IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.147 OF 2013

Master Rushil A.A. Diniz,
by his next friend and father,
Mr. Agnelo F. Diniz, major,
w/off at 108, Mahalaxmi Chambers,
18th June Rd, Panaji, Goa. …. Petitioner

V/s

1. Goa University,
   by its Registrar,
   University Complex,
   Bambolim Plateau, Goa.

2. Fr. Agnel College,
   By its Principal, Pilar, Goa.

3. State of Goa,
   By its Secretary (Education)
   Secretariat, Porvorim, Goa. ….Respondents

Shri S.D. Lotlikar, Senior Advocate with Shri N. Sardessai and Shri D. Shirodkar, Advocates for the Petitioner.
Shri A.N.S. Nadkarni, Advocate General with Shri D. Lawande, Government Advocate for Respondent No.1 & 3.
Shri A.D. Bhobe, Advocate for Respondent No.2.

CORAM : SMT. R.P. SONDURBALDOTA &
U.V. BAKRE, JJ.

DATE : 10th MAY, 2013

JUDGMENT :

The petitioner herein is a student of respondent no.2, college for the stream of Bachelor of Computer Application (B.C.A.). He is also a sportsman and has represented respondent no.2 in inter-collegiate Table

Tennis Tournament. Respondent no.2 is affiliated to respondent no.1, Goa University.

2. The petitioner appeared for the first semester of B.C.A. and cleared all the papers except the paper of Computer Organization and Reconstruction. In that subject he failed to secure the grade for passing i.e. grade "D". He has been awarded grade "F" which is for failure. He therefore applied for verification of his marksheet and learnt that he had secured 34 marks in the subject. The minimum marks required for passing being 40 the petitioner had failed by 6 marks.

3. Admittedly, having represented respondent no.2 in inter-collegiate tournaments the petitioner is entitled to receive 10 marks called "Entitlement Marks". The dispute raised in the present petition is about the mode or manner of allotment of the "Entitlement Marks" by the respondents. It is the desire of the petitioner that these marks should be added to the subject of Computer Organization and Reconstruction wherein he has failed. On such addition he would be able to clear the subject since the total of the marks for that paper would then go up to 44. This is the basic purpose of the petition. For achieving this purpose constitutional validity of some of the provisions of the ordinances under Goa Universities Act have been challenged and submissions on

interpretation thereof have been made. It will be therefore convenient to first note the relevant provisions made in the two ordinances i.e. ordinance OA 5.16 and ordinance OC 47A.

4. The relevant provisions under the two ordinances are reproduced below:

Ordinance OA 5.16 Instructions relating to the grace marks at the University Examinations.

OA 5.16 Effective from (25th July, 2011) Scheme for award of entitlement marks and grace marks at the University Examinations.

This ordinance shall apply to all University examinations except where separate provisions for gracing are made by respective statutory Councils or Ordinance made by Goa University or wherever Grading system of evaluation is in force.

OA 5.16.1 Effective from (25th July, 2011) Scheme for Award of Entitlement Marks.

Candidates who have participated in NCC/NSS/Sports/ Cultural events shall be entitled to entitlement marks as per the following scheme.

I) .....

II) …...

III) …..

A .....
a) .....
b) ….

B) ….

IV)A The above category of students participating in the NCC/NSS/Cultural Events at the University/Inter University/Inter State/National/International level (representing the university or State) level shall be entitled to the gracing of 1% of maximum aggregate marks under any one or more of conditions (a) to (d) mentioned before, for the examination pertaining to the respective semester/academic year.

a) A candidate who fails to pass in one or more heads of passing shall be graced to the extent of 5% of the maximum marks allotted to the head of passing subject to a maximum of 1% of maximum aggregate marks.

b) A candidate shall be entitled to grace marks upto a maximum of 1% of maximum aggregate marks for the purpose of the award of class/honours or distinction at an examination or head of passing.

c) A candidate who fails to pass an examination shall be graced up to a maximum of 1% of the maximum aggregate marks for the purpose of an exemption in a Head/Heads of passing provided the marks so graced in a Head/Heads of passing shall not exceed 5% of the maximum marks allotted to the Head/Heads of passing.

d) The entitlement marks whether allotted or not fully or partially under any of the heads of passing shall be shown along with the grand total with appropriate '#' sign.

Provided that in the case of a candidate appearing at the University examination under semester system, the benefit of gracing mentioned above shall be given at the respective semester examinations.

The entitlement marks under this scheme shall not be counted for purposes of placement in the order of merit or award of scholarships, prizes and medals or of other awards. However, such marks can be utilized for award of class/honors/distinction.

A) Eligibility

Candidate (Sportsperson) should be a bonafide student of Goa

University or its affiliated college and after obtaining prior approval of the respective Principal / Dean / Head of Department should participate in the sports events approved by the Sports Council of Goa University, National Sports Federation having recognition of the Ministry of Youth Affairs and Sports, Indian Olympic Association, Association of Indian Universities.

A candidate shall be eligible for Sports Merit Marks only after the completion of his/her performance in the event and the marks so allotted shall be counted for his/her first appearance at the respective Semester / term / Annual exam only. In the event of his/her performance in more than one category/sport, only the highest marks allotted in any one category/sport will be considered.

B. Allotment of Sports Merit Marks to Categories.
Students participating in sports shall be eligible for merit marks for participation and achievements as per the table given below:

Category	Participation	Winner/ Gold Medal	Runners-up/Silver Medal	Semifinalist/ Bronze Medal
A	28	28+24=52	28+22=50	28+20= 48
B	26	26+22=48	26+20=46	26+18= 44
C	16	16+20=36	16+16=32	16+14= 30
D1	20	20+16=36	20+12=32	20+10= 30
D2	16	16+12=28	16+08=24	16+06= 22
E	10	10+06=16	10+04=14	10+02= 12

C) (i): Sports Merit Marks allotted to a student passing on his/her own merit shall be indicated separately in the mark sheet and shall be counted for the purpose of class, honours or distinction. However, unless otherwise eligible, the same shall not be counted for the purpose of obtaining any University scholarship, prizes, medals or placement in order of merit/rank for the said exam.

(ii) A student shall be eligible for the Sports Merit Marks in a particular Paper/Subject, provided that he/she shall have obtained a minimum of 50% of marks required to pass/claim exemption in that Paper/Subject. In the event of the student being unable to utilize the Sports Merit Marks, the same can be carried forward to the subsequent appearance of the same examination.

(iii) A student failing in a particular Paper(s)/Subject(s), whether in theory or practical or both, the Sports Merit Marks shall be added to the Paper(s)/Subject(s) and indicated by a hash (#), after which the general marks will be added and indicated by a dollar ($).Balance marks, if any, shall be shown separately in the mark sheet.

(iv) In case of semester system of examination, the entitlement marks on account of participation of sports shall be awarded at the examination conducted at the end of the semester during which the student is eligible for such marks.

N.B. (a) The rules relating to gracing under this scheme shall be applied first and thereafter if need be the scheme for the award of General Grace Marks, shall be applied.

b) …...

c) …...

d) …...

e) The students participating in Sports/NCC/NSS/Cultural activities shall be eligible to get marks under only one category in whichever he/she scores
maximum.

New Ordinance OC-47A relating to Bachelor of Computer Applications (BCA) Revised Course Structure. (Effective from the academic year 2011-12)

OC-47A.1 GENERAL

OC-47A.1.1 Programme objective:

To produce employable IT workforce, that will have sound knowledge of IT and business fundamentals that can be applied to develop and customize solutions for Small and Medium Enterprises (SMEs).

OC-47A.4 SCHEME OF GRADING

OC-47A.4.1 Grading Scheme

(i) Absolute grading scheme shall be followed to compute grade for each course registered by the candidate.

(ii) The final grades for the course shall be awarded by the Instructor-in-charge/course co-ordinator taking into account the collective performance in the In-Semester and End-Semester examination.

(iii) For each course taken by the student, a letter grade is assigned based on the performance in all assessments. These grades are defined as A,B,C,D and F.

(iv) Each grade not only indicates a qualitative assessment of the student's performance but also carries an equivalent number called the grade point. The absolute grading range in terms of marks and the corresponding grade point are shown in the table below:

Letter Grade	Grade Point	Range for Total % Marks
A	10	86-100
B	8	71-85
C	6	51-70
D	4	40-50
F	0	Less than 40

v. ...

vi. A candidate is awarded F grade on account of overall poor performance (total marks less than 40) or failure to appear for the End-semester examination.

vii. …...

viii. …..

ix. …...

OC-47A.4.2 Performance Indices

I. **Semester Performance Index (SPI)** : The performance of a

student in a semester is indicated by a number called SPI. The SPI is the weighted average of the grade points obtained in all the courses during the semester. SPI is to be calculated as:

SPI = ∑Grade point X course credit/∑credits of each paper in semester;

SPI has to be rounded to two decimal digits.

ii. **Cumulative Performance Index (CPI) :** The overall performance of a student at a particular point during the entire programme is obtained by calculating a number called CPI. The CPI of a particular semester is the weighted average of the grade points obtained in all the courses for the programme till that semester. The CPI is calculated to two decimal places.

iii. **Conversion of C.P.I. into Percentage for the B.C.A. Course :** In cases where an employer or an institute needs the equivalent percentage they can use the following formula to get an approximate idea of the percentage equivalent from the C.P.I. Score -

Equivalent Percentage = C.P.I. Score *10

For example – If C.P.I. = 5.67, then equivalent percentage = 5.67*10= **56.7**

OC-47A.4.3 Award of class

i. Each semester grade report for the student shall carry his/her SPI and CPI. The final class for the B.C.A. degree would be awarded based on CPI of final semester as per the following scheme:

Distinction : CPI equal to or greater than 7.0
First class : CPI equal to or greater than 6.0 but less than 7.0
Second class : CPI equal to or greater than 5.0 but less than 6.0
Pass Class : CPI equal to or greater than 4.0 but less than 5.0

ii. Due to the grading scheme adopted, there is no provision for gracing in the individual course. However, entitlement marks awarded by Goa University for candidates due to NSS, NCC, Sports or cultural activities shall be added to the total before calculating CPI at the end of each semester.

5. By prayer clause (a) the petitioner challenges constitutional validity of OA 5.16 above to the extent it purports to exclude

examinations wherever grading system of evaluation is in force. In the alternative the petitioner prays that OA 5.16 should be read down to include examinations under grading system of evaluation. Prayer clause (aaa) has been added by way of amendment to challenge constitutional validity of OC 47A.4.3(ii) above to the extent it purports to deprive a student in a grading system of benefits under or akin to those allowed under OA 5.16. The reliefs at clauses (b) and (c) are the further or consequential reliefs.

6. Ordinance 5.16 above is seen to make provisions for instructions relating to the grace marks at the University examinations where system of evaluation by marks is in force. There are two types of grace marks provided therein, i.e. entitlement marks under OA 5.16.1 and General grace marks under OA 5.16.2. They appear under a common heading of "instructions relating to the grace marks". The entitlement marks are for participation in extra-curricular activities like participation in NCC, NSS, sports and cultural events. The scheme contains two sets of rules one is for participation in NCC/NSS/cultural events, the marks awarded for which are called "Entitlement Marks". The other is for participation in sports, the marks awarded for which are called "Sports Merit Marks". The petitioner herein is entitled to Sports Merit Marks. The general grace marks are provided in Rule 5.16.2 to 5.16.5. The provisions for

the manner of allotment or adjustment of the entitlement marks and the general grace marks appear near identical except for the note towards the end of 5.16.1 that gracing under the Scheme of entitlement of marks shall be applied first and thereafter if need be the scheme for award of general grace marks shall be applied. Both the types of grace marks are permitted to be split for adjustment for different subjects and can be availed for the purpose of passing, for securing class, honours or distinctions. These marks however, can not be counted for the purpose of obtaining any university scholarship, prizes or placement in the order of merit/rank for the examination. Wherever the entitlement marks are used for these purposes the same are to be specifically shown in the marksheet with indication by specific signs.

7. The ordinance OC 47A relates to the revised course structure for the course of BCA of which the petitioner is the student. It became effective from the academic year 2011-12. The revised structure adopts "Gracing System" for academic evaluation of the student. It sets up the complete structure of the course right from the objective, admission, course structure, instructional scheme, examination scheme, evaluation to conferment of degree. OA 47A thus makes special provisions for BCA course. The entitlement marks under OC 47A.4.3.(ii) cannot be used for the purpose of gracing in the individual course. It can also not

be used for the purpose of either securing class, honours or distinctions. There is no provision made for splitting of these marks. They are to be added to the "total before calculating CPI at the end of each semester". Their Addition to the total is not to be indicated by any sign on the marksheet.

8. It is the contention of the petitioner that the classification sought to be made between the grading system and non-grading system is artificial and without any intelligible differencia. It amounts to no classification at all. According to him there is no rational nexus with the objective to be achieved by the grant of sports marks. It is his argument that a student participating in sports activities whether a student of the course covered by the grading system or covered by the non-grading system has to spend the same amount of time and energy while participating in sports activities. Therefore, the benefits available of marks awarded as entitlement marks should be same for both the students and there cannot be any discrimination between the two. Thus exclusion of the examinations with grading system from the provision of the grace marks is discriminatory, arbitrary, irrational and violative of article 14 of the Constitution of India.

9. It is also contended in the petition that in fact there is no real

difference between the two systems because the initial evaluation of the academic performance of both the students is by allotment of marks for the papers written by them. Whereas, in the marks system the marks secured in a subject are directly available for assessment of the student. The grading system converts the very marks into grades as set out in 47A.4.1. The grades are then given grade points which are decisive of the performance of the student. This would then mean that the classification drawn between the two systems is artificial. A student in non-grading system can be given benefit of the entitlement marks for the purpose of passing as also for getting a class or distinction. This benefit has been denied to a student of grade system.

10. Mr. Lotlikar, the learned Senior Counsel appearing for the petitioner submits that a BCA student has been patently discriminated against in the matter of utilization of the entitlement marks. According to him as suggested by the very name, these marks have been earned by a student on account of his participation in the extra-curricular activities. While the other students may be exclusively toiling for their examinations, a student participating in extra-curricular activities loses part of the time for studies in preparing for and participating in other activities to bring laurels to his college/University. Therefore he must get the maximum benefit of the entitlement marks either by using them

for the purpose of clearing a subject or for getting any class in a subject.

11. It has also been sought to be contended that the very provision of 47A.4.3(ii) is capable of an interpretation in favour of the petitioner so as to remove the unreasonable or artificial distinction drawn between the students of grading system and non-grading system. It has been argued that the two sentences in the provision have been separated by word "however". This would mean that the second sentence is not affected by the bar of gracing from the first sentence and hence the entitlement marks can be used as grace marks. Such interpretation of the provision would be beneficial for the students and would take away the vice of discrimination.

12. Mr. Lotlikar argues that any statute must be construed as a workable instrument and the Court must adopt purposive construction so as to make the statute effective and operative. A reliance has been placed in support of his submission on the decision of the Apex Court in ***Balram Kumawat V/s. Union of India*** reported in ***2003 (7) SCC 628***. The observations relied upon from paras 26 & 27 of the decision read as follows:

> 26. A statute must be construed as a workable instrument. Ut res magis valeat quam pereat is a well-known principle of law. In Tinsukhia Electric Supply Co. Ltd. v. State of

Assam , this Court stated the law thus :
"The courts strongly lean against any construction, which tends to reduce a statute to a futility. The provision of a statute must be so construed as to make it effective and operative, on the principle "ut res magis valeat quam pereat". It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it. In Manchester Ship Canal Co. v. Manchester Racecourse
Co. ((1900) 2 Ch 352, Farwell J. said : (pp. 360-61)
"Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty."
In Fawcett Properties Ltd. v. Buckingham County Council ((1960) 3 All ER 503) Lord Denning approving the dictum of Farwell, J. said :
"But when a Statute has some meaning, even though it is obscure, or several meanings, even though it is little to choose between them, the courts have to say what meaning the statute to bear rather than reject it as a nullity."
It is, therefore, the court's duty to make what it can of the statute, knowing that the statutes are meant to be operative and not inept and that nothing short of impossibility should allow a court to declare a statute unworkable. In Whitney v. Inland Revenue Commissioners (1928 AC 37) Lord Dunedin said :
"A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable."

27. The Courts will therefore reject that construction which will defeat the plain intention of the Legislature even though there may be some inexactitude in the language used. [See Salmon v. Duncombe [(1886) 11 AC 827 at 634]. Reducing the legislation futility shall be avoided and in a case where the intention of the Legislature cannot be given effect to, the Courts would accept the bolder construction for the purpose

> of bringing about an effective result. The Courts, when rule of purposive construction is gaining momentum, should be very reluctant to hold that the Parliament has achieved nothing by the language it used when it is tolerably plain what it seeks to achieve.

13. As against the above Mr. A.N.S. Nadkarni, the learned Advocate General submits that a regulation or even a bye-law cannot be struck down by the Court on the ground of unreasonableness merely because the Court thinks that it goes further than "it is necessary" or that it does not incorporate certain provisions which, in the opinion of the Court, would have been fair and wholesome. In other words, the Courts cannot say that a bye-law is unreasonable because the Judges cannot approve of it. It is only when the Court finds that a bye-law is manifestly unjust, capricious, inequitable or partial, its operation it can be invalidated on the ground of unreasonableness. Any stray instance of error or irregularity would not fall within the vices mentioned above. He seeks to draw support from the following observations of the Apex Court in ***Maharashtra State Board of Secondary and Higher Secondary Education & Anr. V/s. Paritosh Bhupeshkumar Sheth & Ors.*** reported in ***(1984) 4 SCC 27***.

> 16. In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and

improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. …..

18. In the light of what we have stated above, the constitutionality of the impugned regulations has to be adjudged only by a threefold test, namely, (1) whether the provisions of such regulations fall within the scope and ambit of the power conferred by the statute on the delegate; (2) whether the rules/regulations framed by the delegate are to any extent inconsistent with the provisions of the parent enactment and lastly (3) whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution. We have already held that the High Court was in error in holding that the provisions of clause (3) of Regulation 104 do not serve the purpose of carrying into effect the provisions of the Act and are ultra vires on the ground of their being in excess of the regulation-making power conferred by Section 36. The Writ Petitioners had no case before the High Court that the impugned clauses of the regulations were liable to be invalidated on the application of second and third tests. Besides the contention that the impugned regulations were ultra vires the power conferred under Section 36(1), the only other point urged was that they were in the nature of bye-laws and were liable to be struck down on the ground of unreasonableness.

21. The legal position is now well-established that even a bye-law cannot be struck down by the Court on the ground of unreasonableness merely because the Court thinks that it

> goes further than "is necessary" or that it does not incorporate certain provisions which, in the opinion of the court, would have been fair and wholesome. The Court cannot say that a bye-law is unreasonable merely because the judges do not approve of it. Unless it can be said that a bye law is manifestly unjust, capricious, inequitable, or partial in its operation, it cannot be invalidated by the Court on the ground of unreasonableness. The responsible representative body entrusted with the power to make bye laws must ordinarily be presumed to know what is necessary, reasonable, just and fair. ….

14. Mr. Nadkarni, further argues that the Courts should be extremely slow in interfering with the academic matters that are best left to the professionals possessing technical expertise and experience of actual day to day working of educational institutions. For this purpose he relies upon observations at para 29 of the Apex Court in ***Paritosh Bhupesh Kumar's*** case (supra) which have been reiterated by the Apex Court in its subsequent decision in ***The Secretary, All India Pre-Medical/Pre-Dental Examinations, CBSE and Ors. V/s. Khushboo Shrivastava & Ors.*** reported in ***2011 (9) SCALE 63***. The observations read as follows :

> 29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic

> approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case.

15. We will now first deal with the challenge to the constitutional validity of the two provisions. As already seen above, challenge thereto is based upon artificialness of the classification and discrimination. The system for evaluation for students generally adopted by most of the universities and educational institutions is of marks system i.e. allotment of marks to the the papers written by a student for a subject. As has been submitted by the learned Advocate General the educational experts found this system to be the cause of stress and anxiety for the students. It also led to large number of classifications depending upon the percentage of marks obtained by them. The experts therefore devised the system of award of grades which reduces the stress on the students, helps in making holistic assessment of the students and minimizes the missclassification of students on the basis of marks. It also eliminates unhealthy cut-throat competition amongst the high achievers. The grade system puts the students into only four grades. As pointed out by the learned Advocate General, all over the world, the education systems are

changing over from non-grading system to grading system. Such a change-over has been made, also, by Central Board of Secondary Education. The change was sought to be resisted by Independent Schools' Federations of India (Regd.) by approaching Delhi High Court by way of a writ petition. The Delhi High Court negatived the challenge by its judgment in ***Independent Schools' Federation of India (Regd.) V/s. Central Board of Secondary Education & Anr***. reported in ***183 (2011) DLT 211***. As observed in the decision the advantages found in grading system were of; (i) minimization of missclassification of students on the basis of marks, (ii) removal of unhealthy cut-throat competition amongst high achievers, (iii) reduction of societal pressures and availability of more flexibility to the learner and (iv) focus on better learning environment. On scrutiny of the material placed before it, the Delhi High Court found that CBSE had kept in view the interest of the young students and taken a policy decision to introduce a different evaluation system. The entire endeavour by CBSE was to improve the system of education, reduce the load on the students, usher in assessment-orientation approach, cultivate a holistic system and further make the education system more effective and productive regard been had to the global trend and the requirement of 21st century. The scheme had been framed with the assistance of the experts after carrying out studies on the aspect for several years. The Delhi High Court therefore

rejected the challenge to the new methodology adopted by CBSE.

16. On careful consideration of the material placed before us and, in particular, the observations of the Apex Court in ***Krishna Priya Ganguly & Ors. v/s. University of Lucknow & Ors.*** reported in ***(1984) 1 SCC 307*** relied upon by the learned Advocate General that in academic matters the High Court cannot introduce its own notions since it, neither has the necessary expertise nor competency to do so, we are of the opinion that it would not be correct on the part of us to make any comment on the adoption of different system of evaluation i.e. grading system by respondent no.1, for BCA course. Once, the system adopted cannot be interfered with it would be difficult to find fault with the provisions under the scheme of the system. In any case, as held by the Apex Court in its decision in ***Paritosh Sheth's*** case (supra), the interference can be only in extreme circumstances of the provision being either manifestly unjust or capricious or inequitable or partial. It will therefore have to be seen whether the provisions under challenge suffer from the above vices.

17. Since the system of grading is completely different from the system of marks, in our considered opinion, there can be no comparison between the two. In some respects i.e. in the matter of gracing, the

grading system may appear to be stricter than the marks system. However, if one reads the objective of the programme at 47A.1.1 the absence of gracing can be justified. The objective is "To produce employable IT workforce, that will have sound knowledge of IT and business fundamentals that can be applied to develop and customize solutions for Small and Medium Enterprises (SMEs)". There would be a question mark about the "sound knowledge" of the subject by a student who has cleared the subject with grace marks. In any case, if the university decides to have a system of evaluation by doing away with the provision for gracing it would be a matter of it's academic policy. The policy having been devolved by the academicians and experts there can be no scope for judicial review by this Court under Article 226 of the Constitution of India as held by the Apex Court noted earlier. In the present case, the grading system is seen to have been adopted by respondent no.1 by way of policy of evaluation. The ordinance of OC-47A was approved by academic Counsel of respondent no.1 in its meeting held on 26th April, 2011 and its Executive Council in its meeting held on 19th May, 2011. Thereafter approval of Chancellor of Goa University was received on 30th July, 2011. The policy of evaluation of a student, allotment of marks and giving additional marks for sports or other extra-curricular activities being within the academic domain of university, the policy cannot be interfered with by the Court.

18. We also find substance in the submission of the learned Advocate General that the students who are evaluated on grading system are a class by themselves. The provisions under the two ordinances operate in two different and distinct spheres and there can be no comparison between the two even for the purpose of allotment of Sports Merit Marks. Unlike the mark system, the grading system is a progressive system of evaluation having continuous evaluation of a student.

19. As regards the argument, that a student participating in extra-curricular activities, whether under the grading system or under the marks system, looses the same amount of study time, in our opinion, the entitlement marks allotted by respondent no.1 for participation in sports activities are not only by way of compensating the time spent by the student in such activities, but are essentially by way of an acknowledgment of the additional qualities possessed by a student. This can be inferred from the term “Sports Merit Marks” used in the ordinance for such marks. Since we are not the experts in the matter of the systems of assessments of students in educational institutions it would be not correct for us to question deletion of the provision of grace marks from the grading system. Further, if a system of evaluation of a student in an educational institution or university, adopts a specific

standard of evaluation it is not for a student to challenge it in a Court of law or for a Court to interfere with it. A student while taking admission to any course is well informed of the system and standard of evaluation of any course. Having chosen the course, despite the system, he cannot have the luxury of complaining about it at a later point of time when it is not possible for him to meet the standard. We do not find anything, even remotely, manifestly unjust or capricious or inequitable or partial about the grading system. Therefore, we cannot interfere with the same. Consequently, we find no substance in the challenge to the constitutional validity of the provisions under the ordinances to any extent. We may add that no system of evaluation can be perfect or full proof. What any system would be looking forward to is the student having sound knowledge of the subjects studied by him during the course chosen by him and developing an ability of applying that knowledge while working in the society.

20. This brings us to the argument based on the interpretation of provision 47A.4.3(ii). At the cost of repetition it would be convenient to reproduce it here once again.

> "(ii) Due to grading scheme adopted, there is no provision for gracing in the individual course. However, entitlement marks awarded by Goa University for candidates due to NSS, NCC, Sports or cultural activities shall be added to the total before calculating CPI at the end of each

semester."

Mr. Lotlikar submits that though the first sentence of the provision does away with system of gracing, since the second sentence starts with the word "however" it must be taken as an exception and by way of exception the entitlement marks should be used in the same manner as the entitlement marks under OA 5.16. We are not impressed by the argument. The use of the word "however" at the beginning of the second sentence cannot serve the purpose as desired by the petitioner. The use of the word would only mean that the bar does not get extended to addition of entitlement marks to the total before calculating CPI at the end of each semester as provided under 47A.4.2. When looked at the provision from this angle there can be no controversy or argument about use of the word "however". Such interpretation would also be in harmony with the first sentence and the policy of respondent no.1 of not providing for grace marks in grading system but at the same time awarding sports merit marks and entitlement marks.

21. The second word from the provision which has been argued to be objectionable is "total". As per the provision, the entitlement marks are to be added to the total before calculating CPI. Whether for the purpose of calculation of CPI i.e. Cumulative Performance Index or SPI i.e. Semester Performance Index, the measure used is not of marks but of

grade points, arrived at by conversion of the marks into grades and then into grade points. Mr. Lotlikar therefore submits that the measure of marks cannot be added to the measure of grade points. According to him, there is a possibility of a student, by such addition getting not just the cent-percent grades but at times even beyond the cent-percent grades. Mr. Lotlikar has tried to demonstrate it by hypothetical examples. It is not necessary for us to go into those hypothetical examples. If the system adopted provides for addition of entitlement marks to the grade points, that is part of the system and cannot be a question to be decided in a court of law. It's the method of evaluation arrived at by the educational experts in their considered opinion.

22. Addition of the entitlement marks to the individual subject as desired by the petitioner would give rise to another difficulty and which would also be inconsistent with the provision. Since the entitlement marks are to be added to the "total" the same cannot be added to an individual subject. It has been submitted on behalf of the petitioner that the word "total" in the provision should be interpreted as total of the individual subject. In other words, total of the marks obtained by a student for the different questions in the paper for an individual subject. There can be serious anomaly in adoption of this argument. The grade points in individual subjects are within the range of 10 to 15 marks. In

case of a student who has scored very well in an individual subject addition of the marks to the total of the subject may take him beyond the maximum of hundred marks. But still his total grade points may remain same this is because the grade points are awarded to a range of marks as is seen from the provision. Grade A is for the range of marks between 86 to 100, grade B is for 71 to 85, grade C is for 51 to 70 and grade D is for 40 to 50. Addition of the entitlement marks to the sum total of grade points at the time of calculating CPI however does not give rise to such a difficulty and it is in the general interest of the students.

23. The third word played upon by the petitioner is "before" in calculation of CPI at the end of each semester. It has been argued that the system adopted by the respondents does not add entitlement marks before calculating CPI. The addition is done while calculating CPI. In our opinion, this argument is to be only stated to be rejected.

24. For the reasons above, we do not find merit in the petition. Hence, the same is dismissed.

SMT. R.P. SONDURBALDOTA, J.

U.V. BAKRE, J.

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