

(1995) 12 KAR CK 0054

In the Karnataka High Court

Case No : Writ Petition No"s. 36939 to 36943 of 1995

Zulfkar Khan

APPELLANT

Vs

Vice Chancellor, Gulbarga University

RESPONDENT

Date of Decision : 19-12-1995

Acts Referred:

Karnataka State Universities Act, 1976 — Section 27, 37, 38, 39

Citation : (1996) ILR (Kar) 239 : (1995) 6 KarLJ 365

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : T.N. Raghupathy, for the Appellant; S.S. Koti, for R-1 and R-2, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—There are five petitioners in these Writ Petitions. They are all students of Bachelor of Engineering Course (in short, B.E. Degree course) pursuing their studies in the respondent Colleges which are affiliated with the respondent Gulbarga University. They had been admitted to the said course either during or prior to the academic year 1990-91.

2. Till the academic year 1991-92 respondent University was conducting 4 year Annual B.E.Course under the Ordinance and Regulations framed and enforced by it from the academic year 1981-82. In the first year of the course, which is common to all the Engineering Branches, there are 14 subjects (theory 8 papers and practical 6 papers). Similarly in each of the succeeding three years there are 12 subjects comprised of 8 theory papers and 4 practicals. In academic common parlance these subjects are also called "heads". Therefore, in the entire course of 4 years, the students of Engineering have to study and pass examinations in 50 heads.

3. Clauses 7, 8, 9 and 10 of the Ordinance pertaining to B.E. Annual Course provides for eligibility of a candidate to go over to the next higher class. These

clauses read as under:

"07. A candidate shall not be eligible to keep terms for the next higher classes unless he completely passes the previous year examination.

8. Notwithstanding anything contained in 07 a student who has passed separately at least 50% of the theory (theory-Term Works) and 50% of the practical subjects (term works and practical oral and sketching) of the previous year is allowed to keep terms for the next higher class. However, his/her result of the next class will not be declared unless he/she clears the remaining subjects of the previous year.

09. A candidate shall not be Unless he/she is allowed to permitted to has passed keep under keep terms remaining terms for for subjects of

B.E.(Second Year 08 B.E.Third B.E.(First Engineering) year Engg. year Engg. B.E. 08 B.E. B.E.(Second year Engg. _____

10.

A candidate shall pass First Year Engineering Examination within 5 consecutive attempts, within 3 years from the date of admission to the First Year, failing which he shall not be permitted to continue the Engineering Course in the University."

4. From Regulation 8 of the Regulations noticed above it is clear that a candidate who has failed in 4 heads of theory papers and three heads of practicals in First Year B.E. Course can go over to or keep term for the Second Year B.E., but his result of Second Year B.E. cannot be declared unless he has passed in all subjects of first year. Similarly, if he passes upto 4 theory subjects and 2 practicals in Second Year he becomes eligible for continuing his course in Third Year B.E. but again subject to the condition that his result cannot be declared unless he has passed in all the subjects of second year. The same has to be the process for going over to 4th year B.E. Course and passing the examination subject to the exceptions and limitations contained in Clauses 9 and 10 of the Ordinance. This system of permitting candidates to appear at the next higher class despite failing in some of the subjects of the previous year/s appears to be popularly known in academic circles of the University as "Carry Over System".

5. In the present Writ Petitions, keeping in view certain developments in the academic curriculum of the University and other developments - factual and legal, petitioners have come up before this Court with a prayer that the respondent University should be directed by issuance of appropriate Writ/Orders to permit the petitioners to complete their annual BE Course by providing 100% carry over of all failed subjects, meaning thereby that even if the candidates have failed in all the subjects in a given year or years, still they should be allowed to pursue their course in the next higher class without impediment or restriction. In other words, the prayer in substance is that if a candidate has

6. In the said background, before proceeding further to dwell upon the legal issues raised, it will be appropriate to set out certain relevant facts pertaining to the present five petitioners which are these -

7. From the above table it is clear that none of the petitioners have so far passed in all the subjects (heads) of 1st, 2nd and/or 3rd years of their courses. Their claim is that despite the said fact, the University-Authority ought to have permitted them to continue their courses in 4th year B.E. which according to them, is being illegally denied.

9. During the said transition period, to overcome the practical difficulties, pursuant to consentient decision taken in the meeting of Dean, Principals, BOS Chairman of Engineering faculty and representatives of the students, the University under the direction of the Vice Chancellor issued a Notification dated 14.10.1992 whereunder special Rules to Carry Over for the students of annual course were evolved for going over to the higher classes by restricting it to a Special Examination which was held on 2.11.1991. The Rules were to the following effect:

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possess in at least 5 heads (theory and practical including terms work wherever prescribed).

"2. A student who has passed in at least 4 heads of passing in theory and practicals (including term work wherever prescribed) taken together be allowed to keep terms to the III B.E. Course provided that he/she has passed in at least 2 theory heads of passing at the II year B.E. examination and provided further that a student is allowed to carry not more than 10 heads of passing of I and II year B.E. Examination taken together.

3. A student who has passed in at least 4 heads of passing in theory and practicals (including term work wherever prescribed) taken together be allowed to keep terms for the IV year B.E.Course provided that he/she has passed in at least 2 theory heads of passing at the Ell year of B.E. examination and provided further that a student is allowed to carry not more than 10 heads of passing of I, II and III years examinations taken together.

4. The concession given above is applicable only for the candidates taken this special examination and cannot claim as a precedent for subsequent examination."

10. In the Statement of Objections filed by the Registrar of University, it has been further stated that during the year 1991-92 there was a large scale resentment hunger strike and the law and order problem was created by the students of annual course; that some of the students even threatened self-immolation in front of the University and the Colleges; and keeping in view this exigency an emergent meeting was convened by the Vice Chancellor on 21.9.1992 wherein certain concessions as contained in Annexure-B to the Writ Petitions were conceded to the students of annual course.

11. The main features of the said decision as contained in Annexure-B having bearing on the issues involved herein are to the following effect:

- i) In the first year any 8 heads may be permitted to be carried over;
- ii) In the second year any 9 heads may be permitted to be carried over;
- iii) In the third year any 10 heads may be permitted to be carried over;
- iv) A student who gets the above benefit should clear all the subjects within 3 consecutive years from the end of the term of the fourth year."

12. From the above discussion, it is clear that the respondent University is still conducting both Annual system B.E.Course as well as Semester System B.E.Course which are governed by two separate sets of Ordinances and Regulations framed by the University under and in accordance with the provisions of the Act and are operating independently without over-lapping each other. The rights and obligations of the candidates of the two systems are governed by the provisions contained under the respective Ordinances and Regulations. The contention raised on behalf of the petitioners that on

enforcement of the Ordinances and Regulations pertaining to Semester System, the earlier ordinance of annual system stands abrogated or rescinded apart from being wholly misconceived is also self-destructive. If this submission is accepted it would only mean that the petitioners and the similarly situated other candidates now cannot avail the facility of examination of annual system since in the absence of any Ordinance and Regulation for a given course the University in law cannot hold any examination thereof. Therefore, this contention has to be rejected outright.

13. That being so, the only question that further remains to be considered is - whether under the provisions of the ordinance pertaining to annual system and subsequent decisions of the: University, petitioners are entitled to claim the right of 100% carry over of failed subjects to the higher classes?

14. As I have already noticed above, neither the Ordinance nor the decision dated 21.9.1992 (Annexure-B) permits 100% carry over. To overcome this statutory hurdle, petitioners have placed reliance on a Circular dated 1.9.1992 issued by the Registrar of the respondent-University, whereunder it was said that

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"such of the students who opt for 100% carry over benefit should give an affidavit sworn by the father and the student before 15.9,1992. This is, however, subject to the approval of the Competent Academic Bodies of the University."

15. Learned Counsel appearing for the University has submitted that the said proposal of 100% carry over was not approved or adopted by the University. Petitioners have nowhere pleaded either in the Writ Petitions or in the counter replies that 100% carry over system has at any point of time been accepted by framing either the Ordinance or Regulations as contemplated under Sections 27, 37, 38 and 39 of the Karnataka State Universities Act, 1976 by the competent statutory body like the Academic Council or the Syndicate.

16. It has also been faintly suggested on behalf of the petitioners that the decision dated 21.9.1992 (Annexure-B) setting out certain relaxations in favour of the Annual System for B.E. Students in the matter of carry over of heads to higher classes is in derogation of the ordinance is not enforceable in law, since the said provisions have not been provided either under the Ordinance or the Regulations by following the procedure laid down under Sections 38 and 39 of the Act. In these Writ Petitions no specific plea has been raised for quashing Annexure-B by challenging the validity thereof. Therefore, it seems in the Statement of Objections, it has not been placed on record as to whether it has been made a part of the Ordinance or the Regulations by following the procedure laid down under the Act. But on seeking instructions from the University Authorities it has been admitted by Sri S.S. Koti, learned Counsel for the University that as a practice concession benefit conceded in Annexure-B is being given to all Annual Course B.E. students. That being the situation, I find no reason to pronounce upon the validity of Annexure-B or to interfere with the

enforcement thereof. Anyhow, I feel that the University Authorities will do better to incorporate the Rule of Carry Over as set out therein in the statutory instruments like Ordinance or Regulations by making appropriate amendments by following the procedure laid down under the Act.

17. It has next been submitted on behalf of the petitioners that in the interest of students this Court under its Writ Jurisdiction should issue a Writ of Mandamus to the University for providing them 100% carry over benefit since non-grant of such benefit will cause great hardship to them. In my opinion, so long as this Court finds that the Ordinance and Regulations have been framed by the Competent Authority by following the procedures laid down under the Act, it is not for this Court to investigate into the policy involved therein and substitute its own view in such academic matters.

18. In the case of Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, in paragraph 16, it has been held by the Apex Court that-

"In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution."

19. In the light of the foregoing discussions, in my opinion, it is not possible for this Court to grant any relief as claimed by the petitioners. Writ Petitions are accordingly dismissed but without any costs.