

**(2013) 03 KAR CK 0032**

**In the Karnataka High Court**

**Case No : Writ Petition No. 83882 of 2010 (EDN-RES)**

T. Krishna

APPELLANT

Vs

The Registrar of Karnataka State Open University and  
Another

RESPONDENT

**Date of Decision : 21-03-2013**

**Acts Referred:**

**Citation : (2013) 3 KarLJ 640 : (2013) 4 KCCR 3152**

**Hon'ble Judges : D.V. Shylendra Kumar, J**

**Bench : Single Bench**

**Advocate : J.K. Bukka for Sri K.M. Ghate, for the Appellant; Harshavardhan R. Malipatil, for the Respondent**

**Final Decision : Allowed**

## Judgement

D.V. Shylendra Kumar, J.—Writ petitioner claims to have been admitted to the Hindi and Sanskrit Post-graduate Course conducted by respondent 1-Karnataka State Open University, Manasa Gangotri, Mysore during the year 2005. Petitioner has written examination and had paid examination fees for the years 2005, 2006 and 2007.

2. It appears that the petitioner in the first year wrote three papers out of the total five papers and absented for the other two papers. In the papers which he wrote, he did clear the subjects by securing marks above 40 in each subjects as per the marks sheet dated 5-9-2005 (copy at Annexure-B). In respect of other two papers which he had not written, it appears he wrote examination subsequently and as per the marks sheet issued by the University dated 22-3-2007 (copy at Annexure-C) he has cleared these two papers also by securing 50 marks in Aadhunik Hindi Kavya Modern Hindi Poetry and 52 marks in Hindi Prose, Drama and Fiction. It also transpires that petitioner wrote the M.A. final degree examination and as per the marks sheet dated 13-4-2007 (copy at Annexure-D) he has cleared this exam by securing the aggregate marks of 247 against the minimum of 200 marks.

3. However, petitioner has not been declared as passed and it is aggrieved by this, present writ petition seeking for writ of mandamus as under:

Issue a writ of mandamus, directing to the respondents to consider the request of the petitioner and to issue the passing certificate in favour of the petitioner, in the interest of justice and equity.

4. Notice had been issued and respondent 1-University is represented by Counsel Sri Harshavardhan R. Malipatil.

5. Sri J.K. Bukka, learned Counsel appears on behalf of Sri K.M. Ghate, learned Counsel for the petitioner.

6. Submission of Sri Harshavardhan R. Malipatil, learned Counsel for respondent 1 is that in terms of the prospectus, a candidate is required to pass all the five subjects in one attempt and if he takes more than one attempt, he cannot be declared as passed.

7. A perusal of the copy of the prospectus which is placed before the Court relating to a scheme of examination of M.A. Post-graduate Degree, only indicates that minimum for a pass is 40% of marks in the aggregate of all the theory papers in each year and no paper minimum and no paper exemption as per Para 3.2 of the prospectus. As per Para 3.3, at the end of the final year taking into account the aggregate marks obtained in the earlier year, if candidate secures more than 60% -- as passed in first class; more than 50% but below 60% is declared as passed in second class and other successful candidates as passed in third class. The candidate who is declared to have failed is permitted to reappear for previous or final or both provided that the number of such chances be restricted to four including the first appearance to be utilised within four years from the year of admission as per Para 3.4 of the prospectus.

8. A combined reading of these paragraphs only indicate that a candidate to secure a pass class as a successful candidate should have secured minimum 40% marks in the aggregate in all theory papers of all the years of examination and should have completed the course and the examinations within four attempts in all but not more.

9. Insofar as the petitioner is concerned, there is no dispute that he has secured in the aggregate more than 40% in the M.A. Previous Degree examination and he has also taken two attempts to clear all the five papers. Therefore, I do not find any impediment in the University to declare the result of the petitioner.

10. However, Sri Malipatil, learned Counsel appearing for respondent 1-University submits that in Para 3.2 a candidate is required to secure minimum 40% marks in the aggregate of all theory papers in each year and therefore submits that the petitioner cannot be declared as passed as he has not secured 40% marks in the aggregate in all theory papers of the M.A. previous but has made up that in two years.

11. I am afraid that such submission cannot be accepted for the reason that 40% marks in the aggregate in all theory papers in each year only can refer to previous year and the final year and not 40% aggregate for the same year in all papers. If interpretation as submitted by Sri Malipatil is to be accepted, it virtually renders enabling provisions of Para 3.4 otiose and purposeless. Therefore, the argument fail and rejected.

12. In the result, the writ petition is allowed. Mandamus is issued to respondent 1-University to declare the result of the examination attended by the petitioner based on his aggregate marks.