

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Mohammad Ali Mazhar** and **Agha Faisal, JJ.**

CP D 8726 of 2018 : Riaz Ahmed vs.
NED University of Engineering
& Technology, Karachi

For the Petitioner : Mr. Shahenshah Husain
Advocate

For the Respondent : Mr. Khalid Jawed, Advocate

Date of Hearing : 24.04.2019

Date of Announcement : 31.05.2019

JUDGMENT

Agha Faisal, J.: The present petition was filed in December, 2018 seeking award of a degree to the petitioner, by the respondent NED University of Engineering and Technology ("**NED**"), on the sole premise that the Syndicate of NED ("**Syndicate**") had conditionally recommended for award of the same vide their resolution dated 01.12.1994 ("**Resolution**").

2. Briefly stated, the facts germane to the present petition are that the five students had sought admission to NED and it was found that they had adopted fraudulent means, by submitting forged / tampered educational credentials, in order to seek such admission. NED had issued a notice dated 30.10.1986 ("**Notice**") wherein it was stated that since the five applicants had been found culpable of suppression and misrepresentation of material facts, hence, NED *inter alia* decided to cancel their admission. The present petitioner was one of the five persons in respect whereof fraud was said to have been established. The Notice contained a provision for appeal which was never availed by the petitioner.

3. Mr. Shahenshah Husain, Advocate submitted on behalf of the petitioner that a standing committee of NED had taken a sympathetic view and resolved to request the Syndicate to facilitate the candidates who had wrongfully obtained admission on the basis of fraudulent

documents previously. It was further demonstrated that the Syndicate had considered the said recommendation favorably, as was manifest from their Resolution. Learned counsel submitted that notwithstanding the foregoing NED had not acted upon the proposal of the Syndicate since 1994, hence, the present petition was filed almost a generation later.

4. Mr. Khalid Javed, Advocate appeared on behalf of the respondent NED and submitted that the Notice was issued back in 1986 and it is apparent from a bare perusal of the same that the present petitioner had been found culpable of fraud and misrepresentation. Learned counsel further submitted that the provision of appeal was contained in the Notice, however, the said opportunity was never availed by the petitioner. On the contrary the petitioner filed a civil suit and obtained interim orders to continue with classes at NED for a period of time, however, the fate of the said suit is not known to the learned counsel and it is also apparent that there is no mention of the said suit or its fate in the petition, thereby demonstrating that the same had been actively concealed from this Court. Learned counsel submitted that the issue raised by the Notice was the scrutiny of judicial proceedings which went all the way up to the honorable Supreme Court and it would suffice to submit that the Notice was upheld. Learned counsel referred to the recommendation of the Syndicate and submitted that it was issued without having knowledge of the proceedings in Court and in any event such a recommendation had no applicability especially in view of the Supreme Court decision dated 22.10.2002. It was thus submitted that the present petition was misconceived and ought to be dismissed forthwith.

5. Mr. Shahenshah Husain, Advocate argued in rebuttal that notwithstanding the Notice having been adjudicated and upheld all the way up to the honorable Supreme Court, the recommendations of the Syndicate ought to be given effect by this Court. The learned counsel categorically admitted that the petitioner had in fact tampered with the record but that the delay in award of the degree was punishment enough, therefore, the transgression merited to be condoned by this Court. Despite a specific query, the learned counsel refused to dwell upon the suit filed by the petitioner, wherein interim orders were

obtained, and further indicated his inability to provide the record in respect of the fate of the same.

6. We have considered the arguments of the respective learned counsel and have appreciated the record to which our surveillance was solicited. The primary issue for this Court is to determine whether any grounds exist to compel the respondent to award a degree to the petitioner, in exercise of the Constitutional jurisdiction of this Court.

7. It may be appropriate to initiate this deliberation by adverting to a letter dated 04.10.1985 issued by the Board of Intermediate and Secondary Education, Sukkur, addressed to the Registrar of NED with respect to the verification of academic documents. The relevant constituent of the aforesaid letter, pertaining to the petitioner, is reproduced herein below:

“This office has gone through the matter and after verification, the results of the following candidates are found suspicious/forged/tampered. The details of which are as under:

1/- That the candidate named Riaz Ahmed S/o Qamaruddin Deho bearing Seat No:46576 of HSC II Annual exam: 1982, has manipulated in his Marks Certificate and shown total marks as 625 with “C” grade, whereas he had actually secured 585 In words (Five hundred eighty five marks only) with “C” grade.

2/- That the candidate bearing Seat No: 46576 named Riaz Ahmed S/o Qamaruddin Deho (As in above para) who appeared in Intermediate Annual exam: of 1983 in the Additional subject of Maths-I&II only, has also manipulated again his other Marks Certificate by showing 186 marks (in total) instead of 98 (Ninety eight only). His photo-stat copies of the Marks Certificates are received.”

8. It is pertinent to record that the findings contained in the aforesaid letter of verification have never been challenged by the petitioner and on the contrary the said findings have been admitted by the learned counsel for the petitioner to have been correct, during the course of the hearing. The Notice was issued in pursuance of the aforesaid letter of verification and the petitioner’s admission was cancelled. It is also apparent that the said Notice, issued in 1986, was never appealed despite the provision for appeal having been contained therein. Another candidate aggrieved by the Notice, whose name also appears in the

Resolution of the Syndicate sought to be implemented by the petitioner, challenged the Notice in Suit 1482 of 1987 and the said suit was dismissed vide order dated 30.11.1992. The said decision was assailed in Appeal 140 of 1992, which was also dismissed on 07.12.1993. The judgment in appeal was challenged in revision before this Court, being Civil Revision 49 of 1994 and the proceedings were also dismissed vide order dated 18.06.1994 and appeal was filed before the honorable Supreme Court, being Civil Appeal 1892 of 1996, wherein the judgment in revision was challenged and the honorable Supreme Court was pleased to dismiss the appeal. It may be illustrative to reproduce the operative observations delivered by the honorable Supreme Court:

“4. Leave was granted in the present case essentially to consider the question whether the above reported communication in question dated 31.10.1986 could be held to be a final order and thus hit by the principle of natural justice because the appellant had obviously not been given any opportunity of showing cause and defending himself against the said order before the same had been passed.

5. Answer to this question lies in the concluding para of this communication which reads as under:

“They may file appeals if they so desire within fifteen days hereof. On expiry of this period the decision will be final and irrevocable.” (The underlining is ours)

From a bare reading of this part of the impugned communication, it is obvious to us that the action in question taken by respondent-University was not final in nature and was subject to the requisite appeal being filed by the appellant filing of which appeal was obviously for the purpose of giving an opportunity to the appellant to show cause against the intended action which action had been described even by the appellant through his suit as the “threatened” cancellation of his admission. Irrespective of unhappy wording and language used in the communication in question, it is clear that the action in question was only a proposed action which was not final in nature and it was obviously subject to the result of the appeal which the appellant had a right to file and where the appellant would have had ample opportunity to show cause against the cancellation of his admission in the respondent-University. It has been repeatedly held by the superior Courts including this Court that the domestic tribunals were not equipped with the technicalities of law and therefore their actions could not be judged strictly on the basis of such legal technicalities. As has been mentioned-above, the language used in the impugned communication may not be said to be technically flawless but the intention of the concerned authority in issuing the said communication was, as has been

held above, not to attach finality to the said decision and the same was to become final only upon the fate of the appeal if filed or on the failure of filing such an appeal by the appellant after expiry of the period prescribed for the filing of this appeal. We hold accordingly.

6. There is yet another important aspect of the matter. The cancellation of the admission by the respondent-University was not the cause in itself but was in fact the effect of a cause which was the report of the Board of Intermediate and Secondary Education of Hyderabad stating that the appellant had not obtained 677 marks in the examination in question and further that the provisional marks sheet tendered by the appellant before the respondent-University was a fake and bogus document. It was thus this act of Hyderabad Board which had caused cancellation of the admission granted to the appellant by the respondent-University. It is interesting to notice that while filing a suit before the Civil Court, the appellant never sought any relief against the Hyderabad Board and never prayed for a decree against the said Board declaring that the above-mentioned report of this Board was factually incorrect and that the appellant had in fact received 677 marks. Even if it be presumed by us as declared by the appellant during the course of his submissions that he did not know of any such report of Hyderabad Board wherein it had been declared that he had not received 677 marks in the examination in question and wherein it had been also declared that the marks sheet used by the appellant to secure admission in the respondent-University was a forged document, the fact is undeniable with which the appellant was even confronted by us that the said Board had through para 4 of the written statement filed by it before the learned trial Court alleged, unequivocally that the appellant had not secured 677 marks in the intermediate examination and that the marks-sheet in question was a bogus and a fictitious document. Therefore, the appellant had admittedly been notified of the Board's position viz a viz the marks obtained by him when the said written statement had been filed in Court and despite this the appellant took no steps for the last about 14 years either at any stage of the proceedings before the trial Court or even before at the appellate or the revisional Courts to amend his pleadings to seek a declaration that this claim of the Hyderabad Board was false and was not according to the actual record. In the circumstances we have no hesitation to hold that the said claim of the Board about the appellant not receiving 677 marks in the intermediate examination and the further claim of this Board about the marks sheet in question being a fake document stood admitted by the appellant as he had not questioned the same for all these years spreading over more than a decade. Even on an offer made by us, during the course of hearing of this appeal, the appellant did not pick up the courage to agree to the summoning of the original record of Hyderabad Board with respect to the appellant's actual result which was further proof of the fact that the appellant was not in a position to controvert the plea in question taken by the Board.

7. In view of what has been discussed above, we find that the judgments of the two subordinate Courts and that of the Hon'ble High Court were not exceptionable either in law or in equity.

8. This appeal is, therefore, dismissed”

9. It is our deliberated view that the action undertaken vide the Notice has been subjected to adjudication up to the highest forum in the land and it has also been argued by the learned counsel for the respondent that these proceedings were not in the knowledge of the Syndicate of NED when they recommended for the award of degree to the petitioner and to the person whose appeal was dismissed by the honorable Supreme Court. We are also cognizant of the reply filed by the respondent NED, wherein it has been expressly stated that the petitioner is not entitled to the award of a degree and the recommendation of the Syndicate, even though it was never acceded to, could not be considered to have overriding effect upon the judgment of the honorable Supreme Court.

We have also observed from the record filed by the petitioner, along with the memorandum of petition, that there was absolutely no mention of the proceedings challenging the Notice culminating in the judgment of the honorable Supreme Court and we are also constrained to observe that the petitioner made no reference to the suit filed by himself against the respondent seeking to perpetuate his tenure at NED. As noted above, even upon our specific query, the learned counsel for the petitioner expressed his inability to assist us with the particulars of the aforementioned suit or advise us of its fate.

It is apparent that the petitioner never filed an appeal against the decision of NED, disseminated vide the Notice, and also that the verification report declaring the educational credentials of the petitioner as forged was never assailed. Since the learned counsel for the petitioner has already admitted that the petitioner had tampered with his educational credentials, in the manner described supra, there would be no occasion to challenge the Notice or the verification report.

The sole premise of the petitioner appears to be that since he has already attended classes at NED, based upon interim orders of a suit concealed from this Court, and a certain time period has lapsed since, hence, he is entitled to award of a degree. We are unable to concur with this plea as it would prima facie amount to sanctifying admitted fraud and misrepresentation.

10. In view of the reasoning and rational herein contained, it is the considered view of this Court that the petitioner has been unable to demonstrate any vested right for which enforcement could be sought in the Constitutional jurisdiction of this Court, hence, this petition is hereby determined to be devoid of merit and the same, along with pending application, is hereby dismissed.

JUDGE

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