

**IN THE HIGH COURT OF SINDH, KARACHI**

Present

Mr. Justice Aqeel Ahmed Abbasi

Mr. Justice Aziz-ur-Rehman

1. Const. Petition No.D-5104 of 2017

Zeeshan Javed & 6 others .....Petitioners

Versus

Province of Sindh and others .....Respondents

2. Const. Petition No.D-5115 of 2017

Khurram Ahmed .....Petitioner

Versus

Province of Sindh and others .....Respondents

Date of hearing : 12.02.2018 & 15.02.2018

Date of judgment : 15.02.2018

Mr. Abdul Hafeez Khan, advocate for the petitioners in C.P.No.D-5104/2017.

Mr. Salman Hamid, advocate for the petitioner in C.P.No.D-5115/2017.

Mr. Khalid Javed, Advocate for the respondent along with Ghazanfar Hussain, Acting Registrar, /NED University of Engineering & Technology.

Mr. Ghulam Shabbir Shah, Additional Advocate General Sindh.

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**JUDGMENT**

**Aqeel Ahmed Abbasi, J:** Since a common grievance has been expressed in the above petitions, whereby, petitioners have impugned the letters issued by the Registrar, NED University of Engineering & Technology, Karachi, for cancellation of admissions of the petitioners, therefore, above petitions are being disposed of through this common judgment at Katcha Peshi stage.

2. Briefly the facts as stated in the memo of petition i.e. C.P.No.D-5104/17 are that petitioners No.1 to 5 are students of Civil Engineer Department and petitioner No.6 is the student of Humanity Department, whereas, petitioner No.7

is the student of Mechanical Department of NED University, Karachi, who were admitted in the University in academic sessions 2015-2016. The petitioners appeared in the 1<sup>st</sup> spring semester in the month of April, 2016 and also appeared in fall semester in November, 2016. However, petitioners attained less than required 2.0 Cumulative Grade Point Average (CGPA) in both the semesters for the year (2016) and were, therefore, placed on first probation and second probation respectively. The respondent No.4 issued a warning notice to the petitioners on 29.12.2016 after one year from announcement of the result of both the semesters (1<sup>st</sup> years 2016) and the names of petitioners were placed in "First Probation" in the 1<sup>st</sup> year (fall semester). Thereafter, names of the petitioners were placed on 2<sup>nd</sup> probation in second year Spring semester (2017) held on 03.04.2017 as the petitioners could not acquire their 2.0 CGPA out of 4.0 CGPA in the Spring semester (2017). Resultantly, through an ex-parte decision, the admission of the petitioners in Bachelor Programme was cancelled on 06.07.2017, however, without issuing any final Show Cause Notice, or the notice intimating cancellation of the petitioners' admission. It has been further stated that such act of the University was based on malafide as no right of hearing was provided to the petitioners and the impugned letters of cancellation of admission dated 05.06.2017 were not duly served upon the petitioners through proper channel, who came to know about such cancellation after four months from the date of letters regarding cancellation of the admission of the petitioners. According to petitioners, while cancelling the admission of the petitioners reference to clause 6.8.4 of the prospectus of Undergraduate Programme has been made, whereas, the remaining relevant provision of such prospectus have been altogether ignored and the petitioners have not been provided reasonable opportunity to improve their grade in terms of clause 6.10.1(a) in terms of clause 6.7 of the prospectus and the admissions of the petitioners have been cancelled in an arbitrary manner, therefore, petitioners being aggrieved and dissatisfied with such cancellation of the admission have approached this Court seeking restoration of their admission, and further prayed that the respondents may be directed to allow the petitioners to attend their classes and to complete their Bachelor Degree Programme in

accordance with law and 2016 Prospectus (Undergraduate) NED University of Engineering & Technology.

3. Similarly, the brief facts as stated in connected petition i.e. C.P.No.D-5115/2017 are that petitioner, namely, Khurram Ahmed, who attained 'A' Grade in Matric as well as FSC (Intermediate examination) after having passed the test of NED University took admission and student of Civil Engineering, he could also attain the 2.0 CPGA, therefore, was issued Show Cause Notice on 09.06.2017, whereby, petitioner has been confronted and required to show cause that why his admission should not be cancelled as the petitioner could not attain the required 2.0 CGPA out of 4.0 CGPA after completion of three semesters in Bachelor of Civil Engineering Programme batch 2015-2016 in terms of clause 6.8.4 of the Prospectus of Undergraduate Programme (2016). According to petitioner, on account of serious illness of his mother during the relevant period, petitioner could not attain the required marks in the 1<sup>st</sup> year and 2<sup>nd</sup> year semester, whereas, his mother expired due to such illness (cancer) and such facts were duly intimated to the respondents. However, instead of considering the case of the petitioner sympathetically the respondent intend to cancel the admission of the petitioner by issuing the impugned Show Cause Notice, whereas, reference has been made to clause 6.8.4 only while ignoring the other relevant clauses i.e. 6.1.0 and 6.7 of the Prospectus of admission, therefore, the petitioner has not been allowed to improve the grade in terms of clause 6.10 within the duration of programme as given in clause 6.7.

4. When Notices of instant petition were issued to the respondents, comments were filed on behalf of the respondents, whereby, it was informed that admission of petitioner has been cancelled vide order dated 08.08.2017, pursuant to such comments petitioner filed a rejoinder affidavit, wherein, it has been stated that petitioner was never issued any final Show Cause Notice nor has been served with the cancellation letter as referred to hereinabove, which according to petitioner, has been issued malafidely inspite of the fact that instant petition was

filed on 03.08.2017, whereas, notice of instant petition was issued on 03.08.2017 duly served upon the respondents on 07.08.2017.

5. Since facts of both the petitions are somewhat similar and the same relief has been sought in both the petitions, therefore, instant petitions were taken up for hearing together, whereas, arguments of learned counsel for the petitioners have been summarized as follows.

6. In order to examine the applicability of various clauses of 2016 Prospectus of NED University of Engineering and Technology, it will be advantageous to reproduce hereunder the relevant clauses, which have come under discussion during the course of argument in the instant matter:-

6.7.3 Any student who fails to complete all requirements for his/her degree in the prescribed time may continue study for further three academic years. Consequently, including the academic year of his/her first admission; a) Maximum seven academic years shall be allowed for each Four-year degree programme. b) Maximum eight academic years shall however be allowed for each Five-year degree programme. c) i) Any student admitted in second year on migration basis shall have one year reduced from maximum allowable period. ii) Any student admitted in third year on the basis of B.Tech. Conversion Programme shall have two years reduced from maximum allowable period.

6.8.4 Admission and enrolment of any such student shall be cancelled:

- i) who after being on second probation during Second Year Spring Semester fails to obtain 2.0 CGPA on completion of that semester.
- ii) who without information fails to register in any Semester even after passing of the permissible registration duration.

6.10.1 (a) Any student may be allowed by the Chairperson of the Department concerned to repeat course(s) offered in that semester in which he/she has obtained grade point lesser than 2.0.

- (b) The student will be allowed to register in such courses at any time, if simultaneously admitted in any other semester/ year of study and the maximum number of courses shall be in accordance to Para 6.5.5.(b)

7. According to learned counsel for the petitioners, that the admission of the petitioners has been cancelled in an arbitrary manner without providing opportunity of being heard nor any final Show Cause Notice was issued to the petitioners by the respondent before taking the impugned extreme action of cancellation of their admissions. It has been argued by the learned counsel that petitioners have been discriminated among 200 other students of different department, who could also not acquire the required 2.0 out 4.0 CGPA in the second probation, whereas, keeping in view the poor results of large number of students, the respondents revised their policy and relaxed the condition of acquiring 2.0 CGPA in the meeting of Deans Committee held on 09.05.2017, according to which, recommendation for dealing with students, who would fail to acquire second probation Spring 2017 Examination, was to be sent for consideration and approval of Vice Chancellor, through Registrar with the request to revise regulation. Thereafter, according to learned counsel for petitioners, while referring to existing regulation 8.4(b) statistic of a total number of 170 students, who were on second probation during second year Spring 2017 Semester, was sent with following two options:-

- I. *Students who do not successfully clear 2<sup>nd</sup> probation by Spring semester 2017 be halted from any further registration in regular courses and instead of directed to **improve first year CGPA** to at least 2.0 in Fall 2017 semester and Summer 2017 Session. Cancellation of admission would be subjected to improvement of CGPA by start of next academic year.*
- II. *To cancel admissions of such 2<sup>nd</sup> probation students having less than 1.0 CGPA, while allowing remaining students having CGPA between 1.0 and 2.0 CGPA to improve to at least 2.0 CGPA utilizing one Academic year, failing which their admission would be cancelled.”*

8. However, according to learned counsel for the petitioners, instead of taking a benevolent option and allowing the petitioners to improve their CGPA an extreme arbitrary action of cancellation of admission of the petitioners even without following the legal procedure has been taken by the respondent

University. It has been further contended by the learned counsel for the petitioners that even through purported Notices issued to the petitioners, no reference to any warning letter or Show Cause Notice ever issued by the respondents to the petitioners, has been made for the reasons that neither any warning letter was issued to the petitioners, nor petitioners were provided a chance to improve their CGPA to 2.00 CGPA. On the contrary, the policy decision taken by the respondents in respect of the petitioners is different rather discriminatory from the treatment in case of other students, who could also not attain the required 2.0 CGPA like petitioners. Per learned counsel, such students have been allowed to improve their CGPA while permitting them to appear in the exams, however, the petitioners have been discriminated, as their admissions have been cancelled without assigning any reasons. Learned counsel for the petitioners have further argued that while resorting to clause 6.8.4.1 the respondents have ignored the remaining clauses of 2016 Prospectus under Graduate (NED University of Engineering and Technology) particularly, provisions of clause 6.7.3, which provides “that any student, who fails to complete all the requirement in the prescribed time may continue studies for further three years, whereas, as per sub-clause (a) of clause “maximum seven academic years have been allowed to each four years degree programme. Learned counsel have also referred to clause 6.8.4(i), which provides “who after being on second probation during the second Spring Semester fails to get 1.5 CGPA on completion of that semester his/her admission/enrolment shall be cancelled”, but according to learned counsel, those could not attain 1.5 CGPA their admission was not cancelled, they are still studying in the third year. While concluding their arguments, learned counsel for the petitioners submits that once a student after having acquired the requisite marks on merits and got admission in the NED University of Engineering and Technology with the legitimate expectancy to complete the four years course within extended period of seven years as provided in the Prospectus, could not have been cancelled in such an arbitrary manner, therefore, it has been prayed by the learned counsel for the petitioners that the impugned notices and cancellation of petitioners’ admission may be set-aside and the respondents may be directed to

allow the petitioners to continue their studies and to make improvement in the CGPA as per rules.

9. Conversely, learned counsel for the respondent has submitted that every student, who takes admission in the University is bound by the Rules, Regulation and the terms of the Prospectus, whereas, in order to maintain standard of education in the University, the students are required to obtain requisite marks in each semester. It has been contended by the learned counsel for the respondent that since petitioners could not obtain the required 2.0 CGPA out of 4.0 and could not clear all the papers, therefore, their admissions have been cancelled after notice to the petitioners in terms of clause 6.8.4, which provides **“that admission and enrolment of such student shall be cancelled, who after being on second probation during second year Spring semester to obtain 2.0 CGPA or completion of that semester”** Learned counsel for the respondent has referred to para 4 of the comments filed on behalf of the respondent and drawn the attention of the Court to the academic summary of the petitioners in C.P.No.D-5104/2017 and submitted that the petitioner could not attained the required CGPA nor could clear the total courses, therefore, according to learned counsel, the petitioners’ admission and registration have been cancelled after issuance of notice as per rules. It has been further contended by the learned counsel for the respondent that reference to clause 6.10.1(a) by the learned counsel for the petitioner is misconceived, as according to learned counsel, it provides for improvement and single course where students have obtained grade point lesser than 2.0 in a particular subject and not the semester. Per learned counsel, the said clause is meant for such student, who need to further improve the CGPA and not for those student, who had poor performance and could not obtain the required CGPA less than 2.0. It has been prayed by the learned counsel for the respondent that petitioners do not have any fundamental right or legal basis to seek a declaration from this Court under Article 199 of the Constitution as the petitioners have failed to meet the minimum educational standard as per prospectus, hence not entitled to any discriminatory relief from this Court.

10. We have heard the learned counsel for the parties, perused the record with their assistance and have also examined the relevant provisions of the regulation as detailed in the Prospectus of NED University of Engineering & Technology for the year 2016. For the purposes of deciding the subject controversy agitated through instant petition, we have to examine the provisions of Chapter 6 of the 2016 Prospectus of NED University of Engineering & Technology, which relates to mode of admission as well as cancellation/withdrawal of admission, medium of instructions, during of programme, cancellation of admission/enrolment, withdrawal from semester/programme and grade improvement etc. In the instant case, action has been taken against all the petitioners while invoking the provision of clause 6.8.4(i), which provides that admission and enrolment of any student shall be cancelled; who after being on second probation during second year Spring semester to obtain 2.0 CGPA on completion of that semester, however, while resorting to hereinabove provisions relating to most extreme action as provided in the 2016 Prospectus, the petitioners appear to have not been specifically confronted through a proper Show Cause Notice requiring the petitioners to improve their grade in terms of clause 6.10.1(a) & (b). Similarly, while invoking the provisions of clause 6.8.4(i) the respondents have also failed to take into consideration the other provision of the same Prospectus including the provision of clause 7.6.3, whereby, a maximum seven academic years have been allowed for each four years degree programme in the NED University of Engineering & Technology, whereas, in the instant case the petitioners admissions/enrolments have been cancelled within two academic years for their having failed to obtain 2.0 CGPA. It will not be out of place to observe that about 170 students, along with petitioners who were on second probation of Spring semester 2017, of second year could not obtain the required 2.0 CGPA, which does not only reflect upon to poor performance of the students but also adversely reflects upon the credibility and seriousness of the teaching staff of the NED University of Engineering & Technology, who could not provide professional and skilled education to all of their students, whereas, considerable number of students could not acquire the required 2.00 CGPA in 2<sup>nd</sup> years Spring Semester,



Respondents being fully cautious of such poor performance and result of large number of students during the above semesters decided to relax such regulation and included the said proposal in the Agenda item No.6 in the meeting of the Deans' Committee of different department of NED University of Engineering & Technology held on 09.05.2017, which reads as follows:-

“students failed to clear second probation, Dean’s recommendation for dealing with students, who would fail to clear second probation in Spring semester 2017 were made as per annexure ‘B’ available at page 113 for consideration and approval of Vice Chancellor, whereas, Registrar of NED University of Engineering & Technology was requested to revise regulation, it will be advantageous to reproduce the recommendation for students of second probation during second year Spring semester as mentioned in Annexure ‘B’ available at page 113, which read as follows:-

“Students on Second Probation during Second Year Spring Semester 2017

**Existing Regulations:**

*8.4 b) Admission of any such student shall be cancelled, who after being on second probation during Second Year Spring Semester fails to obtain 2.0 CGPA on completion of that semester.*

**Statistics:**

*A total of 170 students were on 2<sup>nd</sup> probation during second year spring 2017 semester. Summary of statistics is as follows:-*

- 54 students between 1.7 and 2.0
- 24 students between 1.5 and 1.7
- 54 students between 1.0 and 1.5
- 38 students below 1.0 CGPA.

**Possible Options:**

*As obviously, this is quite a large number of students following options are proposed in order to mitigate the situation:*

- I. *Students who do not successfully clear 2<sup>nd</sup> probation by Spring semester 2017 be halted from any further registration in regular courses and instead be directed to improve first year CGPA to at least 2.0 in Fall 2017 semester and Summer 2017 Session. Cancellation of admission would be subjected to improvement of CGPA by start of next academic year.*

II. *To cancel admissions of such 2<sup>nd</sup> probation students having less than 1.0 CGPA, while allowing remaining students having CGPA between 1.0 and 2.0 CGPA to improve to at least 2.0 CGPA utilizing one Academic year, failing which their admission would be cancelled.”*

11. From perusal of hereinabove minutes of the meeting of Deans' Committee of various Department of NED University of Engineering & Technology held on 09.05.2017, it appears that while dealing with the students, who could not attain 2.0 CGPA on second probation during second year Spring Semester, 2017, the Committee has only taken into consideration regulation 6.8.4(i) in isolation, which provides that admission of such student shall be cancelled, **“who after being on second probation during second year Spring Semester fails to obtain 2.0 CGPA on completion of that semester, whereas, other relevant provisions i.e. 6.7.3 (a), which provides that “*maximum seven academic years shall be allowed for each Four-year degree programme* as well as provision of 6.10.1(a), which provides that “*any student may be allowed by the Chairperson of the Department concerned to repeat course(s) offered in that semester in which he/she has obtained grade point lesser than 2.0.*”** Moreover, it has been further noted that while the competent authority decided to relax the regulation relating to cancellation of admission i.e. 6.8.4(i), and also to condone the condition of acquiring 2.0 CGPA on second probation in second year Spring semester 2017, has approved option No.(ii) instead of option No.(i), hence, excluded the petitioners from the benefit of such relaxation, however, without assigning any reasons whatsoever. It appears that the petitioners have been discriminated among 170 students, who could also not attain the required 2.0 CGPA like petitioners. It is also pertinent to note that while approving the item No.6 on the agenda, there seems no formal approval of the possible options as detailed in Annexure 'B' at page 113 (C.P.No.D-5104/2017), nor any reasons have been recorded while treating the petitioners differently from remaining students, whose admissions have not been cancelled and they have been allowed to improve their CGPA. We are of the opinion that exclusion of the petitioners among 170 students, who could not attain the required 2.0 CGPA during second

year Spring Semester, 2017, has no legal basis and does not fall within the definition of reasonable classification, whereby, a different treatment could have been extended to the petitioners under somewhat similar facts and circumstances and the criteria applicable to all the students who could not obtain 2.0 CGPA. There is no cavil to the proposition that every Educational Institution including NED University of Engineering & Technology has the right to determine educational standard by formulating admission policy and prescribing the criteria for passing various courses during each academic year. However, such policy and standard should always be aimed to facilitate the students and to provide the maximum opportunity to clear their courses within the given academic years. In the case in hand it has come on record that large number of students could not obtain the required CGPA of 2.00, therefore, Competent Authority decided to relax such condition, however, while doing so, could not provide equal treatment to the petitioners. We may further observe that once any student, who obtains the required marks and fulfills the requisite qualification and meets the eligibility criteria to be given admission in a professional degree/programme, may be given all possible chances to complete such course within the maximum academic years, whereas, in case of any short fall, an opportunity to improve and to overcome such short fall shall be given to the students, instead of taking a drastic and harsh action of cancellation of his/her admission.

12. In view of hereinabove facts and circumstances of the case, we are of the opinion that petitioners have been discriminated and deprived of an opportunity to improve their CGPA like other students, whereas, they have also not been allowed to complete four years course within the extended period of seven years. Accordingly, the impugned letters of cancellation of admission of the petitioners were set-aside vide our short order dated 15.02.2018, and above the reasons for such short order.

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