

---

**(2011) 03 DEL CK 0557**  
**In the Delhi High Court**  
**Case No : L.P.A. No. 887 of 2010**

Chaudhary Ali Zia Kabir

APPELLANT

Vs

GGSSIP University and Others

RESPONDENT

---

**Date of Decision :** 16-03-2011

**Acts Referred:**

Guru Gobind Singh Indraprastha University Ordinance — Ordinance 11

**Citation :** (2011) 03 DEL CK 0557

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

**Bench :** Division Bench

**Advocate :** R.K. Saini, Sitab Ali Chaudhary and Aradhna Mittal, for the Appellant; O.P. Saxena, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

1. The Appellant is a student who was refused admit card to appear in 4th Semester End Term Examination of B.A. LL.B (H) which was to be held on 10th May, 2010, on the ground of shortage of attendance. The Appellant filed the Writ Petition (C) No. 3129/2010 which has been dismissed by the impugned judgment dated 18th August, 2010, by the learned Single Judge holding, inter-alia, that the Petitioner did not fulfill the attendance requirement under Clause 9 of Ordinance 11 of the Guru Gobind Singh Indraprastha University of 75% attendance in aggregate in all courses taken together. Learned Single Judge has also referred to Rule 12 of the Rules of Legal Education framed by the Bar Council of India under the provisions of the Advocates Act, 1961. As per findings of the learned single judge the Appellant had 60% attendance even after he was granted extra attendance of 30 classes (six days) for attending moot courts.

2. Before us, it was submitted by Mr. R.K. Saini, Advocate that the learned Single Judge has misinterpreted the minutes of the committee for reviewing the University Ordinance relating to attendance norms. Our attention is drawn to the minutes of the meeting held on 25th August, 2007 and 31st August, 2007 and the approval dated 13th February, 2008, granted by the Vice Chancellor.

3. Considering the contention of the Appellant, we are reproducing the said minutes dated 25th August, 2007 and 31st August, 2007:

"Existing position:

For allowing students of LL.B(H) to sit in End Term Examinations it is required that they should fulfill the attendance requirements as prescribed in Ordinance II of the University dealing with the conduct of examinations. The minimum requirement of attendance under that Ordinance is 75%. The Dean can condone attendance of a student upto 5%. The Bar Council of India Rules provide that a student should have 66% attendance in each subject as also at moot court and practical training course. It does not mention that should a student be detained even if he is having less than 66% attendance just in one subject or so. Further the scenario of legal education has undergone a sea change in its nature of instruction with emphasis on practical training. This, therefore, requires some more clarifications in the University and BCI statutes. In this regard the present Committee was constituted by the University which looked into the matter and gave clarification about counting of the attendance of LL.B(H) students at the end of each semester and other related matters.

The clarifications given by the Committee are:

1. No student should be allowed to sit in the End Semester Examination unless he has completed the attendance requirement of 75% in aggregate and 66% in each subject including practical training, moot court participation etc. taken together.

2. The Dean of the Law School may condone attendance shortage of a student upto 5%.

Explanation: Attendance for practical training, moot court participation etc. shall be counted only upto the extent as shown below against each activity.

(i) Participation in Moot Competitions

Actual attendance for the competition and travel days

with two days for preparation

(ii) Preparation for Internal Moot Courts

Two days attendance per moot

(iii) Research for Project Work

Three days attendance per project.

(iv) Internship

Actual attendance for 15 days in a semester.

(v) Participation in Work-shops/Seminars activities of DLSA/BCI/High Court with

prior permission

Actual attendance during the days of the activity

(vi) Organization of Clinical Legal Education programmes / Moots/Fests/ Sports/ Legal Aid/legal literacy camps

Three days per activity

3. Under no condition, a student having an aggregate attendance less than 70% in a semester shall be allowed to appear in the End Semester Examination.

4. Student who has been detained due to shortage of attendance shall not be allowed to be promoted to the next semester and he/she will be required to take re-admission and repeat all courses of the said semester with the next batch of students.

5. Dean of the School shall announce the names of all such students who are not eligible to appear in the semester-end examination, at least 5 calendar days before the start of the semester-end examination and simultaneously intimate the same to the Controller of Examinations.

6. In case any student appears by default, who in fact has been detained, his/her result shall be treated as null and void.

7. In exceptional circumstances, keeping in view his/her previous record, a student may be allowed to sit in the odd semester examination on the basis of an undertaking assuring that he would be completing the 70% aggregate attendance requirement by the end of the session.

4. Noting of Mr. K. K. Aggarwal, Vice-Chancellor dated 15th February, 2008, is as under:

I have gone through the report of the committee and my observations regarding the clarifications given by the said Committee from Clause 1 to Clause 7 are as follows:

i) Clause 1 of the recommendation will be read as under:

"No students shall be allowed to sit in the End Term Semester Examination unless he has completed the attendance requirement of 75% in aggregate, including practical training, moot court participation etc. taken together subject to condonation of 5% in appropriate cases"

ii) Clause 2 of the Report should be amended. For working out details of the attendance to be given for these activities i.e. Practical Training Moot Court etc., it would not be sole prerogative of the Dean. Dean may be assisted by committee of 3 teachers to be constituted by Dean right in the beginning of semester.

iii) In Clause 2(iv) of the Report, where it is mentioned 3 days per activity. It

should not be completely open ended. There should be a ceiling on the number of days per semester for which benefit can be availed upto 6 days per semester.

iv) The Clause No. 7 of the Report be deleted.

5. It is clear from the aforesaid minutes/file notings that no student could be allowed to sit in the end term semester examination unless he/she meets the attendance requirement of 75% aggregate including practical training, moot court etc. taken together. However, 5% relaxation/condonation can be given in appropriate cases. Clause 2 of the recommendations of the committee was also modified by the Vice-Chancellor.

6. The contention of the Appellant is that he had attended 145 lectures out of total of 291 lectures i.e. he had 49.82% attendance but has been granted grace attendance of 30 classes increasing the total attendance to 60%. It is submitted that the Appellant has been benefitted in terms of paragraph 2(ii) of the minutes dated 25th/31st August, 2007, for two moot courts but he has not been given credit for six days on account of research for project work. It is submitted that if extra grace attendance is given for six days, attendance of the Appellant would achieve the minimum qualifying bench mark of 75% as the Appellant is entitled to 45 extra grace attendances.

7. The contention raised by the Appellant though attractive at first glance does not merit acceptance on deeper scrutiny.

8. In the present case, the attendance sheet placed on record before us for the Appellant for 4th Semester is as under:

Sl. No.

Paper Code

Subject Title

Total Classes

Subject wise Attendance

Per centage

Grace attendance

Total

%age

1.

Law of Torts and Consumer Protection

39

24

2.

Family Law - II

42

14

3.

Constitutional Law-II

44

44

4.

Law of Crimes - II

44

22

5.

Administrative Law

37

14

6.

Economics III

40

11

7.

Sociology-III

45

16

Total

291

145

49.82%

30

175

60%

" 9. The Appellant had attended 14 lectures out of 42 in Family Law-II, in Sociology-III, 16 out of 45 and in Economics-III, 11 out of 40. Similarly, in Administrative Law and in Crimes, the Appellant had attended 14 lectures out of 37 and 22 out of 44 respectively. It is noticed that the attendance of the Petitioner is barely 27% in Economics III, 50% in Law of Crimes, 37% in Administrative Law, 33% in Family Law II, and 35% in Sociology III. Thus, there is a shortfall in attendance in lectures of five subjects. It will be ironical and contrary to Rules of the University in case the Appellant is permitted to take examination for IV End Term Semester though he has just attended 27% of one subject and 33-35% classes in other two subjects.

10. Even if, we assume that the Appellant is entitled to grace attendance in terms of minutes dated 25th/31st August, 2007, for attending moot courts of 4 days and research work of 6 days, we do not agree with the counsel for the Appellant that the grace attendance is sufficient to meet the shortfall. Extra attendance can be given for 10 days for the said five subjects i.e. one attendance per subject per day in the relevant subject course. It will be absurd to state and hold that the Appellant is entitled to distribute and claim the benefit of the grace attendance in any of the subjects as per his choice i.e. for the 10 days period, the Appellant is entitled to claim that 19/20 grace attendance should be added to the Economics III paper and similar additions should be made to Sociology III Paper and other papers in which there is a shortage.

11. The minutes dated 25th/31st August, 2007, clearly stated that the Bar Council of India Rules provide that students should have 66% attendance in each subjects. The relevant Rule 12 of the Bar Council of India Rules, has been produced before us and is reproduced as under:

"12. End Semester Test No student of any of the degree program shall be allowed to take the end semester test in a subject if the student concerned has not attended minimum of 70% of the classes held in the subject concerned as also the moot court room exercises, tutorials and practical training conducted in the subject taken together.

Provided that if a student for any exceptional reasons fail to attend 70% of the classes held in any subject, the Dean of the University or the Principal of the Centre of Legal Education, as the case may be, may allow the student to take the test if the student concerned attended at least 65% of the classes held in the subject concerned and attended 70% of classes in all the subjects taken together. The similar power shall rest with the Vice Chancellor or Director of a National Law University, or his authorized representative in the absence of the Dean of Law. Provided further that a list of such students allowed to take the test with reasons recorded be forwarded to the Bar Council of India."

12. The aforesaid rule is clear and it is accepted that the rule mandates minimum attendance of 70% in each subject before he/she is allowed to sit for the end

term semester examination. The expression/words "as also the moot court room exercises, tutorials and practical training conducted in the subject taken together" indicate that these activities have to be clubbed to decide whether a student has attended 70% classes. The first proviso further stipulates that in case a student has attended 70% classes of all subjects taken together but has attended 65% classes in a particular subject, the Dean or the Principal can allow such student to take the test. Thus short fall upto 5% in a particular subject can be condoned but the stipulation that the student must have 70% attendance in aggregate cannot be condoned. The Bar Council Rules are binding and the minimum requirement fixed cannot be diluted or watered down by any university. However, a university can impose/fix higher or stricter attendance criteria.

13. In this connection, we may produce the observations of a division bench of this Court in its judgment dated 4th October, 2010, in LPA No. 539/2010 in Sukriti Upadhyay v. University of Delhi:

10. The question that falls for consideration is whether Rule 3 of the 1975 Rules or the Statutes framed by the University pertaining to obtaining of percentage of attendance would prevail. It is not in dispute that the Ordinance of the University deals with matters relating to admission to the university, transfer of students from one course to the other, migration of students, conditions for admission to examination, conduct of examination and various other aspects. In the case of S.N. Singh (supra), the Division Bench noticing the stipulation in the relevant clauses in the Statute VII and the Rule framed by the Bar Council of India has held as follows:

28. Since the Bar Council of India recognises the LL.B. Degree Course of the University of Delhi and the Bar Council of India is a statutory body constituted under the Advocates Act 1961 and is empowered to lay down standards of legal education, University of Delhi would be required to bring its rules in conformity with the rules of the Bar Council of India.

Eventually, the Division Bench directed as under:

"37. For future, directions contained above, namely, no relaxation would be given from the requirement of clearance of 5 or 15 papers as the case may be for promotion to the third and fifth term shall be adhered to by the University. Further, the attendance rules shall be amended by the University of Delhi and shall be brought in conformity with the attendance rules framed by the Bar Council of India. The permissible relaxation would be as per the rules framed by the Bar Council of India and manner of exercise shall be as so framed there under."

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.

13. 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."

14. We accordingly do not find any merit in the present appeal and the same is dismissed without any orders as to costs.