

(2009) 11 BOM CK 0075

In the Bombay High Court

Case No : Writ Petition No. 7979 of 2009

Miss Anuja Avinash Nawathe and Others

APPELLANT

Vs

University of Pune, The Learned Vice Chancellor, University of
Pune and Marathwada Mitra Mandal College of Architecture

RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Citation : (2010) 112 BOMLR 399

Hon'ble Judges : J.H. Bhatia, J;Ferdino I. Rebello, J

Bench : Division Bench

**Advocate : A.V. Anturkar, instructed by Sugandh B. Deshmukh, for the
Appellant; Girish Kulkarni, instructed by M.G. Kulkarni, for the Respondent**

Final Decision : Dismissed

Judgement

Ferdino I. Rebello, J.—Rule. Heard forthwith.

2. The petitioners are students pursuing the Five Year B.Arch. Course with respondent No. 3 - Institution, which is affiliated to the University of Pune ? respondent No. 1. The petitioners appeared for the third year course which consists of examination as well as the Sessional/Viva examination held in April 2009. The subject matter of the present petition is the paper of "Architectural Design III". This subject has written examination of 100 marks as also 200 marks for Sessional and Viva-voce. The petitioners have been declared as failed in the sessional-viva-voce examination of 200 marks. Hence, the present petition.

3. It is the case of the petitioners that 200 marks are divided into two parts viz. "Internal Assessment" as well as "External Assessment". Both Internal and External Assessments are further divided into two parts ? 75 marks for Sessional work and 25 marks for Viva-voce, each. It is the case of the petitioners that the Internal Assessments were 100 marks (100 + 75 marks for Sessional work performance and 25 marks for Viva-voce) is given by the College. The petitioners relies on a letter addressed by respondent No. 3 wherein it is informed that on

account of oversight and on account of miscalculation and computational error and subsequent oversight, marks of 100 which have been communicated by the said Institution to the Respondent-University were miswritten and therefore, it was requested by letter dated 11.7.2009 addressed by the concerned teacher, Mrs. Medha M. Gurjar to the Principal of Respondent No. 3 College that the corrected marks of the students as stated in the letter dated 11.7.2009 may be taken into consideration in the marks out of 100 (Internal Assessment of Architectural Design III). This letter, according to the petitioners, has been forwarded to the respondent No. 1 ? University. Respondent No. 1 - University has taken no cognizance thereof.

4. At the hearing of this petition, on behalf of the petitioners, the learned Counsel submits that the University has to allot marks under each separate head. In the instant case, the examination consists of (1) paper; (2) sessional and (3) sessional and viva-voce. As the subjects were under different heads, they are to be assessed under three different heads. That has not been done and, consequently, the respondents be directed to accordingly correct the same.

5. On behalf of the University, a reply has been filed. It is pointed out that the examination was conducted and results were declared on 15.6.2009. The marks for the subject Architectural Design III for the Third Year B.Arch are 300 marks which consists of theory paper of 100 marks, Sessional work (internal) of 75 marks, Sessional (external) 75 marks and Viva-voce examination of 50 marks. Reference is then made to various rules. It is pointed out that in view of Rule 7 of the Syllabus, at the end of the academic year combined sessional work of Term I and Term II has to be assessed jointly by the internal and external examiners from amongst the panel approved by the University for the subject. By Resolution dated 18/19.8.1992 passed by the Academic Council of the Respondent University, the Respondent University has issued a Circular laying down the rules of examination of sessional work assessment and viva-voce in Architecture. Clause 2 of the said Circular specifically mentions that the mark list of the sessional work shall be finalized by the Chairman and that such marklist shall be a consolidated mark list out of the total marks stipulated for that subject. The sessional work of B.Arch. required to be assessed jointly and the consolidated mark list of the same is required to be sent to the University by the College. The College by its letter dated 12.4.2009 sent to the Respondent University a copy of the mark list of sessional work assessment/viva-voce of first to fifth year B.Arch. Examinations held in April-May 2009. The results of the petitioners were thereafter declared on 15.6.2009. While declaring these results, the marks obtained in theory papers and sessional work/viva-voce examination were taken into consideration by the Respondent University. The petitioners were declared as failed in the third year B.Arch. Examination, held in April-May 2009 since they failed in sessional/viva-voce examination of 200 marks in the subject "Architectural Design III".

6. It is pointed out that the petitioners by letter dated 19.6.2009, requested the

Vice-Chancellor of the Respondent University for granting A.T.K.T. for the fourth year B.Arch. Course as a special case. The Respondent University by letter dated 2.7.2009, called for the comments of the Respondent No. 3 College on the said letter dated 19.6.2009. The Principal, instead of sending comments, by letter dated 11.7.2009 sent the revised marks of the examination of the sessional work of the subject Architectural design III of the third year B.Arch. conducted by the internal examiner. The sessional work/viva-voce has to be conducted both by the internal and external examiners. It was wrong on the part of the Respondent College to forward the marks of sessional work and viva-voce awarded by the internal examiner. Hence these marks cannot be considered by the University. The revised marks were also sent after the results were already declared.

7. A meeting in respect of the grievances of the students like the petitioners was conducted by the Respondent University in his office on 3.8.2009. The internal examiner, Mrs. Medha Gurjar was present in this meeting. The original mark list and attendance report of the sessional viva-voce examination of the subject Architectural Design III of the third year B.Arch. signed by both the internal and external examiners as first sent by the Respondent No. 3 College, was shown to her and she confirmed the same to be correct. The internal examiner in her letter dated 8.8.2009 has categorically mentioned that the marks seen by her in the meeting are correct and internal marks and external marks were taken into consideration by both the examiners i.e. internal and external while finalizing the total marks. These averments have not been contested by the petitioners.

8. An additional affidavit was filed. It is pointed out that sessional work is assessed by the internal examiner and external examiner appointed by the University jointly as per Clause (b) of Rule 7 of the Syllabus. The internal examiner is one who is teaching that particular subject in the same/any other college under the University of Pune and external examiner is one who is not teaching in the College for which the examinations were conducted. Thus, the sessional work and viva-voce examination form part of the internal assessment to be carried out by the college concerned and not by the University. It is in this context, we may now consider various provisions.

9. Ordinance 148 reads as under:

Ordinance 148. A statement in printed form, showing the marks obtained by a candidate in each head of passing will be supplied to him on payment of a fee of Rs. 5/- (Rs. Three) per examination. Marks obtained by a candidate in individual Papers will also be supplied on payment of a fee of Rs. 5/- (Rs. Five) per examination, provided an application is made within six months after the date of the declaration of the results. Marks obtained by a candidate in individual questions or in sections of a Paper will not be supplied.

10. It is thus clear that the marks in each head of passing have to be shown. Rule 3 for first to 5th year B.Arch. requires that a term can be granted, among others, if the candidate satisfactorily completes the sessional work prescribed for

each subject and secures at least 45% marks in the internal assessment for the same. The examinations are to be held in terms of Rule 6 as under:

(i) Paper

(ii) Sessional

(iii) Sessional and Viva voce based on sessional work, as prescribed in the subjects, for both the terms together, shall constitute separate heads of passing.

Rule 7(b) reads as under:

7(b) At the end of the academic year combined sessional work of Term I and Term II shall be assessed jointly by the internal and external examiner from amongst the panel approved by the University for the subject. The results for sessional work shall be based on marks obtained by the candidate in the particular subject in both terms taken together. The internal marks secured by the students will be displayed on notice board at the end of each such assessment.

This Rule will show that the sessional work of Term I and Term II has to be assessed jointly by the internal and external examiner from amongst the panel approved by the University for the subject. The results for sessional work are to be based on marks obtained by the candidate in the particular subject in both terms taken together. The internal marks secured by the students are to be displayed on notice board at the end of each such assessment. Further, performance of sessional/Viva-voce Examination shall be assessed on the basis of the depth of understanding of the principles involved and not on the basis of mere correctness of results of ornamental or colourful presentation. To pass the examination, a candidate must obtain minimum 45% marks in each paper/sessional/Viva-voce and 50% in aggregate.

11. The Examination Scheme is as under:

A perusal thereof would show that the sessional marks are shown as internal and external. This has to be seen in the context of Rule 7(b) which we have earlier reproduced.

In the Rules framed for sessional work assessment and viva-voce examination, it is set out that all the sessional work drawings/journals will be periodically assessed, signed and dated by the teachers teaching the subject in the colleges and records shall be kept of the same. The record of marks so recorded will be made available to the examiners while conducting the sessional work/viva-voce examination, in order to finalise the mark list to be sent to the University. This list will be finalised by the Chairman. The mark-list to be sent to the University will be consolidated mark-list out of maximum stipulated for that subject. Where only sessional work is to be assessed by the examiners the candidates shall submit to the Principal/HOD of the College the Journals/Drawing sheets of that sessional work by the end of the term. Where sessional work with viva-voce or

only viva-voce is to be conducted, the candidates will appear in person with their work.

12. It will thus be seen that in case of sessional work with viva-voce, the examiners will allot marks on assessment of work done by the student based on drawings/journals which are periodically assessed and viva-voce examination. The consolidated mark list of both internal and external examiners for sessional work/viva-voce has to be sent to the University.

13. The question therefore which we have to answer is whether in the instant case, the Respondent University has complied with the requirements of Rules for Examinations and the Ordinances. The provisions of the Rules quoted above would show that the University conducts the papers for which 100 marks are allotted. The Head of passing of sessional work/viva-voce is conducted in the college both by the internal examiner and external examiner who allots the marks for the work done by the student based on joint work and the viva-voce test and then they prepare a consolidated marks list and forward it to the University. In the instant case, this was done. In other words, marks were given under the head ? Sessional and Viva-voce which together constitutes a separate head of passing. Merely because the word "sessional" is used does not mean that sessional has to be a distinct head for each examination. It depends on the nature of the examination. In the instant case as the examination consists of sessional and viva-voce. The marks list annexed by the petitioners shows that the petitioners had been allotted marks for the written paper under one head and sessional/viva-voce under another head. There is no separate sessional head. This is in terms of the Rules and, therefore, it cannot be said that they have not been assessed under the distinct heads.

Apart from that, the University has produced a joint mark-list prepared by both internal examiner and the external examiner. Under this mark-list, marks obtained jointly under the head internal marks and external marks and viva-voce have been shown. The internal marks and external marks are marks awarded by the internal examiner and external examiner. Viva-voce are the marks given by both which are thereafter consolidated. Both the examiners have confirmed the mark list. This shows that some of the candidates have obtained 70 marks. The minimum for passing is 90 marks. The highest obtained is 142 marks. Mrs. Gurjar the internal examiner has accepted that these marks given are the correct marks.

14. We find that the University has followed the rules and ordinances in declaring the results of the examinations. Courts no doubt are sympathetic to the grievances of the students, however that does not mean that if in professional courses the marks are allotted as per the rules Courts should interfere. In order to grant relief an examinee must show a right coupled with non-observance of the ordinances and rules by the University. In the instant case there is none.

15. In these circumstances, in our opinion, there is no merit in this petition which is accordingly dismissed. Rule discharged. There shall be no order as to costs.