

IN THE HIGH COURT OF KARNATAKA, BENGALURU
DATED THIS THE 18TH DAY OF NOVEMBER, 2020

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BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO. 9395 OF 2020 (EDN-RES)

BETWEEN:

SRI HRUDAY. P B
S/O P.B. BAJENTRI,
AGED ABOUT 21 YEARS,
STUDENT NATIONAL LAW SCHOOL
OF INDIA UNIVERSITY, BENGALURU
(SEEKING PROMOTION TO 4TH YEAR)
R/AT NO. 71, 22ND CROSS,
2ND BLOCK, RAJAJINAGAR,
BENGALURU- 560 010.

...PETITIONER

(BY PROF.RAVI VARMA KUMAR, SENIOR COUNSEL, A/W
SRI. V.R. SARATHY, ADVOCATE)

AND:

- 1 . THE VICE CHANCELLOR,
THE NATIONAL LAW SCHOOL
OF INDIA UNIVERSITY,
TEACHERS COLONY,
GNANABHARTHI ROAD,
BENGALURU- 560 072.
- 2 . THE NATIONAL LAW SCHOOL OF
INDIA UNIVERSITY,
REPRESENTED BY ITS REGISTRAR,
TEACHERS COLONY,
GNANABHARATHI ROAD,
BENGALURU- 560 072.

...RESPONDENTS

(BY SRI. ADITYA NARAYAN, ADVOCATE FOR R1 & R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL
FOR THE RECORDS RELATING TO ISSUE OF IMPUGNED
ENDORSEMENT BY THE R2 UNIVERSITY DATED 01.08.2020
VIDE ANNEXURE-H AND THE ORDER DATED 10.08.2020,
PASSED BY THE R1 AGAINST THE APPEAL OF THE

PETITIONER VIDE ANNEXURE-L1 DENYING THE PETITIONER ADMISSION TO FORTH YEAR B.A LL.B (HONS.) FOR THE ACADEMIC YEAR 2020-21 AND AFTER PERUSAL SET ASIDE THE SAME AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Petitioner who joined the Five Year B.A. LL.B (Hons.) Course in the respondent – University from the Academic Year 2017-18, is declared to have secured “F Grade” in Child Rights Law examination held on 13.03.2020 since he was not given any mark because of alleged plagiarism of the Project Work in question; he was also not allowed to take Special Repeat Examination of third trimester in the third year, allegedly in breach of assurance of the University.

2. Aggrieved by the above action of the respondent - University, petitioner has knocked at the doors of Writ Court with the following prayers:

“(i) To call for the records relating to issue of impugned endorsement by the 2nd respondent University dated 01.08.2020 vide Annexure-H and the order dated 10.08.2020, passed by the 1st respondent against the appeal of the petitioner, (vide Annexure-L1) denying the petitioner admission to Fourth Year B.A. LL.B.(Hons.) for the Academic Year 2020-21 and after perusal set aside the same.

(ii) To direct the respondent University to await result of extra seminar course that the petitioner is permitted to pursue in July, 2020 and get himself promoted to Next Year”.

3. After service of notice, the respondents having entered appearance through their advocate, have filed Statement of Objections on 17.10.2020 and make submission in justification of the impugned action.

4. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant relief to the petitioner as under and for the following reasons:

a) The essential grievance of the petitioner emanates from the so called ‘admitted’ charge of plagiarism and therefore, advertence to the extant Regulations concerning the same becomes relevant; Clause 4 of Regulation III of the B.A LL.B (Hons.) Academic and Examinations Regulations of 2009 reads as under:

“(4) Plagiarism:

*a) Any evidence of plagiarism, if found by the **subject teacher**, in the form of non-citation of sources or copying from another student’s project or from his/her own earlier project without acknowledgment of the same, will result in the matter being referred to the UGC Chairperson by the **subject teacher in***

writing as also a **written intimation** to the student in this regard by the teacher.

b) If the matter is referred to the UGC Chairperson by the teacher, the UGC Chairperson shall refer the matter to the Vice Chancellor immediately. The Vice Chancellor, in turn, shall look into the matter and decide whether to refer the matter to the Disciplinary Matters Advisory Review and Investigation Committee (hereinafter, "DARIC") for disciplinary action at the earliest. In the event that the Vice Chancellor decides not to refer the matter to the DARIC, he shall record his reasons in writing for the same.

c) Pending the decision of the Vice Chancellor or the DARIC, if referred thereto, viva voce for the project shall be conducted.

d) If the student is found guilty of plagiarism, he/she shall be punished as per the DARIC Rules".

Apparently, this provision of the Regulations prescribes an elaborate procedure with several hierarchical checks & balances, presumably because very serious consequences follow a proven act of plagiarism; the text & context of the said Regulation show both the prescription of procedure and designation of the personnel, who process the complaint of plagiarism stagewise.

b) These Regulations do not define plagiarism, is not in dispute; in fact, the University Circular dated 04.10.2019 at Annexure-R9 to the S.O. states: "From the

2nd term of A.Y. 2019-20, the U.G. Council will clarify the concept and application of **Plagiarism rules** through FAQs to be circulated in the first fortnight of this term. The AER 2009 will be applied in full from November 2019”; therefore the concept needs to be understood in a common parlance; **Ramanatha Aiyar’s “Advanced Law Lexicon”** 3rd Edn, Wadhwa Nagpur states: “*Plagiarism: Publishing borrowed thoughts as original; stealing literary matter from the work of another author. The act or an instance of copying or stealing another’s words or ideas and attributing them as ones own*”; the learned Lexicographer also mentions about **Paul Goldstein’s ‘Copyright’s Highway 12 (1994)** which lucidly explains the concept as under:

“Plagiarism, which many people commonly think has to do with copyright, is not in fact a legal doctrine. True plagiarism is an ethical, not a legal, offense and is enforceable by academic authorities, not Courts. Plagiarism occurs when someone – a hurried student, a neglectful professor, an unscrupulous writer – falsely claims someone else’s words, whether copyrighted or not, as his own. Of course, if the plagiarized work is protected by copyright, the unauthorized reproduction is also a copyright infringement.”

c) Plagiarism is a very serious matter that involves ethics and reputation of the student/person concerned; proven plagiarism operates as a hazardous stigma at the

campus and the person carrying the same is ordinarily shunned; it may affect his educational and employment opportunities as well; that is the reason, why the respondent-University has taken appreciable pains in meticulously structuring the provision in the extant Regulations so that the innocents are not victimized; however, it has not adhered to the minimum of the fairness standards enacted therein; *'more is not necessary to specify and less is insufficient to leave it unsaid'*. There is absolutely no material on record to show that the **subject teacher** having found the **evidence** of **plagiarism** had referred the matter to the **UGC Chairman** in **writing** and had sent a **written intimation** to the **student**; petitioner came to know of the alleged plagiarism only after enquiry with the Registry of the University when his exam, result was not announced; this act of the University constitutes a grave error apparent on the face of the record.

d) The entire episode of so called 'plagiarism' is framed on the basis of a few notoriously cryptic mails exchanged between the Course Teacher and the Exam Department, detrimentally keeping the petitioner in darkness; the said mails are printed on a short paper at

Annexure-R7 to the S.O., and the same are reproduced hereunder:

“Subject: FW: Turnitin report –reg.

----- Forwarded message -----

From: Suchithra Menon C. <suchithra@nls.ac.in>
Date: Wed, Feb 12, 2020 at 1:09 PM
Subject: Re: Turnitin report –reg.
To: Third Year LLB <thirdllb@nls.ac.in>

Yes, the projects are plagiarized.

On Fri, Feb 7, 2020 at 10:57 AM Third Year LLB <thirdllb@nls.ac.in> wrote:

Madam,

Pl, indicate if the project is plagiarized and send the report.

With best regards
D.K. Keshavamurthy,
Exam dept.

On Tue, Feb 4, 2020 at 4:47 PM Dr. Suchithra Menon C. <suchithra@nls.ac.in> wrote:

Thanks for the mail.

On Tue, 4 Feb 2020, 16:39 Third Year LLB <thirdllb@nls.ac.in> wrote:

Madam,

PFA, the following students having similarity index more than 30%. Pl, indicate the remarks.

With best regards
D.K. Keshavamurthy,
Exam dept.”

e) The vehement contention of the University Counsel that, petitioner in his mail dated 02.03.2020 has admitted the ‘offence of plagiarism’, is difficult to countenance; petitioner had sent a mail of the kind vide Annexure-R5, is true, though unfairly enough, he has not whispered about

this in the Writ Petition; it is a representation 'to reconsider my case' of plagiarism and not an admission; true it is that, there are a few stray sentences such as '*This is my first plagiarism violation*'; however, the same is followed by other sentences which seek to explain why it is not a case of plagiarism; he has specifically stated that certain things needed to be mentioned as they are and, that would not amount to plagiarism; even in his mail dated 28.2.2020 at Annexure-R1 to the S.O., he has written 'This is my first violation'; but this too is followed by a denial in the very same paragraph.

f) It has been a long settled position of law that a stray sentence giving the impression of admission of the guilt shall not be interpreted in isolation when the rest of the matter in the representations suggests the contra; one has to gather a holistic impression from reading the entire text and not a few sporadic sentences appearing here & there in a script, whilst considering if what is stated amounts to admission. An acclaimed jurist of yester decades **Mr.Rupert Cross** in his treatise '**EVIDENCE**', (3rd Edn. London- Butterworks 1967) at page 433 states: "*An admission being any statement ... which is adverse to a party's case, the only conditions of admissibility, when the*

*statement emanates from the party himself concern the capacity in which he is acting and the **reception of the entirety of the statement...***"; it is more so when one is dealing with the educational career of young minds like the petitioner herein; loose & lavish wording of the representations, need to be given a due discount; the respondent –University is not justified in seeking shelter under a leaking umbrella of a poor student.

g) What intrigues this Court is about the enormity of unfair treatment which the petitioner was meted out at the hands of a Law University, in a serious matter like this; it is anguishing that the University did not afford an opportunity of personal hearing despite his written request vide mail of 02.03.2020 at Annexure-R5 to the S.O.; in Biblical literature, even God is said to have given an opportunity of hearing to Adam & Eve before punishing them for consuming the proscribed fruit, in the Eden Garden; which heavens would have fallen down, had a reasonable opportunity of personal hearing been afforded, remains as a *mystery rapped in enigma*; after all, procedural fairness is a constitutional mandate when the answering respondent is an instrumentality of the "State" under Article 12 of the Constitution; it is high time that

this University of national repute be reminded that it is dealing with our *children* and not others' *chattel*; and,

h) The last contention of the learned counsel for the University that it has shown leniency in not taking a stringent action for the act of plagiarism and therefore its action in not awarding any mark to the project work of the petitioner cannot be faltered, is difficult to agree with; the punitive action of not awarding any mark to the project work itself is founded on the wrongly assumed admission of guilt, when the mails of the petitioner show the contrary, as already discussed above; no Regulation nor Ruling is cited at the Bar which authorizes zeroing of a toiled student's performance value *sans* a finding of guilt arrived after holding a due enquiry when the charge is apparently serious; added to this, the University has not articulated the principles on which a charge of plagiarism is to be founded; there is absolutely no justification for not holding even a preliminary enquiry; since the matter is being decided on merits after a lengthy hearing, it is not desirable to remit the same for reconsideration at the hands of the University, much water having flowed under the bridges, by now.

In the above circumstances, this writ petition succeeds; a Writ of Certiorari issues quashing the impugned orders at Annexures-H & L1; a Writ of Mandamus issues to the respondent-University to assess and award marks to the petitioner's Project Work in question; petitioner shall be continued to keep the term by way of carry over/carry forward, disregarding the attendance shortage, if any.

No costs.

**Sd/-
JUDGE**

Snb/Bsv