
(1992) 03 BOM CK 0061
In the Bombay High Court
Case No : Writ Petition No. 450 of 1991

William Rodrigues

APPELLANT

Vs

Goa University

RESPONDENT

Date of Decision : 31-03-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Goa University Ordinance — Ordinance 5.17

Citation : (1993) 2 BomCR 158

Hon'ble Judges : S.G. Mutalik, J; E.S. Da Silva, J

Bench : Division Bench

Advocate : S.D. Lotlikar, for the Appellant; R.M.S. Khandeparkar, for the Respondent

Final Decision : Allowed

Judgement

E.S. Da Silva, J.—The petitioner was a student of M.A. in Philosophy of Goa University and he appeared for M.A. (Part II) Philosophy Examination conducted by Goa University in the month of June, 1991. The results of this examination were declared somewhere in August 1991. The petitioner was declared successful in all subjects except in one which is the subject Head of Passing of Contemporary Western Philosophy in which he secured 31 out of 100 marks falling short of 9 marks to be declared successful. Hence the petitioner failed in this subject on account of this shortage of 9 marks only. The subject (Head of Passing) of Contemporary Western Philosophy is a core subject which means a compulsory subject and is divided into two components being one Internal and the other External. The Internal Component consists of two tests each carrying 20 marks in a total of 40 marks. The External Components consists of one test carrying 60 marks. The petitioner secured 27 out of 40 marks in the Internal Component, i.e., in both the tests and 4 out of 60 marks in the External Component. The petitioner therefore applied for revaluation of the External Component immediately after the results were declared as on 9-8-1991. On 16-8-1991 the petitioner received reply from the Controller of Examinations of

Goa University stating that his request for revaluation could not be accepted as per Ordinance 5.18. On 22-8-1991 the petitioner made a representation to the Chairman of the Grievances Committee of the University complaining that his answer scripts in Contemporary Western Philosophy had been under marked and requested that the necessary books be reassessed by the Head of Department of Philosophy. On 3-9-1991 the petitioner addressed a letter to the Vice-Chancellor of Goa University bringing to his notice that his request for revaluation had been arbitrarily rejected by the Controller of Examinations. On 4-9-1991 the petitioner received reply from the Controller of Examinations stating that the petitioner was not eligible for revaluation under Ordinance 5.17 as he did not fulfil the conditions required because he had failed to secure the minimum of 50% of marks required for passing in the Theory Paper of the University. The petitioner by another letter dated 3-10-1991 addressed to the Vice-Chancellor once again requested him to look into the matter. By letter dated 4-10-1991 the Vice-Chancellor replied that the petitioner's request for revaluation was found to be not admissible in terms of the relevant provisions of the Ordinance 5.17 of the University. It is this rejection of the petitioner's prayer for revaluation by communications dated 16-8-1991 and 4-9-1991 from the Controller of Examinations and the one dated 4-10-1991 from the Registrar of the Goa University which are sought to be challenged by the petitioner in this writ petition filed by him under Articles 226 and 227 of the Constitution. In the prayer clause the petitioner has asked for a writ of certiorari or direction in the nature of certiorari quashing and set aside the aforesaid communications dated 16-8-1991, 4-9-1991 and 4-10-1991 from the Controller of Examinations and Registrar of Goa University, respectively, as well as for a writ of mandamus or a direction to the respondents to have the petitioner's answer re-evaluated and also by way of amendment of his prayer for a declaration that a portion of Ordinance 5.17(a) enacted by the Goa University to the extent that it provides that candidates would be eligible to ask for revaluation only if they have secured in the concerned subjects or Heads of Passing at least 50% marks required for passing in that subject or Head of Passing is null and void.

2. Shri Lotlikar's, learned Counsel for the petitioner, first submission is that both the Internal and External Components are Theory Papers and since the petitioner has obtained 31/100 marks being 27/40 and 4/60 marks in both the Components, that is to say, more than 50% of passing marks in the concerned subjects or Head of Passing which, as per Ordinance 21.41, is 40% of the total the petitioner should be entitled to ask for re-evaluations. Therefore, the rejection of his prayer for revaluation is wrong, illegal and arbitrary.

3. Against this submission Shri Khandeparkar has contended that the petitioner is not eligible to ask for revaluation since he had obtained only 4 marks in the External Component and as such in view of Ordinance 5.17 read with Ordinance 21.23 no prayer for revaluation would be admissible or available to the petitioner.

4. In order to better understand the conflicting positions taken by both the

parties it is pertinent to refer to the relevant portions of both the Ordinances 5.17 and 21.23. The material part of Ordinance 5.17 as far as this petition is concerned reads as under:

"a) Notwithstanding anything to the contrary contained in any of Ordinances and Regulations of the University, at revaluation of answer-books in Theory papers only will be done at an examination conducted by the University in accordance with the following procedure provided, however, that only such of the candidates as have failed in one or more subjects or heads of passing but not exceeding half of the total number of subjects or Heads of passing, as the case may be, prescribed for theory papers at a University examination, shall be held eligible to apply for revaluation in those subject-heads of passing, if they have secured at least 50 per cent of marks required for passing in a subject/head of passing or minimum "C" grade in cases where grades are assigned to theory papers."

In its turn Ordinance 21.23 is as follows:

"The result of External Examination will be declared normally within a period of one month from the date of examination, while the result of Executive Courses will be declared within a period of one week after examination. No fractional marks will be awarded in any course/examination. A candidate has to pass internal and external components of each course separately."

5. It is Shri Lotlikar's contention that as per Ordinance 5.17, 50% of the minimum passing marks in each subject or Head of Passing is the only requisite for the purpose of eligibility of a candidate for revaluation and that since 40 marks is the minimum required for the passing of each subject of Head of Passing the fact of the petitioner having obtained 31/100 of marks in the respective subject Head of Passing, which is much more than the minimum of 20 marks, would entitle the petitioner to ask for revaluation in terms of Ordinance 5.17. Shri Lotlikar further contended that the reliance placed by Shri Khandeparkar on Ordinance 21.23 is not justified in the actual context of things since the said Ordinance concerns only with the question of declaration of a candidate to be successful or a failure. The said Ordinance has nothing to do with the petitioner's right to apply for revaluation because in this case only Ordinance 5.17 is to be applied.

6. In our opinion the submissions of Shri Lotlikar are correct and deserve acceptance. From the wording of Ordinance 5.17 it is seen that the right of a candidate to apply for revaluation has been given to a candidate who has obtained 50% of the minimum passing marks in each subject or Head of Passing. Admittedly the subject Head of Passing in which the petitioner was declared as failed being a core subject has two Components being one External Component and the other Internal one. Therefore, the very fact that the Subject/Head of Passing has two Components by itself rules out that each of these Components can be treated as separate subjects or Heads of Passing. Obviously External and Internal Components of the same subject or Head of Passing cannot constitute

separate or two different subjects under the same Head of Passing. External and Internal Components are therefore neither two distinct subjects nor Heads of Passing. Both are parts of the same subject or Head of Passing. This in our view finds support in the certificate issued by the Goa University dated August 8, 1991, being Exhibit A at page 13 of the Paper-Book showing that Contemporary Western Philosophy is by itself a Head of Passing in the subject of Philosophy consisting of two parts--Part I and Part II--as a core subject and the marks obtained have been shown as aggregate marks of both the Components or Parts. In his affidavit-in-reply dated 20th March, 1992, at para 5, the petitioner has expressly stated that "in the core course in History or Philosophy, Ideas II, I secured 21 marks out of a total of 40 marks in the internal component and 20 marks out of a total of 60 marks in the External Component and have been shown to have passed in the said core subject with a total of 41 marks out of 100 marks. Besides in the very same examination conducted in June 1991 another candidate namely Miss Palan Kane secured 26 marks out of 40 marks in the internal Component and 15 marks to of 60 marks in the external Component in the core course Contemporary Western Philosophy (PHC-4) and was declared to have passed in the said core course. "The averments made in this affidavit were not denied by the said respondents nor any explanation was sought to be offered by Shri Khandeparkar for this anomaly and we therefore have no doubt in agreeing with Shri Lotlikar"'s contention that this by itself suggests that each of the Components of a core course cannot be treated as an independent subject or Head of Passing.

7. In the aforesaid affidavit-in-reply, at para 3, the petitioner has also pleaded that "although Ordinance 21. 23 governing the M.A. Course of study in Goa University provides that a candidate has to pass internal and external Components of each course separately, this rule has never been made applicable to decide whether a particular student passes in a core subject at any time since this dual system of splitting up the core course into internal and external Components was adopted by the University. Quite on the contrary the overall performance of a candidate in both internal and external Components was taken into account, i.e. the aggregate of marks obtained by a candidate in both internal and external Components was taken into account for the purpose of deciding whether a candidate has passed a particular core subject. "These pleadings were also not controverted or specifically denied by the respondents.

8. In our view these averments find indeed a clear reflection in the above mentioned certificate issued by the University wherein the petitioner has been declared as passed in the core course of History of Philosophy with 41 marks, inspite of having obtained 21 out of 40 marks in the Internal Component and only 20 marks out of 60 in the External Component which is not certainly the minimum required marks which he was supposed to obtain to be declared successful in that subject/Head of Passing if Ordinance 21.23 was to be strictly applied. We have been told that Ordinance 21.23 has since been amended and such requirement of a candidate having to pass separately each of the

Components is no more followed for the time being.

9. Shri Khandeparkar has forcefully contended that Ordinance 5.17 should be interpreted in an harmonious way so as to construe the reference made in its Clause (a) to the subject/Head of Passing as referring to the External Component only. Shri Khandeparkar has invited our attention to sub-clauses (iv) and (vi) of the Proviso to the said Clause (a) of the Ordinance 5.17. Sub-clause (iv) prescribes that the marks obtained after revaluation shall be accepted by the University if the marks assigned to a paper as a result of revaluation exceed or recede the marks originally obtained by the candidate in a paper and as corrected during the process of verification by ten per cent or more of the maximum marks assigned to that paper in which case the marks originally obtained by the candidate in the paper shall be treated as null and void. Sub-clause (vi) reads that revaluation of answer books shall not be permitted in respect of scripts of practical examination/term work/sectional work/project work/dissertation/internal assessment. According to Shri Khandeparkar this shows that the subject of revaluation can be only the External Component and never the Internal one. If so the reference to the subject or Head of Passing in the body of Clause (a) of the Ordinance 5.17 should be necessarily restricted to the External Component alone so as to harmoniously construe the concerned provisions. We are not inclined to accept nor we do think that such restrictive interpretation is required in order to achieve a harmonious construction of the relevant statutes. We have already mentioned that Ordinance 5.17 is a provision concerning the eligibility of a candidate for the purpose of applying for revaluation. This has nothing to do with the effect of the revaluation which is to operate only if consequent upon the revaluation the candidate obtains a result which exceeds or recedes the marks originally obtained by 10 per cent or more. In our view therefore the interpretation sought to be pressed by the respondents is totally devoid of any merit and does not seem also to be either sound or justified on the basis of a plain interpretation of Ordinance 5.17.

10. The next challenge raised by Shri Lotlikar against the impugned communications is with regard to the constitutional vires of that part of Ordinance 5.17 which establishes the requirement of the minimum of 50 per cent of the passing marks in each subject/Head of Passing for the purpose of eligibility of a candidate to ask for revaluation. According to Shri Lotlikar this requirement is by itself arbitrary because it seeks to separate the student community into two classes being one of those who have less than 50 per cent and the other of those who have more than 50 per cent of the minimum passing marks in a given subject or Head of Passing. The said stipulation is also arbitrary because the very concept of revaluation is based on the assumption that the original assessment done by the University is wrong, that there is a mistake in the said evaluation. Therefore, there is no rationale or purpose sought to be achieved between the students who have obtained 50 per cent of the passing marks and those who have obtained less than 50 per cent of the passing marks.

11. Shri Khandeparkar in his turn strongly joined issue and objected to this challenge put by Shri Lotlikar. At the very outset he has pressed an argument that before going to find out what is the purpose of revaluation we have to see what is the purpose of examination itself. According to Shri Khandeparkar the purpose of examination is to ascertain as to whether a student has succeeded in attaining sufficient standards of knowledge which are sought to be imparted by the University. It is not the case of testing the individual knowledge of a particular student but instead of several ones and therefore the question of classification amongst them always arises. It was further urged by the learned Counsel that the scope of an examination is always twofold, i.e. being one to find out as to whether a student has attained some knowledge and the second one to assess what is the degree of this knowledge attained by him. This second aspect of the purpose of examination obviously necessitates the framing of rules to ascertain the degree attained by each of the students and by itself implies that the University has a right to classify the student not only amongst those who are successful but also for the purpose of classifying the performance of those who have failed, this being precisely the purpose of revaluation. Shri Khandeparkar further submitted that this is also a matter of academic policy involving the interest of an entire class of students and therefore to be decided only by academic experts. Hence any decision taken by the academic authorities should not be easily interfered with by the courts in such type of petitions moved by candidates who have failed to secure the minimum marks required by the statute. The learned Counsel has also refuted Shri Lotlikar's contention that the object or purpose of revaluation is to correct the mistake of the valuation as urged by the petitioner. According to Shri Khandeparkar there is no such presumption unless a candidate gets for revaluation according to the Ordinance 5.17, ten per cent of difference referred to therein failing which the revaluation will have no effect. Only then the presumption about the wrong assessment or misassessment arises. At the most Shri Khandeparkar concedes that the revaluation might be construed as an opportunity or chance given to the failed candidate to show that there is a mistake in the previous assessment done by the authorities in charge of the valuation.

12. There appears to be prima facie considerable substance in the submissions advanced by Shri Khandeparkar. However in the view taken by us with regard to the first challenge of Shri Lotlikar to the effect that in terms of the plain wording and interpretation of Ordinance 5.17 the refusal on the part of the concerned authorities to entertain the request made by the petitioner for revaluation of his writing script in the core subject/Head of Passing of Contemporary Western Philosophy is bad and illegal, we do not find it necessary to deal with this second challenge in depth, as the same becomes irrelevant in the circumstances of the case. We therefore express no opinion on the point of unreasonable restriction and arbitrary classification pleaded by Shri Lotlikar in this petition.

13. In the result we allow the petition and make the Rule absolute in terms of prayer Clauses (a) and (b) in respect of the External Component of the subject/

Head of Passing of Contemporary Western Philosophy with no order as to costs.