

(2009) 12 CAL CK 0033

Calcutta High Court

Case No: M.A.T. 492 of 2009

Mrinmay Kumar Sahu

APPELLANT

Vs

Calcutta University and Others

RESPONDENT

Date of Decision: Dec. 23, 2009

Citation: (2010) 2 CALLT 284

Hon'ble Judges: Md. Abdul Ghani, J; K.J. Sengupta, J

Bench: Division Bench

Advocate: Jayanta Mitra and Mr. Rasamoy Mondal, for the Appellant; Dr. Sambuddha Chakraborty and Mr. Biswarup Bhattacharyya for the University, for the Respondent

Final Decision: Dismissed

Judgement

The Judgment of the Court was as follows:

1. This appeal has been filed against the judgment and order dated 29th January, 2009 passed in W.P. 19338(W) of 2005, by which the petitioner challenged the action of the University declaring the petitioner failed in the LL.M. Part II Examination. In the said writ petition, further prayer was made for giving direction upon the respondent. University to declare the petitioner passed in the LL.M Part II Examination.

2. The factual aspect of the matter is that the LL.M. course consist of two parts, Part I and Part II and the appellant/petitioner took part in the Part I examination in 2003 and in Part II examination in 2004. In terms of the Regulations framed by the University of Calcutta, the appellant/petitioner had to take examination of four subjects in Part I; viz. (1) Law and Social Transformation in India, (2) New Trends in Indian Constitutional Law, (3) Judicial Process and (4) Legal Education and Research Methodology. In Part II examination also, the appellant/petitioner took part in examination of four subjects; viz. (1) Law of Torts, (2) Criminology, (3) Penology and (4) Principles of Criminal Law.

3. The candidates are to take written test for the above subjects and in Part II, the candidates are to take part in Dissertation and Viva-Voce in addition to written test. Thus, in Part II, the appellant/petitioner had to take examination of six subjects in aggregate. In Part I, the appellant/petitioner secured 201 marks out of aggregate of 400 marks. In part II, she has secured 187 marks out of 400 marks in written test and in the examination of Dissertation and Viva-Voce, she has secured 112 marks out of 200.

4. From the records, it appears that under the relevant Regulation, viz. Regulation 9, candidate has to secure as follows:

- (i) Not less than 40% of the Minimum marks in each of compulsory and optional papers of the Part-I and II Examinations but not less than 50% in the aggregate.
- (ii) Not less than 45% of the minimum marks for the papers on Dissertation and Viva-Voce.
- (iii) Not less than 50% marks in the aggregate in Part I and II Examination.

5. Other provisions of the Regulation are not relevant for the time being. It is appropriate to quote the Regulation 5 regarding course contents, which is as follows:

The Course shall contain in addition to Eight Written Papers in Part-I and Part-II taken together, two papers of 100 marks each i.e. Dissertation and Viva-Voce.

6. In view of the aforesaid fact and going by the standard, the learned trial Judge held that the appellant/petitioner is not successful and as such, the University has lawfully declared the appellant being unsuccessful. While upholding the action of the University by the impugned judgment and order, the learned trial Judge has interpreted aforesaid Regulation being clear and free from ambiguity.

7. Mr. Jayanta Mitra, Senior Advocate appearing for the appellant submits that upon conjoint reading of Regulations 9 and 5 it will appear that the marks obtained by an examinee in Part I and Part II examination in all the subjects are to be taken into consideration for assessing the examinee's performance. According to him, in that case the appellant will be successful as she has got 12 marks more than the minimum requirement of 50% in Dissertation and Viva-Voce. In Part I Examination, the appellant has secured minimum qualifying marks in each and every individual subject and in aggregate more than 50%. Therefore, shortfall of 13 marks in aggregate in Part II Examination in the subjects for which written test is taken, can be made good by adding 12 excess marks obtained by her in two examinations viz. Dissertation and Viva-Voce and 1 mark in Part I.

8. According to Mr. Mitra, the Regulation 9 admits of considerable ambiguity and when there is an ambiguity in any statute or Regulation, settled law demands it should be interpreted in favour of the person affected. In" support of his submission

he has drawn our attention to the relevant passages of the text of the book Odgers Construction of Deeds and Statutes. Fifth Edition at pages 95, 96.

9. He also submits that if upon interpretation of any words and phraseology there appears to be an ambiguity and capable of two possible interpretation, one of which is beneficial to the person affected, should be accepted in consistent with the object for which the Regulation is framed. Here, he submits, the Regulation has been framed for adjudging the performance of the examinees. Hence, the beneficial interpretation should be given in favour of the appellant. In support of his submission, he has cited decision of Supreme Court in the case of United India Insurance Co. Ltd. Vs. Pushpalaya Printers.

10. Dr. Sambuddha Chakraborty, learned Advocate appearing for the University, on the contrary submits that there has been no ambiguity in the Regulation, governing the methodology for assessment of marks for declaring a particular examinee to be successful, as such, apparent meaning should be given. Alternatively, he submits that when two possible interpretations emerge, and if one of them is accepted by the learned Judge, it should not be substituted by this Court with another one.

11. He says that the Regulation 9 and all the clauses thereunder make it clear what the learned trial Judge held. According to him, Regulation 5 of the said Regulation is an independent one and has nothing to do nor any nexus, with Regulation 9 Clause (i). The Regulation 9 makes it clear that minimum marks for qualifying in each and every individual compulsory subjects and optional subjects in Part I and Part II is 40% and in aggregate not less than 50%. Similarly in case of Dissertation and Viva-Voice, minimum qualifying marks is 45%. Clause (iii) of the Regulation 9 makes it clear that one must get in Part I and Part II examination not less than 50% marks in aggregate. According to Dr. Chakraborty, the words "Part I and Part II Examination" should be read separately and not conjointly. He has also relied on the text of the book "Interpretation of Statutes of N.S. Binda", Fifth Edition at page 438.

12. We have heard both Mr. Mitra and Dr. Chakraborty and have gout through the impugned judgment and order. The point for consideration is as to whether the learned trial Judge has rightly dismissed the writ petition on the interpretation given there and such interpretation is reasonably possible or not.

13. In the context of submission of Mr. Jayanta Mitra, senior advocate we read Regulation 5, of the said Regulation and we are of the view that Regulation 5 only relates to the subjects to be studied and examination whereof are be taken. In Regulation 5 it is mentioned that at least eight written papers are to be taken in part I and Part II together and in addition thereto, two papers of 100 marks, each for Dissertation and Viva-Voice. It is simply plain that the above Regulation has no nexus nor it is related to standard or norms for declaring a particular examinee to be successful. Thus, we are unable to accept the contention of Mr. Mitra that the said Regulation 5 has any bearing, in connection with the performance of any

candidate.

14. According to us, as rightly contended by Dr. Chakraborty, the norms and/or standard for assessing the performance of any examinee, is Regulation 9 and the clauses thereunder. Upon, plain reading of the said Regulation without assistance of anything else, it appears to us that an examinee has to obtain 40% minimum marks in each compulsory and optional subjects in Part I and Part II examination, but not less 50% in aggregate. The subjects taken in terms of Regulation 5 of the said Regulation for written test are to be treated as compulsory ones and there is no rule for any optional subjects and this interpretation will appear if one reads Regulation 5 for written test. It may so happen, there are number of subjects, out of which an examinee has to choose four subjects in Part I and four subjects in Part II and those after having been opted for, becomes compulsory subjects. However, according to us, the subject of Dissertation and Viva-Voice are compulsory. Clause (ii) of Regulation 9 makes it clear that in case of Dissertation and Viva-Voice, the qualifying marks must be 45%. In Clause (iii) of Regulation 9 it has been made specifically clear that an examinee must secure not less than 50% marks in aggregate in Part I and Part II examination. The learned trial Judge held essentially that the said Clause (iii) of Regulation 9 has to be read as if the Part I and Part II are separate and not combined. We are unable to accept the submission of Mr. Mitra that it should not be read separately and that would be clear from Clause (i) of the Regulation 9 to support this view.

15. We think that had it been so, then Clause (iii) would not have been required to be incorporated. The intention of the rule making body is very clear that both in Part I and Part II, a candidate must obtain minimum 50% marks in aggregate separately and not jointly.

16. When we find that there is no ambiguity nor any doubt in the Regulation, upon interpretation, we feel that the aforesaid argument of Mr. Mitra that benefit should be given to the person affected, is not very helpful. We accept argument of Dr. Chakraborty that the learned trial Judge has interpreted the aforesaid Regulation, which is also possible reasonable interpretation and we cannot substitute our own view and moreover/we have not found any different view, upon interpretation of the said Regulation.

17. The Supreme Court judgment, cited by Mr. Mitra, in our view is not applicable as we have come to a conclusion that there is no ambiguity in the Regulation upon plain and clear interpretation of the said Regulation. In the Supreme Court judgment, cited above, it was found that factually there was ambiguity and two possible views on the interpretation was possible.

18. In view of the aforesaid discussion, we do not see any reason to interfere with the judgment and order of the learned trial Judge. Hence, this appeal fails and the same is dismissed. There will be no order as to costs.