

---

**(1994) 03 KAR CK 0019**

**In the Karnataka High Court**

**Case No :** Writ Petition No's. 6172, 5702, 7043 and 7044 of 1994

B.M. Satish and others

APPELLANT

Vs

The Bangalore University and others

RESPONDENT

---

**Date of Decision :** 22-03-1994

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** AIR 1994 Kar 379 : (1994) ILR (Kar) 1191 : (1994) 2 KarLJ 543

**Hon'ble Judges :** R.V. Raveendran, J

**Bench :** Single Bench

**Advocate :** S.R. Shivaprakash and M/s. Vagdevi Associates, for the Appellant;  
N.K. Patil, Surya Prakash and M.N. Sheshadri, for the Respondent

---

## **Judgement**

1. In all these petitions, the petitioners are students of National College, Jayanagar, Bangalore (Second Respondent), who have not been permitted to take the examinations for want of required attendance. They seek a direction to respondents to permit them to take their annual examination to be held in April/May, 1994.

2. Petitioners contend that the college notified a just of about 230 students of B.Sc., B.A. and B.Com. courses, who were not eligible to take the annual examination to be held in April-May, 1994, for want of minimum attendance; that thereafter the Attendance Committee constituted by the College considered the cases of such students and excused the shortage in attendance of about ! 80 students and that only about 50 students including the petitioners were still found to be ineligible for want of attendance. The grievance of the petitioners is that while in the case of several students, similarly placed, shortage in attendance was excused, it was not done so in their cases. The petitioners do not say that they have the required attendance as per the regulations and that the college has committed some mistake in calculating the attendance. The contention of the petitioners is that the college having permitted some students who do not have the required attendance to take the examination and thereby

favoured them, ought to similarly "favour" the, petitioners by also condoning their shortage in attendance; and that the action of the college, condoning the shortage in some cases and not condoning the shortage in other cases, including the petitioners, is arbitrary and discriminatory; and therefore they are entitled to a mandamus directing the respondents to condone the shortage in attendance of petitioners. Petitioners next contend that they will be losing one valuable year of their career if they are prevented from taking the examination and therefore the court should on grounds of sympathy and hardship, permit them to take the ensuing examinations.

3. The college has filed a common counter resisting the claim of petitioners. It has produced the abstracts of attendance relating to each of the four petitioners disclosing the following position regarding their attendance:

3.1) The petitioner in W.P. 6172/94, a student of III B.Sc., has an attendance of 52.5% in Physics, 31.1% in Chemistry and 11.45% in Mathematics.

3.2) The petitioner in W.P. 7043/94, a student of II B.A., has an attendance of 25.3% in Language, 14.5% in English 32.58%, in History, 34.72% in Economics and 39.6%. in Sociology.

3.3) The petitioner in W.P. 7044/94, a student of III B.Sc., has an attendance of 0% in Physics, 4.3% in Chemistry and 4.5% in Mathematics.

3.4) The petitioner in W.P. 5702/92, a student of II B. A., has an attendance of 0% in English, History and Economics and Sociology, as he did not attend any classes at all.

There can be no dispute that all the petitioners have obtained far less than the minimum attendance prescribed under the Regulations (75% attendance in each subject, subject to condonation of 15% by Vice-chancellor, minimum 60%).

4. In regard to the grievance of the petitioner in W.P. No. 5702/94, that weightage has not been given for participation in several sports activities, the college explained that no weightage could be given as he did not take the prior permission of the College for such participation or absence. In regard to his another grievance that there were no lecturer at all for French, the College explained that it had not considered petitioner or any one else as being short in attendance in regard to the subject "French".

In regard to the main grievance of the petitioners that other students, who had been notified as being short in attendance, were permitted to take the examination, the College contended that each case was considered by the attendance Committee (consisting of nine members, that is, the Principal, Vice Principal, three Professors, One Head of the Department, N.S.S. Officer, N.C.C. Officer and Sports Secretary) and wherever sufficient or satisfactory cause was shown, benefit of attendance was given. But as the petitioners did not show such cause, shortage was not condoned in their cases and shortages of attendance cannot be condoned contrary to the Regulations. To counter this contention, the

petitioners have filed the affidavits of three students (Jai Shankar, a Second B.A., student, G. Santosh and Suyesh Shankar, two III B.Sc., Students) who have stated that even though their shortage of attendance was more than the permissible or condonable limits, they have been permitted by the College to appear for the examination.

5. Thus two points arise for consideration :

(i) Whether a direction can be issued to the University and the College to permit the petitioners, who do not have the required minimum attendance, to take the examinations by condoning their shortage in attendance on the ground that in the case of similarly placed students, the college had condoned the shortage and permitted them to take the examination;

(ii) Whether this Court can condone the shortage in attendance and permit the petitioners to take part in the examinations, on the ground of hardship or otherwise.

Point (i):

6. The learned Counsel for the petitioners submitted that the petitioners were "agitated because they were discriminated; that while other students who had shortage in attendance, were permitted to remit the examination fee, petitioners who were similarly placed were not permitted to pay the examination fees. Though there is no material except the affidavits of three students, for assuming that other students were so favourably treated, let me assume that there is some truth in the contention of the petitioners that the shortage in attendance in the case of certain other students had been over-looked or condoned by the college. Can that be a ground for condonation of shortage of attendance in the case of petitioners? Petitioners contend that the college has condoned the shortage in attendance in respect of others, contrary to regulations. Therefore, the college is bound to condone such shortage in their cases also. If the college fails to do so, it amounts to discrimination and therefore they are entitled to seek a mandamus to compel the college to extend such benefit to them also.

7. But whether such mandamus can be sought? Firstly, the person seeking a mandamus, should have a legal right to the performance by the Authority, of a public duty imposed by law. No one has a right to claim performance of an unlawful or illegal act. Secondly, the jurisdiction under Article 226 is not intended to perpetuate illegalities, but to strike at them. On the ground that grant of benefit of an illegality to only a few would amount to discrimination, a Court cannot direct an Authority to repeat the illegality or extend the benefit of the illegality to others. If a person who has a legal right is denied the benefit of it, while others having a similar right are given the benefit of such right, then there is discrimination, and a mandamus may be issued to ensure that he also gets a similar benefit. But, if a person who does not have a right is given a benefit contrary to law, then the illegal act itself will be struck down and there can never be a mandamus to repeat the illegal act to favour others. To put it differently, if a

person having a legal and enforceable right is denied the benefit of it, by non-performance of a public duty, then the Court will grant "constructive" or "positive" relief by way of a mandamus directing the Authority to perform the required act; on the other hand, if a person, not having a legal right, is granted a benefit contrary to law, then the court will grant a "destructive" or "corrective" relief by issue of a certiorari, striking down the illegal action. Neither sympathy nor any enormity of the discrimination or arbitrariness alleged, can persuade a court to issue a mandamus to perform or perpetuate an illegality. Irrespective of the circumstances or hardship likely to be caused, the court will have to always examine and be satisfied before granting a mandamus, that the direction being issued by the Court will not require the Authority to do an act contrary to or prohibited by law, or for doing which the Authority has no jurisdiction or power. It is relevant to refer to three decisions of the Supreme Court to illustrate the above legal position.

7.1 In *K. V. Rajalakshmiah Shetty v. State of Mysore* AIR 1967 SC 993 the Supreme Court observed (at p. 996 of AIR):

"No doubt some concessions had been shown to the first batch of 41 persons and the batches of persons who had come in after the batch of 63 persons also received some concession, but after all these were concessions and not something which they could claim as of right. The State of Mysore might have shown some indulgence to this batch of 63 persons but we cannot issue a writ of mandamus commanding it to do so."

7.2 In *Coromandel Fertilizers Ltd. Vs. Union of India (UOI) and Others*, the Supreme Court held (at p. 1777 of AIR):

"Mr. Setalvad made a grievance that the authorities concerned had allowed the benefit of the Notification under similar circumstances to a rival company. If the grievance of the appellant is true, the appellant may no doubt have reasons to feel sore about it. We have, however, to point out that the grievance of the appellant even if it is well founded, does not entitle the appellant to claim the benefit of the Notification. A wrong decision in favour of any particular party does not entitle any other party to claim the benefit on the basis of wrong decision."

7.3 In *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, the Supreme Court while dealing with the request that the students of an unrecognised non-affiliated college should be permitted to appear for the examination on the ground similarly situated students had been permitted, observed (at pp. 1496-97 of AIR):

".....He invited our attention to the circumstances that students of the Medical College established by the Daru Salam Educational Trust were permitted to appear at the examination notwithstanding the fact that affiliation had not by then been granted by the University. Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interests of the students. We do not think that we can possibly accede to the request made by

Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the laws".

7.4 In this case, the petitioners have not sought quashing of the permission granted to the other students with short attendance to take the examination, but have merely sought a mandamus to respondents to extend such permission to them also. The relief of mandamus claimed being contrary to law, cannot be issued. Point No. (i) is therefore answered in the negative.

Point No. (ii):

8. Regulation V of the Regulations for the B.A., B.Sc., and B.Com., Degree Courses (New Scheme) dealing with attendance, provides that a student shall be considered to have completed an academic year if he has attended not less than 3/4th of the number of working periods in each of the subjects during the said academic year and if his conduct and progress has been satisfactory. The regulation also provides that the Vice-Chancellor may condone the shortage of attendance up to 15% in the special circumstances mentioned in the said Regulation on the recommendation of the Head of the Institution concerned. This Court in a series of decisions has held that where the attendance falls below the minimum of 60% (that is 75% minus 15%) the Courts cannot direct either condonation of shortage of attendance or permit the students to take the examination. Reference may be made to two of them *M. G. Chandrashekharaiah v. The Registrar, Bangalore University* (W. P. 11762 to 64/1988 disposed of on 25-8-1988) and *Ibrahim v. Bangalore University* (W. P. No. 8844/1990 disposed of on 21-11-1990). In *Ashok Kumar Thakur Vs. University of Himachal Pradesh and Others*, the Supreme Court held, where the Principal was empowered to condone the deficiency in attendance to a particular limit, but student's deficiency in attendance exceeded the prescribed limit of condonable deficiency, it was beyond the jurisdiction or competence of the Principal to condone such excessive deficiency.

9. It is well settled that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot direct the authorities to do something which is prohibited by or contrary to law. In *Santosh Kumar and Others Vs. Central Warehousing Corporation and Another*, the Supreme Court has warned : "Surely what may not be done under the provisions of the Act may not be done by invoking the jurisdiction of the High Court under Article 226. Article 226 is not meant to avoid or circumvent the process of the law and the provisions of the Statute".

10. Reference may also be made to a recent decision of the Rajasthan High Court in *Manoj Kumar Rawat and etc. v. Shri Khandelwal Vaishya Central Sr. Higher*

Secondary School, Jaipur AIR 1994 NOC 25 wherein it is held :

"In educational matters, ordinarily court does not interfere in the decisions of the authorities as the educational institutions and the Board/University are best fitted to examine the matter. Court should not nor normally impose its decision on them. The Regulation providing minimum 75 attendance is for the advantage of the students of a qualitative education. It also leads to a sound foundation of education at School level. The Regulations providing educational discipline should not be permitted to be violated. The Regulations of the Board are meant to be obeyed and not flouted and the Court should not become a party in flouting the Regulations on the ground of misplaced sympathy towards the students. In any event, it is more a matter of policy for the Board and a facet of the system of education for the educationalist to consider, which should be beyond the scope of judicial review in the present proceedings."

11. attendance is necessary to achieve academic discipline and scholastic excellence. In fact it is the foundation for any course of study. Recognising its importance, the Regulations provide for a minimum attendance and also provide for exercise of discretion by the Vice-Chancellor, to condone a further shortage in given circumstances. Beyond that limit, the Vice-Chancellor himself has no power to condone the shortage. In such a case it is neither advisable nor permissible for Courts to exercise their extraordinary jurisdiction to condone shortages beyond permissible limits thereby setting at naught academic control and discipline and interfering in a matter which is purely within the regulatory province of colleges and the Universities. As petitioners have admittedly not obtained the minimum percentage of attendance, this Court will neither condone the shortage nor permit the petitioners to participate in the examinations. Hence the second point is also answered in the negative. Consequently all these petitions are rejected.

12. In W. P. Nos. 5072/1994 and 7043-7044/1994, Sri N. K. Patil, is permitted to file his vakalath within four weeks.

13. Petitions dismissed.