

(2001) 08 MP CK 0068
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1146 of 2001

Abhishek Mishra

APPELLANT

Vs

Maharishividya Mandir, Mandla and another

RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (2002) 2 MPJR 484 : (2002) 4 MPLJ 414

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Umesh Trivedi, for the Appellant; Rajesh Maindiretta, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India the petitioner has prayed for issue of a writ of certiorari for quashment of Annexure-P-3 and to command the respondents to give admission card to him and to allow him to appear in the examination and to declare his results.

The facts as have been unfolded are that the petitioner is a student of Maharishi Vidya Mandir, Mandla and was regularly attending his classes in the school. The respondent-school is affiliated to respondent No. 2, Central Board of Secondary Education, Delhi (hereinafter referred to as "the Board"). The petitioner took admission in the school in the year 1995 and his performance in the school was excellent. He had passed all examinations with high percentage and there was never any complaint against him from any quarter. The academic session of 2000-2001 commenced in April, 2000 and the petitioner started attending the school regularly from 15-5-2000 to 30-6-2000. Thereafter, summer vacation intervened and after summer vacation he started regularly attending the classes

and according to him his percentage of attendance would exceed 90%. It has been put forth that at no point of time it was intimated to him that he was not regular in school or there would be shortage of percentage of attendance. The petitioner filled up the examination form on 29-9-2000 and the respondents collected the examination fee from him. It has been averred that the petitioner appeared in the Unit tests as well as half yearly examination. On 12-2-2000 the Board conducted practical examination in respect of Science subject. The petitioner was permitted to undertake the practical examination. From 15-2-2001, the admission cards of Xth Standard were distributed in the school to the students but the same was not given to the petitioner. Thereafter, the father of the petitioner tried to contact the Principal but the same could not be possible as the Principal was away at Delhi for attending a Seminar. The father of the petitioner contacted other teachers but they were not in a position to indicate the reason. Eventually, the father of the petitioner contacted the Principal who initially did not say anything but later on after receipt of a letter from the father of the petitioner, he sent a reply vide Annexure-P-3 dated 1-3-2001 stating that the attendance of the petitioner was 52.7%, and hence, he could not be issued the admission card as per the instructions of the Board. It has been averred in the petition that the allegation with regard to shortage of attendance is totally baseless and erroneous. It has been pleaded that the petitioner had been regularly attending his classes, and therefore, question of shortage of attendance does not arise. It has also been pleaded that the respondents are estopped to take such a plea in as much as the petitioner was never intimated about shortage of attendance.

It is urged in the petition that provision relating to attendance is not mandatory and it can be relaxed and shortage of attendance can be condoned by the respondents. It is also put forth that before admission card was refused the petitioner was not afforded an opportunity of hearing, and therefore, entire action of the authorities is hit by Article 14 of the Constitution of India as there has been violation of principles of natural justice which makes every act an arbitrary one. It is also urged that as Examination Fee had been collected and the petitioner was permitted to appear in the practical examination it should be deemed that the shortage of attendance was condoned. It is also put forth that Board has not passed any order not to disburse the admission card to the petitioner. With these averments reliefs as indicated above have been sought for.

A return has been filed by the respondent No. 1 contending, inter alia, that the petitioner remained continuously absent from the school for the whole month of July and August and first three weeks of September, 2000. He did not even appear in the unit tests which were conducted in the month of July, 2000. The Examination Forms were issued on 20-9-2000. The petitioner was permitted to fill up the form and the examination forms of all the students were sent to the respondent No. 2. The respondent No. 2, the Board, by its letter dated 25-1-2001, Annexure-R-1/1, sent the Admission Cards of all the 25 students of Class Xth including the admission card of the petitioner. It has been put forth that

another student, namely, Ku. Pooja Thakur, was also having short attendance and her examination form was also sent by respondent No. 1 to respondent No. 2, and the Admission Card in respect of her was also sent by the Board. However, the Board by letter dated 25-1-2000 specifically instructed that the admission cards in respect of students whose attendance fell short of the prescribed percentage or otherwise not eligible to take the examination may be detained by the Principal under intimation to the respondent No. 2, the Board. It is submitted that the answering respondents taking into consideration the short attendance of the petitioner as well as of Ku. Pooja Thakur mentioned their names in the letter in the column prescribed for mentioning the names in respect of the candidates whose admission cards had been detained. The school issued the admission cards to the other 23 students. The case of the respondent No. 1 is that it has acted in accordance with the instructions issued by the Board and indicated to the Board by letter dated 14-2-2001 that their admission cards have been detained as their attendance was below 60%. Relevant extract of the attendance in respect of Class Xth of the school has been brought on record as Annexure- R-1/3. It has been put forth that the father of the petitioner vide letter dated 1-3-2001, Annexure-R-1/4, intimated to the respondents regarding non-issuance of admission card and Principal vide letter dated 1-3-2001, Annexure-R-1/5, intimated that the petitioner had 52.7% of attendance, and therefore, admission card was not issued to him. It has also been put forth that this Court by interim measure directed the petitioner to appear in the examination and accordingly the petitioner has been permitted to appear in the examination. It has been further stated that the petitioner falsely stated in the writ petition that his attendance is about 90% and he is being deliberately not permitted to appear in the final examination by the answering respondents. It has been put forth that the statement made by the petitioner in his writ petition is absolutely false and incorrect and the respondent No. 1 has annexed the certificates of teachers including that of the class teacher and the said certificates have been brought on record as Annexures-R-1/8 to R-1/11. Certain Rules have been referred to substantiate the action of the respondent No. 1. It has been further put forth that as per Rules attendance below 60% cannot be condoned, and therefore, the petitioner was rightly not given admission card, and on that score no fault can be found with the respondent No. 1.

A counter affidavit has been filed by the respondent No. 2, the Board, contending, inter alia, that it conducts the examination throughout the country in respect of schools affiliated to it. The Board has verified with regard to the attendance of the petitioner and had found that it was 52.7%, and hence, he was not eligible to appear in the final examination conducted by the Board. Reference has been made to the Examination Bye-laws for conducting examinations. It is put forth that a student is required to attend atleast 75% of the total attendance both in theory classes as well as in practicals and the provision relating to condonation of shortage of attendance the maximum limit is 15%, and hence, the petitioner could not be helped as his percentage had fallen below 60%. It has

been put forth by the Board that admission cards were sent in respect of 25 students with a stipulation that admission cards in respect of the candidates whose attendance had fallen short by the prescribed percentage or otherwise not eligible to take up the examination may be detained by the Principal under intimation to the Board. It has been further pleaded that admission cards of two students, namely, petitioner and Ku. Pooja Thakur were detained by the Principal on account of shortage of attendance.

I have heard Mr. Umesh Trivedi, learned counsel for the petitioner, and Mr. Rajesh Maindiretta, learned counsel for the respondents.

It is submitted by Mr. Umesh Trivedi, learned counsel for the petitioner, that once the petitioner was permitted to appear in the practical examination the respondents were under obligation to permit him to appear in the written examination. It is further canvassed by him that the examination Bye-laws do not prohibit condonation of shortage of attendance beyond a particular level and in any case when the petitioner was permitted to appear in the practical examination it would be deemed that the shortage of attendance had been condoned by the authority concerned and respondents are estopped to refuse to permit the petitioner to appear in the written examination. The learned counsel has seriously criticized the action of the Principal who has detained the admission card of the petitioner. Mr. Trivedi has placed heavy reliance on the decision rendered in the case of *Purushottam vs. Board of Secondary Education*, 1961 MPLJ 1393 : 1961 JU1178.

Mr. Rajesh Maindiretta, learned counsel for the respondents, has contended that the petitioner has made an erroneous statement of fact in "Subject in brief" as well as in paragraph 5.2 by stating that his attendance is about 90% but as an actual fact it is 52.7%. Learned counsel has submitted that merely because the petitioner was permitted to fill up the examination form in the month of September, 2000 and appeared in the practical examination of Science subject no indefeasible right accrued in his favour.

To appreciate the rival submissions raised at the Bar I have carefully perused the pleadings. On a scrutiny of the writ petition it appears that the petitioner in "Subject in brief" has taken a categorical stand that his attendance, according to him, is about 90% but it has been shown to be 52.7%. It is averred in the writ petition that the petitioner was denied to appear in the examination as he had only 52.7% of attendance. The respondent No. 1 has asseverated in the counter affidavit that the petitioner had not attended the classes in the months of July and August and three weeks in September, 2000 and his attendance is 52.7%. Certain certificates of the teachers have been brought on record to indicate the attendance of the petitioner in the class. The same has not been disputed. Quite apart from the above, there is no reason to doubt the certificates issued by the teachers. The respondent No. 1 has also brought on record Annexure-R-1/3 which has been signed by the class teacher indicating the total attendance and the percentage of attendance of each student. On a perusal thereof it appears

that the petitioner had attended 97 classes out of total 184 classes and Ku. Pooja Thakur had attended 71 classes. In view of this there remains no trace of doubt that the petitioner had shortage of attendance and the same has been calculated to be 52.7%.

The next question that falls for consideration is whether percentage of attendance below 60% is condonable or not. In this context Mr. Maindiretta, learned counsel, had referred to the Examination Bye-laws of Central Board of Secondary Education, Delhi. Chapter 4 of the Bye-laws deals with the Admission to Examinations. Bye-law 13.1 deals with Regular Course of Study and it reads as under:--

"13.1 The expression "a regular course of study" referred to in these bye-laws means atleast 75 percent of attendance in the classes/lectures held; counted from the day of commencing teaching of class X/XII upto the 1st of the month preceding the month in which the examination of the Board commences.

(ii) The candidates who had failed in the same examination in the preceding year and who rejoins class X/XII shall be required to put in 75 percent of attendance calculated on the possible attendance from the 1st of the month following the publication of the results of that examination by the Board upto the 1st of the month preceding the month in which the examination of the Board commences.

(iii) In the case of migration from other institution, attendance at the institution/school recognized by the Education Department of the State/Union Territory from which the candidate migrates will be taken into account in calculating the required percentage of attendance.

(iv) Candidates taking up a subject(s) involving practical shall be required to have put in at least 75 percent of the total attendance for practical work in the subject in the laboratory."

The other relevant bye-law is bye-law 14 and it reads as under:--

"14. Rules for condonation of Shortage of Attendances:

If a candidate's attendance falls short of the prescribed percentage, the Head of the School may submit his name to the Board provisionally. If the candidate is still short of the required percentage of attendance within three weeks of the commencement of the examination, the Head of the institution shall report the case to the Regional Officer concerned immediately. If in the opinion of the Head of the institution, the candidate deserves special consideration, he may submit his recommendation to the Regional Officer concerned not later than three weeks before the commencement of the examination for condonation of shortage in attendances by the Chairman who may issue order as he may deem proper. The Head of the School, in his letter requesting for condonation of shortage in attendance, should give the maximum possible attendance by a student in the academic session, attendance by the candidate in question during the academic session and the percentage of attendance by such candidate in the session.

(ii) Shortage upto 15% only may be condoned by the Chairman. Cases of candidates with attendance below 60% in classes X or class XII, as the case may be, shall not be considered.

(iii) The Principal shall refer a case of shortage within the above prescribed limit of condonation to the Board, either with the recommendations or with valid reasons for not recommending the case.

(iv) The following may be considered valid reasons for recommending the cases of the candidates with attendance less than the prescribed percentage:--

(a) prolonged illness;

(b) loss of father/mother or some other such incident leading to his absence from the school and meriting special consideration; and

(c) any other reason of similar serious nature;

(d) Authorised participation in sponsored tournaments and sports" meets of not less than inter-school level and at NCC/NSS camps including the days of journeys for such participation shall be counted as full attendance.

Bye-law 13.2 stipulates requirement of attendances in subjects of Internal Assessment. Bye-law 14 deals with Rules for condonation of shortage of attendance. On a perusal of the bye-laws it is plain as day that a duty is cast on the Head of the Institution to send the names provisionally to the Board and if the candidate is still short of the required percentage of attendance to mention the same within three weeks of the commencement of the examination. It is also his obligation to report to the concerned Regional Officer immediately. The said Rule also prescribes that if Head of the Institution is of the opinion that the candidate deserves special consideration he may recommend his case for condonation of shortage of attendance to the Chairman. The time limit has also been prescribed. The chairman may issue order as he may deem proper. Certain conditions have been stipulated which constitute valid reasons for recommending the case of the candidate having attendance less than the prescribed percentage. As per bye-law 14(ii) shortage of attendance upto 15% only may be condoned by the Chairman and the cases of candidates with attendance below 60% in class Xth or Class XII, as the case may be, shall not be considered. Thus, there is no provision in the bye-laws for relaxation of shortage of attendance which is below 60%.

In view of the aforesaid, shortage of attendance as far as the petitioner is concerned could not have been condoned by the Chairman, and therefore, the Principal had rightly not recommended his case because the Chairman is also a creature of law and could not have condoned the shortage of attendance below 60%.

It is next contended by Mr. Trivedi, learned counsel, that once the petitioner was allowed to appear in the practical examination it would be deemed that shortage

of attendance as far as petitioner is concerned stood condoned. To reinforce the aforesaid submission he has relied heavily on the Division Bench decision rendered in the case of Purushottam (supra). In the aforesaid case the Division Bench was dealing with Regulation 9 occurring in Chapter XVI of Board of Secondary Education Regulations. The Court had also taken note of the fact that the Board allotted the Roll number and allowed the petitioner therein to appear in the practical examinations in the subjects of Physics and Chemistry. Thus, once having exercising its discretion in the matter of condoning deficiency in attendance the Board was precluded from reversing the decision already taken in exercise of its discretion. In paragraph 7 of the said judgment this Court held that it was in the discretion of the authority to condone the deficiency in attendance of any candidate and that discretion having been already exercised in favour of the petitioner by permitting him to appear in the practical examination it was not open to the said authority to disallow him from taking examinations in theory subjects. The Bench came to hold that exercise of discretion in condonation of deficiency in attendance is complete when it had been exercised once and after having exercised discretion once, the Chairman did not retain the liberty to alter the decision taken by him by exercising discretion for the second time. Their Lordships opined that when the Chairman had taken decision in exercise of discretionary powers his discretion in relation to that particular matter was exhausted and he would not again claim to revise his decision already taken by exercising his discretion. At this juncture, I may reproduce paragraph 8 of the aforesaid judgment which is of much guidance:--

"8. Now, here it must be taken that when the opponents permitted the petitioner to take practical examination they condoned the deficiency in attendance of the applicant, if there was any, and found him eligible for the examination. The argument that all candidates applying for examination are as a matter of course allowed to appear at the practical examinations and the scrutiny of their application forms is done subsequently cannot be accepted for the reason that Regulation 9 of Chapter XVI expressly lays down that the Secretary shall, after satisfying himself that a candidate has complied with all the requirements for admission to an examination, furnish him with a card of admission and on presentation of that card the candidate shall be permitted to sit for the examination. It is clear from Regulation 9 that a candidate cannot be allowed to sit for the examination unless the Secretary has satisfied himself that he has fulfilled all the requirements for admission to the examination. There is thus no justification for the practice, if any be such existing, of permitting candidates to take practical examination as a matter of course. Such a wrong practice cannot displace the legal effect of Regulation 9 which is that if a candidate has been allowed to appear in any subject in the examination, it must be taken that he has fulfilled all the requirements for admission to the examination. In the present case, the applicant was not only allowed to appear in practical examination but he was also allotted a roll number for the examination. It is difficult to see how a roll number could have been allotted to him if the Secretary had not satisfied

himself with regard to the points mentioned in Regulation 9. The filling in of admission cards and their actual issue to the candidate is merely a formality after the allotment of roll numbers."

On a scrutiny of the aforesaid paragraph it appears that their Lordships dwelled upon Regulation 9 which expressly lays down that the Secretary shall after satisfying himself that the candidate has complied with all the requirements for admission to examination, furnish with the card of admission and on presentation of that card the candidate shall be permitted to sit for the examination. Their Lordships in the aforesaid paragraph have after relying on the said Regulation opined that there should be a presumption that the Secretary was satisfied to permit the petitioner to appear in the examination and that apart a roll number was allotted.

The present factual matrix has to be tested on the anvil of the aforesaid enunciation of law. It is submitted by Mr. Trivedi, learned counsel for the petitioner, that after permitting him in the practical examination the Board as well as the school could not have refused the petitioner to undertake examination in theory papers. On a perusal of the record there is no order to show that the Chairman had condoned the deficiency but the school had permitted the petitioner to appear in the practical examination. The Board in its letter dated 25-1-2001. Annexure-R-1/1, had categorically stated as under:--

"The Admission Cards in respect of the candidates whose attendances fall short of the prescribed percentage or otherwise not eligible to take the examination may be detained by the principal under intimation to the Board."

The aforesaid letter clearly indicates that the admission cards had been detained in respect of two candidates, namely, Abhikshek Mishra and Ku. Pooja Thakur. It is averred in the petition that practical examination was held on 12-2-2001. Thus, from the aforesaid it is luminously clear that the Chairman had not condoned the deficiency in respect of shortage of attendance for the simple reason he had no jurisdiction to do so. It is well settled in law that a creature of law cannot travel beyond law. When in the bye-laws no power has been conferred on the Chairman to condone the deficiency/shortage in attendance above 15% by no stretch of imagination he could have condoned the same and letter contained in Annexure-R-1/1 was rightly issued. Because the Principal permitted the petitioner to appear in the practical examination the same would not bind the Board to issue him admission card permitting him to under take the examination in theory papers. At this juncture, Mr. Trivedi has drawn the attention of this Court to paragraph 9 of the decision rendered in the case of Purushottam (supra). It is apposite to quote the said paragraph:

"9. Much was made by the opponents of the fact that the applicant was governed by new regulations which came into force on 1st November, 1959 and not by the old regulations, and that under the new regulations the power of the chairman to condone the deficiency in attendance was limited upto a particular period and the

deficiency in the applicant's attendance far exceeded the limit which could be condoned. It is immaterial whether the applicant was governed by the new regulations or by the old ones. The fact that the applicant was allowed to appear for practical examination and was allotted a roll number must be taken as having the necessary implication that the deficiency in the petitioner's attendance was such which could be condoned and was condoned under the regulations which are applicable to him. Therefore, if the new regulations applied to him, then it must be taken that the deficiency in the applicant's attendance was such which was within the power of the chairman to condone."

16-17. I have bestowed by anxious consideration and in my humble way tried to understand the import of the aforesaid paragraph. Their Lordships have stated that once applicant therein was allowed to appear for practical examination and was allotted a roll number it must be taken to have the implication that the deficiency in the petitioner's attendance was such which could be condoned and was condoned. Their Lordship have not laid it as a law that a Chairman or any authority can condone the deficiency even if it is not permissible in the rules or Regulations or in the bye-laws. Their Lordships have used words "was such". In my humble view it makes a gulf of difference. Quite apart from the above, the Chairman of the Board had not condoned the delay in respect of the practical examination. The letter was written much before the practical examination was held. The Principal had no authority to permit the petitioner to appear in the practical examination. If the Principal has committed a mistake that would not enure to the benefit of the petitioner and in any case the Board would not be bound by it. If such a situation would be allowed to pass it would bring in anarchy in the educational system. A student is expected to attend classes regularly so that he becomes equipped and able to appear in the final examination. Considering various factors a specified percentage of attendance has been fixed. That apart, considering certain exigencies power has been conferred on the Chairman to condone the shortage of attendance upto 15%. If the student does not reach that he is not entitled to undertake the examination. The bye-laws have a wholesome and sanguine purpose. The paramount consideration is regularity in study and discipline in the educational institutions. The same cannot be thrown away for the mistake of a Principal. The Board has a duty to perform and as I have explained I do not perceive any fault with the Board. On the contrary, the student is at fault. It is expected of him to attend classes to learn his lessons and adhere to the discipline of the institution but not to suffer from moral malnutrition to claim 90% of attendance when it is not so. In these circumstances, I am of the considered opinion that the law laid down in the case of Purshottam (supra) is distinguishable and does not render much assistance to the learned counsel for the petitioner.

Another facet of argument was canvassed by Mr. Trivedi, learned counsel for the petitioner. It is putforth by him that this Court by an interim order dated 5-3-2001 directed the petitioner to appear in the examination. It is to be noted here that the said order was a conditional one as this Court had made it clear

that the appearance in the ensuing examination would not enure to the benefit of the petitioner if eventually the stand of the respondents is accepted. That apart, it was also stipulated that the result of the petitioner shall not be published. Submission of Mr. Trivedi is that the petitioner is a young man and has undertaken the examination, and therefore, result may be allowed to be published so that he does not suffer. It is worthwhile to state here that the averments were made at two places that the petitioner had 90% attendance and the said factor weighed with the Court while passing the interim order. Such an assertion was indubitably incorrect one as it was within the special knowledge of the petitioner that he had not attended the classes and there was quite a deficiency in his percentage of attendance. A student is required to attend the classes and not to miss them and get himself engaged in other kind of activities which are unwarranted. If a student had not attended the classes it was not proper on his part to assert that he had attended 90% of classes. A person who is in special knowledge of certain things but states contrary to the same, in fact, commits a fraud which the Courts treat as obnoxious. It is worth noting here that this is a case where teachers have given certificates in regard to the absence of the petitioner in the school. There is no reason why these teachers would act against him. They have no axe to grind against the petitioner or his father. On the contrary, the petitioner, though young, has misled his father (I have said so because the petitioner is a minor and the affidavit to the writ petition has been sworn to by the father of the petitioner who possibly was confused that his son was speaking the truth) which is contrary to sense of propriety, ethicality, and irrefragably amounts to a dent in the majesty of law. The moot question that arises for consideration is whether such a person, though young, should be conferred the benefit of publication of result because he has been permitted to appear in the examination by the interim order of the court. The young should remember that their rights flow when truth illuminates. They must keep it in mind that justice does not help those who take recourse to method of deception. Deception is alien to the sense of justice. It would have been better for the petitioner to accept that he had not attended the requisite classes and hence, was not eligible to appear in the examination and should have waited for the next year, to rectify his mistake and appear as a regular student. The Principal, who is the "Guru", whom Shastras describe as

"Ajnanatimirendhesya

Jnenenjana salakaya.

Cakummitam Yena

Tasmai Srigurave Namah."

has failed in performing his duties by permitting the petitioner to appear in the practical examination. But the conduct of the petitioner is also not praiseworthy. He very well knew that he did not have the requisite percentage. A twin fault cannot confer a benefit on the student and the Board should not be allowed to

suffer because the Board has a duty to maintain the discipline not only amongst the institutions but also among the students.

The prayer of the learned counsel for the petitioner to publish the result of the petitioner can be viewed from another angle. In this context I may profitably refer to the decision rendered in the case of Central Board of Secondary Education Vs. Nikhil Gulati and Another, wherein the Apex Court cautioned thus:--

"Occasional aberrations such as these, whereby ineligible students are permitted, under court orders, to undertake Board and/or University examinations, have caught the attention of this Court many a time. To add to it further, the courts have almost always observed that the instance of such aberrations should not be treated as a precedent in future. Such casual discretions by the Court is nothing but an abuse of the process; more so when the High Court at its level itself becomes conscious that the decision was wrong and was not worth repeating as a precedent. and yet it is repeated time and again. Having said this much, we hope and trust that unless the High Court can justify its decision on principle and precept, it should better desist from passing such orders, for it puts the "Rule of Law" to a mockery, and promotes rather the "Rule of Man"."

If the factual matrix is tested on the touch stone of the aforesaid enunciation of law there has to be one conclusion that the petitioner cannot be given the benefit for which he has prayed.

In view of my preceding analysis, I do not find any merit in the writ petition and the same is accordingly dismissed. Ordinarily in a case of this nature I would have imposed cost but as the petitioner had approached this Court with some kind of hope I refrain from doing so.