

(2014) 01 CAL CK 0008
In the Calcutta High Court
Case No : Writ Petition 38137 (W) of 2013

Bhuvan Kapoor

APPELLANT

Vs

National Institute of Technology

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Citation : (2014) 1 ESC 472

Hon'ble Judges : Sahidullah Munshi, J

Bench : Single Bench

Advocate : Biswaroop Bhattacharya and Mrs. Reshmi Ghosh, for the Appellant;
M. Rajasekhar and Mr. N. Thakur, for the Respondent

Final Decision : Disposed Off

Judgement

Sahidullah Munshi, J.—The petitioner in this Writ Petition is a student of National Institute of Technology, Durgapur (hereinafter referred to as the "said Institute"). The petitioner's case in short is that after passing 4th semester B. Tech examination in the computer science and engineering stream he had taken admission in the 5th semester in or about mid July, 2013. In the 5th Semester, the petitioner had five theory subjects, namely, Database Management System, Compiler Design, Operating System, System Programming and Communication Engineering. That apart, he had to attend 3 practical subjects. While prosecuting his studies in the 5th semester, the petitioner tripped and fell down in the hostel of the said Institute on 6th August, 2013 and, consequently, suffered major injuries on his right hand. It is stated that maintenance work was going on inside the hostel and there were shards of glass scattered in and around the hostel premises. Consequent to such injuries suffered by the petitioner on 6th August, 2013 at 7.30 a.m., he was rushed to the medical unit-cum-hospital inside the Institute when he was advised for 3 days" medical rest and issued certificate in that regard in favour of the petitioner. Such certificate appears at page 40 being Annexure P-4. It is submitted that on 6th August, 2013 in the evening he had to be taken to Kolkata for medical treatment considering the seriousness of the

injury sustained by the petitioner. On the following day that is, 7th August, 2013, the petitioner was admitted to Calcutta Medical Research Institute in the plastic surgery department under a reputed doctor and he was diagnosed with glass cut injury in the right hand index, middle and ring finger. He was discharged from the hospital on 10th August, 2013 after an operation on 7th August, 2013. It is the case of the petitioner that at the time of discharge he was directed to meet the doctor after 5 days. The petitioner paid a visit and, thereafter, he was advised rest for 6 weeks initially and subsequently, thereafter, for a further period of 2 weeks. The writ petitioner has annexed documents in support thereof in the writ petition. The petitioner has stated that on 6th August, 2013, on his return from the said Institute, the petitioner had visited doctors who advised him that the case being a serious one it required an urgent operation which prompted the petitioner to get himself admitted in the Calcutta Medical Research Institute. The petitioner was able to return to the said Institute only on 1st October, 2013. Classes remained suspended owing to Puja Vacation and such classes resumed from 20th October, 2013. The petitioner was unable to attend classes owing to the aforesaid accident from 7th August, 2013 till 30th September, 2013.

2. It is the case of the petitioner that he wrote to the Head of the Department of the said stream requesting her to permit him to attend classes and the same was forwarded to the appropriate authorities on 30th October, 2013. A copy of the said request letter has been annexed as Annexure P-6 (page 58). In the said letter, the petitioner stated that he could not attend the Institution from 7th August to 30th September as he suffered an accident which caused grave injury and laid him to undergo surgery. He requested to allow him to attend the class and to grant his prayer in the said application.

3. The petitioner has further submitted that before 6th August, 2013 he had 80% attendance in the relevant subject in the 5th semester, but owing to the aforesaid fatal accident, he could not attend the classes under compulsion and as a result thereof, overall attendance in those 5 subjects fell short of requirement. In paragraph 16, it is the definite averment made by the petitioner that the authorities were quite aware of the said accident because the doctor of the Institute treated him initially after he met the accident in the hostel of the Institute itself. In regard to the number of classes and the attendance, the petitioner has stated that the short-fall in attendance has been condoned by all the three subject teachers barring only one that is, Compiler Design teacher and in support thereof, he has annexed a chart containing the number of classes and percentage of attendance, wherefrom it appears that in Compiler Design (CSE 502) his percentage of attendance from 7th August to 30th September, 2013 was 0%, but undisputedly, this period was shown to be on medical ground. In the said chart, it is the further case of the petitioner that he again made an application on 2nd December, 2013 requesting for allowing him to the supplementary examination. In his said application made on 2nd December, 2013, he wrote to the Dean (Academic) that he had informed the Head of the Department and Professors in the 1st week of September about the accident he

met and that he was operated upon on 7th August at Calcutta Medical Research Institute. He has also claimed in the said letter that he submitted all supporting documents to the Head of the Department as well as the Professors. The Head of the Department had even forwarded a grant application. The petitioner has further stated in the said application that on 20th November, 2012, he was informed that he was not eligible for B. Tech regular as well as supplementary examination due to shortage of attendance in the subject of Compiler Design (CSE 502) whereas there was no shortage of attendance in other theory and all the practical subjects. The petitioner, in support of his above contention, has relied on the regulations particularly Regulation No. 10 with regard to attendance which is as follows: "...However, a student having attendance 55% or more but less than 65% shall be permitted to admit in the supplementary examination provided the concerned teacher/HOD agrees to make up the short-fall of attendance before the commencement of scheduled supplementary examination and the student and his parents give undertaking and request in person for the same..." The petitioner has also relied on Item Nos. 10.3 and 10.8 under Regulation No. 10. Relying on those provisions, the petitioner submits that in a deserving case, Head of the Department may sanction leave and further may hold additional classes beyond what is originally scheduled. Those two regulations are quoted below:

10.3 - It is possible for a student to get leave of absence from classes in deserving cases (use Form NITD/ACA-06 to apply for leave). Heads of the Department/Dean (Academic) may sanction leave on such cases.

10.8 - A teacher, at his discretion, shall hold additional classes beyond what is originally scheduled, particularly when several classes are lost due to holidays or suspension of classes. Attendance in these classes is also mandatory for the student.

4. The above contention of the petitioner has been contradicted by the learned Advocate appearing for the respondents. The learned Advocate for the respondents submits that all these relaxations will be available for the petitioner provided he gets a minimum attendance of 55%. Regulation 10.1, 10.3 or 10.8 cannot be adhered to in the present case inasmuch as the student concerned did not obtain minimum attendance as required to be 55%. The learned Advocate for the respondents also submits that they displayed in the notice board on November 20, 2013 that the student concerned was declared not eligible for both regular and supplementary examination. Learned Advocate appearing for the respondent strenuously argued that in the facts and circumstances of the case the petitioner has got only 36% in the Compiler Design as will be appearing from a document titled as inter-departmental memo dated October 30, 2013. While the said attendance has been noted as 36% in the remarks column, it has been shown medical.

5. From the facts disclosed in the Writ Petition and the document submitted in Court today it appears that the Institute was quite aware of the fact that an

accident took place and the student was hospitalized. Even the application which was submitted on 30th October, 2013, the petitioner requesting to grant his prayer apart from allowing him to attend the class. The authority, without giving proper seriousness to the issue in question, kept silent and did not deal with the same with such seriousness as it deserved. The said Institute cannot disown its liability to see the well being of a student who suffered fatal injuries in the campus of the Institute itself. Again, when the writ petitioner submitted his prayer on 2nd December, 2013, being Annexure P-9, to this Writ Petition it appears to me that the authority did not consider the same with such seriousness as it deserved.

6. While making submission on behalf of the respondents Mr. Rajasekhar, however, has pointed out that even if the Institute considers his case sympathetically but, ultimately, the student may suffer in the long run and, if the student does not get through the examination to obtain desired mark then there is an apprehension for the Institute being disrupted. Mr. Rajasekhar cited various decisions of the Hon"ble Supreme Court as also a judgment of the Division Bench of this Court. By citing the said judgment, the learned Advocate for the respondents tried to show that sympathy has no place when a student is found either to be discollegiate or non-collegiate. The remarkable judgment on the issue which was submitted by Mr. Rajasekhar is a judgment passed by the Division Bench of this Court in the Case of University of Calcutta and Others Vs. Amit Jalan, . The said decision has been given relying upon number of earlier decisions of the Hon"ble Supreme Court wherein it was held that the Court should not casually consider the case of allowing the student to sit for examination without having proper attendance as required under the rules. However, in paragraph 21 of the said judgment although it has been observed that "...these 5 years" Law Course is being sought to be frustrated by permitting this kind of indulgence to the students that they may not attend 65% of the lectures and they may be permitted to appear in examination on grounds like medical and other grounds then the whole purpose of improving the standard of legal education will be frustrated. The relaxation should be granted only in exceptional cases and not in mass scale...."

7. From the above referred judgment, it is, however, clear that Their Lordships made a difference in between relaxation in lot and relaxation in a specific case which has got any exceptional nature depending upon a particular fact and circumstance. In this case although it appears from the above referred Regulation No. 10 that the authority may consider a case if it so desires, but, in the present case, the said duty has not been discharged by the authority concerned. Even no enquiry was made by the authority in true sense. At the same time, the petitioner could not also establish that he has a legal right to pray for a mandamus commanding the respondents to allow him for the supplementary examination and for such reason, I am unable to pass any mandatory Order upon the authority concerned to allow him to sit for the supplementary examination, but I hold that the authorities ought to have taken

appropriate steps at the appropriate time immediately after the petitioner joined his class. Whether or not, the damage caused to the regular study of the student concerned due to the accident met by him in the campus of the Institute, the authority of the said Institute claiming to be of good repute ought to have arranged for additional classes and proper care for the student. However, I give the petitioner liberty to make an appropriate application by 15th of this month before the Respondent No. 2, National Institute of Technology, Durgapur with a prayer to arrange for allowing him for the supplementary examination and in the event, such an application is made, the said Respondent No. 2 shall, after taking into consideration of the petitioner's statement in paragraph 19, that his shortage of attendance has been condoned by all the subject teachers barring Compiler Design teacher as also the statement of attendance as annexed by the petitioner being Annexure P-7 at page 59 of the Writ Petition, consider the petitioner's prayer and to take appropriate decision positively by 17th January, 2014. While taking decision on the petitioner's said application, the Respondent No. 2 will consider both about the career of the student and also the reputation of the Institute. In the event, the said Respondent No. 2 takes a decision to allow the petitioner for the supplementary examination the petitioner will sign an undertaking before the concerned authority and shall communicate the same to the petitioner mentioning that he will appear for the supplementary examination at his own risk and peril and the Institute will not be responsible in any manner whatsoever. The Writ Petition is thus disposed of. There will, however, be no Order as to costs in the facts and circumstances of this case. Since the respondents have not got any opportunity to file affidavit, allegations made against them are deemed to have been denied. Let a Photostat plain copy of this judgment be handed over to the learned Advocate for petitioner and the respondents subject to compliance of all other formalities.