

“REPORTABLE”

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5550 OF 2008
(Arising out of SLP (C) No. 3569 of 2007)

Mahatma Gandhi University & Anr.

.... Appellants

Versus

Gis Jose & Ors.

.... Respondents

JUDGMENT

V.S. SIRPURKAR, J.

1. Leave granted.
2. It is once again, a judgment has come from the High Court in complete derogation of the observations of this Court against the compromising of the educational standards in the matter of admissions to a particular course by showing unnecessary sympathies. The Mahatma Gandhi University has come up against the judgment of the Division Bench of Kerala High Court whereby the Division Bench allowing the appeal of a student, has directed the University to declare the withheld result of the student. The direction though was, of course, without creating precedence, as a special case.

3. It so happened that Petitioner, Gis Jose was admitted to the M.Sc. Computer Science course. She had secured only 53.3% marks in her qualifying examination against the minimum requirement of cut-off marks, which had been fixed by the university as 55%. Obviously in total derogation of this fact, the student was admitted. The error, when found by the University, the Controller of Examination wrote a letter dated 01.11.2004 to the Principal, B.P.C. College, Piravom, pointing out the irregular admission to the M.Sc. Computer Science course. It was pointed out that the student's application for Ist and IInd semester Examinations, held in April and July, 2004 respectively, were already rejected on the ground that the student had scored only 53 % marks and her admission was in violation of the Admission Rules framed by the University and still the Principal had allowed the student to continue in M.Sc. Computer Science to complete the course and to write her examination. It was pointed out that the University was viewing the matter very seriously and the Principal was further directed to cancel the admission given to the student and to report the matter within 10 days. It is obvious from this letter that the earlier applications dated 22.4.04 and 26.7.04 were also rejected by the University. A memo was ultimately sent on 25.2.2005 and the student was informed that the University had rejected her request for continuing studies in M.Sc. Computer Science in the college. This was on the basis of the Minutes of the Academic Council Meeting dated 23.12.2004 where the Academic Council had refused to allow the student to continue her studies and yet the student was allowed to continue with

the course in complete and total derogation of the directions given by the Controller of Examinations.

4. The student came before the Kerala High Court by way of a writ petition which was dismissed by the Learned Single Judge of that Court, as the student did not have the basic qualification for admission to the course in accordance with the University Regulations. It was also found that when the application for the Ist semester examination was submitted, the same was not accepted by the University and the same was the fate of the IInd semester examination also yet the student was permitted to continue her studies.

5. An appeal was filed against the judgment of the learned Single Judge and the Division Bench has allowed the appeal. For that purpose, the Division Bench relied on the earlier Division Bench decision of that Court in W.A. No. 1040 of 2003. In that, the Division Bench had taken the view that since the student had completed the course and had taken the examination, the results would have to be declared. There the Court had also taken the view that at that juncture, the student could not be singled out. The Division Bench **“further in view of the inconsistency”** chose to grant relief and further observed that this did not adversely affect the interest of others and that it was too late for anybody to contend that by treating her admission in nullity, somebody would have gained anything.

The Division Bench also took the view that the student had not misrepresented regarding her marks and yet she was given the admission as a normal student.

6. It was further observed by the Division Bench that a strict approach “disrobbing off the fruits of her effort could have had harsh results.” The Division Bench also agreed that such irregular admissions were likely to pave the way for foul play in the hands of unscrupulous college management, and yet further proceeded to grant relief to the student, in view of the fact that the student had taken the examinations of semesters Ist to IVth and had undergone the full course. We are at complete loss to understand as to how such course could have been taken. In fact, the unscrupulous college management had obviously given an irregular admission and because of that admission, at least one student was deprived of the admission to the M.Sc. Computer Course, so also it was a complete discrimination between the respondent and other students, who had also scored 53.3% marks and were not given admission on that count. The matters do not stop here. The Controller of the Examination had subsequently rejected her application for the first and second semester examination which took place in April and July, 2004 and yet the college proceeded to allow her to write her examination of those semesters and also continued her admission. It cannot be assumed that the students did

not have the idea of all these irregularities. It was obvious that there was an unholy hand shake of the student and the college authorities.

7. It was contended by Shri B.V. Deepak, learned counsel appearing for the student that the Vice Chancellor had allowed her to continue with the course. However, there is nothing on record to support this fact. Further, such permission was clearly incorrect if at all given. In the subsequent meeting of the Academic Council, the student was not permitted to continue with the course. All these factors were completely ignored by the Division Bench in the impugned judgment . Therefore, at least after the Academic Council had rejected the student's request, she could not have been allowed to continue. This did not happen and the college allowed her to take the further examinations for III and IV semesters also. We totally disapprove of all this.

8. Learned counsel for the student relied on a judgment of this Court in the case of **Selin Mary Mammen** vs. **Mahatma Gandhi University & Ors.** [Civil Appeal No.689 of 2004 delivered on 3.2.2004], a judgment delivered by Lahoti, J. Apart from the fact that the factual position is different in that case, there were no timely notices given regarding the irregular admission to the student as in the present case.

9. The misplaced sympathies should not have been shown in total breach of the Rules. In our opinion, that is precisely what has happened.

Such a course was disapproved by this Court in **Regional Officer, CBSE** vs. **Ku. Sheena Peethambaran and Others** [(2003) 7 SCC 719]. In paragraph 6 of the Judgment, this Court observed as follows :

“6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases, it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions.....”

10. In the present case, the college where the student was admitted, in breach of all possible rules allowed her not only to complete the course but also to write the examination which was totally illegal.

11. We, therefore, allow this appeal and set aside the judgment of the Division Bench and restore the judgment of the Single Bench dismissing the Writ Petition.

.....J.

(Ashok Bhan)

.....J.

(V.S. Sirpurkar)

New Delhi;

September 8, 2008.

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Case No. : SLP (C) No. 3569 of 2007

Date of Decision : 08.09.2008

Cause Title : Mahatma Gandhi University & Anr.

Vs.

Gis Jose & Ors.

Coram : Hon'ble Mr. Justice Ashok Bhan
Hon'ble Mr. Justice V.S. Sirpurkar

Judgment delivered by : Hon'ble Mr. Justice V.S. Sirpurkar

Nature of Judgment : Reportable