

(2006) 07 AHC CK 0130

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17558 of 2006

Amresh Kumar Chaudhary

APPELLANT

Vs

Banaras Hindu University and others

RESPONDENT

Date of Decision : 10-07-2006

Acts Referred:

Banaras Hindu University Act, 1915 — Section 11, 18

Citation : (2006) 07 AHC CK 0130

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. After passing their B.A. IIInd Year Examination, the petitioners took admission in B.A. IIIrd Year (Hons) in the Banaras Hindu University, Varanasi as regular students. The final examination of B.A. IIIrd Year commenced from 13.3.2006.

3. All the petitioners were issued Admit Cards. After appearing in their first three papers of the final examination of B.A. IIIrd Year held on 13th, 17th and 21st March, 2006, the petitioners received a notice from the Controller of the Examination, that they will not be allowed to appear in the remaining three papers.

4. The petitioners approached this Court by filing the instant writ petition and this Court vide interim order dated 28.3.2006 permitted the petitioners to appear in the remaining three papers held on 30.3.2006, 2.4.2006 and 5.4.2006, but their result was ordered not to be declared till further orders of this Court.

5. It is claimed that petitioner No. 1 participated in cultural activities from 1.1.2005 to 6.1.2005 and 2.2.2005 to 7.2.2005 and did N.S.S. Camp of the University from 9.1.2006 to 18.1.2006. He also submitted medical certificate to the Dean of the Faculty of Social Science for the period he remained ill from 19.9.2005 to 30.9.2005.

6. Petitioner No. 2 also claims that he participated in cultural activities from 1.1.2005 to 6.1.2005 and represented the University in the InterFaculty Cricket Tournament from 17.11.2005 to 30.11.2005, these periods were liable to be added in his attendance. He also claims that he fell ill in the month of December, 2005 and submitted medical certificate of his treatment before the Dean, Faculty of Social Science for condonation of his absence during the period.

7. Petitioner No. 3 represented the University in Table Tennis and participated in the InterUniversity Tournaments held in West Bengal from 25.11.2005 to 12.12.2005.

8. The claim of petitioner No. 4 is also similar to petitioner Nos. 1 and 2 that he also participated in cultural activities from 1.1.2005 to 6.1.2005 and 2.2.2005 to 7.2.2005 and submitted the documents before the Dean of the Faculty in support to his claim.

9. It is urged by the learned Counsel for the petitioners that once Admit Cards were issued to the petitioners and they were allowed to appear in some of the papers of the examination, they cannot be restrained from appearing in the remaining papers on the principle of estoppel.

10. The learned Counsel for the respondents has drawn the attention of the Court to Paragraph 3 of the counteraffidavit wherein it is stated that in view of the interim order dated 28.13.2006 and 31.3.2006 passed by this Court the petitioners had been permitted to appear in the B.A. III (Hons.) Geography Examination, 200506 but their result has not been declared in pursuance of the aforesaid interim order dated 28.3.2006.

11. Learned Counsel for the respondents has also placed the provisions of Sections 11 and 18 of the Banaras Hindu University Act, 1915 and submits that the Academic Council is the highest body of the University for framing/recommending the ordinance related to examination of students along with other matters and as per the aforesaid Section 11 read with Section 18 of the Banaras Hindu University Act, 1915, Academic Council is the competent body to frame Ordinance for maintenance of proper standards of examination and authorize to condone any deficiency of attendance for cogent reasons with approval of the Executive Council. The resolution of the Academic Council ACR No. 3C(i), dated 22.9.2004 was duly approved by the Executive Council vide ECR No. 302, dated 22.9.2004 as under :

"(a) No relaxation beyond 30% as provided in the Ordinances be considered by the Academic Council in any case.

(b) The following clause (c) of the said Ordinance be deleted.

(c) The Academic Council shall have power to condone any deficiency of attendance but only for cogent reasons.

Resolved further that it be recommended to the Executive Council that the Dean

of the Faculty concerned be authorized to condone attendance up to 30% only on the following grounds :

- (i) Participation in NCC/NSC/NSO Camps, duly supported by a certificate.
- (ii) Participation in University or College/Faculty Team Games or InterUniversity Tournaments, duly supported by a certificate from the Secretary of the University Athletic Association concerned.
- (iii) Participation in Educational Excursions conducted on working days certified by the Principal./Dean of the College/Faculty or the Head of the Department. These Excursions shall "riot include those organised for a class as a whole. No credit will be given for Excursion conducted on holidays.
- (iv) University deputation for youth festival certified by the Principal/Dean of the College/Faculty concerned.
- (v) Prolonged illness duly certified by the Medical Officer or the Superintendent, S.S. Hospital of Banaras Hindu University.

Resolved still further that the above provisions be made effective from the session 20032004 and onwards.

The aforesaid resolution duly approved by the Executive Council and widely circulated in the University vide Notification No. RAC/Mfg./AC15.05.04/3c(i), dated 18.2.2005 of the Deputy Registrar (Academic), Banaras Hindu University."

12. He has also placed reliance upon Annexure C.A. 1 to the counteraffidavit which is a Notification No. RAC/Mfg./AC15.05.04/3c(i), dated 18.2.2005 passed by the Academic Council of the University and issued by the Deputy Registrar (Academic) with regard to attendance of a student. On the strength of the aforesaid notification it is submitted that the petitioners failed to attain minimum 70% attendance and they had been inadvertently issued Admit Cards and permitted to appear in three papers of B.A. III (Hons.) in the examination commenced from 13.3.2006, but when this fact came to the knowledge of the University authorities they rightly restrained the petitioners from appearing in the remaining three papers.

13. Photostat copy of the attendance sheet of the petitioners is also appended as Annexure C.A.2 to the counteraffidavit.

14. It is submitted that even if the period spend by the petitioners in cultural activities is taken into consideration and condoned in that case too the petitioners" attendance falls short of minimum 70% as required which has not been challenged by them.

15. It is further stated that only 30% attendance can be condoned and that too for the cogent reasons.

16. It is lastly urged that the petitioners were permitted to appear in the three papers on misrepresentation by them and no case is made out by them for

condonation of 30% attendance.

17. The learned Counsel for the petitioners in rebuttal submits that there was no misrepresentation by the petitioners and that the respondents have made a vague assertion in the counteraffidavit in this regard without specifically disclosing the misrepresentation alleged to have been made by the petitioners.

18. It is further urged that if the petitioners had not attained minimum 70% attendance, the University could have restrained them from appearing in the examination on this ground before the commencement of the examination, but once they have been permitted to appear in three papers, the irregularity in attendance, if any, is deemed to have waived and condoned and the University is estopped from restraining them from appearing in the remaining papers. It is vehemently urged that all the records of attendance are with the University and as such there can be no question of misrepresentation by the petitioners to the University regarding their attendance.

19. After hearing the learned Counsel for the parties at length, I am of the opinion that the record of attendance of every student is with the University. It has a right to restrain any student from appearing in the examination if their attendance falls short of the required minimum percentage i.e., 70% attendance in addition to 30% that can be condoned by the Dean of the Faculty. However, if the petitioners had been issued Admit Cards even though by inadvertence, the University could not unilaterally take any decision restraining them from appearing in the remaining papers without giving opportunity of hearing to the petitioners. In such an eventuality it will be deemed that the deficiency of attendance is waived or condoned by the University.

20. Since petitioners have already appeared in the examination by virtue of the interim orders granted by this Court on 28.3.2006 and 31.3.2006, their results shall be declared forthwith within two days and the petitioners be allowed to appear in the counseling scheduled to be held from 13.7.2006.

21. For the reasons stated above, the petition is allowed. No order as to costs.