

Ct.
No.
26

3
akb

25.01
2021

W.P.A. 1942 of 2021
Abhisekh Rodricks
- Versus -
Amity University Kolkata & Anr.

Mr. Abhisekh Rodricks ...Petitioner in person

Mr. Rudraman Bhattacharyya
Mr. Souvik Mazumdar
Ms. Suchishmita Ghosh
Mr. Sourajit Dasgupta ...For the Respondent No. 1

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by a decision of Amity University Kolkata for proposing to conduct examinations for the 8th semester of the law course in which the petitioner is currently studying.

2. It is to be noted that the petitioner is presently in the 10th semester and was promoted on the basis of the marks awarded by the university for the 8th semester. Owing to the pandemic situation, following the guidelines of the Bar Council of India, no examinations were held for the 8th semester and marks were allotted to the students based on their internal assessments.

3. On January 21, 2021, none had appeared on behalf of the respondents, and accordingly, keeping the balance of convenience in mind, this Court had directed an interim stay of the examination for the 8th semester to be held, commencing from January 25, 2021 (that is, today).

4. Today, I have heard the learned Counsel appearing on behalf of the Amity University Kolkata, being the respondent No. 1 as also the petitioner appearing in person.

5. The vakalatnama of the learned Counsel for the respondent Amity University Kolkata may be filed with the Department by January 27, 2021.

6. Mr. Rudraman Bhattacharyya, learned Counsel appearing on behalf of the University relies on a letter dated May 27, 2020 issued by the Bar Council of India to the Vice-Chancellors/Registrars of all the Law Universities in the Country. The relevant paragraph of the said letter is delineated hereinbelow :-

“Intermediate Semester students: will be promoted on the basis of performance of previous years and marks obtained in internal examination of the current year. The Universities are directed to conduct the end semester examination within a month of reopening of the colleges.”

7. He has further relied on the Press Release dated June 9, 2020, issued by the Bar Council of India, to indicate that the students, except final year students, were directed to be promoted on the basis of previous year's marks and the marks obtained in the internal examinations, subject to the condition that end-semester examinations for the 8th Semester would be conducted upon reopening of the college. The relevant paragraph is delineated below:-

“4. All Students, except Final year students, will be promoted on the basis of performance of previous year's marks and marks obtained in the internal examination of the current year. However, it is clarified that after reopening of the colleges/Universities, the Universities shall conduct the end semester examination with respect to the year from which they have been promoted, within a reasonable period of time, though, such promoted

students shall continue to study in the year to which they have been promoted, and in case, they are unable to pass/clear any such paper of such end semester exam of the year from which they have been promoted, they shall have to clear the same, before they are granted the degree. In the case of students who have been promoted to the final year as LL.B students, they shall have to pass all papers in order to obtain their degree/s.”

8. He further relies upon the extracts of the meeting of the Bar Council of India held on October 5, 2020 that states as follows:-

“On the other hand, issuing directions for promoting all students except final year students to the next year/semester ensured saving of their academic session and it was ensured that the classes for the next academic session would begin. However, for them a Clause was added that exams should be held within one month of re-opening of Colleges, which refers to physical reopening of Colleges, and thus it refers to exams to be held only after normalcy resumes and after the pandemic is averted. The Circular/Press release refers to adherence of norms of social distancing and sanitization of examination halls too. A further clause was added for all such similarly placed students, that in case, they were unable to clear any of the papers of the previous years, their promotion would not be affected but that they would have to clear all such papers which they have been unable to give before getting their degree. This decision was taken based on the circumstances and ground realities.”

9. He further relies upon the Press Release of Bar Council of India on November 1, 2020, which further clarifies the issue. The relevant paragraphs are delineated below:-

“It is observed by the Council, that if physical exams as contemplated by the University is held with effect from 02.11.2020 and if the said exams are held without any penal consequences to any Student who is unable to appear in the said exam, no student shall be prejudiced or affected and they will get an opportunity to appear in the Exam again after physical reopening of the college/university as contemplated in the Circular/Press Release of the Bar Council of India dated 27.05.2020 and 09.06.2020 respectively, which was further clarified by the BCI Resolution dated 05.10.2020.

.....

The council further places on record the fact that the resolution dated 27.05.2020, later on clarified by Press note dated 09.06.2020 and resolution of 05.10.2020 respectively, was passed believing that the pandemic Covid-19 will subside sooner than later. However, the pandemic still persists with no early respite from it in sight. The Council, therefore, resolves that examination for all intermediary along with final year law students/classes too may be held online, if Universities/Law Colleges are able to hold it online, and if adequate infrastructure and other facilities for students is/are available. It is further resolved that if online exam is so conducted and any student/students is/are unable to take it, or having appeared therein, is unable to pass such exam/subject paper, such students shall be entitled to take the reappear exam/paper whenever it is held preferably within one month of physical re-opening of the Universities/College after the pandemic is averted.”

10. It is clear from the Press Release dated November 1, 2020 that the Universities were allowed to take online examinations in the event physical examinations were not possible and the Universities were capable of taking online

examinations.

11. Mr. Bhattacharya argues that the petitioner was all along aware of the fact that the ad hoc marks and promotions were temporary in nature and the examinations would have to be taken by the students after reopening of the colleges when the Covid-19 pandemic would have subsided.

12. He further submits that the examinations are starting from today and all other students are willing to take part in the examinations. He prays that the examinations for the 8th Semester are permitted to be continued as scheduled and the University will organize a separate examination for the petitioner, if he so desires two weeks hence.

13. The petitioner's main worry is that he has applied to certain Universities in North America and consequently, conditional offers of acceptance were received by him based on the 8th Semester ad hoc marks given by the University. He prays that the University provide letters to him, addressed to these Universities abroad, clarifying the issue with regard to the re-examinations. Petitioner further clarifies that he is willing to take part in the examination starting from today.

14. I have heard learned Counsel appearing on behalf of the respondents as also the petitioner appearing in person and perused the materials placed on record.

15. I am of the view that the Bar Council Rules with regard to promotion of students in intermediary classes were made to facilitate the promotion of students, without taking examinations, keeping in mind the pandemic situation. This

is a situation that was prevailing all over the world and the

Universities abroad were also facing the same situation. Accordingly, the new directions for re-examinations for the 8th Semester have not come out of the blue and should be adhered to. Conditional admissions given by the Universities abroad are also based on the final marks obtained by the students. Hence, explanatory letters by the respondent University shall clarify the issue and the petitioner student should not be prejudiced in any manner.

16. Upon a reading of the circulars that were placed by the learned Counsel appearing on behalf of the respondent University, it is clear that the results of the 8th Semester examinations were ad hoc in nature and conditional upon re-examinations to be conducted upon reopening of the college. Accordingly, the order of stay granted on January 21, 2021 is vacated and the Amity University Kolkata is directed to hold the examination from today onwards itself. The petitioner may also be allowed to take part in the examination starting from today, as he is willing to do so.

17. The respondent University is directed to provide letters to the petitioner with regard to the explanation for the re-examinations so that the petitioner can send the same to the Universities concerned abroad.

18. With the aforesaid directions, the writ petition is disposed of.

19. Since, no affidavit-in-opposition has been called for, the allegations made in the writ petition are deemed to have not been admitted by the respondents.

20. There will be no order as to costs.

21. Urgent photostat certified copy of this order, if applied for, be given to the parties, on priority basis.

22. Photostat plain copy of this order, duly countersigned by the Assistant Registrar (Court), be made available to the learned Counsel for the Amity University Kolkata upon compliance of all formalities.

(*Shekhar B. Saraf, J.*)