
(2003) 02 DEL CK 0115
In the Delhi High Court
Case No : CWP 8048 of 2002

Kamal Naresh and Others

APPELLANT

Vs

Jamia Millia Islamia and Others

RESPONDENT

Date of Decision : 07-02-2003

Acts Referred:

Citation : (2003) 3 AD 163 : (2003) 68 DRJ 607

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Sikandar Islam and Ashok Kashyap, for the Appellant; M. Atyab Siddiqui and N.J. Nasir, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—The Petitioners in this Petition are students of Jamia Millia Islamia University, New Delhi (Respondent No. 1 herein). They seek a writ, direction or order from this Court to direct the Respondents to promote them to the second year of LLB (Bachelor of Law) Course. The admitted facts are that the petitioners appeared in the first year Annual Examinations in the year 2002 and their results which were declared on 30th July, 2002 were as under:-

Sr.No. Name of student Roll No. No. of papers failed Aggregate marks

1 Kamal Naresh 02LLB12 two 461/1000 2 Aaga Khan 02LLB1 two 469/1000 3 Manoj Kumar 02LLB13 three 443/1000 4 Sajid Ali 02LLB26 two 477/1000 5 Ahmad Waseem 02ILB2 two 493/1000

2. From the above it is clear that all the five petitioners have failed in not more than three papers. It is also clear that all of them have obtained aggregate marks which are less than 50%. In this fact situation the question that faces me is whether the petitioners are entitled to promotion to the Second Year LLB Course or not? The answer to this question would depend upon the interpretation of the Clauses of the University Ordinance of 31st July, 1998 of Respondent No. 1 University. The relevant Clauses of the Ordinance are set out hereinbelow:-

"6. Bachelor of Laws (LLB)

(a) To pass the Examination a candidate must obtain at least:

- (i) 40% marks in each Written Paper;
- (ii) 40% marks in the Viva-Voce (if prescribed);
- (iii) 50% marks in the Sessional Work (if Prescribed;) and
- (iv) 50% marks in the aggregate.

(b) There will be no compartmental examination for part I/II.

(i) If a student fails in more than 3 papers/subjects of any examination he/she shall be declared to have failed in that examination and will have to repeat all the papers as an ex-student in the next annual examination.

(ii) Compartmental examination shall be held after annual examination. A final year candidate who fails at the annual examination, may be permitted to appear immediately at the following compartmental examination.

(iii) A candidate who fails to clear their papers of Part - I/II and passed all papers of Part III or get compartmental Part-III will be allowed to clear that papers at the following compartmental examination only once. After that they will be permitted to appear in the annual examination only.

(c) A candidate may be promoted from first year to second year, if he/she, fails in not more than three papers/courses. A candidate may be promoted from second year to third year, provided, that he/she does not fail in more than three papers/courses of first and second year taken together.

.....

....."

3. It is upon an interpretation of the aforesaid Clauses and in particular Clauses 6(a) and 6(c) that the answer to the question lies. According to the petitioners, Clause 6(c) is the only clause that is to be considered insofar as promotion is concerned. It is their contention that upon a plain reading of the said clause 6(c) a candidate may be promoted from the First Year to the Second Year provided that he/she does not fail in more than three papers/courses of the First Year. It is the admitted position of the parties that none of the petitioners have failed in more than three papers/courses of the First Year. Therefore, it is contended on behalf of the petitioners that they are eligible for promotion and ought to have been promoted.

4. On the other hand, learned Counsel for the respondents has submitted that Clause 6(c) of the said Ordinance cannot be read disjunctively and in isolation and must be read conjunctively with other clauses and, in particular, with Sub-clause (a) of Clause 6. He has also taken support of the decision of a Constitution

Bench of the Supreme Court in Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman,

5. I have considered the arguments made by Counsel for the parties and have examined the pleadings and relevant documents. As stated above, the decision of this case turns upon the interpretation of Sub-clause (a) and (c) of Clause 6 of the said University Ordinance. Clause 6(a) clearly stipulates the four conditions which have to be satisfied by a candidate to pass the examination. According to the petitioners the words "the examination" appearing in Clause 6(a) has reference to the entire LLB Degree as such. I am unable to accept this interpretation. If one looks at Sub-clause (b) (i) of Clause 6 there is a reference to "any examination", "that examination" and "next annual examination". From these words, it is apparent that the words "the examination" appearing in Clause 6(a) does not have reference to the LLB Degree as such but has reference to the annual examination or a compartmental examination as is referred to in Clause 6(b) (ii).

6. It is clear that to pass an annual examination the candidate must satisfy the four conditions set out in Clause 6(a), unless otherwise relaxed by other clauses of the Ordinance. Clause 6(c) has to be read not disjunctively but in the light of Clause 6(a). Upon a conjoint reading of the two Clauses, it is apparent that Clause 6(c) is nothing but a relaxation of the condition stipulated in Clause 6(a) (i) that the candidate must pass (i.e. obtain at least 40% marks) in each written paper to pass the annual examination of the respective year. Had Clause 6(c) not been there then any candidate failing in a single paper could not be promoted at all, de hors the question of the candidate obtaining 50% marks in the aggregate as stipulated in Clause 6(a) (iv). As such, it is clear that the stipulation that a candidate to pass the examination and consequently to be promoted to the next year must obtain 50% marks in the aggregate has not been relaxed by any other clause of the University Ordinance.

7. Promotions have throughout been made on the basis of this understanding and this is clear from a plain reading of the said two clauses in question. Although the question does not arise in this particular case, even if two interpretations were possible, it would be instructive to set out the observations of the Supreme Court in the case of Principal, Patna College (supra) with regard to the manner in which University Ordinance/Regulations ought to be interpreted:-

Even on the merits, we think we ought to point out that where the question involved is one of interpreting a regulation framed by the Academic Council of a University, the High Court should ordinarily be reluctant to issue a writ of certiorari where it is plain that the regulation in question is capable of two constructions, and it would generally not be expedient for the High Court to reverse a decision of the educational authorities on the ground that the construction placed by the said authorities on the relevant regulation appears to the High Court less reasonable than the alternative construction which it is

pleased to accept. The limits of the High Court's jurisdiction to issue a writ of certiorari are well recognized and it is, on the whole, desirable that the requirements prescribed by judicial decisions in the exercise of writ jurisdiction in dealing with such matters should be carefully borne in mind."

8. Thus, in view of the fact that none of the petitioners have obtained 50% marks in the aggregate for the First Year Examination of the LLB Course and the interpretation of the relevant clauses of the Ordinance mentioned above as well as the observations of the Supreme Court in *Principal Patna College (supra)*, I hold that the petitioners are not entitled to being promoted to the Second Year LLB Course on the basis of the marks obtained by them.

9. Accordingly, the writ petition is dismissed. There shall be no order as to costs.