
(1998) 09 CAL CK 0050
In the Calcutta High Court
Case No : Writ Petition No. 2472 of 1998

Rajorshi De

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision : 24-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 Cal 60 : 1 CWN 98

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Amal Sen, Jayanta Biswas and Dipankar Dutta, P.K. Das, Bhaskar Sen, P.K. Ghosh, Ketaki De, Sovon Chakraborty, T.C. Dutt, for the Appellant;

Judgement

Amitava Lala, J.—The writ petitioner is a student of MBBS Course in the R.G. Kar Medical College, Calcutta affiliated under the University of Calcutta.

2. In July, 1997, he sat in the first MBBS examination. There are three subjects in the first MBBS examination i.e. Anatomy, Physiology, Bio-chemistry. There are three types of tests in holding examination, i.e, theory and oral, practical, internal assessment. Pass marks in respect of each subject is to be considered by adding up all the marks obtained by the candidate separately. Out of the three subjects the writ petitioner passed in physiology but he failed in internal assessment in, two subjects i.e. Anatomy, and Bio-chemistry. Each examination is to be followed by a supplementary examination, which gives a chance to failed candidates to cover up their marks to go for the further MBBS courses.

3. The contention of the writ petitioner is that although he got chance of sitting in the external examination in July, 1997 in respect of Anatomy and Bio-chemistry as well as in supplementary examination but did not get opportunity to sit for internal assessment in supplementary examination. Self-same marking of the internal assessment of the main examination, where he failed, were added with the result of the supplementary examination. Thus the petitioner/candidate again shown as failed candidate.

4. In the premises, the plinth of the argument of the petitioner is that a candidate should get a real chance in all respects to sit in the examination both for internal and external assessment.

5. The writ petition contains various grievances as against the University and College authorities and sought for various reliefs, but at present primarily for the following :

"(i) to direct the respondents to allow the petitioner to join 3rd year MBBS classes, both practical and theory so that he is not short of requisite percentage for the 2nd MBBS examination subject to the result of the Rule or any other order.

(ii) to award mean/average marks in the Internal Assessment (Anatomy/Biochemistry) to the petitioner on consideration of the marks awarded to him in theory, oral and practical of the relevant subjects of the 1st MBBS supplementary Examination, 1997."

6. During the course of hearing on the basis of an interim order passed by a single Bench of this Court, the writ petitioner obtained an opportunity to sit in the examination for internal assessment both in Bio-chemistry and Anatomy examinations in March, 1998. He obtained 18 marks out of 30 in Anatomy and similarly, 18 marks out of 30 in Bio-Chemistry but unfortunately, he was not able to sit in external assessment examination of Anatomy due to his illness. Therefore, presently he is also passed in Bio-Chemistry.

7. The petitioner also sat on subsequent examination in course of hearing of the writ petition but without any order. Simply writ Court adjourned the matter upon hearing the submissions of the parties and upon knowing that the petitioner went to sit in the examination. Now, the next internal assessment examination is forthcoming preferably it will be taken up on 7th October, 1998.

8. The petitioner contended that not giving a chance to sit for internal assessment examination in the supplementary examination or not having process of taking internal assessment in the supplementary examination is contrary to principles of natural justice and as such he will be declared as passed in the examination in July, 1997 on the basis of his performance in the internal assessment examinations in March, 1998 so that he may not lose one educational year.

9. In support of the contentions of the petitioner time to time Mr. Harshit Chakraborty, Mr. P.K. Das, Mr. Bhaskar Sen and other Learned Advocates made various submissions. In support of their contentions and to clarify the factual and legal aspects Mr. Das, in support of his contentions, cited a judgment reported in University of Calcutta and others Vs. Sm. Gopa Chakraborty and another, in the case of University of Calcutta v. Gopa Chakraborty and submitted that average marking and declaration of pass by the Court is not unusual by applying all courses of natural justice and it happened in many occasions.

10. Thereafter Mr. Das cited a judgment reported in Saroj Poddar and Others Vs.

Vice-Chancellor, Calcutta University and Others, wherein similarly the petitioners have challenged the way of conducting and/or holding examinations of supplementary Bio-chemistry first professional MBBS examination paper, 1995 held in 1996 and prayed for cancellation of the same. To that extent an inference was drawn against the authorities by a single Bench of this Court, on the basis of an apparent irregularity in holding examination.

11. Mr. Das also cited a judgment reported in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, By citing this judgment Mr. Das contended that the management of the college is not being private body, the writ of mandamus is convenient remedy and applies in the case. He further cited a judgment reported in *Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*, . In the case of *Comptroller and Auditor General of India etc. v. K.S. Taganathan* where the public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and by materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. All such cases fit and proper case a High Court can in the exercise of its jurisdiction under Article 226 issue a writ of Mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performances in a proper and lawful manner of the discretion conferred upon the Government or a public authority.

12. The writ petition was opposed by two sets of counsel one is respondent Nos. 1 and 2 i.e. University of Calcutta and Vice-Chancellor, Calcutta University, other is also State of West Bengal as well as the R.G. Kar Medical College and Principals/Heads of the Department of various Medical Colleges being respondent Nos. 3 to 7 herein.

13. Mr. Tapan Dutt, learned Advocate for the respondent Nos. 3 to 7 contended that a supplementary examination is required, under the rules, to be held within 4 weeks after the main examination. Internal assessment is done at the end of each semester of six months. There just is not enough time for holding a fresh Internal Assessment between a Main professional examination and the next supplementary examination. It is therefore not possible that a supplementary examination should also provide for a fresh Internal assessment.

14. Internal assessment is a part of the Theoretical paper. There is no separate pass mark in internal Assessment. So, if a candidate does badly in an Internal Assessment Examination, he can still make up for it by doing well in the Supplementary Examination in the other parts of the Theoretical paper namely written and oral. Petitioner's performance in written and oral parts of the Theoretical paper in the supplementary examination was not good enough to cover up his short coming in the first Internal Assessment.

15. As Internal Assessment is only separate part of the Theoretical paper (which is examined again in the supplementary examination) the petitioner cannot complain that the supplementary examination rules are bad in not allowing a fresh Internal assessment. And that the petitioner is estopped from challenging the rules for supplementary examination as he passed Physiology under the same rules for supplementary examination. He is relying on such pass and has not opted to sit for Physiology in 3rd and 4th chances. He cannot take the benefit of the rules when it suits him and challenge the rules when it does not suit him.

16. When the petitioner sat for his 3rd chance (First Professional MDBS in 1998) he took the leave of the Court, protecting his rights in the writ application. But when he sat for his 4th chance he sought such leave but such leave was not granted. Yet he went ahead and sat for the 4th chance. Therefore, he must be deemed to have abandoned his contentions in the writ application.

17. He further contended that examination of the petitioner was bad because he did not even appear for some of the internal assessment examination during the three semesters 1995-1997, as available from the college records. He further contended that the four cases cited by the petitioner are not applicable in the present case. So far as University of Calcutta and others Vs. Sm. Gopa Chakraborty and another, is concerned the factual aspect of loss of answer scripts and obtaining the benefit out of some cannot be equated with the present case. So far as Saroj Poddar and Others Vs. Vice-Chancellor, Calcutta University and Others, is concerned he contended that the examinations were irregularly held and it is true as to the appointment of some of the examiners made against rules and such ground too can't be equated with the present case. So far as Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, is concerned he contended that the principle has no application in the present case. So far as Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, is concerned he contended that there is no question of arbitrariness on the part of the authorities and as such the case is also not applicable with the present case.

18. Ultimately Mr. Dutt concluded his submissions by saying that the writ petition should be dismissed.

19. So far as the other respondents being the Calcutta University and Vice-Chancellor, Calcutta University are concerned Mr. Jayanta Biswas and Mr. Dipankar Dutta, learned Advocates for the respondent Nos. 1 and 2 are cited various judgments in support of their arguments viz. a judgment reported in Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, in the case of Krishna Priya Ganguly v. University of Lucknow and submitted that the High Court cannot re-write or relax the rules framed by the University as to the question of holding examinations. Mr. Biswas, learned advocate further cited a judgment reported in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others,

in the case of Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kurmarshetn etc. and stated that the process of evaluation of answer papers does not attract the principles of natural justice since no decision making process which brings adverse, evil consequences to the examinee is involved. The principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd length as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners. It is not for the Court to examine the merits or demerits of a policy laid down by the regulation-making body because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation making power conferred on the delegate by the statutes.

20. Mr. Biswas further cited a judgment reported in 1984 (Supp) SCC 372 in the matter of Arun D. Desai v. High Court of Bombay in para 3 of this judgment, Supreme Court held students who fail in their examinations are generally prone to make such allegations to explain their failure and to console themselves with the thought that, not they but the examiners are to blame. We understand, the anguish of the petitioner at his failure but we have no power to pass him.

21. He also cited another judgment reported in Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, to establish that as the petitioner had appeared for the examination without protest but he failed. The petitioner only after he had perhaps realised that he would not succeed in the examination sought for relief, such relief ought not to be granted to such petitioner,

22. He also cited a judgment reported in 1998 (2) CHN 61 in the case of..... and submitted that the Division Bench of this Hon''ble Court upon consideration of various other judicial pronouncements have reiterated the settled proposition of law that a Court cannot grant relief on humanitarian ground contrary to law.

23. Ultimately they have also concluded their submissions by saying that in view of the circumstances, the petitioner should not be entitled for any relief as claimed by the petitioner and is liable to be dismissed with costs.

24. After careful consideration of the submissions advanced by the parties at length I have come to the following balancing factors :

(a) As to whether Court can pass a failed candidate in an examination held by the University ?

(b) As to whether there is any specific Rule in respect of not giving chance to sit in internal assessment examination in supplementary examination ?

(c) Whether by not allowing the candidate by the authority to sit for internal

assessment in the Supplementary examination for inconvenience other than Rules can it be said that appropriate chance was given to him for passing and in such circumstances no equitable justice can be rendered?

(d) Can the numbers obtained by the writ petitioner/candidate in subsequent internal assessment examination in the year 1998 be relate back to the examination held in 1997 ?

(e) Whether the petitioner can be declared as pass on the basis of the average marking in the subsequent examination so that one examinational year can be minimised ?

25. I have also carefully considered the following balancing factors and I feel that neither there is specific Rule for not giving chance to sit a candidate for internal assessment examination with the supplementary external examination but there is inconvenience which cannot be said to be Rules, on the other hand, Court cannot pass a failed candidate in an examination. A chance means a chance to appear and/or to pass examination. It is apparent that the writ petition was refused by the authority from sitting for internal assessment in supplementary examination but then the Court has to get cast-iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible for the purpose of applying discretion by it. Had it been the position that in March 1998 when the petitioner passed in the internal assessment examination also availed the opportunity of sitting and passing in external examination but not for the illness matter would have been ended therein. Similarly had there been good result in external examination no question of giving similar marks arose. Therefore this is not cast iron case before this Court when Court should apply discretion by declaring him as pass. Now by not having appropriate Rule and not having such cast iron case Court has no other alternative but to direct the authority to apply discretion, if it is otherwise permissible and upon considering those in the manner as directed below. Other issues are incidental to the above two main issues.

26. Under these circumstances, the Vice-Chancellor of the University of Calcutta being respondent No. 2 herein is directed to hear out the representation of the writ petitioner and his guardian immediately on receipt of the signed copy minute of the operative part of the order and after giving reasonable opportunity of hearing sympathetically, if necessary by giving hearing at his residence in case of puja holidays and finding out the position of the Rules if there is any scope of applying discretion, can apply the same immediately by declaring him as pass on a date much earlier than the next date of examination on 7th October 1998 so that the petitioner can get benefit of not losing another educational year and can sit in the examination as aforesaid with special permission.

27. Leave granted to obtain the xerox copy of the judgment. Leave granted is also to the University and concerned College to take back the answer scripts and attendance sheets,

28. Vice Chancellor of the University of Calcutta and all parties are to act on a signed copy minute of the operative part of the order. Order accordingly.