

(2005) 11 CAL CK 0033

In the Calcutta High Court

Case No : M.A.T. No. 1161 of 2004 and C.A.N. No. 7574 of 2004

University of Calcutta and Others

APPELLANT

Vs

Saima Gaziani

RESPONDENT

Date of Decision : 17-11-2005

Acts Referred:

Calcutta University Rules — Rule 20, 30

Citation : AIR 2006 Cal 35

Hon'ble Judges : V.S. Sirpurkar, C.J.; Arun Kumar Mitra, J

Bench : Division Bench

Advocate : Dipankar Dutta, Sutanu Kumar Patra and Rajib Kumar Basak, for the Appellant; Sailendra Nath Ray, for the Respondent

Final Decision : Allowed

Judgement

V.S. Sirpurkar, C.J.—This is an appeal against the interim order passed by the learned single Judge of this Court. Following facts will help us understand the controversy involved. The writ petitioner is a student. She was admitted to B.Com Honours course starting from session 2001 -2002. As per the curriculum she could appear for the Part-I examination of the B.Com Honours course after two years that is in the examination which was scheduled to be held in 2003. Accordingly she appeared in that examination. For B.Com Honours Part-I, a student has to pass in three groups of subjects. Out of these three groups the first two groups are compulsory subjects and the third group is the Honours subject. The student passed in the Group 1 of the pass group but failed in two papers namely Economics and Mathematics in group II. She, however, passed in the Honours group which was the third group. It was seen from the initial mark sheet that in group II she had failed. She had scored 17 marks in Economics and 28 marks in Mathematics. In keeping with the Rules of the University she applied for revaluation of those two papers. After the revaluation it was found that there was no change in the marks awarded in Economics, while in Mathematics, however, she was entitled to 5 more marks and thus a new mark sheet was

provided to her wherein her newly scored marks were entered. However, that made no difference because she had failed in group II. However, she was held eligible for compartmental examination in Group II. As per the concerned Rule she could take up the classes of Part II of Honours examination only after passing in the compartmental examination. We shall come to these rules a little later. However, the student did not stop at that and filed a writ petition.

2. In her writ petition she, inter alia, prayed for the following reliefs :

(a) A writ and/or in the nature of Mandamus commanding the respondents herein to re-examine the answer scripts of Part II and paper III namely theoretical papers of Economics and Mathematics in the said two papers of Paper II and Paper III B.Com Part-I (3 years) Examination held in 2003 under the New Regulation of the University of Calcutta for proper re-assessment of the marks as obtained by the petitioner namely of 17 marks and 3 marks respectively according to the requirements of law and the principles of natural justice without causing any deviation and/or departure within the prescribed time limit by an examiner/ expert other than University of Calcutta.

(b) A writ and/or in the nature of Mandamus commanding the respondents herein to maintain proper ratio of marks as awarded more than higher marks in other papers except the said two papers of Paper II and Paper III of the said B.Com Part-II (3 years) Examination held in 2003 with Honours in Economics and Mathematics under the New Regulations of the University of Calcutta according to fundamentals requirement of law and justice.

(c) A writ and/or in the nature of Certiorari commanding the respondents herein to transmit the records particularly the answer scripts of the said two paper namely Paper II and Paper III including the mark sheet and tabulation and the question papers after moderation as set out in the said B.com Part-I (3 years) Examination held in 2003 with Honours to this Hon'ble Court so that conscionable justice may be (done) quashing the same.

(d) Rule NISI in terms of prayers (a), (b) and (c) above.

(e) Ad-interim (order) directing the University of Calcutta and the respondents herein for holding re-examination of the answer scripts of Economic and Mathematics being Part-II and Paper III as answered by the petitioner for maintaining the proper ratio of marks within the prescribed time limit as should be laid down by this Hon'ble Court.

3. Her contentions appeared to be that her answer papers were not properly evaluated. She reiterated in her writ petition that she was a brilliant student and had scored high percentage of marks varying from 79-81 in her Indian Certificate of Secondary Education Examination held in the year 1999. She relied on the xerox copies of mark sheets of that examination. She then reiterated that on the basis of her performance she expected better results but was given only 17 and 33 marks in Economics and Mathematics respectively. No specific allegation has

been made by the petitioner in respect of any of the evaluator nor any fact has been highlighted to suggest that she was picked and chosen for unreasonable and harsh evaluation. It is also not the claim that her answer papers were not fully evaluated. In short, the claim of the petitioner was that her papers were not properly evaluated. On that basis she prayed for re-examination (probably meaning revaluation) of the answer scripts of Economics and Mathematics. We have deliberately referred to the writ petition as also the prayers because in our opinion prayer (b) of the writ petition makes no sense, while in prayer (c) the same prayer is reiterated. Vide prayer (e) again ad-interim relief is claimed for holding re-examination (probably revaluation) of the answer scripts. We have quoted the prayers because there was no challenge to the constitutionality or the validity of the concerned Rules of University of Calcutta in the whole writ petition.

4. When the matter came up before the learned single Judge of this Court it seems that the learned single Judge required the answer papers to be produced in the Court. The learned single Judge seems to have personally gone into the different answers made by the petitioner and on that basis came to the conclusion that it would be proper that the answer scripts be revaluated by the head examiner. The Learned single Judge also suggested awarding of grace marks, if any in terms of the statutory provisions. In addition to this, since it was found that the B.Com Part II Honours Examination was scheduled to be held with effect from 16th April, 2004 the petitioner was allowed to take that examination. However, the result of the B.Com Part II Honours Examination was directed to be kept in abeyance till such time the answer scripts of the petitioner were not revaluated and it was found that she had passed in the papers. The learned single Judge also suggested amendment to the University Rules because as per the Rules a student is not permitted to attend the classes of Part II unless the student has passed the Part-1 examination or as the case may be cleared the compartmental examination. Ultimately, the learned single Judge directed the answer papers to be handed over to the learned advocate appearing for the University for onward transmission to the head examiner along with a plain copy of the order.

5. It is this order which is under challenge before us, Sri Dutta, learned Counsel appearing on behalf of the University firstly took us extensively the writ petition and pointed out that in the writ petition at no point of time had the petitioner challenged the validity or the constitutionality of the Rules. According to Sri Dutta the reliefs granted by the learned single Judge by way of interim order was even beyond the scope of the writ petition itself. Sri Dutta points out that there was no scope for revaluation of the answer scripts once that exercise was done already by the University at the instance of the petitioner. He further points out that there was no question of the student being allowed even to attend the classes of Part II let apart being allowed to appear for the Part II examination. According to Sri Dutta all these were entirely contrary to the Rules. He relied upon two Supreme Court decisions namely *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission* reported in (2000) 6 SCC 714 and

6. As against this learned Counsel for the respondent/writ petitioner supported the order and pointed out that rightly or wrongly the student was allowed to keep her terms for Part-II and that her career would be adversely affected if the order of the Learned single Judge is interfered with. learned Counsel in addition to that suggested that since the student had already passed the Honours Group of Part I examination there was no impediment in her attending the classes of Part II and also for appearing in the examination. In short, learned Counsel for the respondent wanted a separate treatment for the pass groups and honours groups. According to the learned Counsel even if the student had failed in the pass group that would be of no consequence and would have no effect on the result of the honours group.

7. On these rival contentions it would be for us to see as to whether the learned single Judge was justified in passing the interim order that he has passed. It will be our task to see as to whether there was any scope on the part of the High Court to have ordered re-examination (reevaluation) of the papers of Economics and Mathematics. Now it is very clear and an admitted position that the student had already applied for reevaluation of the two answer papers that is Economics and Mathematics and that task was also completed and it was declared that there was to be no change in the marks awarded in Economics papers, however, the student was to get 5 more marks in respect of Mathematics paper. Sri Dutta invited our attention to Rule 30(b)(i) of the University of Calcutta which runs as follows :

30(b)(i) A candidate who appeared in the Part. I (Honours) Examination can seek re-examination of not more than two Honours theoretical papers or two theoretical papers in General Courses including papers in Language Group, provided he/she secures at least 40 percent of the total marks in the remaining Honours paper/papers in General Course including languages in Language Group as the case may be.

8. The other part of the Rule is not relevant. Sri Dutta points out that the revaluation or re-examination of the answer scripts, as contemplated in the Rules, has to be done only once. There is no scope in these Regulations for repeating the exercise of re-examination or as the case may be reevaluation. Learned Counsel stresses on the language of the Rule to suggest that this language does not in any manner provide successive revaluations. The learned Counsel, therefore, says that once the Rule provides a re-examination, which task was done by the University at the instance of the writ petitioner there was no scope for a further task or re-examination or reevaluation of the answer scripts and that the learned Single Judge has erred in directing re-examination which was contrary to the Rule. Learned Counsel further, in our opinion, rightly suggests that there was no right in the writ petitioner to get her answer scripts reevaluated again after such task was already undertaken by the University at her instance.

9. Learned Counsel for the respondent could not show us any rule which enables the student to have successive re-examination or revaluation of his/her papers. The Supreme Court in *Arun D. Desai Vs. High Court of Bombay and Others*, very categorically held that the petitioner cannot complain against the evaluation of the papers. In paragraph 3 the Supreme Court says :

The petitioner has failed in the second LL. B. Examination. It is not shown how the assessment of his answer books is defective, arbitrary or partial. Students who fail in their examinations are generally prone to make such allegations to explain their failure and to console themselves with the thought that, not they but the examiners are to blame. We understand the anguish of the petitioner at his failure but we have no power to pass him.

10. It is to be remembered that in this case the observations of the Supreme Court would be all the more relevant particularly because the task of re-examination/revaluation had already been done by the University at the instance of the writ petitioner and her answer papers were revalued only to see that she would still fail in two subjects. The Supreme Court in *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, has already explained the law that in the absence of any rules there is no right in any student to get his paper revalued. This was a case where the student had complained that his papers were not properly evaluated. In the absence of any rules supporting the revaluation, the Supreme Court declined to grant any relief to the said student. In the present case such task has already been done since the revaluation was permissible under the University Rules. However, we fail to understand as to how there would be any right in the writ petitioner to insist upon further re-examination in the absence of any Rules.

11. The Supreme Court has time and again warned the Courts from taking the task of looking into the papers themselves and coming to the conclusion on the basis of their own expertise. In our opinion, once the task of revaluation was over and if there was no right in the petitioner to get her papers revalued there was no question of the learned single Judge perusing the answer papers and coming to the conclusion that the answer paper were not properly evaluated. In our opinion, the learned single Judge has exceeded his jurisdiction in doing so. We, therefore, set aside the order in so far as it pertains to re-examination of the writ petitioner's answer papers.

12. That leaves us with the question as to whether the learned single Judge was right in allowing the student to appear in the Part II of B.Com Honours Examination. In this behalf our attention was drawn to Rule 20(c) which is as under :

20(c) Candidates successful at the Compartmental Examination shall be eligible to join the third year classes.

13. From this Rule learned Counsel for the appellant University suggests that if

the student cannot attend the classes unless he/she successfully clears the compartmental examination there would be no question of such student, being allowed to appear for the examination of Part II or the third year. Admittedly, there was no scope in this case for the petitioner to attend the third year classes. It only so happened because her writ petition or as the case may be the appeal remained pending. It was reported that since the Part II examination was round the corner, the Court had allowed the student to appear for the Part II examination. However, that was without prejudice to the rights of the parties. We are quite convinced that the rules do not provide that, a student, who has failed or has not passed the compartmental examination can attend the third year classes. In this case admittedly the petitioner had not cleared the compartmental examination, therefore, there was no question of her being allowed to attend the third year classes and consequently further to take up the examination, that would be quite contrary to the Rules. We were not shown any Rules nor any rule was relied upon by the learned single Judge for permitting the student for appearing in the Part-II examination even without attending the classes of third year. The learned Judge seems to have presumed that the student after the revaluation for the second time was bound to pass. We do not see as how such a direction can be given and set aside the same.

14. Lastly, the learned single Judge has suggested that there should be some amendment in the Rules. We quote from the order of the learned single Judge which goes as under :

While passing this order it appears before this Court that time has come to change the rule of University of Calcutta. In the nearby University that is Viswa Bharati University as well as in Jadavpur University and in other Universities outside the State of West Bengal already a rule has been introduced for the examinee allowing them a choice to appear in the higher examination of higher class subject to his clearance of the papers simultaneously in the event he/she is unsuccessful to clear and paper of the earlier examination. As for example support an examinee fails to clear any pass subject but already has passed honours subjects in Part-I examination is allowed to appear in the Part-II honours subjects simultaneously with the pass papers of the Part-I subject. Appropriate order to be passed at the time of final hearing of the matter for considering the amendment of the Rule, if any.

15. Learned Counsel for the appellant takes exception to these expressions and suggests that this was beyond the scope of the writ petition and there would be no question of making any amendment unless the University statutes and rules are amended by the Legislature. It is the sole task of the Legislature and not of the law Courts.

16. The argument is justified and in our opinion the order of the learned single Judge cannot stand and has to be set aside. We, accordingly, set aside the whole order.

17. In view of what has fallen from us there would be no question of the writ petition being entertained because we have found that there was no right whatsoever with the writ petitioner at all. In that view we proceed to dismiss the writ petition also. The appeal stands allowed. The impugned order is set aside. The application is also disposed of. the writ petition being W.P. No. 4844 (w) of 2004 is directed to be dismissed with no order as to costs.