

**(2004) 03 CAL CK 0038**

**Calcutta High Court**

**Case No:** Writ Petition No. 14465 (W) of 2003 and W.P.C.R. No. 17242 (W) of 2003

Abhishek Banerjee

APPELLANT

Vs

University of Calcutta

RESPONDENT

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**Date of Decision:** March 17, 2004

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 19, 21, 226

**Citation:** (2005) 1 CALLT 87 : (2005) 2 CHN 254

**Hon'ble Judges:** Indira Banerjee, J

**Bench:** Single Bench

**Advocate:** S.N. Mukherjee and Uttam Majumdar, for the Appellant; B.R. Bhattacharya, S.K. Patra and R.C. Basak, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Indira Banerjee, J.

This writ application is directed against the action of the respondent University of Calcutta in declaring the petitioner as "failed" in the Master of Science Part II examination in Computer and Information Science, notwithstanding the fact that the petitioner obtained over 240 out of 600, that is, over 40% in the aggregate in the theoretical papers and over 50 per cent in each of the practical papers.

2. The facts giving rise to the writ application are briefly as follows: The petitioner claims to have passed the Madhyamik examination conducted by the West Bengal Board of Secondary Education in the year 1996 securing 75% marks.

3. According to the petitioner, the petitioner thereafter passed the Higher Secondary Examination in the year 1998 securing 73.6% marks in the Science subjects.

4. It has been stated that the petitioner appeared for the B.Sc. Part I examination in which he secured 66% marks. In the B.Sc. Part II examination the petitioner claims

to have secured 67% marks.

5. After graduating in Science from Calcutta University with over 66% marks the petitioner got himself admitted in the Master of Science Course in Computer and Information Science conducted by the University of Calcutta.

6. According to the petitioner, the Master of Science examination in Computer and Information Science is governed by Notification No. CSR 90/98 dated 9th October, 1998 of the University of Calcutta.

7. The relevant regulations with regard to the Master of Science examination in Computer and Information Science as laid down in the said Circular are extracted hereinbelow for convenience;

" 1. The Department of Computer Science, University of Calcutta shall provide instructions leading to two-year M.Sc. degree in Computer and Information Science.

2. A candidate who has passed 3-year B.Sc. Examination with Honours in Computer Science can apply for admission to the M.Sc. course. Admission for candidates from other Universities will be governed according to the University rules.

3. There will be two examinations - M.Sc. Part I & M.Sc. Part II. Which will be held at the end of each academic session.

4.1. The total marks for the two-year M.Sc. course in Computer and Information Science will be 1000. The distribution of marks for Part I & II Examination will be as follows:

	Part I	Part II
Theoretical	400 (4 x 100)	200 (2 x 100)
Practical	100 (1 x 100)	100 (1 x 100)
Project		100 (1 x 100)
Seminar		50
General Viva-Voce		50

Part I Examination shall consist of four theoretical and one practical paper.

Part II Examination shall consist of two theoretical papers including one optional special paper, one Practical, one Project and one paper for Seminar & General Viva-voce.

4.2. Examination on each practical paper :

- i. 40 Marks for internal assessment on the basis of class work,
- ii. 40 Marks for practical examination of 6 hours duration,
- iii. 20 Marks for viva-voce examination.

4.3. Pass marks for project, general viva voce and seminar will be same as those for practical papers.

4.4. Each candidate will have to submit a project-work report under the supervision of faculty member/members. The project work will be assessed by the external and internal examiners and marks will be awarded on the basis of sessional work (60 marks) and viva-voce (40 marks).

4.5. Each candidate will have to deliver a seminar lecture on a previously decided topic and he/she will have to submit a report on the seminar topic.

5.1. A candidate shall be eligible to appear at the Part I & Part II examinations provided he/she prosecutes a regular course of studies with minimum attendance (60% of total classes) in classes.

5.2. Qualifying marks for Part I Examination will be 40% of the total marks of theoretical papers and 50% of each practical paper.

5.3. If a candidate secures less than 25% marks in any theoretical paper, 5 marks for each such paper will be deducted from the total marks obtained in theoretical papers. The deduction will not be applicable for a paper of 50 marks.

6. All candidates who have completed the Part I Examination shall join the second year M.Sc. classes which will ordinarily commence immediately after the completion of Part I Examination. The University will publish a list of successful candidates for the Part I Examination candidates failing to qualify in the Part I examination shall automatically revert back to the Part I course immediately after the publication of the result.

7. A candidate will get not more than three consecutive chances including the first one to qualify/pass in each of the Part I & Part II Examinations.

8. The final result (combining the Part I & Part II Examination results) will be determined by adding marks for all theoretical papers separately. A candidate obtaining 40% marks in theoretical papers (i.e. 240 out of 600) and 50% marks in practical papers (in each examination) will be declared as passed with a Second Class. A candidate securing 60% marks in the total aggregate of Part I & Part II Examinations will be placed in the First Class."

8. The mark sheets issued by the respondent University of Calcutta to examinees of M.Sc. Part I examination contains the following endorsement "A minimum of 40% marks to be obtained in aggregate of theoretical papers and a minimum of 50% marks to be obtained in aggregate of practical papers."

9. The mark sheets issued for the M.Sc. Part II examination also contain the following endorsement "A minimum of 40% marks to be obtained in aggregate of theoretical papers and a minimum of 50% marks to be obtained in each practical papers. 1st Class = 60% and above, 2nd Class = less than 60%."

10. The petitioner as aforesaid enrolled himself in the two year Master of Science course in Computer and Information Science.

11. The petitioner had to appear for 4 theoretical papers and one practical paper in the M.Sc. Part I examination. The petitioner secured 198 out of 400 in the aggregate in the 4 theoretical papers and 80 out of 100 in the one practical paper and was accordingly declared passed in the M.Sc. Part I examination.

12. The petitioner thereafter joined the 2nd year course and appeared for the Part II examination in the year 2003 in two theoretical papers each comprising 100 marks and three practical papers each comprising 100 marks.

13. The petitioner secured 80, 70 and 67 out of 300 respectively in each of the 3 practical papers. In the theoretical papers, however, the petitioner obtained 55 out of 100 in one paper and 14 out of 100 in the other.

14. The petitioner has been declared as failed on the sole ground that the petitioner failed to obtain 40% marks in the aggregate in the two theoretical papers in the Part II examination.

15. The respondents have in their Affidavit-in-opposition contended that the petitioner was separately required to secure 40% marks in the aggregate of the theoretical papers in the Part I and the Part II examinations.

16. The respondents submit that although the petitioner secured over 40% marks in the theoretical papers in the Part I examination held in 2002, the petitioner failed to secure 40% marks in aggregate in the theoretical papers in the M.Sc. Part II examination held in 2003 and accordingly the petitioner was declared failed. The petitioner secured 34.5% in the theoretical papers in the M.Sc. Part II examination, 2003.

17. It is however, not in dispute that the regulations published vide Notification No. CSR 90/98 dated 9th October, 1998 govern the M.Sc. examination in Computer and Information Science. The regulations have also been relied upon by the respondent authorities.

18. On a perusal of the regulations on which reliance has been placed both by the petitioners as also the respondents, it is apparent that the qualifying marks for the Part I examination is 40% of the total marks of theoretical papers and 50% of each practical paper.

19. Regulation 6 makes it clear that all candidates who complete the Part I examination shall join the 2nd year M.Sc. classes which would ordinarily commence immediately after the Part I examination. The University would thereafter publish a list of successful candidates for the Part I examination. Candidates failing to qualify in the Part I examination would automatically revert back to the Part I course immediately after the publication of the result.

20. While the Rules stipulate qualifying marks for the Part I examination there are no separate qualifying marks for the Part II examination.

21. On the other hand, Regulation 8 provides that the final results (combining the Part I and Part II results) would be determined by adding marks for all theoretical and practical papers separately. A candidate obtaining 40% marks in theoretical papers (that is, 240 out of 600) and 50% marks in practical papers (in each examination) will be declared as passed in the 2nd Class. A candidate securing 60% marks in the total/ aggregate of Part I and Part II examinations will be placed in the 1st Class.

22. Regulation 8 is absolutely clear. A candidate is required to obtain 40% marks in aggregate in the theoretical papers. The Rules clarify in brackets that an examinee would be required to obtain 240 out of 600 in the theoretical papers and 50% in practical papers in each examination. From the language and tenor of Regulation 8, there can hardly be any doubt that a student who obtains 40% marks in the aggregate of 6 theoretical papers, that is, 240 out of 600 is entitled to be declared as passed provided of course the student clears the practical papers as per the Rules. In the instant case, there is no dispute that the petitioner has duly cleared the practical papers separately in the Part I and the Part II examinations.

23. The respondent University can at best deduct 5 marks for each paper in which the petitioner has secured less than 25 marks in terms of Regulation 5.3.

24. Counsel appearing on behalf of the respondent University strenuously urged that it was never the intention of the respondent University that students should pass irrespective of the marks obtained by them in the Part II examination.

25. Counsel also tried to impress this Court that there could be situations where a student who obtained 240 out of 400 in the theoretical papers in the Part I examination need not appear for the M.Sc. Part II examination at all or might be able to clear the Part II examination even though they might secure zero out of 100 in the Part II examination.

26. Examinations are to be conducted in accordance with Rules in existence. If the Rules do not provide separate qualifying marks for each examination, a student has to be declared passed if a student obtains the requisite qualifying marks as per the Rules.

27. There is no doubt that the Respondent University is entitled to frame its own Rules for conduct of examinations. The power to frame Rules includes the power to amend the existing Rules and Regulations. If the Rules in existence cause any practical difficulties so far as respondent University is concerned, it is for the respondent University to amend its own Rules and Regulations in accordance with law.

28. An examinee who clears an examination on the basis of the Rules in existence cannot be penalised in the manner as has been done in the instant case.

29. Be it noted that the petitioner by framing Regulation 8 referred to hereinabove represented to all examinees, that they would be declared passed provided they obtained the requisite qualifying marks in the Part I examination and 240 out of 600 in the theoretical papers in the Part I and Part II examinations taken together.

30. Many examinees, might have, on the basis of the Rules in existence taken certain theoretical papers in the Part II examinations less seriously, on the understanding that a few marks would enable them to qualify the examination. The examinees cannot be penalised if the Rules and Regulations have not appropriately been framed.

31. For the reasons discussed above, the writ application is allowed. The results of the petitioner of the M.Sc. Part II examination in so far as the same declares the petitioner as failed, are set aside.

32. The respondents shall issue mark sheet to the petitioner declaring the petitioner as having passed in the M.Sc. Part II examination within 2 months from the date of communication of this order. It is made clear that this judgment and order shall not prevent the respondent authorities from amending and/or clarifying the Rules and Regulations pertaining to the conduct of the M.Sc. examination in Computer and Information Science in accordance with law.

33. Mr. Patra, learned counsel, appearing on behalf of the respondent University, prays for stay of operation of this judgment and order. Such stay is granted for a period of two weeks from date.

34. Urgent xerox certified copy of this judgment and order, if applied for, be supplied expeditiously, subject to compliance with the requisite formalities.