
(2010) 02 JH CK 0034
In the Jharkhand High Court

Shiv Shankar

APPELLANT

Vs

Vinoba Bhave University and Others

RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 4 LJLR 409

Hon'ble Judges : Gyan Sudha Misra, C.J; R.R. Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal has been preferred by the appellant-Shiv Shankar against the judgment and order dated 5.5.3008 passed by the learned Single Judge in W.P. (C) No. 6854 of 2007 by which the writ petition, although was disposed of with certain direction, the effect of the impugned order is clearly adverse and prejudicial to the petitioner's case for which he had moved the High Court by way of a writ petition under Article 226 and 227 of the Constitution of India. By order dated 17.12.2009, we had directed the appellant to file a representation before the University but the same having not been disposed of by the University, we thought it just and appropriate to hear the matter finally and thus the Counsel for the parties were heard.

2. A slight enumeration of the facts giving rise to this appeal is essential in order to explain the controversy which indicate that the appellant-Shiv Shankar was initially admitted as a student of B.Sc. (Hons) for the Sessions 1990-93 in Bokaro Steel City College, which was initially affiliated with the Ranchi University at the relevant time. After completion of one year of the B.Sc. Part-I course, the petitioner-appellant herein appeared in B.Sc. Part-I examination in the year 1992 but was declared fail by the Ranchi University. Thereafter, he re-appeared in the B.Sc. Part-I examination in the year 1993 but this time again he was declared fail. However, as per the University Regulation, he was allowed to attend classes of B.Sc. Part-II also since he had already completed his classes for B.S. Part-I,

although he could not clear the B.Sc. Part-I examination. During the intervening period i.e. in the year 1992, the University of Ranchi was bifurcated and the Bokaro Steel City College was now under the affiliation of Vinoba Bhave University, Hazaribagh. The petitioner thereafter became eligible for re-appearing in the B.Sc. part-I as also Part-II examination in the year 1993 but the petitioner-appellant did not appear in B.Sc. part-I and II in this year and prepared himself for next year to take these examinations i.e. in the year 1994. However, as the College and the University had permitted him to attend classes of B.Sc. Part-III also in the year 1994 and the petitioner-appellant appeared for B.Sc. part-I examination for the third time in January, 1994 and his result was also declared for B.Sc. part-I on 10.6.1994 and in the meantime the petitioner had already attended the classes for B.Sc. Part-II, he was permitted to appear in B.Sc. Part-II examination in May, 1994, for which his result was declared on 10.8.1994 and finally he appeared in Part-III examination in September, 1994 for which his result was declared on 9.12.1994.

The petitioner -appellant finally succeeded in clearing the B.Sc. examination for all the three parts by December 1994 and marks-sheet declaring pass was also issued to him in the same year. The petitioner-appellant thereafter also sought admission in L.L.B course and successfully completed the course. Thereafter, he also sought admission in a diploma course in LL.M in another University and also applied for granting him licence to practice as an Advocate in the Bihar State Bar Council. For this purpose, the appellant had to furnish his graduation certificate of B.Sc. and for this reason he applied to Vinoba Bhave University for granting him the certificate of B.Sc. From this stage onwards, the appellant invited trouble for himself as the University refused to issue B.Sc. degree to the appellant and raised an objection that he could not have been allowed to appear in all the parts of the B.Sc. examination in the year 1994 itself as he was not eligible under the University Rules to take three University examinations in one go.

3. A period of 13 years had elapsed by efflux of time since the petitioner-appellant had already passed the LL.B and thereafter sought a licence to be enrolled as an Advocate in the Bihar State Bar Council. On account of denial of the issuance of B.Sc. degree to the petitioner-appellant, he was compelled to file a writ petition which he did before the High Court of Jharkhand and the learned Single Judge vide the impugned judgment and order dated 5.5.2008 was pleased to dispose of the writ petition holding therein that the petitioner-appellant herein would not have been permitted to appear in B.Sc. Part II and III examinations without clearing B.Sc. part-I examination way back in the year 1994. The learned Single Judge clearly observed that the result of the petitioner's B.Sc. part -I examination was declared in June, 1994 and before declaration of his result, he appeared in B.Sc. Part-II in May, 1994 and hence he was not eligible for appearing in B.Sc. part-II before clearing Part-I and thereafter also appeared in Part-III before declaration of result of B.Sc. part-II and, therefore, the University was justified in declaring that he was not eligible for B.Sc. degree. The learned Single Judge however was pleased to allow him to clear Part-II and III

examinations of B.Sc. by re-appearing in the examination. The petitioner under compulsion had also agreed to reappear in B.Sc. Part-II and III examination but was still aggrieved that although he had cleared all the three examinations way back in the year 1994, the University was permitted to raise objection about clearance of his B.Sc. examination after 13 years of his passing out the B.Sc. course after which he had also cleared three years of LL.B course. He, therefore, has preferred this appeal, which we have heard.

4. The impugned order passed of the learned Single Judge, in fact, has not recorded certain important facts, indicating that the petitioner-appellant herein had been admitted into the B.Sc. course for the first time in the year 1990 and although he had failed on two occasions, he has pursued the course from 1992 in the Vinoba Bhave University, which means that even if his Session is counted from the year 1992, he became eligible for the B.Sc. part-I examination in 1993 in which he did not appear but finally cleared it in 1994. But the appellant by this time had been permitted to attend the classes of B.Sc. part-II and III also obviously on the plea that he belongs to the 1990-93 batch and if his Session is counted from 1990, he clearly became eligible for B.Sc. part-II and Part-III examinations also in the year 1994.

5. It is no doubt true that inspite of this, a slight aberration had still crept into the academic record of the appellant insofar as his clearance for the B.Sc. course is concerned as the learned Single Judge has taken the view, and not wrongly, that he could not have been permitted to appear in B.Sc. part-I and Part-II examination without declaration of his result of the previous part i.e. B.Sc. part-I examination. But in the process, the learned Single Judge missed, as no one brought to the attention of the learned Single Judge, that the appellant having been permitted to attend the classes of B.Sc. part-II and Part-III in different years i.e. 1992-93 and 1993-94 and as he had already completed his classes for B.Sc. Part-II, he obviously was eligible to take the examination for the B.Sc course in the year 1994.

6. At this juncture, Counsel for the University has submitted that as per the Rules of the University, a candidate is not permitted to take three University examinations in one year and as the petitioner-appellant had taken examination for all the three parts in the year 1994 itself, he was not eligible to appear in all the three parts in the year 1994 itself.

7. We have carefully examined this argument advanced by Learned Counsel for the University, but we cannot overlook that the application of the Rule of the University and for that matter any Rule has to satisfy the conditions and the circumstances also under which it is applied. In the normal and usual course, an University would have been justified in taking this objection and also equally correct in restraining the students from taking the examination for the next part only after declaration of the result for the previous part, but the University is missing that it had itself permitted the appellant to attend the classes for B.Sc. part-I and III after the appellant had completed his classes for B.Sc. part-I but

could not successfully clear the B.Sc. part-I examination.

8. As already stated, if the University had not issued the admit card to the appellant at the relevant time, restraining him to appear in B.Sc. Part-II examination on the plea that his result has not been declared for B.Sc. part-I, perhaps, something could have been inferred in favour of the University, but the University, perhaps, under its administrative discretion and decision which was taken by the University at the relevant time to streamline the derailment of Sessions which was running late for several reasons had itself permitted the appellant and perhaps other similarly situated students to attend classes of the next part, even though the previous part had not been cleared. The University itself had not only permitted the students to attend the classes of B.Sc. Part-II and III, it also had issued admission card to the appellant for all the three examinations, which although was taken by the appellant in the year 1994, yet he had attended the classes in three different Sessions for the three parts and all the Classes had not been attended by him in one year, so as to disqualify him to appear in the examination for the three parts which were conducted in different months of the year 1994.

9. We are fully conscious of the fact that there might be slight deficiency and violation of the Rule on this aspect also, but at the same time it cannot be ignored or over looked that the University had itself permitted the appellant to take the examination and had also issued Admission card for the three examinations which he successfully cleared and marks-sheet also was issued in his favour. Thereafter the appellant also pursued the LL.B course and completed it for a period of three years and only when he applied for the certificate/degree of the B.Ss. the University raised an objection after 13 years that at the relevant time in the year 1994 when he had taken the B.Sc. Examination, he was not eligible to take all the three examinations in a single year which was 1994 in which he had attended classes in three different years from 1990 onwards.

10. In order to resolve this issue, Counsel for the appellant also placed reliance of the decision delivered by the Supreme Court in the matter of Guru Nanak Dev University Vs. Sanjay Kumar Katwal and Another, wherein the learned Judges of the Apex Court, referred the decision delivered in the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, wherein it was observed that;

before issuing the admit card to a student to appear in Part-I Law Examination, it was the duty of the University authority to scrutinize the papers; and equally it was the duty of the Head of the Department of Law before submitting the form to the University to see that it complied with all requirements; and if they did not take care to scrutinize the papers, the candidature for the examinations cannot be cancelled subsequently on the ground of non-fulfillment of requirements.

In the same decision, the learned Judges also referred to the pronouncement of the Supreme Court reported in Sanatan Gauda Vs. Berhampur University and others, wherein the Apex Court had held that:

Where the candidate was admitted to the Law course by Law College and University also permitted him to appear for Pre-Law and Intermediate Law examinations, the college and the university were estopped from withholding his result on the ground that he was ineligible to take admission in Law course.

11. In the instant matter, the case of the appellant is still on a higher footing as in this case, Vinoba University, not only permitted the appellant to appear in the examination but also did not withhold his result and on the top of it, issued the marks-sheet also to him. Thereafter the provisional certificate of the B.Sc. was also issued in his favour on the basis of which he pursued his further studies and completed the LL.B course. Thus, apart from the fact which had been related hereinbefore, a right has accrued in favour of the appellant to claim the degree for the B.Sc. and the stand taken in favour of the appellant which we approve also stands fortified by the view taken by the Apex Court, referred to hereinbefore.

12. Even at the risk of repetition, we feel encouraged to reiterate that if the University or any other Institution has any valid objection in regard to the eligibility or candidature of a student to pursue his course or to appear in any examination, it is certainly expected of the Institution and the University to raise objection about the candidature of the student at the first instance and after a student is allowed by the University or the Institution itself to pursue the course—so much so— that he succeeds in obtaining a still higher degree, it is certainly not expected to rake up the issue after unlimited long number of years which has been done in the present case. This is a case where inspite of having granted provisional certificate of the B.Sc. degree to the petitioner-appellant, the University denied him to award the final degree, for which provisional degree had already been issued to him.

13. The fall out of the entire discussions, consideration and the circumstances referred to hereinbefore, obviously drive us to the ultimate conclusion that the order of the learned Single Judge, directing the appellant to re-appear in B.Sc. Part-II and III examination after more than 15 years of his clearing the B.Sc. degree would not only be arbitrary but extremely harsh and impractical to be upheld ignoring the fact that the University itself had approved of the passing of the examination and had also even granted the degree of B.Sc.

However, we may not be mis-understood, so as to infer that even if a student has indulged in malpractice in securing any degree, the University would be precluded from raising objection in regard to the eligibility of a student to secure a degree merely due to efflux of time. What we wish to emphasize is only to the extent that if technical objections are raised for enforcement of a particular Rule, the same cannot be allowed to be raised after an unduly long number of years and that being the case in the instant matter, we have thought it just and appropriate to allow this appeal and set aside the order of the learned Single Judge to the extent by which the appellant had been directed to re-appear in B.Sc. Part-II and III examination after 15 years of its clearance only on the

ground that 15 year ago he was not eligible to take the examinations of all the three parts in one year, although he had attended the classes for all the three Sessions in three different years.

14. The appeal, therefore, is fit to be allowed. Consequently, Vinoba Bhave University is directed to furnish the final degree to the appellant in pursuance to the provisional degree as well as the marks-sheet of the B.Sc. Examination which the appellant had cleared in the year 1994 in regard to which technical objections had been raised by the University but has been overruled by this Court for the reasons recorded hereinbefore.

15. The appeal, accordingly, is allowed but without any order as to costs.