

(1987) 08 MAD CK 0048
In the Madras High Court
Case No : W.A. No.1191 of 1987

R. Karthik Kumar

APPELLANT

Vs

The Anna University

RESPONDENT

Date of Decision : 10-08-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) 08 MAD CK 0048

Hon'ble Judges : M.N. Chandurkar, C.J.;Srinivasan, J

Bench : Division Bench

Advocate : M.R. Narayanaswami for M/s. Ramani Natarajan and K. Sellathurai, for the Appellant; Row and Reddy, for the Respondent

Judgement

M.N. Chandurkar, C.J.—When at the time of the hearing of the application which the appellant has filed for a direction from this Court to hold a separate entrance examination for the petitioner for the Master of Computer Application Course (hereinafter referred to as M.C.A. course) conducted by the Anna University, we indicated to the learned counsel that we were not inclined to give the direction asked for, the learned counsel stated before us that if we were not inclined to grant any interim order, then the appeal itself might be dismissed. In view of this submission by the learned counsel we thought it would be proper to indicate why we did not think it fit to make an interim order directing the University to hold a separate examination for the petitioner. It cannot be in dispute that factually the petitioner cannot claim to have passed the B.Com., examination at the first attempt because in April 1986, examination, he had appeared only for three papers viz., Indian Economy, Business and Society and Business Mathematics and Statistics instead of all the five papers. For the remaining two papers viz. Corporate Accounting and Auditing and Company Law and Secretarial Practice, he appeared in the September 1986 examination. The reason given for not being able to appear at the examination in two papers in April 1986, was that on the day of the examination while he was on his way to the examination hall he had met with an accident. In his representation made to the Vice Chancellor, on the

19th July 1987, he has stated as follows-- "My motor cycle skidded on the roadside on a turn and I fell heavily to my right suffering several abrasions, bruises and a severe injury on my right hand and wrist.

The injury to my hand and my whole condition was most painful and I could not even ride my motor cycle.

I was taken to the Government Royapettah Hospital around 10 a.m. I was treated there for my injuries and given an A.T.S. injection. X-rays were taken and they revealed that the wrist was damaged. The wrist and the hand were immobilised and strapped up."

It may not be necessary to go into the truth of these averments.

2. The relevant clause with regard to the eligibility for admission to the M.C.A. course is reproduced by the learned Judge in his judgment. The qualification prescribed by the University was either "First class in first appearance in Bachelor's degree in Engineering or first class in first appearance in Bachelor's degree in Science/Commerce/Applied Science/Social Science/Management, with Mathematics, Statistics or Commerce as one of the subjects of study under "10 + 2 pattern." There is a note which indicates when a candidate cannot be considered to have secured a first class in first appearance. This note reads as follows--

For the purpose of interpreting first appearance besides failing in a subject (including language) even absenting oneself from writing the examination on any particular occasion will be considered as an appearance. Marks in the first appearance only will be considered. Improve-marks will not be considered.

Now the simple stand of the University is that whatever be the reason the petitioner cannot be said to have secured "first class in first appearance." The learned Judge, who dismissed the petition, directed against the refusal of the University to permit the petitioner to appear at the entrance examination held that the reason behind the rule was that "absence for any cause" whether involuntary or voluntary will fall within the note appended to the circular; more so when the rule made a reference to the failing in a subject. The relevant part of the finding of the learned Judge is in paragraph-13 and it reads as follows:--

I am, therefore, of the view that it is more a matter of semantics or tautology. But if one carefully perceives the reason behind the rule, absence of any cause" whether involuntary or voluntary will fall within the note appended to the circular; more so when it succeeds the words "besides failing in a subject", the object being to make the situation all comprehensive.

3. Now, undoubtedly, we admitted the appeal because at that stage we did not feel that it could be worthwhile considering whether the words "absenting oneself" in the note would exclude "involuntary absence".

4. However, when it came to making an interim order, we had directed that the

results would be published subject to the result of the appeal because we were of the view that withholding the results of even the successful candidates would be inflicting upon them stress and tension for which they were not in the least responsible, and also merely because the petitioner was agitating the correctness of the decision of the University to debar him from taking the examination, the future of the other students should not be affected. We had only directed the learned Advocate General who appeared for the University when we took up the matter at the special request of the counsel on a day when we were not sitting in a Division Bench and we had fixed the sitting in Chambers at the persistent request of the petitioner, to find out whether it would be possible for the University to hold a separate examination for the petitioner.

5. The University has now filed an affidavit justifying its view that the petitioner cannot even prima facie be treated as having secured a "first class" in the first attempt. The reason, which appears to us to be quite plausible, as given by the University is that the provision that a candidate must have secured "first class at the first attempt" is based on academic considerations and not on any legal criterion. According to the University, there are only six seats for open competition out of 30 seats for the M.C.A. course. There were 617 applicants for 30 seats out of which 58 applications were rejected in the first screening itself on various grounds including the ground of second appearance. Many of the applicants had not given the necessary particulars to enable the University to decide whether the applicants had passed in "first class at first appearance". The petitioner also had not given the necessary particulars and he was called upon to furnish further details before hall tickets could be issued. However, instead of furnishing all the details to the scrutinising authorities, the petitioner approached the Vice-Chancellor requesting him to intervene in the matter. According to the University, some common basis for comparison of marks obtained in the qualifying examination had to be devised. One of the criteria was the candidate obtaining first class. The second criterion was "first class at first appearance" which meant that the candidates should have taken all the subjects of the qualifying degree examination in one sitting because it is possible that a candidate who passes an examination in more than one instalment can always secure, other things being equal more marks than a candidate who takes all the subjects including languages in one sitting. This was because such a candidate would have more time for preparing for the subject. According to the University, the stipulation of first class in "first appearance" was meant to provide a reasonable common basis for comparison of the performance of the candidates in the qualifying examination. There is much substance in the stand which the University has taken that a student who completes the same number of subjects in instalments, whatever be the reason, cannot be compared with a candidate who completes all the subjects taken together in one examination. The stand of the University is that having regard to the heavy competition "to allow a candidate who has passed the subjects of an examination in more than one instalment with greater time for preparation than those who have taken all the

examinations in one sitting will totally vitiate the common base which is sought to be established."

6. The second reason given by the University for not treating the person who has appeared in different subjects at different points of time, whatever be the reason, at not having secured a first class in the first attempt is that candidates can always produce certificates of inevitable absence and it will become almost impossible for the University to scrutinise and decide on the validity of the reasons that may be given for the absence especially when they are supported by some documents, legal, medical or otherwise. The University has taken the stand that it cannot differentiate between one medical certificate and the other and any decision could be questioned. The University refers to the possibility that candidates who may leisurely complete the requirements in more than one sitting will also have to be allowed to compete for the literally few seats which the University has to fill by way of open competition as against candidates who have completed in one sitting and whose number is itself large.

7. The learned counsel for the petitioner has vehemently contended that the University cannot speculate as to the conduct of the candidate in future and each case will have to be decided on its own facts when the case is brought before the court. Now to say the least, it is difficult for us to reject the argument of the University that it would be unfair to the candidates who have appeared for all the subjects at one stretch at one examination to have their performance judged in comparison with the candidates who have for one reason or another not taken all the papers at one examination and have passed an examination in two or more than two instalments. It is clear that the performance of candidates who clear subjects by instalments cannot be compared with the performance of candidates who clear all the subjects at one examination. In this context, the reason why a candidate was unable to appear for all the subjects, in our view, becomes wholly immaterial. Where subjects are cleared by instalments the number of marks obtained in such subjects can stand no comparison with the number of marks obtained by candidates who have appeared for all the subjects at one examination because the time for preparation for the respective subjects examination for which is given by instalments is much longer as compared with the time available for each subject to the candidate who takes all the subjects at one examination.

8. If there is one thing which is necessary about a rule, it must be its certainty. Cases like the present one, if permitted would only introduce an uncertainty because it may be impermissible to draw a line at any particular number of attempts at which a candidate has passed an examination. In a given case, it may be that a candidate has passed an examination in three instalments or four instalments. Even assuming, therefore, there may be a good justification for a candidate to remain absent, having regard to the unfairness involved in permitting such a student to compete with students who have taken the examination at one stretch, the case of the University cannot be rejected as

wholly untenable and it would not therefore be proper to direct the University to hold a separate examination for one student. The additional reason for not making such an order also is that his performance will now be compared with the performance of students who have taken altogether a different paper at the entrance test and it cannot therefore be said that the merit will be considered on identical considerations.

9. It also appears to us that any attempt to give a liberal construction to the rule is bound to involve the University in difficult situations especially when the construction placed by the University does not appear to us to be either perverse or unreasonable. Having regard to the object which the University has in mind, viz., to have the best students in the open competition, it is entitled to take the view that the marks obtained in further examinations will not be taken into account,

10. We may with advantage refer to the five Judges Constitution Bench decision of the Supreme Court in *Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman*, , in which the Supreme Court has highlighted the fact that in educational matters and in respect of orders passed by the educational authorities the High Court should be slow to interfere where the construction placed on a rule or a regulation by the educational institution is a plausible construction. In paragraph 20 the Supreme Court observed as follows:--

It is hardly necessary to emphasise that in dealing with matters relating to orders passed by authorities of educational institutions under Art. 226 of the Constitution, the High Court should normally be very slow to pass *ex parte* interim orders, because matters falling within the jurisdiction of the educational authorities should normally be left to their decision, and the High Court should interfere with them only when it thinks it must do so in the interests of justice. Even on the merits, we think we ought to point out that where the question involved is one of interpreting the regulation framed by the Academic Council of a University, the High Court should ordinarily be reluctant to issue a writ of certiorari where it is plain that the regulation in question is capable of two constructions, and it would generally not be expedient for the High Court to reverse a decision of the educational authorities on the ground that the construction placed by the said authorities on the relevant regulation appears to the High Court less reasonable than the alternative construction which it is pleased to accept. The limits of the High Court's jurisdiction to issue a writ of certiorari are well recognised and it is, on the whole, desirable that the requirements prescribed by judicial decisions in the exercise of writ jurisdiction in dealing with such matters should be carefully borne in mind.

11. So long as the decision of the University cannot be considered to be *ex facie* unreasonable, it would not be proper for us to issue the interim directions prayed for by the petitioner and thereby interfere with the affairs of the University especially when the object of the rule is to achieve higher academic standards. We are not therefore inclined to make any interim direction.

12. The learned counsel has referred us to the decision of the Supreme Court in *Abhijit Vs. Dean, Government Medical College, Aurangabad and Another*, and wanted to contend that the rule in the instant case would become arbitrary. The rule which the Supreme Court was construing in that decision was in the form of a note in R.IV-5 (e) of the Rules relating to a Appointment of Residencies. The note reads as follows:--

For the purpose of the reductions, non-appearance at any examination when due, is deemed as an attempt at the said examination.

In that case, the candidate had secured first rank in the order of merit in the Third M.B.B.S. examination of the Marathwada University in May 1985. He stood first in Surgery/ E.N.T./Ophthalmology and he sought admission to the M.S. degree course commencing in July 1986. The candidate was not selected as deduction of five per cent was made from the marks obtained by them on the ground that he had passed the subjects in his second attempt. The basis for holding that he had passed in the second attempt was that in the Third M.B.B.S. final term, the candidate suffered from infectious hepatitis and was therefore unable to attend classes and clinics. He applied to the dean "to cancel Third M.B.B.S. final term" and to permit him to attend classes and clinics regularly with the next batch. This was done and the candidate passed the Third M.B.B.S. examination creditably by securing the first rank. The facts in that case will disclose that the candidate had not even submitted the application form for the Third year M.B.B.S. examination and that he had in fact appeared for the Third year M.B.B.S. at the first opportunity that was available to him and yet a deduction of 5 per cent of marks was made. On these facts, the Supreme Court held that there appeared to be no justification for holding that the candidate passed the Third M.B.B.S. examination in the second attempt. As a matter of fact, there was no rule which defined what the second attempt was, but it was contended on behalf of the Dean of the Medical College, that there were rules for appointment of Residents under the Third year Residency Programme at Government Medical Colleges and these rules defined what was the second attempt and since those admitted to the M.S. degree course were necessarily to be appointed to Residencies the rules applicable to Residencies were made applicable to those seeking admission to the M.S. degree course. The Supreme Court held that the rules relating to Appointment of Residencies could not regulate admission to M.S. degree course. The Supreme Court then observed as follows--

We may at once say that the appellant was not "due" to appear at the examination as he had not put in the necessary attendance of the classes and clinics and had not even submitted his application form for the examination. We are also of the view that if the rule has the effect of treating failure to appear at the examination because of serious illness as non-appearance at the examination so as to make the candidate liable to a deduction of five per cent of marks when seeking admission to a Post-graduate course the rule is indeed

arbitrary.

13. Now the observations which are made by the Supreme Court that the rule would be arbitrary was in the context that the candidate was not "due" to appear for the examination. In the instant case, the petitioner had not only appeared at the examination, but we are dealing with an entrance examination where the question is one of competition. Competition could be between persons who have subjected themselves to identical tests and we are not able to see how the University was not justified in not treating a person who had passed the examination by instalments, whatever be the reason, as not being on the same footing as those who have passed the examination at one stretch in one examination. As we have already indicated, the learned counsel did not think it worthwhile to keep the appeal pending, if we were not inclined to make an interim order. Accordingly, it does not become necessary for us to go into the merits of the appeal. The applications as well as the appeal are dismissed with costs.