

**(2008) 05 DEL CK 0201**

**In the Delhi High Court**

**Case No : Writ Petition (Civil) No. 8145 of 2007**

Santosh Kumar Singh

APPELLANT

Vs

Sri Guru Gobind Singh College of Commerce and Others

RESPONDENT

---

**Date of Decision :** 02-05-2008

**Acts Referred:**

**Citation :** (2008) 05 DEL CK 0201

**Hon'ble Judges :** Gita Mittal, J

**Bench :** Single Bench

**Advocate :** Zakir Hussain, for the Appellant; Anurag Mathur and A.P.S. Ahluwalia, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

Gita Mittal, J.—The petitioner in this case is aggrieved by the action of the respondent No. 2 in not permitting him to undertake the second semester examination of the course of Diploma in Business Journalism & Corporate Communication ("DBJCC" for brevity). So far as the material date and events are concerned, there is no real dispute and the same, to the extent necessary, are briefly noticed hereafter.

2. The petitioner took admission in the course of Diploma in Business Journalism & Corporate Communications which was being run by the Sri Guru Gobind College of Commerce, respondent No. 1 herein. The respondent No. 1 college is affiliated to the University of Delhi and is consequently bound by the statutory provisions of the Delhi University Act, statutes and ordinances framed thereunder. The petitioner has arrayed the Controller of Examinations of the Delhi University as respondent No. 2 herein on the ground that he was responsible for the conduct of the examination and had declined the permission to the petitioner to appear in the second semester examination of the course. The respondent No. 3 is the course coordinator of the DBJCC course run by the respondent No. 1.

The petitioner was admitted to the course of the respondent No. 1 in August, 2004.

3. The course content and scheme of the DBJCC course was based on the ordinance framed and notified by the Delhi University in exercise of powers under the Delhi University Act, 1922. The ordinance regarding rules of admission, examination, promotion and attendance to the DBJCC course stipulated thus:

There shall be a Diploma in Business Journalism & Corporate Communication (DBJCC) at the Post Graduate level. This will be a full time course of one year duration divided into two semesters.

4. It is noteworthy that the scheme of study and examination as per the ordinance, the same has been reproduced in the prospectus which was issued by the respondent No. 1.

5. So far as the course content as detailed in the prospectus issued by the respondent No. 1 is concerned, it was provided under the heading "Scheme of Study and Examination" and read thus:

1. Candidate shall have to study 9 papers and one project in one year duration of the DBJCC program.

2. All papers are compulsory.

3. the examination for each paper will be conducted for 100 marks of which 70 marks are for written examination. The remaining 30 marks are reserved for internal assessment which will be judged on the basis of the student's performance in mid-semester examination, presentations, participation in seminars, preparation of House Newspapers and Journals and Detailed report of Mock Press Conference, etc.

4. The duration of written examination for each paper will be 3 hours.

5. Internal Assessment: 30 Marks in each paper reserved for internal assessment are to be judged on the following basis:

(a) 15 marks on the basis of mid-semester examination.

(b) 5 marks for class presentation

(c) 5 marks for preparation of House Newspapers and Journals/Assignments.

(d) 5 marks for detailed report of Mock Press Conference/Assignments.

Papers to be taught in First Max. Duration Semester Marks  
1. Communication and Business Communication 100 3 hrs.  
2. Indian Business Environment 100 3 hrs.  
3. Print and Electronic Media 100 3 hrs.  
4. Financial System and Analysis 100 3 hrs.  
5. Information Technology and 100 3 hrs.  
Cyber Journalism Papers to be taught in Second Semester  
6. Global Information Scenario 100 3 hrs.  
7. PR and Corporate Communication 100 3 hrs.  
8. Advertising and Marketing 100 3

hrs. 9. Reporting and Editing - Theory and Process 100 3 hrs. 10. Project Report 100 3 hrs.

Thus, as per the scheme of study and examination, a candidate was required to study nine papers and one project in the one year duration programme.

6. The prospectus also provided the pass percentage, span, period of the course as well as classification of results which also deserve to be considered in extenso and for convenience, are reproduced hereunder:

### 3. Pass Percentage

A student shall be declared to have passed the course if he/she obtains 40% marks in each paper and 50% marks in the aggregate.

### 4. Span Period

No student shall be allowed to appear in the examination more than twice and a student must pass the examination within 2 years of his/her first admission to the course.

### 5. Classification of Results

Successful candidates shall be classified as follows on the basis of the combined performance in I and II semester:

First Division with Distinction: 75% marks or more in the aggregate

First Division: 60% marks or more in the aggregate

Second Division: 50% marks or more in the aggregate

The minimum pass marks would be 50% marks in the aggregate. To get the degree he/she must pass in all the papers i.e. obtain atleast 40% marks in each paper.

7. The petitioner took the first semester examination in December, 2004. He, however, failed to obtain the pass percentage marks in paper No. IV while he cleared the examination conducted in the other papers. The petitioner has claimed that he attended all classes of the two semesters, took the mid-term examination in March, 2005 and was permitted 40 days internship as well. It is only when the petitioner submitted his examination form that the respondent No. 2/Controller of Examinations in May, 2005 stated that the petitioner had failed in one paper and that in the rules it was not clear as to whether he is entitled to appear in the second semester examination and consequently his form was not accepted.

8. The respondent Nos. 2 & 3 have filed the counter affidavit contending that the petitioner was not eligible to appear in the second semester examination for the reason that he had failed in one paper and consequently, his examination form was rightly rejected. None of the requests of the petitioner were favourably

considered. The respondent No. 1 expressed helplessness in the matter inasmuch as it was stated that it was bound by the decision taken by the respondent Nos. 2 & 3. In this background, the petitioner was prevented from taking the examination conducted in November/December, 2005 on account of the decision of the respondent No. 2.

9. The petitioner has placed reliance on a clarification to the ordinance which was issued by the Delhi University authorities in March, 2006, stipulating and clarifying the rule of promotion that if any student failed to secure 45% marks in any of the paper in first semester, he would be promoted to the second semester and would have to appear in such first semester paper in which he had failed along with the second semester examination in the same academic year.

10. Thereby the respondent Nos. 2 and 3 clarified that if a candidate failed to secure 50% marks in aggregate in both the semesters but secured at least 45% marks in each paper, then he could appear in any paper/test of the first/second semester along with second semester examinations to be held in the subsequent year. It was clarified that a candidate would not be given more than two chances in any paper.

11. The petitioner has submitted that he was entitled even to the benefit of this clarification and consequently, in April, 2006, had again approached the respondent No. 1 for submitting the examination form and to deposit the examination fee. The petitioner's application and case was recommended by the respondent No. 1 by its communication dated 16th November, 2006 as well as a letter dated 30th November, 2006 addressed to the Controller of Examination, respondent No. 2 and the Dean of Students Welfare respectively.

12. The request of the petitioner and the recommendations of the respondent No. 1 were rejected by the authorities of the Delhi University which decision was communicated by a letter dated 7th March, 2007 by the Assistant Controller of Examination (C) of the Delhi University. The respondent No. 1 was informed that the case of the petitioner was considered at an appropriate level and it had not been found possible to promote him to the second semester under the new promotion scheme which came into force w.e.f. the academic year 2006-2007.

13. In view of the above, the present writ petition has been filed by the petitioner seeking an order quashing the letter dated 7th March, 2007 and a direction to the respondents to facilitate the petitioner to appear in the examination of the second semester of the DBJCC course and one paper of the first semester.

14. The writ petition has been opposed on the same grounds which have been mentioned in the letter dated 7th March, 2007 by the Assistant Controller of Examinations of the Delhi University. Mr. Anurag Mathur, learned Counsel appearing on behalf of the respondent Nos. 2 & 3, has urged at great length that having failed to pass one paper of the first semester examination, as per the applicable ordinance relied upon by the petitioner himself, the petitioner was not

eligible to take the second semester examination. According to Mr. Mathur, learned Counsel, the petitioner was required to repeat the paper of the first semester in the following academic year and accordingly, thereafter take the second semester examination. It has also been submitted that the clarification of the examination scheme which was issued on the 7th March, 2007 was issued pursuant to the faculty meeting held on 13th March, 2006 and later by the academic counsel. The petitioner was disentitled to any benefit thereof inasmuch as the same was prospective in nature and came into force w.e.f. the academic year 2006-2007. For this reason, the same would not apply to the petitioner who had failed to clear one paper in the first semester examination held in December, 2004.

15. It has further been objected that as per the ordinance, the petitioner was required to complete the entire course in a maximum period of two years. The petitioner having joined the course in August, 2004, the period of two years within which he was to complete the course, came to an end in August, 2006 and consequently the present writ petition deserves to be summarily rejected.

16. So far as the respondent No. 1 is concerned, Mr. A.P. Ahluwalia, learned Counsel representing this respondent, has submitted that the respondent No. 1 had very fairly recommended the case of the petitioner to the University of Delhi. However, the recommendations made twice by the respondent No. 1 did not find favour with the authorities of the Delhi University. Consequently, inasmuch as the respondent No. 1 is affiliated to the Delhi University, it would remain bound by the decision making.

17. I have heard learned Counsel for the parties. I find that the only question which arises for consideration is as to whether the stand taken by the Delhi University is sustainable in the light of the applicable provisions of the Ordinance and the terms and conditions notified in the prospectus with regard to the course contents and the information furnished therein. The Ordinance has been framed in exercise of statutory power and certainly would bind the respondents and guide adjudication in the present case.

18. The admitted position is that as per the applicable Ordinance, the Diploma in Business Journalism & Corporate Communication has been mentioned as a post graduate level course. It has been indicated that it is a full time course of one year duration divided in two semesters. As per the scheme of study and examination, a candidate is required to study nine papers and complete one project in the one year duration. A stipulation has also been made that a student shall be declared to have passed the course if he/she obtains 40% marks in each paper and 50% marks in aggregate. The total span available to the student to complete the course is within two years of his/her admission to the course. The Ordinance also stipulates that no student shall be allowed to appear in the examination more than twice. The success of a candidate depends upon the combined performance in the first and second semester.

19. So far as the prohibition which has been read into the scheme notified in the Ordinance by the respondents, I find that no such prohibition has been even remotely suggested, let alone expressly stated in the Ordinance. It nowhere states that in case a candidate fails to clear any paper in the first semester, he/she would not be permitted to continue in the second semester. On the contrary, the scheme envisages that if the student completes the nine papers and the project in a total duration of two years and that he would be given only two opportunities to undertake examination. The prospectus circulated by the respondent No. 1 for the course in question also does not contain any such prohibition. There is nothing on record even to remotely suggest that the scheme of the conduct of the course in the DBJCC required that the candidate proceeds to the second semester only if he had completed the first semester.

20. The submissions on behalf of the respondent Nos. 2 & 3 and the University requires to be examined from yet another angle. According to the respondent No. 2 & 3, a candidate was required to complete the course within two years from the date of his admission. At the same time, he was entitled to two opportunities to clear the examination in any paper or subject. In case the contentions placed by the respondent Nos. 2 & 3 were to be accepted, the result would be that a candidate who failed in any paper in the first semester, would be deprived of two opportunities to take the papers which form part of the second semester. Such student who failed the paper one in the first semester, would be required to be held ineligible to continue in the second semester till he cleared or passed the failed first semester paper. Thus, this student (who failed the first semester paper in December, 2004) would be able to take the first semester paper only in December, 2005. Thereby, such student would be required to take the second semester examination only at the end of the session, i.e. in May, 2006. Thus, in case he fails any examination of the second semester, he would not get a second chance inasmuch as he would have failed to complete the course within two years of commencement of the course or two years of his admission. This position is contrary to the stipulations contained in the Ordinance and the prospectus by the respondent.

21. The respondent Nos. 2 & 3 have informed the Principal of the respondent No. 1 in the letter dated 7th March, 2007 that it had not been found possible to "promote" him to the second semester. under the new promotion scheme, which came into force w.e.f. the academic year 2006-2007. While recommending the petitioner's case in the communications of 16th November, 2006 & 30th November, 2006, the respondent No. 1 has written that the petitioner was disqualified to sit in the second semester examination as per the examination scheme mentioned in the Ordinance.

In the light of the foregoing discussion, in my view, both views, that is, the view of the respondent No. 1 as well as that of the respondent Nos. 2 & 3, are misconceived and have no basis in the applicable prescription. As per the scheme of the examination, the respondents have divided the nine papers into two parts,

that is the first and second semester. It was nowhere stipulated that a student has to pass any particular number of papers of the first semester before he could take the second semester examination. The scheme which is notified in the ordinance and the prospectus also does not envisage "promotion" to the second semester.

22. The petitioner was not permitted to take the exam on an erroneous reading of the Ordinance by the respondents. A nonexistent ambiguity was read into the rule to deny the petitioner permission to appear in the examination.

23. It is well settled that such Ordinance and terms of the prospectus have to be strictly construed. A prohibition which was not contained nor stipulated therein and thus not notified to the student, could not be read into the conditions of the course mid-session to his/her prejudice.

The disqualification and the ineligibility which has been read into the scheme of the course by the respondents, so far as the petitioner was concerned, is wholly arbitrary, misconceived and untenable and cannot be sustained. The petitioner thus was wrongly prevented from taking the examination.

24. Even the objection taken with regard to the applicability of the clarification of the examination scheme issued by the Delhi University pursuant to the faculty meeting held on 13th March, 2006 and later in the academic counsel is wholly untenable and misconceived. No such clarification was in fact factually required inasmuch as there was no prohibition as was being read into the ordinance by the Delhi University and the respondent Nos. 2 & 3.

25. The clarification which was issued, only explains the existing ordinance and is not in the nature of amendment to the ordinance which are framed in exercise of statutory powers. The ordinance as held above, does not contain any requirement of promotion to the second semester. The course remains one of one year duration consisting of nine papers and one project. There is no change in the position which subsisted so far as the ordinance and the prospectus of 2004-2005 are concerned, whether before the clarification or thereafter.

26. So far as the objection that the period of two years since the date the petitioner was given admission is over, is concerned, the same has to be examined in the facts and circumstances of the case.

27. The petitioner was admitted to the course in August, 2004. He took the first semester examination. It has been held that he was allegedly not permitted to take the second year examination. The petitioner had approached the respondent for correcting the error which had been made. The respondent Nos. 2 & 3 unequivocally refused to do so and the respondent No. 1 was mandated to follow the decision taken by the Delhi University.

28. In the instant case, it is the respondents who have permitted the petitioner for completing the course after he took the first year examination. On a misconception and erroneous reading of the provisions of the ordinance and the

stipulations contained in the prospectus, the petitioner has not been permitted to take the examination of the second semester or the examination which he had failed. Even the respondent No. 1 had recommended the petitioner's case in its communication of 16th November, 2006 & 30th November, 2006. The respondents sat over the same and opted to reply thereto as late as on the 7th March, 2007. In this background, certainly it cannot be held that the petitioner has become ineligible to course to which he was admitted by the respondent No. 1.

29. For all these reasons, this writ petition deserves to be allowed. The letter dated 7th March, 2007 issued by the respondent Nos. 2 & 3 shall stand hereby set aside and quashed. It is held that the petitioner was eligible to take the second semester examination and the examination of Paper No. IV of the first semester in which he had failed.

The petitioner shall be permitted to participate in the examination which is to be conducted by the respondents. The petitioner shall be granted opportunity to prepare and permitted to complete all formalities including submission of the examination form and fee in order to undertake the examination of the second semester and the one examination of the first semester which he had not cleared. The petitioner shall be given opportunity to complete the same and to take the examination of the first semester paper in which he has failed as also the second semester, in accordance with the applicable laws and procedure. In terms of the prospectus, in case the petitioner is unsuccessful in clearing any paper of the second semester, he shall be permitted the second chance to clear the same.

The respondents shall furnish the examination forms to the petitioner for the second semester examination and paper IV of the first semester examination within one week from today. The same shall be completed and submitted by the petitioner to the respondents within one week thereafter. The petitioner shall be issued the admit card and be permitted to take the ensuing examination.

This writ petition is allowed in the above terms.

The petitioner shall be entitled to the costs of Rs. 15,000/- which shall be paid by the University of Delhi to the petitioner within two weeks from today.

Dasti.