

(1985) 02 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Special Appeal No. 40 of 1985

The University of Jodhpur

APPELLANT

Vs

Mahendra Kewalia

RESPONDENT

Date of Decision : 27-02-1985

Acts Referred:

Citation : (1985) WLN 31

Hon'ble Judges : S.K. Mal Lodha, J;D.P. Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.P. Gupta, J.—The writ petition filed by respondent Mahendra Kewalia was dismissed by the learned Single Judge by his order dated February 5, 1985 following the decision of their Lordships of the Supreme Court in Kamlesh Kumar Khatri's case.

2. The respondent Mahendra Kewalia had failed in three Units in the IIIrd year B.E. (Mines) Examination of the University of Jodhpur and had also failed to obtain 45% of the total marks at the said Examination held in the year 1983. The case of the respondent was that he should have been allowed to keep terms in the next higher class notwithstanding the fact that he had failed in three units of the B.E. IIIrd year Examination and had also failed to obtain 45% of the total marks at the said Examination. The University did not permit the respondent to keep terms in the IVth year B.E. Class on the ground that besides having failed in three Units, the respondent had also failed to obtain 45% of the total marks at the IIIrd year B.E. Examination.

3. In Kamlesh Kumar Khatri's case, the Supreme Court agreeing with the view taken by a learned Single Judge of this Court in Sita Ram's case approved of the interpretation sought to be put by the University. Thus, the respondent was not entitled to keep terms in the next higher class in accordance with the relevant rules of the University then in force. The learned Single Judge, therefore, rightly

dismissed the writ petition filed by the respondent.

4. However, in this appeal, the only question raised on behalf of the University of Jodhpur is as to whether the respondent could take advantage of the interim orders passed by this Court? Mr. H. M. Parekh, learned counsel for the University submitted that although in pursuance of the interim order passed by this Court, the respondent was provisionally admitted in IVth year B. E (Mines) Class and was allowed to keep terms in respect of the 3 subjects, in which he had failed to obtain the minimum required pass marks at the III year B E. Examination, yet as the respondent had submitted an under-taking that he would not claim any benefit of the IIIrd year B E. Examination in pursuance of the interim order passed by this Court in case the writ petition failed, the respondent should not have been allowed by the learned Single Judge to obtain an advantage or benefit on account of the interim orders passed by (his Court, particularly in view of the fact that the writ petition filed by the respondent has been dismissed. The learned Single Judge has observed that since the respondent had appeared at the examination and had cleared the lower examination and not the higher examination, he was entitled to take the benefit of having passed the lower examination.

5. There can be no doubt that after having given the undertaking in this Court that the respondent would not claim any advantage of having passed the IIIrd year Examination in case his writ petition failed, the respondent is not entitled as of right to any advantage or benefit on account of the interim order passed by this Court on February 16, 1984. as modified by order dated April 5, 1984. In this connection, we may refer to the observations made by their Lordships of the Supreme Court in the case of Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others,

Laws are meant to be obeyed, not flouted. Some day, not distant, if admissions are quashed, for the reason that they were made wrongly, it will have to be directed that the names of students who are wrongly admitted should be removed from the rolls of the institution. We might have been justified in adopting this Court in this case itself, but we thought that we may utter a clear warning before taking that precipitate step.

Thus, on account of his under-taking, the respondent is not entitled as of right to claim any benefit from the fact that he was allowed to keep terms with the next higher class and was also allowed to appear at the examination in pursuance of the interim orders issued during the pendency of the writ petition with the dismissal of the writ petition, the interim orders passed by this Court ceased to have any effect. However, we are of the view that the respondent should not be subjected to any disadvantage on account of having appeared in only three subjects at the IIIrd year B. E. Examination at the time of his appearing at the IVth Year B E. Examination, If the respondent would not have filed the writ petition in this Court and in case the interim orders would not have been passed by this Court, the respondent would have appeared in all the subjects at a

special examination held by the University in March/April 1984 for the benefit of the students who had failed or he would have appeared in all papers at least at the time when he appeared in the 3 subjects or units of the BE IIIrd Year Examination & also in all the subjects of IVth B.E. Class. We are not unmindful of the fact that the respondent might then have been misled on account of the divergent views prevailing in this Court about the interpretation of the provisions of Clause II (a) of the Syllabus of the Bachelor of Engineering Course of the University of Jodhpur. The legal position in this regard was set at rest only with the decision of their Lordships of the Supreme Court in Kamlesh Kumar Khatri's case. We are of the view that in aforesaid circumstances, the respondent should not be placed at a worst position than he should have been if he would not have filed the writ petition in this Court. Taking into consideration, these facts and circumstances, we think that it would be equitable and just if the respondent has obtained the requisite pass marks in the 1984 Examination in the three subjects or Units, in which he had failed at the IIIrd year B.E Examination in the year 1983 and has also obtained 45% marks in the aggregate in the three Units together with the other subjects or Units in which he was successful in the B.E. IIIrd Year Examination held in the year 1983, then the University should declare the respondent to have cleared the B. E. IIIrd Year Class and he should thereafter be allowed to prosecute his further studies in the B.E. IVth Year Class and appear at the IV Year B.E. Examination to be held this year.

6. Mr. H.M. Parekh, learned counsel appearing for the University informed us in pursuance of our directions that the respondent has not passed the IVth Year B.E. Examination held in the year 1984, although the result of the same has not been declared, but he has passed in the three subjects of IIIrd Year B.E. at that Examination.

7. In this view of the matter, no further direction is required to be given except that given by the learned Single Judge that the University should declare the respondent to have passed the IIIrd Year B.E. Examination if he has now passed in all the subjects, including the three subjects in which he appeared in the year 1984 and further in case he has also obtained 45% in the aggregate of the total marks in all the subjects in IIIrd Year B. E. Examination. The respondent should also be allowed to prosecute his studies in the IV Year B.E. Class and undertake the examination of IVth Year B.E. (Mines) Class which may be held in the year 1985.

8. With these observations, the appeal is dismissed. There will be no order as to costs.