

(2002) 06 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 505 of 2002

Lakshmi Narayan and Others

APPELLANT

Vs

University of Jammu and Others

RESPONDENT

Date of Decision : 12-06-2002

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 103
Jammu and Kashmir Universities Act, 1969 — Section 42
Jammu and Kashmir Universities Regulations — Regulation 18

Citation : AIR 2003 J&K 53

Hon'ble Judges : T.S. Doabia, J;Sudesh Kumar Gupta, J

Bench : Division Bench

Advocate : U.K. Jalali and Ruchi Bhakhri, for the Appellant; J.P. Singh, for the Respondent

Judgement

Doabia, J.—The Controller of Examinations, University of Jammu informed the various institutions imparting education in the discipline of

Bachelor of Education to adopt 'Standard to be adopted in evaluation of Teaching Practice in the matter of awarding marks in internal and external

examination'. The necessity to make this, change and adopt this method was felt as some of the Colleges were found to be making liberal

assessments which enabled the students to steal march over the others. The institutions which were making objective assessment on the basis of the

knowledge and performance displayed by a candidate as per the respondents were placed at a disadvantageous position. It was this factor which

led the University authorities to adopt the method referred to above. This is being challenged inter alia on the ground that such was not the

procedure which the students were supposed to face when they joined the course. Any change in mid-stream is likely to affect them. It is submitted

that calling upon the internal and external examiners not to grant marks more than 75% in the case of external examinations and not more than 80

marks in the case of internal examination is a direction which would be prejudicial to academically meritorious students. A student may have a

capacity of getting cent percent marks and if this capacity is to be limited in the terms of the procedure prescribed, then this would operate to the

prejudice of the students.

2. Before noticing the stand of the University, it would be apt to notice what is the procedure which has been prescribed now. This has been

mentioned in the communication dated 27-5-2002. This communication in so far as relevant for the purpose of disposal of this petition is being

noticed below:

TABLE

2. The standard normative table to be followed for identifying the students to be awarded marks as per below mentioned table is internal and

external practice teaching :

Percentage of cases Description of performance

3% Outstanding

4% Very Good

22% Good

36% Average

22% Below Average

7% Poor

3% Very Poor

To work out the marks, the highest score ordinarily should not exceed 75% of total marks i.e. 150 out of 200 in case of external examination and

80% i.e. 160 out of 200 in case of Internal examination. When the highest and lowest is decided (150-90) the range of marks and number of

students falling in each interval on the basis of above percentage of candidates can be worked out. It has been indicated for reference through two

examples :

Intake 240 Intake 120 Intake 80

Range of % No. of Range of % No. of Range of No. of

Marks Candidates Marks Candi- Marks Candidates

dates

150& 3 7 150& 3 4 150& above 2

above above

140-149 7 17 140-149 7 8 140-149 6

130-139 22 53 130-139 22 26 130-139 18

120-129 36 86 120-129 36 44 120-129 28

110-119 22 53 110-119 22 26 110-119 18

100-109 7 17 100-109 7 8 100-109 6

90-99 3 7 90-99 3 4 80-99 2

3. Petitioners have challenged this system inter alia on the following grounds ;

i) that the criteria which was fixed earlier should have been permitted to go on and no change could be effected in mid-stream;

ii) that no change can be made without effecting change in the course of studies;

iii) that the afore-mentioned system has not been approved by the Board of Studies;

iv) that no change can be brought at the end of the Session.

4. This is the sum and substance of the submissions made by the learned counsel for the petitioner. In addition to this, it is submitted that the

students protested against this system. When the protest was lodged, the University authorities assured that the new criteria would be kept in

abeyance. Lodging of protest on the part of the students is not something new. This protest has no meaning and no effect in the matter of taking

decision by this Court.

5. Stand taken by the University is simple. It is stated that this system has been adopted because some of the institutions were awarding marks un-

mindful of the merits of the candidates. The sole criteria is to see that the students of that institutions are able to steal a march over others. It is

further submitted that the system which has been adopted is not being adopted for the first time. This has been adopted after thorough research.

This research was done by the Research Cell of the Association of Indian Universities, New Delhi. The system which is commonly prevalent is

known as the 'Marking system'. It was observed that this numerical marking

system leads to great deal of irrationality. For this reference be made to a booklet titled, ""Monograph On Grading For Universities"". What is said in Paragraph 3 is being re-produced below :

3. It is a matter of common experience that in some subjects like Mathematics, the highest mark awarded may be 100 and the lowest 'O' or close

to 'O'. In many other subjects, this never happens. The highest mark for instance may be 70 and the lowest mark 20. Thus for what is considered

to be a 100 mark paper, the actual range of marks is only 50. When the marks of different papers are added, the subject in which a wide range of

marks is used has a disproportionate effect on the total result. For example, we combine marks in two subjects say Chemistry and Mathematics; If

marks in Chemistry range from 30 to 60 while marks in Mathematics vary from 5 to 95 (sic), the result will be that Mathematics will receive three

times the weight of Chemistry. In effect, we shall be evaluating the performance of the student on his Mathematics rather than his Chemistry.

This certainly leads to a great deal of irrationality, in the choice of subjects or of papers and in regard to the time given by a student to the study of

particular subjects or papers. Such irrationality can be obviated by scaling the marks to a common standard, but the better alternative is to use

grades in the place of marks. Summing up, the consideration of accuracy of the result will lead us to award grades rather than numerical marks.

6. Thereafter the booklet makes mention of adoption of a system of grading. The view expressed is that subjectivity in judgment has been found to

be more severe in marking than grading. It has been observed that there is lesser variation in grades awarded by various examiners than in the

marks awarded by them. What is said at page 22 in this regard is being noticed below:

Subjectivity in judgment has been found to be more severe in marking than grading. A study by the author has proved that there is lesser variation

in grades awarded by various examiners than in the marks awarded by them. This means that grading (by virtue of a range of marks) takes this into

account so to say the grading system lives with the error recognising its presence. The more unreliable the examination is (characterised by long,

vague, open, stereo-typed question) the more will be the error and a grading system for this situation will be coarse. Consistent with this, distinction

made out by grades is more meaningful and realistic. While marks are inconsistent, grades are realistically consistent. Let us be honest; if there is a high degree of subjectivity and consequently low reliability, in marking the standard error will be high and a grading system to recognize this, will be coarse.

In the ultimate analysis, what is more important is to devise more and more objective ways of assessing student performance (improving our questions to make them capable of being reliably marked).

7. At page 28, the result of the discussions at various work-shops stands summarised. At page 28, it has been observed as under :

In case it is found that some departments or colleges are overestimating or under-estimating the performance of their students in internal

assessment or external examinations, this can be test checked by means of the normal distribution curve or frequency distribution curve or

frequency distribution of marks in the earlier years by a central agency.

Normal Distribution (UGC) A 7%

B 24%

C 38%

D 24%

E 7%

There is a consensus in respect of the points of scale to be adopted. After considerable discussions, all the workshops (Delhi. Chandigarh,

Bombay and Madras) convened by UGC during October-Dec. 1975 have accepted to adopt the 7 point scale. But the recommendation to divide

the range between maximum and minimum marks awarded equally to denote different grades suffers from serious disadvantages :

(a) The equal range of marks for different grades is unjustifiable rationally and scientifically;

(b) Considering minimum marks (usually ones around 35) for each subject is arbitrary

8. The sum and substance of the arguments put across by the learned counsel appearing for the University is that by this process the desire on the

part of some of the institutions to award more marks to their students would stand curtailed and this system would lead to a more rational result. In

addition to this, it is urged that the guidelines which have been issued are not such that these lead no room for going beyond the outer limits. All that

has been said is, ""Higher Score ordinarily should not exceed"". It is accordingly urged that if in a particular institution, there are large number of

outstanding students, nothing would prevent the internal or external examiner to adjudge them accordingly. The criteria which has been adopted

and which has been described has been done with a view to see to it.

i) that the students of one institution are not given marks in the internal and external examinations by adopting a liberal approach which ultimately

places them at an advantageous position, as compared to students where the marking is objective;

ii) that in any institution and as a matter of fact in the society at large all those who compete are not 'outstanding'. It is only a fraction which is

outstanding, the others may be placed average, below average, poor and very poor.

iii) the prescription of 3% of outstanding in a particular institution has been done so that in the institutions which are about fifteen in number, those

who come in the top slot are those who have really done well.

9. As indicated above, it is accordingly submitted that there is no room for making any deviation.

10. After hearing the learned counsel for the parties, we are of the opinion that these are the matters on which a decision has to be taken by the

experts and this Court is not to exercise Judicial review in these matters. There is hardly a system which could be fool proof. An endeavour has

been made by the University to see that those who come in the top slot in a particular institution, related to the University are within a particular

percentage. This is however, a method which is to be ordinarily adopted. If in a particular Institution internal and external examiner finds that the

number of candidates, who are outstanding, are more than 3% and the possibility that there can be a number which is more than 3% then nothing

debars the examiners from making assessment of these candidates and the percentage can even be more than what has been indicated. These all

are matters on which the decisions have to be taken by the experts and this Court has naturally to depend upon the opinion of the experts. If the

experts have chosen to follow a particular system, which system is not un-known

then this Court would not exercise judicial review. This is one aspect of the matter.

11. A contentious issue still requires to be gone into. This is as to whether the criteria can be changed in midstream or as to whether the Controller

of Examination of its own without reference to the Syndicate or the Authority which is supposed to frame the regulations could take a decision. In

this regard reference is being made to the powers of the Controller of Examinations as contained In the University statutes. The Controller of

Examinations can make arrangements for the conduct of the examinations of the University, but this he can do subject to the directions of the

Syndicate. As to how the answer-books and question papers are to be despatched and as to how the cases of unfair means are to be dealt with,

and how the publication and re-checking of results and other related matters, are matters which fall within the power of the Controller of

Examinations, but this is subject to the direction of the Syndicate. The Controller of Examinations can exercise the other powers which the statutes

or the regulations confer upon him from time to time.

12. There is University Council. The powers are regulated under Regulation 22. There is yet another body by the nomenclature of Syndicate.

Powers of the Syndicate have been indicated in Regulation 24. One of the powers which the Syndicate is supposed to exercise is contained in

Regulation 24 (o). This deals with the appointment of paper setters and examiners for all the examinations held by the University in accordance

with the procedure prescribed in the statutes. As to how the results are to be published are dealt with in Regulation 22 (p). This confers powers for

holding of examinations compilation and publication of the results.

13. Therefore, the question arises as to whether the Controller of Examinations could issue the guidelines. As the powers which the Controller of

Examinations is supposed to exercise are being commented upon. It would be apt to refer Regulation 18. This reads as under :

18(1). The Controller of Examination of a University shall be a whole-time officer of the University concerned and shall be appointed by the

University Council on the recommendation of the selection committee constituted in accordance with the provisions of Section 36(1) on such terms

and conditions as the University Council may from time to time prescribe.

(2) It shall be the duty of the Controller of Examinations of a University to make arrangements connected with the setting and printing of question

papers for all the examinations held by the University concerned including their safe custody and all other matters connected therewith.

(3) Subject, to directions of the Syndicate, the Controller of Examinations of a University shall make all arrangements for the conduct of

examinations of the University concerned.

(4) Subject to directions of the Syndicate the Controller of Examinations of a University shall arrange all items of the examination work such as

despatch and transit of answer-books and question papers, evaluation of answer scripts, tabulation of results, complaints against question papers

set for the examinations, use of unfair means, publication and rechecking of results and other related matters.

(5) The Controller of Examinations of a University shall exercise such other powers and perform such other duties as may be prescribed under the

statutes and Regulations from time to time.

(6) The Controller of Examinations of a University shall, in the execution of his duties, be subject to the immediate direction and control of the

Vice-Chancellor of the University concerned and shall render such assistance to the Vice-Chancellor as may be required by him in the

performance of his official duties.

14. A perusal of the above would indicate that the Controller of Examinations has basically to act under the authority conferred upon him and the

directions which are given to him from time to time by the Syndicate or by the Vice-Chancellor of the University.

15. In the present case a meeting of the sub-committee was held and the sub-committee appears to have taken a decision. Information was given

to the Vice-Chancellor and Registrar of the University and to various Principals of affiliated Colleges.

16. We are of the opinion that this is a vital decision and it should have been approved by the Syndicate and in any case it should have been put

before the Academic Council, which under Regulation 26 has the power to control and regulate the standards of teaching and examinations in the

University. There is a Board of Studies also, which has the power to make suggestions to the Faculty concerned regarding the appointment of

paper-setters and examiners.

17. We are accordingly of the view-

i) that so far as the change in the system 2003 J. & K./4(2) (8 pp.) VIII G-31 which is sought to be brought, that is, as to whether it should be

introduced or not, is a matter on which this Court is not to exercise judicial view;

ii) that prima facie there appears to be nothing wrong with the decision, which had been taken vide the impugned order. The question as to whether

a change can be made in the mid-stream, is not being commented upon. This is a matter on which decision would be taken by the competent

authority. If the decision goes against the petitioners they would be at liberty to challenge the same before the competent forum;

iii) that the decision taken is not mandatory and it makes mention of the fact that it ordinarily requires to be followed;

iv) that if this vital decision changing the system of grading was to be introduced, then it should have been put before the Academic Council, Board

of Studies and should have obtained the approval of the Syndicate also. This is because the Controller of Examinations acts under the control of

the aforementioned authorities. This is missing in this case. Therefore, the decisions in question shall not be implemented unless and until the

requisite approval of the Syndicate is duly obtained.

18. With these observations, this writ petition is disposed of.