

(2004) 08 RAJ CK 0055
In the Rajasthan High Court
Case No : Civil Writ Petition No. 883 of 2004

Sameer Sharma

APPELLANT

Vs

M.N.I.T. and Others

RESPONDENT

Date of Decision : 27-08-2004

Acts Referred:

Citation : (2005) 2 RLW 871 : (2004) 4 WLC 749

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : R.S. Chauhan, for the Appellant; Sanjay Pareek, for the Respondent

Judgement

K.S. Rathore, J.—This writ petition has been filed by the petitioner seeking following reliefs:-

1. by an appropriate writ, order or direction the respondents be directed to register the petitioner for 2nd Semester in Master of Management Studies (MMS) Course for which petitioner has already paid fee;
 2. by an appropriate writ, order or direction the respondents be directed to permit the petitioner to appear in examination of rest 4 papers of 1st Semester alongwith examination of IInd Semester;
 3. by an appropriate writ, order or direction the respondents be restrained from rusticating the petitioner from Institute on the ground of his short-fall in attendance in 1st Semester due to his accident and not clearing all papers of 1st Semester.
2. Brief facts of the case are that the petitioner applied for MMS Course Entrance Test, 2003 which was held on 2.6.2003. Since the petitioner was declared pass in the entrance test, group discussion and interview was conducted on 3.6.2003 and was selected for admission to Master of Management Studies Course.
3. After paying the requisite fee of Rs. 19,500/- on 15.7.2003, the petitioner got admission in the aforesaid course as a regular student.

4. On 12.9.2003, when the petitioner was coming back to home from the college, he met with serious accident resulting fracture in his right leg. The petitioner was admitted in Orthopaedic Unit of Government Rukmani Devi Jaipuria Hospital. On 13.9.2003, the petitioner was advised to get his treatment at Delhi and on the same day, he was admitted in Saroj Hospital, Delhi. On 15.9.2003, operation was conducted on his right leg and inter-locking rod was fixed in the leg.

5. The petitioner as well as his father informed the Head of Department of respondent-institute on 22.9.2003 and also sent the information in writing to the Head of. Department regarding illness of petitioner with request to grant him leave.

6. After recovering from illness, the petitioner was given fitness certificate by the Hospital Authority on 1.11.2003 and from 5.11.2003, the petitioner started to join his classes regularly and submitted his medical certificates and fitness certificate to the respondents.

7. Considering the fact of accident and medical certificate produced by the petitioner, the respondents allowed the petitioner to take the examination of 1st Semester and Examination fee of Rs. 1,000/- was submitted by the petitioner vide receipt No. 1285. Subsequently, the Head of Department informed the petitioner that his medical certificate has not been accepted by the Institute and he will be allowed to appear in the examination of only three papers in which attendance was 75% and as regard remaining four papers, he was assured. On the assurance given by the respondents, the petitioner appeared in the examination on 27.11.2003, 29.11.2003 & 5.12.2003 in subjects Quantitative Methods & Computer Programming, Business Organisation & Management and Industrial Engineering & Productivity Management and passed the aforesaid papers.

8. It is submitted on behalf of the petitioner that after receipt of fee for IInd Semester, the petitioner was told on 14.1.2004 that the respondents are not registering him for admission in 2nd Semester because in 1st Semester his attendance was less than 75%. Prior to accident, the attendance of the petitioner was above 75% and after sickness period, his attendance was 100%.

9. In the writ petition, it is alleged that there are students who are employed elsewhere and their attendance has wrongly been shown as 75% or above and they were permitted to appear in all papers whereas the petitioner, who meted with the accident and twice undergone the operation, has been denied admission in the next Semester.

10. To this effect, the petitioner submitted the representations to the respondents on 18.1.2004, 20.1.2004 & 27.1.2004. The Head of Department verbally permitted the petitioner to sit in the classes and since then he is regularly attending the classes, but the verbal permission has not been confirmed in writing.

11. Being aggrieved by this action of the respondents not promoting the petitioner in 2nd Semester despite charging fee and giving him threat to rusticate him from Institution, the petitioner preferred this writ petition.

12. On 5.4.2004, this Court after hearing the parties considering the fact that the petitioner got injured in the accident, directed the respondents to allow the petitioner in remaining four papers of Master of Management Studies (MMS) 1st Semester and further directed that the result of the aforesaid papers will be kept in sealed cover subject to decision of this writ petition.

13. On 2.6.2004, on the application moved on behalf of the petitioner, this Court after hearing the parties and looking to the fact that pursuant to the interim order dated 5.4.2004, the respondents are going to hold the examination of four due papers from 8.7.2004 to 16.7.2004, since they have not issued the examination programme, respondents were further directed that after 15 days shall convene the examination of 2nd Semester and shall issue the programme of 2nd Semester and result of both the examinations shall be kept under the sealed cover.

14. The respondent-institution filed a SLP before the Hon"ble Supreme Court. The Hon"ble Supreme Court after hearing learned counsel for the petitioner passed the following interim order on 13.7.2004:

"The compliance of the impugned order of the High Court shall remain stayed after 17th July, 2004."

15. The Hon"ble Supreme Court heard the matter finally on 23.7.2004 and passed the following order:-

"Leave granted.

The respondent preferred Writ Petition No. 883 of 2004 since he was not permitted to take examination of the first semester of Masters of management Studies (MMS). As an interim measure, the High Court, in terms of order dated 5th April, 2004, directed the appellants herein, who are respondents before the High Court, to admit the respondent for examination of the remaining four papers of the first semester and to keep the result in a sealed cover so as to determine the matter on the decision of the writ petition. Insofar as the second semester is concerned, the order directed that if the respondent clears all the remaining four papers, then the Management may be directed to hold a separate examination for the candidate for the second semester.

The result of first semester is lying in a sealed cover after the examination concluded on 16th July, 2004. On 5th April, 2004, it was also directed that the matter might be listed after two months.

By another order dated 2nd June, 2004, the High Court has directed the Management to convene the examination for the second semester and also issue the programme for the purpose. It further directed that result of both the

examinations shall be kept in a sealed cover. The Management has challenged the validity of these orders.

In view of the direction we propose to issue for disposal of the writ petition, we feel it appropriate not to express any opinion on merit. Both the orders are interim in nature and stipulate that the matter in the controversy will be decided by the decision of the writ petition. Insofar as holding of examination for the second semester is concerned, the said direction has been stayed in terms of the order passed by this Court on 13th July, 2004.

Having regard to the facts and circumstances of the case, we are of the view that the order dated 13th July, 2004 staying the holding of the examination for the second semester shall continue till the decision of Writ Petition No. 883 of 2004 by the High Court. It would, of course, be open to the High Court, while deciding the writ petition, to issue such directions as it may deem fit and proper in regard to the second semester. The writ petition, however, deserves to be disposed of expeditiously. Under these circumstances, we request the High Court to decide the writ petition, preferably, within a period of three weeks.

The appeals are disposed of accordingly."

16. As observed by Hon"ble Supreme Court that the writ petition deserves to be disposed of expeditiously. The arguments heard at admission stage for final disposal.

17. Learned counsel for the respondents does not dispute this fact that the petitioner met with an accident and they were informed vide application dated 5.11.2003 and also submitted an application on 18.11.2003 seeking permission to allow him to appear in the examination of 1st Semester of Master of Management Studies.

18. Learned counsel for the respondents submits that though the attendance of the petitioner was short, but considering his genuine request, he was allowed to appear in the examination of three subjects of 1st Semester, as in these subjects he meted out the criteria of minimum attendance through extra classes. It is further submitted that the petitioner failed to secure the minimum requisite Semester Grade Point Average (For short SGPA) for continuation in the programme and he cannot be allowed to continue in the programme. His SGPA at the end of first semester is only 2.69 whereas the minimum requirement is of 4. Mr. Sanjay Pareek, learned counsel for the respondent drawn my attention towards the relevant provisions of the Ordinances for the Post Graduate programmes of the Malviya National Institute of Technology, Jaipur (hereinafter to be referred as the Ordinance) and submits that the petitioner cannot be promoted to next semester as according to sub para 2 of para 17 of the Ordinance for the continuation in the programme, a student shall have to earn not less than 12 credits in a previous semester and a SGPA of not less than 4 at the end of the 1st semester and a CGPA of not less than 4.5 at the end of the subsequent semester, failing which registration of the student shall be terminated

and he will be asked to leave the programme. Here in the instant case, the respondents permitted the petitioner to appear in 1st semester, but he failed to obtain minimum credits, therefore, he cannot be promoted to the 2nd semester.

19. Mr. Pareek further submits that so far as attendance criteria is concerned, the same has been prescribed in para 16 of the Ordinance. According to it, a student must have a minimum attendance of 75% of the total number of classes in order to appear in the end term examination for that course. Learned counsel further submits that at the most on the medical ground, as per old ordinance, attendance to the extent of 10% can be condoned by the Principle concerned whereas the said provisions are not existence in the new Ordinance.

20. In support of his submissions, learned counsel for the respondents placed reliance on the judgment wherein the Hon'ble Supreme Court in case of Regional Engineering College, Hamirpur and Another Vs. Ashutosh Pandey, has held that Principal of College is entitled to condone the shortage in lectures only up to 10% in specific contingencies.

21. Learned counsel for the respondent also referred the case of Thapar Institute of Engineering and Technology and Another Vs. Gagandeep Sharma and Another, wherein it was held that the court would normally not interfere with such prescribed standards and especially when they are intended to improve the academic standards in their respective institutes.

22. Heard learned counsel for the respective parties and perused the material available on record as well as judgments referred before me.

23. The settled facts which are not disputed are that the petitioner was declared successful in the entrance test for MMS course and was given admission in the said course. On 12.9.2003, the petitioner met with an accident resulting fracture in his right leg. and was admitted in Government Rukmani Devi Jaipuria Hospital, Jaipur where he was advised to take the treatment at Delhi. On 13.9.2003, the petitioner was admitted in Saroj Hospital, Delhi and inter-locking rod was fixed in the leg. Upon submission of the medical certificate and fitness certificate, the petitioner was allowed to join his classes from 5.11.2003.

24. It is necessary to test the conduct and misfortune of the student. Earlier to the accident i.e. prior to 12.9.2003, the petitioner was regularly attending the classes and his attendance was more than 75% and after 5.11.2003, when he was declared fit to attend the classes, his attendance was 100%. Only for the period from 12.9.2003 to 5.11.2003 i.e. about two months, he remain absent on account of accident.

25. The respondents allowed the petitioner to appear in three subject and vide interim order dated 5.4.2004 the petitioner was allowed to appear in remaining four papers. From 8.7.2004 to 16.7.2004, the petitioner appeared in remaining four papers. Now the controversy remains whether the petitioner is entitled to be assessed under the formula of Semester Grade Point Average (SGPA) and

Cumulative Grade Point Average (CGPA).

26. The respondent has calculated the SGPA considering the three subjects and upon conclusion of the grade, the petitioner has not got the requisite grade, therefore, in view of the grade awarded by the respondents, the petitioner is not entitled to pursue his study in IInd Semester.

27. To resolve this controversy whether the grade should be given to the petitioner considering all 7 papers or not. I would first like to deal with the Regulations for the Post Graduate Programmes. As per Clause 16, a post graduate student must have a minimum attendance of seventy five percent of the total number of classes including lectures, tutorials and practicals held in a subject in order to appear at the End-Term Examination for that course.

28. As per Sub-clause 2(a) of Clause 17, a full-time student shall be allowed to register for courses having not less than a total of 18 credits and not exceeding a total of 28 credits in any semester. For the continuation in the programme, a student shall have to earn not less than 12 credits in a previous semester and a SGPA of not less than 4.0 at the end of the first semester and a CGPA of not less than 4.5 at the end of the subsequent semesters. The registration of a student shall be terminated and he/she will be asked to leave the programme in case he/she is unable to fulfill the above requirement. As informed by the respondent that the petitioner only secured grade 2.69 whereas required grade is 4.

29. Considering the aforesaid regulations and facts of the present case, I am not convinced with the submissions made on behalf of the respondents as they have given the benefit to the petitioner to appear in three papers, but not allowed the petitioner to appear in remaining four papers on the same ground.

30. Since the petitioner has already appeared in the four papers under the direction of this Court, in view of the fact, I am of the considered opinion that the respondents should apply the formula of SGPA & CGPA for awarding the grade to the petitioner considering all seven papers. In case the petitioner has achieved the requisite grade in the examination as per the regulation referred hereinabove, the respondents shall issue the schedule of examination and the petitioner be permitted to appear in the IInd semester examination. For the purpose of undertaking the exercise of awarding the grade after applying SGPA & CGPA, the respondents are at liberty to open the sealed envelope of the result. The respondents are directed to undertake the aforesaid exercise within a period of 15 days from the date of passing of this order. If the petitioner will not achieve the requisite grade, the respondents are at liberty to pass appropriate order for termination of the petitioner and to ask him to leave the programme.

31. With the aforesaid observations, the writ petition stands disposed of.

32. It is given out that this course is now not continuing with the respondent Institution and only the petitioner is left out to undertake this examination. Considering the fact that the petitioner already appeared in three papers and

under the direction of this Court appeared in remaining four papers, I deem it proper to direct the respondents to provide one chance to the petitioner to appear in IIInd Semester in view of the aforesaid observation.