

(2013) 12 P&H CK 0140
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12452 of 2012

Shri Guru Govind Singh Khalsa College and Others	APPELLANT
Vs	
Panjab University, Chandigarh and Another	RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Citation : (2014) 2 SCT 117

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : K.S. Dadwal and Mr. Sameer Sachdeva, for the Appellant; Rahul Garg, for the Respondent

Final Decision : Disposed Off

Judgement

Rakesh Kumar Jain, J.—The petitioner/college, affiliated to the Panjab University, started M.Sc. (Chemistry) from the academic session 2011-12 under the eligibility of annual system, was allegedly in operation from the past academic session 2010-11. The petitioner/college alleges that it received admission guidelines vide letter No. 5808-3107/R&S dated 17.6.2011 from the Panjab University/respondent No. 1, in which it was provided that "all admissions are required to be made by the colleges/departments strictly in accordance with the Regulations/Rules contained in latest University Calendars/Guidelines/any other instructions which have been issued/may be issued by the University from time to time and after admission, the registration returns are to be sent in computerized form and it should be prepared as per instructions contained in item No. 12 at pages 15-19 of the enclosed instructions for admission to various courses." It is alleged that in the instructions (Annexure P-1), there was no reference to M.Sc. (Chemistry). However, the petitioner/college submitted the Eligibility-cum-Registration Return of the students on 15.10.2011 along with their educational certificates of B.Sc. as well as DMCs and after scanning and scrutinizing the Eligibility-cum-Registration Return, all the students, who are admitted in M.Sc. (Chemistry) were issued roll numbers by the University for

taking Ist and IInd semester examination. Accordingly, all students including Shivani Rana, Class roll No. 4213 (University Roll No. 10212); Deepshikha, Class Roll No. 4220 (University Roll No. 10219) and Sakshi Sharma, Class Roll No. 4231 (University Roll No. 10228) appeared in the Ist semester examination but their result was not declared and respondent No. 2 sent a letter dated 22.2.2012 informing the petitioner that these three candidates were not eligible for admission to MSC (Chemistry) course because they did not secure 50% marks in Chemistry as required in Regulation 2(a) of the Punjab University Calendar Volume II. A request was made by respondent No. 2 to strike off their names from the College. After the receipt of impugned letter dated 22.2.2012, petitioner sent a letter to respondent No. 2 that since no guidelines regarding the intimation of semester system from session 2011-12 were received and earlier the courses were being run on annual basis, all the students were admitted on the basis of eligibility of annual system and return to that effect was also sent to the University along with their certificates. The University did not point out any deficiency in their admission and even issued roll numbers for their appearance in the Ist semester examination held in December, 2011. The petitioner/college, thus, requested to regularize their admission and further allow them to sit in the IInd semester examination after declaring the result of the Ist semester examination pleading that neither the students nor the college is at fault because at the time of admission, the guidelines and the rules, applicable to the admission were fully complied with.

2. It is alleged by the petitioner/college that after receipt of letter dated 21.3.2012, sent by the petitioner to respondent No. 2, University Roll No. 10693 was issued to Shivani Rana, University Roll No. 10700 was issued to Deepshikha and University Roll No. 10709 was issued to Sakshi Sharma to appear in the IInd semester examination which were to be held in April/May, 2012.

3. The petitioner/college was concerned that although all the students including aforesaid three students were permitted to sit in the IInd semester examination but the result of Ist and IInd semester of the aforesaid three students were not declared alongwith the result of the other students. The petitioner/college contacted the University authorities and came to know that the result of the aforesaid three students has not been declared because of the impugned letter dated 22.2.2012.

4. The case set up by the petitioner/college is that upto the academic session 2010-11, admissions were made under the eligibility of annual system, the M.Sc. (Chemistry) course is for 2 years and yearly examinations were being held. However, from the academic session 2011-12, semester system has been introduced but nothing was intimated to the college. It is alleged that as per the Panjab University Calendar Volume II, the Regulation which deals with the eligibility of Physics and Chemistry is find mentioned under the Chapter "Master of Science (2 years course) examination" and Regulation 2.1 says that the aggregate of 50% marks in B.Sc. examination is the criteria, which has been

fulfilled by all the three students referred to above. The relevant provision of Regulation 2.1 of the Panjab University Calendar Volume II is reproduced as under:--

2.1 A person who has passed one of the following examinations shall be eligible to join Part I (First Year) Class of the course:

Anthropology

BA or B.Sc. examination of the Panjab University or any other examination recognized by the Syndicate as equivalent thereto: Physics and Chemistry:

(a) B.Sc. Honours school examination of the Panjab University in the subject of M.Sc. course;

(b) B.Sc. examination of the Panjab University securing at least 505 marks in aggregate and with Physics and Mathematics for M.Sc. Physics course and with Chemistry and Mathematics for M.Sc. Chemistry alongwith anyone of the following subjects:

Bio-Chemistry, Botany, Chemistry, Geology, Physics, Statistics, Zoology.

Provided that a student who had not taken up Mathematics as one of the subjects in B.Sc. examination may be admitted to M.Sc. (2 year course) in Chemistry on the condition that he passes an additional paper in Mathematics (50 hours course) in the first semester examination securing at least 40% marks.

(c) Awarded B.Sc. pass degree under the old B.Sc. honours School Regulations by the Syndicate on the recommendation of the Board of Control;

(d) B.Sc. Honours school examination in the subject of the M.Sc. from any other University recognized by the Syndicate as equivalent to (a);

(e) B.Sc. examination of any other University recognized by the Syndicate securing at least 50% marks in aggregate and with Physics and Mathematics for M.Sc. Physics course and with Chemistry and mathematics for M.Sc. Chemistry course along with any one of the following subjects: Bio-Chemistry, Botany, Chemistry, Geology, Physics, Statistics, Zoology.

5. It is further alleged that in the instructions for admission conveyed through letter dated 17.6.2011, nothing has been said about the subject of Chemistry, therefore, in terms of past practice of eligibility of annual system was adopted and admission was granted. It is further submitted that in the Regulation 1.1, it has been mentioned that there shall be an examination for the degree of Master of Science in the subjects of Physics, Chemistry, Zoology and Anthropology and the duration of the course shall be two years. The Course shall be held in two parts, which shall be Part I at the end of the Ist year of the course and Part II at the end of the IInd year of the course. Regulations 1.1 and 1.2 are reproduced as under:--

1.1 There shall be an examination for the degree of Master of Science in the

subjects of Physics, Chemistry, Zoology and Anthropology. The duration of the course shall be two years.

1.2 The examination for these course shall be held in two parts: Part I at the end of the first year of the course and Part II at the end of the second year of the course ? once a year ordinarily in the month of April on a date fixed by Syndicate.

6. The petitioner has thus, challenged the validity of communication dated 22.2.2012 and prayed for a writ in the nature of mandamus directing the respondents to declare the result of all the three students of M.Sc. I (Chemistry) Ist and IInd semester.

7. It may be pertinent to mention that on the first date of hearing, this Court, prima facie, was not prepared to hear the institution, who had admitted the students without properly checking the eligibility, but had found that if any particular student is put to any prejudice, then his case can be considered. Accordingly, the three students, namely, Shivani Rana, Deepshikha and Sakshi Sharma filed application bearing CM No. 8835 of 2012 under Order 1 Rule 10 of the CPC for being impleaded as co-petitioners, which was allowed by this Court on 26.7.2012 and notice of motion was issued in the main writ petition for 24.8.2012.

8. In reply, the respondents alleged that upto 2010-11, M.Sc. (Chemistry) (2 years course) in the affiliated colleges of Panjab University was being conducted under the annual system of examination. However, vide letter No. Misc./A-6/3194-3444 dated 27.5.2011, the semester system in Postgraduate Courses was introduced in all the affiliated colleges w.e.f. 2011-12 session and all the affiliated colleges including the petitioner/college were informed about it. It was also admitted that the admission instructions were sent to the College vide letter dated 17.6.2011 but at the same time, it was reiterated that letter dated 27.5.2011 was sent regarding introduction of semester system. The respondents admitted regarding receipt of Registration Return of the students from the petitioner/college on 15.10.2011 and also admitted para 6 of the writ petition in which it is alleged by the petitioner/college that the educational certificates of B.Sc. as well as DMCs were also sent to the University. The averments made in Para 7 of the writ petition were also not denied that the educational certificates of B.Sc. as well as DMCs were scanned and scrutinized and thereafter all the students, who were admitted in M.Sc. (Chemistry), were issued roll numbers for the purpose of appearing in the Ist semester. All that has been said in para 7 of the written statement that as per Panjab University Calendar Volume II of 2007, Regulation 2(a) provides for admission to Master of Science (semester system) in Chemistry, a candidate should be having 50% marks in the B.Sc. (Medical/Non-Medical) and also 50% marks in the subject of Chemistry separately. It is further alleged that in the letter dated 17.1.2012 written by the College to the University, an undertaking was given that M.Sc. degree will not be awarded to the three students till their improvement in the B.Sc. subject of Chemistry.

9. Thus Court had found that there was a dispute with regard to receipt of letter dated 27.5.2011 by the College by which it was informed by the University that admission has to be given as per the semester system. Therefore, on 16.11.2012, this Court ordered that the Principal of the petitioner/college shall file an affidavit as to when letter dated 27.5.2011 was received by the College or whether it was received or not. In terms of the order dated 16.11.2012, Dr. Surjit Singh Randhawa s/o Shri Teja Singh, Principal of the petitioner/college filed his additional affidavit by way of CM No. 17250 of 2012 which was taken on record vide order dated 4.12.2012. In the said affidavit, the principal of the college has averred "that the deponent has checked up all the receipt registers concerning to the period from 27.5.2011 onwards and found that the said letter was not received by the college at any point of time rather after the admission of the students, the original certificates were sent to the University on the basis of which, the roll numbers were issued. The deponent again submits that the letter dated 27.5.2011 was never received by the college at any point of time."

10. In view of the aforesaid averment in the affidavit, this Court, in the order dated 4.12.2012 passed in the main writ petition, ordered the University to show from the record if the letter dated 27.5.2011 was really received or not by the College.

11. While the writ petition was still pending, an application bearing CM No. 17483 of 2012 was filed by the three students in which they made a prayer to allow them to appear in the IIIrd semester examinations which were scheduled to be held on 12.12.2012.

12. Notice in the application was issued on 7.12.2012 and on 10.12.2012, following order was passed by this Court:--

Counsel appearing for the University states that he will not have any objection, in case, the petitioners/students are permitted to appear in the examination. He, however, further points out that letter dated 27.5.2011 was communicated through E-mail as well as through ordinary post and ought to have been received by the college. Since, the examinations are fixed for 12.12.2012 onward, the petitioners/students are permitted to appear in the examinations provisionally, which shall be subject to the final outcome of the writ petition. It will also not lead to change of any equity in favour of the petitioner/college or the petitioners/students.

13. After few adjournments, on 1.5.2013, following an order was recorded by this Court:--

Learned counsel for the respondent-University seeks short adjournment to get the complete relevant record and also to file an affidavit by the Registrar, as to from which academic session and vide which communication, the annual system was changed to semester system introducing the changed eligibility criteria for admission in M.Sc. When the eligibility-cum-registration return of the students was sent by the petitioner-college and after the scrutiny thereof, the roll nos.

were issued to the students by the University, allowing them to take the examination. On his request, adjourned to 24.5.2013.

Let the registrar of the respondent-University file his specific affidavit in this regard, within a period of two weeks from the receipt of the certified copy of this order with an advance copy to the learned counsel for the petitioner. Copy of this order be supplied to learned counsel for the respondent-University under the signature of the Court Secretary attached to this Bench, for meticulous compliance thereof.

14. In terms of the aforesaid order, affidavit dated 31.5.2013 was filed by the Registrar, Panjab University in which it was alleged that letter dated 27.5.2011 was sent to the Principal of all the affiliated colleges. When the registration return of the students was sent by the petitioner/college to the University on 15.10.2011, it was scrutinized and admission of all the students were confirmed except the three students and the college was informed vide letter dated 8.12.2011 and when no reply was received from the college a reminder was sent on 28.12.2011, thereafter the college sent a reply on 17.1.2012, which was put before the Board of Postgraduate Studies in Chemistry of the University where it was decided that three students were not eligible and communicated its decision vide letter dated 22.2.2012 to the college. It will not be out of place to mention that while the writ petition was still pending, all the three students have also taken their IVth semester exam and as a matter of fact their course of M.Sc. (Chemistry) is over but for the declaration of their result.

15. Learned counsel for the petitioner while pleading the case of the College has submitted that the college had not received letter dated 27.5.2011 containing the instructions with regard to semester system. The college had sent Eligibility-cum-Registration Return to University along with educational certificates of B.Sc. and DMCs of all the students including the three students, which was duly scanned and scrutinized by the University and issued roll numbers to all the students for their appearance in the Ist semester examination. It is submitted that the college, acting in terms of the instructions dated 17.6.2011, pertaining to the instructions for admissions to the various courses for the session 2011-12, in which there is no reference to the M.Sc. (Chemistry) and was under the bona fide belief that the admission has to be given on the basis of eligibility of annual system.

16. The Principal of the college has also categorically sworn an affidavit dated 3.12.2012 in this regard repeatedly averring that the letter dated 27.5.2011 was not received by the College at any point of time. However, this has been strongly denied by the University as it is averred that the letter dated 27.5.2011 was sent to all the affiliated colleges through E-mail as well as by the ordinary post and the petitioner/college had also received the same. It is, however, not denied by the University that the Registration Return, DMCs and Educational certificates were sent by the College to them which were duly checked up before confirmation of the admission and issuance of roll numbers to all the students

including the three students. The University, however, is firm on its stand that the college was duly informed on 8.12.2011 about the ineligibility of the three students and reminder was also sent on 28.12.2011 and forms an opinion of its receipt from the letter of the college dated 17.1.2012 in which the Principal of the College had alleged that the degree of the M.Sc. shall not be awarded to the three students till their improvement in the B.Sc. Chemistry. Thus, it is submitted that the Principal of the college is telling lies and he is trying to conceal true fact from the Court.

17. Now, I advert to the arguments raised by learned counsel for the students, who is incidentally the same counsel, who is appearing for the college, however, be that as it may, it is argued that the petitioners/students are not at fault and should not be penalized for the error of omission and commission either on the part of the college or the University. It is further submitted that the University itself had issued roll numbers to the petitioners to appear in the Ist and IInd semester and the petitioners have now taken the examinations of IIIrd and IVth semesters as well under the order of this Court, as a matter of fact, completed their course of M.Sc. (Chemistry) and if at this stage, their admission is ordered to be cancelled then there would an irreparable loss to the students who are not at all at fault because if they were not eligible to take admission, the College should have refused and if the college had not refused then the University to whom the registration return, educational certificates and DMCs were sent and had scanned and scrutinized the same, should not have issued roll numbers to the petitioner to appear in Ist and IInd semester. It is, thus, submitted that the respondent/University is now estopped by the Principle of equitable estoppel.

18. In this regard, learned counsel for the petitioners/students has relied upon the decisions of the Supreme Court in the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, "Bhavnit Singh Bhuttar v. Central Board of Secondary Education and others" 2001 (Sup. 2) JT 63 and a Division Bench judgment of this Court in the case of "Ashu Singla v. Punjabi University, Patiala and another" 2004 (2) RSJ 720.

19. In the case of Shri Krishan (Supra), it was held that once a student is allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the student cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear. In the case of Bhavnit Singh Bhuttar (Supra), he was debarred from appearing in the final examination of XIIth class for allegedly not clearing Chemistry paper at Class XI examination. His stand was that he had never been asked to clear Chemistry paper of Class XI, the admission not granted on the ground that he has not passed Chemistry paper of Class XI was not found to be justified and his final result was ordered to be declared. In the case of Ashu Singla (Supra), the petitioner appeared in 10+2 examination conducted by Punjab School Education Board. In the Gazette published by the

Board, his roll number was included in the list of candidates who had passed the examination, however, he got reappear in the paper of English. Although, he cleared that paper also but in the meanwhile he applied for admission in Bachelor of Computer Application (BCA) course. He was admitted in the college of Management and Technology. On receipt of the mark-sheet of 10+2 examination, he brought it to the notice of the authorities of the College that he had not passed 10+2 examination. The Principal of the college forwarded the mark-sheet to the University alongwith other documents, but no objection was raised by the concerned authority of the University to his eligibility. Rather, he was allowed to take BCA Part-I examination in April, 2001. he got reappear in papers I, V and VI of that examination. He took reappear examination held in September, 2001 but could not clear the same and he was allowed to prosecute studies in BCA Part-II. In April, 2002, he applied for permission to appear in the reappear papers of BCA Part-I and the main examination of BCA Part II. At that stage, he was informed that he is not eligible to take the examination because he had not passed 10+2 examination at the time of admission in the BCA Course. It was observed by this Court that the provisional permission granted to the petitioner to take BCA Part-I (reappear) and BCA Part-II (main examination) deserves to be regularized because the said petitioner did not conceal any material fact from the University. He sought admission on the basis of result published in the Gazette issued by the Board and as soon as the mark-sheet was received from the Board, the same was submitted to the college authorities and thus did not make any misrepresentation to secure admission. It was held that the blame for wrongly admitting the said petitioner and allowing him to appear in BCA Part-I examination squarely lies with the University. Thus applying the Principle of equitable estoppel, it was held that the respondents should estopped from questioning the eligibility of the said petitioner to be admitted to the BCA Part-I course or deny him the benefit of his studies in BCA Part-I and Part-II.

20. In this regard, learned counsel for the respondent/University has submitted that when the roll numbers were issued for taking Ist and IInd semester examinations, it was specifically mentioned on the back side of the roll number amongst the instructions that the examination is being taken by the student at his own risk and peril.

21. I have heard learned counsel for the parties, perused the record, considered facts of the case in detail and concluded that insofar as the students are concerned, they are not at fault. They had submitted the educational certificates and DMCS to the college at the time when they were offered admission. At no point of time they were informed either by the College or the University, evident from the documents available on record, about their ineligibility to take admission in the semester system for having less than 50% marks in the subject of Chemistry. The University issued them roll numbers to appear in Ist and IInd semester examinations after scanning and scrutinizing their educational certificates and DMCs and if they were not eligible, their roll numbers should not have been sent at all. The students have also appeared in the IIIrd and IVth

semester examinations as well though under the orders of this Court and if their admission at this stage is ordered to be cancelled their entire career would be spoiled without there being any fault of their part. Once, it is not the case of the respondents that the students have misrepresented or played any kind of fraud by submitted forged documents in order to take admission by showing that they have got 50% marks in the subject of Chemistry, rather submitting their genuine documents not only to the College but also to the University, the order of cancellation of their admission at this stage will be highly unreasonable. Thus, following the decision of the Division Bench of this Court in the case of Ashu Singla (Supra) and applying the Principle of equitable estoppel, the respondent/ University is directed to regularize the admission of the students and declare their result forthwith.

22. Insofar as the role of the College is concerned, there is a serious dispute with regard to the receipt of letter dated 27.5.2011. The University has insisted that the said letter was sent to the College not only through E-mail but also by the ordinary post whereas an affidavit has been filed by Dr. Surjit Singh Randhawa, Principal of the College reiterating therein that the letter dated 27.5.2011 was not received by the College at any point of time. This dispute on fact, calls for an enquiry for which the Vice Chancellor of the University may, if so advised, constitute a committee to find out the truth and take necessary action, if required. The writ petition is, however, disposed of in view of the terms as indicated above.