

(2011) 12 DEL CK 0197

In the Delhi High Court

Case No : Writ Petition (C) No. 7610 of 2011

Siddharth Kaul and Others

APPELLANT

Vs

Guru Gobind Singh Indraprastha University

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Citation : (2011) 12 DEL CK 0197

Hon'ble Judges : Rajiv Sahai Endlaw, J;Dipak Misra, J

Bench : Division Bench

Advocate : Geeta Luthra with Mr. Sanjeev Sahay and Mr. Harish Malik, for the Appellant; Mukul Talwar, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The 203 petitioners are the students of colleges affiliated to the respondent University. They have filed this petition

claiming the following reliefs:-

a) Pass a writ of certiorari or writ, order or directions like in nature declaring the part of the Prospectus which provide that 90% of the credit of

Ordinance 11(B)(iii) is mandatory for promotion from one year to the next year is illegal, arbitrary and ultra vires and hence liable to be set aside.

b) Pass a writ of certiorari or writ, order or directions like in nature declaring that the Clause 11 of Indraprastha Vishwa Vidyalya Act and other

relevant clauses which provides for pass percentage 50 marks per subject is illegal, arbitrary and ultra vires, hence is liable to be set aside;

c) Pass a writ of certiorari or writ, order or directions like in nature declaring that the Clause 11 of Indraprastha Vishwa Vidyalya Act and other

relevant clauses which provides for re-totaling of the answer sheet is illegal,

arbitrary and ultra vires and hence liable to be set aside;

d) Pass a writ of mandamus directing the respondents to hold the counseling, declaring the result of the semesters and or re-valuation is done within

the specified/reasonable time so that no part of academic year is lost;

e) Pass a writ of Mandamus or writ, order or directions like in nature declaring that the pass percentage should be 50 marks per subject;

f) Pass a writ of mandamus directing the respondents to hold re-valuation of the examination papers;

g) Pass a writ of mandamus directing the respondents to have Credit System based on uniform grading i.e. equal number of grades in each

semester.

h) Pass such other and further order/orders as this Hon'ble Court may deem fit and proper in the interest of justice.

2. Pleadings have been completed and the counsels have been heard.

3. The various issues raised may be categorized as under:-

i. Right to re-evaluation / re-assessment of answer sheets as distinct from re-totaling only permitted by the University;

ii. Discrimination between the students of the colleges affiliated to the respondent University and the students of the colleges of the respondent

University itself, in the matter of proportion of the internal and the external assessment marks; while for the students of the affiliate colleges the

same is 25:75; that in the University's own colleges is 40:60;

iii. Imposition of the pass marks as 50%. It is contended that the pass marks in the other Universities are 40% only;

iv. The Rules of promotion from one year to the other. It is contended that the rule of requiring the students to have 50% of the credits for the

current year and overall 90% credits of the previous years, to get promoted to the next academic year is bad; and,

v. Delay on the part of the University in declaring the result and result of re-evaluation.

RE-EVALUATION

4. On the aspect of re-evaluation, it is pleaded that the same is critical if the student has failed and/or is on the borderline; that several other

institutions are providing for re-evaluation / re-assessment of answer sheets; no

prejudice will be caused to the respondents in permitting re-evaluation / re-assessment whereas if re-evaluation / re-assessment is not provided, the students suffer extreme hardship and great prejudice. The respondent University in its counter affidavit has pleaded that the Supreme Court has held that no direction to the University or any other academic body to re-evaluate the evaluated answer sheets can be given unless the ordinances and rules of the University specifically provide therefore.

5. The senior counsel for the petitioners during the hearing while not controverting that a right of re-evaluation has been denied by the courts till now has contended that time is ripe for change of the said view. It is contended that re-evaluation would be in consonance with the principles of transparency now in vogue and as acknowledged by the introduction of the Right to Information Act, 2005. It is further contended that the factors of sheer impossibility of the exercise of re-evaluation which weighed with the Supreme Court in denying re-evaluation in the CBSE examination in which lacs of students appear and of likelihood of delays in further admission if such exercise were to be undertaken, do not exist in the case of the respondent University which has only 28000 students.

6. We are unable to agree. The Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs.

Paritosh Bhupeshkumar Sheth and Others, held that it is not within the legitimate domain of the Court to determine whether the purpose of a statute

can be served better by adopting any Policy different from what has been laid down by the legislature or its delegatee and to strike down as

unreasonable a Bye-Law merely on the ground that the Policy enunciated therein does not meet with the approval of the Court is not permissible.

The argument of fair play requiring such re-evaluation was also rejected and it was held that if it is found that every possible precaution has been

taken and all necessary safeguards provided to ensure that the evaluation is done by the examiners applying uniform standards with checks and

cross-checks at different stages and that measures for detection of malpractice, etc. have also been effectively adopted, it will not be correct on the

part of the Courts to strike down the provision prohibiting re-evaluation on the ground that it violates the rules of fair play. Similarly, the argument

of public interest was also not accepted.

7. The Division Bench of this Court in Parent Forum for Meaningful Education and Others Vs. Central Board of Secondary Education and Others,

also laid down that the setting of the question papers in the examination and the evaluation of the answers is the prerogative of the examining body

and it is not advisable for Court to interfere therein. The Supreme Court in SLP preferred by the CBSE against the said judgment, vide order

dated 5th November, 1993 set aside the direction of the Division Bench of this Court to the CBSE to introduce the system of re-evaluation. The

Supreme Court prior thereto in Jawaharlal Nehru University Vs. B.S. Narwal, had already opined that authorities of the University are best

qualified and the Courts, perhaps least qualified to judge the academic performance of a student and there can be no question of giving an

opportunity to be heard when the student fails in the test.

8. Another Division Bench of this Court in Parents Forum for Meaningful Education v. CBSE being W.P. (C) No. 1824/1997, vide judgment

dated 19th December, 2001 held that this Court would not interfere with the Policy decision far less in relation to education and which has been

evolved by experts. The question of re-evaluation was held to be not res integra.

9. The Supreme Court in Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission and Others, also held that in the absence of

any provisions in the rules for re-evaluation of answer books, no candidate had a right thereto.

10. The counsel for the respondent University has also invited our attention to Bhushan Uttam Khare Vs. The Dean, B.J. Medical College and

others, and to The University of Mysore and Another Vs. C.D. Govinda Rao and Another, to contend that Court should not interfere in academic

matters. He has also referred to H.P. Public Service Commission Vs. Mukesh Thakur and Another, and to The Secretary, West Bengal Council of

Higher Secondary Education Vs. Ayan Das and Others, laying down that it is not permissible for the High Court to examine the question paper

and answer sheets itself and reiterating the earlier view.

11. We find that another Division Bench of this Court recently in Rohit Kumar Vs. Delhi Subordinate Services Selection Board reiterated that in

the absence of rules permitting the same, re-evaluation cannot be directed unless a special case therefore is made out.

12. The aforesaid conspectus of law would show that in the absence of any provision therefore, right of re-evaluation has been denied across the

board irrespective of the number of examinees and the denial has not been restricted to cases of CBSE or where there are lacs of examinees.

13. The senior counsel for the petitioners of course contends that the Apex Court in Paritosh Bhupeshkumar Sheth (supra) had satisfied itself of the

checks and balances in the examination scheme and for this reason had denied the right of re-evaluation. She has contended that the respondent

University in its counter affidavit has not pleaded anything in this regard. However we do not agree. It was for the petitioners to plead and establish

a case for re-evaluation to have arisen in the case of the respondent University. There are no pleadings in this regard. We cannot presume that the

respondent University has not ensured fair, objective and uniform evaluation of the answer sheets.

14. As far as the argument of transparency is concerned, undoubtedly the Apex Court in Central Board of Secondary Education and Another Vs.

Aditya Bandopadhyay and Others, has in allowing inspection of answer sheet to the examinees struck a chord different from that prevalent earlier.

However para 17 of the same judgment notices the provisions barring re-evaluation of answer books and restricting the remedy to re-totaling and

holds the same to be valid and binding on the examinees. The Supreme Court did not hold that allowing the examinees to inspect the evaluated

answer sheets will result in allowing re-evaluation also. No right to seek re-evaluation was found to be flowing from RTI Act also. Rather the same

Bench in the The Secretary, All India Pre-Medical/Pre-Dental Examination, C.B.S.E. and Others Vs. Khushboo Shrivastava and Others,

pronounced contemporaneously with Aditya Bandopadhyay (supra), set aside the orders of the High Court substituting their views for that of the

examiner and held the same to be impermissible.

15. It is not as if in the absence of a provision for re-evaluation a candidate is vulnerable or at the mercy of an examiner. Wherever a case calling

for re-evaluation is established, the Courts have allowed the same. Reference may be made to Sahiti and Others Vs. The Chancellor, Dr. N.T.R.

University of Health Sciences and Others, where the right of the Examining Body to for sufficient reasons order re-evaluation was upheld. The

Supreme Court in Sanjay Singh and Another Vs. U.P. Public Service Commission, Allahabad and Another, has also emphasized the necessity of having uniformity and consistency of evaluation of answer scripts and noticing that evaluation by several examiners may result in "examiner variability" or "hawk-dove effect", prescribed the procedure to be followed to ensure uniformity inter se the examiners so that the effect of examiner subjectivity" or "examiner variability" is minimized. However notwithstanding the same, a general right of re-evaluation without even establishing a case therefore was not allowed nor has been allowed in any other judgment. Mention may also be made of the The President Board of Secondary Education, Orissa and Another Vs. D. Suvankar and Another, where also the Supreme Court after observing that it is the bounden duty of the Board to ensure the examiners who evaluate the answer papers are equipped for the job and the possibility of wide variation in evaluation by different examiners is reduced, still held that the scope for judicial interference therein is very limited unless compelling reasons are shown.

16. Not only is the question thus no longer res integra but the petitioners in the present case have not even made out any case for striking down the provision of the respondent University prohibiting re-evaluation. We have also wondered as to where such re-evaluation scheme even if permitted would lead to. Evaluation of an essay type answer necessarily, to a certain extent, has to be subjective. Re-evaluation in the present case is founded on the expectation of the petitioners, who have failed to secure prescribed credits for promotion to the next academic year, of better marks. The Supreme Court in Union of India (UOI) Vs. Mohan Lal Capoor and Others, held that "it is not expedient to extend the horizon of natural justice in the audi alteram partem rule to the twilight zone of mere expectations, however great they might be". The petitioners have neither alleged nor shown any irregularity in the conduct of the examination. There is no basis for the claim for re-evaluation. The said claim is accordingly dismissed.

DISCRIMINATION

17. We now proceed to take up the next challenge of discrimination. The respondent University in its counter affidavit has denied any such

discrimination. It is the case of the respondent University that the proportion of the internal and external assessment marks in affiliate as well as University colleges is the same i.e. 25:75. The petitioners in support of their claim have been able to place before this court instance only of the course conferring a Dual Degree of B.Tech/M.Tech. The proportion between the internal and the external assessment marks in the said course is of 40:60. It is the contention of the counsel for the respondent University that since as per the rules/ordinances of the respondent University the proportion of internal to external assessment for post-graduation courses is of 40:60, in the said dual course the same proportion is provided. The counsel for the petitioners rejoins by contending that a student of the said dual course has the option to leave after completing the B.Tech and is not necessarily required to do M.Tech; on the basis of the records of the previous year, it is demonstrated that most of the students admitted to the said course left after B.Tech and do not proceed to do M.Tech.

18. We may at the outset state that the petitioners, in the petition failed to plead the distinction between the course, reliance on documents whereof was placed to contend discrimination. We cannot believe that the petitioners were not aware thereof. Such attempts have but to be deprecated. Had the petitioners carved out the said distinction, the respondent University would have had occasion to respond as to why notwithstanding the option to the students to leave after the B.Tech, the proportion as of post-graduation courses had been applied to the B.Tech part of the said course also. However it stands established that the course of the respondent University college on the basis of which discrimination is alleged is different. The counsel for the petitioners has not been able to show that any of the affiliate colleges also has such a dual degree course or that the proportion prescribed therein is different. She has also not been able to controvert that the proportion in other courses in University colleges is the same as in the affiliate colleges. We are sure the expert academicians in the University have their reasons for providing a different proportion in the dual degree course. The Supreme Court in All India Council for Technical Education Vs. Surinder Kumar Dhawan and Others, has held that the Courts are not equipped to judge whether one course is identical to another and if start venturing into such exercise, it will lead to chaos in

education and deterioration in standards of education. No such case of discrimination also is made out.

19. We are also concerned with the rationale behind the claim of the petitioners for internal assessment to the extent of 40% instead of 25% as

provided. Ordinarily, a student/examinee ought not to be concerned with who the examiner is, whether one to whom his face is familiar or the other

to whom he is faceless. The claim for higher proportion of internal assessment is predicated on a premise that a student, for the same performance

is likely to secure better marks if assessed internally than in external assessment. The criteria for assessment is expected to be, and we hope is, the

same, whether the assessment is internal or external.

PASS PERCENTAGE

20. The third challenge to pass percentage of 50% is also predicated on the argument that the same was pegged high, instead of 40% or 45%,

owing to the proportion of the internal assessment marks in the University colleges being 40% and with which parity was claimed. However it has

not been found so. The challenge to 50% pass percentage is liable to be rejected on this ground alone. The counsel for the petitioners has not been

able to urge any other argument to find any illegality or wrong in the pass percentage fixed by the respondent University.

21. The counsel for the petitioners has been unable to cite any law or rule requiring the respondent University to provide a lower pass percentage

merely for the reason of some other Universities/academic bodies so providing. We are unable to understand any right in a student to challenge

such rule of the University. The petitioners if desirous of scraping through the examination with less than 50% marks, ought not to have taken

admission to the respondent University or its affiliate colleges. In today's day and time of extreme inter se competition when the education sector

has been opened to the private players, the argument is contrary to the goal of achieving excellence. The Universities are expected to impart and

instill education and knowledge and not to churn out graduates with Degrees but with little knowledge. Assessments are designed to measure

student learning at the end of a period of time and play an important role in holding the system responsible for student outcomes particularly when

they are shared publicly and transparently as part of accountability and

improvement systems. The students are the brand ambassadors of the University and a University is entitled to peg its brand higher than other Universities. If the respondent University has opted to confer a Degree or qualification only on those who obtain at least 50% marks, no folly can be found therewith.

22. A Division Bench of this Court in *Ashutosh Bharti and Others Vs. The Ritnand Balved Education Foundation (Regd) and Others* has already

held that if any step is taken towards better educational method and standards, not only the Court should not come in the way but must command

and encourage it. Better standards are required for learning and it can be only from experiences and different modalities. Educational Institutions

are the best judges to impose appropriate restrictions and conditions. Merely because the conditions which are imposed may be found

inconvenient to some students, it cannot be challenged as being arbitrary. Recently another Division Bench in *Independent Schools' Federation of*

India (Regd.) Vs. Central Board of Secondary Education and Another, reiterated that the Courts are not experts to judge the decisions that have

been arrived at by the Educational Bodies and experts and the same are policy decisions with which the Courts would be slow to interfere.

23. The fixation of the pass percentage is also dependent on curricula amongst other factors. The expert academicians of the respondent University

in the light of the course curricula have fixed the pass percentage of 50%. It is not the case of the petitioners that the course curricula and the other

factors in the other Universities which may be having a lower pass percentage is the same. Even if it was possible to make out a case for

discrimination, none has been made out or pleaded.

24. We are also of the opinion that even if the course curricula were to be the same, no case of discrimination is made out. A University/academic

body is always entitled to set higher benchmark. It is not without any reason that a handful of Universities of the world qualify to be in the Ivy

League. The students, after joining the University cannot be permitted to compel the University to lower its standards. It is the student who opts for

the University and not the other way round. If the student feels that he is unable to cope with the University standards, it is for him/her to opt out

and he cannot be permitted to create circumstances which would lead to the

University lowering its standards. The prospective employers judge the merits of the prospective employees from their qualifications and in which University forms a relevant criterion. It is for this reason only that students of Universities which maintain high standards command better emoluments than those of other Universities. Passing out from an Ivy League University opens doors to a better future which passing out in the same course from another University does not. It cannot be lost sight of that of the stated 28000 students of the respondent University a mere 200 have filed this petition. A handful of students cannot dictate the standards of the University. There is thus no merit in the said challenge also. The Apex Court in Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, observed that an academic Degree is of great significance and value and goes a long way in shaping the future of the holder thereof and the interest of the society requires that the holder of such a Degree must possess the requisite proficiency and expertise in the subject which the Degree certifies.

25. Reference may also be made to Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others, where the Apex

Court has held that the object of prescribing eligibility criteria is to ensure maintenance of excellence in standards of education and not to fill up all

the seats. Reducing the standards to fill the seats was held to be a dangerous trend which will lead to destruction of the quality of education.

Warning was sounded of creeping commercialization of education and it was reiterated that determination of such standards being part of

academic policy of the University, are beyond the purview of judicial review. Accordingly, the action of the University prescribing higher standards

for admission than those prescribed by AICTE was upheld.

PROMOTION RULES

26. What has been observed by us herein above with respect to pass marks equally applies to the rules of promotion. We may notice that the

petitioners are the admittees to the University of the year 2009-10. Earlier also the admittees of the said year had filed petitions before this Court

challenging the denial of promotion from the first to second year owing to the amendments of 20th October, 2009 to inter alia Ordinance 11 of the

University. The said challenge was decided by one of us vide judgment Siddharth

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University, . It was held that since the amendment was of a date after the admission, the same would not apply to the admittees of the said year.

On appeal by the University there against, being LPA No.677/2010, a settlement was arrived at as recorded in the order dated 21st September,

2010. It was agreed that the said amendment would be applicable to the 2009-10 batch of students from the Academic Year 2010-11. Now the

petitioners intend to back out from the said settlement also. The said challenge is liable to be dismissed on this ground alone.

27. The counsel for the petitioners has vehemently argued that owing to the delays by the respondent University in declaration of results, the

classes of the next academic year commenced before such declaration also; that the petitioners had to pay the fee of the next academic year and

also started attending the classes of the next academic year; that the University itself having delayed the result and having made the petitioners to

pay the fee and attend classes of the next academic year is now not entitled to deny them promotion and is estopped from doing so. Reliance is

placed on Kanishka Aggarwal Vs. University of Delhi and others, and on Javed Akhtar v. Jamia Hamdard (2007) 1 AD (Delhi) 542.

28. Though the petitioners have challenged Ordinance 11 but have chosen not to file the same. The counsel for the respondent University during

the course of hearing handed over a copy thereof. The same provides as under:-

(iii) A student will be promoted to the next academic year only if such student has obtained at least,

A. 50% (accurate upto two decimal digits) of the total credits of the ensuing academic year from which the promotion to next academic year is

being sought, and

B. 90% (accurate upto two decimal digits and rounding off thereafter to full digits) of the total credits of all previous years excluding the credits of

the ensuing academic year from which the promotion to next academic year is being sought. All such students who fail to get promoted to next

academic year for the reason of deficiency in required credits as stated here in above will automatically be declared to have taken academic break

to reappear in such examinations of previous semesters in which the student has failed, so as to obtain sufficient credits to be promoted to the next

academic year. Only two academic breaks are permissible for a student for the completion of the academic programme/course.

29. He has further contended that the earlier system being followed by the University of not insisting on minimum credit for promotion from one

academic year to another was resulting in a large number of students having a number of papers to clear though having reached the final year of the

course and thereafter seeking extensions of the maximum time prescribed for completing the course.

30. We fail to see as to what is the right of the petitioners to claim to be promoted when they have not imbibed, to be able to pass the exam, what

has been taught to them in the current year. There is generally a continuity in the syllabus/curriculum for the succeeding years and without

knowledge sufficient to clear the exam of the syllabus/curriculum of the previous year, attendance in classes of the subsequent years is likely to

serve no purpose. If the academic experts of the University have devised a scheme for promotion, this Court would not interfere in the same. The

petitioners even otherwise are a handful of failures who have no equity in their favour.

31. The petitioners have also challenged the system of promotion by contending that the ""credits"" necessary for promotion are weighed only on the

number of subjects/papers passed and without giving any weightage to the marks obtained in the subjects/papers passed. It is urged that credit

should be given for the high marks if obtained in the subjects/papers passed, to compensate for the failure in other subjects/papers.

32. Again, these are policy matters and no case for interference therewith is made out. Moreover, the same was not even the subject matter of

amendment and the system has been in vogue since prior to the petitioners taking admission. The Supreme Court in Thapar Institute of Engineering

and Technology and Another Vs. Gagandeep Sharma and Another, was also concerned with rules of promotion in an educational institution and

set aside the judgment of the Division Bench of the High Court allowing the students to take advantage of the unamended as well as the amended

Regulations when the Regulations did not provide so and restored the judgment of the Single Judge of the High Court holding that to prescribe the

academic standards falls exclusively in the domain of special bodies of the University and refusing to interfere with the Regulations of the University

which were intended to improve the academic standards. The students cannot be permitted to decide the academic policies or to seek change

thereof to enable them to get over their own deficiencies. The Supreme Court recently in *State of H.P. and Others Vs. Himachal Pradesh Nizi*

Vyavsayik Prishikshan Kendra Sangh, once again reiterated that education is a dynamic system and has to keep changing and none can have a

right to insist upon continuance of the state of affairs earlier prevailing and the Courts must refuse to sit as super legislature to weigh the wisdom of

such decisions unless they run counter to the mandate of the Constitution and cannot proceed on the premise that the decision makers were

unaware of the situation.

33. Mere payment of fee would not create any rights in favour of the students. The counsel for the respondent University has explained to us the

reasons for delay on the part of the University in declaring the results and has assured us that suitable steps have already been undertaken to

prevent the same from happening again. We are of the view that principles of estoppel would not arise when the petitioners were fully aware that

the result had not been declared and when there was no representation to them that payment of the fee would entitle them to promotion

irrespective of the result of the examination which was then yet to be declared. The Supreme Court in *National Board of Examinations Vs. G.*

Anand Ramamurthy and Others, has held that the principle of legitimate expectations has no application in such matters. A Division Bench of the

Bombay High Court in *Forum for Fairness in Education and Others Vs. University of Mumbai and Others*, where also provisional admissions to

the next academic year had been made awaiting the results, held that the remedy of the students was only to take action for wrongful recovery of

fee and not on the basis thereof claim promotion.

34. The observations of the Supreme Court in *Prof. Yashpal (supra)* that the success of a University is to be judged as much by the type of

Graduate it turns out are apposite here. A Degree must always be what a University makes it by the kind of teaching it imparts and the type of

intellectual life it provides for its members. In our country where it is not uncommon to hear people describing their educational qualification as first

year pass or second year pass, allowing the petitioners to be promoted without

having obtained the requisite qualifications will tantamount to giving them licence to claim so, without infact passing and which we are not inclined to do.

35. We therefore do not find any merit in the petition. The same is dismissed. No order as to costs.