

(2008) 02 DEL CK 0104

In the Delhi High Court

Case No : Writ Petition (Civil) 2537 of 2007

Baroon Prakash

APPELLANT

Vs

National Council For Hotel Management and Catering
Technology and Another

RESPONDENT

Date of Decision : 04-02-2008

Acts Referred:

Citation : (2008) 02 DEL CK 0104

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : R.K. Saini, for the Appellant; Kamini Jaiswal, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The petitioner was granted admission to the B.Sc.(Hotel Management and other Hospitality Courses) in the competitive examination held by the National Counsel for Hotel Management, respondent No. 1 herein, in the year 2002 for admission to its affiliated institutions. The examination was of national level and the petitioner was allotted Institute of Hotel Management, Catering and Nutrition at New Delhi, respondent No. 2 herein. It is an admitted position that as per the notified conditions of pursuing course, a student is required to ensure a minimum of the 75% attendance during the academic session in order to be eligible for appearing in the annual examinations which are conducted by the respondent No. 1. The prescribed conditions in this behalf as provided in the prospectus empowers the principals of the concerned Institute to condone up to 10% of the absence on medical grounds. The request is, however, required to be accompanied by a medical certificate issued by the registered medical practitioner.

2. Students who have been detained or failed in the examination can, at the discretion of the principal, be re-admitted in subsequent sessions as repeaters on payment of full fees.

3. The petitioner has struggled to complete the first year and second year academic course and passed the first year examination as a compartment student in the year 2003. The petitioner passed the second year examination also as a compartment case when he failed to clear the Food and Beverage Theory examination and failed to clear one subject in the year 2004

4. The instant writ petition is concerned with the petitioner's inability to secure the prescribed percentage of attendance in the year 2005 for his final year's examination. Inasmuch as the petitioner was able to secure only 67% attendance, the petitioner was not permitted to take the final third year examination. He took re-admission in the third year in the year 2006-2007 upon payment of the full fees for the same and joined classes on regular basis. It is contended by the writ petitioner that for the reason that he suffered from Jaundice and consequently had gone to home town in Bihar, he could not attend classes from 27th November, 2006 to 11th January, 2007. Upon recovery, he submitted a leave application with medical certificate to the respondents seeking condensation of attendance. The balance fees of Rs. 27,350/- required to be deposited, was also deposited by the petitioner on 12th March, 2007. However, the petitioner was informed by his classmates on the 28th of March, 2007 that the respondents had pasted a notice detaining and debarring him from appearing in the annual third year examination in the year 2006-2007 for the reason of shortage of attendance. The petitioner learnt from the notice pasted by the respondents that his attendance had been computed as 44% even though according to him, he had regularly attended classes. As all requests of the petitioner did not meet with any favorable consideration, the petitioner was constrained to file the present writ petition on 2nd April, 2007 seeking a declaration that the action of the respondents in not allowing the petitioner to appear in the final year examination on grounds of shortage of attendance was illegal, arbitrary, unreasonable and unfair. Further directions were sought to the respondents to permit the petitioner to appear in the third year examination which was to be held in April, 2007.

5. By an ex parte order passed in these proceedings on 3rd April, 2007, the petitioner was permitted to appear in the third year examination for the B.Sc. (Hotel Management and other Hospitality Courses) for the year 2006-2007 conducted by the respondents. However, the order made it clear that the petitioner was being permitted to appear in the examination as an interim measure without creating any equity in its favor and further that the counsel for the petitioner would not be permitted to urge that because the petitioner had appeared in the examination, he also be granted the relief prayed for in this petition.

6. Having regard to the expressed urgency of the matter, the same has been taken up for disposal and counsel have been heard. It has been pointed out that the petitioner was required to complete the B.Sc. Course in a maximum period of five years from the date of his initial admission in the year 2002. The same

having expired, the petitioner is disentitled to any relief.

7. Mr. Rakesh Saini, learned Counsel appearing for the petitioner, has urged at great length that the respondents have erred in computing the attendance of the petitioner and have not given the benefit of attendance on dates when the petitioner actually attended classes. It has also been urged that the respondents have failed to give to the petitioner the benefit of the attendance for the period from July and November, 2006 as well as for the period from 27th November, 2006 to 11th January, 2007 when the petitioner was unwell as he was suffering from Jaundice and was in his home town.

8. The petitioner also makes a grievance that the respondents in routine grant 10% attendance for medical and cultural activities, 10% attendance for placement and 8% attendance for mid-term and tutorials. The complaint is that while computing the petitioner's attendance after his admission in July, 2006, the petitioner has not been given the benefit of attendance for these activities. According to the petitioner, if correctly computed, he had been a diligent student and there was no deficiency in his attendance.

9. By way of an interim application being CM No. 11489/2007, the petitioner has urged that the result of the third year examination which he was permitted to take by virtue of the interim orders dated 3rd April, 2007, has been declared and posted on the internet by the respondents and that the petitioner has qualified all the papers. It has further been urged that the petitioner was successful in obtaining placement and is desirous of pursuing his Post- Graduation MBA Programme. The submission is that consequently, the interests of justice and equity merit that the writ petition be allowed and the petitioner be declared as having successfully completed the course.

10. This writ petition has been vehemently contested by Ms. Kamini Jaiswal, learned Counsel appearing for the respondent No. 1, who has urged that the sympathy would not guide adjudication in the present matter which relates to maintenance of standards in an educational institution. It is urged that interest of students mandates that the prescribed rules are strictly followed and discipline maintained. The respondents have disputed receipt of the communication or any medical certificate relied upon by the petitioner. On the contrary, it is urged that as per the record maintained in due course to conduct of classes, the petitioner was in Delhi and has attended several classes even between the period from 27th November, 2006 till 11th January, 2007. Relevant extracts of the attendance registers maintained subject-wise for the different courses by different teachers which the petitioner was required to undertake between 2006-2007, have been placed before this Court. The record supports the attendance computation which has been placed before the court. The same bears the signatures of the instructors/teachers. The same also includes attendance for practical and theory classes during this period.

11. The respondents also repudiate the petitioner's claim that the attendance

benefit is given in routine for the medical and cultural activities, placement, mid-term and tutorials. It is submitted that the record of the attendance even in respect of these activities and attendance is computed based on the actual attendance by the students. The petitioner is stated to have been given benefit of his actual attendance for these activities as well. The respondents have placed copies of the extracts duly signed by the instructors as well in this behalf.

12. The principal argument on behalf of the petitioner before this Court is based on the medical certificate which is stated to have been submitted to the respondents.

13. I find that the respondents have not only disputed receipt of the medical certificate but also have strongly challenged the authenticity of the same. Apart from referring to the fact that the petitioner had actually been attending some of the classes on the dates to which this certificate relates, it has further been pointed out that the petitioner failed to disclose the date on which such medical certificate was actually tendered or submitted to the respondent No. 2. The covering letter which is stated to have been written by Mr. S.N. Arun, father of the petitioner, is undated. The same does not bear any receipt by the office of the respondents. Even in the writ petition, it has only been stated that soon after recovery from the Jaundice, the petitioner submitted the leave application along with the medical certificate to the authorities in this regard. No. date of submission has been mentioned. There is nothing on record to support the petitioner's plea that he left Delhi for the reason that he was ailing with jaundice. He gave no intimation of either his sickness or intention to go home to the respondents.

14. On the other hand, the respondents have placed reliance on a notice dated 11th December, 2006 which was addressed by the respondent No. 2 to Shri S.N. Arun, father of the petitioner. By this communication, the respondent No. 2 notified the petitioner's father that the percentage of the attendance secured by the petitioner in aggregate till October, 2006 which was only 53%. The petitioner's father was clearly notified that as per the extant rules, the students must have attendance of 75% in aggregate and 70% in individual subjects so as to qualify for appearing in the annual examination. The father was required to ensure that his ward fulfills the requisite attendance requirement before commencement of the annual examination which was scheduled to be held in April/May, 2007. He was also notified that upon failure to do so, the petitioner shall be detained and debarred from appearing in the annual examination.

15. I find that the communication of the petitioner's father relied upon by the petitioner with which it has been contended that the medical certificate was filed, refers to this letter dated 11th December, 2006 from the Principal. Thus, the receipt of this notice from the principal is squarely admitted. The context in which the letter has been composed would show that an effort has been made to justify the attendance shortage. Normal conduct would be to respond immediately to the college and intimate that the petitioner was ill and in Bihar.

The medical certificate would have been sent there and then in anxiety to point out that the petitioner was entitled to benefit of attendance on the medical grounds, if the petitioner was really ailing and in Bihar. The very fact that no such thing was done lends support to the respondents contention that the communication and certificate are fabricated and procured without any basis in truth. The attendance which has been placed by the respondent before this Court also displays that the casualness with which the petitioner has treated the rules and academics and made no efforts to meet the attendance requirement inasmuch as in January and February, 2007, the record shows that he attended only 17.59% and 28.05% of the classes which were held.

16. The respondents have explained that so far as the July was concerned, classes begin only in the end of month and same have been clubbed with the month of August. So far as attendance for the month of No. vember is concerned, it is pointed out that classes were held only for part of the month of December and consequently, the attendance for the months of No. vember and December has been clubbed together.

17. It is noteworthy that even after 28th March, 2007, the petitioner made no grievance that the attendance had not been correctly computed till he filed the writ petition.

18. The undated letter not supported by even an averment with regard to the date of its submission with the respondent and the medical certificate stated to have been submitted in answer to the letter dated 11th December, 2006 from the respondent No. 2, have to be tested as against the record maintained by the respondent in due course. The record relates to attendance register prepared by different instructors for the classes which the petitioner was attending. The same relates to not only the petitioner but the entire class. This record certainly cannot be ignored as the petitioner's father was communicated of the percentage of his attendance as back as on 11th December, 2006 based on this record. It is an admitted fact till 12th January, 2007, the petitioner made no effort to inform the respondents that he was ailing and was in his home town on account of sickness. In this background, certainly, the record placed by the respondent cannot be doubted or faulted.

19. There is no plea of any malice or vengeance on the part of the respondents against the petitioner. The stand of the respondents is justified by the conduct of the petitioner.

20. In this background, there is no substance in the contentions of the petitioner to the effect that the attendance has been wrongly computed and that he has been wrongly effected as attending classes when he was entitled to absence on account of medical reasons.

21. Ms. Kamini Jaiswal, learned Counsel for the respondent has places reliance on the pronouncement reported at Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others, C.B.S.E. and Another Vs. P. Sunil Kumar and Others,

and Guru Nanak Dev University Vs. Parminder Kr. Bansal and another, It is disputed by Ms. Jaiswal, learned Counsel that even if the petitioner's contention that he was ailing and absent from Delhi from 27th November, 2006 till 12th January, 2007. The further submission is that even if the same was accepted and he was given the attendance benefit for medical reasons, even then his attendance would have remained short of the minimum required inasmuch as in October, 2006, his attendance was only to the tune of 53%.

22. The parameters of judicial review on a challenge to an administrative action on assertions of violation of Article 14 of the Constitution on grounds of arbitrariness are well settled. In (2001) 2 SCC 386 Om Kumar and Ors. v. Union of India, the court has clearly held unequivocally that the jurisdiction of the High Court under Article 226 of the Constitution would be confined to the applicability of one or the other well known principles known as the Wednesbury principle and the interference in exercise of a discretion would be permissible only if the order was contrary to law or relevant factors were not considered or irrelevant factors were considered or the decision was one which no reasonable person could have taken.

23. In view of the above discussion, in the instant case, it cannot be held that the decision taken by the respondents was either arbitrary or irrational or unreasonable or based on extraneous material.

24. So far as the permission which was given to the petitioner by the interim order dated 3rd April, 2007 to undertake the third year examination for the B.Sc. (Hotel Management and other Hospitality Courses) for the year 2006- 2007 conducted by the respondents is concerned, the court had recorded that such permission would not create any equity in his favor. It was also directed that it would not be open for the counsel for the petitioner to urge that because the petitioner had appeared in this examination, he ought to be granted the relief prayed for in this petition.

25. Yet, learned Counsel for the petitioner has vehemently urged that on considerations of sympathy, the writ petition deserves to be allowed inasmuch as he was permitted by the interim orders passed by this Court to undertake the examination. This submission has been vehemently opposed by learned Counsel for the respondent on the plea that in matters of education, no considerations of sympathy can be permitted to reign.

26. In this regard, it would be noteworthy that the Apex Court has repeatedly deprecated the practice of permitting students or to appear in examinations under interim orders passed in petitions. The court has repeatedly emphasised that rules stare in the face of a plea of sympathy and concessions, against the legal provisions. In this behalf in C.B.S.E. and Another Vs. P. Sunil Kumar and Others, the institutions whose students were permitted to undertake the examination of the CBSE were not affiliated to it and hence students were not actually entitled to appear in the examination. They were, so permitted under

interim orders granted by the court. The Apex Court held that permitting such students to appear in the examination and then to compel the CBSE to issue certificates in favor of those who had undertaken the examination would tantamount to subversion of law. On this ground the court held that it was not justified to sustain orders to this effect which were passed on misplaced sympathy in favor of the students.

27. To the same effect are the observations of the Apex Court in *State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another*, and *State of Maharashtra Vs. Vikas Sahebrao Roundale and others*, .

28. In *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, the court held that it would not be justified in issuing a direction to the university to protect the interest of the students who had been admitted to the medical college in clear transgression of the provisions of the statute and regulations. It was also observed that the court cannot by its fiat direct the university to disobey the statute to which it owes its existence and the regulations made by the university itself as that would be destructive of the rule of law.

29. These principles have been reaffirmed by the Apex Court in a recent pronouncement reported at *Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others*, wherein the court placed reliance on all the aforementioned pronouncements and observed that in all these cases it had been ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. The court observed that this resulted in a very awkward and difficult situation. However in the background of the law as laid down by the court, condoning the lapses or overlooking the legal requirements on consideration of the mere sympathy factor does not solve the problem, rather breeds more violations in the hope of being condoned. It disturbs the discipline of the system and ultimately effects the academic standards.

30. So far as considerations of sympathy are concerned, the observations of the Apex Court in the pronouncement reported at *Guru Nanak Dev University Vs. Parminder Kr. Bansal and another*, succinctly declares the principles thus:

7. We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the serious of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the

present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions.

31. The petitioner was required to show that the refusal to grant him permission to take the examination was illegal, arbitrary and irrational. The argument based on considerations of sympathy cannot assist the petitioner at all. In the light of the above discussion, the petitioner was compelled to do so and the consequences for the carelessness and lack of diligence displayed by the petitioner would follow. The petitioner was fully aware of the conditions on which he was admitted to the course which was also made known to the petitioner when he took admission to the course. Yet the petitioner has displayed utter casualness and ignored even the notice sent to warn him of his attendance position.

For all these reasons, I find no merit in this writ petition which is dismissed.

It is made clear that the petitioner would not be entitled to any benefit on account of examination which he has taken pursuant to the order dated 3rd April, 2007.