
(2015) 06 AP CK 0080

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 1727 and 2360 of 2015

Arshia Tanveer and Others

APPELLANT

Vs

Osmania University and Others

RESPONDENT

Date of Decision : 24-06-2015

Acts Referred:

Andhra Pradesh University Act, 1991 — Section 3
Constitution of India, 1950 — Article 14, 21, 226

Citation : (2015) 5 ALD 590 : (2015) 5 ALT 74

Hon'ble Judges : D.B. Bhosale, A.C.J;S.V. Bhatt, J

Bench : Division Bench

Advocate : K. Lakshmi Narasimha, Counsel, for the Appellant; Deepak Bhattacharjee, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.V. Bhatt, J—Heard Dr. K. Lakshmi Narasimha, learned counsel for the petitioners and Mr. Deepak Bhattacharjee, learned Standing Counsel for Osmania University/respondents 1 and 2. The prayers in these writ petitions are slightly different and for immediate reference, they are reproduced hereunder:

W.P. No. 1727 of 2015

".....to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in detaining the petitioners in BE 2nd year/1st year/3rd year as illegal, arbitrary and unconstitutional and consequently direct the respondents to permit the petitioners to prosecute their studies by permitting them to attend the classes of BE 2nd year 1st semester/4th year 1st semester and consequently direct the respondents to permit the petitioners to appear for the main examinations as well as the supplementary examinations for the back log subjects in the interest of justice and to pass such other order or orders as the Hon"ble Court may deem fit ad proper."

"....to issue a writ or order preferably in the nature of Mandamus and declare the action of the University in not permitting the petitioners to attend/continue the BE Courses of next year/semester 2014-15 & 2015-16 without break subject to clearing off the permissible back log subject is wholly arbitrary, contrary to law and unconstitutional and consequently quash Lr No. 351/Acad.1/2015 dated 24-1-2015, and consequently declare that the petitioners are entitled to attend/continue the next year/semester 2014-15 & 2015-16 including appearing in the semester/year wise examination and consequently direct the University Authorities to permit the petitioners to prosecute their BE Courses by permitting them to continue in the next year/semester of 2014-15 & 2015-16 including appearing in the semester/year wise examination without break and consequently, and pass such other order or orders as the Hon"ble Court may deem fit ad proper."

2. For convenience, the pleadings in W.P. No. 2360 of 2015 are referred to.

3. The petitioners in these two writ petitions are engineering students prosecuting BE (Degree) in colleges affiliated to Osmania University, Hyderabad/1st respondent. The four year degree course is divided into one year and from 2nd year onwards into six semesters with two semesters in each academic year. The admission and the promotion of students in BE courses are governed by Rules and Regulations. Part IV of the Regulations deals with promotion of students from one academic year to another year. The Rule of detention stipulates that a student with 12 backlog subjects in an academic year is not promoted to next academic year. The petitioners refer to the agitation for separate statehood to Telangana and that the agitation has affected the students' academic calendar. The petitioners claim to have pursued the course under fear psychosis and consequently the performance of students in the examinations was not up to the expectation. The allegation against the 1st respondent-University is that the 1st respondent-University has not conducted the supplementary exams as per schedule or immediately after the main/general examination. The delay in conducting the supplementary examination has resulted in loss of one complete year by operation of rule of detention for having more backlog subjects. Further, due to delay in conducting the supplementary examination, the very purpose of conducting supplementary examination is lost and is due to the shortsightedness of the 1st respondent-University. According to the petitioners, had the supplementary examinations illustratively stated for the main examination of May/June of academic year been conducted in the month of July/August and for the main examination in November/December supplementary examination conducted in October/November, the petitioners would have cleared the backlogs much before the promotion to next academic year, is considered by the respondents. The non-conducting of supplementary examination is contrary to law and violative of Articles 14 and 21 of the Constitution of India. The petitioners filed W.P. No. 27749 of 2013 and this Court

through order dated 03.10.2013 in W.P.M.P. No. 34428 of 2013 permitted a few of the petitioners herein to appear for the main examination as well as the supplementary examination for the backlog subjects.

4. On 12.08.2014, the results for the main examination held in the months of April/May, 2014 were declared. The petitioners have been attending the classes in the next semester till the results were declared on 12.08.2014 and the petitioners were detained on the ground that the petitioners have got 12 or more backlog subjects and are not eligible for promotion to next year. The petitioners in a circumlocutory way stated the same grievance in different manifestations and reference to all these averments, in our considered view, is unnecessary for the disposal of these writ petitions. For whatever may be the explanations of petitioners, the admitted position is that as on the date for promotion to next academic year, the petitioners have more backlog subjects than permitted by the Rules. The petitioners refer to the order dated 05.11.2014 in W.A. No. 1358 of 2014 which reads as follows:

"This appeal is sought to be preferred against the judgment and order of the learned Single Judge dated 15.10.2014 by which His Lordship with reasons dismissed the writ petition and refused to grant relief as was made in the writ petition.

The appellant before us in the writ petition has prayed for issuance of writ of Mandamus declaring the impugned action of the respondents in detaining the petitioner in BE/B Tech III year to IV year as illegal, arbitrary and unconstitutional and direct the respondents to permit the petitioner to prosecute by permitting her to attend the classes of IV year and consequently direct the respondent to permit the petitioner to appear for main exams and the supplementary exams as well for clearance of backlog subjects in furtherance of their academic carrier.

Learned Single Judge has noted the undisputed fact and also the legal position. After considering the same, His Lordship was pleased to dismiss the writ petition, in our view rightly so, observing that the decision taken by the University authority does not suffer from any illegality or arbitrariness. The University authority has not violated the rules and regulations to deprive the students. Unless the decision taken by the University is patently absurd, irrational and not in accordance with its own regulations, the Court cannot interfere with the said decision. In this case, we do not find which of the rules and regulations the University authority has violated. Rather there is a breach on the part of the appellant.

We therefore dismiss the appeal."

5. The petitioners also refer to the order dated 12.12.2014 in W.A. No. 1594 of 2014 which reads as follows

"Because of passage of time, this matter has become infructuous. But, the

problem canvassed here is a perennial problem. So, we feel the University authorities will consider in future how this sort of problem can be solved.

We are told that a representation has been made to the Registrar of the University concerned. We think that the Registrar will give a hearing to the students concerned. After giving consideration to their grievance and having appreciated the ground reality, the Registrar will take a pragmatic and realistic decision so that the students may not lose their academic year unnecessarily.

Sri Deepak Bhattacharjee, learned Standing Counsel appearing for the respondent-University states that there are number of students. As such, everyone cannot be heard separately. Under the circumstances, it would be ideal if on their behalf, a learned lawyer is engaged or a competent student representative is engaged; he or she will be heard."

6. The 1st respondent University in obedience to the direction of this Court afforded opportunity to petitioners herein and their counsel and after considering the request of petitioners and the extant rules for admission, promotion etc., in four year BE course, on 24.01.2015 communicated the rejection letter, which reads as follows:

"The supplementary examinations cannot be conducted immediately after final examinations as thousands of students appear in the final examination and there is no infrastructure available to conduct the supplementary examinations immediately. It is further pointed out that after the final examinations are conducted, to organize the valuation and thereafter revaluation itself takes considerable length of time. After the result is declared, taking appropriate steps for recording the result, issuing the marks memorandum, issuing the certificates etc., takes considerable length of time. It is in view of the above circumstances, pending release of results the students are permitted to attend the classes so that in the event they pass in the examinations, they do not lose the year.

It is also pointed out that the university is always in favour of the students but promoting the student to the next academic year without clearing the backlogs cannot be at the cost of degrading the standard of education.

It is further pointed out that taking into consideration the various factors, which had affected the academic atmosphere during the last two academic years, the Standing Committee of Academic Senate have already relaxed the rules of promotion for engineering and other courses and increased the permitted backlogs by three/four backlogs in the form of granting relaxation. The present students who are before the Registrar have backlogs more than the backlogs as fixed after granting relaxation. It is also submitted that even if there is a pragmatic approach to the present issue, it will not be in the interest of the university to grant further relaxation and permit the students to appear in the main examination by way of automatic promotion. Any such relaxation can be granted by the Standing Committee of Academic Senate in exercise of its power under the A.P. Universities Act, 1991 only and the Registrar is not entitled to

grant any further relaxation than what is already granted by the Standing Committee of Academic Senate.

Taking into consideration the representation of both the student representatives it became necessary for the Registrar to refer the matter once again to the Standing Committee of Academic Senate.

Accordingly, the matter was referred to the Standing Committee of Academic Senate and the above issue was again discussed by the members of the Standing Committee of Academic Senate after taking into consideration the facts and circumstances presented as above and the direction of the Hon'ble High Court, came to the conclusion that once the relaxation is already granted, the question of granting further relaxation of the promotion rules for automatic promotion to next semester which has statutory force will drastically bring down the academic standard. The Standing Committee of Academic Senate also expressed that though the sympathy of the Committee is with the students, any further relaxation granted shall lower the academic standard as the said relaxation may have to be extended to each and every student perusing the above professional course by the students shall be lost. The Standing Committee therefore resolved as follows:--

"The request of the students of BE/B.Tech courses who were detained in the April/May examinations of 2014 to permit them to continue the next semester without break i.e., in the II semester of II/III/IV year of BE/B.Tech courses is not agreed to."

Taking into consideration the opinion expressed by the Standing Committee of Academic Senate after giving consideration to the grievances and after appreciating the ground reality, the Registrar is now compelled to take pragmatic and realistic decision. The students (who are only 5%) and who appeared for the BE/B.Tech courses cannot state that there will be loss of one academic year unnecessarily. Admittedly, the performance of the students was not up to the mark and even after granting of relaxation by three/four backlogs, the said students could not seek promotion to the next academic year. It is also worth mentioning that when 95% of the students could clear the required backlogs for promotion, further relaxation if granted may seriously affect the seriousness - with which the professional course is persuaded. Hence, the representations are now disposed of in compliance of the direction of the Hon'ble High Court holding that it is not possible for the university to grant any further relaxation than the relaxation of three/four backlogs or automatic promotion to next semester. The students are accordingly informed to take appropriate steps and study well to clear the backlogs and become good professions tomorrow."

7. Hence, the writ petitions.

8. The petitioners challenge the proceedings dated 24.01.2015 as illegal and unconstitutional. The 1st respondent ought to have conducted supplementary examinations in time and the 1st respondent having not conducted the

supplementary examinations as per schedule cannot subject the petitioners to undue hardship by strictly following the rule of detention by reference to backlog subjects. The 1st respondent committed error of law and fact, by not advertng to the specific contentions urged by the petitioners while disposing of the letter dated 24.01.2015. The reasons stated for not giving the benefit of promotion to next year are contradictory, erroneous and liable to be set aside. The petitioners through several grounds, as stated in the writ affidavit, challenge the correctness of conclusions recorded in letter dated 24.01.2015 by the 1st respondent. We are not proposing to refer to these pleadings, for the issue in the writ petitions is whether admission, promotion of students in four year BE Degree course is as per extant rule or not and secondly this Court does not wish to sit as a Court of appeal in academic matters. As the petitioners refer to the order of this Court dated 12.12.2014 in W.A. No. 1594 of 2014, we are constrained to make reference to these details to the required extent. Thus referred, the case of petitioners is that on account of not conducting of supplementary examinations in time, the strict implementation of rules by 1st respondent and detaining the petitioners is arbitrary and unconstitutional.

9. The writ prayers are opposed by the respondents on all fours. The 1st and 2nd respondents filed counter affidavit contending that the 1st respondent-University is a body corporate under Section 3 of the A.P. Universities Act, 1991. The inclusion of Vice Chancellor as one of the respondents is misconceived and erroneous. The 1st respondent while summing up the prayer and averments states that in effect the petitioners pray for declaration that the action of University in not permitting the petitioners to attend/continue the BE courses of next year/semesters 2014-15 and 2015-16, without clearing backlog subjects as arbitrary. According to the 1st respondent, the prayer in these two writ petitions is contrary to the Rules and cannot be considered under Article 226 of Constitution of India. The 1st respondent submits that the detained students constitute 5% of total students who appeared for various BE examinations conducted by the University. The rules of promotion for the BE courses are as follows:

10. It is further stated that having regard to the circumstances prevailing then and within the power conferred on the Standing Committee of Academic Senate, the relaxation of backlog subjects is granted in the following manner:

11. It is further averred that in compliance of the direction of this Court and after considering the representation of petitioners it was felt that solution to the issue is possible by granting further relaxation in respect of the minimum backlogs provided under the rules of promotion. The power of further relaxation can be considered by the Standing Committee of Academic Senate. Therefore, the issue was referred to Academic Senate for further relaxation of backlog subjects and the proposal was turned down by the Standing Committee of Academic Senate. It is averred that such further relaxation in professional courses will dilute the standards of education and accreditation enjoyed by the 1st respondent.

12. From the admitted facts and circumstances, it is relevant to note that the parties to these writ petitions do admit the extent of operation of rules of admission, promotion etc., in four year BE degree course and the requirement of completing a number of subjects for promotion to next year. The petitioners by reference to agitation and the delay in conducting semester examinations by the 1st respondent contend that strict adherence to rules is arbitrary and unconstitutional. On the other hand, the 1st respondent-University contends that only 5% of the engineering students are detained by reference to backlog subjects and further relaxation of backlog subjects is not accepted by the Standing Committee of Academic Senate and the petitioners cannot insist upon promotion to next year/semester without passing sufficient number of subjects. The 1st respondent has given the details of the academic calendar, the minimum percentage of attendance required etc., and submitted that the prayer either for promotion to next year/semester without clearing the backlog subjects or to set aside the letter dated 24.01.2015 is untenable and liable to be rejected.

13. The learned Standing Counsel contends that the issue on hand is a pure and simple academic issue and hardly any circumstance warranting interference of this Court under Article 226 of the Constitution, is either pleaded or made out.

14. Now, the short point for consideration is - whether communication dated 24.01.2015 of 1st respondent refusing to grant further relaxation of backlog subjects suffers from illegality and amounts to refusing to exercise the authority vested in 1st and 2nd respondents?

15. The 1st respondent, having regard to the order of this Court in W.A. No. 1594 of 2014 dated 12.12.2014, considered the issue afresh. Briefly stated, the conclusions of 1st respondent are that it is difficult to conduct supplementary examinations immediately with the completion of main examinations; the 1st respondent has to organize for valuation and re-valuation and it takes reasonable time for taking up these steps and completing them; the University is sympathetic to consider reasonable request of students, but the request cannot be at the cost of the degradation of academic standards; the Standing Committee of Academic Senate once has granted relaxation of a few backlog subjects, the request of further relaxation of backlog subjects is not in the academic standards of accredited University and the request for relaxation was rejected.

16. As already noted, the learned counsel appearing for the petitioners by relying upon the atmosphere in the colleges and in the State at that time due to agitation for separate Statehood, has contended that the adherence to rules in letter and spirit is arbitrary and that the inability to conduct supplementary examinations since it is admitted through communication dated 24.01.2015, the respondents ought to have relaxed the rule of detention and promoted the petitioners to next year. In other words, it is required to be noted that the petitioners who constitute 5% of the unsuccessful students, who have appeared for the regular and supplementary examinations, pray for promotion to next year

without completing the required number of subjects in the current academic year.

17. We remind ourselves of the observations of the Supreme Court in judicial review of academic issues. See *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, AIR 1965 SC 491 : (1964) 4 SCR 575 , *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, AIR 1984 SC 1543 : (1984) 2 SCALE 30 : (1984) 4 SCC 27 : (1985) 1 SCR 29 : (1984) 16 UJ 1107 , *Tariq Islam Vs. Aligarh Muslim University and Others*, AIR 2001 SC 3058 : (2001) 8 JT 459 : (2002) LabIC 566 : (2001) 7 SCALE 86 : (2001) 8 SCC 546 : (2002) 1 SLJ 343 : (2001) AIRSCW 4128 : (2001) 7 Supreme 401 and *Rajbir Dalai v. Chaudhary Devi Lal University* 2008 (6) SCJ 1037 : (2008) 9 SCC 287 : 2009 (4) ALT 14.1 (DN SC).

18. It is held that the Courts should be slow to interfere with the opinions expressed by the experts, particularly in a case where there is no allegation of mala fides made against the experts. The Court should be reluctant to substitute its views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It is further held that unless there is a clear violation of statutory provisions, the regulations or the notifications issued, the Courts shall keep their hands off since academic issues fall within the domain of experts.

19. In the case on hand, admittedly the respondents have applied and implemented the rule uniformly to all the students who have appeared for the exams. As a result of such implementation of rule, it is brought on record that 95% of the students have been promoted to next academic year. The case of petitioners is not that the respondents have not followed the rule or have followed the rule illegally, but the petitioners want further relaxation of backlog subjects in view of the agitation that was admittedly going on in the State at that point of time. It is in this background the Standing Committee of Academic Senate, as already noted, has given distinct and convincing reasons for not accepting the request of the petitioners for further relaxation of backlog subjects. The issue is one of academic standards and in the exclusive domain of Academic Senate. From the nature of prayer, the petitioners request for further relaxation of backlog subjects. The Standing Committee of Academic Senate being the highest body in the University which is alive to all the circumstances, including the agitation at that point with a view to maintaining academic standards, rejected the request of further relaxation. Except the points already argued, the petitioners have not pointed out a circumstance of law or fact attracting the jurisdiction of this Court. This Court cannot sit as a Court of appeal and re-appreciate the details, however hard the situation may be and express an independent view, contrary to the applicable rules. The grounds urged by the petitioners are without substance and are accordingly rejected. The writ petitions

fail and are dismissed. Consequently, miscellaneous petitions, if any pending, also stand disposed of.