
(1983) 04 BOM CK 0031
In the Bombay High Court
Case No : Writ Petition No. 226 of 1983

Vijay Devji Aiya

APPELLANT

Vs

University of Bombay and Others

RESPONDENT

Date of Decision : 06-04-1983

Acts Referred:

Bombay University Ordinance — Order 237A
Constitution of India, 1950 — Article 226

Citation : (1983) 1 BomCR 2

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

Bench : Single Bench

Advocate : Rajni Iyyer, S.H. Doctor and J.V. Thakkar, for the Appellant; N.G. Bhide, for the Respondent

Judgement

S.P. Bharucha, J.—The petitioner appeared for the L.L.B. degree (3rd L.L.B.) examination held by the University of Bombay, the 1st respondent, in April 1982. On 29th July, 1982 the results of the examination were declared. The petitioner was shown to have failed in the examination. A few days later received his marks-sheet which showed that he had obtained 48 out of 100 in the Trade Marks and Patents and 31 out of 100 in the Drafting, Pleading and conveyancing Papers. It showed also that he had received 276 out of 600 marked as his grand-total and had, therefore failed.

2. On 8th August, 1982, the petitioner applied to the University of revaluation of the said two papers. It was only by its later dated 7th December, 1982 that the University informed the petitioner that, upon revaluation of his marks in the said two papers, he was found to get 59 out of 100 marks in the Trade Marks and Patents paper and 44 out of 100 marks in the Drafting, Pleading and Conveyancing paper. Accordingly, the petitioner was found to have been successful in the L.L.B. degree examination. This letter was received by the petitioner on 11th December, 1982. He immediately made an application to the University for the corrected mark-sheet. He received it on 23rd December, 1982

and, on the same day, he approached the Department of Law of the University for admission to the 1st year of the L.L.M. course. He was sent to the Registrar and told to apply in writing. He made this application on 23rd December, 1982 itself. The X-mas vacation intervened and nothing was done upon his application. On 12th and 15th January, 1983 the petitioner sent reminders to the University authorities. By its letter dated 19th January, 1983 the University informed the petitioner that : ".....at this late juncture when the second term of the academic year 1982-83 has already commenced, it is not possible to give you admission to the L.L.M. degree course. You may, therefore, apply for admission in June/July 1983." On 22nd January, 1983 the petitioner made a representation to the Voice-Chancellor of the University and sought a personal hearing but fruitlessly.

3. On 29th January, 1983 the petitioner filed this petition seeking that the University be directed by a writ to admit him to the L.L.M. course 1st year for 1982-83 and to permit him to appear at its examination to be held in or around May 1983. On 10th February, 1983 rule was issued and in the interregnum the petitioner was permitted to keep terms for the course. It was then pointed out by Counsel that the Executive Council of the University was to meet and could consider the petitioner's case. Accordingly, the Court clarified that the admission of the petitioner did not debar the Executive Council from considering the petitioner's application and recommended, in the circumstances of the case, that the application be sympathetically considered. By a letter dated 21st March, 1983 the petitioner was informed by the University's Registrar that his case had been considered by the Executive Council at its meeting held on 12th March, 1983. He was directed by the Executive Council to inform the petitioner that "your request for condonation of deficiency in your attendance at the LL.M. degree course during the current academic year cannot be granted and that you cannot, therefore, be permitted to appear at the LL.M. examination to be held in the first half of the year 1983."

4. An affidavit is filed by one Joseph, Officer-on-Special Duty, on behalf of the University. It states inter alia, that "the reassessment of the answer books is not a matter of right of any student but it is a sort of amenity or concession given to the students.

No prejudice will be caused to the petitioner if he applies for such course in the next academic year commencing from June 1983. On the contrary if this petition is allowed, much confusion and chaos would be caused thereby disturbing in its entirety, smooth functioning of all the post-graduate courses in general, conducted by university departments."

5. I propose to confine myself to only one aspect of this unfortunate matter. For doing so, it is necessary to note the provisions of Ordinance 237-A which deals with revaluation of answer papers. It states that a candidate who desires revaluation of his papers must apply for such revaluation within 4 weeks from the date of the declaration of the results of the examination. He must submit an application in the prescribed form along with the prescribed fees. He must give

and undertaking that the results of the revaluation shall be binding on him. If the Marks assigned to a paper as a result of revaluation exceed or recede the marks originally obtained by the candidate in the paper by ten per cent or more of the maximum marks assigned to that paper the University shall accept them and the marks obtained by a candidate after revaluation as accepted by the University shall be taken into account for the purpose of amendment of his results in accordance with the rules of the University.

6. That the petitioner was declared to have been unsuccessful in the L.L.B. degree course was entirely due to the University; that the petitioner was declared to have passed this examination as much as 4 months after his application for revaluation is also entirely due to the University. In the light of this, it was not unreasonable to expect from the university a more humane approach. Instead, the Court is told that revaluation is only a sort of amenity or concession given to students, that no prejudice will be caused to the petitioner if he misses a year and that confusion and chaos will abound if the petition is allowed.

7. Let us see if the spirit of the rules which the University seeks to preserve has been observed by it in the petitioner's case.

8. It is implicit in the Ordinance relating to revaluation that the revaluation shall be made with the utmost despatch so that the student whose marks are revalued upwards has the benefit thereof in the following academic year. A revaluation of a student's marks upwards loses most, if not all, its meaning, if despite such revaluation, he has to lose the benefit of the revaluation. It is true that the Ordinance does not explicitly prescribe the time within which revaluation is to be made but the Ordinance does prescribe that if the revalued marks exceeded by 10 P.C. or more the maximum marks assigned to the particular paper, the marks originally obtained shall be treated as null and void and the University shall accept such revised marks and amend the results accordingly. I have no doubt that when Ordinance was framed in 1978, as I understand from Mr. Bhide, learned Counsel for the University, nobody dreamt that the University of Bombay would take four months to revalue a student's papers and then take shelter behind its rules to deny the student his due.

9. The petitioner is entitled to be put into the same position in which he would have been had he been, originally shown as having passed the L.L.B. degree course. He would then have been entitled to enrolment for the 1st year of the LL.M. course and to appear for its examination in or around May 1983. He shall, accordingly, be so enrolled by the University and shall be permitted to appear for that examination.

10. If this order does not make for some confusion and chaos it will be in a good cause. Mr. Bhide is very anxious that the direction that I give here should not be treated as any sort of precedent. I hope and trust that the University shall so conduct itself that no occasion arises to treat this direction as a precedent.

11. In the light of this conclusion, I do not advert to the averments relating to the validity of the rules and to discrimination.

12. Miss Iyyer, learned Counsel for the petitioner states that the time for making an application for sitting for the forthcoming L.L M. examination and for payment of fees therefore has already expired. I direct the University to accept the petitioner's form and his fees and grant the petitioner a seat number, though the time for this has already expired.

There shall be no order regarding costs. Rule accordingly