

(2001) 07 P&H CK 0070
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 17401 of 2000

Poonam Vij and Others

APPELLANT

Vs

The Thapar Institute of Engineering and Technology (Deemed University), Patiala and Another

RESPONDENT

Date of Decision : 02-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Punjabi University Act, 1961 — Section 11, 19
Punjabi University Regulation — Regulation 17

Citation : AIR 2001 P&H 378

Hon'ble Judges : R.C. Kathuria, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : Rajiv Atma Ram and Puneet Gupta, for the Appellant; P.S. Patwalia, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—Petitioners are students of Thapar Institute of Engineering and Technology, Pattala (for short the Institute). They were admitted to the first year of the Bachelor of Engineering course for the academic session commencing from July, 1999 and were granted admission on the basis of their merit in the Combined Entrance Test conducted for the purpose. The duration of the course is four academic years and each year is divided into two semesters. An examination is held at the end of each semester according to the syllabi prescribed by the Institute. Petitioners took the first semester examination and also the 2nd semester examination. They secured 40% of the credits offered to them in these two semesters but failed to secure 3.7 Cumulative Grade Point Average (CGPA) at the end of the first year. Their names were struck off from the rolls and they were asked to leave the Institute. This action was taken by the Institute in terms of Regulation 17 of the Regulations which after its amendment on 2-7-1999 then stood as under :--

"A student will be required to withdraw from the under-graduate programme and leave the Institute;

(i) If at the end of first year, he/she is unable to secure a CGPA of greater than or equal to 3.70 and earn 40% of the credits offered in the approved scheme of courses.

(ii) If, at the end of second year, he/she is unable to secure a CGPA of greater than or equal to 4.50 and earn 50% of the credits offered in the approved scheme of courses,"

Feeling aggrieved by the action of the Institute in removing their names from the rolls, the petitioners filed CWP 8929 of 2000 in this Court. The Institute took the stand that according to the amended Regulation a student was required to fulfill both the conditions of securing 3.7 CGPA as also earning 40% of the credits if he had to continue with the course and in case he failed to achieve either of them he was required to leave the Institute and that the word "and" used in-between the two conditions was intended to be read disjunctively. Since the petitioners failed to secure 3.7 CGPA at the end of the first year even though they secured 40% of the credits, their names, according to the Institute, could be removed from the rolls. We did not accept this plea of the Institute and on the language used in Regulation 17 held that a student could be asked to leave the Institute only if he failed to get both 3.7 CGPA and earn 40% of the credits and that in case a student failed to get only one of the two, his name could not be removed from the rolls and he could not be asked to leave the Institute. The word "and" used in-between the two conditions specified in Regulation 17 was held to have been used conjunctively and, therefore, a student could not be asked to leave unless both the conditions were satisfied. Accordingly, the writ petition was allowed and the action of the Institute in removing the names of the petitioners from its rolls was quashed. Dissatisfied with our order, the Institute preferred a SLP in the Supreme Court which came up for hearing on 24-11-2000. The Institute made a prayer that the same be dismissed as withdrawn as it proposed to amend Regulation 17 to make it explicit that if one of the two conditions contained in the Regulation was fulfilled the student could be required to leave the Institute. In other words, the Institute wanted to clarify its intention that the two conditions contained in Regulation 17 were disjunctive and not conjunctive. The SLP was dismissed as withdrawn. As a result of the decision of this Court in CWP 8929 of 2000 and the dismissal of the special leave petition, the petitioners were allowed to continue their studies and join the 3rd semester of the course. They took the 3rd semester examination which commenced from 6-12-2000. They are presently studying in the 4th semester and will take the examination at the end of this semester sometime in June this year.

2. After the dismissal of the special leave petition, the Institute amended Regulation 17 with effect from 27/28-11-2000 and the amendment was notified by the Acting Registrar. The amended Regulation reads as under :--

"A student will be required to withdraw from the B.E. (including Lateral Entry for Diploma Holders)/M.C.A./M.Sc. programme and leave the Institute :

(a) if at the end of the first year, he/she

(i) fails to secure a CGPA of greater than or equal to 3.70

or

(ii) fails to earn 40% of the credits offered in the approved scheme of courses.

(b) if at the end of 2nd year, he/she (i) fails to secure a CGPA of greater than or equal to 4.50

or

(ii) fails to earn 50% of the credits offered in the approved scheme of courses.

Explanation : A student who fails to satisfy either or both the conditions mentioned in Sub-clause (i) and (ii) of clause (a) or (b), as the case may be, will be required to leave the Institute. For B.E. Lateral Entry Programme, only clause (b) will be applicable."

As already observed, the petitioners have taken the 3rd semester examination held in December, 2000 and it appears that they have not fared well. They are continuing with their studies in the 4th semester and will take the examination at the end of this semester sometime in June this year and they seem apprehensive that they will not be able to secure a CGPA of greater than or equal to 4.5 or earn 50% of the credits offered in the approved scheme of courses and, therefore, they are likely to be asked to leave the Institute at the end of the 2nd year in terms of the amended Regulation. They have, thus, filed this petition under Article 226 of the Constitution challenging the validity of the amendment made in November, 2000.

3. At the outset we may observe that the petitioners have yet to take the 4th semester examination and in any case it cannot yet be known whether they would secure a CGPA of at least 4.5 or earn 50% of the credits offered in the approved scheme of courses at the end of the 4th semester/2nd year and, therefore, the writ petition is premature and is liable to be dismissed as such. Since the counsel for the parties had argued at length regarding the validity of the amended Regulation, we propose to decide the same.

4. Shri Rajiv Atma Ram appearing on behalf of the petitioners vehemently urged that the Institute by amending the Regulation in November, 2000 has tried to overreach the Judgment of this Court rendered in CWP 8929 of 2000 and, therefore, the amendment is not sustainable. It is also contended that the amendment was not made by the Board of Governors of the Institute which alone has the power to amend the Regulations and, therefore, the same is bad in law. The validity of the amendment has also been challenged on the ground that the Senate was not consulted before the Regulation was amended and,

therefore, the amendment is contrary to Rule 57 (xxi) of the Rules framed by the Institute. It is also submitted by the learned counsel for the petitioners that since the petitioners joined the 3rd semester in July, 2000, the amended Regulations could not apply to them till the end of the 4th Semester viz. the end of the 2nd year. Reference in this regard is made to the prospectus of the Institute issued for the year 1999-2000 according to which the Regulations in force at the time when a student joins the programme shall hold good only for the examinations held during or at the end of the semester. Lastly, it was argued that the impugned amendment is totally arbitrary and hence unsustainable. Learned counsel appearing for the Institute controverted the pleas raised by the counsel for the petitioners and contended that the amendment was made by the Director of the Institute in exercise of the powers conferred on him under Rule 38(ii) of the Rules and that prior consultation of the Senate was not necessary. It is pleaded that the amendment is valid and that it governs the petitioners who Joined the four years" course in July, 1999.

5. We have given our thoughtful consideration to the rival contentions of the parties and are of the view that there is no merit in any of the submissions made on behalf of the petitioners. Regulation 17 as originally incorporated in the Academic Regulations provided that a student would be required to repeat first year of the course if (1) he failed to earn 40% of the credits offered in the approved scheme of courses for the first year and/or (11) he secured a CGPA of less than 4 at the end of first year. As already observed, this Regulation was amended on 2-7-1999 and the amended regulation has already been reproduced in the earlier part of the judgment. When we compare Regulation 17 as it originally stood with the amended provision, it is clear that prior to the amendment a student was required to repeat the first year if he did not satisfy the requirements of the Regulation whereas under the amended provision he is required to withdraw from the under-graduate programme and leave the Institute at the end of the first year if he is unable to get a CGPA of greater than or equal to 3.7 and earn 40% of the credits. Similarly, at the end of the second year a student is required to leave the Institute under the amended provision if he is unable to either secure a CGPA of greater than or equal to 4.5 or earn 50% of the credits. The explanation added to the Regulation makes this position amply clear.

The stand taken by the Institute in the earlier writ petition filed by the petitioners was that it was intended that a student must secure a CGPA of not less than 3.7 and also earn 40% of the credits offered in the approved scheme of courses before he could continue with the course failing which he had to leave the Institute. However, on the language used, this Court held that the word "and" used in Regulation 17 was to be read conjunctively and, therefore, both the conditions had to be satisfied if the student was required to leave the Institute and in case he failed to secure either CGPA of not less than 3.7 or earn 40% of the credits his name could not be struck off from the rolls. When this interpretation was given by the Court the Institute thought it necessary to make

its Intention explicit and further amended the Regulation to make it clear that a student will be required to leave the Institute if he fails to either secure a CGPA of greater than or equal to 3.7 or fails to earn 40% of the credits offered in the approved scheme of courses. There is nothing unusual about an amendment being made by an authority to make its intention clear after a court judgment. It cannot, therefore, be said that by doing so the institute has tried to overreach this Court. We have, thus, no hesitation in rejecting the first contention of Shri Rajiv Atma Ram, learned counsel for the petitioners.

6. Shri Atma Ram then referred to clause (xxi) of Rule 57 of the Rules to contend that the power to frame Regulations vests in the Board of Governors and that when the Regulations affect the admission or enrolment of students then such Regulations cannot be framed or altered without consulting the Senate. He argued that the Board of Governors of the Institute never met so as to approve the amendment and nor was the Senate consulted before the amendment was made and, therefore, the same is illegal and contrary to the Rules governing the Institute. Rule 57(xxi) on which reliance has been placed reads as under :--

"57. Subject to the provision of the Memorandum of Association and the Rules, the Board shall in addition to all other powers vested In it, have the power to frame Regulations which may provide for all or any of the following matters :--

(i) to (xx)

(xxi) all other matters which by the Rules may be provided for by the Regulations. Provided that no Regulations shall be made affecting the condition of residence, health or disciplines of students and scholars, admission or enrolment of students and scholars, condition and mode of appointment or duties of examiners or the conduce or standard of examinations or any course of study without consulting the Senate."

It is true that the power to make Regulations is with the Board of Governors and when a Regulation pertains to the admission or enrolment of students, it can be framed only after consulting the Senate. This procedure is followed when Regulations are framed or altered in the normal course. However, the Director who is the principal academic and executive officer of the Institute and exercises general supervision and control over the affairs of the Institute and gives effect to the decisions of all the authorities of the Institute has been given emergency powers under Rule 38 of the Rules. If he is of the opinion that immediate action is necessary on any matter, he may exercise any power conferred on the Board and the Rule requires that he shall report to the Board about the action taken by him on such matter. It is further provided that if the Board is of the opinion that such action ought not to have been taken it may refer the matter to the President of the Institute whose decision thereon shall be final. The Council, Board of Governors and the Senate are, amongst others, the Authorities of the Institute and they an: large bodies which do not meet very often. The Board of Governors is the principal execute body of the Institute and it ordinarily meets

four times in a year. In these circumstances emergency powers have been given to the Director to act in the absence of the Board and place its actions before it. Similar provisions are found in the constitution of other academic bodies like the Universities where the Vice-Chancellors are given such emergency powers to act when the Syndicate or the Academic Council take time to meet and discuss an issue. Such powers are necessary to be given to one of the senior most functionaries to run the day-to-day administration. The Director is a senior officer of the Institute and his position is akin to that of a Vice-Chancellor in a University. The Director in the exercise of his emergency powers amended the Regulation in November, 2000 since it was to come into operation with effect from December 1, 2000 and it would have taken time for the Board of Governors to meet. His action was placed before the Senate of the Institute and the latter in its 50th meeting held on January 23, 2001 ratified the same. The Board of Governors has yet to meet and it is pleaded in the written statement that the matter will be placed before the Board in its next meeting for ratification. If the Board approved of the action then that will be the end of the matter and the amendment would be valid. In case, the Board does not approve the action of the Director, the matter will be placed before the President of the Institute whose decision thereon would be final. Till such time the Board meets, the amendment brought about by the Director in exercise of his powers under Rule 38 would operate. In this view of the matter, the amendment cannot be held to be invalid merely because it was not made by the Board of Governors. We are also of the view that when the Director exercises his emergency powers under Rule 38 of the Rules to amend a Regulation, it is not necessary for him to consult the Senate as envisaged in clause (xxi) of Rule 57 even though the amendment in the Regulation may relate to the admission or enrolment of students. Rule 38 is an independent provision and the power of the Director contained therein is absolute and there is no embargo placed on the exercise of that power that the Director must consult the Senate before he amends such a Regulation.

7. It was then contended by the learned counsel for the petitioners that the amendment which was brought about in November, 2000 could not apply to the writ petitioners who joined the 3rd semester (2nd year) of the course in July, 2000. In support of his plea he referred to the following clause in the prospectus issued for the academic year 1999-2000 :--

"Notwithstanding the nature of a programme spread over more than one academic year, the regulations in force at the time a student joins a programme shall hold good only for the examinations held during or at the end of the semester. Nothing in these regulations shall be deemed to debar the Institute from amending the regulations subsequently and the amended regulations, if any, shall apply to all students whether old or new."

A perusal of the aforesaid clause leaves no room for doubt that where a programme is spread over more than one academic year the Regulations in force at the time when a student joins the programme shall apply to him for the

examination to be held at the end of the semester. The programme here is a four years" degree course and the semester which the petitioners joined was the first semester in July, 1999 and, therefore, the Regulations which were then in force would govern them till the end of that semester. Thereafter, it is open to the Institute to make amendments in the Regulations and whatever amendments are made those shall apply to all the students whether they are new or old. It is, thus, clear that when the petitioners joined the 3rd semester in July, 2000 it was open to the Institute to amend the Regulations and having amended them, those would govern the petitioners as well. It cannot be said that the amendment in any way has retrospective effect. The amendment is prospective in nature and will govern all the students who would take their examinations with effect from December 1, 2000. A similar view was taken by the Apex Court in *Punjab University Vs. Subash Chander and Another*, and *Punjab University, Chandigarh Vs. Devjani Chakrabarti and Others*, . There is, thus, no merit in this contention of the learned counsel for the petitioners as well.

8. It was lastly urged that the amendment made in the Regulation is arbitrary and, therefore, deserves to be quashed. Reference was made by the learned counsel for the petitioners to the unamended Regulation to contend that it provided for a student to repeat the first year in case he failed to make the requisite grade and thereafter for the subsequent semesters he was required to obtain a CGPA of 4.5 and/or earn 50% credits. It was provided that if a candidate failed to do so he would be placed on scholastic probation and allowed to register for further studies. After the amendment, the learned counsel for the petitioners contended, the Regulation has become harsh and penal and it provides that the student has to leave the Institute if he fails to get either the CGPA of 3.7 or earn 40% credits in the first year and CGPA of 4.5 and 50% credits in the second year. This, according to the petitioners, is arbitrary. We are unable to agree with the learned counsel for the petitioners. The Institute follows the semester system of education and its salient features are continuous evaluation of students" performance, course-wise promotion and flexibility to allow the students to select courses and move at an optimum pace suited to their ability, capacity and interest. The continuous evaluation system is based on the mid-term tests, end semester examinations, tutorial class work and quizzes and laboratory work. The Institute has a transparent system of evaluation where answer-sheets of tests/ examinations/quizzes are given to the students and marks are displayed on the notice board. At the end of the semester each teacher gives a letter grade based on normal distribution of marks (relative grading). To get admission on the basis of merit in the Common Entrance Test is one thing and to show academic performance after admission is another thing. Admission to a programme does not give guar antee for the award of degree unless the performance of the student is up to the mark and meets the requirements of academic standards as laid down in the Regulations. Keeping in view the nature of the course and the system of education followed by the Institute, it cannot be said that the provision of the amended Regulation is in any way harsh. The blame lies with the

petitioners who have not worked hard. They did not fare well in the first year as well and they had an opportunity to repeat the courses in the second semester to improve their CGPA but they opted not to do so and Instead registered for the additional new courses. The Institute in its wisdom decided to amend the Regulation so that students who are unable to cope with the studies relating to engineering education could leave at the earliest without wasting much of their time. The Institute is a Deemed University and has a standard and status of its own and it has the right to maintain that standard by not allowing students who do not have the requisite aptitude for the engineering courses to continue after seeking admission. In these circumstances, we find no arbitrariness in Regulation 17 as it now stands.

9. No other point was raised.

10. In the result, we find no merit in the writ petition and the same stands dismissed with no order as to costs.