

MAHATAMA GANDHI UNIVERSITY & ANR.

v.

GIS JOSE & ORS.

(Civil Appeal No. 5550 of 2008)

SEPTEMBER 8, 2008

[ASHOK BHAN AND V.S. SIRPURKAR, JJ.]

*Education – Admission to Masters Course – Violation of Admission Rules framed by University – Principal allowing student to complete the course and write examination – Legality of – Held: Illegal – Misplaced sympathies should not have been shown in total breach of the Rules – Thus, order of Single Judge of High Court that student cannot be allowed to continue the course as she did not have basic qualification for admission to the course as per the University Regulations, upheld – Order of Division Bench directing the University to declare the withheld result of student set aside.*

**The respondent scored less marks in her qualifying examination against the minimum requirement for M.Sc. Computer Science Course and was admitted to the course. The University directed the Principal to cancel the admission given to respondent and also rejected her application for 1st and 2nd semester examination. However, the Principal allowed the respondent to continue in M.Sc. Course and to write the examination. Thereafter, the Academic Counsel rejected the respondent's request for continuing the studies in M.Sc. Course and sent her a Memo. Respondent filed writ petition which was dismissed as she did not have basic qualification for admission to the course. However, the Division Bench of High Court set aside the order of Single Judge. Hence the present appeal.**

**Allowing the appeal, the Court**

A HELD: 1.1 The unscrupulous college management  
gave 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  
B students, who had also scored 53.3% marks and were  
not given admission on that count. It cannot be  
understood as to how such course could have been taken.  
The Controller of Examination had subsequently rejected  
her application for the 1st and 11nd semester examination  
C 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  
D unholy hand shake of the student and the college  
authorities. [Para 6] [205-F-G 206-G-H]

1.2 There is nothing on record to support the fact  
that the Vice Chancellor had allowed her to continue with  
the course. Further, such permission was clearly incorrect  
E 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  
F 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.  
All this cannot be approved. [Para 7] [206 B-D]

1.3 The misplaced sympathies should not have been  
G shown in total breach of the Rules. That is precisely what  
has happened. 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. The judgment of  
H the Division Bench of High Court is set aside and the

judgment of the Single Judge of High Court is dismissing the Writ Petition is restored. [Paras 9, 10 and 11] [206 F 207 B,C] A

*Selin Mary Mammen vs. Mahatma Gandhi University and Ors. Civil Appeal No.689 of 2004 decided by Supreme Court on 3.2.2004 – distinguished.* B

*Regional Officer, CBSE vs. Ku. Sheena Peethambaran and Ors. 2003 (7) SCC 719 – relied on.*

#### Case Law Reference

2003 (7) SCC 719 Relied on. 9 C

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 5550 of 2008

From the final Judgment and Order dated 7.7.2006 of the High Court of Kerala at Ernakulam in W.A. No. 2413 of 2005 D

C.S. Rajan, M.T. George for the Appellants.

B.V. Deepak (for M/s. T.T.K. Deepak & Co.) for the Respondents.

The Judgment of the Court was delivered by E

**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. F G

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 H

A 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

A 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.

B 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  
C 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  
D examinations for III and IV semesters also. We totally disapprove  
of all this.

E 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.

F 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,  
G this Court observed as follows :

H "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.....” A

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. B

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. C

N.J.

Appeal allowed.