

Arindam Roy Vs. North Eastern Regional Institute of Science and Technology

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Court : Guwahati

Decided On : Feb-19-2002

Judge : B.B. Deb, J.

Acts : NERIST Academic Regulations

Appeal No. : WP(C) No. 49 of 2000

Appellant : Arindam Roy

Respondent : North Eastern Regional Institute of Science and Technology

Advocate for Def. : K.N. Bhattacharjee, S. Chakraborty and P.K. Dhar, Advs.

Advocate for Pet/Ap. : C.S. Sinha, Adv.

Disposition : Writ petition allowed

Judgement :

B.B. Deb, J.

1. In this petition, the petitioner challenged the impugned letter bearing letter No. Adad/AR/2/93 dated 22.12.1999 issued by the Deputy Registrar (Academic), North Eastern Regional Institute of Science & Technology (for short, 'the NERIST') by

which the petitioner's registration for August, December, 1999 semester was terminated and also for issuing a writ of certiorary for quashing the impugned order dated 18.6.2001 refusing withdrawal from the examination of January, May, 1999 semester.

PETITIONER'S CASE

2. That the petitioner is a student of Degree Module, B. Tech. course

in the NERIST at Itanagar, Arunachal Pradesh. The aforesaid course consists of 3 independent modules in technology, viz., Base module. Diploma module and Degree module and each module having two years course of 4 semesters. In 1993, the petitioner got himself admitted to Base module course and he successfully completed the same in 1995. Thereafter, he got himself admitted to Diploma module course and that also was successfully completed by the petitioner and thereafter the petitioner got himself admitted to Degree module course and registered for August, December, 1998 semester. The final examination for that semester commenced from 8.12.1998. But, since the petitioner suddenly fell ill very seriously, he initially approached the Doctor of the NERIST itself who suggested complete rest to the petitioner. Thereafter, the petitioner approached the authority for withdrawal from the examination for the August-December, 1998 semester on medical ground. The authority did not allow the same and as a result, the petitioner had to appear and complete the examination with serious illness. As such, he could not complete the examination with satisfaction. On 13.1.1999, the Doctor of NERIST advised him to consult a Psychiatrist. Having learned the information as to the illness of the petitioner, his father made applications to the Dean of the NERIST on 19.1.1999 and 25.1.1999 seeking for withdrawal of his son for August-December, 1998 and also for January, May-1999 semester (i.e., first and second semesters of the Degree module). The petitioner got himself registered for July-December, 1999 semester, i.e., first semester and the authority allowed the registration. After admission in the aforesaid semester, the petitioner have been attending the classes regularly and appeared in the mid-semester examination and also the final examination for the first semester of the Degree module commencing from 3.12.1999 except one paper. The petitioner completed

the said one paper in Advanced Mechanics of Solids and appeared for its theoretical part on 7.1.2000, but he was not allowed to appear for the Quiz test. In the second week of January 2000, the petitioner received a letter bearing No. Acad/AR/2/99 dated 22.12.1999 issued by the NERIST authority which the petitioner received at Agartala from which it reveals that the authority considered the petitioner's prayer for withdrawal from January-May, 1999 semester and permitted his registration for January-May-2000 semester (i.e., 2nd semester) but did not consider his case of his withdrawal from August, December-1998 semester, i.e., first semester for the Degree module course. The petitioner was allowed to withdraw from the second semester while he was refused to withdraw the same for the first semester. Rather, the authority terminated the registration of the petitioner for August, December, 1999 (first semester), though the petitioner regularly

attended the classes and appeared in the midst semester course and completed all the papers except the Quiz test. The authority having invoked jurisdiction under Clause-10 of the NERIST Academic Regulations issued the aforesaid termination letter terminating the petitioner's admission in August, December-1999 session, though, according to the petitioner, the aforesaid clause was/is not applicable in the present case. The petitioner's second semester examination was permitted to be withdrawn while the first one was refused. As a result, the petitioner cannot appear for the examination in the first semester and virtually the petitioner's future career has been jeopardised. Hence, this petition.

RESPONDENTS CASE

3. The NERIST authority having filed the counter affidavit contended, inter alia, that the application of the petitioner's father dated 19.1.1999 and 25.1.1999 seeking withdrawal of his son from the first and second semester of the Degree module course were beyond time limit and accordingly, vide letter dated 22.12.1999, the petitioner was informed that his prayer for withdrawal from January- May, 1999 (second semester) was allowed, but, his withdrawal from the August-December, 1998 (first semester) was not withdrawn being time barred. Since the first semester for Degree module course, i.e., August-December, 1998

semester was not allowed, the petitioner got himself registered again for the said semester and the authority allowed the same. But, subsequently, the authority on the pretext of detecting the defect, terminated the aforesaid registration for the first semester (August-December, 1999). According to the counter affidavit in case a student fails in certain subject in a particular semester, he is required to clear the said subject through supplementary or by taking parallel course according to the Rule 13 (c), (d), (e) and under Rule 21 of the NERIST Academic Regulations and not by repeating the left over course by fresh registration.

4. I have heard Mr. C. S. Sinha, learned counsel for the petitioner. Also heard Mr. K. N. Bhattacharjee, learned Sr. counsel assisted by Mr. S. Chakraborty for the respondent-NERIST and Mr. P. K. Dhar, learned Sr. CGSC for the respondent-Union of India.

5. Mr. C. S. Sinha, learned counsel for the petitioner having referred Clause-10 of the NERIST Academic Regulations vehemently submits that the authority having no jurisdiction issued the letter dated 22.12.1999 (Annexure-7) by which the registration of the petitioner for August, December-1999 semester was illegally terminated. Mr. K. N. Bhattacharjee, learned sr. counsel assisted by Mr. S. Chakraborty for the respondent-NERIST submits that since the

authority inadvertently allowed the registration for the aforesaid period, they terminated it on detection of the wrong subsequently. From the impugned order dated 22.12.1999, it appears that the petitioner applied for registration on 19.1.1999 and that was respondent to by issuing the impugned letter dated 22.12.1999, i.e., after a year and that done in appropriate exercise of Clause-10 of the NERIST Academic Regulations. The provisions of terminating the registration are provided under Clause-8 of the NERIST Academic Regulations and not Clause-10. For ready reference, the Clause-8 is reproduced below :-

'8. Termination of registration

8.1 The registration of a student in a module may be terminated on the following grounds :

(a) Misconduct or breach of discipline ;

On the recommendation of the Institute's Disciplinary committee and approved by the Director.

(b) Unauthorised absence ;

Continuous unauthorised absence in a semester for more than 25 working days.

(c) Submission of false documents and/or declaration: On having been found to have produced false documents or having made false declaration at the time of seeking admission.

(d) On having been found to be pursuing regular studies including correspondence courses in any other college. University or an educational institution.

(e) On concurrently being employed and performing duty or carrying out business.

8.2 The registration of a student shall automatically stand terminated if he/she failed to earn a minimum of -

(a) 25 credits at the end of second semester of the first year in Base Module of both Engineering and Applied Science Streams ; or

(b) 30 credits at the end of second semester of the first year in Diploma/Degree module of Engineering ; or

(c) 30 credits at the end of second semester of the first year, and at least 60 credits at the end of 4th semester in the Degree module of Applied Science stream.

(*) Not applicable in case of student who has been permitted to withdraw from a semester.'

Clause-8 of the said Regulations, the contingencies prescribed under

Clatse-8.1, reveals that in case a student committed breach of discipline or misconduct, his registration could be terminated on the report of the Institute's

disciplinary committee and also by approval of the Director. His registration could also be cancelled on unauthorised continuous absence for more than 25 days in a particular semester or in case a candidate got himself admitted by submitting false documents or false declaration or in case it is found that the candidate simultaneously has been pursuing regular studies including correspondence course with/in any other college or Universities or a student is profitably employed or performing any duty elsewhere or carrying out any business. These are the first set of grounds on which the registration could be terminated. The second set of grounds prescribed under Clause-8.2 is that at the end of second semester of the first year in Base module of both engineering and applied science stream, if a student fails to earn minimum of 25 credit marks or in a diploma or degree module engineering course, or fails to earn 30 credit marks or at the end of second semester of first year fails to earn minimum 30 credit marks etc. These are also not applicable to the petitioner's case.

6. The impugned letter referred Clause-10 of the NERIST Academic Regulations. The Clause-10 deals with the withdrawal from a semester. It says in case of a serious illness, a student may be permitted to withdraw from a semester provided he duly registered for the semester, but was unable to attend class continuously for a period of more than 25 working days in that semester and has intimated about it to the Chairman and secondly, the application for withdrawal in the prescribed form is to be submitted to the Director at least one week before the commencement of the end of semester examination. So far the aforementioned last ground is concerned for withdrawal, the Clause appears to be absurd and not functional in all the contingencies. It says that withdrawal petition must be submitted 'at least one before commencement of the end of semester examination' In case a student having been stout in health in the midst of the examination suddenly met an accident or suddenly he is attacked by serious illness preventing him from appearing in the examination, how he would submit the withdrawal petition 'at least one week before commencement of the end of semester examination'. This casual contingency likely to be happened in the life of any candidate has not been taken care of by Clause-10(ii) of the NERIST Academic Regulations. However, for convenience sake, the entire Clause-10 is reproduced below :-

'10. Withdrawal from a semester

In case of serious illness, a student, may be permitted to withdraw from a semester, provided :

(i) he/she duly registered for the semester but was unable to attend classes continuously for a period of more than 25 working days in that semester and has intimated about it to the Chairman, CETC ; and

(ii) the application for such a withdrawal in the prescribed form is submitted to the Dean (Academic) at least one week before the commencement of the end of semester examination. Such a student will be allowed to register only in the same semester of the following year, provided that he/she has applied for withdrawal within two year of his/her entry in that module. In case of Forestry degree students this period will be four years.'

7. Under the aforesaid circumstances, I am of the considered opinion that Clause-10(11) of the NERIST Academic Regulations is inconsistent with the natural phenomenon. Rather, it goes contrary to nature. None can anticipate a week before commencement of the examination that one may meet an accident or may be attacked by any disease on the preceding date or in the midst of the examination. That unanticipated situation has been totally ignored by Clause-10 of the said Regulations.

8. In the present case, it is transpired that in the preceding day of the examination, the petitioner suddenly fell ill and the Doctor advised him to take rest. Despite, the authority did not permit him to withdraw from the examination and he, was compelled to continue the examination with his ailment and subsequently filed petitions on 19.1.1999 and on 25.1.1999. That petitions would have been rejected if the authority thought it right and within jurisdiction. But that was replied after 11 months by the impugned letter dated 22.12.1999. The petitioner already got himself registered for August-December, 1999 semester for the Degree Module course and that registration was cancelled after about a year. Had the authority took its decision in appropriate time, within January, 1999 itself, the petitioner

could have tested his fate elsewhere. He could have searched out and resolved his problem by admitting himself in any other institute. But the authority in one hand allowed the registration afresh, and on the other hand, terminated the same by the impugned order. The writ petition was filed on 28.1.2000 having challenged the impugned order of termination of registration dated 22.12.1999 and during the pendency of the writ petition, the second impugned letter dated 18.6.2001 was issued compelling the petitioner to get his writ petition amended with the leave of the Court. From the impugned letter dated 18.6.2001, it appears that virtually, the petitioner was allowed to withdraw himself

from the second semester of the Degree module course meaning thereby the petitioner was permitted to seat for the second semester while his prayer for withdrawal from the first semester was refused. Unless, a student would clear his first semester, what would be the utility in appearing or clearing the second semester course ?

In that view of the matter, the impugned letter dated 10.6.2001 suffers from irrationality and unreasonability.

9. Mr. C. S. Sinha, learned counsel for the petitioner having referred a case law in *Mala Chawla v. Guru Nanak Dev University* reported in AIR 1989 P&H; 40 submits that once the petitioner was allowed to be registered for the first semester of the Degree module course afresh, he should have been allowed to continue and complete the said course on the basis of his fresh registration and as such having cancelled the said registration, the authority only exposed arbitrary and unjust attitude which cannot be sustained under any valid law. In the aforesaid case, the candidate was permitted to appear in M.A. examination for second time and he sat for and completed the examination for second time. Thereafter, the result was cancelled on the ground that permission to appear for the second time was contrary to law. The Hon'ble Punjab & Haryana High Court held such action of the University arbitrary and unjust.

10. While the Court asked the learned counsel for the respondent-NERIST Mr. K.N. Bhattacharjee to appraise the Court as to whether the petitioner exercised fraud or whether the petitioner misrepresented any fraudulent aspect at the time of

his registration afresh for August-December, 1999 semester of the Degree module course, Mr. Bhattacharjee frankly submits that there is nothing on record to put such blame upon the petitioner. On perusal of the counter affidavit, I have not come across any such averment putting any blame upon the petitioner for his having made any false or distorted statement or having committed any fraud at the time of getting himself registered for the second time for August-December, 1999 semester of Degree module course.

11. In that view of the matter and in absence of any misrepresentation or fraud committed by the petitioner and since I hold that neither Clause-8 nor Clause-10 of the NERIST Academic Regulations, are found to be applicable in the present case, the impugned letter of termination dated 22.12.1999 and subsequent the order of cancellation of registration vide order dated 18.6.2001 are found to be unjust, unreasonable and contrary to the NERIST Academic Regulations and as, such, they are, liable to be and are hereby quashed.

12. In the result, the writ petition is allowed. The NERIST authority is directed to allow the petitioner to attend classes and/or to seat for examination for the course he was allowed to be registered for the second time. No cost.

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