

MADHYA PRADESH HIGH COURT

Premji Bhai Ganesh Bhai Kshatriya

Vs.

Vice Chancellor

Misc. Petn. No. 326 of 1965
(P.V. Dixit, C.J. and R.J. Bhave, J.)

23.12.1966

JUDGMENT

Bhave, J.

1. By this petition under Articles 226 and 227 of the Constitution the petitioner seeks a writ of certiorari for quashing an order of the Vice-Chancellor, Ravishankar University, Raipur, cancelling the provisional admission granted to the petitioner for appearing at the final LL.B. Examination held by the University in April 1965. The petitioner also seeks a writ of mandamus directing the respondents to publish his result for the said examination for which he was allowed to appear and his admission was subsequently cancelled.

2. The petitioner was a student of final LL.B. in the College of Arts and Commerce, Janjgir, District Bilaspur. The final law examination was held from 15-4-1965 to 29-4-1965. The petitioner had duly filled in the examination form which was forwarded by the Principal to the University. It appears that though the Principal of the College had received the admission card of the petitioner, it was not issued to the petitioner till the morning of 15-4-1965, presumably for the reason that according to the Principal of the College the petitioner had not attended the prescribed number of lectures and was, therefore, not eligible to appear for the examination. On the request of the petitioner the Principal, however issued to him the admission card marking it 'Provisional', on the undertaking given by the petitioner that he would secure the condonation of deficiency in attendance from the Vice-Chancellor and that in case the same was refused, he would not press his claim for declaration of result. On issuance of the admission card the petitioner appeared for all the papers. In the meanwhile, he had also sent his representation to the Vice-Chancellor. That representation was rejected

by the Vice-Chancellor and accordingly the petitioner was informed of the said decision by Memo, dated 29th May 1965 (Ex. P-4). This memo contains the decision of the Vice-Chancellor to the effect that the provisional admission to the examination granted by the Principal is cancelled. As a result of this decision of the Vice-Chancellor, the petitioner's result also was not declared.

3. The contention of the petitioner is that the issuance of the admission card by the University raised a presumption that the attendance of the petitioner was as required by the rules or, in any case, the shortage in attendance was condoned by the Vice-Chancellor. The Principal had no authority to withhold the admission card received from the University; nor had the Vice-Chancellor any authority to revise the decision already taken. The refusal of the Principal to issue the admission card will have deprived the petitioner of the opportunity of appearing for the examination and he was, therefore, forced to give the undertaking. Inasmuch as the Principal had no authority to withhold the admission card, the undertaking given by the petitioner could not be used against him.

4. In the return filed on behalf of the respondent No. 3, the Principal of the Arts and Commerce College, Janjgir, it is alleged that the petitioner had attended only 38 per cent of the lectures when the minimum percentage required was 75 and that the petitioner was as such a 'detained student' of the College. It was alleged that on a representation by the petitioner on the morning of 15-4-1965 the provisional admission card was issued. The Principal also asserted that he never recommended the petitioner's case for condonation of shortage in attendance. It was further alleged that under the relevant rules a provisional certificate is granted by the Principal when the application forms are forwarded; but if a candidate fails to attend the requisite number of lectures before the end of the term, the Principal is entitled to withdraw such certificate. On the basis of the provisional certificate issued along with the application forms, the University had sent the admission cards to the Principal. The Principal, however, while finally issuing the admission card to the candidate had to satisfy himself that the candidate had attended the requisite number of lectures and that if it was found that a candidate had not attended the requisite number of lectures, he had the authority to withhold his admission card. It was, therefore, urged that the Principal rightly withheld the petitioner's admission card.

5. In the return filed on behalf of the Vice-Chancellor, Ravishankar University, it was urged that the Vice-Chancellor discovered that during the academic session of 1964-

65 more than 50 per cent students were likely to be detained on account of deficiency in attendance. To meet the situation the Vice-Chancellor called a meeting of the Principals of all the Colleges under the University and in the meeting held on 3rd March 1965 it was decided that in cases where attendance was found to be less than 75 per cent but more than 50 per cent the Vice-Chancellor would, on the recommendation of the Principal concerned, permit such candidates to appear at the examination: and in cases where attendance was less than 50 per cent, the Vice-Chancellor may, on special recommendation of the Principal, permit a candidate to appear provided his absence was due to prolonged illness within the knowledge of the Principal.

It is alleged that the decision taken by the Vice-Chancellor in this meeting was conveyed to the Principals of all the Colleges by letter dated 4th March 1965. By this communication, the Principals were directed to issue admission cards to the candidates falling in the first category: while in cases of candidates falling in the second category, admission cards were not to be issued without prior permission of the Vice-Chancellor. It is further alleged that in accordance with the decision reached, the Principal of the petitioner's college had informed the Registrar of the University that the petitioner was detained as his attendance fell below 50 per cent. In these circumstances it is alleged that the Principal had the requisite authority to withhold the admission card of the petitioner. The admission card was provisionally issued by the Principal on the undertaking given by the petitioner and that the petitioner was bound by his undertaking and was not entitled to make any grievance.

6. It is an admitted fact that the Ordinances of the Saugor University have been adopted by the Ravishankar University. The relevant Ordinances for the purposes of the present dispute are Ordinances Nos. 19 and 48. Under clause (1) of Ordinance No. 19, an application for admission to the University Examinations is required to be made in the prescribed form and it is forwarded to the Registrar through the Principal of the College concerned. Clause 2 of the said Ordinance provides :

"The following certificates signed by the Principal of the College or the Dean of the Faculty concerned, as the case may be, shall be required from such applicant :

(a) That the candidate has satisfied him by the production of the Certificate of a competent authority that he has passed the Examination which qualifies him for admission to the Examination.

(b) That the candidate has attended a regular course of study for the prescribed number of academic years.

Certificate (b) will be provisional and can be withdrawn at any time before the Examination if the applicant fails to attend the prescribed course of Lectures before the end of his College or University Terms". Clause 5 of the said Ordinance provides :

"(1) Every candidate whose application has been accepted by the University for admission to an examination shall be given an admission Ticket showing the name of the candidate and the roll number assigned to him for admission to the Examination.

(2) The Ticket shall be sent in the case of a College student to the Principal of the College who will give it to the candidate after obtaining his signature on the Ticket.

(3) In the case of other candidates the Ticket shall be issued by the Registrar after obtaining their signatures in the same way".

7. Ordinance No. 48 specifically deals with the examinations for the Degree of Bachelor of Laws. Under clause 2 thereof, a person, after graduation and after having prosecuted a regular course of study in the University or in a college admitted to the privileges of the University, is entitled to appear for the LL.B. Examination. Under clause 4, prosecution of regular course of study means attendance at least 75 per cent of the lectures delivered in each subject of the course of instruction for the admission, the attendance being calculated upto a date four weeks next preceding the date of the commencement of the examination. This clause further provides that a certificate of the principal or the Dean of the Faculty relating to the completion of the required attendance of the applicants at their respective colleges shall reach the Registrar not later than three weeks next preceding the date of the commencement of the written examination.

Clause 5 of this Ordinance is important. It reads. :

"Any deficiency in attendance at the course of study for the examination may be condoned with the following provisions :

(i) The Principal of the College or the Dean of the Faculty shall send to the Registrar a list of the students who have applied on the prescribed form for admission to the examination but have not prosecuted a regular course of study, stating clearly in the case of each student :

- (a) the extent of his deficiency in attendance in each subject;
 - (b) his recommendation as to whether the deficiency should or should not be condoned; and
 - (c) the grounds on which his recommendation is based.
- (ii) The list shall be submitted to the Vice-Chancellor and in all those cases in which he is able to accept the recommendation of the Principal, the deficiency shall be condoned or its condonation refused, as the case may be, in accordance with the recommendation of the Principal. In such case the decision of the Vice-Chancellor shall be final.
- (iii) Those cases in which the Vice-Chancellor is unable to accept the recommendation of the Principal shall be referred to the Executive Council whose decision as to whether deficiency should or should not be condoned in any such case shall be final."

A perusal of the above provisions would show that the application forms are required to be sent eight weeks before the date fixed for the examination; while the requisite attendance of 75 per cent is required to be calculated upto a date four weeks next preceding the date of commencement of the examination. That is why in Ordinance No. 19, clause 2 (b), a provision has been made enabling the Principal to issue a provisional certificate along with the application form. This certificate is liable to be withdrawn if it is found that subsequent to the issuance of the certificate the candidate has failed to complete the requisite attendance. From clause 4 of Ordinance No. 48 it is also clear that the certificate relating to the completion of the required attendance of the applicant is required to be sent by the Principal to the Registrar of the University at least three weeks before the commencement of the examination. This postulates that between the period of sending the application form and four weeks before the examination, if the Principal finds that the candidate has not completed the requisite attendance, he should inform the Registrar that he had withdrawn the provisional certificate issued under clause 2 of Ordinance No. 19. From clause 5 of Ordinance No. 48 it is further clear that if the Principal feels that he should recommend in the case of any candidate that the deficiency in attendance should be condoned, he is required to send to the Registrar a list of the candidates in whose cases the recommendation is made. On receipt of the recommendation, the Vice-Chancellor, in his discretion is entitled to condone the deficiency. In case the Vice-Chancellor does not accept the recommendation of the Principal, the matter is required to be referred to the Executive Council. All these provisions clearly indicate that the final certificate certifying the

requisite attendance of a candidate must be issued by the Principal before the admission card is issued. It also follows that if any recommendation for condonation is made to the Vice-Chancellor, that is to be done before the admission cards are issued.

8. When the case came up for hearing before us for the first time we asked the respondents to produce before us the certificate issued by the Principal which is required to be issued under clause 2 of Ordinance No. 19. We also wanted to satisfy ourselves that the Principal had withdrawn the provisional certificate issued under clause 2 of Ordinance No. 19 or had informed the Vice-Chancellor regarding deficiency in attendance in the case of the petitioner as well as other students. No such record was produced before us even though the hearing was adjourned. It must, therefore, be presumed that the Principal issued the provisional certificate as required under clause 2 of Ordinance No. 19 and that he did not withdraw the certificate within three weeks of the commencement of the examination informing the Registrar accordingly. Though it is stated in the return of the Vice-Chancellor, that the Principal of the College had informed the Registrar of the University that the petitioner was detained, as his attendance fell below 50 per cent, no such letter was produced before us. We are, therefore, inclined to think that the Principal did not take the necessary steps for withdrawing the certificate issued provisionally. As the Principal in his provisional certificate had certified that the petitioner had the requisite attendance to his credit and as he had not withdrawn the certificate, the admission card was properly issued by the University. The Principal of the College had no authority to withhold the admission card and obtained the undertaking, from the petitioner before delivering the same. From the provisions of Ordinance Nos. 19 and 48 it is clear that the scrutiny as to the requisite attendance of the candidates is required to be made before the admission cards are issued. Once the admission cards are issued permitting the candidates to take their examination, there is no provision in Ordinance No. 19 or Ordinance No. 48 which would enable the Vice-Chancellor to withdraw the permission. The discretion having been clearly exercised in favor of the petitioner by permitting him to appear at the examination, it was not open to the Vice-Chancellor to withdraw that permission subsequently and to withhold his result. A similar view was taken by a Division Bench of this Court in *Purshottam Das Dulichand v. Board of Secondary Education, Jabalpur*,¹

9. In *Purushottam Das Dulichand's Case* 1961 MPLJ 1393 : AIR 1962 Madhya Pradesh 3 (supra), the petitioner was allowed to take practical examination but was

subsequently informed by the Board of Secondary Education that he was not permitted to appear for theory examination as he did not attend the minimum number of lectures qualifying him for the examination. On behalf of the Board, it was alleged that as a matter of course students were allowed to appear at the practical examination and the scrutiny of their application forms was made subsequently. In allowing the petitioner to appear for the practical examination, there was no condonation of any deficiency in attendance. That question was subsequently considered by the Board and the petitioner was rightly informed that he was not eligible to appear for the examination. This Court repelled the contention. It was observed :

"Regulation 9 of Chapter XVI expressly lays down that the Secretary shall, after satisfying himself that a candidate has complied with all the requirements for admission to an examination, furnish him with a card of admission and on presentation of that card the candidate shall be permitted to sit for the examination. It is clear from regulation 9 that a candidate cannot be allowed to sit for the examination unless the Secretary has satisfied himself that he has fulfilled all the requirements for admission to the examination. There is thus no justification for the practice, if any be such existing, of permitting candidates to take practical examination as a matter of course. Such a wrong practice cannot displace the legal effect of regulation 9 which is that if a candidate has been allowed to appear in any subject in the examination, it must be taken that he has fulfilled all the requirements for admission to the examination".

On this reasoning it was further held that the act of permitting the petitioner (in that case) to take his practical examination amounted to exercise of discretion vested in the Chairman of the Board of condoning the deficiency, if any, in attendance and that the discretion in a particular manner could only be exercised once, thereafter the Chairman did not retain the liberty to alter the decision taken by him by exercising the discretion a second time.

10. The circumstances in the present case are not, in any way, different. The provisions of the Ordinances, quoted above, clearly indicate that no admission card could be issued unless the Principal had issued the necessary certificate of the candidate having prosecuted the regular course of study by attending the requisite number of lectures or the Vice-Chancellor, on the recommendation of the Principal, had condoned the deficiency. It is not open to the respondents to plead any practice

contrary to the provisions, referred to above, and assert that the deficiency in attendance was, in fact, not condoned by the Vice-Chancellor, though the admission cards were sent to the Principal.

11. Apart from this, the necessary record in support of the allegations in the return was not produced before us, though he required its production. The case can, therefore, be decided only on the assumption that the provisions of the Ordinances were strictly followed and that the admission card was properly issued after the authorities were satisfied that the petitioner was eligible to appear for the examination. It is also clear that the Principal had no authority to withhold the admission card and create a situation forcing the petitioner to give an undertaking. Our conclusion, therefore, is that the Vice-Chancellor acted beyond any authority in law in withdrawing the permission granted to the petitioner after the examination was over. We also hold that the University has no authority to withhold the result of the petitioner.

12. For the aforesaid reasons, the petition is allowed. The decision of the Vice-Chancellor contained in his Memo dated 29th May 1965 withdrawing the permission to appear for the examination is quashed. The respondents 1 and 2 are directed to publish the result of the petitioner. The respondents 1 to 3 shall pay costs of this petition. Hearing fee Rs. 150/-. The security amount deposited by the petitioner shall be refunded.

Petition allowed.

Cases Referred.

1. 1961 MPLJ 1393: AIR 1962 Mad Pra 3