

(2010) 07 BOM CK 0152
In the Bombay High Court
Case No : Writ Petition No. 363 of 2010

Shri Rama Gurudas Kankonkar	Vs	APPELLANT
The Goa University and The Goa Engineering College		RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Citation : (2010) 07 BOM CK 0152

Hon'ble Judges : F.M. Reis, J;A.S. Oka, J

Bench : Division Bench

Advocate : D. Pangam, for the Appellant; A. Agni and M. Salkar, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Oka, J.—Heard learned Counsel appearing for the petitioner, learned Counsel appearing for respondent No. 1 and the learned Counsel appearing for respondent No. 2. Considering the issue involved in the petition, the same is being disposed of finally at the admission stage. Hence Rule, returnable forthwith. Heard by consent.

2. The petitioner is a student of Degree course in Information Technology. The Petitioner was admitted to the second respondent College in the year 2003 for Semester I of the said degree course. The said Degree Course consists of eight semesters. As of April 2009, the petitioner had not cleared one subject each of semesters V. and VI and five subjects of semester VII.

3. The petitioner appeared for the examination of the semester VII in December 2009. According to his case, as the result of the said examination was not declared, the second respondent allowed the petitioner to attend the classes of semester VIII with effect from 14th January 2010. The results of the semester VIII examination were declared in February 2009. As stated earlier, the petitioner could not clear five subjects. The petitioner applied for revaluation. The result of the revaluation was declared in April 2009 in which the petitioner did not

succeed. Accordingly to the case of the petitioner, he was granted admission to the semester VIII by the second respondent College by accepting the tuition fees on 16th April 2009. According to the case of the petitioner, some other students who had not cleared more than six subjects were admitted to semester VIII. The petitioner appeared for the examination of the semester VIII held on 28th May 2009. The result of the petitioner was not declared on the ground that the petitioner was not entitled to answer semester VIII examination in May 2009.

4. According to the petitioner, on 1st April 2009, a Circular was issued by the first respondent University under which the petitioner became entitled to complete his course irrespective of number of subjects remaining uncleared. By a communication dated 18th December 2009, the first respondent rejected the prayer made by the petitioner for declaration of results. A writ petition was filed by the petitioner in this Court. The said petition was disposed of by this Court by directing the first respondent University to treat the petition as an Appeal and to decide the same. According to the petitioner, on 27th April 2010, the said appeal was dismissed. Hence present petition has been filed. On 4th May 2010, this Court passed an ad- interim order permitting the petitioner to appear for the semester VIII examination to be held in May 2010. This Court directed that the result of the petitioner shall be kept in a sealed cover and the same shall not be declared without permission of this Court.

5. The learned a counsel appearing for the petitioner invited the attention of the Court to the Circular dated 1st April 2009 issued by the first respondent University. He relied upon Clause (iii) of the said Circular and pointed out that though in May 2009 the petitioner had backlog of more than six subjects, in view of the said clause he was qualified to appear for the semester VIII examination. He invited our attention to the Circular dated 6th April 2009 issued by the first respondent University by which the earlier Circular dated 1st April 2009 was clarified. The learned Counsel appearing for the petitioner submitted that the said Circular makes it very clear that the petitioner was entitled to secure admission to semester VIII irrespective of number of backlogs up to semester VII. He submitted that the Circular dated 6th April 2009 explains the earlier Circular dated 1st April 2009 and therefore, the petitioner was eligible to keep terms of the semester VIII. Inviting our attention to additional affidavit of the petitioner, he pointed out that apart from the petitioner, admission was granted to other similarly placed students to the semester VIII and they were allowed to appear for the semester VIII examination. He submitted that the second respondent College admitted the petitioner to the semester VIII course after accepting fees from the petitioner. He submitted that the Circular dated 6th April 2009 shows that under the earlier Circular, notwithstanding backlog of more than six subjects, a student was permitted to keep term of the semester VIII. He submitted that the Circular dated 6th April 2009 was issued granting the same concession to the students to enable them to take admission in November/ December 2009 to the semester VIII irrespective of backlog of more than 6 subjects. He submitted that it is a longstanding practice of the first-respondent

University to admit such students in as much as invariably there is a delay in declaration of the result of the semester examinations of engineering. He submitted that the first respondent University has never cancelled the admission of the petitioner to the semester VIII course of the second respondent College. He submitted that the petitioner was allowed to appear for examination of the semester VIII in May 2009 without raising any objection. He submitted that there was no reason to withhold the result of the said examination of the petitioner. He submitted that now the first respondent cannot take up a stand that the petitioner was not eligible to take admission to semester VIII. He submitted that the very fact that Circular dated 6th April 2009 permits similarly placed students to take admission to semester VIII in November/December 2009 shows that the petitioner was eligible to take admission to the said semester in January 2009. He submitted that due to illegality on the part of the first respondent, prejudice has been caused to the petitioner as now there is a new course in engineering degree and the petitioner was a student of old course. The learned Counsel lastly submitted that for reasons recorded, this Court allowed the petitioner to answer semester VIII examination held in May 2010. He prayed that the result of the petitioner be ordered to be declared.

6. The learned Counsel appearing for the first respondent submitted that in January 2009 the petitioner was not eligible to keep terms of the semester VIII as he had backlog of more than six subjects. The learned Counsel submitted that by communication dated 18th December 2009, the first respondent had informed the petitioner that the petitioner was entitled to take admission to semester VIII in January 2010 provided he fulfills the requirements of Ordinance OA-16.13. The learned Counsel pointed out that the petitioner had chosen not to get himself admitted in January 2010. The learned Counsel pointed out that the present petition has been filed on 29th April 2010. The learned Counsel submitted that the petitioner was not eligible to appear for the semester examination VIII held either in May 2009 and in May 2010 and hence the result of the petitioner cannot be declared. On instructions, she stated that the petitioner can be admitted to semester VIII even in January 2011. The learned Counsel appearing for the second respondent College stated that the tuition fees paid by the petitioner on 16th April 2009 will be adjusted against the tuition fees payable by the petitioner in January 2011 provided the petitioner is eligible to secure admission and that he applies for admission. He submitted that the examination fee cannot be adjusted. The learned Counsel appearing for the petitioners submitted that the stand taken by the first respondent University is contrary to its own Circular dated 6th April 2009.

7. We have given careful consideration to the submissions. The Ordinance OC-1 0.27 of the first respondent University provides that in addition to the candidates who have passed semester I to VII, the candidates who have fulfilled the requirement of preceding semester and have not more than six papers as backlog from the three immediate preceding semesters shall be considered eligible for admission to semester VIII. There is no dispute that in January 2009,

the petitioner had backlog of seven papers. Therefore, the petitioner was not eligible to secure admission to semester VIII. The petitioner has relied upon Circular dated 1st April 2009. None of the four clauses of the Circular deal with admission to semester VIII. Clause (i) of the said Circular permits admission to semester VII to students who have more than six backlogs. The Circular does not grant any such concession for securing admission to semester VIII. Clause (iii) of the said Circular does not deal with admission to semester VIII. The said clause enables the student having more than six backlogs to clear the backlog papers in order to qualify for admission to higher semester. In the case of Petitioner there was no question of qualifying for admission to higher Semester as the Semester VIII was the last Semester. The said Circular does not permit or does not regularize admission to semester VIII of the students who were having backlog of more than six papers and who were otherwise not eligible. The Circular dated 6th April 2009 does not permit admission either in January 2009 or in June 2009 to semester VIII to the students who have backlog of more than six subjects. The said Circular permits students to secure admission to semester VIII in November/December 2009 irrespective of number backlogs. Thus the petitioner was not entitled to secure admission to semester VIII either in January 2009 or in June 2009. The petitioner admittedly did not secure admission in November/December 2009 in terms of the Circular dated 6th April 2009. Therefore the petitioner was not eligible to answer semester VIII examination either in May 2009 or in May 2010.

8. On the 11th December 2009 the second respondent College informed the first respondent University that the petitioner answered semester VII examination held in December 2008. It is stated in the said letter that as classes of semester VIII started on 10th January 2009 and as the result of the semester VII was not declared till then, the petitioner was allowed to attend semester VIII classes. The result of the semester VII was declared on 29th January 2009. The petitioner did not qualify to secure admission to semester VIII as he could not clear five papers of the semester VII in addition to earlier backlog of two papers. It is stated in the said letter that on the request made by the petitioner, as he was confident to clear some more papers in revaluation, he was provisionally allowed to attend semester VIII classes. The commutation records that the petitioner could not succeed in revaluation. The communication records that the form submitted by the petitioner for examination of Semester VIII to be conducted in May 2009 was forwarded by the second respondent to the first respondent by clearly mentioning that the form was submitted on the basis of interpretation of the Petitioner of the Circulars. The form was submitted subject to the decision by the University. The said letter records that the petitioner was informed about the letter dated 6th November 2009 by which the first respondent University informed that the petitioner was not eligible and the appearance of the petitioner for the examination in May 2009 is to be treated as null and void. The communication further records that the petitioner was informed that he is entitled to be re-admitted to semester VIII afresh in January 2010 provided he

fulfills the criteria of the relevant ordinance. A copy of the said letter was forwarded to the petitioner. The first respondent University issued letter dated 18th December 2009 to the second respondent College stating that the petitioner was not eligible to appear for semester VIII examination in May 2009. A copy of the said letter was forwarded to the petitioner. The petitioner did not avail of the opportunity of securing admission in January 2010. The conclusion of the University that the petitioner was not eligible to secure admission to semester VIII in January 2009 is consistent with the relevant Ordinance and the Circulars dated 1st and 6th APRIL 2009. Therefore, the Petitioner was not eligible to appear for semester VIII examination either in May 2009 or in May 2010.

9. The learned Counsel appearing for the first respondent on instructions stated that it will be open for the petitioner to apply for admission to semester VIII in January 2011. The learned Counsel appearing for the second respondent has stated that tuition fees paid by the petitioner in April 2009 will be adjusted against the tuition fee payable in January 2011 provided the petitioner secures admission to semester VIII in January 2011. The statements sufficiently protect the petitioner.

10. We accept the statements made by the learned Counsel appearing for first and second respondents on instructions. However no relief can be granted to the petitioner in terms of the prayers made in this petition. Hence, subject to what is observed above, the writ petition is rejected.