
(2004) 09 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 817 of 2003

Sandeep Singh and Others

APPELLANT

Vs

University of Jammu and Others

RESPONDENT

Date of Decision : 24-09-2004

Acts Referred:

Jammu and Kashmir Universities Act, 1969 — Section 13, 5

Citation : (2005) 3 JKJ 452

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : Surinder Kour, for the Appellant; D.S. Thakur, for the Respondent

Judgement

Permod Kohli, J.—Petitioners are students of Bachelor Degree Course of Computer Application (BCA) admitted to Sant Rocha Singh

Degree College, Nanak Nagar, Jammu, which is one of the affiliated colleges to University of Jammu.

2. All the petitioners could not qualify all the papers of 1st Year BCA and accordingly were placed in re-appear category in different subjects as

per the details given in para 3 of the writ petition, wherein the roll numbers allotted to the petitioners have also been indicated. Consequent upon

their failure in the subjects they were denied admission to 2nd year BCA course. All the petitioners claims to have applied for re-evaluation of the

subjects in which they have been placed in the re-appear category as averred in the writ petition. The applications were submitted within the

prescribed time and fee for the purpose already stand deposited. The University authorities have not permitted re-evaluation of the papers. Being

denied the re-evaluation of the papers, the petitioners have filed the present writ petition seeking two-fold prayer in the nature of mandamus (i) a

direction to re-evaluate the papers in respect to the subject(s) they have applied for (i) to introduce the carry on/semester system for the BCA

Course on the analogy of other professional degree courses like LLB; MBBS; BE etc. and consequently to issue direction to the respondents to

admit the petitioners in 2nd year course of BCA.

3. With a view to establish their right seeking the afore-said directions, the petitioners have placed on record copies of application form for re-

valuation of answer book; receipt for payment of Rs 1100/- as re-evaluation fee and mark-sheet issued by the university on re-valuation of paper

of one Deepak Hakeem and a mark-sheet of re-evaluation of one Sanjeev Suri issued by the University of Jammu. Petitioners have also placed on

record a Notification regarding adoption of the statutes governing the Degree of Bachelor of Engineering and Appendix of governing the Colleges

of Engineering for Academic Calendar for the same course as also Information Brochure to demonstrate that semester system has been adopted

by the University of Jammu in respect to various courses of study. Based upon the afore-said documents, it is stated that in the year 2001 and

2002 the University of Jammu allowed re-evaluation of papers in the course of BCA. However, the same benefit is being denied to the petitioner

herein.

4. The University of Jammu in its detailed reply denying the right of the petitioners to invoke the writ jurisdiction of this Court have also raised the

issue of exercise of jurisdiction by this Court to issue the directions prayed for primarily on the ground that the questions of academic are not

justiciable. It is accordingly stated that the University in its wisdom has not framed any statute providing for re-evaluation and semester system in

the BCA course in the academic interest of the course, same being not suitable.

5. On the question of allowing re-evaluation in case of some of the candidates in the last academic year, the University was directed to file a

supplementary affidavit and produce the record in respect to re-valuation of the candidates named in the writ petition vide interim order dated 10-

10-2003.

6. Pursuant to the afore-said directions of the Court the University has filed supplementary affidavit admitting the grant of benefit of re-evaluation in

BCA course Part-I Examination for the annual Session 2002 to some of the

candidates. With a view to explain the circumstances allowing such a benefit it has been averred in the supplementary affidavit that in the year 2002 some of the candidates who appeared in BCA Part-I Annual examination represented to the Vice Chancellor for providing the benefit of re-valuation of the answer scripts in the subjects they were placed in re-appear category. The representation was placed before a Committee which recommended the grant of benefit of re-valuation. Based upon these recommendations the Vice Chancellor allowed re-evaluation vide Notification dated 16-5-2002 in anticipation of the approval of the Competent Authority. Subsequently the matter was placed before the University Council, the Apex decision making statutory authority of the university which while approving the action of the Vice Chancellor decided not to allow the re-evaluation in BCA Course. Copy of the decision of the University Council adopting a Resolution No. 47 on 21-2-2003 at item No. 47 has been placed on record which reads as under:

ITEM NO. 47:

Considered confirmation of the action taken by the Vice-Chancellor, in anticipation of the approval of the Competent Authority, in having authorized Re-evaluation in BCA Course as applicable in respect of Three Year B.A/B.Sc/B. Com and BBA Course. RESOLVED that the action taken by the Vice Chancellor in having authorized Re-evaluation in BCA Course as applicable in respect of under graduate and BBA Course as one time concession, duly endorsed by the Syndicate, be confirmed.

7. In-disputed facts that emerge from the record are summarized as under:

(i) There is no statute framed by the University in exercise of its statute making power either to allow or not to allow the re-evaluation in BCA

course;

(ii) There is a decision of the University Council taken on 21-2-2003 approving re-evaluation order by the Vice Chancellor in the BCA course as

'one time exception'.

(iii) Some similarly situated candidates belonging to BCA Course were allowed the benefit of re-evaluation in the year 2002 Annual Examination.

8. It is settled position of law that the State or any of the autonomous or governing authority have the absolute authority and power to frame and

lay down policy/policies. Such a power emanates from Section 5 of the Jammu and Kashmir Constitution, which reads as under:

5. Extent of Executive and Legislative Power of the State-

The executive and legislative power of the State extends to all matters except those with respect to which Parliament has power to make laws for

the State under the Provisions of the Constitution of India.

9. Since the Constitution provide and confer the jurisdiction upon the State and such other authority to exercise the Executive Power in respect to

all such matters for which it has the legislative power, if any authority has taken a decision by exercising its executive/administrative power to

formulate any policy or guide-lines in a particular area/field, the same can govern and regulate all actions relating to that field. Therefore, the

University even without framing statute has the authority to take decision in respect to matters relating to admission of a particular course, its

examination and all other related matters. No fault can be found with the same, merely, because the same is not backed by statutory authority.

Therefore, even in the absence of statute, the decisions taken by the University by its Decision Making Committee like University Council are valid

and enforceable.

10. The only area to which the Court, particularly a writ Court can examine the validity of such a decision are (a) illegal exercise of power to take

decision; (b) Rationality and arbitrariness of the action' (c) infringement of the rights of individuals/persons, by enforcement of the decision.

11. Mr. D.S. Thakur, learned Counsel appearing for the University has strenuously argued that the issues raised in the writ petition are not

justiciable. It is for the expert bodies like University Council/Body Experts in the field of academics, who are entitled to take a decision and Court

should not venture into the decision of such experts/bodies. With a view to support this point of view he has placed reliance upon the Apex Court

judgment in the case of Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth

and Others, . In the afore-said case the Maharashtra State Board of Secondary and Higher Secondary Education had framed regulation in

exercise of its Regulation making power under the provisions of the Act creating a provision not to permit the inspection and re-evaluation of

answer- scripts in the examination. Some of the un-successful candidates challenged the validity of the Regulation so framed by the Board on the

ground of un-reasonableness. The High Court struck down the Regulation. However, in an appeal before the Apex Court, the judgment of the

High Court was over-set. The Apex Court on consideration of some earlier judgments held as under:

Far framed advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly

defeasive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to

what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical

experts and rich experience of actual day to day working of educational institutions and the departments controlling them. It will be wholly wrong

for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and gross root

problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a

pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision of interpretation of

a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this

principle has not been adequately kept in mind by the High Court while deciding the instant case.

12. I have examined the contentions raised by the learned Counsel for the parties as also the decision of the University Council dated 21-2-2003.

It is true that some of the candidates were allowed the benefit of re-evaluation in respect to Annual Examination 2002 in the BCA Course. This

benefit was allowed by the Vice Chancellor in anticipation of the approval of the competent authority in terms of Section 13 (iv) of the Kashmir

and Jammu Universities Act 1959. The competent authority though approved the action of the Vice Chancellor in respect to the conferment of the

benefit of re-evaluation to some of the candidates but declared the same as a 'one time exception'. Though the University Council has not disclosed

any reason for arriving at their decision and no such reason has been disclosed in the reply as also the supplementary affidavit filed. It cannot be

lost sight of the fact that fairness and rationality of a decision which can only be examined if the reasons are disclosed, as in absence of the reasons,

the same cannot be ascertained. There may be valid basis for taking a particular decision, but in absence of reasons it may not be possible for the

Court to find out the real intent and purpose for such a decision. This Court is also conscious of the fact that the decision has been taken by an

Expert Body of Academicians and they may have valid reasons for not providing re-evaluation for this course. It is not a case where the University

has adopted the policy not to provide re-evaluation at all. In most of the disciplines the university has provided re-evaluation. What is the difference

between this course and other courses wherein re-evaluation has been provided has not been disclosed anywhere in the reply/supplementary

affidavit. There can be one valid reason as indicated by the Apex Court in case *Maharashtra State Board v. Paritosh Bhupesh Kumar Sheth*

(supra) wherein the Apex Court while considering the feasibility of the re-evaluation observed as under :

The High Court has relied upon the fact that the University of Bombay and some other Universities have recently made provisions permitting

candidates to demand revaluation. In our opinion, this has little relevance for the purpose of deciding about the legal validity of the impugned

regulations framed by the Board. We do not know under what circumstances, the University of Bombay has decided to recognize a right in the

examinees to demand a revaluation. As far as the Board is concerned, it has set out in the counter-affidavit the enormity of the task with which it is

already faced, namely, of completing twice during each year the process of evaluation and release of results of some 3 Lacs of candidates

appearing for the SSC and HSC examinations to be held in an interval of only a few months from one another. If the candidates are all to be given

inspection of their answer books or the revaluation of the answer papers is to be done in the presence of the candidates, the process is bound to

be extremely time consuming and if such a request is made by even about ten percent of the candidates, who will be 30,000 in number, it would

involve several thousands of man hours and is bound to throw the entire system out of gear. Further, it is in the public interest that the results of

public examinations when published should have some finality attached to them. If inspection verification in the presence of the candidates and

revaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regards to the relative ranking etc. of the

candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process.

13. In the afore-said case what persuaded the Apex Court was the large number of candidates appearing in the particular examination being

conducted by the Maharashtra State Board of Secondary Education. In the present case though none of the parties have disclosed the number of

candidates appearing for BCA Course in the University of Jammu, but keeping in view the number of Institutions and the infra-structure available in

the province of Jammu that may have affiliation with the University of Jammu, the number cannot be as large as under the Secondary Board of

Education of even Jammu and Kashmir Board of Secondary Education. The University has already provided re-evaluation in other courses like

LLB, MBBS, BE and number of other courses where the number of students may be much more. No distinguishing features have been indicated in

the reply to examine the fairness, reasonableness and rationality of the decision. Therefore, it is difficult to fully agree with the decision of the

University.

14. As regards the contention of the petitioners that the university should provide a Semester and Carry on system, I am afraid, the court can

formulate any opinion of its own in this regard. The Apex Decision Making Body of the university having taken a decision to provide an annual

examination for the court, no interference is permissible by this Court.

15. This Court is conscious of the powers of judicial review in exercise of writ jurisdiction, particularly in respect to the decision of the expert

bodies like the University and intruding in such an areas just at the asking of the litigating party, may not be permissible. However, applying the

tests approved by the Apex Court in the afore-said decision of Maharashtra State Board of Secondary Education (supra) I am of the opinion that

the University has not examined the issue in an objective manner and no distinguishing features have been shown how the BCA course can be said

to be different than the other courses where the re-evaluation has been made permissible. Therefore, I direct the University to examine the issue of

providing re-checking/; re-evaluation for the BCA course. Let University Council

examine this issue in objective manner and take a decision in this regard within a period of two months. Disposed of accordingly.