

Shri Krishan vs The Kurukshetra University, ... on 17 November, 1975

Equivalent citations: 1976 AIR 376, 1976 SCR (2) 122, AIR 1976 SUPREME COURT 376, 1976 2 SCR 722, 1976 UJ (SC) 15, 1976 (1) SCC 311, ILR 1976 KANT 1051

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, Hans Raj Khanna, P.N. Bhagwati

PETITIONER:

SHRI KRISHAN

Vs.

RESPONDENT:

THE KURUKSHETRA UNIVERSITY, KURUKSHETRA

DATE OF JUDGMENT 17/11/1975

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

KHANNA, HANS RAJ

BHAGWATI, P.N.

CITATION:

1976 AIR 376 1976 SCR (2) 122

1976 SCC (1) 311

ACT:

Statutes of Kurukshetra University-ordinance X. cl. 2(b) Scope of Application for examination-Nor scrutinised by the University in the beginning If could raise objection after the examination-If University could allege fraud later-Statement made in ignorance of law-Effect of.

HEADNOTE:

Under the statutes of the respondent-University persons in service could take the three-year degree course in law by attending the evening classes. A candidate who had failed in some of the papers of one year could clear those papers before completing the three-year course. Under cl. 2(b) of Ordinance X contained in the University Calendar Volume I, a

candidate should submit to the University an application seeking permission to appear for an examination which should be signed by the Principal of the College or the head of the department concerned certifying that the candidate had attended a regular course of study for the prescribed number of academic years. But, this certificate is provisional and could be withdrawn at any time before the examination if the applicant failed to attend the prescribed course of lectures before the end of his term.

The appellant, a Government servant, joined the LL.B. I year class of the University. He failed in three papers, but was promoted to the second year. Before appearing in the second examination, however, he wrote to the University stating that if he was not able to get the requisite permission from his employer to join the law classes he would abide by any order that the University might pass. The appellant, however, wrote to the University later that this condition was not at all necessary and requested that his result in Part II might be announced. In reply the University wrote to the appellant that since his percentage of marks in Part I was short, his candidature for Part II examination stood cancelled. Having failed in his appeal to the Vice-Chancellor, he moved the High Court which dismissed his writ petition in limine.

Allowing the appeal to this Court,

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HELD: The impugned order of the university suffers from errors of law patent on the face of the record. This was not a case which should have been dismissed by the High Court in limine. [730-A]

(1) The last part of cl. 2(b) clearly shows that the University could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But, this could be done only before the examination. Once an applicant was allowed to take the examination, the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving permission to appear. [727-E-F]

(2) It was the duty of the University to scrutinise the form for admission to the examination in order to find out whether it was in order. It was also the duty of the head of the department of law, before submitting the form to the University, to see that the form complied with all the requirements of law. If neither took care to scrutinise the admission form, then the question of the appellant committing a fraud did not arise. Where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved.' It was neither a case of suggestion, falsi nor of suppressio

[728 A-C]

Premji Bhai Ganesh Bhai Kshatriya v. Vice-Chancellor, Ravishankar University, Raipur and others,, A.I.R. 1967 M.P. 194, 197, approved.

(3)(a) There is no provision of the University statutes which could have afforded jurisdiction to it to cancel the candidature of the appellant on the ground that he had not obtained the previous permission of his superior officers. The impugned order did not mention this ground at all. [728G, 729-BC]

(b) The undertaking given by the appellant that he would get the requisite permission of the employer did not put him out of court. It was written because he was anxious to appear in Part II examination and was written in terrorem and in complete ignorance of his legal rights. Any admissions made in ignorance of legal rights or under duress cannot bind the maker of the . admission. [729-DE]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil-Appeal No. 947 of 1975.

Appeal by Special Leave from the Judgment and order dated the 2nd April, 1971 of the Punjab and Haryana High Court in Civil Writ No. 1039 of 1974.

Kapil Sibal and S. K. Gambhir for the appellant. S. K. Nandy for the respondent.

The Judgment of the Court was delivered by FAZAL ALI, J. What appears to have been a clear case of refusal of admission to the appellant or the cancellation of his candidature at the proper time has been completely bungled and destroyed by the inherent inconsistency and seemingly contradictory stand taken by the respondent and lack of proper vigilance on the part of the Head of the Department of Law. The facts of the present case lie within a very narrow compass and only two short points of law have been raised before us by Mr. Kapil Sibal learned counsel for the appellant.

The appellant was a teacher in the Government High School, Dumarkha in the District of Jind (Haryana). The University of Kurukshetra was running law classes for three years Course and had extended the facility to persons who were in service to attend the evening classes and complete the three-years course in that manner. The appellant decided to take the benefit of the facility given by the Kurukshetra University and joined the LL.B. Part I classes some time in the year 1971. According to the University statute a student of the Faculty of Law was given the option to clear certain subjects in which he may have failed at one of the examinations before completing the three years course. The students were to appear in six papers each year. In April 1972 the petitioner appeared in the annual examination of Part I but failed in three subjects, namely, Legal Theory, Comparative Law and Constitutional Law of India Subsequently he was promoted to Part II which he joined in the year 1972. Under the University Statute the appellant was to appear in part II Examination in April 1973. On April 26, 1973 the appellant applied for his Roll number to the University in order to reappear in the subjects in which he had failed and to clear them but he was refused permission and

according to the appellant without any reasons. The annual examination for Part II was to be held on May 19, 1973 and the appellant approached the University for granting him provisional permission to appear subject to his getting the permission from his employer to attend the Law Faculty. In between it appears that the appellant had been prosecuted for offence under ss. 376, 366 and 363 I.P.C. and was suspended during the period when the case was going on against him. The appellant was, however, acquitted and was reinstated by his employer on August 22, 1972. It would thus appear that on May 18, 1973 as also on April 25, 1973 when he had applied for his Roll Number to clear the subjects, the stigma of criminal case had been completely removed.

To start the thread the appellant as mentioned already approached the University on May 18, 1973 and wrote a letter to the University authorities giving an undertaking that if he was not able to get the requisite permission from his employer to join the Law Classes, he would abide by any order that the University may pass. It appears that on the basis of this undertaking he was allowed to appear at the Part II Examination on May 19, 1973. On June 20, 1973 the appellant wrote to the University authorities that the condition on which he was to get the permission was not at all necessary and that his results may now be announced. On June 26, 1973 the respondent informed the appellant that since his percentage was short in Part I his candidature stood cancelled. Thereafter there were series of correspondence between the appellant and the University authorities but the appellant was refused admission to LL.B. Part III Class. The appellant then filed an appeal to the Vice Chancellor of the University on September 26, 1973 which was also rejected on November 3, 1973. Thereafter the appellant approached the High Court of Punjab and Haryana for a writ of certiorari to quash the order of the respondent canceling the candidature of the appellant but the High Court after issuing notice to the other side and persuing the application form rejected the petition in limine. Hence this appeal by the appellant by special leave to this Court.

The sheet-anchor of the case of the respondent was that the appellant had been involved in a criminal case` and therefore the Head of Institution could not give the certificate in the prescribed form that the appellant bore a good moral character. Subsequently it was said that as the appellant was short of the requisite percentage in LL.B. Part I he could not insist on his being admitted to the Part II Examination; and lastly the stand taken by the respondent was that the Evening Law Classes were held to benefit the members of the Services and it was incumbent on the appellant to have obtained permission of his superior officers and as he did not do so, the University was well within its rights in refusing him permission to appear at the Part II Examination or in admitting him to Part III Law course.

A long counter-affidavit has been filed by the respondent of which some paragraphs are extracted below :

4. Para 4 of the writ petition is rebutted. The petitioner was involved in a case under sections 363 and 366 of the Indian Penal Code. As a result, he was suspended. He remained under suspension till August 23, 1972, when he was reinstated. Consequently, he attended the lectures in Part I. So far as Part II is concerned, the petitioner didn't attend the requisite number of lectures. According to the notice displayed on the notice board of the Department of Laws on January 24, 1973, the

petitioner was falling short of attendance by 48 lectures upto December, 1972. There after, another notice was displayed on the notice board on r April 16, 1973, according to which the petitioner was falling short of attendance by 46 lectures. As such, the averment in the writ petition that he attended his lectures according to the rules is absolutely false.

Vide letter dated November 17, 1972, the Headmaster, Government High School, Dumarkha (District Jind) made an inquiry from the University regarding the petitioner's result in the LL.B. Part I Examination. The intimation was sent by the University vide their letter dated November 17, 1972. Thereafter, a letter dated January 1, 1973, was received in the University from the District Education officer stating inter alia that "it may also be pointed out that Shri Siri Krishan, Teacher was reinstated on 23-3-1972 and there after he is attending his duties in School. I am amazed to learn that he is declared by your Law Department to be attending classes in LL.B. Part II simultaneously".

"A copy of this letter is appended as Annexure 'R.1' to this affidavit. A perusal of this letter would show that the petitioner had not been granted permission by his employer to attend the law classes at the University. Furthermore, the approximate distance between his station of posting and the University is more than' fifty miles. Keeping m view the fact that he was posted in the interior of District Jind, it is impossible that the petitioner could have attended the requisite number of lectures. Evidently, the petitioner was himself aware of the fact that he had not attended the requisite number of lectures. It is also incorrect to suggest that the petitioner's name could be sent for the examination only if he had completed and required minimum attendance of lectures. The examination forms are always sent in December. Rule 2(b) of Ordinance 10 of the Kurukshetra University Calendar, Volume I, provides as under inter alia:-

"B. that he has attended 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 term."

5-L159SCI/76 The petitioner's examination form was, as such, sent provisionally and could be withdrawn at any time in case of his failure to attend the requisite percentage of lectures."

23. (i) In reply to sub-para (i) of the writ petition, it is submitted that the cancellation of the candidature of the petitioner for LL.B. Part II was not based on any extraneous considerations. Under the rules of the University every student is required to attend the prescribed course of lectures delivered to the class in each of the subjects offered. , I Mr. Sri Krishan was short of attendance which was duly notified on the notice board of the Department of Law twice; once on January 24, 1973 and again on April 16, 1973. The admission of the petitioner to Law course in the University was under dispute as a result of a complaint from the District Education officer, Jind. The petitioner came to the Magistrate on May 18, 1973, with an application that pending final

decision of his case, he may be allowed to sit `` in the examination provisionally at his own risk and responsibility. In this application, the petitioner did not mention that he was also falling short in lectures as notified by the Head of the Department of Law. Since the office was closed at that time and the examination was to start at 8.00 a.m. On May 19, 1973, the candidate was allowed to appear in the examination provisionally at his own risk and responsibility.

(viii) In reply to sub-para (viii) of the writ petition, it is submitted that in the admission notice printed at page 75 in the Hand Book of Information for the session 1971-72 to which the application for admission to the Department forms a part, mentions that LL.B. Classes in the evening were for employed persons only. It was, therefore, implied that the applicant while seeking admission in this class would obtain the approval of his employers. This approval became particularly necessary because of the constant complaints of ill serious nature from the employers (the Government) of the petitioner who insisted that he must obtain such permission. It may be recalled that the petitioner in his undertaking to the Registrar on May 18, 1973 promised to produce the required permission."

It will be seen from the above affidavit that the stand taken by the respondent is by no means consistent. It may be mentioned that at one stage the University takes the stand that it was a case of shortage of , percentage and therefore the appellant was refused admission to appear at Part II Examination. Later on this stand is given up and the respondent averred that as the appellant did not get the permission of his superior officers and since the University was moved by the District Education Officer to cancel the candidature of the appellant the impugned order was passed by the University. It was also argued by Mr. S. K. Nandy counsel for the respondent that the appellant knew fully well that his percentage was short and in spite of that he fraudulently suppressed this fact from the University authorities when he was allowed to appear in the LL.B. Part I Examination in April 1972.

Mr. Sibbal learned counsel for the appellant submitted two points before us. In the first place it was argued that once the appellant was allowed to appear at L.L.B. Part II Examination held on May 19, 1973 his candidature could not be withdrawn for any reason whatsoever, in view of the mandatory provisions of clause 2(b) of the Kurukshetra University Calendar Vol. I, ordinance X under which the candidature could be withdrawn before the candidate took the examination. Secondly it was argued that the order of the University was mala fide because the real reason for cancelling the candidature of the appellant was the insistence of the District Education officer that the appellant should not have been admitted to the Law Faculty unless he had obtained the permission of his superior officers. In order to appreciate the first contention it may be necessary to extract the relevant portions of the statute contained in Kurukshetra University Calendar Volume I, ordinance X. Clause 2 of this ordinance runs as follows:

"2. The following certificates, signed by the Principal of the College/Head of the Department concerned, shall be required from each applicant:-

(a) that the candidate has satisfied him by the production of the certificate of a competent authority that he has passed the examinations which qualified him for admission to the examination; and

(b) that he 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 term."

The last part of this statute clearly shows that the University could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear. It was, however, submitted by Mr. Nandy learned counsel for the respondent that the names of the candidates who were short of percentage were displayed on the Notice Board of the College and the appellant was fully aware of the same and yet he did not draw the attention of the University authorities when he applied for admission to appear in LL.B. Part II Examination. Thus the appellant was guilty of committing serious fraud and was not entitled to any indulgence from this Court.

It appears from the averments made in the counter- affidavit that according to the procedure prevalent in the College the admission forms are forwarded by the Head of the Department in December preceding the year when the Examination is held. In the instant case the admission form of the appellant must have been forwarded in December 1971 whereas the examination was to take place in April/May 1972. It is obvious that during this period of four to five months it was the duty of the University authorities to scrutinise the form in order to find out whether it was in order. Equally it was the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirements of law. If neither the Head of the Department nor the University authorities took care to scrutinise the admission form, then the question of the appellant committing a fraud did not arise. It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of *suggestio falsi*, or *suppressio veri*. The appellant never wrote to the University authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the University authorities to have found out the defect. In these circumstances, therefore, if the University authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I Examination in April 1972, then by force of the University Statute the University had no power to withdraw the candidature of the appellant. A somewhat similar situation arose in *Premji Bhai Ganesh Bhai Kshatriya v. Vice-Chancellor, Ravishankar University, Raipur and others*(ii) where a Division Bench of the High Court of Madhya Pradesh observed as follows:

"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 favour 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."

We find ourselves in complete agreement with the reasons given by the Madhya Pradesh High Court and the view of law taken by the learned Judges. In these circumstances, therefore, once the appellant was allowed to appear at the Examination in May 1973, the respondent had no jurisdiction to cancel his candidature for that examination. This was not a case where on the undertaking given by a candidate for fulfilment of a specified condition a provisional admission was given by the University to appear at the examination which could be withdrawn at any moment on the non-fulfilment of the aforesaid condition. If this was the situation then the candidate himself would have contracted out of the statute which was for his benefit and the statute (1) A.T.R. 1967 M. P. 194,197.

therefore would not have stood in the way of the University authorities in cancelling the candidature of the appellant.

As regards the second point that the order was passed mala fide, it is difficult to find any evidence of mala fide in this case. The order suffers from yet another infirmity. The annexures filed by the appellant and the respondent as also the allegations made in the counter affidavit clearly show that there were series of parleys and correspondence between the District Education officer and the respondent in the course of which the respondent was being persuaded, to the extent of compulsion, to withdraw the candidature of the appellant because he had not obtained the permission of his superior officers. Mr. Nandy appearing for the respondent has not been able to show any provision in the statutes of the University which required that the candidates attending the evening law classes who are in service should first get the prior permission of their superior officers. We have also perused the University Statute placed before us by counsel for the appellant and we do not find any provision which could have afforded justification for the respondent to cancel the candidature of the appellant on the ground that he had not obtained the previous permission of his superior officers.

Mr. Nandy counsel for the respondent placed great reliance on the letter written by the appellant to the respondent wherein he undertook to file the requisite permission or to abide by any other order that may be passed by the University authorities. This letter was obviously written because the appellant was very anxious to appeal in Part II Examination and the letter was written in terrorem and in complete ignorance of his legal rights. The appellant did not know that there was any provision in the University Statute which required that he should obtain the permission of his superior officers. But as the respondent was bent on prohibiting him from taking the examination he had no alternative but to write a letter per force. It is well settled that any admission made in ignorance of legal rights or under duress cannot bind the maker of the admission. In these circumstances we are clearly of the opinion that the letter written by the appellant does not put him out of court. If only the University authorities would have exercised proper diligence and care by scrutinising the admission form when it was sent by the Head of the Department to the University as far back as December 1971 they could have detected the defects or infirmities from which the form

suffered according to the University Statute. The Head of the Department of Law was also guilty of dereliction of duty in not scrutinising the admission form of the appellant before he forwarded the same to the University.

Moreover, the stand taken by the respondent that as the appellant did not get the requisite permission from his superior officers, therefore he was not allowed to appear at the examination, does not merit consideration, because the impugned order does not mention this ground at all and it was not open to the respondent to have refused admission to the appellant to LL.B. Part III or for that matter to refuse permission to appear at the examination on a ground which was not mentioned in the impugned order.

Having gone into the circumstances mentioned above, we are of the view that the impugned order suffers from errors of law patent on the face of the record, and in any event this was not a case which should have been dismissed by the High Court in limine.

The appeal is accordingly allowed and the order of the University dated June 26, 1973, is hereby quashed by a writ of certiorari. The respondent is directed to declare the result of LL.B. Part II Examination in which the appellant had appeared on May 19, 1973 and also to give him an opportunity to appear in the three subjects in which he had failed in LL.B. Part I Examination, at the next examination which may be held by the University.

In the peculiar circumstances of this case, however, we leave the parties to bear their own costs.

P.B.R.

Appeal allowed.