

(2017) 04 KAR CK 0116

In the Karnataka High Court

Case No : 53571 - 53574 of 2016 & 53625 of 2016 (EDN - EX)

ABHISHEK KUMAR S/O CHIRANJIVI LAL, & ORS.

APPELLANT

Vs

VISVESVARAYA TECHNOLOGICAL UNIVERSITY, JNANA
SANGAMA, & ORS.

RESPONDENT

Date of Decision : 26-04-2017

Acts Referred:

Citation : (2017) 04 KAR CK 0116

Hon'ble Judges : S.Sujatha

Bench : SINGLE BENCH

Advocate : SANDEEP KATTI, SANTHOSH S. NAGARALE, ANUPAMA T.S.

Final Decision : Dismissed

Judgement

1. The petitioners have challenged the Regulation 7.2 of "The Degree of Bachelor of Engineering/Technology", hereinafter called "Regulations" for short, prescribed by the 1st respondent-University.

2. The petitioners have enrolled themselves to the post of Bachelor of Engineering for the academic year 2014-15 with the 2nd and 3rd respondent-colleges (in the Department of Mechanical and Aeronautical Engineering) affiliated to the 1st respondent-University.

3. As per Regulation 7.2, a candidate seeking for an admission to the 5th semester should pass in all the subjects of 1st and 2nd semesters and should not have failed in four heads of passing of 3rd and 4th semesters taken together.

4. The facts pertaining to the petitioners are as under:

a) The petitioner No.1 in order to enter 5th semester is required to clear all the subjects of 1st and 2nd semesters. He has failed in one subject of Engineering Maths-II of 1st semester and had cleared all the subjects of the 2nd semester. The petitioner No.1 was denied admission to the 3rd year;

b) Petitioner No.2 is enrolled himself with 2nd respondent-college. He has failed

in Programming in C and data structures of first year. He has also failed in another subject of second year;

c) Petitioner No.3 is enrolled with the 2nd respondent-college. He has failed to secure passing marks in Engineering Maths-1 and Basic Electrical Engineering of first year. He has cleared all the subjects of 3rd and 4th semesters put together;

d) Petitioner No.4 is enrolled with 2nd respondent-college. He has failed to secure passing marks in Engineering Chemistry of 1st year and two other subjects of 2nd year;

e) Petitioner No.5 enrolled with 2nd respondentcollege has failed in Engineering Maths-2 of 1st year, also failed in two other subjects (petition is already withdrawn);

f) Petitioner No.6 enrolled with 3rd respondentcollege has failed in Engineering Maths-2 of 1st year and has cleared all subjects of 2nd year.

5. It is contended that the petitioners are meritorious and hardworking students and they have been pursuing their engineering course with utmost interest and dedication. Respondents No.1 to 3 in view of Regulation 7.2 denied admission to the petitioners for pursuing third year engineering. Aggrieved by the same, present writ petitions are filed challenging Regulation 7.2 of VTU.

6. Learned counsel Sri.Sandeep Katti placing reliance on the Judgment of this Court in the case of K.S.Thara and another -v- State of Karnataka reported in 2014(2) AKR 712 submits that as per the guidelines of All India Council For Technical Education ("AICTE" for short) credit and grade based evaluation process in the method of valuation is prescribed, likewise carry over benefit is accorded as per clause 8.5.1 and 8.5.2 of the guidelines of AICTE, clause 8.4.2 provides for conducting tutorial classes/remedial classes to help at individual levels, whereas Regulation 7. 2 of the 1st respondent contemplates that the candidate shall be eligible for promotion from even semester to next semester if the candidate has not failed in more than four heads of passing of the immediately preceding two semesters and has passed in all the subjects of all the still lower semester examinations, which is contrary to the AICTE guidelines, has to be held unconstitutional. It is contended that though the Division Bench of this Court upheld the Regulations framed by the VTU, this inconsistency was not brought to the notice of the Division Bench. The judgment was rendered by the Division Bench in the context of benefits available to students in Autonomous colleges vis-a-vis the colleges affiliated to VTU.

7. It is the argument of the learned counsel, prescribing harsh conditions in Regulation 7.2 not found in the AICTE guidelines, prima-facie makes the Regulation 7.2 unreasonable and illegal. It is further contended that the petitioners herein have appeared for the regular classes of 5th semester and also appeared for the examination of 5th semester. Hence, they are entitled to pursue the engineering course and Regulation 7.2 which is causing impediment requires

to be relaxed.

8. Learned counsel Sri. Santhos S.Nagarale, appearing for respondent No.1 would contend that a Division Bench of this Court in the case of Yogish M -vThe Registrar, Visvesaraya Technological University and others (W.A.No.5410/2012 and connected DD 28.9.2012) has upheld the validity of the Regulations framed by the 1st respondent. Further following the same, this Court in W.P.No.46964/2016 (DD 7.9.2016) and W.P.No.56488-490/2016 (DD 18.1.2017) upheld the constitutional validity of Regulation 7.2. Hence the challenge to Regulation 7.2 by the petitioners herein, do not merit any consideration and the writ petitions are to be dismissed.

9. Heard the learned counsel appearing for the parties and perused the material on record.

10. It is obvious that the petitioners are not eligible for promotion from even semester to the next odd semester having failed in more than 4 heads of passing of the immediately preceding two semesters in terms of Regulation 7.2 framed by respondent No.1. The principal argument of the learned counsel appearing for the petitioners is that Regulation 7.2 is inconsistent with the guidelines prescribed by the AICTE i.e. the 1st respondent has no authority/jurisdiction to frame any regulation not formed in the AICTE guidelines. It should be strictly adhering to the guidelines prescribed by the AICTE. Any deviation or departure from the same would render the Regulation unconstitutional. This very issue was the subject matter in W.A.No.5410/2012 and connected matters, wherein the Division Bench of this Court considering the Regulations vis-a-vis similar arguments advanced by the appellants therein, upheld the validity of the Rules. Such being the case, the arguments now canvassed by the petitioners that the Regulations are contrary to the AICTE guidelines has no merit. Indeed in the judgment relied upon by the learned counsel for the petitioners in case of K.S.Thara (supra), as per the guidelines of NCTE, the requisite qualification for an applicant to B.Ed. course was 50% marks at the degree level, whereas the State or the University on the other hand had prescribed the eligibility criteria that a student ought to have passed the degree and ought to have studied atleast two of the prescribed electives. The question therein was repugnancy in the prescription of eligibility as indicated by the NCTE and the State government. In that context, it was held that the State government cannot depart from the guidelines prescribed by the NCTE in the matter of fixing guidelines for admission and curriculum which are already in place. This fact situation and the situation in the present case are different. It is obvious that no guidelines are prescribed by the AICTE regarding the promotion and eligibility for the examination that alone would not render the Regulation 7.2 unconstitutional.

11. Regulation 7.2 reads thus:

OB 7.2 A candidate shall be eligible for promotion from an even semester to the next odd semester (i.e. to the next academic year) if the candidate has not failed

in more than four heads of passing of the immediately preceding two semesters and has passed in all the subjects of all the still lower semester examinations. A theory or practical shall be treated as a head of passing.

Illustrations

a. A candidate seeking eligibility to 3rd semester should not have failed in more than 4 heads of passing of first and second semesters taken together.

b. A candidate seeking eligibility to 5th semester should have passed in all the subjects of 1st and 2nd semesters and should not have failed in more than 4 heads of passing of third and fourth semesters taken together.

c. A candidate seeking eligibility to 7th semester should have passed in all the subjects up to 4th semester and should not have failed in more than 4 heads of passing 5th and 6th semesters taken together."

12. The Division Bench of this Court in W.A.No.5410/2102 and connected matters, considering the same has held thus:

" In other words, if admission is sought to the 5th (odd) Semester even if a students has the backlog of only four failed subjects if any of them pertaining to 1st or 2nd Semester, admission will be refused irrespective of status of Colleges. Per se, we find obvious wisdom in this stipulation inasmuch as the course of studies adhere to a transcending basis, which would make it difficult for a students to cope with the more advanced course in the succeeding semester, if he has failed to attain the minimum comprehension of a previous paper."

13. The validity of the impugned Regulations are thus upheld following the aforesaid decision of the Division Bench by this Court in W.P.No.46964/2016 (DD 7.9.2016), W.P.No.56488-490/2016 (DD 18.1.2017) and W.P.39796-801/2012 (DD 05.03.2013). The very

same arguments were advanced by the learned counsel for the petitioners in W.P.46964/2016, negating the contention of the petitioners, the impugned Regulation is held to be valid. In D.S. Nakara & Others vs Union Of India (AIR 1983 SC 130), a Constitution Bench of the Hon'ble Apex Court held that, Regulations imposed would not be unconstitutional if the State satisfies the twin test (a) a discernable deviation; (b) intended to achieve a lawful object, are palpably present. This enunciation of law if, applied to the facts of the present case would not make the Regulation 7.2. as unconstitutional one. It is well established principles of law that it would be most inexpedient for a Court to interfere in the field of academic matters. AICTE, a statutory body is well equipped to lay down the norms and standards for promotion and eligibility for examination which are the decisions in academic matters of technical nature. Perhaps it is to make the students to prepare for the advanced course in the succeeding/higher semesters, the condition is stipulated that if a student has failed in four subjects pertaining to 1st and 2nd semesters, no promotion is accorded. In the wisdom of the professional and technical experts who are

qualified and equipped to decide the academic issues, such Regulation is warranted. The power and authority of the 1st respondent to frame the Regulations is not in dispute. Such authority of the 1st respondent is approved by the Hon''ble Apex Court in a catena of decisions. In a nutshell, the condition imposed under Regulation 7.2 is to improve the standard of education and the same cannot be held to be unconstitutional. Accordingly, the Writ petitions are dismissed. However, petitioners are at liberty to take the crash course as per the notification to be issued in future, subject to meeting the eligibility criteria. Respondents are directed to consider the cases of petitioners sympathetically and pass appropriate orders keeping in mind the petitioners having appeared for 5th semester regular classes and also for the examination of the 5th semester.