
(1998) 04 DEL CK 0069
In the Delhi High Court
Case No : C.W.P. No. 4960 of 1997

Piyush Gupta

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 29-04-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 3 AD 840 : (1998) 73 DLT 671

Hon'ble Judges : Cyriac Joseph, J

Bench : Single Bench

Advocate : Mr. B.B. Sawhney, for the Appellant; Mr. S.K. Luthra, for the Respondent

Judgement

Cyriac Joseph, J.

1. The petitioner is a student for the Degree of Bachelor of Business Studies (B.B.S.) in the College of Business Studies, Jhilmil Colony, Vivek Vihar, Delhi. The Bachelor of Business Studies is a three year course consisting of six semesters with examinations at the end of each semester. The petitioner was admitted to the course in July 1995. He appeared in the examination conducted at the end of the first semester in November-December 1995 and Passed in 4 out of 5 papers.

He failed in Paper No. 3-Micro Economics & its Applications. However, he was promoted to the second semester because a student who passed in 4 out of 5 papers was eligible for promotion as per the rules. The petitioner appeared in the examination at the end of the second semester in April-May 1996. When the results were declared the petitioner was shown as failed since he did not secure a minimum of 50% marks in both the semesters together as required under the Bachelor of Business Studies (B.B.S.) Ordinance issued in May 1996 by respondent No.1, University of Delhi. However, in view of representations made by students like the petitioner, the students of 1995 batch were exempted from the requirement of a minimum of 50% marks in both the semesters together. Accordingly the petitioner was declared to have passed in all the 5 papers of the

second semester and he stood promoted to the third semester. The petitioner appeared in the third semester examination in November-December 1996. He also reappeared in the examination in Paper No. 3 of the first semester held in January 1997. The results of the third semester examination held in November-December 1996 were declared only on 11th March, 1997 and the petitioner was declared to have failed in the 3rd semester though he had secured more than 40% marks in 4 out of 5 papers. The petitioner was declared unsuccessful also in the examination in paper No. 3 of the first semester. Even though the petitioner had been attending the fourth semester classes from January 1997, he was not allowed to attend the fourth semester classes after the declaration of the results of the 3rd semester examination and the examination in Paper No. 3 of the first semester. The petitioner was not allowed to continue the course apparently on the ground that he did not pass in Paper No. 3 of the first semester even in the second attempt. According to respondent No. 3, a student was not entitled to appear in more than two chances. The petitioner applied for revaluation of the answer sheets of Paper No. 3 of first semester and pending revaluation he was allowed to continue to attend the fourth semester classes and he was allowed to deposit examination fee for the fourth semester examination scheduled to be held in May 1997. But on 7th May, 1997, the petitioner was told that he was not eligible to appear in the 4th semester examination starting on 8th May, 1997 and he was not allowed to appear in the said examination. The petitioner could not seek any remedy against it since the refusal to permit him to appear in the examination was conveyed to him only at the last minute. According to the petitioner, the result of revaluation has not been communicated to him. Though the petitioner wanted to reappear in the examination in paper No. 3 of the first semester scheduled to be held in October-November 1997 as an ex student, respondent No. 3, the Principal of the College, told the petitioner that he would not allow him to appear in the said examination even as an ex student. In such circumstances the petitioner filed this writ petition in November, 1997 challenging the Bachelor of Business Studies Ordinance based on which the petitioner was denied permission to reappear in the examination in Paper No. 3 of the first semester. He has also prayed for directions to the respondents to allow the petitioner to attend classes on regular basis for completion of the B.B.S. Course.

2. By an interim order dated 25th November, 1997 this Court permitted the petitioner to appear in the examination in Paper No. 3 of the first semester held in November-December 1997. The Court has recorded the statement of the learned counsel for the petitioner that the petitioner would not claim any special equities arising from the permission to take the examination. By the said order dated 25th November, 1997 the respondents were also directed to withhold the result of the petitioner and to make it available to the Court in a sealed cover. Accordingly, the Petitioner appeared in the examination and the result was communicated to this Court in a sealed cover on 27th March, 1998. It was found that the petitioner had passed in the examination.

3. The following issues arise for consideration in this case :

- a) The validity of the Bachelor of Business Studies Ordinance issued by respondent No. 1 in May 1996.
- b) The applicability of the provisions of the above mentioned Ordinance to the petitioner who was admitted to the B.B.S. Course in 1995.
- c) Whether the petitioner was entitled to reappear in the examination in paper No. 3 of the 1st semester which was held in December 1997 in which the petitioner actually appeared on the strength of the interim order passed by this Court on 25th November, 1997?
- d) Whether the petitioner is entitled to continue as a student of the B.B.S. course?
- e) Whether the petitioner is entitled to appear in the 4th semester examination scheduled to be held in May 1998?

Each of the above issues is dealt with hereunder.

4. Prayer (c) in the writ petition is "to quash the Bachelor of Business Studies (B.B.S) Ordinance and declare the same being bad in law." However the writ petition does not contain necessary pleadings to support the prayer. The averments in the writ petition do not make out sufficient grounds to grant the prayer. In fact the petitioner has failed to explain clearly why the Ordinance should be quashed and how the Ordinance is bad in law. In these circumstances, this Court is not called upon to decide on the validity of the said Ordinance and the prayer of the petitioner in this regard is liable to be rejected.

5. The contention of the petitioner that the provisions of the B.B.S. Ordinance issued in May 1996 cannot be made applicable to the petitioner who was admitted to the course in 1995 is on the basis that a new scheme of examination and rules of promotion have been introduced by the said Ordinance. Respondent No.1 has not filed any reply or counter affidavit. In the counter affidavit filed by respondent No. 3, it is stated that under the Bachelor of Business Studies Ordinance issued in May, 1996 the pass percentage of individual subjects was maintained at 40% but at the end of the year the requirement in aggregate was raised from 40% to 50%. It is further stated that the students including the petitioner objected to the raising of the overall aggregate pass percentage and also made representations against the said change. The representation made by the students were duly considered by the University authorities and it was decided that for the 1995 batch the percentage would be 40% as notified by the College authorities at the commencement of the academic year 1995-96. It is further stated that the students in their representation dated 9th September 1996 had categorically stated that they had read the new examination scheme duly approved by the Academic Council of the University of Delhi and that the scheme was acceptable to them except to the extent of pass percentage of the aggregate of all subjects. A copy of the said representation dated 9th September

1996 is Annexure R-1 to the counter affidavit. It is also stated in the counter affidavit that the above mentioned representation of the students was accepted by the Academic Council and Pass percentage applicable to 1995 batch was maintained as 40%. In the light of the above averments in the counter affidavit of Respondent No.3, the petitioner cannot have any grievance about the minimum percentage of marks prescribed under the ordinance. The petitioner will be entitled to the benefits or concessions stated to have been conceded by the University in response to the above mentioned representation dated 9th September, 1996 (Annexure R-1). Apart from that, I am not inclined to hold that the provisions of the B.B.S. Ordinance issued in May 1996 cannot be made applicable to students who were admitted to the course in 1995 unless the petitioner is able to show that any vested right of the petitioner has been taken away by the provisions of the Ordinance. The petitioner in this writ petition could not show that any vested right of the petitioner under the earlier rules was taken away by the provisions of the ordinance. It cannot be said that the University is not competent to change or amend the rules relating to the percentage of marks required for a pass in the examination or to the number of chances available to a student to appear in an examination and to apply the said rules prospectively to students who were admitted to the course even prior to such change or amendment of the rules. Learned counsel for the petitioner relied on the judgment in Miss Prabha Kalyandeo Verma Vs. The Nagpur University and Others, to contend that the provisions of the B.B.S. Ordinance should not be made applicable to the petitioner who was admitted to the course in 1995. The above mentioned judgment related to admission to a course and the applicability of certain criteria which were not made known to the applicants through the rules and the prospectus. In my view ,the said judgment has no application to the facts of the present case.

6. The next issue is regarding the number of chances available to the petitioner to appear in the examination in paper No. 3 of the 1st semester. According to the averments contained in the counter affidavit of respondent No. 3, since the petitioner failed twice in paper No. 3 he became ineligible to continue the course. It is stated that according to clause 8(i) of the B.B.S. Ordinance, a candidate to be eligible for promotion from one semester to another is required to pass at least 4 papers of that semester and a student is allowed only one more chance to pass in the remaining paper as a regular student along with the next regular examination of the relevant semester. It is also contended that the petitioner was entitled to only one more chance to reappear and since the petitioner had availed of the same and had remained unsuccessful, he was not entitled to any further opportunity to appear in the said paper. But according to the learned counsel for the petitioner, even as per the provisions contained in the B.B.S. Ordinance, even if a student fails in a paper in the second chance, he is entitled to reappear in the said paper as an ex student during the next regular examination of the semester concerned. It is contended that though the petitioner appeared in Paper No. 3 of 1st semester in December 1996 for the second time and failed, he was entitled

to reappear again in Paper No.3 of 1st semester as an ex student in November-December 1997. Learned counsel for the petitioner also relied on Clause 8 of the B.B.S. Ordinance. For convenience Clauses 8 and 9 Of the Ordinance are extracted below:

8.(i) A candidate to be eligible for promotion from one semester to another shall be required to pass in atleast four papers of that semester. He/She shall get only one more chance to pass in the remaining paper as regular student Along with the next regular examination of the relevant semester.

(ii) A candidate to be eligible for promotion from I year to II year of the course shall have to pass in at least 8 Papers out of 10 subject to the condition that the candidate secures a minimum of 50% marks in both the semester together.

(iii) 4 candidate to be eligible for promotion from II year to III year of the course shall have to pass in at least 18 papers out of 20 subject to the condition that the candidate secures a minimum of 50% marks in both the semesters of second year.

(iv) An ex student shall be required to appear only in those papers in which he/she had failed. In case the candidate is not fulfilling the requirement of 50% he/she may repeat the whole semester or semesters.

(v) In all cases where a candidate has been declared fail he/she shall have to reappear in the written examination of only those papers in which he/she had failed, as ex-student. His/Her original score in internal assessment/practical/project with respect to these papers shall be carried over. For all other papers his/her original score shown as Total Marks shall be carried over.

(vi) In case a candidate has to undertake his specialization project again, his/her Presentation/Viva-voce shall be conducted again .

(vii) No improvement shall be allowed. However, the facility of revaluation shall be available to the candidates.

9. A candidate shall have to complete the course in a maximum duration of six years after his/her first admission to semester I of the course. As soon as it is evident that a Candidate cannot complete the course within the stipulated six years he/she shall not be allowed to take any further examination.

The contention of respondent No. 3 is based on the second sentence in Clause 8(i) according to which a candidate who fails in one of the papers of a semester shall get only one more chance to pass in that paper as a regular student along with the next regular examination of the relevant semester. According to the petitioner the limitation imposed by the said sentence is applicable only for appearing as a regular student and it does not prevent a candidate who failed in the second chance from reappearing again in the examination as an ex student. In my view the effect of sub clause (i) of Clause 8 is to restrict the number of chances to appear as a regular student only and it does not prevent a student

from reappearing in the examination as an ex student even after failing in the second chance. Sub clauses (iv) & (v) of clause 8 relating to ex students do not impose any condition that a candidate who failed in the second chance cannot reappear again in future examinations as an ex student. It is also to be noted that as per Clause 9 of the Ordinance a candidate is given a maximum period of 6 years to complete the B.B.S. course whereas the normal duration of the course is only 3 years. The provisions of Clauses 8 and 9 show that failed candidates are given the right to reappear in future examinations as ex students and that a total period of six years is available to a candidate to complete the course. If the contention of Respondent No.3 is accepted, a candidate who failed in more than one paper of a semester and thereby could not get promoted to the next semester will set any number of chances to reappear in the examination as an ex student subject to the maximum period of six years to complete the course and a candidate who failed only in one paper of the semester and was promoted to the next semester will get only one more chance and thereafter he will have to discontinue the course forever if he fails in that paper in the second chance also. Such a provision will be not only illogical but also arbitrary, discriminatory and unjust. Hence on a proper and just interpreting of Clauses 8 and 9 of the Ordinance, I hold that a candidate who failed in one of the papers of a semester is entitled to get only one more chance to pass in that paper as a regular student and if he fails in the second chance also, he can reappear in that paper as an ex student in the future examinations without any restriction regarding the number of chances. However, as provided in Clause 9, as soon as it is evident that a candidate cannot complete the course within the stipulated period of 6 years he shall not be allowed to take any further examinations. In the present case, the petitioner failed in Paper No. 3 for the second time in the examination held in December, 1996. Therefore he was obliged to discontinue the course after the result of the said examination was declared. He could reappear in Paper No. 3 again as an ex student. The first opportunity for the petitioner to appear in paper No. 3 as an ex student came in December, 1997 and he was entitled to appear in Paper No. 3 in the examination held in December, 1997 as an ex student. The petitioner was in fact allowed to appear in the said examination on the basis of the interim order passed by this Court on 25th November, 1997. As per the result communicated to this Court, the petitioner has passed in the examination. Hence the petitioner is entitled to a declaration that he was entitled to appear in paper No. 3 of semester 1 in the examination held in December, 1997 and that the result of the said examination is liable to be declared. Therefore respondent No. 1 is liable to be directed to formally declare the result of the petitioner .

7. The next question is whether the petitioner is entitled to continue as a student of the B.B.S. course. Since the petitioner was entitled to appear in the examination held in December, 1997 as an ex student and since he has passed in the examination, he is entitled to be readmitted to the course and to the next semester. The petitioner was admitted to the B.B.S. course in July 1995. Hence as per the Clause 9 of the ordinance, the petitioner has time till July 2001 to

complete the course. Admittedly, the petitioner had appeared in the 3rd semester examination in December 1996 and had secured more than 40% marks in 4 out of 5 papers. Pending declaration of the result of the 3rd semester examination, the petitioner had been allowed to attend 4th semester classes from January 1997. In these circumstances, the petitioner is entitled to continue as a student of the B.B.S. course.

8. The next question is whether the petitioner should be admitted to the 4th semester again and whether he should again attend 4th semester classes and only thereafter appear in the 4th semester examination. According to the learned counsel for the petitioner the petitioner was entitled to reappear in the examination in paper No. 3 of semester 1 in December, 1997. But Respondent No. 3 refused to allow him to appear in the examination giving a wrong interpreting to Clause 8 (i) of the Ordinance. Consequently, the petitioner had to approach this Court. Even though he was allowed to appear in the examination on a provisional basis, the result could not be declared due to the pendency of this writ petition and the petitioner was not allowed to attend 4th semester classes which commenced in January 1998. It is further pointed out by the learned counsel that had the respondents allowed the petitioner to appear in paper No. 3 as an ex student in December 1997, in the normal course he would have been allowed to attend 4th semester classes from January 1998 pending declaration of the result. In that event the petitioner would have been eligible to appear in the 4th semester examination scheduled to be held in May 1998 since he has passed in the examination in paper No. 3 of semester 1 held in December, 1997. It is contended that the opportunity to attend 4th semester classes and to appear in the 4th semester examination scheduled to be held in May 1998 cannot be denied to petitioner because of the illegal action of the respondents in not permitting the petitioner to appear as an ex student in Paper No. 3 of semester 1 in the examination held In December, 1997. Learned counsel also pointed out that if the petitioner has to be readmitted to the 4th semester again and if he has to attend the 4th semester classes again for appearing in the 4th semester examination, he will have to wait till January 1999 for re-admission to the 4th semester and till May 1999 for appearing in the 4th semester examination. Learned counsel submitted that the petitioner may not be forced to suffer the loss of one year on account of the illegal action of the respondents and the pendency of this writ petition. Learned counsel for the petitioner also pointed out instances of students being allowed to attend classes of the next semester pending declaration of the result of the examination in which they appeared as ex-students and also being allowed to appear in the examination at the end of the said semester when they are declared to have passed in the earlier examination. According to the learned counsel, a benefit which would have been normally available to the petitioner if the respondents had acted in accordance with the provisions of the Ordinance should not be denied to the petitioner on the technical ground that the petitioner has not attended the 4th semester classes after successful appearance in the examination in paper No.3 of 1st semester. In

this connection learned counsel also invited my attention to the representation dated 19-12-1997 submitted by the petitioner to Respondent No. 3 requesting him to permit the petitioner to continue to attend 4th semester classes since the petitioner had been allowed by this Court to appear in paper No.3 of 1st semester during the examination held in November/December 1997. Learned counsel also pointed out that one of the prayers in CM 9128/97 was for a direction to Respondent No.3 to allow the petitioner to attend 4th semester classes. Learned counsel further submitted that the Petitioner may be allowed to appear in the 4th semester examination scheduled to be held in May 1998 taking into account the 4th semester classes attended by him from January 1997 to March/April 1997. Learned counsel pointed out that as per clause 7 of the Ordinance a candidate is required to attend 2/3rd of the total number of lectures/tutorials/practicals/seminars/ case discussion etc., conducted in each semester provided the Principal may, at his discretion, permit a candidate to proceed to the 5th semester if he has to his credit a minimum of 62% attendance of semester I II, III and IV.

According to the learned counsel if the attendance of the petitioner during the semester I, II and III and the attendance of the petitioner during IV semester from January 1997 to March/April 1997 are taken together, the petitioner will satisfy the requirement of the minimum attendance of 62% and hence Respondent no.3 Principal can permit the petitioner to appear in the 4th semester examination and also to proceed to 5th semester.

9. Learned counsel for respondent No.3 strongly opposed the request of the learned counsel for the petitioner for permission to appear in the 4th semester examination to be held in May 1998. According to the learned counsel the question of the petitioner appearing in the 4th semester examination can arise only after the petitioner's result of the examination in paper No.3 of 1st semester held in December 1997 is declared and thereafter the petitioner attends the 4th semester classes. The effect of the above submission is that the petitioner may join the IV semester classes commencing from January 1999 and appear in the 4th semester examination in April/May 1999. Though the submission of the learned counsel for Respondent No.3 is technically correct., the issue has to be approached from the point of view of equity and justice in the light of the peculiar circumstances of this case. The action of Respondent No.3 in not permitting the petitioner to continue the course after the petitioner failed twice in paper No 3 of 1st semester was justified. But the mistake committed by Respondent No.3 was in telling the petitioner that he could not reappear in the examination in paper No.3 of 1st semester even as an ex-student and in creating a situation in which the petitioner was constrained to file this writ petition and to wait for the outcome of the writ petition. Had Respondent no.3 correctly understood and applied the provisions of clause 8 of the Ordinance and allowed the petitioner to appear in the examination in paper No.3 of semester I in December 1997 as an ex-student, the petitioner would have been allowed, as in similar cases, to attend the 4th semester classes which commenced in January

1998 and the petitioner would have become eligible to appear in the 4th semester examination scheduled to be held in May 1998 as he has passed in the examination in paper No.3 of semester I. In view of the permission given by this Court to the petitioner to appear in the examination held in December 1997 as an ex-student, the petitioner had made a written request dated 19.12.1997 to Respondent No.3 to allow him to attend the 4th semester classes but the said request was not granted. Learned counsel for the respondents contended that since the petitioner was allowed to appear in the examination on the strength of an interim order passed in the writ petition and since the petitioners prayer for direction to the respondents to permit him to attend 4th semester classes was not granted by this Court, Respondent No.3 was not obliged to permit the petitioner to attend 4th semester classes. However find that if the petitioner is not allowed to appear in the 4th semester examination scheduled to be held in May 1998 he will be able to appear in the 4th semester examination only in May 1999 and he will have to lose one more year due to the mistake committed by Respondent No.3 in understanding and applying clause 8 of the Ordinance. It is also to be noted that pending declaration of the result of the 3rd semester examination, Respondent No.3 had permitted the petitioner to attend 4th semester classes from January 1997 till March/April 1997. Having regard to the peculiar circumstances as explained above. I am of the view that in the interest of equity and justice the petitioner should be permitted to appear in 4th semester examination scheduled to be held in May 1998 and to proceed to 5th semester provided he satisfies the requirements of attendance mentioned in clause 7 of the Ordinance and fulfills other conditions for promotion to the 5th semester.

10. In the result the writ petition is disposed of with the following directions:

- i) The respondents shall formally declare the petitioner's result of the examination in paper No. 3 of semester I held in December 1997 immediately;
- ii) Since the petitioner has passed in the examination in paper No.3 of 1st semester, he shall be re-admitted to the course forthwith. He shall be permitted to appear in the 4th semester examination scheduled to be held in May 1998 if the petitioner has a minimum of 62% attendance of semester I, II, III and IV taken together. For this purpose the 4th semester classes attended by the petitioner from January 1997 to April/May 1997 shall be treated as his attendance for the 4th semester;
- iii) The petitioner shall be liable to pay the required tuition fees (if not already paid) for the 4th semester and the examination fee on demand made by Respondent No.3. The fact that the examination fee for the 4th semester examination to be held in May 1998 has not been paid earlier shall not be held against the petitioner.
- iv) The respondents shall take appropriate decisions regarding the petitioner's right to be promoted to the 5th semester and his right to attend classes of the

5th semester pending declaration of result of the 4th semester examination and his right to appear in any of the remaining papers of the previous semesters. Such decisions shall be in accordance with the provisions of the Ordinance and the practice followed in similar cases.

The writ petition is allowed to the above extent the above terms. There will be no order as to costs.