

(2008) 12 MAD CK 0313

In the Madras High Court

Case No : Writ Petition (MD) No. 1970 of 2007 and M.P. (MD) Nos.1 to 3 of 2007

T.S. Rajaram

APPELLANT

Vs

Bharathidasan University and The Principal, Anjalaiaammal
Mahalingam Engineering College

RESPONDENT

Date of Decision : 01-12-2008

Acts Referred:

Citation : (2008) 12 MAD CK 0313

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : R. Viduthalai for A. Arun Prasad, for the Appellant; K. Srinivasan, for Row and Reddy for RR1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This writ petition has been filed to call for the records pertaining to the order of second Respondent in Reference No. UG/Engg./ENQ/Nov.2006 dated 15.11.2006, quash the same and consequently direct the second Respondent to return the original certificates viz., (i) Degree certificate, S. No. 213974 dated 02.09.2003, (ii) Provisional certificate F. No. 6261, and (iii) Consolidated Mark Statement, F. No. 0249366, 0249367 to the Petitioner.

2. Heard Mr. R. Viduthalai, learned senior counsel for the Petitioner and also Mr. K. Srinivasan, learned Counsel for the Respondents 1 and 2.

3. The epitome and long and short of the case of the Petitioner as stood expounded from the averments in the affidavit accompanying the writ petition as well as from the submissions made by the learned Counsel for the Petitioner would run thus:

The Petitioner is the father of one Gopinath, who is a student of B.E.(E.E.E.) Course in the third Respondent viz., Anjalaiaammal Mahalingam Engineering College, Thiruvarur District, which is affiliated to Bharathidasan University. It so happened, that the University conferred the degree of B.E.(E.E.E). Thereupon,

the said Gopinath got employment in Omen and now presently he is working as Engineer in software. While so, the University after three years of conferring such B.E.(E.E.E) degree on him, unearthed some malpractices perpetrated in getting mark sheets and consequent confirmant of the degree. Thereupon the University cancelled the B.E.(E.E.E) degree on the main ground that even though the Petitioner got only 15 marks in the subject viz., Applied Physics during the examination conducted in the year 2002, nonetheless he got the marks tampered and 15 marks was converted as 45 and consequently, he got the degree.

4. Being aggrieved by and dissatisfied with the action taken by the University, W.P. No. 3347 of 2005 was filed; whereupon this Court vide order dated 28.04.2005 allowed the writ petition. Animadverting upon such allowing of the writ petition, W.A. No. 316 of 2006 was filed before this Court and the Division Bench of this Court vide order dated 30.08.2006 mandated as under:

In that view of the matter, while allowing the appeal and setting aside the order passed by the learned single judge, we direct that there shall be an enquiry by the University on the allegations against the student concerned and the student shall appear before the University on 16th October 2006. Thereafter, the matter may be disposed of in accordance with law as expeditiously as possible.

5. Consequently, the Petitioner was given opportunity of airing his grievance as against the act of the University. The Petitioner's son viz., Gopinath himself appeared and gave his statement in that regard. However, the University Authorities after considering it, cancelled the degree conferred on him and further order thus:

It is informed that as per the order of the Hon'ble Division Bench of Madurai High Court dated 30.08.2006, the candidate Thiru. T S R Gopinath with Register Number:E:731945 _ B.E.(EEE)- Anjalai Ammal Mahalingam College of Engg. & Tech.. Kovilvenni, was intimated to appear before the Enquiry Committee vide this office letter dated 26.09.2006. Accordingly, the candidate appeared before the Enquiry Committee. During the course of enquiry, the records which tampered, were showed to the candidate and the candidate gave his deposition.

After an in depth scrutiny of records, deposition and oral evidence the Enquiry Committee confirmed the tampering and recommend the following punishment, based on the earlier Syndicate Resolution No. 2005.45.

1. The results of ALL THE PAPERS APPEARED by the candidate APRIL - 2002 session, in which tampering had been committed are hereby CANCELLED.
2. The Degree Certificate awarded, Provisional certificate and all the related mark statements issued by the university from April-2002 session are hereby treated as CANCELLED and BE WITHDRAWN.
3. The candidate is hereby PERMITTED to appear the papers which were cancelled in April 2002 session on charges causing tampering from November -

2006 on humanitarian grounds.

6. Challenging and impugning the said order, this writ petition has been filed on various grounds inter-alia thus:

The University Authority without considering the representation of the Petitioner's son viz., Gopinath properly, simply raised its accusative finger as against him. The officials of the University was at fault and for that the Petitioner's son cannot be mulcted with such a penalty of cancelling the degree conferred on him. The said Gopinath secured a job at Muscat, in Sultanate of Oman during the month of January, 2005, which is a fact accompli and as such right from January, 2005, he has been working there; at this distant point of time, the University was not at all justified in cancelling the degree leaving the Petitioner's son high and cry. Accordingly, the Petitioner herein prays for setting aside the impugned order.

7. The learned senior counsel for the Petitioner in support of the affidavit filed by the Petitioner, would develop his arguments on various grounds. Without admitting but assuming such malpractice was perpetrated, the learned senior counsel for the Petitioner would argue that major part of the fault squarely rests on the University officials. However, ultimately, he made a supine submission to the effect that the Petitioner would be satisfied if the Petitioner's son viz., Gopinath is permitted to once again take up the examination on the subject, viz., Applied Physics either as per the then existed syllabus or as per the new syllabus, by giving him two or three opportunities of appearing and passing the examination. It is also his argument that absolutely there is no rhyme or reason on the part of the University Authority to cancel the pass marks obtained by the candidate in other examinations; he also secured very good marks in those other subjects; no rule or provisions available with the University so as to impose such a mammoth punishment.

8. Whereas the learned Counsel for the Respondents 1 and 2, by placing reliance on the counter filed by the Respondents 1 and 2 would advance his arguments that fraud vitiates everything and the said Gopinath cannot try to carve out an exception only relating to the subject viz., Applied Physics, concerning which the tampering of mark took place; the University has got the power to cancel the degree on the ground of fraud perpetrated on it; simply because the University official also was involved in the fraud, the gravity of the fraud committed by the Petitioner would not get mitigated. Accordingly, he prayed for the dismissal of the writ petition.

9. On both sides, various decisions have been cited. Hence, it is just and necessary to advert to those decisions in seriatim. The learned Counsel for the Petitioner would cite the following decisions of the Hon'ble Apex Court:

(i) State of Maharashtra v. Milind and Ors. reported in (2001) 1 SCC 4. An excerpt from it would run thus:

38. Respondent 1 joined the medical course for the year 1985-86. Almost 15 years have passed by now. We are told he has already completed the course and may be practising as a doctor. In this view and at this length of time it is for nobody's benefit to annul his admission. Huge amount is spent on each candidate for competition of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to the Respondent 1. If any action is taken against Respondent 1, it may lead to depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the degree obtained by him and his practising as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP(C) No. 16372 of 1985 and other related matters, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment.

(ii) Additional General Manager/Human Resource Bharat Heavy Electricals Ltd. Vs. Suresh Ramkrishna Burde, . An extract from it would run thus:

13. The principle, which seems to have been followed by this Court is, that, where a person secures an appointment on the basis of a false caste certificate, he cannot be allowed to retain the benefit of the wrong committed by him and his services are liable to be terminated. However, where a person has got admission in a professional course like engineering or MBBS and has successfully completed the course after studying for the prescribed period and has passed the examination, his case may, on special facts, be considered on a different footing. Normally, huge amount of public money is spent in imparting education in a professional college and the student also acquires the necessary skill in the subjects which he has studied. The skill acquired by him can be gainfully utilised by the society. In such cases the professional degree obtained by the student may be protected though he may have got admission by producing a false caste certificate. Here again no hard-and-fast rule can be laid down. If the falsehood of the caste certificate submitted by the student is detected within a short period of his getting admission in the professional course, his admission would be liable to be cancelled. However, where he has completed the course and has passed all the examinations and acquired the degree, his case may be treated on a different footing. In such cases only a limited relief of protection of his professional degree may be granted.

10. Absolutely, there could be no second opinion on the point that the dictum as laid down by the Hon'ble Apex Court is binding on this Court. The summation and summarization of the law points as found enunciated with in those decisions, is to the effect that if at all a student gets admission in a College by misrepresenting his caste status and on that count he writes the examinations

and gets a degree, his status of as that of a degree holder has to be protected on the ground of pragmatism and humanism.

11. The learned Counsel for the Respondents 1 and 2 would correctly point out that fraud vitiates everything and in support of his contention, he cited the decisions of the Hon''ble Apex Court in Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others, . An excerpt from it would run thus: 12. Apart from the fact that the mark sheets issued by the Principal in the years 1984 and 1986 speak differently, by no stretch of imagination it can be presumed that even when the second mark sheet in the year 1986 was issued, Respondent 3 was not aware of the order dated 6-1-1985 passed by the first Respondent.

13. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud.....

25. We are also unable to issue any direction to the first Respondent to allow the third Respondent to sit for the intermediate examination at this stage, having regard to the fact that the relevant rules in this regard have not been placed. We may, however, observe that if he is entitled to take the said examination in law, he may be permitted.

26. Further, we find that there is no equity in favour of Respondent 3, inasmuch as he knew that his result had been withheld because of the allegation of having used unfair means in the examination. Suppressing this fact, he took admission in BA and studied further.

12. I would like to highlight that cases involved in the precedents of the Hon''ble Apex Court cited on the side of the Petitioner could be differentiated from the case on hand on factual basis as fabricating of caste certificates in the process of securing admission in the academic institution is involved in those precedents, whereas in this case the marks relating to degree examination itself is found tampered with. As such there is a chasm and bottomless abyss in between the two. Wherefore I could see no much of a muchness between the two. To the risk of repetition without being tautologous, I would like to highlight that the ratiocination adhered to by the Hon''ble Apex Court was that the candidates involved in those cases, out of over enthusiasm, overreached themselves by fabricating some caste certificates and underwent the courses and passed the examinations properly. Even though, the Hon''ble Apex Court looked askance at their conduct and found fault with them, nonetheless did not want to cancel the degree for the reason that huge amount of public money was spent in imparting education in a professional college and the student also acquired the necessary skill in the subjects and in such circumstances, the Hon''ble Apex Court felt that the degrees conferred on them should not be stripped of from them. But, here the factual background is entirely different as it is obvious and axiomatic. Here

the Petitioner's son viz., Gopinath and the officials of the University in pursuance of their conspiratorial attitude and *hois clois*, fabricated the mark list.

13. At this juncture, the learned Counsel for the Petitioner would try to distinguish between this case with that of a hypothetical case, where a candidate, who *suo motu* forging the marks and getting degree. In my considered opinion the distinguish sought to be made is one that of *tweedledum* and *tweedledee*. The candidate forging *suo motu* his marks is equally guilty as the one who curried favour with some officials of the University and got the marks forged. At this juncture, my mind recounts the popular adage "Pot calling kettle back". However, in view of the supine submission made by the learned Counsel for the Petitioner as set out *supra*, I need not dilate on other aspects any further, but straight away coming to brass tacks the said plea of taking up only one exam could be dealt with as under:

So far the said specific plea has not been put forth before the University and it was not considered by the University specifically in the impugned order.

14. The learned Counsel for the Petitioner's argument that absolutely there is no rule enabling the University to call upon such a candidate to take up the examination in all subjects, even though he passed all other examinations except the one, viz., Applied Physics.

15. Whereas the learned Counsel for the University would submit that it is the prerogative of the University to cancel the degree itself as fraud vitiates everything. At this juncture, my mind is redolent and reminiscent of the following maxims:

- (i) *Ex dolo malo non oritur actio* (A right of action cannot arise out of fraud);
- (ii) *Ex non scrip to jus venit quod uses comprobavit*; and
- (iii) *In pari delicto potioreset conditio possidentis*.

16. The sum and substance of those maxims is to the effect that no legal cause of action arises out of an illegal act and one cannot capitalize his own fault. No doubt, the learned Counsel for the Petitioner here would try to carve out an exception to those maxims by pointing out that the University can punish the student for the fault committed in respect of one subject and not in respect of all other subjects. I would like to point out that this is a matter to be considered by the very University itself.

17. Hence, in these circumstances, I am of the considered opinion that the following direction could be issued:

The Petitioner is at liberty to make representation within fifteen days from the date of receipt of a copy of this order, seeking permission to take up only the examination on the subject viz., Applied Physics as per the then existed syllabus or the present syllabus by giving him two or three opportunities and within fifteen days thereafter, the University after giving due opportunity of being heard

to the Petitioner, shall take a decision on merits in accordance with the University Rules and Regulations and at their discretion, untrammelled and uninfluenced by any of the observations made by this Court in disposing of this writ petition.

18. I make it clear that on par with the interim stay granted by this Court on 28.04.2008, the stay shall be continued till the University disposes of the representation referred to supra.

19. With the above said observations and directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.