

(2010) 09 DEL CK 0349

In the Delhi High Court

Case No : Writ Petition (C) No. 3118 of 2010

Vipul Bhole and Another

APPELLANT

Vs

The School of Planning and Architecture and Others

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Council of Architecture (Minimum Standards of Architectural Education) Regulations, 1983 — Regulation 7(3), 7(5), 8

Citation : (2010) 173 DLT 349

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ashok Gurnani, for the Appellant; R.K. Singh, for R- 1/SPA, Mayank Manish, for Amitesh Kumar, for R-5/UGC, A.K. Bhardwaj, M.P. Singh and Jai Shri Raj for R-6/UOI, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The two petitioners were admitted to the respondent No. 1 School of Planning & Architecture (SPA) in the year 2003 in the Bachelor of Architecture course. The duration of the course is of five years. Ordinarily the petitioners should have completed the course in the year 2008. However the petitioners in or about May, 2010 filed this petition for direction to the respondent SPA to amend the result of the Academic Session 2008-2009 by which the petitioners were failed in the 3rd year and denied promotion to the 4th year. The petitioners also claim the relief of declaration that they have passed in the 3rd year and direction for their promotion to the 4th year.

2. The result of the Academic Session 2008-2009 was declared on 14th July, 2009. It is not disputed that the petitioners having failed in the 3rd year, the respondent SPA asked them to repeat the 3rd year. The petitioners however did not report for repeating the classes of the 3rd year. The petitioners challenged the result of their 3rd year examination as aforesaid by filing this petition in May, 2010. According to the respondent SPA, the Academic Session for 3rd year

course which the petitioners were directed to repeat was over by May, 2010. The respondent SPA has as such raised a preliminary objection of the petition being barred by laches, waiver and acquiescence.

3. The respondent SPA has raised another preliminary objection. It is contended that a student is required to pass the 4th year examination within seven years of joining the course and the final examination within three years of passing the 4th year examination. It is contended that the petitioners without passing the 4th year have crossed seven years since the date of admission and cannot now be permitted to continue with the course. It is informed that the said Rule has been upheld in judgment dated 11th July, 2007 of a Single Judge of this Court in W.P. (C) No. 3273/2007 titled Ms. Sudeepti Chandra v. Director, School of Planning and Architecture and which was affirmed in the judgment dated 13th September, 2007 of the Division Bench in LPA No. 1205/2007.

4. The counsel for the petitioner has sought to meet the aforesaid preliminary objections by contending that the petitioners after declaration of their result on 14th July, 2009 (and which result is impugned in this petition) were making representations and gathering information on the basis whereof the present petition has been filed, through the medium of Right to Information Act. With respect to the other preliminary objection it is contended that if the petitioners succeed in the petition and the result failing them is set aside, the bar aforesaid would not come in their way.

5. I am not satisfied with the explanation by the petitioners of the delay in preferring the petition. The petitioners herein inspite of being on the verge of being barred from pursuing the course, did not show any promptitude in challenging the result declared on 14th July, 2009. It is not as if the petitioners without prejudice to their rights to challenge the said result, joined the classes of the 3rd year to repeat the said semester. On the contrary, the petitioners, save for the representations and RTI queries stated to have been made, in so far as the respondent SPA was concerned abandoned the course. The said abandonment was for a full academic session. Such laxity in educational matters (which courts also endeavour to give priority to) is not understandable. The only inference is that the petitioners had abandoned the course and the petition was filed as an afterthought. In my view, the petition is liable to be dismissed on this ground alone. Nothing prevented the petitioners from repeating the 3rd year classes as advised, if desirous of saving themselves from the bar under the Rules for pursuing the course. The information sought to be gathered through the medium of RTI is also not such which prevented the petitioners from filing the petition earlier. Rather the petitioners have in the petition made vague allegations against the respondent SPA and its faculty.

6. However, the matter being of the career of the students and even otherwise for complete adjudication, it is deemed expedient to deal with the contentions on merits also.

7. The petitioners seek to find flaw in the examination in which they were failed by contending that the said examination was held in contravention of the Council of Architecture (Minimum Standards of Architectural Education) Regulations, 1983. It is contended that as per the said Regulations the weightage for external assessment and internal assessment has to be 50:50 while the respondent SPA gave weightage of 67% to internal assessment and 33% to external assessment. It is contended that the faculty of the respondent SPA is biased against the petitioners which has resulted in very low marks being given for internal assessment and which is evident from the comparatively higher marks received by the petitioners in external assessment.

8. I have enquired from the counsel for the petitioners as to whether the particulars as required to be given for taking a plea of bias have been given in the petition in as much as I was unable to find any names of the faculty members biased against the petitioners or the reasons therefore. The counsel for the petitioners has fairly stated that such particulars have nowhere been given. His contention however is that bias in the present case is evident from the contrast in the marks given for the same work in internal assessment and in external assessment.

9. The petitioners have along with the petition filed the New Scheme for Bachelor's Degree Course in Architecture effective from the Academic Session 1992-1993. The "Interpretations" Clause on which reliance is placed by the counsel for the petitioners, in Sub-clause (j) defines "Internal Assessment" as meaning the marks awarded to the years' work by the faculty and "External Evaluation" in sub Clause (k) as the marks awarded to the years' work by the external jury and/or the marks awarded by the examiners for theory papers. It is informed that in the 3rd year there were no theory papers. On the basis of the said Clauses it is urged that Internal Assessment and External Evaluation is of the same work. However, I find that the said Scheme in Clause 7 thereof further elaborates "Internal Assessment". It is provided therein that marks for internal assessment are allotted to evaluate the performance of the students on a continuous basis; the teacher concerned in consultation with the Head of Department is free to adopt any of the methods viz. written tests, viva-voce, class assignments, studio work, seminar, practicals, term papers, tutorials etc. for assessing the performance of the students. On the contrary "External Evaluation" is elaborated in Clause 8 of the Scheme; the External Jury is to evaluate years' work in Architectural Design in all examinations; the students are required to make themselves available during the period of external evaluation to offer clarifications on their work. It would thus appear that the scope of internal assessment and external evaluation is entirely different. The counsel for the respondent SPA also contends that while the internal assessment is done on the basis of continuous evaluation of performance throughout the year, the External Jury visits for a few hours only and assesses on that basis. The counsel for the respondent has also drawn attention to the poor past performance of the petitioners. It is informed that the petitioners have been

repeatedly failing and for this reason only have been unable to complete the course.

10. The petitioners have been unable to satisfy me that the scope of internal assessment and external evaluation is identical or that both sets of examiners judge performance on the same material and same parameters. On the contrary, the argument defies logic. The scope of internal assessment and external examination ordinarily cannot be the same. While the internal faculty of the College/Institute has an opportunity to assess the performance of the student regularly, the external jury has no such opportunity. The very concept of internal assessment shall be defeated if the best performance put up before the external jury were to be the only criterion. If the argument of the petitioners were to be accepted, the marks of internal assessment and external evaluation should always be identical. Such a proposition is found to be preposterous.

11. The external jury would assess the Architectural Design in its final shape/form. However the in-house faculty has opportunity to see and judge the same from conception and through each and every stage thereof till it takes final shape. Thus while internal assessment is concerned with judging the skill of the student in conceiving and developing the design, the external evaluation is only concerned with the final product. In today's day and time when even school homework and projects are being outsourced for consideration, the possibility of a student procuring a design from elsewhere cannot be ruled out. While only the in-house faculty would know that the student has not conceived and developed it himself/herself, the external evaluator would only evaluate the final product.

12. That brings me to the question as to whether the proportion of the marks for internal assessment and external assessment has to be necessarily 50:50 and whether change thereof by the respondent No. 1 SPA to 67:33 entitles the petitioners to have their result declared as invalid. However before coming to the said question, two enquiries have been made from the counsel for the petitioners. Firstly, as to how the petitioners will benefit by having the result declared as bad and secondly as to why the petitioners should be allowed to challenge the said procedure of the respondent SPA, after having taken the exam on the basis of the same procedure and having been unsuccessful in the same. On enquiry, the counsel for the respondent SPA informs that the marks structure of 67:33 has been in vogue since inception of the respondent SPA.

13. With respect to the first query, it was felt that even if the contention of the petitioners were to be accepted and the marks structure of the respondent SPA set aside, the petitioners will have to still take the exam again and would in any case face the bar aforesaid of seven years. The counsel for the petitioners however states that the petitioners are not claiming setting aside of the result declared on 14th July, 2009. It is stated that the relief claimed by the petitioners is that the marks obtained by them in external evaluation be increased proportionately so as to account for 50% instead of 33% and the marks in internal assessment be proportionately changed to that out of 50% instead of

67%. It is contended that upon the same being done, the petitioners would pass the exam and become eligible for promotion to the 4th year. With respect to the second query the counsel for the petitioners fairly states that, that can be one way of looking at the matter.

14. I am not satisfied with the reply of the petitioners to the queries. The petitioners inspite of having earlier also failed did not find fault with the marks/examination structure of the respondent SPA. The petitioners took a chance of appearing in the 3rd year examination. Only on failing in the same, the challenge to the marks structure is being made. The petitioners cannot be permitted to do so. They were fully aware of the said marks structure and agreed to be bound by the same and took the exam on that premise. The petitioners cannot now be permitted to assail the same. The Supreme Court in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, held that it is now well settled that if a candidate takes a calculated chance and appears at the interview, then only because the result of the interview is not palatable to him, he cannot turn around and subsequently contend that the process of interview was unfair or selection committee was not properly constituted; when the petitioner appears at the examination without protest and when he finds that he would not succeed in the examination, he files a petition challenging the said examination, the Court should not grant relief to such a petitioner. Recently, in *Amlan Jyoti Borooah Vs. State of Assam and Others*, it was reiterated that candidates who take part in the selection process knowing fully well the procedure laid down therein, are not entitled to question the same.

15. Similarly, the marks of the result already declared cannot be so altered as sought by the petitioners. The petitioners even if succeeding in their challenge to the marks structure of the respondent SPA would only be entitled to appear again in the examination of the 3rd year and which they are now prohibited from appearing owing to the seven years bar aforesaid.

16. That brings me to the challenge on merits in the petition. The Regulation relied on by the petitioners is Regulation 7(3) of the Regulations (supra) and which is as under:

The weightage of marks for subjects having both class work marks as well as examinations marks may not exceed the ratio of 50:50.

The counsel for the respondent SPA has sought to meet the said contention by relying on "Notwithstanding anything contained in these Regulations, the institutions may prescribe minimum standards of Architectural Education provided such standard, does not, in the opinion of the Council, fall below the minimum standards prescribed from time to time by the Council to meet the requirements of the profession and education thereof" appearing after Regulation 8.

17. The counsel for the petitioners has rejoined by contending that the aforesaid is with respect to the standards of education and not with respect to the conduct

of the examination.

18. The Regulation 7(3) uses the words "may not" and not the words "shall not". I do not find any reason to read the word "may" as "shall" in the present case particularly when the non-obstante provision aforesaid vests a discretion in the institutions. The variation from the Regulations by the institutions has to be found to be bad by the Council of Architecture. The statement of the counsel for the respondent SPA that the aforesaid marks structure has been in existence since inception has not been rebutted by the counsel for the petitioners. If the said marks structure being followed by the respondent SPA was below the minimum standards as prescribed in the Regulation aforesaid, the Council would have certainly intervened. The Council of Architecture though impleaded as respondent No. 4 in the present petition, has also not contended that it finds the marks structure of the respondent SPA challenged in this petition to be below the minimum standards prescribed in the Regulations aforesaid. I also do not agree with the contention of the petitioners of the said non-obstante clause relating only to standards of education and not to examination. The reference to examination in the Regulations is in the context of the standards of Architectural Education only. The said challenge of the petitioners also therefore does not stand. I must however record that the counsel for the petitioners has drawn attention to the letter dated 16th November, 2009 of the Council of Architecture in response to the RTI query of the petitioners to the effect that the minimum standards prescribed are mandatory. However on interpretation of the same, this Court has found that the Regulations themselves permit variation. Moreover, the reference in Clause 7 (3) (supra) is to class work marks as well as examination marks and not to internal assessment and external evaluation.

19. Before parting with the case, another contention of the petitioners though not urged may also be considered. It was sought to be suggested that under Regulation 7(5) aforesaid, only the students who had passed in internal assessment are permitted to appear in an examination. It was sought to be suggested that the petitioners were deemed to have passed in internal assessment because their external evaluation was permitted to be done. The argument is again misconceived. Clause 7(5) deals with an examination for which an admit card is required. The same is not the position here according to the petitioners also.

20. The petition is therefore dismissed. No order as to costs.