
(1983) 02 KAR CK 0007
In the Karnataka High Court
Case No : W.P. 36671/82

Patrick D'souza

APPELLANT

Vs

Bangalore University and Another

RESPONDENT

Date of Decision : 08-02-1983

Acts Referred:

Citation : (1983) 2 KarLJ 97

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. This writ petition is disposed of after notice to respondents and after hearing the Counsel for parties at the stage of preliminary hearing.

2. This petition is by Patrick D' Souza a student of the final year LL.M. Degree Course of the Bangalore University. He appeared for the examination conducted under the Regulations of the University framed in that behalf in August, 1980. His performance in that examination as evidenced by the marks card produced is as follows:

- (1) Public international Law ... 40 marks
- (2) The Constitution of India ... 35 marks
- (3) The Law of International Institutions including the United Nations ... 42 marks
- (4) Comparative Constitutional Law ... 37 marks
- (5) Private International Law and Legal Essay ... 47 marks
- (6) Dissertation (For New Scheme only ... 50 marks

3. There is no dispute that the maximum marks for the first five subjects enumerated above are 100 marks in each of the subjects while for the last mentioned dissertation, the maximum marks are 150. The petitioner has obtained 251 marks out of a total 650 marks as evidenced by Annexure-H to the petition. The marks card also indicates at the remarks column, pass in theory papers. 50 marks are awarded in column 3 of the marks card against item-6,

dissertation, and the remarks column reads "fails". As a result, the candidate has been declared to have failed in the LL.M. Degree Course of the examination of the first respondent University in the examination held in August, 1980.

4. Shri S.L. Simha, learned Counsel appearing for the petitioner, has argued that the declaration of results of the candidate as a failed student in the examination held in August, 1980, is erroneous and contrary to the regulations and therefore has prayed in the writ petition for a writ of mandamus to be issued to the 1st and the 2nd respondents directing them to declare the petitioner as having passed in the LL.M. Degree Examination. In support of this contention he has drawn my attention to the regulations of the University governing the case, Annexure-A. The relevant regulations for purpose of disposal of this case are as follows:

"5 Scheme of the Examination: There will be only one public examination at the end of two years, consisting of five papers and a dissertation to be submitted by the candidate as part of the examination.

6. Examination:

Paper No. Max.

Marks

I Public International Law 100

II The Constitution of India 100

III The Law of International Institutions including the United Nations 100

IV Comparative Constitutional Law 100

V Private International Law and Legal Essay 100

VI Dissertation 150

7. Requirements for passing: The paper minimum is 35 marks but the aggregate is 40 per cent of all the papers. The marks for the Dissertation is 150 out of which the minimum is 50 marks".

5. He has also drawn my attention to the proceedings of the Faculty of Law held on 27th February 1971 in the Senate Hall of the 1st respondent-Bangalore University. At item-4 the Faculty of Law resolved as follows.

"Regarding the inclusion of dissertation in M.L. Degree Examination, it was approved to have the same from 1973 examination, in all the four branches. It was also resolved to assign 150 marks for dissertation, 50 marks being the passing minimum. It was also resolved that the dissertation should be submitted only by the candidates who are declared to have passed in the theory papers. And hence the results of the theory papers should be published first and then the results of the dissertation. The M.L. degree will be conferred to a candidate only

when he/she has passed both in the theory papers and dissertation and not otherwise".

6. What is apparent from the Proceedings of the Faculty of Law as resolved is that till 1973 the students of LL.M. Course were not required to submit any dissertation to get that degree, but students offering the course subsequent to 1973 were required to submit the dissertation carrying 150 marks in addition to the regular papers which they were required to answer at the examination held at the end of two years. The resolution of the Faculty of Law also indicates the minimum passing marks for dissertation.

7. Similarly, a close study of regulation-7 extracted above relating to the course indicates that a student is required to obtain 35 marks in each of the papers, but must nevertheless score an aggregate of 40 per cent in the total of all the papers. If he does not achieve this, he would not have passed in the papers and therefore he must necessarily be declared as having failed in the examination. The marks for the dissertation is, it is repeated is 150, out of which the minimum for pass is 50 marks. In other words, whatever was decided at Faculty of Law Proceedings referred to earlier is reflected in the regulation governing the course. From the marks scored by the petitioner extracted above, it is clear that he has obtained 35 marks in each of the five papers and therefore has satisfied the first half of the first part of regulation-7 of the University. If his total marks are added in papers only i.e., items 1 to 5, he has obtained 40% of the total maximum marks prescribed, thereby satisfying the requirement of the second half of the first part of the said regulation-7. In so far as the dissertation is concerned, it leaves no room for doubt that he has the required minimum for passing as he has obtained 50 marks out of the maximum marks.

8. Normally, on the plain reading of the regulation, the student should be declared to have passed in the examination, though at the lowest level of performance.

9. Sri Devadas, learned Counsel appearing for the respondents, has contended that the student has been declared as having failed because having regard to regulation-6 of the University where dissertation also is one of the papers, the aggregate of 40 per cent must be worked out not against the maximum marks of 500, but 650 including the maximum marks set out for dissertation. Therefore, according to him, if 650 is the total marks in respect of which the aggregate should be worked out at 40 per cent, the petitioner's aggregate is a little over 39 and not 40 per cent and therefore he has been declared as having failed.

10. I personally feel that this approach is not merely not warranted by the regulations but it is a total misreading of the regulations themselves. I have pointed out earlier that they have indicated in the marks card that the student has failed in dissertation i.e., entirely without any foundation. According to the regulations, he has secured the minimum for pass and therefore at least in that subject -dissertation-he should have been declared as having passed. It is

contended that the 2nd respondent has read regulations 6 and 7 together and come to the conclusion that the aggregate must be at an average of 40 percent out of the total marks of 650 in as much as the 6th item in regulation-6 under the heading "Examination Dissertation", the whole of the maximum marks prescribed must be added together and an average arrived at. This, in my opinion, is not warranted. I have already pointed out that regulation-7 has two parts one dealing with papers and another part dealing with dissertation. As pointed out earlier, the student is eligible to be declared to have passed if the regulation is read in two parts, as one relating to dissertation and the other relating to the papers. I do not see any obstacle to read it in that manner. On the other hand, regulation-5 as extracted above under the heading "Scheme of the Examination" clearly points out that there will be one public examination at the end of two years consisting of five papers and a dissertation. That even from the point view of the Academic Council, the examination consists of two parts-papers and dissertation-and that distinction is maintained in regulation-7 also by providing two parts prescribing different standards for pass. Therefore, the respondents are clearly in error in understanding and interpreting their own regulations and they should not have declared the student as having failed in the examination which he took in the year 1980 in the LL.M. Degree Course

11. For that reason this court must necessarily interfere under Art. 226 of the Constitution and correct the error in the light of the interpretation given to regulations 5, 6 and 7 of the M.L. (LL.M.) Degree Examination of the Bangalore University.

12. Accordingly, a writ of mandamus will issue to declare the petitioner as having passed in the said examination taken by him in 1980 for the LL.M. Degree Course of the 1st respondent-University.

13. Rule will accordingly issue and be made absolute. In the circumstances, there will be no order as to costs.