
(1986) 03 BOM CK 0042
In the Bombay High Court
Case No : Writ Petition No. 2261 of 1985

Umapati Vasudev Vyas

APPELLANT

Vs

University of Bombay and Another

RESPONDENT

Date of Decision : 17-03-1986

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : (1986) 2 BomCR 347

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Advocate : Milind Sathe and K.R. Dhanuka, for the Appellant; N.H. Gursahani and S.H. Gursahani for respondent No. 1, M.K. Chehria, for respondent No. 2., for the Respondent

Final Decision : Dismissed

Judgement

S.P. Bharucha, J.—The petitioner was admitted to the Pre-Ayurvedic I course in the Smt. Kamladevi Mittal Punarvasu Ayurvedic College, Bombay, in July 1980 and he passed the relevant examination in May 1981. In May 1982 he appeared for the Pre-Ayurvedic II examination conducted by the University of Bombay (the 1st respondent). Its results were declared on 31st July, 1982. The petitioner was declared to have passed in all subjects but one, namely, Ayurveda it has Parichaya.

2. On 17th August, 1981 the petitioner applied to the University for revaluation of his marks in the subject in which he had failed.

3. In August 1982, it is the petitioners case, he applied to the College, of which the 2nd respondent is the Principal, to be allowed to study for the First Year Bachelor of Ayurved in Medicine and Surgery (Main) course subject to the result of the revaluation. The Principal granted permission to him to do so. The petitioner attended, it is his case, the relevant classes and practicals.

4. On 19th April, 1983 the petitioner received a communication from the

University intimating to him that, upon revaluation, he had passed in the Pre-Ayurvedic II examination.

5. In October 1983 the petitioner appeared for the First year B.A.M.S. (Main) examination conducted by the University and, in December 1983, was declared successful. In April 1985 the petitioner appeared for the Second year B.A.M.S. (Main) examination and, on 16th July, 1985 was declared to have passed in all subjects but two, i.e., "Nidanpanehakam Sarva Roganprati Vignayam" and "Agadatantra and Vyavaharayurveda".

6. It appears that in October 1985 there was a news-item in the Times of India wherein it was mentioned that the Executive Council of the University had annulled the examination results of the petitioner in the F.Y., B.A.M.S. (Main) examination. On 4th November, 1985 this petition was filed to restrain such annulment. The petitioner was allowed to keep terms and appear in examinations under the interim orders of this Court subject to the result of the petition.

7. Mr. Sathe, learned Counsel for the petitioner, submitted that the College had given the petitioner permission to keep terms pending the revaluation of his paper in Ayurveda. It has Parichaya in the Pre-Ayurvedic II examination; he, had passed that examination upon revaluation; he had completed the course until 1985 with no objections raised by the University; the University was, therefore, estopped from annulling the petitioner's F.Y., B.A.M.S. result on the ground that the petitioner had failed to keep the requisite terms before appearing for that examination. Mr. Sathe also placed reliance upon my judgment in Writ Petition No. 226 of 1983, *Vijay Devji Aiya v. The University of Bombay*, dated 6th April, 1983, to which I shall refer.

8. The University requires by Ordinance No. 119 that in Ayurvedic Medicine 75 per cent of the total number of lectures and practicals in a term shall be the minimum attendance necessary. Under Ordinance 125, to keep a term at a college, an undergraduate must complete to the satisfaction of the Principal the course of study at the College prescribed for such terms for the class to which such undergraduate then belongs. Ordinance 2001 prescribes that a candidate, for being eligible to enter upon the main course leading to the Bachelor of Ayurvedic Medicine and Surgery, must have passed the two-year Pre-Ayurvedic course. The main Ayurvedic course, under Ordinance 2002, extends over a period of five years consisting of :

First B.A.M.S. course 11/2 years,

Second B.A.M.S. course 11/2 years

Third B.A.M.S. course 2 years.

9. The petitioner became eligible to enter upon the main course leading to the B.A.M.S. degree only when he passed the Pre-Ayurvedic course. He passed the Pre-Ayurvedic course only when he was intimated on 19th April, 1983 of the

result of his revaluation application. He must, therefore, be held to have entered the F.Y., B.A.M.S. (Main) course only in April 1983 and had not completed the 11/2 year course when he appeared for the examination in October 1 983.

10. No provision is pointed out to me which enables the Principal of a College to permit a student to enter upon and keep terms for a succeeding year prior to revaluation being made, as was purported to be done in this case by the 2nd respondent. Mr. Chehria has frankly stated that the 2nd respondent had not considered whether he had such powers.

11. In the University's affidavit it is stated that where revaluation results are declared after the commencement of an academic term and the candidate makes an application to the University that, in view of the late declaration of his results, late admission be granted to him, the University permits, on the merits of each case, late admission but at the student's own risk as to the completion of the requisite term. In the instant case, no such application was made. And the requisite term would not have been completed.

12. It is requisite that a candidate should obtain a degree only after he has undergone the prescribed course of theoretical and practical training and has passed the requisite examinations. Upon obtaining the B.A.M.S. degree, the candidate would be entitled to treat the ailing public. It is all the more necessary to ensure that he is fully qualified to do so. Not having undergone the full course of theoretical training, the petitioner will not be fully qualified to do so.

13. It is not possible to equate a degree obtained only after a course of theoretical training, such as an L.L.B. with a degree obtained after theoretical and practical training such as in Medicine. To the latter, the principles of my judgment referred to by Mr. Sathe cannot be made applicable.

14. Further, the correspondence that has been exchanged between the University and the College in regard to the petitioner raises many doubts about the conduct of the 2nd respondent and the petitioner.

15. On 29th August, 1985 the University wrote to the 2nd respondent in regard to the petitioner's application for admission to the First year B.A.M.S. (Main) examination in October 1983. The 2nd respondent was asked about the date on which the petitioner was admitted to the F.Y., B.A.M.S. (Main) course and the marks-sheet copy on the basis of which he was admitted to that Course. On 12th September, 1985 the 2nd respondent wrote to the University that as the petitioner "had applied for revaluation after declaration of the result, he was allowed to attend 1st B.A.M.S (Main) Class at this College on the clear understanding that if he is declared successful in the above examination after revaluation, his attendance in this class would be counted for purposes of being eligible for being sent up for the I B.A.M.S. (Main) examination when due. In case the result of the revaluation is not in his favour, in that case, his attendance in this class will not be treated as valid for the above purpose." On 13th September, 1983 the University posed further questions which are material. The

University asked whether the petitioner was formally admitted to the F.Y. B.A.M.S. course in June/July 1982 or whether he was allowed merely to attend classes. To this, the 2nd respondent replied on 16th September, 1985 that the petitioner was allowed to attend conditionally as had already been stated. The University asked for a xerox copy of the petitioner's application together with the admission fee receipt, if the petitioner had been formally admitted. The reply was that this question did not arise. The University asked, if the admission had been made formally in June, 1982, before the petitioner had passed the previous examination, whether this was brought to the notice of the University. To this, the answer was that the question did not arise. The University asked, if the petitioner had only been allowed to attend the classes but not formally admitted, when he was formally admitted. The reply was, and this is very material, that he was formally admitted after the declaration of the result of the revaluation of his paper on Ayurvedic Itihas. The University asked, if the petitioner had been admitted late in April 1983, i.e., after his revaluation result, whether a letter had been written to the University seeking permission for condonation of late admission and how his term had been granted. The answer to this reads thus :

"We are giving fresh admissions to the students to the I B.A.M.S. (Pro Ayurved) Class only when new, academic year begins. Once the students are admitted in the I B.A.M.S. (Pre-Ayurved) Class, they are continued in this College till they pass their Final B.A.M.S. (Main) examination. They are not required to apply for admission in the beginning of every academic year as is vague in other Colleges such as Arts, Science, etc."

Since he was attending F.Y., B.A.M.S. (Main) class from the beginning and the result of revaluation went in his favour, his term was automatically granted. In our opinion, the question of approaching University as raised in your letter does not arise. Moreover, 75% attendance in the lectures and practicals is to his credit before he was sent up for F.Y., B.A.M.S. (Main) examination of the University"

16. On 17th September, 1985 the University proceeded in regard to the 2nd respondents statement that the petitioner was admitted after the declaration of his result on revaluation. The 2nd respondent was asked to State the date on which the petitioner was admitted and the date of his fee receipt. The University's letter stated that the candidate had, as the 2nd respondent had stated, been admitted when he got the revaluation result at the end of April, 1983 but had been allowed to appear for the examinations in October, 1983, he had not completed 3 terms after he was admitted. The 2nd respondent was asked to explain how this anomaly had been allowed to happen. On 25th September, 1985 the 2nd respondent explained that the petitioner had been conditionally allowed to attend the F.Y., B.A.M.S. (Main) class from July, 1982 and, accordingly, he attended the lectures and practicals of the F.Y., B.A.M.S. (Main) class regularly. After getting the result of the revaluation of his paper on "Ayurved Itihas", his term for the I B.A.M.S. (Main) class was granted from July, 1982. He thus completed 3 academic terms from July, 1982 to October, 1983 and

he was allowed to appear for the F.Y., B.A.M.S. (Main) examination of the University held in November, 1983. There was, therefore, no anomaly as presumed in the above letter.

17. The 2nd respondent did not, when he admitted the petitioner to the F.Y., B.A.M.S. course or when he sent up to the University the petitioner's form for that examination, inform the University of the circumstances in which the petitioner had been admitted to the course and would be appearing for the examination. That he should not have so done is strange. It is also strange that the petitioner should not have insisted that he do so and so safe-guarded himself.

18. Put at its mildest, the University is not, in the circumstances estopped from annulling the petitioner's F.Y., B.A.M.S. result so soon as it got information about the irregularities.

19. Mr. Chehria, learned Counsel for the College, stated that there were others who sail in the same boat as the petitioner. For the predicament of all these, the 2nd respondent is squarely responsible.

20. The petition shall, accordingly, stand dismissed.

21. Consequent on the annulment of the petitioner's F.Y., B.A.M.S. (Main) result, all other subsequent examinations, results shall also stand annulled.

22. The 2nd respondent shall pay the costs of the petition both to the Petitioner and the University.

23. On Mr. Sathe's application, the University shall not enforce the annulments for a period of 10 days from today.