

(2014) 11 KL CK 0109

In the High Court Of Kerala

Case No : WP (C). Nos. 5205 of 2014 (A), 7054 of 2014-F, 23768 of 2014-U, 26258 of 2014-F and 26261 of 2014-G

Rebecca Saji Moses

APPELLANT

Vs

Mahatma Gandhi University

RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Mahatma Gandhi University Act, 1985 — Section 10, 10(17), 39, 40, 40(1)

Citation : (2014) 11 KL CK 0109

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : P. Deepak, Advocate for the Appellant; Varghese M. Easo, SC and Tony George Kannanthanam, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioners in all the above writ petitions were students of M.Tech, who completed the course from two different colleges, one under a private management and the other a self-financing college of the University itself. The petitioners completed their course of study in the year 2013. They failed in some subjects of the 1st and 2nd semester regular examinations, for which they appeared in the supplementary examinations and passed in the individual subjects. The petitioners in W.P.(C). Nos. 23768 of 2014 and 26258 of 2014 are persons identically situated, but with the difference that they failed in the supplementary examinations of the 1st semester and appeared in the subsequent supplementary examinations, the results of which are awaited.

2. The issue agitated before this Court is, as to whether they can be declared passed in the semester examinations and are entitled to issuance of course certificate as per the Regulations of the University. Admittedly, except for the two petitioners, noted above, all the other petitioners have passed with Grade "E" or above in all the papers. Grade "E" is the minimum for a pass in the individual papers. The two petitioners referred above; but for the papers in which they have appeared in the second 1st semester supplementary examination, has also

acquired pass grade of "E" or above in all the other papers. The University declined grant of course certificate on the ground that they do not have 6 [six] Semester Grade Point Average (for brevity "SGPA") as prescribed in the Regulations.

3. The petitioner in W.P.(C). No. 26261 of 2014 has produced Exhibit P1 "Regulations for Admission, Scheme and Syllabi for M.Tech. Degree Course" [with effect from 2011 admissions], which, according to the University, have been amended by Exhibits P6 and P7. The amended Regulations, according to the University, prescribe for "6 SGPA" for certifying a student as having passed. Hence, a student, according to the University, to be conferred with a post-graduate degree should have passed with a minimum of Grade "E" in all the individual subjects and should have acquired "6 SGPA", in each of the semesters.

4. The petitioners primarily challenge the amendment to the Regulations, as having not been notified properly through the Colleges in which they were studying, and essentially, having no force of law for reason of the same having not been published in the Gazette as provided in the statute. To buttress the above contention, the learned counsel appearing for the petitioners refers to Sections 10, 39, 40 and 42 of the Mahatma Gandhi University Act, 1985 [for brevity "the Act"]. Section 39 indicates that, the power to make Regulations in academic matters are conferred on the Academic Council. Section 40(1) gives power to the Academic Council to provide for Regulations made under Section 39 to have effect from the date, which the Academic Council prescribes. Section 42 requires that all Statutes, Ordinances and Regulations made under the Act shall be published in the Gazette. Section 10(17) confers power on the Vice-Chancellor to take any decision, invoking the emergency clause; which decision has to be taken by the Syndicate or the Academic Council.

5. The learned counsel for the petitioner has placed before me the decisions of the Hon'ble Supreme Court in Vice Chancellor, M.D. University, Rohtak Vs. Jahan Singh, , Rajendra Agricultural University Vs. Ashok Kumar Prasad and Others, and Municipal Corporation of Greater Mumbai Vs. Anil Shantaram Khoje and Others, . The said decisions place the position, beyond any pale of doubt that, when the statute prescribes for a thing to be done in a particular manner, the same has to be done in that manner and not otherwise. Hence, if the publication as indicated in the statute is not made in the Gazette, then such Regulation would have no effect. However, in view of the contention raised in the above cases, especially considering the fact that even Exhibit P1 Regulation, which regulates the course study of the post-graduate M.Tech course, has not been notified, this Court would not endeavour to go into such controversies.

6. If the amendments were to be set aside, then necessarily the Regulations originally brought out will also have to be set aside, which would lead to a vacuum and there would be no Regulation as such, which could regulate the course of study and enable the University to grant certification. This would create a stalemate where the entire conduct of the course would be put into jeopardy;

which would prejudice umpteen students. That is not the result, which a judicial adjudication is intended at.

7. The learned Standing Counsel for the University refers to Regulation 15 in Exhibit P1, which confers on the University the right to modify any of the regulations. But, however, the power granted under Exhibit P1 Regulations cannot be said to override the statutory mandate and enable the University to make a Regulation without publication in the Gazette. The learned Standing Counsel of the University also refers to the "Programme Co-ordinator" as constituted in Regulation 3 of Exhibit P1, whose duty it is, to inform the colleges and students about any amendment in the regulations. Again that does not absolve the University from bringing out regulations as provided in the statute. This Court cannot, but issue a word of caution, to the University to insist on and require Gazette notification of the amendments brought out at least to ensure coherence and legal backing to the same; as also avoid waste of judicial time as has been specifically noticed in Anil Shantaram Khoje (supra). This Court cannot render futile an entire course of study, already completed for reason of it not being notified. Hence, this Court would examine the regulations, as it exists.

8. Exhibit P1 provides for "Passing Requirements and Provisions" in Regulation 8, of which the relevant clauses are (xi), (xiv) and (xvii), which are extracted hereunder:

"(xi) All other successful candidates will be declared to have passed the M.Tech. Degree in SECOND CLASS.

xxx xxx xxx

(xiv) A student absent in the first eligible chance/failed in the first appearance in the University examination and subsequently appearing for the University examination in next chance within six consecutive semesters after the commencement of his/her study, is considered as supplementary chance.

xxx xxx xxx

(xvii) Minimum for a pass

a) A candidate shall be declared to have passed a semester examination in full in the first appearance if he/she secures not less than 6 CGPA with a minimum of "E" grade for the all individual subject in that semester.

b) A candidate shall be declared to have passed in an individual subject of a semester examination if he/she secures grade "E" or above.

c) A candidate who does not secure a full pass in a semester examination as per clause (a) above will have to pass in all the subjects of the semester examination as per clause (b) above before he is declared to have passed in that semester examination in full."

9. As per sub-clause (a) of Regulation 7 of Exhibit P1, examinations are proposed

at the end of each semester, called the "End Semester University Examination" [for brevity "ESE"]. It is also specified therein that, there is no provision for improvement. Hence, a candidate who qualifies with minimum grade percentage, cannot hope for appearance in the supplementary examination, merely for improving the marks. This provision has to be viewed in the context of the passing requirements, which, according to the University, has been specified to a minimum of "6 SGPA" in the ESE.

10. Sub-clause (a) of clause (xvii) of Regulation 8 of Exhibit P1 provides that, to be declared as having passed a semester examination in full in the first appearance a candidate has to secure not less than "6 CGPA" [Cumulative Grade Point Average] and a minimum of Grade "E" in the individual subjects. It has been clarified by Exhibit P6 amendment that the reference to CGPA is wrong since in an ESE there could only be SGPA. Sub-clause (b) of clause (xvii) specifies that any person who gets "E" grade in an individual subject, would be considered as having passed in the same. Sub-clause (c) of clause (xvii) provides that, for securing a full pass in a semester examination as per clause (a) above, a student will have to pass in all the subjects of the semester examination as per clause (b) above. Hence, if not in "the first appearance" a candidate would be considered as passed if he/she obtains Grade "E". Such candidates as per Regulation 8(xi) would be declared as passed in only Second Class. Clause (xii) also mandated grant of only "E" grades to a candidate who passed in any paper, in the supplementary examination.

11. As per clause (xvii) of Regulation 8, a person who had passed in a first appearance and a person who passes in the supplementary examination would be treated differently. The former would have to get minimum "E" grade in individual subjects and a minimum of "6 SGPA", but the latter need get only a minimum grade of "E". This assumes significance due to the fact that the pass in first appearance specified in sub-clause (a) has a specific purpose, insofar as, only such candidates would be considered for ranking and award of higher classes. Clauses (viii), (ix) and (x) of Regulation 8 of Exhibit P1 respectively indicate that only persons who have passed all the four semesters at the first chance would be considered for ranking purposes and for conferment of higher class; that too based on the CGPA, which is the average of the SGPA's in all the semesters. Clause (ix) provides for a CGPA of 8 or above to be certified as having passed in First Class with Distinction and clause (x) provides for a CGPA of 6.75 and above to be placed in the First Class. Clause (xi) of Regulation 8 mandates that all other candidates, meaning, persons who have passed in the supplementary examinations without looking into the CGPA or SGPA, would be declared as having passed the course only in the Second Class.

12. A probable view as per clause (xvii) of Regulation 8 would be that sub-clause (c) indicates that a person who does not qualify in the first chance also should have the requirements in sub-clauses (a) and (b) to be considered as passed. But, this has to be viewed with reference to the provision that there would be no

improvement provided for candidates who have passed in the individual examination. This would lead to absurd consequences, since a person who has secured a minimum grade point of "E" in each individual subject, but not having secured a SGPA of 6, would have no chance for improvement; nor would such candidate be considered as passed. This cannot be the intention of the Regulation. Further, a person who has failed in one paper would be entitled to appear in the supplementary examinations while one who has qualified in all the individual papers with Grade "E", but not obtained the required SGPA of 6, would be rendered helpless insofar as there being no further chance to appear for an examination.

13. The amendments also have to be looked at in this perspective. Exhibit P6 is an amendment, which altered the "CGPA" in clause (xviii) of Regulation 8 of Exhibit P1 to "SGPA". All sides agree that it was only clarificatory in nature, since ESE can be only assessed as SGPA and the CGPA is the average of SGPA. In bringing out Exhibit P6, in addition to the clarification, the University also cancelled sub-clause (c) of clause (xvii). The learned counsel for the petitioners point out the shabby manner in which the amendments were made, since what is referred to in Exhibit P6 is clause R(XVIII) while the provision sought to be amended is Regulation 8(xvii).

14. Be that as it may, again the University came out with Exhibit P7 amendment. Herein, clause (xvii) of Regulation 8 was modified, which reads as follows:

"R8(XVII), "Minimum for a pass" has been modified to include one more provision as follows; "A candidate may be given the option to select the number of subjects which he./she considers sufficient to secure the CGPA required for a semester pass in his supplementary appearance only from among the subjects for which he has scored E or less"."

Together with that, Regulation 8(xii) was modified, to upgrade the minimum pass grade granted in a supplementary examination to "D" rather than "E". Hence, the anomaly pointed out earlier was sought to be removed by permitting any person who gets Grade "E" to go for improvement of the Grade, but with the rider that even then the upward mobility in grade will be confined to Grade "D". This does not bring in the requirement of minimum SGPA; but only provides that a person who appears for a supplementary chance, the minimum pass grade would be upgraded to "D". As per the unamended provision, a person who sits for supplementary examination can only hope for a minimum pass grade of "E". The amendment was to facilitate a student who appears in the supplementary examination to get the minimum CGPA which grade point average is decided on the SGPA given in the ESE. When sub-clause (a) of clause (xvii) was amended to alter CGPA to SGPA, the amendment by Exhibit P7 spoke again of minimum CGPA.

15. This Court is not convinced that the amendments brought in would in any manner affect the minimum pass percentage of "E", which stands unamended by

clauses (xi) and (xvii)(b). A student who gets a minimum grade of "E" in all individual subjects will have to pass in M.Tech Degree, in Second Class. Sub-clause (c) of clause (xvii) as it existed, cannot be found to have insisted for a minimum SGPA for a pass in the examinations. In any event, that was deleted by an amendment too. Going by the unamended Regulations, a minimum SGPA of 6 and a minimum grade of "E" in all individual subjects is required for a student to be qualified in the first appearance, which alone would enable such student to be considered for Ranking and for conferment of Distinction or First Class. True, by introduction of the provision in clause (xvii) a student has been given the option to select subjects for appearance in the supplementary examination only for the purpose of securing the required CGPA. Again, it is to be noticed that it is not SGPA which is referred to and CGPA; which would be applicable only to the candidates who aspire for Ranking, Distinction and First Class. Even if CGPA is taken as SGPA; there is no prescription anywhere that any student, to be certified as passed, should in addition to "E" grade, should also have "6 SGPA". That requirement is only for the pass in first appearance. Looking at the amended Regulations also, this Court is of the opinion that any person who secures minimum grade of "E" in all of the individual subjects, in a semester has to be considered to have passed in Second Class and such persons are to be conferred with the post-graduate degree. That is the only conclusion looking at Regulation 8(xi) and (xvii)(b). It is declared accordingly.

16. The desired result which the University seeks to bring in is that, in considering a candidate as having passed in a semester, he/she should have a minimum grade of "E" in the individual subjects and also SGPA of 6. This does not emanate from the amended or unamended Regulations. The University would be well within its powers to bring in such amendments; but as noticed earlier, with a proper Gazette notification. The reason cited on behalf of the University is the practice followed all these years and the delay in making Gazette notifications, which this Court does not find to be appealing in the teeth of the rigour provided by the statute. The University would do well to notify the original regulations too, since that alone would bring the requisite statutory sanctity to the same.

In the result, the writ petitions are allowed and the petitioners who have obtained Grade "E" individually in all the subjects, whether in the first appearance or in the supplementary examination, have to be granted certification and issued with post graduate degree. Parties are left to suffer their respective costs.