

(2010) 07 AHC CK 0481

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 10993 of 2007

Navneet Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: July 21, 2010

Hon'ble Judges: Dilip Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Dilip Gupta, J.

The Petitioner, who had appeared at the Intermediate Examination conducted by the Board of High School and Intermediate Education, U.P., Allahabad (hereinafter referred to as the "Board") in the year 2002, has filed this petition for a direction upon the Board and the Principal of the Mahatma Gandhi Inter College, Siswa Bazar, Maharajganj (hereinafter referred to as the "College") from where he had appeared at the said Examination, to provide the original Certificate to the Petitioner.

2. It is stated that the Petitioner had appeared as a regular student at the Intermediate Examination 2002 from the aforesaid College with Roll No. 0535542. In the mark sheet dated 28th June, 2002 issued to the Petitioner he was declared failed as in Chemistry Theory Paper, he was awarded 9 marks in Ist Paper and 6 marks in I Ind Paper. The Petitioner applied for scrutiny in Chemistry Paper-II. The Principal of the College issued a mark sheet to the Petitioner on 15th February, 2003 in which the Petitioner was shown to have passed in Second Division with 8 marks in Chemistry Paper-II. The Petitioner thereafter took admission in B. Sc. in a College affiliated to the Deen Dayal Upadhyay Gorakhpur University, Gorakhpur. On 3rd May, 2006, the Petitioner made a request to the Principal of the College from where he had appeared at the Intermediate Examination in the year 2002 to provide a Certificate to him but the Principal of the College under his signatures only provided a provisional Certificate and when the Petitioner approached the Principal of the College for issuance of the regular Certificate, neither any reply was given and nor

the Certificate was provided. The Petitioner, therefore, filed this petition in 2007 for issuance of the Certificate of the Intermediate Examination 2002.

3. A Counter Affidavit has been filed on behalf of the Board as also on behalf of the College.

4. The Board in its counter affidavit has specifically stated that though the Petitioner had applied for scrutiny in Chemistry Paper II, but his marks remained unchanged and there is no provision for issuance of a certificate to an unsuccessful candidate. It has also been stated that the Principal of the College issued the revised mark sheet in collusion with the Petitioner even though there was no change in the marks obtained in Chemistry Paper II after scrutiny and for that purpose an explanation was called for from the Principal of the College by the communication dated 3rd October, 2007. Photostat copy of the Original Tabulation Chart has also been enclosed to show that there was no change in the marks of the Petitioner in Chemistry Paper-II.

5. In the Counter Affidavit filed by the Principal of the College, it is stated that the mark sheet dated 15th February, 2003 was issued to the Petitioner on the basis of the communication dated 18th November, 2002 sent by the Assistant Secretary (Confidential) of the Board which mentioned that after scrutiny, the marks obtained by the Petitioner in Chemistry Paper-II had increased from 6 to 8 and the Petitioner had passed the Intermediate Examination 2002 with Second Division. It has further been stated that since the Principal had not received the Certificate from the Board, it was not possible to him to issue any Certificate to the Petitioner.

6. On 15th September, 2008, when the matter was taken up by the Court, the following order was passed:

Sri Parmeshwar Yadav has put in appearance on behalf of Respondent No. 3. He has produced the communication dated 18th November, 2002 said to have been sent by the Madhyamik Shiksha Parishad to the Principal of the Mahatma Gandhi Inter College, Maharajganj (hereinafter referred to as the College). He also produced the tabulation chart in which the necessary corrections have been made by the College on the basis of the said communication.

These two documents shall be kept under seal cover in the office of Registrar General and shall be produced as and when the Court desires.

A perusal of the communication dated 18th November, 2002 shows that it bears U.P. Government seal. This appears to be highly suspicious as the seal should have been of the Board of High School and Intermediate Education. This apart, in the counter affidavit filed by the Board, a categorical stand has been taken that after scrutiny the marks of the Petitioner did not change and, therefore, in such circumstances, there was no occasion for the Principal of the College to have issue a corrected mark-sheet to the Petitioner.

Since these two documents have been filed today, learned Standing Counsel appearing for the Board of High School & Intermediate Education shall seek instructions from the Board about the authenticity of the communication dated 18th November, 2002. Learned Standing Counsel shall also file a detailed affidavit explaining the procedure adopted by the Board for communicating the results of scrutiny of the candidate to the respective Colleges.

It has also been stated by the counsel appearing on behalf of the Principal that such communication was received by him from the office of the District Inspector of Schools, Maharajganj. The Secretary of the Board shall, therefore, also enquire from the District Inspector of Schools, Maharajganj whether such communication was ever received by the District Inspector of Schools and thereafter sent to the Principal of the College.

Let the affidavit be filed within two weeks.

List this petition on 13th October, 2008 before the appropriate Court.

7. Pursuant to the aforesaid order passed by the Court, a Supplementary Counter Affidavit has been filed by the Board. It has been stated that the only mark sheet that was sent by the Board through the District Inspector of Schools was the mark sheet in which the Petitioner had been declared failed and the communication dated 18th November, 2002 was never sent by the Board. It has further been stated that the result of the scrutiny is sent by the Board to the Principal through the District Inspector of Schools by special messenger and that there was no change in the marks obtained by the Petitioner in Chemistry Paper-II after scrutiny.

8. The original records of the Board have also been produced by the learned Standing Counsel.

9. Learned Counsel for the Petitioner submitted that the Petitioner is entitled to receive the Intermediate Certificate on the basis of the mark sheet issued by the College on 15th February, 2003 in which he was declared passed. It is his contention that on the basis of the said mark sheet the Petitioner had also taken admission in B. Sc. in a College affiliated to the Gorakhpur University and the Respondents are now stopped from contending that the Petitioner had failed at the Intermediate Examination 2002.

10. Learned Standing Counsel appearing for the Respondents, however, submitted that the claim of the Petitioner is based on the basis of the mark sheet issued by the Principal of the College which according to the Principal of the College was issued on the basis of the communication dated 18th November, 2002 sent by the Board, but this is a forged document which was never issued by the Board and the records maintained by the Board clearly show that there was no change after scrutiny in the marks obtained by the Petitioner in Chemistry Paper-II. It is his submission that the Petitioner had failed at the Intermediate Examination 2002 and, therefore, no

Certificate can be issued.

11. I have considered the submissions advanced by the learned Counsel for the parties.

12. The Petitioner had appeared at the Intermediate Examination 2002 conducted by the Board. The mark sheet dated 28th June, 2002 issued to the Petitioner clearly shows that he had failed at the Examination since in theory paper of Chemistry he could not obtain the requisite minimum marks. The Petitioner applied for scrutiny in Chemistry Paper-II in which he had obtained 6 marks. According to the Petitioner, the marks after scrutiny in Chemistry Paper-II, had increased from 6 to 8 and thereafter the mark sheet dated 15th February, 2003 was issued by the Principal of the College declaring the Petitioner as having passed the Intermediate Examination 2002 with Second Division.

13. The Principal of the College in his Counter Affidavit has come out with a case that the said mark sheet 15th February, 2003 was issued to the Petitioner on the basis of the communication dated 18th November, 2002 sent by the Board in which it was stated that after scrutiny in Chemistry Paper-II, the marks of the Petitioner had increased from 6 to 8 and that he had passed the Intermediate Examination 2002.

14. The Board denies having sent the letter dated 18th November, 2002 and according to the Board, the marks of the Petitioner did not increase after scrutiny in Chemistry Paper-II and, therefore, he had not passed the Intermediate Examination 2002. The letter dated 18th November, 2002 has been annexed as CA-1 to the Counter Affidavit filed by the Principal of the College and in paragraph 5 of the Counter Affidavit all that has been stated is that the Principal of the College received the letter dated 18th November, 2002. There is no averment as to how this letter was received. In the Supplementary Counter Affidavit filed by the Board it has been stated that any change in marks of scrutiny is intimated by the Board to the Principal of the College through the District Inspector of Schools. Sri S.C. Dwivedi, learned Counsel appearing for the Principal of the College has, however, stated that the Principal of the College has informed him that the said communication dated 18th November, 2002 had been submitted by the Petitioner to the Principal of the College and it is on the basis of the said communication that the Principal issued the mark sheet.

15. The Board has also produced the Tabulation Chart. It is the submission of Sri R.P. Tiwari, learned Standing Counsel that if the marks in Chemistry Paper II had actually increased after scrutiny from 6 to 8, such change would have been recorded in the Tabulation Chart, but such change is not recorded. The Board has also produced the Register containing the details of the cases in which marks have changed after scrutiny. The name of the Petitioner is not included in the said Register. The Register containing the carbon copy of the communications sent by the Board to the Principal of the Colleges regarding change of marks after scrutiny has also been

produced. This Register also does not contain the copy of the alleged letter dated 18th November, 2002 said to have been sent by the Board to the Principal of the College. What is also to be noticed is that all the carbon copies of the communications contained in the Register mention serial number but the alleged communication dated 18th November, 2002 filed by the Principal of the College does not bear any serial number. The document produced by the Principal of the College is only a Tabulation Register maintained at the level of the College and it is in the said Tabulation Register that corrections have been made by the Principal of the College on the basis of the alleged communication dated 18th November, 2002.

16. Thus, it is clear that Board did not send the letter dated 18th November, 2002 and from the records produced by the Board it is apparent that such communication was not sent to the College. On the contrary, the records clearly indicate that there was no change in the marks of the Petitioner in Chemistry Paper-II after scrutiny. The mark sheet dated 15th February, 2003 has, therefore, been issued by the Principal of the College on the basis of a forged and fabricated document and it is really surprising that the Principal of the College should have issued the mark sheet on the basis of a document submitted by the candidate without even verifying the contents from the Board.

17. The Petitioner has claimed relief for issuance of the Intermediate Certificate on the basis of a forged document. The question, therefore, that arises for consideration is whether any relief should be granted to the Petitioner in such a situation.

18. This issue arose for consideration before a Division Bench of this Court in *Rahul v. Madhyamik Shiksha Parishad, U.P. Allahabad and Ors.* 1980 UPLBEC 262. In this case also, a mark sheet had been issued by the Principal of the College on the basis of a communication received by the Principal of the College concerned purported to have been issued by the Board intimating that after scrutiny the marks had increased and the candidate had passed in Second Division. The relief claimed by the candidate on the basis of a said forged document was denied by the Board and it was observed:

We have heard learned Counsel appearing for the Petitioner as well as standing counsel who represented the Parishad. The standing counsel has also placed before us all the relevant documents relating to the Petitioner's case. The basic contention on behalf of the Petitioner is that since the Principal of Mahamana Malviya Inter College, Khekra, Meerut acted as an agent of opposite party No. 1 assuming that the mark sheet issued to the Petitioner was inaccurate the Petitioner having acted upon it and having passed the B.A. Previous Examination on the Principle of promissory estoppels applied and it was no-longer open to opposite party No. 1 not to treat the Petitioner as having been successful at the Intermediate Examination held in the year 1975. From the material that has been placed before us in original it appears that in the transfer certificate obtained by the Petitioner when he was delivered his

mark-sheet by the Principal of Mahamana Malviya Inter College, Khekra, Meerut it was noted that the Petitioner had passed the Intermediate Examination in the II division on the basis of a letter issued by opposite party No. 1 dated 29th November, 1975. The register sent by opposite party No. 1 containing the marks of various candidates who had appeared at the examination was produced by the standing counsel before us. According to the register of marks the Petitioner had secured 26 marks in total in three Mathematics papers. Subsequently a letter dated 29th November, 1975 was received by the Principal of Mahamana Malviya Inter College, Khekra, Meerut purporting to have been issued by opposite party No. 1 intimating to him that as a consequence of the rescrutiny of the Petitioner's answer script he had secured 49 marks and had passed in II division. A mere perusal of the letter dated 29th November, 1975 discloses that it is a forged document. Whatever was written in the letter in original was erased out with a ball pen and it was written out that the Petitioner had secured 49 marks in total as a consequence of the rescrutiny of his answer script. Even the original date of the letter has been scored at and has been interpolated. The entire claim of the Petitioner is found on this letter of 29th November, 1975 . As is clear on the basis of this forged document the Principal of Mahamana Malviya Inter College, Khekra, Meerut issued mark sheet to the Petitioner and in such circumstances in our view the principle of promissory estoppels can have no application. Though the Petitioner asserts that the genuine marks as intimated by the Parishad were never intimated to him it is difficult to believe that this was so. It is significant that apart from the Petitioner no one stood to gain anything on the basis of the forged document dated 29th November , 1975. There is thus no equity operating in faovur of the Petitioner also. The agency of the Principal of the Mahamana Malviya Inter College, Khekra, Meerut extended in issuing a mark sheet on the basis of the marks intimated by the Parishad to the Principal. Since the letter dated 29th November, 1975 was never sent on behalf of the Parishad the Principal of the College cannot be said to have acted as an agent of the opposite party No. 1 while issuing the mark sheet on the basis of an alleged rescrutiny of the Petitioner's answer script who had not even applied for a rescrutiny. He is in our judgment not entitled to any relief. (emphasis supplied)

19. The Supreme Court has also repeatedly emphasised that fraud avoids all judicial acts and the Writ Courts, while exercising equitable jurisdiction, should act to prevent perpetration of the legal fraud.

20. In [Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another](#), the Supreme Court observed that a writ Court, while exercising its equitable jurisdiction, should so act as to prevent perpetration of a legal fraud as the Courts are obliged to do justice by promotion of good faith. Equity is always known to prevent the law from the clefty evasions and new subtleties invented to evade law.

21. In [United India Insurance Co. Ltd. Vs. Rajendra Singh and Others](#), , the Supreme Court observed that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries.

22. Even otherwise, it is a settled proposition of law that estoppels cannot be raised to defeat the provisions of a Statute and nor do the Courts issue any direction contrary to law. Thus, if the Petitioner was not entitled to be declared successful at the Intermediate Examination, then the plea of estoppels cannot be raised by the Petitioner and nor can this Court direct the Board to issue the Certificate to him.

23. Thus, for all the reasons stated above, no relief can be granted to the Petitioner.

24. What also needs to be noticed is that the Principal of the College has issued the mark sheet to the Petitioner on the basis of a letter produced by the Petitioner. The Principal of the College should not have issued the mark sheet to the Petitioner on the basis of a letter produced by the candidate without even verifying its contents from the Board, particularly when such letters are received from the office of the District Inspector of Schools. The Board has already issued a letter to the Principal requiring him to explain as to under what circumstance the mark sheet and the provisional certificate were issued to the Petitioner. The Principal of the College has submitted a reply. The Board should, therefore, conclude the enquiry initiated against the Principal of the College as expeditiously as is possible.

25. The writ petition is, accordingly, dismissed with the aforesaid observations.