

Sanjaykumar Varma Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Jul-06-1999

Reported in : 1999(6)KarLJ467

Judge : Tirath S. Thakur, J.

Acts : All India Council of Technical Education Act, 1987 - Sections 10(1) and 23;
[Dentists Act, 1948](#)

Appeal No. : Writ Petition No. 18694 of 1999

Appellant : Sanjaykumar Varma

Respondent : State of Karnataka and Others

Advocate for Def. : Sri V. Prakash, Government Advocate and ;Sri N.B. Bhat, Adv.

Advocate for Pet/Ap. : Sri Ravi B. Naik, Adv.

Judgement :

ORDER

1. The petitioner is an Engineering student pursuing a degree course in P.D.A. College at Gulbarga affiliated to the 2nd respondent Gulbarga University. Results for the 5th Semester Examination conducted in March 1999 showed that the petitioner had failed in Ceramic Engineering Thermo Dynamics. He applied for the

grant of grace marks admissible as per the ordinance issued by the University, which request was turned down having regard to a circular dated 7-5-1999 issued by the University according to which award of grace marks was impermissible in view of the directions issued by this Court in W.P. No, 31741 of 1998, disposed of on 24-11-1998. Aggrieved, the petitioner has in the present writ petition assailed the correctness of the circular in question and prayed for a mandamus directing the University to award the permissible grace marks.

2. Sri Naik, Counsel appearing for the petitioner argued that the impugned circular had been issued by the University on a total misunderstanding of the true purport of the order of this Court in the writ petition mentioned earlier. He urged that the general direction issued in the said case had no application to courses in which the authority functioning under the relevant Central enactment had not formulated any norms or framed any regulations governing the conduct of examinations or matters relating thereto. No regulations having been framed and no norms stipulated by the All India Council for Technical Education under the A.I.C.T.E. Act, the conduct of examinations for Engineering courses had to be in accordance with the rules and regulations framed or ordinances issued by the affiliating University. If any such rules/regulations or ordinances envisage award of grace marks to candidates eligible for the same, the grant of such marks could not be refused only because there was in existence a Central enactment or an Apex Body constituted under the same. The order of this Court in W.P. No. 31741 of 1998, it was argued was in the context of Medical and Dental Courses where the regulations framed by the respective Councils have fixed norms for passing the examinations which were different from those prescribed by the affiliating Universities. In any such situation where there is a conflict between the norms fixed by the Central body and those prescribed by the University generally, the norms prescribed by the Central body had to be given effect to. The direction of this Court should have been understood in that spirit alone, in which case the circular issued by the University could not make the University regulations/ordinances universally inapplicable.

3. Mr. Bhat, Counsel appearing for the respondent-University as also A.I.C.T.E. which was added as a party to these proceedings by order dated 24-6-1999 has filed a statement of objections on behalf of the latter. The statement specifically

records that neither the A.I.C.T.E. Act nor the regulations made thereunder prescribe any minimum marks to be secured by a candidate for passing the B.E. Degree Examination conducted by the concerned affiliating Universities. Sri Bhat argued by reference to the statement filed by him that the A.I.C.T.E. has not prescribed any norms nor framed any regulations for the conduct of B.E. Examinations and that the award of Degrees and the conduct of examinations for such courses is governed exclusively by the regulations, ordinances, statutes and rules framed by the affiliating Universities concerned.

4. In W.P. No. 31741 of 1998 the question that fell for consideration was whether a B.D.S. student could claim the benefit of grace marks admissible under the relevant ordinance of the affiliating University the norms prescribed for passing of such examination by the Dental Council of India under the Dentists Act, notwithstanding. This Court noticed that Dental Council of India had specifically prescribed a minimum of 50% marks in the examination for declaring a candidate to have passed the same. Any candidate who secured less than 50% could not be declared to have passed the examination nor could the award of grace marks be brought in to reduce the minimum percentage of marks prescribed by the Central body. While dismissing the writ petition, the Court went on to issue the following general directions:

'It is clarified that henceforth all the Universities in the State should take due notice of law declared by the Supreme Court as explained above and should not apply any general University regulations or ordinances framed for the examinations held by the Universities if such examinations are regulated by any Central Act and the Regulations framed thereunder'.

A plain reading of the above would show that the directions were subject to the all important conditions that the examinations conducted by the University should be regulated by a Central enactment or regulations framed thereunder. This would imply that the general University regulations, statutes and ordinances prescribing minimum marks for a pass in the examination would be inapplicable only in cases where the Central enactment or the rules framed thereunder separately prescribe a different standard for the purpose. In other words, if no independent regulations

under the Central enactment exist or even if such regulations have been framed the same do not prescribe the norms for passing the examination, the University would be entitled to deal with the subject in accordance with its own regulations. That line of reasoning appears logical for it is only in the event of there being a conflict between the Central enactment and the regulations on the one hand and the University regulations/ordinances on the other then the question of one superseding the other would arise. In cases like the present where the Central body has not framed any regulations dealing with the conduct of the examinations nor otherwise prescribed any norms for grant or refusal of grace marks or the minimum percentage required for passing the examination, there was no question of the University being deprived of its power to regulate the matter according to the norms prescribed by it. The statement made on behalf of A.I.C.T.E. that the B.E. Degree Examinations are conducted according to the regulations, ordinances, statutes and rules made by the concerned University only acknowledges the fact that the power to grant or refuse benefits under the said regulations including the award of grace marks to eligible candidates is left to be exercised by the concerned University. The impugned circular insofar as the same understood the directions of this Court to be applicable even to cases where the Central enactment or the regulations framed thereunder do not regulate the conduct of the examinations is an artificial and unnecessary extension of the logic underlying the directions of this Court hence unsustainable. The said circular cannot therefore be sustained nor did Mr. Bhat make any effort to justify the same. Mr. Bhat was on the contrary candid enough to say that the circular had been issued on account of an inadequate understanding of the purpose of the directions issued by this Court and that the University would rectify the situation once the position is made clear by this Court.

In the result, this petition succeeds. The impugned, circular dated 7-5-1999 insofar as the same relates to the award of grace marks for Engineering students is hereby quashed with a direction to the respondent-University to consider the petitioner's request in accordance with the existing University ordinances governing the examination taken by the petitioner. No costs.

