
(2016) 03 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 6293 of 2015

Sneha Fulchand Hargude and Others

APPELLANT

Vs

Joint Director of Technical Education and Others

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Citation : (2016) 3 AIRBomR 254 : (2016) 3 ALLMR 577 : (2016) 2 BCR 530 :
(2016) 4 MhLJ 580

Hon'ble Judges : V.A. Naik and A.S. Chandurkar, JJ.

Bench : Division Bench

Advocate : T.S. Kene, for the Appellant; P.S. Tembhare, Asstt. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

V.A. Naik, J.—1. Rule. Rule made returnable forthwith. The petition is heard finally, as the notice for final disposal was issued to the respondents on 20/11/2015 and the respondents are duly served.

2. By this petition, the petitioners impugn the communication of the respondent No. 3-College of Pharmacy, dated 18/11/2015, rejecting the applications filed by the petitioners for permission to appear at the M.Pharm., Part-I Examination, on the directions of the University.

3. Few facts giving rise to the petition are stated thus -

The petitioners had appeared at the B.Pharm. Final Examination in Summer 2015 and were declared unsuccessful in some of the subjects. The petitioners, therefore, applied for revaluation in terms of the Direction of the Nagpur University, bearing No. 5 of 2004. It is the case of the petitioners that though the revaluation result is required to be declared within a period of 45 days, the result was not declared by the University within a reasonable time and the petitioners were, therefore, provisionally admitted in the M.Pharm Course, subject to the declaration of their B.Pharm. results. The petitioners attended the M.Pharm. Part-

I classes and also submitted their practical record to the respondent No. 3-College. Since the result of revaluation was not declared within a reasonable time, the petitioners approached this Court to seek a direction to the respondents to declare the revaluation results of the petitioners. Though the last date for submission of the mark-sheet of the previous examination was 25/09/2015, the petitioners were not able to submit the mark-sheet of the B.Pharm. Final Examination to the respondent No. 3-College, as the revaluation results were not declared by then. Since the petitioners failed to submit the mark-sheet before the cut-off date, the University asked the College not to permit the petitioners to appear at the First Semester Examination of the M. Pharm. Course. On the say of the University, the respondent No. 3 College prohibited the petitioners from appearing at the First Semester Examination of the M.Pharm. Course. In the circumstances of the case, the petitioners have challenged the action on the part of the University and the College, of prohibiting the petitioners from appearing at the First Semester Examination of the M.Pharm Course.

4. The learned counsel for the petitioners submitted that the petitioners were not at fault in not submitting the mark-sheet of the final year B.Pharm. Examination to the concerned authorities before 25/09/2015, as the results of the revaluation were declared on 05/10/2015. It is submitted that the petitioners could not have been directed to do something that is impossible and not within the control of the petitioners. It is submitted that the petitioners have passed the B.Pharm. Final Examination after revaluation and it is due to the fault of the University that the petitioners were declared unsuccessful when the results were initially declared on 16/06/2015. It is stated that the petitioners could not submit the mark-sheet of the B.Pharm. Degree Course to the concerned authorities before 25/09/2015, as the University had not declared the revaluation results. It is stated that since in view of the interim directions, the respondents had permitted the petitioners to appear at the First Semester M. Pharm. Examination and since the petitioners are declared successful in the B.Pharm. Degree Course, the admission of the petitioners in the M.Pharm.Degree Course needs to be protected. It is submitted that the students like the petitioners should not be made to suffer because of the inaction on the part of the University to declare the results of revaluation, within a reasonable time.

5. Shri Patil, the learned counsel for the respondent No. 2-University, supported the action of the University. It was denied that the revaluation results are liable to be declared within a period of 45 days. It is stated that till 2001, the University was required to declare the revaluation results within a period of 45 days, but after Direction No. 5 of 2004 was notified by the Nagpur University, there is no time prescribed for declaration of the revaluation results. It is stated that the revaluation results could be declared within a period of 135-140 days as could be gathered from the various clauses of Direction No. 5 of 2004. It is stated that in the instant case, the petitioners' results were initially declared on 16/06/2015 and the petitioners had applied for grant of photocopies of the answer-sheets on 20/06/2015. It is stated that the applications of the petitioner

Nos. 1 and 2 were dispatched by the College to the University on 29/06/2015 and 30/06/2015 respectively. It is stated that the forms of the petitioners were sent to the godown on 16/07/2015 and the answer-sheets were received from the godown on 26/07/2015. It is stated that the photocopies of the answer-sheets of the petitioners were sent to the College on 17/08/2015 and 20/08/2015. It is stated that the petitioner Nos. 1 and 2 applied for revaluation on 28/08/2015 and 30/08/2015 respectively. It is stated that the marks secured by the petitioners as per the results declared on 16/06/2015 were entered into the tabulation register on 14/09/2015. It is stated that thereafter, on 01/10/2015, the duly constituted Committee decided that the answer-sheets of the petitioners could be reevaluated. It is stated that the reevaluation of the answer-sheets was completed on 04/10/2015 and the revaluation results were declared on 05/10/2015. It is stated that in the circumstances of the case, it cannot be said that the University was at fault in not declaring the results of the revaluation till 05/10/2015. It is submitted that the approximate time to declare the revaluation results would be 135 to 140 days for the engineering courses and for the other courses the time would be lessor by 30 to 45 days. It is stated that the petitioners do not have a right to get the answer-sheets revalued and that is an additional facility provided to the petitioners by the University. It is stated that in this case, the results have been declared within a period of 65 days from the date of the receipt of the applications for revaluation by the University. The learned counsel for the University relied on the clauses in Direction No. 5 of 2014 to substantiate his submission. It is submitted that since the petitioners were permitted to appear at the First Semester Examination of M.Pharm. Course in terms of the interim directions, an appropriate order may be passed.

6. On hearing the learned counsel for the parties, we find that the University was at fault in not declaring the revaluation results of the petitioners within a reasonable time. On the basis of the data furnished by the learned counsel for the University, we find that the University did not proceed diligently in the matter of revaluation of the answer-sheets of the petitioners. It is pertinent to note that the results of B.Pharm. Final Examination were declared on 16/06/2015 and the petitioners had immediately applied for photocopies of their answer-sheets on 20/06/2015. It is no doubt true that the College dispatched the applications of the petitioners for supplying the photocopies of the answer-sheets to the University on 29/06/2015 and 30/06/2015. We fail to understand as to why the University wasted the time from 30/06/2015 till it asked for the supply of the answer-sheets from the godown on 16/07/2015. We find that a period of nearly 16 days was wasted in only sending the requisition to the godown for supply of the answer-sheets. The answer-sheets could have been received from the godown earlier, but they were received on 26/07/2015. The photocopies of the answer-sheets were then dispatched to the College without any diligence on 17/08/2015 and 20/08/2015. We wonder why 20 days should be required only for sending the photocopies of the answer-sheets that were received from the godown to the respondent-College. Immediately on the receipt of the answer-

sheets, the petitioners applied for revaluation on 28/08/2015 and 30/08/2015. After that, time of 14 days was wasted and the marks secured by the petitioners initially were recorded in the tabulation register on 14/09/2015. If the marks secured by the petitioners in all the subjects were already entered into the tabulation register before 16/06/2015, it is difficult to gauge as to why the marks that were entered in the initial tabulation register could not be entered into the tabulation register pertaining to revaluation, for 14 days. The Committee for considering whether the applications of the students are genuine and whether revaluation could be ordered, decided on 01/10/2015 that the answer-sheets of the petitioners could be reevaluated. It is necessary to note that the time required to reevaluate the answer-sheets of the petitioners was only 4 days i.e. between 01/10/2015 to 04/10/2015. It is only at this stage that the University has acted diligently. We find that there was no delay whatsoever in actual reevaluation of the papers and the delay in declaring the revaluation results is attributable to the negligence on the part of the University at all earlier stages. If the University prescribes a date i.e. 25/09/2015 for submission of the mark-sheet of the previous examination for admission to an other advanced course, it is least expected of the University to declare the revaluation results of the students before that date. Even if it is assumed that the requirement of submission of the mark-sheet of the previous examination before 25/09/2015 is based on the directions of the State Government, there is an expectation that the University would declare the results of revaluation at least before that date, so that the students are able to produce the mark-sheet after revaluation before 25/09/2015, as per the requirement. The University cannot direct the cancellation of the admission of the students when it is at fault in not declaring the revaluation results of the students within a reasonable time.

7. There is no merit in the submission made on behalf of the University that the petitioners and the other students like them are provided with the facility of revaluation as an additional facility and there is no right in them to seek revaluation. We do not find any force in the submission made on behalf of the University that there is no right to seek revaluation. We find on a reading of Direction No. 5 of 2004 that the students are entitled to make applications seeking revaluation of their answer-sheets. The very fact that the petitioners were declared unsuccessful initially as per the results declared on 16/06/2015 and are declared successful after revaluation, clearly shows that it was the fault of the University in not awarding appropriate marks to the petitioners at the first valuation. The fact that the petitioners were initially declared unsuccessful and are declared successful after revaluation clearly shows that the facility is deserved. We have witnessed that sometimes some worthy students are either declared unsuccessful or are awarded extremely low marks in the initial valuation and after revaluation they are declared successful and their marks are increased significantly. At least, in case of such students, it cannot be said that revaluation is an additional facility which the University has granted to the students due to its generosity.

8. We do not find any force in the submission made on behalf of the University that the revaluation results were declared within a period of 65 days. We are not inclined to reckon the period from the date of making of the application for revaluation as the results were declared in the case of the petitioners on 16/06/2015 and the declaration of the revaluation results was on 05/10/2015. This clearly shows that the results of the petitioners were declared after a period of 110 days from the date of declaration of the results. We find that there is a gross delay in the declaration of the results of the petitioners in the instant case. The submission made on behalf of the University that about 135 to 140 days are required for completing the process of revaluation is ridiculous. If this is accepted, the results of the students would not be declared till the next supplementary examination. Also, the students would not be entitled to admission in the subsequent year of the same course or to a new course if the last date for submission of the mark-sheet for appearing at the examination of the advanced course or the next year of the same course is 25th of September. The revaluation facility would be illusory. The students may not know till the beginning of the supplementary examination whether they would or would not be required to appear at the supplementary examination, if the revaluation results are declared in 135 to 140 days.

9. Also, we find that the principle of *lex non cogit ad impossibilia* would apply to the facts of this case. The petitioners cannot be asked to do something that is impossible and is not within the reach of the petitioners. The petitioners had applied for revaluation and it was the duty of the respondent No. 2-University to reevaluate the answer-sheets within a reasonable time. If the University was at fault in not declaring the revaluation results of the petitioners before the stipulated date, i.e. 25/09/2015, the petitioners cannot be non-suited for not submitting the mark-sheets before that date.

10. In the circumstances of the case, we allow the writ petition and quash and set aside the impugned order cancelling the admission of the petitioners in M.Pharm. Degree Course and refusing permission to appear at the M.Pharm. Examination for not producing the mark-sheet of B.Pharm. Examination before the cut-off date i.e. 25/09/2015. We direct the respondent No. 2-University to protect the admission of the petitioners in the M.Pharm.Degree Course.

Rule is made absolute in the aforesaid terms with no order as to costs.