

Sanatan Gauda

Vs

Berhampur University and Others

Civil Appeal No. 891 of 1988

(L. M. Sharma, P. B. Sawant JJ)

02.04.1990

JUDGMENT

SHARMA, J. -

1. I agree that the appeal should be allowed as indicated by my learned Brother.
2. The learned counsel for the appellant contended that the respondent-University having issued the admit card and permitted the appellant to appear at Parts I and II of Law Examination, should not have later refused to publish his result. If there was any irregularity in the admission of the appellant for the Law Course, the University authorities ought to have scrutinised the position before permitting him to take the examination. It was pointed out that in identical circumstances the same High Court had earlier in the same year allowed the case of another candidate in O.J.C. No. 2619 of 1986 by a judgment, which also was by a Division Bench.
3. Mr. P. N. Misra, the learned counsel for the respondent, contended that the University had informed the colleges about the necessary condition for admission to the Law course which it appears, was not respected by the College. When the applications by the candidates for sitting at the examination were forwarded by the College, the University asked the Principal to send the marks of the candidates for the purpose of verification, by the Principal did not comply. The letters Annexures 'F' and 'G' to the counter-affidavit have been relied upon for the purpose. The learned counsel pointed out that instead, the principal sent a letter Annexure 'I' stating that the marks-list would be sent in a few days for "your kind reference and verification" which was never sent. The principal wrongly assured the University authorities that he had verified the position and that all the candidates were eligible. In these circumstances, the agreement is, that the appellant cannot take advantage of the fact that the University allowed him to appear at the examination. I am afraid, the stand of the respondent cannot be accepted as correct. From the letters of the University it is clear that it was not depending upon the opinion of the Principal and had decided to verify the situation for itself. In that situation it cannot punish the student for the negligence of the Principal or the University authorities. It is important to appreciate that the appellant cannot be accused of making any false statement or suppressing any relevant fact before anybody. He had produced his marks-sheet before the College authority with his application for admission, and cannot be accused of any fraud or misrepresentation. The interpretation of the rule on the basis of which the University asserts that the appellant was not eligible for admission is challenged by the appellants and is not accepted by the college and my learned Brother accepts the construction suggested by him as correct. In such a situation even assuming the construction of the rule as attempted by the University as correct, the Principal cannot be condemned for recommending the candidature of the appellant for the examination in question. It was the bounden duty of the University to have scrutinised the matter

thoroughly before permitting the appellant to appear at the examination and not having done so it cannot refuse to publish his results.

4. Before parting I would like to impress upon the University authorities to frame the rules in such clear terms that it may not require great skill for understanding them. It is a serious matter if a student who acts upon one interpretation of a rule and spends a considerable period of his youth, is later threatened by a possible alternative construction which may cost him several years of his life. In order to achieve clarity, it does not matter, if the rule, instead of being concise, is elaborate and lengthy.

SAWANT, J. –

This is an appeal by special leave against the order dated July 30, 1987 of the High Court of Orissa.

6. The appellant passed his M.A. Examination in July 1981 securing in the aggregate 364 marks out of 900 marks, i.e. more than 40 per cent of the total marks. In 1983, he secured admission in Ganjam Law college for three years Law Course. There is no dispute that at the time he took admission, he had submitted his marks-sheet along with his M.A. degree certificate. The appellant completed his first year course known as the "Pre-Law Course" and in 1984 was promoted to the second year course known as the "Intermediate Law Course". In 1985, he appeared for the Pre-Law and Inter-Law examination held by the Berhampur University to which the Ganjam Law College is affiliated. He gave the said examination and in the same year he was admitted to the Final Law course in the same College.

7. It appears that although he was admitted to the Final Law classes, his results for the Pre-Law and Inter-Law examination were not declared. The appellant made representations to the Bar Council of India and the Administrator of the Berhampur University, on February 12, 1986. On October 30, 1986, the University replied that since the appellant had secured less than 39.5 per cent marks in his M.A. degree examination, he was not eligible for admission to the Law Course. On November 11, 1986, the appellant made a representation pointing out that he had secured more than 40 per cent marks in the said examination and, therefore, he was entitled to be admitted to the Law Course. On November 14, 1986, the Chairman of the Board of Studies also wrote to the Deputy Registrar of the University pointing out that the Board of Studies in its meeting held on October 29, 1986 had recommended that those students who passed their M.A. examination and had secured more than 40 per cent of the total marks should be considered eligible for admission to the Law Course even though they had secured less than 20 per cent marks in any one of the papers in the said examination.

8. In spite of this, the University did not take any step to announce the appellant's results. Hence, the appellant approached the Orissa High Court by a writ petition on May 11, 1987 challenging the non-declaration of his result and the university's refusal to permit the appellant to appear in the Final Law examination. The writ petition was dismissed by the High Court by the impugned order of July 30, 1987. Against the said decision the present appeal was filed. By an interim order of March 15, 1988, the appellant was permitted to continue his final Law Course and to appear in the examination of the said course. It was also directed that the results of the examination in which the appellant had appeared should be declared in due course.

9. On these facts, the question that falls for consideration is whether the appellant was eligible to be admitted to the Law Course. The University has objected to the appellant's admission on the ground

that the University Regulation 1 in Chapter VIII relating to the Bachelor of Laws Examination (Three-Year Course) read with Regulation 10 in chapter V of the University Regulations relating to the Master's Degree Examination requires that if the student has secured less than 25 per cent marks in any of the papers for M.A. examination, he should have on the aggregate more than 39.5 per cent marks in the said examination. Admittedly, the appellant has obtained in the aggregate 364 marks out of 900 marks, i.e. more than 40 per cent marks, but in one paper in Group II, he has secured only 13 marks out of 100 which were less than 25 per cent. It is, therefore, the University's contention that in view of the said Regulation, he was not qualified to be admitted to the Law Course and since he was admitted wrongly, he was not entitled to appear for the examination and, therefore, for the declaration of his results in the said examination.

10. Regulation 1 of Chapter VIII which lays down qualification for admission to the Law Course is as follows :

"1. Any registered candidate may be admitted to the degree of Bachelor of Laws, if (a) he passes the examination for the degree of Bachelor of Arts, Bachelor of Science, Bachelor of Commerce, Bachelor of Oriental Learning, Bachelor of Medicine and Bachelor of Surgery, Bachelor of Science (Engineering), Bachelor of Science (Agriculture), Bachelor of Veterinary Science and animal Husbandry, B. Pharma or any other examination recognised by the Bar Council of India and the Academic Council as equivalent thereto securing 40 per cent or more than 39.5 per cent of marks in the aggregate of such examination or any other higher degree examination passed after graduation :

Provided that relaxation to the extent of 5 per cent of marks in the qualifying examination be allowed to the Scheduled Caste and Scheduled Tribe candidates :

Provided further that in case of physically or the paedically handicapped candidates, relaxation up to 5 per cent of marks in the qualifying examination may be given on production of a certificate of disability from any Government Medical officer to the satisfaction of the authority concerned ..."

11. The first paragraph of Regulation 1 on which reliance is placed by the University shows that the requirement of 40 per cent or more than 39.5 per cent marks in the aggregate, is meant only for graduates such as of Bachelors of Arts etc. That requirement does not apply to those candidates who pass any higher degree examination after graduation. Therefore, on a plain reading of the said paragraph, a post-graduate student like the appellant who has passed his M.A. examination is not required to satisfy further that in the said post-graduate examination he has secured 40 per cent or more than 39.5 per cent marks in the aggregate. It is enough if he has passed his post-graduate examination.

12. What is further, Regulation 10 in Chapter V of the Regulations which prescribes marks for passing M.A., M.Com. and M.Sc. examinations states that the minimum marks required for a student to pass the said examination is 36 per cent in the aggregate of all the theory papers taken together in case of M.A. and M.Com. examination and in the case of M.Sc. examination 36 per cent in the aggregate of all the theory papers taken together and 40 per cent in the aggregate of all the practical papers taken together. I am not concerned here with the marks of M.Sc. examination. The proviso to the said regulation 10, further states that no minimum pass marks shall be required in any paper. But if in any paper a candidate obtains less than 25 per cent of marks, those marks shall not

be included in the aggregate. In other words, in the case of the appellant, who has obtained 364 marks out of 900 on the aggregate, his 13 marks in one of the papers being less than 25 per cent have to be excluded. His aggregate marks, therefore, come to 351 out of 900 marks according to this Regulation. They are admittedly more than 36 per cent as required by the said Regulation for passing the M.A. examination. I may reproduce the said Regulation here :

"10. The minimum marks that a candidate shall obtain to have passed shall be 36 per cent in the aggregate of all the theory papers taken together in the case of M.A./M.Com. and in the case of M.Sc. 36 per cent in the aggregate of all the theory papers taken together and 40 per cent in the aggregate of all the practical papers taken together :

Provided further that no minimum pass marks shall be required in any paper a candidate obtains less than 25 per cent marks then these shall not be included in the aggregate."

13. Even though, therefore, for admission to the Law Course there is no requirement of any particular marks for post-graduates students like the appellant, and the appellant is entitled to be admitted under regulation 1 in Chapter VIII of the Said Regulations quoted earlier, the appellant satisfies the other qualification as well, viz., he has passed the M.A. examination with 36 per cent in the aggregate deducting 13 marks in one of the papers and is, therefore, duly qualified to be admitted to the Law Course.

14. Mr. Misra appearing for the respondents, however, contended firstly that the qualifying marks for admission as per Regulation 1 of Chapter VII even for post-graduate students was 40 per cent or more than 39.5 per cent and since the appellant admittedly did not secure more than 39.5 per cent marks after deducting from the aggregate 13 marks secured in one of the papers, he was not eligible for being plain reading of the said regulation shows that the qualifying marks laid down there do not apply to the post-graduates. They apply only to graduates. As far as the post-graduates are concerned, it is enough that they have passed their examination. Secondly, he has also obtained the marks as required by the said Regulation 10 of Chapter V which is applicable to the appellant viz., 39 per cent when the minimum marks laid down by the said regulation is only 36 per cent. Mr. Misra then relied upon the prospectus of the Ganjam Law College which had laid down as follows :

"3. Eligibility for admission.

1. Pre-Law class.

(a) An aggregate of 40 per cent and above, in the B.A., B.Sc., B.Com. or any other university Degree of Higher University examination recognised by Berhampur University ..."

and contended that even if a candidate has a higher degree than B.A., B.Sc., B.Com. he has to have an aggregate of 40 per cent minimum marks. As I read the said prospectus, I find that it is on par with the qualification for admission given in University Regulation 1 in Chapter VIII quoted above. The aggregate of 40 per cent and above marks is required only for graduates and there is no requirement of any percentage of marks prescribed for the post-graduates. Resolution No. 123/1984 of the Bar Council of India passed on October 30, 1984 and which is annexure 'K' to the respondent-University's counter-affidavit also shows that for admission to three-year Law Course the

qualification of minimum of 39.5 per cent marks is meant only for graduates. That Resolution does not speak of the requirement of marks for examination at post-graduate level. I am also of the view that this distinction between graduates and post-graduates made in the matter of the qualifying marks is as it ought to be, since graduates and post-graduates cannot be treated equally. A post-graduate student has a minimum of two years more of academic pursuit to his credit than the graduate before he seeks admission to the Law Course. Obviously, therefore, they cannot be treated equally, and that is what the University and the Bar Council of India have rightly done. It is the interpretation placed by the university on its own Regulations and the Resolution of the Bar Council of India which is at fault and not the Regulations or the Resolution.

15. This is apart from the fact that I find that in the present case the appellant while securing his admission in the Law College had admittedly submitted his marks-sheet along with the application for admission. The Law College had admitted him. He had pursued his studies for two years. The University had also granted him the admission card for the Pre-Law and Intermediate Law examinations. He was also admitted to the final year of the course. It is only at the stage of the declaration of his results of the Pre-Law and Inter-law examinations that the University raised the objection to his so called to be admitted to the Law Course. The University is, therefore, clearly estopped from refusing to declare the results of the appellant's examination or from preventing him from pursuing his final year course.

16. For all these reasons, I am of the view that the University is not justified in refusing to declare the appellant's results of the Pre-Law and Intermediate Law examinations. The appeal, therefore, succeeds. The respondent-university is directed to declare the said results as well as the result of the final examination if the appellant has appeared for the same. The appeal is allowed accordingly. In the circumstances of the case, there will be no order as to costs.

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