

CASE NO.:
Appeal (civil) 967 of 2008

PETITIONER:
ANAND SHARADCHANDRA OKA

RESPONDENT:
UNIVERSITY OF MUMBAI & Ors

DATE OF JUDGMENT: 04/02/2008

BENCH:
C.K. THAKKER & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 967 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (CIVIL) NO. 4590 OF 2006

C.K. THAKKER, J.

1. Leave granted.
2. The present appeal is filed against final judgment and order dated August 8, 2005 passed by the High Court of Judicature at Bombay in Writ Petition No. 1513 of 2005. By the impugned order, the High Court dismissed the petition on the ground that the writ petitioner could not be said to be 'aggrieved party'. In view of the said finding, the High Court did not consider it appropriate to express any opinion on the question raised in the petition.
3. Shortly stated the facts of the case are that the first respondent is University of Mumbai. Respondent Nos. 2 and 3 are Vice Chancellor and Registrar respectively of respondent No.1, whereas Respondent No. 4 is the State of Maharashtra. The University is governed by the provisions of the Maharashtra Universities Act, 1994 (hereinafter referred to as 'the Act').
4. On August 2, 1999, the respondent University issued a notification calling for applications from registered graduates in the prescribed form for getting their names registered in the electoral roll for electing ten members in the Senate of the University. The writ-petitioner who holds LL.M. degree of the University applied for registering his name in the said roll. The respondent-University, however, addressed a letter to the writ petitioner, calling upon him to submit his Bachelor Degree Certificate to ascertain whether he had obtained Graduate Degree from the said University. According to the writ petitioner, if a person has obtained Master Degree or Doctoral Degree from the University, his name also should be included in the electoral roll and he cannot be denied registration only on the ground that he had not

obtained Graduate Degree from the University. The writ petitioner, in the circumstances, approached the High Court by filing Writ Petition No. 436 of 2000 challenging the interpretation placed by the respondent-University on the term 'Graduate'. The High Court found prima facie substance in argument of the writ petitioner and admitted the petition by issuing Rule nisi. But, by the time the writ petition came up for final hearing, elections were over and the High Court did not think it fit to express any opinion on the question of law raised by the writ petitioner and disposed it of observing that the petition had become 'infructuous'. The question of law, however, was kept open.

5. Once again when the elections were scheduled to be held, the question of interpretation of the word 'Graduate' came up for consideration. The writ-petitioner addressed a letter to the University on October 25, 2004 to re-consider the legal issue. The respondent-University, however, disregarded the writ petitioner's request and issued a notification on April 22, 2005 for election of Senate. It insisted to register names of those persons who had obtained Graduate Degree from the University. The writ petitioner, therefore, was constrained to approach the High Court again by filing the present petition, i.e. Writ Petition 1513 of 2005. Notice was issued by the Court and the respondents appeared. An affidavit was filed on behalf of the respondents wherein it was contended that the writ petitioner could not be said to be 'aggrieved party' in view of the fact that he was graduated from Bombay University and his name could be registered in the electoral roll. No other person had made any grievance who was graduated from other University and obtained Master Degree or Doctoral Degree from Bombay University and was denied enrolment of his name in the electoral roll. The petition filed by the writ petitioner, therefore, was not maintainable.

6. The High Court in the impugned order observed that the writ-petitioner himself was a graduate who obtained B.A. Degree from the respondent-University. He could not, therefore, have any grievance in the matter. The contention of the writ petitioner was that the respondent-University was wrongly interpreting the word 'Graduate' in a restricted manner and several other persons who were not graduated from respondent-University, but obtained Master or Doctoral Degree from the University were not enrolled in the electoral roll. According to the High Court, since the writ-petitioner was not 'aggrieved party', the petition was liable to be dismissed and accordingly, it was dismissed. The said order is challenged by the writ petitioner in the present appeal.

7. Notice was issued on February 27, 2006 by this Court and on August 27, 2006, the Registry was directed to place the matter for

hearing on a non-miscellaneous day. That is how the matter has been placed before us.

8. We have heard the learned counsel for the parties.

9. The learned counsel for the appellant submitted that the High Court was wrong in dismissing the petition on the ground of locus standi. The Court ought to have appreciated that the question was of interpretation of law and it ought to have decided the issue one way or the other. According to the appellant, even in past, the High Court did not decide the matter on merits and disposed of his writ petition as 'infructuous'. Again the question has come up and even in future, at every election, such question will arise. It was, therefore, submitted that the High Court was wrong in not deciding the controversy.

10. The learned counsel for the respondents, on the other hand, submitted that the High Court was justified in dismissing the writ petition on the ground that the petitioner was not aggrieved person. The writ petition was not in the nature of Public Interest Litigation (PIL) and when the writ-petitioner himself was graduated from the respondent-University, his name could be there in the electoral roll. The High Court, hence, refused to enter into larger question. The counsel, however, admitted that there may be certain persons who might have been graduated from other Universities and obtained Master Degree or Doctoral Degree from Bombay University and whose names on that ground might not have been registered in the electoral roll. But it was submitted that this is the provision of law, the University has rightly interpreted it and refused to register their names. He further submitted that the constitutional validity or vires of the provision had not been challenged by the writ-petitioner. In the light of the statutory provisions, the University decided not to register names of persons who were graduated from other University and no fault can be found against such action. He, therefore, submitted that the appeal deserves to be dismissed.

11. Having heard the rival contentions of the parties, in our opinion, it cannot be said that the High Court was wrong in dismissing the writ petition filed by the writ-petitioner-appellant herein. It is expressly stated by the High Court that the writ-petitioner obtained B.A. Degree from Bombay University. Thus, the writ-petitioner was graduated from the respondent-University. His name, therefore, can be registered in the electoral roll for electing members of Senate. He was not, therefore, an 'aggrieved party'. The writ petition was not in the form of PIL and it cannot be said that the High Court ought to have decided the question. To that extent, therefore, the grievance voiced by the writ-petitioner is not justifiable.

12. It is, no doubt, equally true that

there may be some persons who might have obtained Graduate Degree from Universities other than the respondent-University and Master Degree or Doctoral Degree from Bombay University. According to the interpretation adopted by the respondent-University, their names cannot be registered under the Act. We have, therefore, to consider whether the action of the University is illegal, contrary to law or otherwise objectionable. The learned counsel for the respondents, in this connection, referred to the relevant provisions of the Act. Section 2 defines certain terms and the word 'University' is defined in Clause (36) of Section 2 which reads thus;

"University" means any of the universities mentioned in the Schedule.

13. The Schedule to the Act specifies Universities. The term 'Graduate' is not defined in the Act. Section 3 provides for "Incorporation of Universities". Section 6 deals with "Jurisdiction and Admission to Privileges of University". Section 24 enumerates Authorities of the University. One of the Authorities of the University is "Senate". Section 25 declares that Senate shall be the Principal Authority for all financial estimates and budgetary appropriations and for providing social feedback to the University on current and future academic programmes and also provides for its constitution. Section 26 lays down functions and duties of Senate. Chapter XI relates to Enrolment, Degrees and Convocation. Section 99 is a material provision and provides for Registered Graduates. Sub-section (1) of the said section is material and reads thus;

"(1) Subject to the provisions of sub-section (2), the following persons shall be entitled to have their names entered in the register of registered graduates or deemed to be registered graduates, maintained by the university, namely:-

(a) who are graduates of the university;

(b) who are graduates of the present university from which corresponding new university is established;
Provided. . .

(2)"
(emphasis supplied)

14. Section 100 enables the Chancellor to remove name of any person from register of graduates.

15. Clause (a) of sub-section (1) of Section 99, in our opinion, is clear and unambiguous. It specifically and unequivocally

declares that only those persons who are 'Graduates of the University' are entitled to have their names entered in the register of registered graduates. As already observed earlier, University means any university mentioned in the Schedule. It is not even the case of the writ-petitioner either before the High Court or before us that name of any person who has graduated from the University as defined in Section 2(36) of the Act has not been included in the register. It, therefore, cannot be said that the interpretation of the respondent-University is unwarranted, illegal or contrary to statutory provisions. In our opinion, the learned counsel for the respondent-University is also right in contending that the constitutional validity of statutory provision has not been challenged by the writ-petitioner and, as such, the Court is called upon only to interpret the provision as it stands treating it to be valid and *intra vires*. If it is so, the limited controversy before the Court is whether the University is right in interpreting the relevant provision of law in Section 99 read with Section 2 of the Act.

16. Learned counsel for the appellant, however, submitted that the repealed statute, namely, the Bombay Universities Act, 1974, treated persons who had obtained Graduate Degree from other university, but Master Degree or Doctoral Degree from Bombay University as eligible and qualified to be included in the register of registered graduates of the University. In our opinion, however, the above circumstance, instead of supporting the writ-petitioner may support the respondents as it can be said that though there was such provision in the previous Act, the Legislature consciously and deliberately departed from it and the registration was restricted to those who must have graduated from the University. The said contention, therefore, cannot take the case of the writ-petitioner further.

17. It was then contended that in several other Universities, such persons who had obtained Graduate Degree from other universities, but obtained Master degree or Doctoral Degree from those Universities have been treated as eligible to get their names registered in the register of graduates. Even on that ground, the impugned action of the respondent-University cannot be said to be legal or proper. We are afraid, we cannot uphold the contention of the writ-petitioner. If it is for the Legislature to provide for registration of graduates and in absence of any challenge to the constitutional validity, we have to give literal interpretation to the expressions used and terms defined in the statute book.

18. As already noted by us, considering Section 99 in the light of Clause (36) of Section 2 of the Act, it cannot be said that the University was wrong or had committed any

error in interpreting the provision and in depriving any person of his right. If it is so, no grievance can be made against such interpretation. We, therefore, see no substance in the argument raised by the writ petitioner.

19. For the foregoing reasons, the appeal deserves to be dismissed and is, accordingly, dismissed. On the facts and in the circumstances of the case, however, there shall be no order as to costs.

JUDIS