

(2010) 08 CAL CK 0065
In the Calcutta High Court

Case No : Writ Petition No. 10055 (W) of 2008 and C.A.N. No. 10832 of 2008

Ritwick Ghosh

APPELLANT

Vs

Bengal Engineering and Science University and Others

RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Citation : (2010) 08 CAL CK 0065

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Shambhu Nath De, for the Appellant; Subrata Mukhopadhyay and Basabi Roychowdhury, for the Respondent

Judgement

Dipankar Datta, J.—This petition dated 2.6.2008 is at the instance of a student of Civil Engineering of the Bengal Engineering and Science University, Shibpur (hereafter the University) seeking the following relief:

- a) A writ in the nature of Mandamus do issue commanding and/or directing the respondents and/or agents and/or associates to strictly act and/or proceed in accordance with to allow the petitioner to continue his study and to appear in the subsequent supplementary examination;
- b) Rule Nisi upon the respondents calling upon the show cause why a writ in the nature of Mandamus shall not issue directing them to withdraw and/or cancel and/or rescind any order declaring the petitioner as the CNC;
- c) Rule NISI upon the respondents calling upon them to show cause why a writ in the nature of Certiorari shall not issue directing them to certify and transmit to this Hon'ble Court records pertaining to the discontinue of the petitioner's study, so that conscionable justice may be administered.

2. The present petition has been prefaced by a number of proceedings, both at the trial and appellate stages. I, therefore, consider it appropriate to give a composite picture of the facts giving rise to this petition.

3. The petitioner had taken admission in the University during the session 2001-2002. In terms of the Regulations framed by the University, the civil engineering course is divided into four parts and each part is sub-divided into two semesters. The first (odd) and second (even) semesters are comprised in Part I (i.e. first year), the third (odd) and fourth (even) in Part II (i.e. second year), the fifth (odd) and sixth (even) in Part III (i.e. third year) and the seventh (odd) and eighth (even) in Part IV (i.e. fourth and final year). The students are required to take the Regular Examinations at the end of each semester and in the event of their failure to clear any paper/subject at the Regular Examinations, they are entitled to appear in the Supplementary Examinations, subject to conditions laid down in the Regulations.

4. At the conclusion of the first semester, the petitioner took the Regular Examination conducted by the University and succeeded to clear all but one of the subjects. He failed to clear M 101. However, during pendency of proceedings before this Court, the petitioner has, in fact, been declared to have cleared M 101.

5. At the end of the second semester, the petitioner again took the Regular Examination and obtained pass marks in all the subjects save and except AM 201. He availed of two Supplementary Examinations, yet, failed to clear the same. The subject AM 201 was, therefore, treated as a back paper of Part I.

6. At the end of the third semester, the petitioner appeared at the Regular Examination and obtained pass marks in all the subjects save and except M 301. He could not clear the subject despite taking one more Supplementary Examination.

7. At the end of the fourth semester, the petitioner again appeared in the Regular Examination but he could not obtain pass marks in three subjects viz. AM 401, AM 402 and M 401.

8. It would appear from the aforesaid narrative that one subject of the second semester, one subject of the third semester and three subjects of the fourth semester were not cleared by the petitioner. This resulted in the University declaring him disqualified to continue further studies. The University, however, had offered readmission to the petitioner which he declined.

9. It is not in dispute that the petitioner had moved a petition earlier being W.P. 26859 (W) of 2006. No interim order was granted by the learned Single Judge. An intra-court appeal was preferred by the petitioner against the order refusing interim order. The appeal was disposed on 27.3.2007 with certain directions. Alleging contumacious acts of the officers of the University in not complying with the Court's order, a contempt petition was filed which was disposed on 31.1.2008 holding that no contempt had been committed. However, liberty was granted to the petitioner to agitate his grievance, if any, by filing appropriate application.

10. W.P. 26859 (W) of 2007 was ultimately disposed of on 18.5.2008 by a learned Judge of this Court granting liberty to the petitioner to file a representation before the Controller of Examinations of the University by 23.4.2008 and if such representation was at all filed, the Controller was directed to pass a reasoned order in accordance with law by 2.5.2008 after granting opportunity of hearing to the petitioner.

11. The petitioner, availing of the liberty granted by the aforesaid order, duly submitted a representation before the Controller which, however, did not yield any result. The representation was not considered on the ground that an appeal, FMA 1396 of 2009, had been preferred by the University against the order dated 18.5.2008.

12. Since the University intended to conduct the Regular Examinations after the sixth semester (at the end of Part III) between 2.6.2008 and 9.6.2008, this petition came to be presented.

13. While I was hearing the writ petition finally, the appeal filed by the University was listed for consideration of the Division Bench. It has been disposed on 22.12.2009 by the Division Bench by passing, inter alia, the following order:

We have considered the rival contentions. We are of the view that the issue should be decided on merit once for all. We are prompted to say so as we are told that the second writ petition is ready for hearing after completion of affidavits and appearing in the list before the learned Single Judge. In such view of the matter, we feel that instead of taking a hyper technical stand in the matter the fate of the student should be decided on merit. The learned Single Judge may do so. Mr. Mukhopadhyay in his usual fairness agrees not to agitate the maintainability point before the learned Single Judge and he would address the matter on merits. Mr. Mukhopadhyay has made such submission in deference to the desire of this Court.

We are also of the view that once the second writ petition is pending and awaiting its decision the order of the learned Single Judge impugned in this appeal may not be acted upon as it would otherwise complete the issue. The order dated April 18, 2008 is set aside. The entire issue is remanded back to the learned Single Judge to be decided on merit in the Second writ petition being W.P. No. 10055 (W) of 2008.

After this order is passed, Mr. Mukhopadhyay apprehends that this order would dilute the strength of the order passed by the Division Bench on March 27, 2007. His apprehension is misconceived. We are prompted to say so as Their Lordships, by the subsequent order passed in the contempt proceeding, permitted the respondent No. 1 to file an independent proceeding raising the subject issue, which is yet to be decided by the learned Single Judge.

With these observations the appeal is disposed of without any order as to costs.

14. In course of hearing, I had called upon the Controller by my order dated 1.4.2010 to submit a report in support of the stand taken by Mr. Mukhopadhyay, learned advocate appearing for the University, on that day to the effect that the petitioner must start de novo from the second year, if at all he is considered eligible.

15. In compliance with the said order, the Controller filed her report which was taken on record on 21.4.2010. It appears therefrom that failure of the petitioner to obtain pass marks in 5 (five) subjects in the fourth semester examination resulted in he being declared a failed candidate and he was advised to take re-admission.

16. Mr. De, learned advocate for the petitioner contended by referring to the Regulations framed by the University vis-?-vis the number of subjects in which the petitioner plucked that the University acted illegally in declaring the petitioner as disqualified to prosecute further studies therein.

17. Mr. Mukhopadhyay sought to contend that the petitioner had practiced fraud on the University by interpolating the admit cards issued in his favour and, therefore, is not entitled to any relief from the Court of Writ, which is also a Court of equity.

18. The action of the University in not allowing the petitioner to continue his study from the level of third year was sought to be sustained by him by referring to the Regulations of the University. In particular, he referred to Regulation 4.5 (b) to contend that the University was justified in its impugned action of debarring the petitioner.

19. I have considered the rival submissions and perused the relevant Regulations.

20. Regarding the point of maintainability of the petition raised by Mr. Mukhopadhyay on the ground that the petitioner is guilty of practicing fraud, I have looked into the admit cards issued by the University in favour of the petitioner and produced before the Court by him. A detailed investigation is required to be undertaken in reaching a decision on the point as to whether the admit cards suffer from interpolation or not. While considering this petition, I am not inclined to embark on an investigation on such point because evidence is required to be led to convince the Court to come to a conclusion one way or the other.

21. Even otherwise, Mr. De seems to be right in his contention that the point of maintainability cannot be raised by Mr. Mukhopadhyay any longer and decided by this Court in view of the order dated 22.12.2009 of the learned Judges comprising the Division Bench wherein the submission of Mr. Mukhopadhyay was recorded to the effect that he would not agitate the point of maintainability before the learned Single Judge and would address the matter on merits in deference to the desire of the Division Bench.

22. The submission has to be examined in the light of proper interpretation of

the order of the Division Bench. One may usefully refer to the observations of the Supreme Court in Commissioner of Wealth Tax Vs. Dr Karan Singh and Others, , which read as follows:

The basic rules of interpreting Court judgments are the same as those of construing other documents. The only difference is that the judges are presumed to know the tendency of parties concerned to interpret the language in the judgments differently to suit their purposes and the consequent importance that the words have to be chosen very carefully so as not to give room for controversy. The principle is that if the language in a judgment is plain and unambiguous and can be reasonably interpreted in only one way it has to be understood in that sense, and any involved principle of artificial construction has to be avoided. Further, if there be any doubt about the decision, the entire judgment has to be considered, and a stray sentence or a casual remark cannot be treated as a decision.

23. Read in its entirety, there can be no two opinions that the Division Bench directed adjudication of the writ petition on merits. Embarking on an investigation with a view to find the petitioner guilty of interpolation of certain documents in his possession, which in any event are not germane for deciding the issue raised herein, and thus hold him disentitled to relief would necessarily entail in the merits of the petitioner's claim not being adjudicated. Since there is a specific direction of the Division Bench to decide the writ petition on merits, I find no reason to sustain the objection of Mr. Mukhopadhyay. Therefore, the contention of Mr. De must be and is upheld.

24. However, liberty of the University to proceed against the petitioner before the appropriate forum is reserved.

25. Now, I shall proceed to consider the rival contentions of the parties on merits.

Regulation 4.5(b) reads as follows:

4.5. A candidate failing

a) ***; or

b) to secure pass marks in more than four theoretical subjects of the two regular semester examinations of a given part taken together; or

c) ***; or

d) ***

shall not be eligible for enrolment in the immediately succeeding part. During the next academic session, such a candidate may seek readmission to the odd semester of that part in which he/she failed to qualify, subject to provisions laid down in Regulation 4.12. Failure to seek readmission during the next academic session shall make the candidate liable to have his/her name struck off from the University roll.

26. Mr. De again is correct in his contention that Regulation 4.5(b) has been wrongly applied to declare the petitioner disqualified to prosecute further studies. What Regulation 4.5 (b) ordains is that a candidate failing to secure pass marks in five or more theoretical subjects of the two regular semester examinations of a given part shall not be eligible for enrolment in the immediately succeeding part. The petitioner had not cleared five subjects as noted above but out of those five subjects, one was in respect of the second semester examination i.e. AM 201. Failure to clear AM 201 could not have been clubbed together with failure to clear M 301, AM 401, AM 402 and M 401, being subjects of the third and fourth semesters. The failed subjects of the third and fourth semesters being part of Part II could only be decisive for answering the question as to whether the petitioner was eligible to continue with his studies or not. The expression "more than four theoretical subjects of a given part" could not have been stretched too far to include one failed paper of an earlier part. The contention of Mr. Mukhopadhyay that this has been the practice of the University during the past years cannot but attract condemnation from the Court. If the University intends to include the failed paper of an earlier part for the purpose of declaring a candidate ineligible, it is entitled to amend its Regulations. However, the Regulations as it presently stand do not authorize the University to declare the petitioner as ineligible based on a flawed interpretation thereof.

27. The petition therefore succeeds. Decision taken by the University to the detriment and prejudice of the petitioner declaring him ineligible stands set aside. The petitioner shall be allowed to take the permissible Supplementary Examination(s) for clearing the failed subjects. He shall also be allowed to take the Regular Examination for the fifth semester, provided he attended requisite class lectures therefore. In the event the petitioner has not attended requisite class lectures, he shall be allowed to attend the classes at the level of fifth semester, as and when classes commence in future and not in the mid-stream.

28. In view of the aforesaid order, C.A.N. 10832 of 2008 stands disposed of.

29. The original admit cards which were directed to be retained by the Registrar General in his safe custody and were produced before the Court by the petitioner shall be returned to his learned advocate by the Assistant Court Officer upon his giving a receipt therefore.

30. Records of the appeal (FMA 1396 of 2009) shall stand de-tagged and sent back to the department.

31. There shall be no order as to costs.

32. Urgent photostat certified copy of this judgment and order, if applied for, shall be given to the applicant as early as possible.