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Court : Punjab and Haryana

Decided On : Aug-25-2000

Reported in : AIR2001P& H13

Judge : N.K. Sodhi and; R.C. Kathuria, JJ.

Acts : Thapar Institute of Engineering and Technology, Patiala, Academic Regulations of the Institute, Regulations - Regulations 9, 15, 17, 19 and 176; Ordinance of Punjab University, Patiala - Ordinance 18; [Mines Act, 1952](#) - Sections 3; [Industrial Disputes Act, 1947](#) - Sections 36(4)

Appeal No. : Civil Writ Petition No. 8929 of 2000

Appellant : Shveta Rangray and Others

Respondent : Thapar Institute of Engineering and Technology and Others

Advocate for Def. : Mr. P.S. Patwalia, Adv.

Advocate for Pet/Ap. : Mr. Rajiv Atma Ram, Adv.

Judgement :

N.K.Sodhi, J.

1. This order will dispose of three Civil Writ Petition Nos. 8929, 9381 and 9682 of 2000 in which common question of law and fact arise.

2. Petitioners are students of Thapar Institute of Engineering and Technology, Patiala (hereinafter referred to as the Institute). They were admitted to the 1st year of the Bachelor of Engineering Course for the academic session commencing July, 1999 and were granted admission on the basis of their merit in the Combined Entrance Test conducted for the purpose. The duration of the course is four academic years and each academic semester is of 15-16 weeks. An examination is held at the end of each semester according to the syllabi prescribed by the Senate of the Institute; At the end of the semester, the students are awarded a letter grade in each of courses taken during the semester depending on the total performance in the Sessional Work (which consists of class test, quizzes - announced and unannounced, laboratory exercise, tutorial work, seminars, home assignments etc.) as well as in the End Semester Examination. Each letter grade indicates the level of performance in a course and has a grade point for purposes of computing the Cumulative Grade Point Average (CGPA) as under:

LetterGrade

Performance

Grade Point

A.

Excellent

10

B.

Good

8

C.

Fair

6

D.

Poor

4

E.

Fail

2

A student is required to maintain a CGPA of 4.5. CGPA is the weighted average of all the grades awarded to a student since his entry into the Institute up to and including the latest semester. A candidate who earns an 'E' grade in a course is required to register for that course again when it is offered next. When a student repeats a course the new grade will replace the earlier one in the calculation of CGPA. Each course carries grades as per the scheme of course approved by the Senate and a student must study all the courses given in the scheme and fulfill the requirement of attendance as per Regulation 5 of the Academic Regulations of the Institute (for short the Regulations). Further, he must secure one of the pass grades i.e. 'A', 'B', 'C' or 'D' and maintain the minimum academic requirements as specified in Regulations 15, 17 and 19 of the Regulations. A student is allowed to register for papers carrying a minimum of 15 and a maximum of 30 grades per semester. At the end of each semester students are supplied a grade card indicating the grades secured in each course and up-to-date CGPA. The salient feature of the internal evaluation system which is being followed by the institute is, continuous evaluation of the students', performance, course-wise promotion and flexibility to allow the students' to select courses and move at an optimum pace suited to their ability, capacity and interest. Each course is assigned the credits which the students earn after successful completion of the course. Regulation 17(a) of the Regulations as it stood prior to its amendment on 2.7.1999 read as

under :-

'17(a). A students will be required to repeat first year if (i) he fails to earn 40% of the credits offered in the approved scheme of course for the first year; and/or (ii) he secures a CGPA of less than 4.00 at the end of First year. However, while repeating first year he will be exempted from repealing courses in which the grade earned is A, B or C in the earlier attempt.

If the student after repeating first year under 17(a) is unable to secure a CGPA of 4.5 he will be required to leave the Institute.

(b) xxx xxx xxx

(c) xxx xxx xxx'

The Senate Under-graduate Committee of the Institute in its meeting held on 18.3.1999 considered the question of amending Regulation 17 and sent its recommendations to the Senate. The Senate considered the matter in its meeting held on 10.5.1999, and decided that Regulation 17(a) be amended as under :-

'17. A student will be required to withdraw from the undergraduate programme and leave the Institute :

(i) If at the end of first year, he/she is unable to secure a CGPA of greater than or equal to 3.70 and earn 40% of the credits offered in the approved scheme of courses.

(ii) If, at the end of second year, he/she is unable to secure a CGPA of greater than or equal to 4.50 and earn 50% of the credits offered in the approved scheme of courses.'

The recommendation of the Senate could not be taken up by the Board of Governors of the Institute as their meeting was not scheduled and since the Regulations had to be published in the prospectus for the year 1999-2000, the recommendation was approved by the Chairman of the Board of Governors whose decision was ratified by the Board of Governors in their meeting held on 2.7.1999 and the aforesaid amendment in Regulation 17 was approved.

3. Petitioners appeared in the first semester examination held in December, 1999 but failed to obtain the CGPA of 3.7. Consequently, they were informed by letter dated 14.2.2000 that they had not obtained the minimum requirement of CGPA at the end of the first semester. They were also informed that they would have to secure a CGPA of more than 3.7 at the end of the second semester in order to continue their studies in the third semester. They were advised to put in maximum efforts to make up the deficiency. Copies of their grade cards have been appended as Annexure R-1/2 (collectively) with the written statement. A perusal of these cards would show that the petitioners have secured 'D' and 'E' grades in most of the subjects which means that their performance was poor and they had failed in the subjects in which they got grade 'E'. They all took the second semester examination in May this year and even at the end of the second semester they could not obtain the CGPA of 3.7. It is common case of the parties that the petitioners have, however, earned more than 40% of the credits offered. The Registrar of the Institute ordered that since some of the students of BE Programme of 1999 batch including the petitioners had failed to maintain the minimum academic requirements as provided under Regulation 17 of the Regulations they were required to leave the Institute. Accordingly, their names were struck off from the rolls of the Institute and a notification dated 21.6.2000 issued in this regard. It is this notification which is now under challenge before us in these petitions filed under Article 226 of the Constitution.

4. A perusal of the impugned notification would show that the names of the petitioners have been struck off because they failed to obtain a CGPA of greater than or equal to 3.7 at the end of the second semester. This action has been taken by the Registrar under Regulation 17 of the Regulations as amended on 2.7.1999 which has been reproduced hereinable. According to the Institute students like the petitioners could continue their studies in the third semester only if at the end of the first year they had secured a CGPA of not less than 3.7 and also earned at least 40% of the credits offered in the approved scheme of courses. Since one of the two conditions was not satisfied by the petitioners action was taken under Regulation 17 and their names struck off from the register.

5. Mr. Rajiv Atma Ram, learned counsel for the petitioners strenuously urged that Regulation 17 as it presently stands provides that a student would be required to withdraw from the under-graduate programme and leave the Institute only if at the end of the first year he/she is unable secure as CGPA of 3.7 and also earn at least 40% of the credits offered in the approved scheme of courses. His argument is that a student who fails to obtain both a minimum CGPA of 3.7 and 40% of the credits could only be asked to leave the Institute. In other words, according to the learned counsel, if a student obtains either of the two i.e. either obtains a CGPA of 3.7 or earns at least 40% of the credits offered, he could not be asked to withdraw from the course. The argument, indeed, is that since the petitioners had obtained more than 40% of the credits offered they did not fall within the mischief of the Regulation and, therefore, the action of the Registrar in striking off their names from the rolls of the Institute was illegal and contrary to the Regulations. It was also contended by Shri Rajiv Alma Ram that the Institute has not offered the course to the petitioners in which they had earned as 'E' grade in the 1st semester and it was not justified in removing their names from its rolls. Reference in this regard was made to Regulation 9(iii) of the Regulations to submit that the petitioners could have registered for those courses again only when those were offered by the Institute. Shri P.S. Pat-walia, learned counsel for the Institute, on the other had, emphatically contended that in terms of Regulation 17 a student would be allowed to continue his studies in the third semester only if he obtains a CGPA of at least 3.7 and earns a minimum of 40% of the credits offered in the approved scheme of courses. His argument is that if a student fails to obtain either of the two i.e. either fails to secure a CGPA of at least 3.7 or fails to earn at least 40% of the credits offered he would fall within the ambit of Regulation 17 and will have to leave the Institute. According to the learned counsel for the Institute, both the conditions of getting at least 3.7 CGPA and also earning a minimum of 40% of the credits have to be fulfilled by a student in order to continue with the studies failing which he would be required to leave the Institute. He urged that the Institute follows a system of continuous evaluation of students' performance and that students who obtain a CGPA and also earn the requisite percentage of credits alone are allowed to continue as those who fail to do so do not have the requisite aptitude to continue with the course which is of four years duration and, therefore,

the Regulations provide that such students shall be asked to withdraw from the course. Countering the argument of Shri Rajiv Atma Ram that the Institute had not offered the courses to the petitioners in which they had earned an 'E' grade, it was emphatically submitted on behalf of the Institute that no formal offer was required to be made and that every student is aware of the grade that he/she had earned in the first semester and that it was for the student himself/herself to offer to register for those courses again. Shri Patwalia has filed an additional affidavit of the Registrar of the Institute to support his contention. According to the Institute, every student has full opportunity to repeat the subjects of the first semester in the second semester and that the petitioners are wrong in asserting that they were not offered or given a chance to repeat the subjects in which they were given 'E' grade.

6. From the rival contentions of the parties the two questions that arise for our consideration are :-

(i) Whether the petitioners are entitled to continue their studies in the third semester without having obtained a CGPA of at least 3.7 at the end of the first year though they have earned more than 40% of the credits offered ?

(ii) Whether the petitioners were offered in the second semester the subjects in which they earned 'E' grade in the first semester

7. We have given our thoughtful consideration to the rival contentions of the parties. Dealing with the second question first, we are of the view that the petitioners had been offered the subjects in which they earned an 'E' grade in the first semester but since they failed to register themselves for the said courses they have to blame themselves and no fault can be found with the Institute in this regard. Learned counsel for the petitioners referred to Regulation 9(iii) of the Regulations which provides that 'a candidate who earns an 'E' grade in a course shall have to register for that course again when it is offered next' to contend that the courses which the petitioners were required to repeat in the second semester were never offered to them. He was emphatic in submitting that the Institute could not produce any notice or circular issued to the students in this regard. We are unable to agree with him. As has been explained by the Registrar of the Institute in

his additional affidavit all the students admitted in the first year are divided into two batches Group 'A' and Group 'B' and the total number of subjects offered are also similarly divided in two groups. The first group of students study one set of subjects in the first six months and the second group of students study the other set of subjects of those six months. In the second semester the groups of subjects are reversed between the two batches and all the subjects of one group are again taught to the other group in the other semester except the subject of Mathematics. As explained by the Registrar in his affidavit, the subject of Mathematics-1 is taught in the first semester to all the students of both the groups and the subject of Mathematics-11 is taught to all the students (both groups) in the second semester. In this way, every student has full opportunity to repeat the subjects of the first semester in the second semester. As is clear from Regulation 9(iii), the students have themselves to register for those courses depending upon their ability to cope with the additional subjects. No formal procedure for offering those subjects is prescribed by the Regulations. The students who are promoted to the second semester know very well the grades earned by them in each subject and they also know they have to repeat those courses again. If they do not register themselves for those courses in the second semester with a view to improve their CGPA they have themselves to blame and not the Institute. In these circumstances, it cannot be said that the Institute did not offer the subjects when those are being taught to one set to students in the second semester. The gist of the Regulations is published in the information brochure/prospectus on the basis of which the students apply for admission and each student also files an affidavit giving an undertaking to the Institute to the effect that 'I have read the information brochure and instructions incorporated therein correctly'. Not only this, a student counselling cell has been established in the Institute to help the students having specific problems relating to academics, physical, psychological etc. Moreover, immediately after the admissions when the students are asked to register for a course by a prescribed date, an orientation programme is organized and orientation lectures are arranged for all students when features of the academic regulations are discussed. All salient features of the system of education being followed by the Institute are brought to their notice. Apart from this, the schedule of courses and the time table is circulated well before the start of a semester and all

the courses being offered in a semester are brought to the notice of a student. The repeat courses which are being run are also mentioned and adjusted in the time table and the students come to know of the courses being offered so that they could adjust the courses as per the time table and register for the same. Respondent No. 3 who had also earned 'E' grades in some of the subjects in first semester had offered herself for the repeat courses in the second semester and she improved her CGPA. If she could register herself for the repeat courses, there is no reason why the petitioners could not do so. There is, thus, no merit in the second contention of the learned counsel for the petitioners which we unhesitatingly reject.

8. We shall now deal with the first submission made by Shri Ram Atma Ram, learned counsel for the petitioners. It is common ground between the parties that the petitioners at the end of the first year were unable to secure a CGPA of greater than or equal to 3.70 though they had earned more than 40% of the credits offered in the approved scheme of courses. A reading of Regulation 17 of the Regulations as it presently stands makes it clear that a student is required to leave the Institute only if he fails to get both 3.7 CGPA and earn 40% of the credits. In case a student fails to get only one of the two, he cannot be required to leave the Institute. Clause (i) of this Regulation lays down two conditions : (a) that he/she must secure a CGPA of greater than or equal to 3.70; and (b) earn 40% of the credits offered. In between the two conditions, the word 'and' has been used which is intended to have been used conjunctively. In other words, both these conditions will have to be satisfied i.e. student must be found deficient in both CGPA and in earned credits before he/she is asked to leave the Institute. A student who has paid his fee to the Institute and has sought admission is expected to continue with his studies till the completion of the course. This Regulation, however, requires the course to be discontinued at the end of the first year if the student has not performed well academically during that year. This Regulation is harsh and in the form of a penal provision requiring a student to discontinue with his studies and, therefore, in the very nature of this it has to be construed very strictly. Accordingly to Law Lexicon 1997 Edn. at page 108 'the word 'and' has generally a cumulative sense requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of 'or'.' Sometimes, however, even in such a connection it is, by

force of a context, read as 'or'. As already observed, in the present context the word 'and' joins the two conditions referred to in clause (i) of Regulation 17 and unless a student is deficient in both he cannot be asked to leave the Institute. The word 'and' has, thus, to be read conjunctively. A similar view has been taken by Division Bench of these Court in Navdeepak Sandhu v. Baba Bands Singh Engineering College, Fetehgarh Sahib and others CWP 13457 of 1997 decided on November 28, 1997, wherein Ordinance 18(i) of the Ordinance of Punjabi University, Patiala came up for consideration which reads as under:

'18. A candidates who has failed in one or more of the theory and or viva-voce and other practical papers of any semesler examination shall be allowed to study for next semester examination and shall be permitted to appear in the failed papers of the previous examination(s) if the subsequent ex-amination(s) which shall be held along with the papers of the higher examination, subject to the following conditions:

(i) A candidate who fails to pass a minimum of 50% of theory papers and 50% of practical papers in each academic year will have to repeat the course of failed papers by attending regular classes and will not be allowed to study in the higher class.

(ii) xxxxx

(iii) xxxxx

(iv) xxxxx'

The petitioner therein had failed in 3 out of 5 theory papers in the first semester but had passed all the practical papers of the first semester. He had also failed in 5 theory papers out of 6 in the second semester but had passed all his practical papers. Thus, in both the semesters he had failed in 8 theory papers out to 11 but had passed all the practical papers. The learned Judges held that the word 'and' used in Ordinance 18(i) could not be read as 'or' and it was read conjunctively. We are in agreement with the view expressed by the learned Judges in Navdeepak Sandhu's case (supra). As already observed, Regulation 17 of the Regulations

was amended by the Board of Governors of the Institute on 2.7.1999. A perusal of the Regulation prior to its amendment which too has been reproduced in the earlier part of the judgment reveals that a student was required to repeat the first year if (i) he failed to earn 40% of the credits offered in the approved scheme of course for the first year and/or (ii) he secured a CGPA of less than 4 at the end of the first year. It will be noticed that the unamended Regulation had used the words 'and/or' in between the two conditions which the students were required to fulfil. The Board of Governors on the recommendation of the Senate took a conscious decision to amend this Regulation and they deleted the word 'or' and only the word 'and' was allowed to continue. It is, thus, clear that the Board of Governors wanted both the conditions enumerated in clause (i) of Regulation 17 to be satisfied conjunctively.

9. Learned counsel for the Institute, however, relied upon the judgment of the Apex Court in *Joint Director of Mines Safety v. Tandur and Nayandgi Stone Quarries (P) Ltd.*, 1987(3) SCC 208, to contend that the word 'and' should be read as 'or'. It is true that in the context in which this word was used in the proviso to the exclusionary clause in sub-section (i) of Section 3 of the [Mines Act, 1952](#) their Lordships read the word 'and' as 'or'. As stated in the Law Lexicon it would depend on the context in which the word has been used. In *Paradip Port Trust v. Their Workmen*, AIR 1977 SC 36, their Lordships considered the question whether the word 'and' could be read as 'or' in sub-section (4) of Section 36 of the Industrial Disputes Act which bars a lawyer from appearing before an Industrial Tribunal without the consent of the opposite party. The learned Judges having regard to the history of that legislation and the context in which the word 'and' has been used in that provision were unable to hold that 'and' in Section 36(4) could be read as 'or'. Learned counsel for the Institute also placed reliance on *Bhushan Uttam Khare v. Dean, B.J. Medical College and others*, JT 1992(1) SC 585 : 1992(2) SCT 177(SC), to contend that this Court should not interfere with the action of the Institute. We are unable to agree with him. It is true that this Court is slow in interfering with the orders passed by educational institutions in the exercise of their jurisdiction but where a wrong interpretation is sought to be placed on a relevant regulation to terminate the course of studies of the petitioners, this Court had necessarily to interfere in the matter to give a correct interpretation of the

regulation for its future guidance and to avoid injustice to the students. This judgment is, therefore, of no help to the Institute. The judgment of the Apex Court in Dr. Uma Kant v. Dr. Bhika Lal Jain and others, JT 1991(4) SC 75 : 1991(3) SCT 256 (SC), does not deal with question that has arisen before us and is, therefore, of no assistance.

10. Before concluding, we may mention that the learned counsel for the petitioners had raised a plea that respondent No. 3 had been allowed to repeat the courses of the first semester in which she was graded as 'E' only because one of the Directors of the Institute was her local guardian and a similar benefit had been denied to the petitioners. The fact that a Director of the Institute is the local guardian of respondent 3 has been emphatically denied by the Institute and we are not inclined to go into this disputed question nor is it necessary for the adjudication of this case. As already observed, the petitioners themselves are to blame for not registering themselves for the repeat courses which were available in the second semester.

CWP 9381 of 2000

11. Petitioner appeared in the second semester examination in May, 2000 and he could neither obtain a CGPA of 3.7 nor could he earn more than 40% of the credits offered. His case is squarely covered by Regulation 176 of the Regulations and the Institute was right in asking him to withdraw from the programme and leave the Institute. No fault can, thus, be found with the impugned order qua him.

CWP 9682 of 2000

12. The Institute also admits students to the under Graduate B.E. degree programme under the Lateral Entry Scheme. Admissions under this scheme are open to diploma holders and they are admitted at the second year third semester level through a Lateral Entry Engineering Test commonly known as LEET. This test was conducted by Punjab Technical University, Jalandhar in July, 1999 on the basis of which the two petitioners were given admission in the second year 3rd semester level for the academic session 1999-2000. Students like the petitioners who are admitted under this scheme study the same courses as prescribed in the

regular scheme of B.E. programme in the respective disciplines from third semester onwards and they are governed by the same Regulations. Petitioners appeared in the third semester examination in December, 1999 and again appeared in the fourth semester in May, 2000. At the end of the second year of the B.E. course they were unable to secure a CGPA of greater than or equal to 4.50 although they earned more than 50% of the credits offered in the approved scheme of courses. The Registrar of the Institute ordered that since the petitioners who were admitted to the second year (third semester level) under the Lateral Entry Scheme during the session 1999-2000 had failed to maintain the minimum academic requirements as provided under Regulation 17 of the Regulations, they were required to leave the Institute. Accordingly, their names were struck off from the rolls and a notification dated 21.6.2000 issued in this regard. Since the petitioners were admitted to the second year under the Lateral Entry Scheme, they are governed by Regulation 17(ii) of the Regulations. It is common case of the parties that at the end of the second year the petitioners could not secure a CGPA of 4.50 but they had earned more than 50% of the credits offered. In clause (ii) also there are two conditions which have to be satisfied before a student can be asked to withdraw from the under graduate programme and leave the Institute. These conditions are: (a) that a candidate should be unable to secure a CGPA of greater than or equal to 4.50, (b) earn less than 50% of the credits offered. As in the case of clause (i) these two conditions are also joined by the word 'and' and in the context they will have to be read conjunctively. For the reasons already stated in Civil Writ Petition No. 8929 of 2000, it has to be held that the Institute was not justified in asking the petitioners to leave the Institute because they had earned more than 50% of the credits offered in the approved scheme of course.

13. For the reasons recorded above, the Civil Writ Petitions 8929 and 9282 of 2000 are allowed and the impugned notification dated 21.6.2000 quashed qua the petitioners. Civil Writ 9381 of 2000 is, however, dismissed. There will be no order as to costs.

14. Petitions allowed.