
(2000) 10 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 28614 of 2000

Miss. Sowrabha V. Besur

APPELLANT

Vs

Karnataka Pre-University Board, Bangalore and Others

RESPONDENT

Date of Decision : 10-10-2000

Acts Referred:

Regulation of Study and Scheme of Examination and Syllabus of Bangalore University,
Rules — Rule 13, 17

Citation : AIR 2001 Kar 235 : (2001) ILR (Kar) 392 : (2001) 4 KarLJ 96

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : Sri Mahesh R. Uppin, for the Appellant; Sri K. Vishwanath,
Government Advocate and Sri N.K. Patil, for the Respondent

Judgement

1. The question raised in the writ petition relates to the interpretation of Rule 17 of Regulation of Study and Scheme of Examination and Syllabus of the Bangalore University.

2. The petitioner took the Second Year P.U.C. Examination in April 2000 with Register Number 101334 conducted by the Bangalore University. The said examination consisted of two parts namely, Part I having two subjects and Part II having four optional subjects. In Part II her optional were History, Economics, Psychology and Sociology. Thus there were six subjects altogether. She alleges that she attended five subjects but could not attend one subject on account of her unfortunate illness. Results were announced in June 2000. She secured 367 marks out of 600 with respect to the five subjects attended which is 61%. Though she secured 61%, she was declared to have failed at the examination as she had not secured any marks in one subject which she did not attend. She challenges the action of the respondents in declaring her having failed at this examination. The argument is based on the interpretation of Rule 17 of the Rules. Rule 17 of the Rules reads as follows:

"17. Classification of successful candidates.--(a) The results of the Second Year

P.U. Examination shall be declared in classes as detailed below on the basis of performance of the student at the examination.

First Class.--Those who obtain 60% or more in aggregate in Part I and Part II put together.

Second Class.--Those who obtain 50% or more but less than 60% in aggregate in Part I and Part II taken together.

Pass Class.--Those who secure 35% or more but less than 50% in aggregate in Part I and Part II taken together with a subject minimum of 30% of marks and an aggregate of 35%.

The candidates who pass the examination in parts or in subsequent attempts will be awarded pass class only.

Note.--The marks or grades obtained in the internal assessment shall not be added to the theory marks. However the grades shall be mentioned in certificate".

3. Learned Counsel Mr. Naik appearing for the petitioner contends that the petitioner having secured the marks required for entitling the first class in aggregate, there is no question of she having failed in the examination as the rules do not contemplate, a candidate to secure any separate minimum in each paper. According to the learned Counsel, whenever a candidate secures 60% and above or 50% and above but less than 60%, he be awarded, the First Class or Second Class as the case may be, irrespective of the question as to whether the said candidate has secured separate 30% marks in each subjects namely, theory, practical and viva voce. It is enough if he secures required 50% or 60% as the case may be. The argument is that first class has to be awarded to a candidate who has obtained 60% and above of the marks in aggregate in Part I and Part II put together, second class to a candidate who has obtained 50% or more but less than 60% in aggregate in Part I and Part II taken together. The remaining candidates who have secured less than 50% and who have secured more than 35% in aggregate in Part I and Part II taken together and a further subject minimum of 30% of marks are placed in pass class. In the absence of any specific requirement to the effect that a candidate should pass in the examination by securing 30% of the marks in each subject, it is not correct to hold there is no stipulation that the petitioner who has not secured 30% in one subject in Part I or Part II would be disentitled to claim the first or the second class as the case may be.

4. Mr. K. Vishwanath, learned Government Advocate appearing for the first respondent and Mr. N.K. Patil, learned Counsel for the University, contended that this interpretation would destroy the very concept of the system of examinations. According to Mr. Vishwanath, learned Government Advocate, in order to categorise a candidate as having earned either a first class, second class or pass class, the candidate should initially pass in each subject and then only the further question of awarding any of these classes arises. A candidate who has not

passed in any one of the papers cannot be considered as having passed either in first class, second class or pass class and therefore the contention of the petitioner that she be awarded first class cannot be sustained.

5. Therefore, the question urged is whether there is any requirement for the petitioner to pass in each of the subjects separately so as to be adjudged as having passed at the examination either in first class or second class.

6. I have heard the respective contentions at length. Mr. M.R. Naik, learned Counsel for the petitioner has relied in support of his argument a decision of Rajasthan High Court in Ram Kumar Sharma Vs. The University of Rajasthan, and M. Ajay Babu and Others Vs. Rajiv Gandhi University of Health Sciences, Bangalore and Another, .

7. To appreciate the argument of the petitioner it is necessary to understand Rule 17 of the Rules referred to above. What does Rule 17 contemplate? All that the Rule 17 provides is that it classifies a successful candidate who has necessarily passed the examinations. That is to say it postulates the classification of a successful candidate which means a candidate who has secured the minimum marks at the examination held. The rule only grades the candidate who has passed and does not contemplate a "failed class". Therefore, the rule obviously proceeds to classify only a candidate who has passed and not others. Therefore, unless a candidate is successful at the examination, the question as to whether he has passed in first class, second class or pass class would not arise for consideration.

8. It is thus clear that, in the first place a candidate has to be successful at the examination. And who is a candidate who is "successful" at the examination? If we examine the third category of Rule 17, namely the pass class, it contemplates that those who secure 35% or more but less than 50% in aggregate in Parts I and II taken together with a subject minimum of 30% in each subject would be deemed to have secured the pass class. This requirement of subject minimum of 30% guides us to understand what is meant by the expression a "successful" candidate. There is only one category of candidate, namely a "successful" candidate. That successful candidate is further classified as first class, second class and third category pass class. The argument of the learned Counsel is that the subject minimum of 30% does not apply to declare the results in first class or second class as such may not be correct, as he who does not secure 30% in each subject is not a successful candidate. The subject minimum of 30% applies to the candidate irrespective of the class he is being placed to be declared as a successful candidate. Unless a candidate is successful at the examination, there is no question of he or she being awarded first class or second class.

9. Meaning of Rule 17 cannot be understood by looking at its words in isolation. We have to advert to other cognate rules as well. Rule 13 of the Rules is general in nature deals with announcement of results. It touches on the same subject. The relevant part of Rule 13 reads as under:

"13. Announcement of Results.--The results for I year Pre-University Examination shall be declared on 10th April every year.

Declaration of Passes.--(a) All those who obtain a minimum of 30% in a paper and 35% in the aggregate in the Annual Examination shall be declared as promoted".

This rule, is the key to understand the meaning of the expression contemplated by the concept of successful candidate at the University examination. It indicates as to how the expression "successful candidate at the examination" has to be understood.

10. What is stated above, according to me, has been made further clear in the sentence occurring after detailing what is meant by pass class in Clause 17(a), namely,

"The candidates who pass the examination in parts or in subsequent attempts will be awarded pass class only".

In other words, it means a candidate who has passed the examination in compartment and secures the required percentage would be disentitled to claim first or second class even if he has secured the marks. In this context we should also advert to Rule 18 as well. That rule specifically confers the right to reject the result on a candidate only in the event he has "passed" the examination. This is also a point to understand Rule 17. Thus, all these rules indicate that classification of the result of the examination, either way, is only with respect to a candidate who has "passed" at the examination. As stated earlier, the rule makers contemplated award of first class, second class or a pass class to a candidate who has passed the examination and not to an unsuccessful candidate. If a candidate does not appear for a subject he is deemed to have secured "0" mark therein which means he has not passed in the examination and thus not obviously a successful candidate thereat. Therefore, the elementary requirement of passing the examination is a basic requirement which alone classifies the candidate either to declare that he has secured first, second or pass class. If the candidate does not pass the examination and is not successful, all these classification is of no avail to him. In such circumstances, the interpretation of the learned Counsel for the petitioner has only to be rejected.

11. Learned Counsel for the petitioner relied on the decision namely Ram Kumar Sharma's case, referred to above wherein the relevant rule as found from the judgment is as under:

"4. The minimum number of marks required to pass the examination shall be 35 per cent, in the external except in supervised teaching and field experience in which it will be 40 per cent, and 40 per cent, in the internal assessment and external examination in all the papers combined. Candidates who obtain 60 per cent, or more of the total maximum marks shall be placed in the first division, those who secure not less than 50 per cent, in the second division and all below

in the third division. Candidates shall be awarded distinction in the subjects in which they obtain 70 per cent, or more marks".

12. The argument of the University therein was that candidate should secure separate minimum marks in each paper which constitute a single subject and then alone he is eligible to be awarded first or second division as the case may be. The High Court considered this contention and stated thus while rejecting the same.

"8. We are, therefore, of the opinion that in note (4) appended to Regulation 43.B-6 the minimum pass marks are required in "each subject" and not in "each paper". Further, the subject "Philosophical and Sociological Foundation of Education" (Summer School-cum-Correspondence Course) has got two papers and as such there is no doubt that the requirement of the aforesaid note (4) would be fulfilled if a candidate obtains minimum 35 per cent marks in external examination in the said subject as a whole and there is no requirement that a candidate should obtain 35 per cent marks in each one of the two papers in that subject separately. So far as the submission of Mr. Mehta that in paper "Supervised Teaching and Field Experience" described at S. No. 5 in Regulation 43.E-6 two subjects have been mentioned, it is enough to observe that the "two subjects" refer to two school subjects which have been described in Ordinance 322 and in respect of which supervised teaching is to be conducted".

In other words, the High Court was of the view that when the rules stated the candidate need secure subject minimum, there cannot be a further stipulation of separate minimum in each paper that constitute one subject and therefore interpretation that it is separate minimum in each paper as contended by the University cannot be sustained. The judgment shows that the subject minimum requirement to be secured is maintained by the Court and it did not accept the further sub-division of the subject into papers and seeking to secure minimum in each paper, which is against the rule. It would be like introducing a sub-rule not in the contemplation of the rule makers, and in effect, such a rule will defeat the rest of the provisions. I do not think the principle laid down in that case has any application to the facts of this case.

13. The learned Counsel then relied on the decision of this Court in M. Ajay Babu's case, *supra*. That was rendered interpreting Rule 1 and I(a) pertaining to the "results" in the scheme of the examination in question. The said rule is referred to as under (at page 260 of AIR):

"1. A candidate shall be declared to have passed the examination if he secures not less than 50% of the total marks for theory and Viva voce examinations and internal assessment combined together and 50% of the total marks in practical/clinical examinations and internal assessment combined together in each of the examination subjects.

1(a) For University conducted examinations for theory/practical/clinical/viva voce the minimum marks shall be 50% for a pass".

14. The dispute then has been summarised by framing the following questions for consideration:

"6. On the basis of averments and rival contentions of both the parties the following three material questions were raised for determination by the learned Single Judge:

"1. Whether it is sufficient for a candidate to secure minimum 50% marks in aggregate in Part "A" and Part "B" Examination for a pass in the First year BDS Course?" "

In other words, though Rule Ha) noted that securing of 50% in aggregate would qualify for passing the University conducted examination, the University made a further inroad of declaring need of securing 50% marks in each subject of the examination i.e., to say 50% in theory, practical and viva voce, ignoring the expression "combined" occurring in the rule. The Court in that context held thus (at pages 262 and 263 of AIR):

"23. On our careful examination of the scheme of examination of respondent-University we find considerable force in the contentions of Mr. Madhusudhan Naik though they cannot be accepted in totality. In the context of the scheme of the division and sub-division of various subjects of first BDS Examination and the distribution of marks of each of them out of maximum 200 marks for each subject we find that the words "in each of do not admit of being imparted into the plain language of relevant Clause 1 and Clause 1(a) of the RESULTS in the scheme of examination as rightly highlighted by Mr. Madhusudhan Naik. It is necessary to quote here the said Clause 1 and 1(a) at the cost of repetition for clear understanding thereof and the same are:

"1. A candidate shall be declared to have passed the Examination if he secures not less than 50% of the total marks for theory and viva voce examinations and internal assessment combined together and 50% of the total marks in practical/clinical examinations and internal assessment combined together in each of the examination subjects.

1(a) For University conducted examinations for theory/practical/clinical/viva voce the minimum marks shall be 50% for a pass".

Both these clauses read together in the context of other relevant provisions of the "Scheme of Examination" bring this clear position to the fore that for a student to pass in any of the examination subjects of BDS Course it is not required of him that he must secure 50% of the maximum marks in each of the University conducted examination papers viz., A(a)--Theory and A(b)--Viva voce, and B(d) -- Practical; as was maintained by the learned Counsel for respondent-University, but it is enough if he secures not less than 50% of the total marks for theory and viva voce examination papers; and internal assessment all combined together on the one hand, and 50% of the total marks in practical/clinical examinations and internal assessment combined together on the other hand in

each of the examination subject for the purpose of said Clause 1 and that in the case of University conducted examinations for the purpose of said Clause 1(a) he has to secure minimum 50% of the total marks for "theory + viva voce" together on the one hand, and 50% of the maximum of the minimum marks and the mode if its computation for a student to pass is also indicated at the foot of the prescribed "statement of marks" stating "Minimum to pass: 50% in University Theory, 50% in Theory aggregate, 50% in University Practical and 50% in Practical aggregate". This is the real test for the score of marks in each of the examination subjects for a subjects for a student to pass as laid down by Clause 1 and 1(a) of the RESULTS".

15. I do not think the learned Counsel can employ the principle therein to the facts of this case. It has to be noted that the results are being announced primarily basing on the fact that the candidate was successful at the examination and only thereafter the question of classifying him into any of the three divisions i.e., first, second or pass class would arise. In the absence of passing the examination by securing the required percentage stipulated which is indicated while dealing with the pass class, certainly it disentitles a candidate to be declared as having secured first class or the second class when he has not passed in any one of the subjects. Only the candidate who has been successful in the examination is eligible for the gradation referred to above. In the instant case, the candidate having not secured 30% marks in Economics at the examination held, she is not successful at the examination. Therefore, the question of she being conferred with first class or second class does not arise at all. I reject the contention of the petitioner. I therefore dismiss the writ petition.