
(2011) 05 DEL CK 0211
In the Delhi High Court
Case No : LPA No. 405 of 2011

Arhan Sett

APPELLANT

Vs

Jamia Milia Islamia and Another

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Citation : (2011) 05 DEL CK 0211

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Meenakshi Arora and Mohit D. Ram, for the Appellant; M. Atyab Siddiqui, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—In this intra-Court appeal, the assail is to the order dated 28th April, 2011 passed in W.P.(C) No. 2765/2011 whereby the learned single Judge has declined to grant the benefit of relaxation of 15% of attendance to the Appellant on the ground that there has been non-compliance of Ordinance 15. The Ordinance 15 reads as follows:

Ordinance 15(XV)

The University Examinations

2. Attendance (for Regular Students)

2.1 A Candidate shall be deemed to have under-gone a regular course of study in the University, if he/she attended at least 75% in the aggregate of lectures, tutorials and practicals in order to be eligible to appear at the Examination. Provided that the Majlis-i-Talimi (Academic Council) may, in special circumstances, condone any shortage in such attendance except otherwise provided by the Academic Council.

2.2 a relaxation of the maximum extent of 15% of the total attendance shall be accorded to student on account of sickness, participation in University functions

and the prescribed Educational Tours/Field Trips/Field work, provided that the attendance record, duly counter signed by the Teacher incharge, is sent to the Head of the Department concerned/Principal, University Polytechnic within two weeks of the function/activity etc.

Provided further in case of sickness/medical disability an application for the condonation shall be supported by a medical certificate issued by a registered Medical Practitioner/Public Hospital and duly authenticated by the Ansari Health Centre of JMI. Such applications must be submitted either during the period of treatment/hospitalization or within two weeks following recovery.

2. The medical certificate that was produced before the university has been brought on record at page 56, which reads as follows:

To whom it may concern

Certified that I had examined Mr. Arhan Sett of 55A Dilkhusha Street, Kol-17 during his visit to Kolkata in the 1st week of October, 2010 and treated him for Migraine attack.

3. It is not in dispute that the said certificate was produced on 17th March, 2011 and it was not certified as required under the proviso. Be it noted, the Appellant-student sought relaxation from attendance for the period August, 2010 to November, 2010.

4. Mr. M.A. Siddiqui, learned Counsel for the university would contend that the certificate apart from not being in accordance with the proviso to Ordinance 15, also does not indicate the period of rest as advised by the Doctor.

5. In this context and on the question of relaxation of attendance norms, grace or extra attendance, we may fruitfully refer decision in *Sukriti Upadhyay v. University of Delhi* LPA 539/2010 decided on 4th October, 2010, wherein this Court has stated thus:

11. In *Kiran Kumari (supra)*, another Division Bench of this Court referred to the decisions in *Baldev Raj Sharma Vs. Bar Council of India and Others*, *Bar Council of India and another Vs. Aparna Basu Mallick and others*, *S.N. Singh (supra)* and expressed the view as under:

13. In the light of the above, we find it difficult to appreciate as to how the requirements of 66% in each subject or as a condition of eligibility for appearance in the examination or the requirement of 66% attendance in the aggregate for purposes of granting the benefit of condonation in the shortfall can be said to be either illegal or arbitrary. The decisions delivered by the Supreme Court and by this Court to which we have referred above have in our view authoritatively held that the LLB course was a professional course in which the candidates have to ensure regular attendance of lectures and those who do not attend the stipulated percentage of lectures would not even be eligible for enrolment as members of the Bar. Such being the importance given to the

attendance of lectures, there is no question of the requirement stipulated by the Rules being either irrational, unconstitutional or illegal in any manner. The quality of training which a candidate gets during the time he undergoes the course is directly proportional to the number of lectures that he attends. The failure of a candidate to attend the requisite number of lectures as stipulated by the relevant rules can legitimately disentitle him to claim eligibility for appearing in the examination.

14. That brings us to the contention vehemently urged by Mr. Mittal that insistence upon 66% lectures in the aggregate as a condition precedent for the exercise of the power of condonation was irrational, for it amounts to empowering the competent authority on the one hand and denuding him of that power on the other. We do not think so. What is the minimum percentage of lectures which a candidate must attend in each subject or on the aggregate is a matter on which the academic bodies like the University and the Bar Council of India are entitled to take a decision. If in the opinion of the Bar Council and the University, a candidate cannot be said to have taken proper instructions or meaningfully undergone the course, unless he attends a minimum of 66% lectures in the aggregate, this Court cannot but respect that opinion. In matters relating to academics and standards of education, the Court would show deference to the opinion of the academicians unless a case of patent perversity is made out by the Petitioners. The present is not, however, one such case where the requirement of the rule can be said to be so perverse or irrational as to call for the intervention of this Court. As a matter of fact, the minimum percentage of lectures having been fixed at 66%, still gives to the students freedom to miss or abstain from 34% of the such lectures. That is a fairly large percentage of lectures which a student may miss for a variety of reasons including sickness or such other reasons beyond his control. No student can however claim that apart from 34% lectures which he is entitled to miss even without a cause, the shortage to make up 66% should be condoned if he shows good cause for the same.

12. In *Smt. Deepti v. Vice Chancellor, University of Delhi* WP (C) No. 18051/2006 decided on 20.04.2007, a learned Single Judge of this Court has observed as follows:

11. The main difference between the amended and un-amended provision is that while the un-amended provision pertained to the number of lectures delivered in a year, after amendment the provision relates to the number of lectures in each of the subjects and has reference, in the proviso, to the aggregate of lectures for the "semester examination". Thus, the Ordinance, by virtue of the said amendment, was sought to be brought in line with the provisions of Clause 3 of Section B of Part IV (Standards of Legal Education and Recognition of Degrees in Law for admission as Advocates) of the Bar Council of India Rules. The implication of this amendment is that rather than requiring an average of 66% attendance in the year, students preparing for the LL.B. Degree must attend 66%

lectures in each subject in order to be eligible to sit for semester examinations.

12. Unfortunately, somewhat of a dilemma has emerged. Although the University amended Clause 2(8)(a) of the Ordinance VII to be consistent with The Bar Council of India Rules, it did not bring about any change in Clause 2(8) (b) or 2 (9) (a), (b), (c) or (d) of the said Ordinance. This has created an apparent inconsistency in the language of the attendance rules. It seems that although amended Clause 2(8)(a) requires calculation of attendance on a subject-wise semester-wise basis, Clause 2 (8) (b) (albeit pertaining to the LL.M. Programme) and Clause 2 (9) (which refers to all courses in general and is not limited to the courses offered by the Law Faculty) continue to refer to attendance calculated on a yearly basis. There is no doubt that the piecemeal amendment brought about by the University in the Ordinance has introduced a certain degree of confusion.

13. We entirely agree with the aforesaid pronouncement of law. The University would have been well advised to compartmentalize the clauses in the Ordinance or put it differently so that such a situation could have been avoided, but the same has not yet been done. Be it noted, the learned Counsel for the University submitted with all fairness that that the 1975 Rules have to prevail and Clause 9 of the Ordinance VII does not apply to the students who prosecute LL.B course. We have already accepted the said submission. As has been indicated earlier, the Appellant has obtained 56% of attendance. That apart, she does not come within the relaxation clause. Thus, extension of benefit of relaxation does not arise.

14. Before parting with the case, we are obliged to state that the field of legal education has its own sacrosanctity. With the passage of time, the field of law is getting a larger canvas. A well organized system for imparting of education and training in law has become imperative. In a democratic society where the rule of law governs, a student of law has a role to play. Roscoe Pound has said "Law is experience developed by reason and applied continually in further experience". A student of law has to be a dedicated person as he is required to take the study of law seriously as pursuit of law does not countenance any kind of idleness. One may conceive wholesome idleness after a day's energetic and effective work. An active mind is the mother of invention. A student prosecuting study in law, in order to become efficient in the stream of law, must completely devote to the learning and training. One should bear in mind that learning is an ornament to continuous education and education fundamentally is how one engages himself in acquiring further knowledge every day. If a law student does not attend lectures or obtain the requisite percentage of attendance, he cannot think of taking a leap to another year of study. Mercy does not come to his aid as law requires a student to digest his experience and gradually discover his own ignorance and put a progressive step thereafter.

6. We may be failing in our duty, if we do not take note of the submission canvassed with immense enthusiasm by Ms. Meenakshi Arora, learned Counsel for the Appellant that the university sometimes plays twains with its own Ordinance and take the path of deviation by granting benefit to the persons in

violation of the Ordinance. Contrary act of the Respondent cannot be regarded as a weapon to claim benefit of equality. Negative equality cannot be pleaded and accepted in Courts. Be that as it may, we hope and trust that the university shall not deviate from the Ordinance and follow the same in letter and spirit for the simple reason; attendance by a student in a college is a matter of paramount concern and there cannot be any kind of deviation from the same. It is to be borne in mind that by attending classes one gets systematic education, which is required and necessary for a student attending a regular course. No university, after framing a rule or ordinance, can show any kind of deviancy or harbour the notion that it can deviate from the same. We say no more on this score. In the ultimate eventuate as we do not perceive any merit in the present appeal, the same is dismissed without any order as to costs.

Order dasti under signature of the Court Master.