

(2010) 04 KAR CK 0259

In the Karnataka High Court

Case No : Writ Petition No's. 61721-35 and 62090-94 of 2010

Arbaz and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) ILR (Kar) 2469

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Ahamed Ali J. Rahimansha, for the Appellant; K.B. Adhyapak, AGA for R1 and 2 and Goulay Associates for R3, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—The petitioners are the students of Shaikh Pre-University College of Science, Commerce and Arts, Nehru Nagar, Belgaum. They were not permitted to appear for the II year PUC examinations held from 18.03.2010 onwards on the ground of ineligibility to appear for the examination. Therefore, they have filed these writ petitions for a mandamus directing the respondents to grant permission to appear for the II Year PUC examination for the academic year 2009-2010. In W.Ps. No. 61721-35/2010, this Court passed an interim order on 19.03.2010 permitting the petitioners therein to appear in the remaining subjects of the II Year PUC examinations, subject to the condition that the petitioners should not claim equity if they are found to be ineligible for declaration of their results. Pursuant to the said order, the petitioners have appeared for the examination the remaining subjects of II Year PUC. In W.P. Nos. 62090-94/2010, this Court has not granted any interim order.

2. Learned Counsel for the petitioners would contend that the petitioners have regularly attended the classes. However, their attendance has not been marked by the concerned lecturers. On the other hand, Learned Counsel for the 3rd respondent submits that the petitioners were not eligible to appear for the

examinations. In order to be eligible to appear for the examination, a student shall have attendance of 75% of the total number of periods in each subject during the academic year. Since the petitioners do not have 75% attendance, they are denied permission to appear for the examination. He has produced the records relating to the attendance of the petitioners in each subject for the academic year 2009-2010.

3. From the records made available by the Learned Counsel for the 3rd respondent, the attendance of the petitioners are as under:

 Eco Business studies Accountancy Computer science History Total SI Name of the
 Total Total % Total Total % Total Total % Total Total % Total Total % Total Total %
 No Students Classes Classes Classes Classes Classes Classes Classes Classes Classes
 Classes Classes Classes Classes Taken Attended Taken Attended Taken Attended
 Taken Attended Taken Attended Taken Attended -----

----- 1 Mr. Arbaz Mohd Ali Sayyed (Pet
 No. 1) 85 11 12.9 95 22 23.16 102 12 12 78 9 11.54 438 54 12.32877 2 Mr.
 Mustaq 89 45 52.9 95 25 26.32 102 36 35 78 29 37.18 442 135 30.54299
 Immam Sahib Bagewadi (Pet No. 2) 3 Mr. Arish 89 47 55.3 95 34 35.79 102 44
 43 70 20 28.571 356 145 40.73034 Mohd Sharif Mujawar (Pet No. 3) 4 Mr.
 Akib 89 41 48.2 95 18 18.95 102 32 31 70 20 28.571 356 111 31.17978
 Akhtar Alfaf Husain Murgod (Pet No. 4) 5 Mr. Nadeem 89 14 16.5 95 20 21.05
 102 20 20 78 10 12.82 442 64 14.47964 Rafiq Ahd Gadahinglaj (Pet No. 5) 6
 Mr. Aizan 89 35 41.2 95 24 25.26 102 35 34 70 20 28.571 356 114 32.02247
 Ibrahim Mujawar (Pet No. 6) 7 Mr. Shahbaz 89 38 44.7 95 32 33.68 102 55 54
 78 38 48.72 442 163 36.87783 Haroon Bagwan (Pet No. 7) 8 Abdulgani 89 25
 29.4 95 30 31.58 102 30 29 70 20 28.571 356 105 29.49438 Jamadar (Pet No.
 8) 9 Akram Nasir 89 17 20 95 10 10.53 102 26 25 70 20 28.571 356 73
 20.50562 Khan Pathan (Pet No. 9) 10 Mr. Zeeshan 85 6 7.06 95 27 28.42 102
 15 15 78 11 14.1 438 59 13.47032 Hashim Talib (Pet No. 10) 11 Mr. Praveen
 85 22 25.9 95 35 36.84 102 35 34 78 27 34.62 438 119 27.16895 Maruti
 Kothalikar (Pet No. 11) 12 Mr. Bilalahmed 89 35 41.2 95 18 18.95 102 23 23 78
 23 29.49 442 99 22.39819 Fayazahd Momin (Pet No. 14) 13 Mr. Sadiq 85 8
 9.41 95 28 29.47 102 30 29 70 20 28.571 352 86 24.43182 Riyaz Ahd
 Kakatkar (Pet No. 15) -----

----- Petitioners in W.Ps. No. 62090-94/2010 -----

----- Phy/Eco Chem/Bus. Stc
 Maths/Acc Bio/History Comp Sci Total SI Name of the Total Total % Total Total %
 Total Total % Total Total % Total Total % Total Total % Total Total % No Students Classes
 Classes Classes Classes Classes Classes Classes Classes Classes Classes Classes Classes
 Classes Classes Classes Classes Taken Attended Taken Attended Taken Attended Taken Attended Taken

----- 1
Mr. Mujahid 85 9 10.6 95 11 14.86 102 11 10.78 78 12 15.385 360 43 11.94
Chopdar Commerce) (Pet.No. 1) 2 Mr. Jafar 85 10 11.8 95 2 2.703 102 0 0 65
12 18.46 412 24 5.825 Mulla (Commerce) (Pet No. 2) 3 Mr. Sharif 90 41 45.6
74 36 48.65 118 39 33.05 93 35 37.63 468 151 32.26 Mulla (Pet No. 3) 4 Mr.
Shoaib 93 19 20.4 79 26 35.14 120 41 34.17 76 45 59.211 368 131 35.6
Betgeri (Pet No. 4) 5 Mr. Irpan 93 40 43 79 32 43.24 120 44 36.67 100 33 33
492 149 30.28 Jamuna (Pet No. 5) 6 Mr. Abdul 93 41 44.1 79 41 55.41 120 47
39.17 76 48 63.158 368 177 48.1 Kayum Langoti (Pet No. 6) -----

----- W.Ps. No.
61721-35/2010 Attendance Report Rameez Shaikhaji (Pet. No. 12) -----

----- SI
Subject Theory Practical No. Total Attended Percentage Total Attended
Percentage -----
----- 1 Physics 93 37 39.78494624 15 3 20 2 Chemistry 78 29
37.17948718 14 0 0 3 Maths 115 41 35.65217391 0 0 0 4 Comp.Sc. 76 27
35.52631579 14 6 42.85714286 -----

----- Attendance Report Taheer Kadalagi (Pet.
No. 13) -----

----- SI Subject Theory Practical No. Total Attended Percentage Total
Attended Percentage -----
----- 1 Physics 93 51 54.83870968 19 9 47.36842105 2
Chemistry 78 48 61.53846154 16 7 43.75 3 Maths 115 70 60.86956522 4
Comp.Sc. 76 53 69.73684211 13 6 46.15384615 -----

4. The Kamataka Pre-University of Education (Academic, Registration, Administration and Grant-in-aid etc.) Rules, 2006, which has come into force with effect from 09.10.2006 provides for the minimum days of attendance a student has to secure in order to be eligible to appear for the annual examination. The said rule is as under:

12. Minimum days of attendance:

(1) A student shall have attendance of 75% of the total number of periods in each subject during the academic year to become eligible to appear for the annual examination.

5. It is evident from the aforesaid rule that in order to be eligible to appear for the examination, a student shall have attendance of 75% of the total number of periods in each subject during the academic year. The documents produced by the Learned Counsel for the 3rd respondent would clearly indicate that the petitioners do not have attendance of 75% in each subject. The overall

attendance is also far below 75%. There is no merit in the submission of the Learned Counsel for the petitioners that the lecturers of the petitioners have not marked the attendance of the petitioners whenever they attended the classes. The petitioners have not alleged any mala fides against any of their lecturers nor have they been made parties to the writ petitions. The attendance of the petitioners is between 11% to 40%.

6. The attendance is necessary to achieve the academic discipline and scholastic excellence. It is the foundation for any course of study. A formal education in a school or college necessarily involves learning and training under the direction of teachers. A student has to undergo the requisite training to acquire the knowledge, learning, discipline in the prescribed manner. A quality or worth of education not only consists of marks obtained in the examination held at the end of the academic session but also human qualities, the culture and the social outlook one acquires and the development of his personality through living with other students in the school/college as a community, constant interaction with teachers and other students and participation in co-curricular activities. That is why the experts who formulated the policy and framed the Regulations, have made minimum attendance in each of the subjects, as essential for eligibility to appear for the examination.

7. In *B.K. Raghu v. The Karnataka Secondary Education Board and Ors.* ILR 2006 Kar 3651, this Court was considering the deficiency of attendance in respect of a student who had to appear for SSLC examination. The ground urged was ill-health of the student for not attending the classes. Rejecting the said contention, this Court has held that such an approach would be detrimental to the essential requirement that a student has to necessarily undergo the requisite training to acquire the knowledge, learning variance and discipline in prescribed manner by attending the classes. Benediction impelled by sympathetic considerations cannot be a substitute for the legal requirement. If the authority has in its discretion come to the conclusion that 116 days of absence was too long period to be condoned and if condoned it would result in sacrificing the interest of the academic standards, the Court cannot substitute the discretion exercised by the authorities only because a sympathetic view was permissible in a given case.

8. The said order has been upheld by the Division Bench of this Court in *Sri B.K. Raghu Naik Since Minor rep. by his Father Sri Keshava S. Naik Vs. The Karnataka Secondary Education Examination Board and The Principal, K.L.E. Society's M.R. Sakhare English Medium School, .* In the course of the judgment, the Division Bench has observed as under:

...

Thus a formal education in a school or college necessarily involves learning and training under the direction of teachers and it envisages that the learners should come to the school/college regularly and on time. That is why the experts who formulated the policy and framed the Regulations, have made minimum

attendance as essential condition for eligibility to appear in the examination. Having regard to the possible contingencies and circumstances, the rules also provide for dealing with exceptionally hard cases subject to certain reasonable conditions and limitations. Persuaded by sympathy, the Court should not further dilute or relax the requirements prescribed by the experts in the field. If the Court did so, it will amount to an unwarranted interference in academic matters and it will not be in public interest. It may also be pointed out that the quality or worth of education consists not only in the marks obtained in the examination held at the end of the course. It consists also in the human qualities, the culture and the social outlook one acquires and the development of his personality through living with other students in the school/college as a community, constant interaction with teachers and other students and active participation in co-curricular activities. Hence unless a student attends the school/ college regularly, he cannot get proper education. Therefore, it is in the interest of the student himself that he is asked to repeat the course to enable him to attend at least the required minimum number of classes.

9. This Court in *Preetham Bhargav K.S. v. B.R.R. Mahajan First Grade College and Anr.* ILR 208 Kar 5127 has held that attendance is necessary to achieve academic discipline and scholastic excellence. It is the foundation for any course of study. That is why the University has provided for a minimum attendance in the semester. What may not be done under the Regulations of the University cannot be done by invoking the jurisdiction of the High Court under Article 226 of the Constitution of India. Article 226 is not meant to avoid or circumvent the process of law and the provisions of the statute. Courts do not interfere with the decisions of the authorities as the educational institutions and Board/University are best fitted to examine the matter. The jurisdiction under Article 226 is not intended to perpetuate illegalities, but to strike at them.

10. The petitioners have not put in the required number of attendance as per the relevant Rules. Therefore, they are not eligible to appear in the examination. The writ petitions fail and they are accordingly dismissed. However, the 3rd respondent-College is directed to admit the petitioners to II Year PUC if they so desire and permit them to appear for the examination if they become eligible in accordance with the relevant Rules. The petitioners in W.Ps. No. 61721-35/2010 are not entitled for declaration of results of the examination taken by them pursuant to the interim order passed in the said cases. No costs.