

**(1974) 02 RAJ CK 0018**  
**In the Rajasthan High Court**  
**Case No : Special Appeal No. 113 of 1970**

Ram Kumar Sharma

APPELLANT

Vs

The University of Rajasthan

RESPONDENT

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**Date of Decision :** 18-02-1974

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** AIR 1975 Raj 85 : (1974) RLW 111 : (1974) 7 WLN 85

**Hon'ble Judges :** B.P. Beri, C.J.; D.P. Gupta, J

**Bench :** Division Bench

**Advocate :** C.L. Agarwal, for the Appellant; S.M. Mehta, for the Respondent

**Final Decision :** Allowed

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## Judgement

Gupta, J.—In the Summer Schools-cum-Correspondence Course Scheme, 1968 of the University of Rajasthan, Ram Kumar Sharma appellant appeared for his Bachelor of Education (B. Ed.) Examination. He was declared unsuccessful and feeling aggrieved he presented a writ petition under Article 226 of the Constitution of India to this Court praying that the interpretation of the relevant regulation No. 43.B-6 given by the University was erroneous and he deserved to be declared successful. The University of Rajasthan joined issue by filing an answer in support of the interpretation it had taken of the regulations which were applicable to the appellant. The learned single Judge of this Court by his order dated January 23, 1970 examined the scheme of the examination and observed that it was capable of two interpretations but in view of the observations of their Lordships of the Supreme Court in Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman, preferring the view taken by the University, he dismissed the writ petition. Aggrieved by that decision Ram Kumar Sharma has come up in appeal.

2. Mr, Agarwal, learned counsel for the appellant, urged that the correct interpretation of Note (4) of Regulation No. 43. B-6 is that the minimum number of marks which a candidate was required to obtain in order to pass the

examination in every subject in the external was 35 per cent, and in the internal assessment it was to be 40 per cent, and 45 per cent, in the aggregate. The University is in error when it insists that a candidate must secure 35 per cent, marks in each paper, on account of which interpretation the appellant was declared unsuccessful. He brought to our notice Ordinances Nos. 329.L-2, 329.L-5c and 329.L-23 for the purpose of showing that the University has been consistently keeping a marked distinction between the word "subject" and the word "paper." In note 4, urged the learned counsel, each subject meant the totality of papers, if there were more than one, under the subject, and in the instant case, he said that in the subject "Philosophical and Sociological Foundation of Education", although the papers were two in number, the subject is one. He endeavoured to explain the observations of the Supreme Court in the case of Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman,

3. Mr. S. M. Mehta, learned counsel for the University, submitted that the words "subject" and "paper" were loosely employed by the University in its Hand-Book and sometimes they have been treated as interchangeable. To illustrate his point, he urged that in Regulation No. 43.B-6 itself in item No. 5 though the paper is one, it mentions two subjects. By way of reference, he invited our attention to the scheme of examination contained in regulation 43.B-1 which is the regular scheme for B.Ed, and urged that the intention was that a candidate must attain a level of pass efficiency by obtaining 35 per cent, marks in each paper.

4. Mr. Agarwal urges and it is not disputed by Mr. Mehta that this scheme under Regulation No. 43.B-6 lasted for only one year and has since been abolished and there are only two candidates who are affected by the out-come of this interpretation.

5. We are required to consider in the light of the judgment of the Supreme Court, whether the interpretation put by the University is a possible interpretation.

6. The relevant regulation 43.B-6, which we are called upon to interpret, reads as under:--

"Regulation 43.B-6, Bachelor of Education Examination (Summer Schools-cum-Correspondence Course)."

1. Each written paper shall be of 3 hours duration.

2. The scheme of Examinations shall be as under:--

S. No.

Paper,

Marks. Internal. External.

1. Philosophical and Sociological Foundation of Education (Paper I). 125 25 100

2. Philosophical and Sociological Foundation of Education (Paper II). 126 25 100

3. Psychological Foundation of Education. 125 25 100

4. Workshop in Teaching 125 125 No Uni. Exam

5. Supervised Teaching and Field experience (Two subjects). 200 100 100\*

\*Marks to be awarded by a team of College supervisor and teacher educationists to be appointed by the University, one of them to be appointed as convener by the University, -

Optional Subjects :

6. Content-cum-Methodology (First Paper). 100 50 50

7. Content-cum -Methodology (Second Paper).

100 50 50

Noten: 1. X X X X X

2 X X X X X X

3 X X X X X X

4. The minimum number of marks re-quired to pass the examination shall be 35 per cent. in the external except in supervised teaching and field experience in which it will be 40 per cent. and 40 per cent. in the internal assessment in each subject and 45 per cent. in the aggregate of the marks obtained in the internal assessment and external examination in all the papers combined. Candidates who obtain 60 per cent. or more of the total maximum marks shall be placed in the first division, those who secure not less than 50 per cent. in the second division and all below in the third division. Candidates shall be awarded distinction in the subjects in which they obtain 70 per cent. or more marks."

As is apparent, the scheme of examinations shows that there are seven papers out of which the first two papers have been referred to as ""Philosophical and Sociological Foundation of Education (Paper I) and (Paper II)" respectively. The petitioner-appellant obtained 28 marks in the first paper and 46 marks in the second paper in external examination out of 100 marks each. In both these papers together he thus obtained 74 marks out of 200. Now the question is that if these two papers are considered as separate subjects then the candidate was required to obtain 35 marks in each of them separately, but if both the aforesaid papers are collectively considered as one subject, then the candidate was inquired to obtain 70 marks out of 200 in both the papers together in the external examination While the counsel for the University canvasses the interpretation that they are two subjects and the candidate was required to obtain 35 per cent minimum marks in each of them separately in the external examination, the appellant's counsel submits that although there are two papers, yet they together constitute one subject and that the appellant has fulfilled the requirement laid down by the University, as he obtained more than 35 per cent, marks in both the papers collectively.

7. The subject-matter of the controversy between the parties centres round note (4) appended to the aforesaid regulation 43.B-6, in respect of minimum pass marks relating to external examination. Bereft of superfluities, note (4), so far as it material for the present case, provides that "the minimum number of marks required to pass the examination shall be 35 per cent, in the external and 40 per cent, in the internal assessment in each subject" (emphasis is ours). While in Clause (2) of the regulation prescribing the scheme of examination the word "paper" has been used, but in note (4), while prescribing the minimum number of pass marks in respect of external examination and internal assessment the word "subject" has been employed. It appears that a marked distinction has been maintained by the University bodies between a "subject" and a "paper." A consideration of other related Ordinances and Regulations also goes to show that whenever the intention was that the minimum pass marks should be obtained by a candidate in each paper separately it has been specifically mentioned as such by the University authorities. For instance, in regulations 43.B-1 and 43.B-1A which relate to the regular scheme for B.Ed, examination, it has been provided that the minimum pass marks required were "(i) 35 per cent and 40 per cent, marks at the External and Internal Assessment respectively, in each paper under Part I" and "(ii) 50 per cent, marks in each of the subjects (a) practice teaching (b) Content and (c) Physical Education-Health, Recreation and Hygiene under Part II." Thus in those regulations also when the University prescribed the minimum pass marks in respect of papers under Part I the words "each paper" have been used, but when the minimum pass marks were prescribed in respect of subjects under Part II the words "each of the subjects" were employed. In ordinance 329.L-2 "Philosophical and Social Foundations of Education" has been described as a "subject" for one year Teacher Education Course, for the degree of Bachelor of Education, while in the corresponding Regulation 43.B-1 it has been provided that the examination in that subject shall be conducted by means of two papers described as "Paper I" & "Paper II." Similar is the case in the One year Teacher Education Course in Languages for the degree of Bachelor of Education (Languages) inasmuch as Ordinance 329 L-5C describes "Philosophical and Social Foundations of Education" as a "subject", while the related Regulation 43.B1-A provides that the examination in the aforesaid subject shall be conducted by means of two papers. In Ordinance 329 L-23 relating to the degree of Bachelor of Education (Craft), although "Social and Philosophical Foundations" have been described as a "subject" the corresponding Regulation 43.B-3 clearly provides that the number of papers in the said subject shall be two. Thus in the schemes of related examinations leading to the Degree of Bachelor of Education itself, the University authorities have consistently employed the word "subject" and "paper" to connote different concepts and further "Philosophical and Social Foundations of Education." has been consistently treated as one subject in respect of which there are two papers in all the examinations referred to above. There does not appear to be any reason, to think that the University intended to depart from the aforesaid pattern when it laid down the scheme of examinations relating to the "Summer School-cum-Correspondence Course", for the very same

degree of Bachelor of Education. In our opinion the University has employed the word "subject" to denote one composite whole while the word "paper" has been used to describe the unit of examination. This distinction permeates throughout the scheme of examinations relating to the faculty of Education.

8. We are, therefore, of the opinion that in note (4) appended to Regulation 43.B-6 the minimum pass marks are required in "each subject" and not in "each paper." Further the subject "Philosophical and Sociological Foundation of Education" (Summer School-cum -Correspondence Course) has got two papers and as such there is no doubt that the requirement of the aforesaid note (4) would be fulfilled if a candidate obtains minimum 35 per cent, marks in external examination in the said subject as a whole and there is no requirement that a candidate should obtain 35 per cent marks in each one of the two papers in that subject separately. So far as the submission of Mr. Mehta that in paper "Supervised Teaching and Field Experience" described at S. No. 5 in Regulation 43.B-6 two subjects have been mentioned, it is enough to observe that the "two subjects" refer to two school subjects which have been described in Ordinance 322 and in respect of which supervised teaching is to be conducted,

9. The learned single Judge did not enter into the controversy whether "Philosophical and Sociological Foundations of Education", paper I and paper II constituted two different subjects or was only one subject. But on the basis that each paper was assigned separate marks, he came to the conclusion that a candidate should secure minimum percentage of 35 per cent, paperwise and not subjectwise. With respect, we are unable to agree inasmuch as a plain reading of note (4) shows that the minimum number of marks required to pass the examination so far as external examination and internal assessment are concerned, is subjectwise. As a matter of fact, it was not even the stand taken by the University that the minimum pass marks were required paperwise, as would appear from the letter of the Registrar of the University dated 22nd April, 1969 (Ex. 2) wherein the interpretation given was that the "Philosophical and sociological Foundation of Education Paper I and Paper II" are two different subjects. Thus the whole basis of interpretation by the University appears to be that these two papers constitute two different subjects and not one subject. Merely because separate marks have been assigned to each one of the papers, in external as well as internal assessment, do not lead to the inference that the minimum pass marks are required to be obtained in respect of each paper separately. For ought we know the ambit of the subject of Philosophical and Sociological Foundation of Education may be so wide that in one paper of 3 hours or so it may not be possible to cover its scope and in the interest of comprehensiveness and convenience the subject has been divided in two papers. However we have said above that from the plain reading of note (4) as also from a consideration of the schemes of examinations of B.Ed. (Regular Course) and other related examinations, it is absolutely clear that "Philosophical and Sociological Foundation of Education" or "Philosophical and Social Foundations of Education" has throughout been treated by the University as one subject having

two papers. An examination of the original mark-sheet Ex. 1 furnished by the University to the petitioner-appellant also shows that "Philosophical and Sociological Foundation of Education" has been mentioned as a major head under which two minor heads have been mentioned as paper I and paper II. Thus there is no doubt in our minds that "Philosophical and Sociological Foundation of Education" constitutes one subject having two papers.

10. The learned counsel for the university relied upon the following observations of their Lordships of the Supreme Court in *Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman*, and has submitted on the basis of that decision that even if the interpretation sought by the petitioner-appellant is more plausible, this Court shall not interfere with the interpretation placed by the educational authorities on the ground that the construction placed by the University on the relevant Regulation appears to be less reasonable :

"Even on the merits, we think we ought to point out that where the question involved is one of interpreting a 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.""

11. We may observe that in the present case it does not appear to us that note (4) appended to Regulation 43.B-6 is capable of two constructions. There is only one possible construction which could be placed upon the aforesaid note, namely that a candidate was required to secure minimum 35 per cent, marks in each subject and the "Philosophical and Sociological Foundations of Education" is one subject having two papers. It may also be mentioned that in the case before the Hon'ble Supreme Court, the Registrar had referred the matter to the Vice Chancellor of the University, who had interpreted the Regulation in one way, which was capable of two interpretations and in those circumstances it was held by their Lordships that the High Court should not generally interfere in a writ of certiorari. Further, in that case the Regulation in question had remained in force for many years and was interpreted by the University authorities in the same manner for quite some time till the matter came to be examined by the High Court. In the present case it has not been shown to us that any of the Academic bodies of the University, either the Syndicate, Senate or the Academic Council or even the Vice Chancellor of the University had placed any construction upon Regulation 43.B-6. It is only the Registrar of the University, who in his letter Ex. 2, took the view that two papers of "Philosophical and Sociological Foundations of Education" constitute two different subjects. Moreover, as mentioned above, the Scheme of examinations relating to the Summer School-cum-Correspondence Course remained in force only for one year, namely during the

year 1968. Thus it cannot be said that there was any authorised consistent interpretation placed upon regulation 43.B-6 by Academic bodies of the University. In this view of the matter, the appellant having secured more than 35 per cent, marks in the external examination in the subject "Philosophical and Sociological Foundations of Education\*", he should not have been declared as having failed in the B.Ed, examination, 1968 (Summer School-cum-Correspondence Course).

12. The appeal is, therefore, allowed with costs. The order passed by the learned single judge dated 23-1-1970 is set aside and the declaration of the result of the petitioner-appellant regarding the B.Ed, examination under the Summer School-cum-Correspondence Course in the year 1968 is quashed. The University is further directed to declare the result of the petitioner afresh in the light of the observations made above.