
(2001) 07 P&H CK 0182

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 15897 of 1999 and 3811 of 2000

Rohit Datta

APPELLANT

Vs

Punjab University, Chandigarh

RESPONDENT

Date of Decision : 17-07-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 2001 P&H 339 : (2002) 1 ILR (P&H) 282 : (2001) 4 RCR(Civil) 323

Hon'ble Judges : Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Mr. R.K. Malik, for the Appellant; Mr. Anupam Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioners in these two writ petitions complain that the action of the University in enhancing the fees for the "executives" admitted to the 3 years Part-Time MBA Course is arbitrary, illegal, unjust, unfair and unconstitutional. Is it so?

2. The counsel have referred to the facts and pleadings in C.W.P. No. 15897 of 1999. These may be briefly noticed.

3. The Punjab University conducts courses leading to the degree of Master of Business Administration. One of these is a Full Time Course. The second is called the Part-Time Course which is conducted in the evening. The latter course is conducted exclusively for persons who have atleast "two years whole time executive experience in a Commercial or Industrial establishment after passing the qualification examination.....". Even members of All India, State Administrative/Technical Services and Defence Personnel holding administrative posts "with not less than 2 years executive experience" are eligible. For these candidates, "Organisational sponsorship is essential."

4. The petitioners in C.W.P. No. 15897 of 1999 had taken admission to the course

in the years 1997 and 1998. The petitioners in C.W.P. No. 3811 of 2000 were admitted in the year 1999.

5. The petitioners allege that initially the University was charging fee at the rate of Rs. 1,080/- per annum. However, on August 27, 1999, the Syndicate had decided to enhance the fee and raise it to Rs. 955/- per month. Fee is being charged at a much lower rate from the students who joined the two years" course run by the University in the morning. Even the students admitted to the LL.B. and M.A. courses are being charged fees at a lower rate. Thus, the action of the University in imposing a higher rate of fee for students admitted to the M.B.A. (evening course) is arbitrary and unfair. Still further, the petitioners also maintain that the enhanced rate of fee can be applied only to the students admitted to the course after the decision of the Syndicate and not to those who were already studying. On these premises, the petitioners pray that the decision of the University to charge the fee at the revised rate be quashed.

6. The University contests the claim. It maintains that the persons admitted to the "MBA Part Time/Evening Course are all independent, earning hands holding executive positions". There is "a fundamental and material difference of status between the students of the MBA Evening/Part Time Course and the students of the MBA Morning Course. The students of the MBA Morning Course are totally dependent on their parents/guardians like other University and College students generally. On the other hand, the students of the MBA Evening/Part Time Course are independent, earning hands, holding executive positions in commercial or industrial establishments or members of All India or State Administrative/ Technical Services.....". On this basis, it is maintained that the "financial status or paying capacity of the students of the MBA Evening Course is far better and higher than that of the students of the Morning Course who.... are entirely dependent upon their parents." The University faces a financial crunch. There is need to generate resources so as to be able to "maintain and promote the quantum and quality of education". The need to revise fees was, thus, imperative.

7. So far as the charge of discrimination based on the rate of fee for the other courses is concerned, it has been pointed out that "the University does not run any Evening Course or classes for M.A. (Sociology)". With regard to the LL.B. course, it has been pointed out that "there is no distinction between the Morning and Evening Classes which are only two shifts of the same course". The evening classes are not confined to the "executives".

8. It has been also pointed out that the matter was considered by the University before the impugned decision was taken. Keeping in view the financial crunch, a Committee was constituted in December 1998. The existing fee structure was examined. It was after thorough consideration of the matter that the impugned decision was taken by the Syndicate.

9. On these premises, the University maintains that the action is legal and valid.

10. Mr. R.K. Malik, who argued the case on behalf of the petitioners, contended

that the action of the University is arbitrary and discriminatory. The University cannot impose the revised rate of fee on the students who had already taken admission. The decision of the Supreme Court in *Unni Krishnan, J.P. and others etc. etc. v. State of Andhra Pradesh and others etc. etc.* 1993(2) SCT.12 (SC) : 1993(1) SLR 743, was invoked to contend that 100% seats had been converted by the University into "paid" seats.

11. The claim made on behalf of the petitioners was controverted by Mr. Anupam Gupta who submitted that the petitioners form a district class. The decision was just and fair. It had been arrived at after due consideration. It is in conformity with the statutes governing the University. Thus, it called for no interference.

12. The two questions that arise for consideration are:-

1. Is the action of the University violative of Article 14 of the Constitution?
2. Are the petitioners not liable to pay the fees in accordance with the decision of the Syndicate ?

Regarding-1

13. Education is essential. It is a part of the right to life. The State is under an obligation to provide educational facilities. However, this obligation is limited by the economic capacity. This is all the more so in case of higher education. Resultantly, it is permissible for the State and even a University to lay down conditions for payment of fee etc. so as to be able to meet atleast a part of the expense which it incurs.

14. In the present case, it has been specifically pointed out that the University is facing a financial crunch. In fact, it is a national phenomenon. While the wages are rising and the cost of governance is going up, the resources are limited. In this situation, the Schools, the State and the Universities cannot continue to provide almost free education to the students. Necessarily, resources have to be generated. Only then the facilities for higher education can be provided and continued.

15. A perusal of the written statement filed by the University shows that in December 1998 a Committee was constituted to examine the fee structure and "to recommend a revised tariff". A copy of the Minutes of the meeting of the Committee has been produced as Annexure R-1 with the written statement. A perusal of these. Minutes indicates that the Committee consisted of 16 persons. The Dean of University Instruction was the Chairman. Fellows of the Punjab University; Dean, College Development Council; Principals of different colleges were the members. The Committee found that the existing fee "was too low...." In view of "the Government's repeated insistence" it was necessary to generate "resources to ease fund starvation". Thus, the Committee had recommended the revised fee structure. It had further recommended that it be reviewed every year.

16. The matter was then considered by the Syndicate in the meeting held on

March 17, 1999. Members expressed their views. The Vice Chancellor had pointed out that when income levels had gone up all around, the fees could not remain untouched. At present, students were living well. They were spending more than their predecessors. Cost of education, infrastructure and apparatus had increased manifold. There was no moral or legal justification for retaining the existing fee level. It was necessary to take note of the ground realities. While the "government must shoulder its responsibility and meet its liability towards higher education", the fees could not remain "at paltry levels". It was also pointed out that by enhancing the fees the University was not going to earn more than 10%.

17. Despite the good reasons given by the Vice Chancellor the Syndicate had resolved to refer the matter to the Committee for reconsideration. The constitution of the Committee was altered by adding new members including the representatives of the students. The matter was reconsidered by the Committee which consisted of 21 members including the President and the Secretary of the University Students' Council. The Committee had prepared a chart indicating the comparative rates of fee in the Guru Nanak Dev University, Amritsar, and the Punjabi University, Patiala. It proposed the revision of rate of fee for various courses conducted by it. The recommendation of the Committee was considered by the Syndicate in the meeting held on July 30, 1999. The revised rates were approved with effect from May 1, 1999 in case of the affiliated colleges and from June 1, 1999 in case of the University teaching departments.

18. A perusal of the sequence of events clearly shows that the decision had been arrived at after due deliberation. The revision of rates was not a mere option but an imperative necessity. It was essential to enable the University to maintain and promote the "quantum and quality of education". The decision was by no stretch of imagination arbitrary or unfair.

19. Mr. Malik contended that the action is discriminatory inasmuch as different rates of fee had been prescribed for different courses. In particular, the counsel submitted that the rate of fees charged from the MBA students in the morning was much less than that prescribed for the MBA students studying in the evening course. He further submitted that even the rate of fees charged from the LL.B. students studying in the evening classes was much lower. Thus, the action suffered from the vice of discrimination. Is it so ?

20. Admittedly the students admitted to the MBA Evening Course are independent earning hands. They hold executive positions in governmental or private organisations. To support its assertion in this behalf, the University has produced a list of students studying in the Evening Course during the session 1999-2000. The posts held by them and the rates of salary drawn by different persons have been indicated in the document at Annexure R-10 with the written statement. A perusal thereof shows that the petitioners are holding senior positions of Managers, Executives and Directors etc. They are drawing substantial amounts of salary. They are not poor nor dependent upon the poor parents. Thus, it is clear that the petitioners are a class apart. The differential

treatment in the rate of fee has a rationale based on the income of the candidate. It has a reasonable nexus with the object of generating resources. In this situation, it cannot be said that the University is arbitrarily treating the petitioners differently from the other students. The decision of the authority is fully justified in law and equity.

21. It is, undoubtedly, true that the rate of fees laid down by the University in respect of the MBA students studying in the morning is much lower than for those admitted to the evening session. However, even this differential treatment has a good basis. It is the admitted position that only persons holding administrative or executive posts with two years' experience are eligible for admission to the MBA course in the evening classes. Even organisational sponsorship is essential. The candidates who are serving various commercial or governmental organisations are joining these courses to improve their own efficiency and career prospects. They must, in the very nature of things, bear a part of the financial burden of the University. This is precisely what the University seeks to achieve.

22. Mr. Malik contended that there is no distinction between the persons who join the evening classes for a degree of Law or a degree of "Master in Business Administration". Thus, there should be no difference in the fees charged from the two categories of the candidates. On the other hand, Mr. Anupam Gupta, learned counsel for the University, pointed out that "so far as the LL.B. course is concerned, there is no distinction between the morning and evening classes which are only two shifts of the same course."

23. It is the admitted position that the duration of the MBA Morning and Evening Courses is different. While the Morning Course is of two years, the evening students qualify for the final examination after studying for three years. This distinction does not exist in case of the LL.B. students. Still further, it is not essential for a person to hold an executive position for admission to the LL.B. evening course. Even a tea-vendor can join the course. There is an apparent difference in the economic status of the students admitted to the LL.B. and the MBA courses. This essential difference in the condition of eligibility for admission fully justifies the action of the University.

24. Another fact which deserves mention is that in the matter of fixation of fees, the authority has to take various factors into consideration. The number of students, the nature of infrastructure and the number of teachers required are some of the relevant inputs. To illustrate, in a course where only a few students are studying, the cost per student shall be high as all the teachers will have to be paid but the amount of fees collected shall be less. As against this, when the number is high, the per capita cost should be less.

25. It is the admitted position that the number of students admitted to the evening classes in Law is much larger than the number of students admitted to the MBA course. In this situation, the cost that the University incurs on each

LL.B. student gets considerably reduced in comparison to the amount spent on the MBA student. Similarly, in case of students studying Science subjects, additional expense may have to be incurred on providing facilities of Laboratories etc. In view of these factors, there cannot be a fool-proof or universal method for determination of fees. In view of the existing variables, the Court cannot insist upon a mathematical or scientific exactitude. Certain differences are inevitable. It is only when the action is per se arbitrary that the writ Court can interfere. Not otherwise. In the present case, we are satisfied that no ground for interference is made out.

26. In view of the above, it is held that the action of the University in revising the fees is not arbitrary or unfair. It does not suffer from the vice of discrimination. It is not violative of Article 14 of the Constitution. The impugned decision is, thus, not liable to be quashed as being ultra-vires Article 14.

27. The first question is accordingly answered against the petitioners.

Regarding-2

28. Mr. Malik contended that the petitioners had joined the course at different points of time. Thus, they are liable to pay the fees at the rates which existed at the time of admission in the respective years. The subsequent revision of the rates of fee cannot be applied to them. It would amount to a retrospective application of the order. Is it so ?

29. Despite being asked, learned counsel was unable to refer to any thing on the record to show that the University had ever promised that the rates of fee shall remain unchanged till the completion of the course. Still further, we find that the University publishes its Rules and Regulations in the form of a Calendar. This Calendar is in three volumes. Volume-II contains the Regulations. At the very threshold, there are important notes on the opening page of Volume-II. These read as under:-

"1. All the Admission/Examination and other fees etc. as given in various Chapters relating to different examinations in this Calendar, Volume, be treated as replaced by the revised rates of fees/funds/charges etc. as given in Chapter No. X.

2. Henceforth, all Admission/Examination/all other fees, funds and charges shall be as decided by the Syndicate of the University from time to time.

3. For fees, funds and charges as applicable at present, please see Chapter No. X at pages 508-514 of this Calendar, Volume."

30. It is, thus, clear that the University has categorically reserved the right to revise fees etc. from time to time. The decision in this behalf has to be taken by the Syndicate of the University. This is precisely what has happened in the present case. The Syndicate has taken a decision to revise the rates of fee. The action has accordingly been taken by the University office.

31. Another fact which deserves notice is that even with regard to the applicability of the regulations, a specific provision has been made by the University. It has been provided as under :-

"Notwithstanding the integrated nature of a course spread over more than one academic year, the regulations in force at the time a student joins a course shall hold good only for the examinations held during or at the end of the academic year. Nothing in these regulations shall be deemed to debar the University from amending the regulations subsequently and the amended regulations, if any, shall apply to all students whether old or new."

32. Thus, it is clear that even when a provision has been made by a statutory regulation, it holds good only during the year. The University has the power to apply a different norm for the subsequent year despite the integrated nature of the course.

33. The University publishes a "Hand-Book of Information" periodically. The fees to be charged from students are specifically mentioned. Each student who seeks admission has to pay the fee at the prescribed rate.

34. In the Hand-Book of Information for the year 1999, the rate of fee for the MBA Evening Course has been prescribed at the rate of Rs. 1,000/- per month. It has also been provided at page-XXX that the tuition fee will be charged for 12 months in a year viz. from June to May. Each student "is required to pay tuition and other fees in two instalments i.e. one at the time of the admission and the second duration 10th November to 30th November". The University is accordingly demanding fee. Its action does not violate any rule or regulation.

35. Mr. Malik contended that the application of the revised rate to the students who are already studying amounts to a retrospective revision of the rate of fee.

36. We are unable to accept this contention. Firstly, it is clear that despite the integrated nature of the course the students are bound to pay fees "as decided by the Syndicate of the University from time to time". The Syndicate has, thus, the power to revise the rates at any time. The decision of the Syndicate is binding on the students. Secondly, it is the admitted position that the matter regarding revision of fees was pending with the University for a consideration length of time. The decision to revise the rate was taken by the Syndicate in the meeting held on July 30, 1999. The students have accordingly been asked to pay the fees at the revised rate for the full session during the year 1999-2000. The decision does not operate retrospectively in any manner.

37. It may be mentioned that in a slightly different situation, the argument of retrospectivity was raised in the case *The Punjab University, Chandigarh v. Subash Chandler* and another 1976 PLR 920. While dealing with the amendment of a regulation regarding the grant of grace marks, it was held that a candidate would continue "to be governed by the regulations existing at the time when he joined the present course of studies". However, this view was reversed by their

Lordships of the Supreme Court in Punjab University Vs. Subash Chander and Another, . It was held that when the University changed the regulation there was no "element of retrospectivity". It was further observed that "no promise was made or could be deemed to have been made to him at the time of his admission in 1965 that there will be no alteration of the rule or regulation in regard to the percentage of marks required for passing any examination or award of grace marks.....".

38. Thus, even the second question is answered against the petitioners.

39. No other point was raised.

40. In view of the above, we find no merit in these petitions, Resultantly, it is held that the petitioners are liable to pay the fees due from them. They should do the needful within two months. In case of failure, the University shall be entitled to proceed further in accordance with law. The petitions are dismissed. In the circumstances, we make no order as to costs.

41. Petitions dismissed.