

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.1452 of 2015**

- Abdul Kadir Vanak S/o Mohammad Vanak Aged About 24 Years Student Of B. E. (E E E) In Chouksey Engineering College, Lalkhadan, Masturi Road, Bilaspur, R/o New Bohra Masjid, Kaparganj, Bilaspur (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Technical Education, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (Chhattisgarh).
2. Chhattisgarh Swami Vivekananda Technical University, Through Its Registrar, Central Park Avenue, Sector- 8, Bhilai, Dist. Durg (Chhattisgarh).
3. Chouksey Engineering College, Through Its Principal, Lalkhadan, Masturi Road, Bilaspur (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri S. S. Baghel, Advocate
For Respondent No.1	:	Shri Dilman Rati Minz, Dy.GA
For Respondent No.2	:	Shri Anumeh Shrivastava, Advocate
For Respondent No.3	:	Shri Rajkumar Gupta with Shri Ram Narayan Sahu, Advocates

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****17/11/2016**

By this petition under Article 226 of the Constitution of India, the petitioner, a Engineering Student of respondent No.3-College, has prayed for a direction to the College as well as to the University to grant him one more opportunity to appear in the class test of Fourth Semester of B.E. (Electrical and Electronics) examination.

2. The factual backdrop, as obtaining on the records of the case and relevant for decision are stated infra.

The petitioner was admitted in the B.E. (Electrical and Electronics) course in

respondent No.3-College, affiliated by the respondent No.2-University in the year 2009. The petitioner pursued his studies and passed Ist, IInd and IIIrd Semester. However, in the Fourth Semester (Session 2011-2012), the petitioner was declared failed as he could not secure minimum required 50% of aggregate marks. The petitioner secured only 356 marks. The result indicated that the petitioner was awarded 0 marks in all the subjects in so far as class tests are concerned. Even though, the petitioner had obtained good marks in other examination, because of award of 0 marks in all the subjects in class tests, he failed.

It appears that thereafter, the petitioner was admitted in higher semester i.e. Semester Vth, Vith, VIIth & VIIIth, one after the other and he pursued his studies and also passed all those subsequent semesters. However, on account of petitioner having failed in the Fourth Semester, the petitioner was not declared pass in the B.E. Course. It is relevant to note here that the petitioner had completed his education session of 8 semesters in the year-2014. When he appeared in the examination of Eighth Semester in the year 2014, a representation was made by the petitioner to the Registrar of the University on 24-08-2015 praying that he may be allowed to appear in the class tests to improve his aggregates, so that, he could be declared pass and obtain a degree of Engineering. At that time, the petitioner also requested the College by representation of even date, in response to which, the College sent communication on 29-04-2015 to the Registrar of the University to consider the case of the petitioner on humanitarian ground. Having left with no other option, his grievance not redressed, the petitioner filed this petition seeking direction as mentioned hereinabove.

3. Learned counsel for the petitioner argued that the petitioner had actually appeared in the class tests while pursuing his studies in the Fourth Semester, but for the reasons best known to the respondent-College, he was awarded 0 marks in all the subjects, due to which, he could not secure minimum qualifying aggregate

marks. It is the case of the petitioner that despite request made by the petitioner and his parents to the College and the University to grant at least one opportunity to the petitioner to appear in the class tests, no response was given, which has spoiled the career of the petitioner. It is also submitted that though the petitioner had in all, appeared five times in the examinations of those subjects held from time to time, he could not achieve the minimum 50% of the aggregate marks because of 0 marks awarded to the petitioner in the class tests of subjects of Fourth Semester. Therefore, it is prayed that appropriate direction be issued to the College and to the University to allow the petitioner to appear in the class test of all the subjects of Fourth Semester in the ensuing examination and that the petitioner may be granted opportunity to improve himself and able to secure 50% of the aggregate marks to obtain the degree of Engineering. Learned counsel for the petitioner further submits that as there is no restriction, the petitioner may appear in forthcoming examinations in those subjects of Fourth Semester which he chooses and in case, he obtains the marks which taken together with the marks obtained in other subjects reach minimum required aggregate marks, the petitioner would be declared pass.

4. Per contra, learned counsel for the respondent No.2-University submits that as far as class test examination is concerned, under the scheme of Ordinance, this test can be attended by a student, who is actually undergoing the semester course and not by a student, who has already completed the course up to Eighth Semester. According to him, the provisions of Ordinance 14 only permitted the candidates who have failed in certain subjects or failed to achieve minimum aggregate, by appearing in any of two subjects of their choice in forthcoming examinations, without there being any restriction of number of attempts. He submits that the petitioner has already taken up the examination on various occasions for the last two-three times but as he could not achieve the minimum requirement of aggregate marks, as such, he could not be declared pass till date.

5. Learned counsel for the respondent No.3-College refuted the allegations of the petitioner that the petitioner had appeared in the class test. He submits that the petitioner remained absent in all the class tests held in the Fourth Semester, in which, the petitioner was studying at the relevant time. Along with the return, attendance sheet of the candidates have also been placed on record. According to the College, when the petitioner made representation, his case was forwarded to the University because the University alone was competent to take decision in such cases and the college was bound by the rules and regulations framed by the University. It is submitted that the University did not allow the petitioner to appear in the class test of Fourth Semester on subsequent years, because the petitioner is actually not studying in the institution much less in the Fourth Semester.

6. The relief sought in this petition is that a direction may be issued to the respondents to allow the petitioner to appear in the class tests of Fourth Semester. The foundational facts to seek such relief, as averred in the petition, are that even though, the petitioner had appeared in the class tests, for the reasons best known to the respondents, he has been awarded 0 marks. This appears to be the basis of entire petition.

This allegation of fact contained in the petition has been specifically denied by the respondent-College, where from the petitioner pursued his studies. Along with return, attendance sheets of the students have also been placed on record. These sheets have been signed by the HOD/Subject Teacher of the College. There is no other material brought on record by the petitioner to satisfy the Court that the petitioner had actually appeared in the examination. This is seriously disputed fact. The burden is on the petitioner to prove this fact. The documentary evidence of attendance sheet of the College has been produced, which negates the contention of the petitioner. The petitioner has neither placed on record any affidavit nor any declaration by any of the faculty, who had taken the class tests of the petitioner in

the subjects of Fourth Semester. There is no affidavit or declaration by any of the students to support the case of the petitioner.

7. There is yet another circumstance, which lends improbability to the assertion of the petitioner. As a man of ordinary prudence, a person is expected to immediately record his objection and take remedial measures in such matters. It is difficult to fathom the reasons as to why the petitioner kept silent even after the result was declared, in which, he was shown to have obtained 0 marks in the class test of all the subjects of Fourth Semester in the year 2012. There is nothing on record to show that immediately thereafter, the petitioner registered his objection with the College or with the University or with any other authority much less taking recourse to any legal remedy under the law by approaching any Court of law. The petitioner quietly appeared and pursued his studies in subsequent semesters Vth, VIth, VIIth & VIIIth Semester without any demeanor or protest till 2014. Not only that the petitioner appeared in the examination of some of the subjects of Fourth Semester also, even after completing his course of VIIIth Semester. As late as in the month of April, 2015, representations were made by the father of the petitioner to the Principal of the College as also to the Registrar of University. Even in this communication, there is nothing to show that the petitioner came out with the case that though he appeared in the examination, he was wrongly awarded 0 marks.

Therefore, the petitioner's case, as built up in the petition, on which basis, relief has prayed for, is not made out.

8. During the course of arguments, this Court, in order to find out whether in this kind of situation, the rules and regulations of the University governing conduct of examination provide for any remedy to the petitioner by invoking consideration of the University or College authority to deal with his case in a manner that he can be allowed to appear in the forthcoming class tests of Fourth Semester, raised query. Learned counsel for the respondent No.2-University, on this aspect, submitted that

there are no such rules and regulations permitting such a course of action to be adopted, where a student can be allowed to participate in the class tests of the Semester, in which, he had already studied in the past. He submits that according to the scheme of the regulations, the petitioner can only appear in the subjects of his choice to improve his marks with the hope that he may achieve minimum aggregate marks, in which case, the institution may award him degree of Engineering.

9. This Court, after having gone through the provisions contained in Ordinance No.14 and also provisions contained in Ordinance No. V & VI, copies of which have been placed before this Court, could not find any specific provision mandating the University to consider the request of the petitioner to allow him to appear in the class tests of Fourth Semester, so as to give him an opportunity to secure marks in class tests and facilitate the improvement of minimum required aggregate marks necessary for awarding degree of Engineering. However, in clause 27 of Ordinance No.6, it has been provided that “ any matter connected with the conduct of examination and declaration of results, not specifically covered under the Ordinances, the decision of the Vice Chancellor, thereon, shall be final.”

Learned counsel for petitioner submits that under Ordinance No.14, it has been provided that at least two class test examination can be attended by a candidate but there is no upper limit provided to say that a candidate shall not be allowed to appear more than two class test examination, but the stand of learned counsel for the University is that it goes without saying that the candidate must be actually studying in the Fourth Semester.

10. Learned counsel for the petitioner fervently urged this Court to invoke extraordinary jurisdiction under Article 226 of the Constitution of India to direct the institution, as a special case, to allow the petitioner to appear in the class test of Fourth Semester.

11. I am afraid, on the facts and circumstances of the case, such discretion may be exercised in favour of the petitioner. True it is, that wide amplitude of power conferred on this Court under Article 226 of the Constitution of India could be taken recourse to grant relief in appropriate cases, but the discretion conferred on this Court has, nevertheless, to be exercised judiciously. It is not the case where the petitioner came out with the stand that for reasons beyond his control like illness, natural calamity or similar reasons he could not attend classes and appear in the class tests of Fourth Semester. The case of the petitioner, which has been found unsustainable in law, is that he appeared but was not awarded marks. Therefore, if the petitioner, without any rhyme or reasons chose not to appear in the examination, the law would not come to his aid. The discretionary power of this Court would not come to the aid of the petitioner. It is different thing to say that the competent authority of the University may consider the case of the petitioner, as the same may be permissible under the administrative discretion, as has been observed hereinabove with reference to provision contained in clause 27 of the Ordinance No.VI.

12. Subject to the aforesaid observation, this petition is dismissed.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge