the University. Relying on these circumstances, we are of opinion that the petitioners had a hand in getting the forged letter issued. They were the only beneficiaries of the act done by them. No one else could possibly have indulged into it than the petitioners.

24. Counsel for the petitioners placed reliance on the following decisions of this Court and urged that the controversy arising in the present writ petition stands concluded in favour of the petitioners. These decisions are: (1) Anil Kumar Srivastava Vs. University of Allahabad and Another, , (2) Writ Petn. No. 1209 of 1977, Tarkeshwar Lal v. Gorakhpur University, Gorakhpur (decided on Aprl. 26, 1978), and (3) Writ Petn. No. 2935 of 1977, Ram Avadh Rai v. Vice Chancellor (decided on 26-4 1978).

25. In Anil Kumar Srivastava"s case, which is the decision followed in the subsequent two judgments, mentioned above, Anil Kumar Srivastava, the petitioner of that case, appeared at the M. Sc. Previous (Maths) examination. On the strength of the mark sheet of M. Sc. Previous, Anil Kumar Srivastava joined M. Sc. Final. Only a couple of days before the commencement of the final examination, "the petitioner of that case was informed that he had been debarred from appearing at the examination because he had failed to pass the M. Sc. Previous examination. Anil Kumar Srivastava filed a writ petition. Hon"ble

H.N. Seth, J. allowed the writ petition and directed the University to declare his result. The learned single Judge held that in view of the fact that the University authorities had issued the final mark sheet showing that the petitioner had passed the M. Sc. Previous, the University was estopped from restraining Anil Kumar Srivastava from appearing at the final examination. The learned single Judge also held that Section 115 of the Evidence Act was applicable to the facts of the case. Against the said judgment, an appeal was filed by the Allahabad University, which was Special Appeal No. 65 of 1973, *University of Allahabad v. Anil Kumar Srivastava*. The appeal was decided on 18-4-1973 by a Bench consisting of Hon"ble Satish Chandra, J. (as he then was) and Hon"ble N.D. Ojha, J. The Divisional Bench maintained the judgment of the learned single Judge by confining it only to the point of opportunity. The view taken was that the Allahabad University could not cancel M. Sc. Previous result of Anil Kumar Srivastava without giving an opportunity to him. The Bench held that unilateral decision of the University was in violation of the principles of natural justice which were attracted to the case because Anil Kumar Srivastava had acquired a right to appear at the M. Sc. Final examination. On the question of estoppel, that is, Section 115 of the Evidence Act, the Division Bench observed :

"The learned single Judge held that the University authorities were estopped. According to him, Section 115, Evidence Act, was applicable. In the view of the matter that we have taken, it is unnecessary to decide this point, we leave the question of the applicability of the doctrine of estoppel to the University open."

26. From the above decision, it would appear that the question of estoppel decided by the learned single Judge was left open, and, as such, the decision of the learned single Judge on that point could not be said to have been approved. The decision of the learned single Judge could not be considered to be an authority on the question of applicability of Section 115 of the Evidence Act or that of the doctrine of estoppel. In the two decisions, mentioned above, both the Division Benches heavily relied upon the judgment of the learned single Judge given in *Anil Kumar Srivastava v. Allahabad University* AIR 1973 AH 442 (supra).

27. *State of U.P. and Others Vs. Hindustan Aluminium Corpn. and Others*, , was an appeal filed before the Supreme Court against a decision of this Court given in Writ Petition No. 3732 of 1979, decided on 27-4-1978 : 1978 All LJ 56. In that case, the Division Bench deciding the writ petition had relied upon an earlier decision, to which one of the two Judges was a party. When the appeal was taken against that judgment, the writ petition itself was withdrawn and was dismissed. The Supreme Court held that the High Court was in error in relying upon the decision of the learned single Judge which could not be said to have subsisted after the writ petition had been, withdrawn. Similar position obtains in our case. The question of estoppel was left open by the Division Bench, and, therefore, the judgment of the learned single Judge could not be said to have been approved on that point. The decision of the learned single Judge on estoppel therefore, ceased to be a law laid down which could be taken into account while deciding this

controversy in subsequent cases.

28. That apart, both of these two decisions are distinguishable on facts. In Tarkeshwar Lal (supra), the Division Bench noted that the fact that the petitioners of that case had appeared at LL. B. Part III examination, the University could be deemed to have acquiesced in permitting the petitioners to appear in LL. B. Part III examination, and, as such, the University was estopped from declaring the petitioners unsuccessful in LL. B. Part II. This would indicate that if the University would not have permitted the petitioners of that case to appear at LL. B. Part III examination, the decision of that case would have been different. In the instant case, the petitioners had not been permitted to appear at the LL. B. Part III examination. The other point of distinction is:

"that there was no evidence brought before the Bench deciding the said case which established that the students of that case were responsible for the fraud and were a party to the procurement of mark sheets."

29. We have referred to the affidavits of the parties and found that the petitioners had a hand in procuring the mark sheets. This factual aspect of the matter brings about a vital distinction between the two cases. While deciding the case of Ram Avadh Rai, the Division Bench followed the two decisions, viz. Anil Kumar Srivastava Vs. University of Allahabad and Another, and Tarkeshwar Lal v. University of Gorakhpur, and applied estoppel against the University in that case. We have already distinguished the two decisions relied upon in this case.

30. In Kedar Lal Verma Vs. The Secretary, Board of High School and Intermediate Education and Another, , a Division Bench of this Court held that where a candidate is patently disentitled to be declared successful, the authorities, could not be estopped from correcting the mistake. The ratio is helpful in deciding the controversy involved in the present case.

31. For the reasons given above, we find that the petitioners are not entitled to any relief. May be that our judgment affects the petitioners' career, but for that the petitioners have to blame themselves. Being a party to the fraud, they are not entitled to get any relief under Art. 226 of the Constitution.

32. In the result, the writ petition be dismissed, with costs.