
(2012) 03 CAL CK 0065
In the Calcutta High Court
Case No : Writ Petition No. 486 (W) of 2012

Shalini Chatterjee

APPELLANT

Vs

Jadavpur University and Others

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Jadavpur University Act, 1949 — Section 15, 49, 49(2)

Citation : (2012) 03 CAL CK 0065

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Arabinda Chatterjee, Mr. Soumen Dutta and Mr. Goutam Dey in WP Nos. 485, 486 and 487 W of 2012, for the Appellant; Sumit Kr. Panja and Mr. Taraprasad Halder for the Respondent No. 3 and Mr. Sovan Lal Hazra for the Respondent Nos. 1 and 2 in WP Nos. 485, 486 and 487 (W) of 2012, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—In all these Writ Petitions, the petitioners have prayed for the issuance of a writ of mandamus commanding upon the respondents to allow them to continue with the 5th Semester and to be given a fair chance to clear their respective papers. In the case of Shalini Chatterjee, the concerned paper is "Building Material" of the 1st Semester. In the case of Rishika Bubna, the concerned paper is "Principles of Architecture" of the 2nd Semester and in the case of Sonia Choudhury, the concerned paper is "Fabric Manufacture" of the 2nd Semester. In all the Writ Petitions, the petitioners have stated that with the intention of making their careers in Interior Design, they got themselves admitted to the J. D. Birla Institute in May, 2009. They have stated that they all were admitted to the 3 year B. Sc. (Hons.) Course in Interior Design. The said 3 year B.Sc. (Hons.) Course consists of six Semesters having two Semesters in each academic year starting from May, 2009.

2. Petitioner Shalini did not pass in the subject "Building Material" in the 1st

Semester Examination which was held in December, 2009.

3. Petitioner Rishika Bubna could not pass in the Paper "Principles of Architecture" in the 2nd Semester Examination which was held in June, 2010.

4. Petitioner Sonia Choudhury could not pass in the paper "Fabric Manufacture" in the 2nd Semester Examination that was held in June, 2010.

5. The petitioners were all promoted to the 3rd Semester Class (2nd Year) and they all successfully completed and cleared all subjects. Petitioner Shalini Chatterjee got an opportunity to clear the paper "Building Material", but she could not pass. This was another chance granted to her.

6. Petitioner Rishika Bubna also completed and cleared all subjects in the 3rd Semester and in the Examinations of the 3rd Semester she was given an opportunity to clear the paper "Principles of Architecture" but she could not pass. This was also another opportunity that was granted to her.

7. Similarly, petitioner Sonia Choudhury completed and cleared all the subjects of 3rd Semester but at the time of Examinations of the 3rd Semester she was also given an opportunity to clear the paper "Fabric Manufacture", but she could not pass. This was also another opportunity granted to her.

8. The petitioners have stated that they were all promoted to the 4th Semester. The Examinations were held in July, 2011 and the results came out in September, 2011. In the mean time, the 5th Semester started from June, 2011 and the Examinations were supposed to have been held in December, 2011. The petitioners were promoted to the said Class of the 5th Semester and Fees was accepted by the Institute and they were all allowed to attend the Classes of the 5th Semester for more than six months.

9. On December 5, 2011, the petitioners deposited the Examination Fee as well as Registration Fees of Rs. 1100/- for supplementary Examinations in respect of each of their unsuccessful papers. It is stated by them that they were all registered for clearing the unsuccessful papers. However, the Principal of the Institute did not issue any receipt and they were told that the supplementary Examinations would be held after December 12, 2011. However, the said supplementary Examinations were not held by the Principal in December, 2011.

10. The Petitioners were surprised when they were told on December 22, 2011 that they were not entitled to sit in the 5th Semester Examinations and that they would have to complete the entire year as they were not eligible. The petitioners have stated that no rules were shown to them but according to them, the rules which were known to them did not disallow them to pursue their courses of studies in the 5th Semester of the 3rd Year merely because they had not completed one subject. They have referred to Annexure P-1 as the said Examinations Rules and have stated that subsequently, they came across another set of Rules (Annexure P-2) which had come into the force after their admission. These petitioners have stated that the relevant Rules (Annexure P-2)

are as follows:

(1) Under Rule 24(a) Promotion from semester1 to semester2 in each year/session will be granted irrespective of the number of subjects (theory and practical included) notcleared/passed.

(2) Under Rule 24(b) - For promotion from 1st year B. Sc. To 2nd year B.Sc., a student candidate can only have a maximum of 4 back papers (including theory and practical).

(3) Under Rule 24(c) - For promotion to the 3rd year, a student has to clear all the papers (theory & practical) of the first four semesters.

(4) Under Rule 26 - Special Supplementary-I Examination shall be conducted within 1 month of publication of the 2nd year B.Sc. (Hons.) 4th Semester result. Provisional admission/promotion shall be given to students from the 4th Semester to the 5th Semester. Only those students who have completed the 4th semester examination and have 4 or less than 4 back papers in subjects taught in 2nd year B.Sc. (semester 3 and semester 4) are eligible to sit for the Special Supplementary-I examination.

11. The petitioners have argued that even assuming, though not admitting, that the Rules at Annexure P-2 are applicable, even then those Rules have not even been followed by the respondents themselves inasmuch as the results of the 4th Semester was published in September, 2011 but contrary to Rule 26 no special supplementary-I Examination was held within 1 month from September, 2011. In fact, no such examination was held at all although the petitioners paid the registration fees after filling up the necessary forms together with Examination Fees on December 5, 2011.

12. As soon as they came to learn about the new Rules (Annexure P-2), they rushed to the Principal of the J. D. Birla Institute but he did not pay any heed to their problems. They then approached the authority of the Jadavpur University but even then, nothing happened. It is the case of the Petitioners that thereafter the Principal stopped even meeting them. The petitioners, alongwith other similarly situated students, filed a Representation (Annexure P-3) but to no avail.

13. When the Institute reopened on 2nd January, 2012, the petitioners were not allowed to enter into the Campus of the Institute. They were forced to remain outside and thereafter, on 3.1.2012, they met the authority of the University who assured them to look into the matter. They waited for two days and thereafter, having no other alternative, they again filed a Representation before the Vice Chancellor on 6.1.2012 vide Annexure P-4 but nothing happened.

14. The petitioners have further stated that they were allowed to attend their classes for more than six months after acceptance of Fees. The respondent no. 3 also took registration fees as well as examination fees for the Supplementary Examinations and although the said Supplementary Examinations were supposed to have been held within 1 month from September, 2011, as per rule 26 (being

the date of publication of the results of the 4th Semester), but till December, 2011, no such examinations were held.

15. On the basis of the aforementioned set of facts, these petitioners have filed these Writ Petitions with a prayer, inter alia, that the Respondents be directed to allow them to appear in the 5th Semester Examinations.

16. A Supplementary Affidavit has also been filed on behalf of the petitioners on 10.2.2012 wherein they have stated that the need for filing the same has been necessitated because of certain facts which were inadvertently missed to be stated in the Writ Petition. They have stated as follows:

a) Shalini Chatterjee (WP No. 486 (w) of 2012) has stated that Registration Fee referred to in Paragraph 3(g) of the Writ Petition was registration Fee for the 5th Semester which was duly carried out.

b) The statement with regard to the Vice Chancellor should actually be read as the Examiner and Controller of Examinations of the University.

c) She has further stated that in her entire course upto 4th Semester, she was given only one chance to clear her back paper and no further chances were given.

d) The Principal had taken fees for the supplementary examinations but he did not allow her to sit in the said examinations and it was only after an Order was passed by this Court that she was allowed to sit in the said examinations.

e) She has further stated that she has been attending classes for the 5th Semester since June, 2011 after having paid fees for the 5th Semester. According to her, the new Rules have come into effect only in December, 2011 and under the old Rules, there was no bar in appearing in the 5th Semester examination with a back paper and therefore, she is entitled to get a chance to clear the paper alongwith 5th Semester Examinations.

f) Pursuant to the order of this Court passed on 10.1.2012, Petitioner Shalini sat for the 5th Semester Examination. Thereafter, on and from 6.2.2012, Classes for the 6th Semester have started but the College Authorities have not allowed her to join the class and therefore, she cannot enter the classroom. She has further stated that on 10.1.2012 itself, one paper of the 5th Semester viz., "Ethics and Environment" was held but she could not appear because the respondents did not allow her to sit in the Examination.

(g) Petitioner Rishika Bubna (WP No. 485(w) of 2012) has made a similar statement with regard to registration fees and with regard to the Vice Chancellor as also stated by Shalini.

h) She has stated that her statement made in Paragraph 3(o) with regard to the statement that on 10.1.2012, there spondents created a situation by which she was unable to appear in both the examinations, may be deleted.

i) She has made others prayers also but principally, the arguments are more or

less the same.

j) Petitioner Sonia Choudhury (WP No. 487(w) of 2012) has also filed a supplementary affidavit praying for some corrections to be made in writ petition and her submissions are also, more or less the same.

Here, at this juncture itself, this Court would like grant leave to each of the petitioners to carry out the necessary corrections that they have referred to in these supplementary affidavits but all these corrections must be carried out during the course of the day itself.

17. Affidavits-in-opposition have been filed by the respondents. The respondent nos. 1 and 2 (The University Authorities) have filed their own affidavit wherein they have stated that the Examination Rule was adopted through Resolution no. 10 dated 27.4.2009 of the Executive Council of the University after its Draft was prepared by the Faculty Council of Engineering & Technology in its meeting held on 30.3.2009. These Rules were then forwarded to the University "Court" which approved the same through its resolution dated 19.8.2009. They have relied upon Annexures R-1 which contains both the Proposal as well as the Resolution accepting the same and the final Rules (pages 16 -24 of said Affidavit-in-Opposition).

18. Mr. S. L. Hazra as well as Mr. Sumit Panja, Learned Counsel appearing for the respondent nos. 1-2 and 3 respectively have both pooh-poohed the submissions of Mr. Aurobindo Chatterjee, Learned Counsel for the petitioners to the effect that at the time when his clients had taken admission, the old Rules (Annexure P-1) were in existence and the new Rules had not come into effect. They have referred to Section 49 of the Jadavpur University Act, 1949. According to them, Section 49(2) clearly lays down that a Regulation shall be deemed to have been passed by the Executive Council if it is agreed to at a meeting of the said council by a majority of the total number of members existing at the time. A Regulation shall come into force immediately on being passed unless otherwise directed by the Chancellor.

Regulation 49(3) lays down that the "Court" shall have the power, by a resolution passed by a majority of its total number of members existing at the time, to cancel or modify any regulation. According to them, the "Court's" power is limited only to cancel or modify the Regulations.

The word "Court" in the context of the Jadavpur University, means an extremely high powered Body, even above the Executive Council and as indicated in Section 15 of the Jadavpur University Act, 1949. They have submitted that each of the petitioners got themselves admitted in the J. D. Birla Institute in May, 2009 whereas as per Annexure R-1, the proposal with regard to the examination Rules for the 3 year (6 Semesters) B. Sc. (Hons.) Course was accepted on 27.4.2009 and was forwarded to the "Court" for its approval. Now as per Section 49(2), a Regulation will be deemed to have been passed on the day it is so passed/accepted by the Executive Council. They have submitted that therefore, the Rules

will be deemed to have come into force on and from 27.4.2009 i.e., prior to the date of admission of the petitioners.

19. The aforementioned submissions of the Learned Counsel appearing for the respondent nos. 1, 2 and 3 are correct and they are accordingly accepted. Section 49 does not leave any doubt in accepting such a proposition. Under the circumstances, the submissions to the effect that the Regulations were not applicable upon the petitioners on the day they took admission, is not at acceptable to this Court.

20. The fact remains that each of the petitioners, as on date, are not even eligible in terms of Regulation 24(c) which clearly lays down that for promotion to the 3rd year, a student has to clear all the papers (theory and practical) of the first four semesters. In the instant case, the petitioners have already availed two chances but they have failed in their respective subjects referred to above. Under the circumstances, they cannot be said to have a vested right to pray for the issuance of a writ of mandamus upon the authorities to allow them to continue with the 5th Semester without clearing the papers.

21. Mr. Aurobindo Chatterjee, Learned Counsel for the petitioners had made a suggestion to the effect that the College/University, as the case may be, should be directed to allow the petitioners to sit in the back papers keeping intact the attendance made so far in the 5th Semester Classes as well as the merits of the other examinations. After concluding and passing the back paper, these should be ordered to be added to the credit of the petitioners who should then be allowed to continue in the 6th Semester.

22. This Court, after having held that the petitioners are not eligible cannot pass such a direction in view of the judgment reported in the case of *Guru Nanak Dev University Vs. Parminder Kr. Bansal and another*, . The Hon"ble Supreme Court, in the aforesaid case, has held that "Loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by itself taking over their functions". Under the circumstances, no benefit can be conferred to the Petitioners on the strength of the interim order passed on 10.1.2012.

23. Under the circumstances, this Court is not inclined to grant any relief to the petitioners as they are not even eligible even as on date and unless they clear all the papers of the first four semesters in accordance with the Rules and

Regulations of the Institute and of the University, they cannot, as a matter of course, claim that they must be promoted to the 3rd year. The Writ Petitions are all, therefore, Dismissed. No Order as to Costs.