

(2014) 10 AP CK 0058

In the Andhra Pradesh High Court

Case No : Writ Petition No. 30876 of 2014

Akula Venkata Chaitanya

APPELLANT

Vs

The Chaitanya Bharathi Institute of Technology (Autonomous)

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Citation : (2015) 3 ALD 43

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : M. Hemalatha, Advocate for the Appellant

Judgement

C.V. Nagarjuna Reddy, J.—This Writ Petition is filed for a Mandamus to set aside proceedings, vide No. 155/AEC/CBIT/2014, dated 03.09.2014, of respondent No. 1, whereby it has directed the petitioner to pursue the second semester of B.E. I-year during the current academic year 2014-15.

2. I have heard Ms. M. Hemalatha, learned counsel for the petitioner and perused the record.

3. The petitioner joined the B.E. course in respondent No. 1-college during the academic year 2013-14. During the second semester of I year, he fell short of the required attendance of 75%. Therefore, he was not permitted to appear for the second semester examinations. He has, therefore, filed Writ Petition No. 18745 of 2014 questioning the said action. This Court by order, dated 07.07.2014, while admitting the Writ Petition, has granted interim order directing respondent No. 1 to permit the petitioner to write the examinations and the petitioner was permitted to make a representation to respondent No. 1 within a period of two days. The petitioner is, accordingly, stated to have made a representation on 08.07.2014 to respondent No. 1, for condonation of shortage of attendance by duly explaining the reasons for not attending the classes. But, he has not filed a copy of the representation stated to have made by him to respondent No. 1.

4. Respondent No. 1 has constituted a Committee for verifying the representations made by the students who are detained due to shortage of attendance and for submitting its reports for taking appropriate decisions by respondent No. 1. The petitioner's representation was considered by the said Committee, which submitted its report to respondent No. 1. Respondent No. 1, thereafter, has passed the impugned order.

5. A perusal of the impugned order shows that the Committee has opined that the petitioner has not produced any evidence of his participating in the extra-curricular activities such as NCC. Respondent No. 1 has observed that the petitioner's overall attendance was 51.36% and that therefore, the shortage of attendance cannot be condoned.

6. Learned counsel for the petitioner has not disputed that as per the Regulations of respondent No. 2-University, a student must have a minimum of 75% of attendance and if reasonable cause is shown, the shortage of attendance to the extent of 10% can be condoned.

7. In para-5 of his affidavit, the petitioner has raised a vague plea that due to health problems and due to actively participating in extra-curricular activities, he was not able to attend the classes. The petitioner has not adduced any evidence in respect of his plea of participating in extra-curricular activities. He has only filed two photo copies of the purported medical certificates, dated 05.04.2014 and 09.03.2014, to the effect that he was advised rest for one week from 03.03.2014 to 09.03.2014 and for six days from 01.04.2014 to 05.04.2014.

8. In the impugned order, it is mentioned that even if the medical grounds are considered, the petitioner will not fall within the range of 10% of shortage of attendance for being condoned.

9. In *B. Yugandhar Vs. Principal, Kuppam Engineering College and Another*, , while dealing with the academic regulations of Jawaharlal Nehru Technological University, which are *pari materia* with the Regulations framed by respondent No. 1 to the extent of attendance, a Division Bench of this Court, to which I am a party, has unequivocally held as under.

"The above reproduced regulation was interpreted by the Division Bench in *M.S. Chakravarthi Vs. Principal, Sri Kalahasteeswara Institute of Technology-2005* (1) ALT 253 (D.B). After noticing the judgment of the Supreme Court in *Ashok Kumar Thakur Vs. University of Himachal Pradesh and Others*, , the Division Bench held,

"Since nobody has power to condone the attendance below 65%, therefore, it should be assumed that even this Court cannot order such a condonation. Something which is prohibited by the Regulations cannot be subject-matter of a mandamus."

In *Ashok Kumar Thakur (supra)*, the Supreme Court unequivocally rejected the plea of sympathy and held.

"Considering that this case concerns the career of a young student we tried to look at the matter with all possible sympathy and consideration but we do not see how we can direct or compel an authority to do something which is beyond its legal competence to do. Since the principal is the only authority who can condone and since it was beyond his competence to condone the shortage in question, we do not see how we can intervene in favour of the petitioner even if the petitioner had succeeded in making out a case for condonation. In our opinion, the appeal must fail on this short point. Much as we regret the unfortunate fact that the petitioner is going to lose almost two precious years of his academic life we are in law bound to confirm the decision of the High Court, and dismiss the petitioner's appeal. We, therefore, do so. In the circumstances of this case, however, we are making no order as to costs."

10. In view of the aforementioned judgments, it must be held that the Court cannot issue a judicial fiat to the respondents to admit the appellant in I semester examination of the 4th year and thereby, violate the mandate of Regulation 5 of the Academic Regulations.

11. As the petitioner has failed to substantiate his plea that the shortage of attendance beyond 10% was due to his participating in extra-curricular activities, I do not find any illegality in the impugned order passed by respondent No. 1 rejecting the petitioner's request for condonation of shortage of attendance and advising him to re-appear for the second semester examinations of I-year BE course.

12. The Writ Petition is, accordingly, dismissed.

13. As a sequel to disposal of the Writ Petition, W.P.M.P. No. 38605 of 2014 filed by the petitioner for interim relief is disposed of as infructuous.