

(2024) 02 BOM CK 0006
In the Bombay High Court
Case No : Writ Petition No.7795 Of 2022

Shilpa Gorakh Chavan

APPELLANT

Vs

University Grants Commission And Others

RESPONDENT

Date of Decision : 01-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
University Grants Commission Act, 1956 — Section 26

Citation : (2024) 02 BOM CK 0006

Hon'ble Judges : Vibha Kankanwadi, J; S. G. Chapalgaonkar, J

Bench : Division Bench

Advocate : P. R. Katneshwarkar, A. A. Fulfagar, S. W. Munde, S. S. Thombre

Final Decision : Dismissed

Judgement

S. G. Chapalgaonkar, J

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India with following prayers:-

"A. This Hon'ble Court may be pleased to quash and set aside the impugned letter dated 06.06.2022 issued by the University to the petitioner wherein the admission of the petitioner in course of Ph.D. has been rejected.

B. This Hon'ble Court may be pleased to direct the Dr. Babasaheb Ambedkar Marathwada University to grant notification as well as degree of Ph.D. in favour of the petitioner."

3. The petitioner contends that she is a student. She has acquired a postgraduate degree i.e. M.Sc. Botany in the year 2018. She was intending to continue her higher studies in the field of Botany. The petitioner further states that she is a National level sportsperson and participated in the events in Rifle

Shooting. She has been awarded Silver Medal for her excellence in the game. According to the petitioner, the University failed to conduct Ph.D. Entrance Test (for short 'PET') during the period from 2016 to 2021. Therefore, Vice Chancellor was pleased to grant her admission to Ph.D. as a special case by order dated 24.01.2019. Further she was permitted to carry her research under guidance of Dr. Narayan Pandure as research guide. The petitioner joined her course with effect from 22.03.2019. Her joining report is signed by her Guide Dr. Narayan Pandure as well as Head of the Department. The University granted research approval. The communication to that effect was issued by Deputy Registrar, Ph.D. Section. The petitioner attended pre-Ph.D. course conducted by UGC in the year 2021 and secured A+ grade with 7.08 CGPA. The petitioner continuously submitted her progress report up till 31.12.2021. The petitioner submitted pre-synopsis for the Ph.D. course in the field of Botany. Thereafter, the petitioner submitted her final synopsis. Thereafter petitioner submitted her Ph.D. thesis to the Department of Botany. She was given a letter for viva-voce scheduled on 14.03.2022 in the University campus. However, viva-voce has been conducted by virtual mode.

4. On 04.05.2022, the petitioner made an application to the University and requested for issuance of Notification regarding completion of her viva-voce examination. However, the said communication was not replied. At this stage, the University issued impugned communication dated 06.06.2022 stating that the admission of the petitioner in Ph.D. course is cancelled, since her admission was inconsistent with the UGC Regulations, which requires admission to Ph.D. course only through PET examination followed by presentation before Research Recognition Committee (RRC) of the University. Similarly, her admission is contrary to the reservation policy.

5. Petitioner contends that the action of the University is arbitrary. The petitioner was admitted in the year 2019 to the Ph.D. course. She has completed her research and submitted thesis. At this stage, cancellation of her admission to the Ph.D. course would be contrary to the own decision of the University and detrimental to her career advancement.

6. The respondent-University filed affidavit-in-reply and opposed the prayer on the ground that the admission of the petitioner was contrary to the UGC Regulations made operative since the year 2016 to regulate the procedure for admission to the Ph.D. course. Any admission granted without securing merit in the PET examination would be illegal. Admittedly, the petitioner has not passed PET examination. The Vice Chancellor do not possess any special power to grant admission dehors PET examination. It is further contended that the University has taken similar action against 16 candidates, who were illegally admitted to Ph.D. course without qualifying PET. The petitioner cannot seek Writ of Mandamus to regulate her backdoor entry.

7. We have considered submissions advanced by the respective Advocates appearing for the parties. We have perused the record leading to the admission

of the petitioner to the Ph.D. course and also decision of the University to cancel such admission. Before we proceed to the record our findings regarding factual matrix of the present matter, it is apposite to refer the relevant provisions regulating admission to the Ph.D. course conducted by the University. The University Grants Commission vide Notification dated 05.05.2016 promulgated the University Grants Commission (Minimum Standards and Procedure for Awards of M.Phil./Ph.D. Degrees) Regulations, 2016 in supersession of Regulations of 2009 in exercise of powers conferred under Section 26 of the University Grants Commission Act, 1956. The Clause (3) of the Regulations, 2016 provides for eligibility criteria for admission to Ph.D. programme. The Clause (5) provides for procedure for admission. The relevant clause 5.1 states thus:

"5.1. All Universities and Institutions Deemed to be Universities shall admit M.Phil./Ph.D. students through an Entrance Test conducted at the level of Individual University/Institution Deemed to be a University. The University/Institution Deemed to be a University may decide separate terms and conditions for Ph.D. Entrance Test for those students who qualify UGC-NET (including JRF)/UGC-CSIR NET (including JRF)/SLET/GATE/teacher fellowship holder or have passed M.Phil programme. Similar approach may be adopted in respect of Entrance Test for M.Phil programme."

8. Dr. Babasaheb Ambedkar Marathwada University, Aurangabad issued Ordinance-1009 relating to the admission process for Ph.D./M.Phil. programme through PET/CET, evaluation process of Ph.D./M.Phil. as per procedure laid down in the Maharashtra Public University Act, 2016 and UGC Regulation dated 01.06.2009 and 05.05.2016. Clause 2(a), (b), (c), (d) and (e) provides for eligibility criteria for admission to Ph.D. programme, which reads as under:

"a) Master's degree holders satisfying the criteria stipulated under clause 1.1 as mentioned above.

b) Candidate who have successfully passed the M.Phil. Course work as per conditions laid down by U.G.C. Regulations, 2009 published in Government of India Gazette, July 11-July 17, 2009, i.e. admitted on the basis of entrance examination, with at least 55% marks in aggregate or its grade B in the UGC-7 point scale or an equivalent grade in a point scale, wherever grading system is followed, and successfully completed the M.Phil. Degree shall be eligible to proceed to do research work leading to Ph.D. degree in the same institute in an integrated programme. A relaxation of

5% of marks from 55% to 50% or an equivalent relations of grade, shall be allowed as mentioned in 1.1.2.

AND

c) The candidate who has been declared to be qualified in the Entrance Test (PET) of the university shall be eligible to submit his/her application for admission/registration for M.Phil./Ph.D. within a period of One year from the date

of result of his/her Ph.D. Entrance Test (PET).

d) Candidates possessing degree considered equivalent to M.Phil. Degree of an Indian institution or from a foreign educational institution accredited by an Assessment and Accreditation Agency which is approved, recognized or authorized by an authority, established or incorporated under a law in its home country or any other statutory authority in that country for the purpose of assessing, accrediting or assuring quality and standards of educational institutions.

e) A candidate fulfilling the eligibility criteria mentioned in (a) and who have qualified the UGC-NET (including JRF)/UGC-CSIR NET (including JRF)/SLET/GATE/GPAT/SET/teacher FIP holders or have passed M.Phil. Programme (admitted through entrance test) in the concerned subject from any Statutory University.”

9. The careful consideration of provisions regulating admission to Ph.D. programme conducted by Universities or higher Educational Institution depicts that the admission to Ph.D. course shall be through an Entrance Test conducted at the level of individual University/Institution deemed to be University. However, the Universities are given latitude to decide these separate terms and conditions for PET examination for those students who qualified UGC-NET. The University Ordinance also prescribes that apart from complying eligibility criteria for admission to Ph.D. programme, the candidate must acquire qualification in the PET of the University to make him eligible to apply within a period of one year from the date of result of the entrance test. The aforesaid provisions contained in UGC Regulation, 2016 and further elaborated under Ordinance-1009 of the University leaves no doubt that the admission of the student to the Ph.D. programme is channelized through PET conducted at the level of individual University. The purpose behind introducing the PET can be further understood from other provisions under UGC Regulations. Apparently, Regulations aims for providing opportunity to the meritorious students based on their performance in the Common Entrance Test. Since there are limited resources with the University in terms of the number of guides, infrastructures required for conducting research programme, the Regulation imposes restrictions on number of students to be admitted under the research guide. The Clause (6.5) of the Regulation stipulates that the Research Supervisor/Co-supervisor cannot guide more than three (3) M.Phil. and eight (8) Ph.D. scholars. An Associate Professor can guide up to maximum of two (2) M.Phil. and six (6) Ph.D. scholars, whereas Assistant Professor can guide up to maximum one (1) M.Phil. and four (4) Ph.D. scholars. In light of the aforesaid provisions regarding admission of students to Ph.D. programme, there is no other way to secure admission except going through PET. The UGC Regulation binds all the Universities to conduct PET taking into account number of vacancies available in a particular stream/department. The University Ordinance further stipulates to adhere with reservation policy while admitting the students based on their merit in PET.

10. Turning back to the facts of the present case, apparently petitioner acquired

her postgraduate degree in M.Sc. in April 2018. On 24.01.2019, she applied the University to admit her for Ph.D. programme in the subject of Botany from Vice Chancellor's quota. Pertinently, the Vice Chancellor vide its endorsement on same date allotted the research guide as a special case and petitioner joined her Ph.D. course on 22.03.2019. It appears that, she was issued research approval letter dated 18.03.2019 in the subject of "Ethnomedical, In Vitro and Phytochemical Studies in Adansonia Digitata (L) Pier". The research guide appears to have issued consent letter dated 19.03.2019 in her favour. The record shows that the petitioner had submitted her progress reports right from July 2018 onwards i.e. much before date of her joining Ph.D. course. The petitioner submitted Ph.D. thesis on 23.12.2021. She was given letter for viva-voce examination to be held on 14.03.2022. The certificate regarding submission of the thesis dated 03.06.2022 is issued by the Deputy Registrar, Ph.D. Section. However, on 06.06.2022 her admission to Ph.D. programme came to be cancelled giving reason that she has not cleared PET examination or made representation before the Research Recognition Committee. It is apparent that the petitioner has never appeared for PET, however she has been admitted to Ph.D. course under endorsement of the Vice Chancellor as a special case. During the course of argument we have specifically asked the learned Advocate appearing for the petitioner to point out any provision that enables Vice Chancellor to admit the student under his special powers. However, no such provision is brought to our notice either under UGC Regulations or University Ordinance or the Maharashtra Public Universities Act. We are, therefore, convinced that the Vice Chancellor of the University does not possess power or authority to admit any student for Ph.D. course de-hors the admission procedure prescribed under UGC Regulations, 2016 coupled with University Ordinance-1009.

11. Mr. Katneshwarkar, learned Advocate appearing for the petitioner would submit that there are many more students who have been admitted under special powers of the Vice Chancellor. Apart from that the petitioner has participated in National level Rifle Shooting and brought the medal. Therefore, she was given special consideration by the Vice Chancellor while accepting her request for admitting her to the Ph.D. programme. We have perused the documents regarding admission to the other students. We find that the University in its reply clarified that all admissions, found contrary to the UGC Regulations, have been cancelled and none of the Ph.D. student is permitted to complete his Ph.D. programme on the basis of backdoor entry. Nothing is brought on record to controvert the aforesaid explanation given by the University. We find that except the students who had already completed M.Phil. programme and entitled for exemption from PET have been permitted to continue their Ph.D. and all other admissions have been cancelled.

12. At this stage, Mr. Katneshwarkar, learned Advocate appearing for the petitioner would submit that there is no fault on the part of the petitioner while seeking admission to Ph.D. programme as a special case, when she was a National level sportsperson. He would submit that the petitioner possessed basic

eligibility in terms of Clause

(3) of the UGC Regulations, 2016. There is no prohibition for admission of the students to the Ph.D. programme once he possessed the eligibility for admission to Ph.D. programme. He would point out that the University has followed entire procedure of admission in respect petitioner except insisting for PET. Subsequent to her joining, she has completed her research work and also submitted the thesis. Abrupt cancellation of the admission after perusing research programme for three years is arbitrary and petitioner cannot be put to loss at this stage. He would submit that it is not the case where petitioner has secured admission by misrepresentation or fraud or she lacks inherent eligibility criteria. Therefore, her admission needs to be protected. In support of his submissions he relies upon the judgments of the Supreme Court of India in the matters of S. Krishna Sradha Vs. The State of Andhra Pradesh & ors. (2020) AIR (SC) 47. , Ashok Chand Singhvi Vs. University of Jodhpur and Others (1989) 1 Supreme Court Cases 399, Rajendra Prasad Mathur Vs. Karnatka University and Another 1986 (Supp) Supreme Court Cases 740. and judgment in case of Abha Georges & Ors. Vs. All India Institute of Medical Sciences (AIIMS) & Anr. passed by Delhi High Court dated 02.02.2022.

13. We have given anxious consideration to the aforesaid judgments. In case of S. Krishna Sradha (supra), the petitioner was wrongly deprived of the admission owing to lapse of cut-off date of 30th September for medical admission, although she was found eligible and meritorious. The Court found no fault attributable to her. In exercise of plenary powers to do complete justice by way of exception, supreme court, directed to admit her by increasing the seats. It is not the case where the petitioner's admission was cancelled or denied being contrary to the procedure. In second judgment relied by the petitioner in case of Ashok Chand Singhvi (supra) the admission of the student was protected, which was granted on the basis of the University Resolution that was contrary to the University statutes. The appellant's admission which was made after last date was protected, since he was not at fault and admission was based on University's own Resolution that was subsequently revealed to be contrary to statute. In the third judgment in case of Rajendra Prasad Mathur (supra) the students were not eligible for admission to the Engineering Degree Course. However, they were admitted to the Engineering Colleges for the sake of capitation fees. On cancellation of their admissions they were protected by interim orders passed by the High Courts and the Supreme Court of India. In that background, finding no fault with the students in securing admission, they were protected. In the last judgment in case of Abha Georges & Ors. (supra) delivered by the Delhi High Court, the Court protected their admissions since the petitioners were not guilty of misrepresentation or fraud.

14. The learned Advocate appearing for the respondent-University, however relies upon the judgment of the Supreme Court of India in case of Dental Council of India Vs. Sailendra Sharma AIR 2022 Supreme Court 5266. , wherein

candidate had secured admission through backdoor against vacant seat. After mop up round of counseling, the admissions were found illegal being contrary to the procedure. The Supreme Court observed in paragraph no.11.1 as under:-

"Even otherwise, once it is found that the respective original writ petitioners were granted admissions illegally and their admissions are backdoor, thereafter to allow them to continue their course shall be perpetuating the illegality. Similar prayers have been consistently denied by this Court in catena of decisions (See Abdul Ahad (supra) & Dr. Astha Goel (supra)). In the case of Guru Nanak Dev University v. Parminder Kr. Bansal, (1993) 4 SCC 401, in paragraph 7, it is observed and held as under:"

15. The Division Bench of this Court in case of Tejaswini d/o Rajkumar Phad Vs. State of Maharashtra and Others 2018 (5) Mh.L.J. 78 observed in paragraph no.26 observed as under:-

"26. If the methodology adopted and the manner in which the admissions are given in the present matter is considered that shows that the procedure adopted by the management after CAP rounds was illegal. Inference is easy that such modus operandi was used with the object to give admission to less meritorious candidates and ultimate aim was of profiteering. In such case, the Court can draw further inference that the students, who got admission due to aforesaid procedure are benefited due to illegality and they are also not innocent. Such observation are also made by the Apex Court in the case of Priya Gupta. Due to such admissions candidates of higher merit have been denied admission in medical course."

16. If the ratio laid down by the Supreme Court of India in various judgments as stated above is taken into account, it can be gathered that if the admission is granted illegally dehors the procedure laid down under the Act, such admission has to be treated as backdoor entry and permitting such admission to continue would amount perpetuating illegality. Pertinently, in the present case we are dealing with the admission to Ph.D. course. The petitioner had already possessed postgraduate degree in M.Sc. Even her application to the Vice Chancellor to secure admission would show that she is aware about the procedure prescribed under UGC Regulations, 2016 by which PET is made compulsory for admission to Ph.D. course. There is no other way by which the student can be admitted to Ph.D. programme. In her application she states that on the basis of her excellence in sports events at National level she be treated as special case. However, there is no such provision under University Act or UGC Regulations, 2016. The Vice Chancellor acceded to her request on the same day and made allotment of research guide. This would not have happened in case of normal students. Apparently, the petitioner does not seem to be innocent or oblivious of the Regulations governing admission. We have no hesitation to hold that the admission of the petitioner was backdoor entry to Ph.D. programme. The petitioner contended that PET was not held from 2016 to 2021. Though this appears to be a true fact but it cannot be taken as a justifiable ground for Vice

Chancellor to admit her for the Ph.D. course. The Vice Chancellor has not assigned the said reason nor it can be taken as a special reason. There might be many students during said period who would have been deprived because of non-holding of PET. Everyone cannot be considered eligible for admission on that ground. In absence of any special powers to Vice Chancellor, entire procedure gets vitiated ab initio. Resultantly, we do not find any reason to interfere in the decision of the University regarding cancellation of the admission being contrary to the procedure.

17. Hence, Writ Petition stands dismissed with no order as to cost.

18. Rule is discharged.