
(2010) 08 DEL CK 0002

In the Delhi High Court

Case No : Writ Petition (C) No. 3129 of 2010

Choudhary Ali Zia Kabir

APPELLANT

Vs

Guru Gobind Singh Indraprastha University and Another

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Legal Education Rules, 2008 — Rule 12

Citation : (2010) 08 DEL CK 0002

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner, a student of 4th Semester of B.A. LL.B (H) in the respondent No. 2 University School of Law & Legal Studies of the respondent No. 1 Guru Gobind Singh Indraprastha University (GGSIU), filed this petition upon being not issued admit card for the 4th Semester End Term Examination to be held from 10th May, 2010, for the reason of not meeting the requisite attendance criteria. The writ petition came up first before this Court on 7th May, 2010 when while issuing notice of the petition, vide ad interim order, the respondent No. 1 University was directed to issue admit card to the petitioner and allow him to appear in the 4th Semester End Term Examination awaiting the disposal of the writ petition. It was however provided that merely because the petitioner had been so permitted to take the examination will not create any equities in his favour and the result of the petitioner for the said examination was ordered to be kept in a sealed cover.

2. The respondent No. 1 University has filed a counter affidavit to which rejoinder has been filed by the petitioner. The petitioner has thereafter also filed two additional affidavits. The counsels for the parties have been heard.

3. Clause 9 of Ordinance 11 of the University requires a student to have a minimum attendance of 75% in the aggregate of all the courses taken together in a Semester and empowers the Dean of the concerned School to condone attendance shortage upto 5% for individual student for reasons to be recorded. It further provides that "under no condition, a student who has an aggregate attendance of less than 70% in a Semester shall be allowed to appear in the Semester End Examination". There is further a provision that even if a student who does not meet such attendance criteria but by default appears in the examination, his / her result shall be treated as null and void.

4. Rule 12 of Rules of Legal Education framed by the Bar Council of India under the provisions of the Advocates Act, 1961 further prescribe minimum attendance required as 70% of the classes held in the subject concerned as also Moot Court Room exercises, tutorial and practical training conducted in the subject taken together. The University School of Law & Legal Studies in consonance with the said Rule has provided for counting attendance for practical training, Moot Court participation etc. to the following extent:

(i) Participation in Moot Competitions. "Actual attendance for the competition and travel days with 2 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 Workshops / 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 subject to a maximum of 6 days per semester."

5. The policy aforesaid qua attendance in the University School of Law & Legal Studies of the respondent No. 1 GGSIP University was framed pursuant to directions of the Division Bench of this Court in WP(C) No. 5572/2007 titled Dr. Ravindra Pratap v. GGSIP University and has the approval of the Division Bench.

6. According to the respondent No. 1 University, the petitioner in 4th Semester secured only 60% attendance, including attendance granted for 30 classes (six days) for attending Moot Court.

7. The petitioner claims further relaxation of attendance on account of following other activities in which he claims to have participated in the 4th Semester viz.:

a. National Cadets Corps (NCC), National Integration Camp 2010, held at Rohtak, Haryana from 19-01-2010 to 30-01-2010, representing Delhi Directorate of NCC as a Senior Division Cadet.

b. Essay Writing Competition "Role of Women in Armed Forces" conducted by National Cadets Corps (NCC), National Integration Camp 2010, at Rohtak, Haryana, from 19-01-2010 to 30-01-2010, representing Delhi Directorate of NCC as a Senior Division Cadet.

c. Kirorimal College, University of Delhi, Debating Competition, which was held from 10-02-2010 to 13-02-2010, as an Adjudicator.

d. Deen Dayal Upadhyaya College, University of Delhi, Melange 2010, Verbal Blitz (Debate), which was held on 26-02-2010, as a debater.

e. St. Stephen's College, University of Delhi, 62nd Mukherjee Memorial Championship (Debate), which was held from 26-10-2010 to 02-03-2010, as an Adjudicator.

f. Annual Prize Distribution Function conducted by Satyawati College, University of Delhi, and petitioner has been awarded a Trophy for excellence as a Cadet in NCC Awards 2009-2010.

g. R.K. Jain Memorial, National Moot Court Competition 2010, which was held from 27-03-2010 to 28-03-2010, as a Speaker / Mooter.

8. The counsel for the respondent No. 1 University contends that as per respondent No. 1 University's policy, the petitioner is not entitled to any relaxation for the activities save as in (g) above and of which benefit has already been given to the petitioner.

9. Argument of the counsel for the petitioner is that the petitioner is entitled to relaxation for the period of the NCC camp attended by him. It is stated that there is no reason for the respondent No. 1 University, to while in its policy aforesaid allowing relaxation for sports, not allowing relaxation for NCC. It is further the case in the rejoinder that since the University School of Law & Legal Studies does not have NCC, the petitioner had applied to the Dean for permission to pursue NCC and which permission was granted. It is urged that the respondents having granted permission to the petitioner to join NCC, ought to grant relaxation in attendance therefor. It is further informed that the attendance of the petitioner is short by just six days and since he had attended NCC camp for over six days, if benefit thereof is given, the petitioner would meet the attendance criteria.

10. However, according to the policy aforesaid of the respondent University, NCC even if equated with sports, the benefit thereof only to the extent of three days can be given and not of six days.

11. The petitioner prior to preferring this petition had made representations to the respondent No. 1 University but without any success. The vehement opposition by the respondent No. 1 University to the said petition is also indicative of the respondent No. 1 University being not willing to consider the case of the petitioner.

12. The subject of attendance in Law Colleges has been a subject matter of a recent detailed judgment dated 12th July, 2010 of another Single Judge of this Court in Vandana Kandari v. University of Delhi and several other petitions. This Court, for plethora of reasons given therein has held that minimum percentage of lectures having been fixed at 66% (in that case), still gives the students freedom

to miss or abstain from 34% of such lectures and which was considered 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. Reliance in this regard was placed on the judgment dated 16th May, 2008 of a Division Bench of this Court in W.P. (C) No. 9143/2007 titled Kiran Kumari v. Delhi University, order dated 1st December, 2008 of another Division Bench of this Court in W.P. (C) No. 8534/2008 titled Komal Jain v. University of Delhi and on judgment dated 20th April, 2007 of another Single Judge in W.P. (C) 18051/2006 titled Smt. Deepti v. Vice Chancellor, University of Delhi.

13. I find that another Division Bench of this Court in Arvind Gupta Vs. University of Delhi and Another, in Preeti Srivastava Vs. Central Board of Secondary Education and Another, and in Ashutosh Bharti and Others Vs. The Ritnand Balved Education Foundation (Regd) and Others and Single Judge of this Court in Yogesh Bhatia Vs. University of Delhi and Another, and in Neera Dadhwal Vs. Deepak Paintal and Others have emphasized the importance of attendance and that Rules with regard thereto cannot be given a go by on sympathetic grounds.

14. The petitioner as per the policy of the respondents regarding attendance did not have the requisite attendance. The policy regarding attendance having been approved by the Division Bench of this Court, this Bench cannot go into the questions as to why exemption is granted for some extracurricular activities and not for others. The students are required to attend all classes. The petitioner if had attended the other classes besides for the period for which he claims to have participated in extracurricular activities would still have met the attendance criteria. Such students who take classes lightly and believe in skipping rather than attending classes do not deserve any indulgence.

15. The petitioner has also urged that the respondent No. 1 University has permitted other students who also do not have the requisite attendance to take the examination. Neither have the said other students been made parties nor can such enquiry be made in these proceedings. Moreover, there can be no equality in illegality. Even if the contention of the petitioner were to be true that the policy of the respondents regarding attendance has been violated qua other students, that would only entitle the petitioner to have the said action of the respondent No. 1 University struck down, as held in Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others,

16. The petitioner has also contended that no warning was meted out to him. The petitioner has however not shown any Rule requiring such warning to be meted out to him. A student is required to know the norm qua attendance and which is a usual norm transgressing all educational institutions and the student cannot be heard to say that he did not know that he was short of attendance. A student whenever he / she misses a class ought to know that the same is at the peril of his being detained.

17. The petitioner has also urged that the respondents have fabricated his

attendance records and have not given him the aggregate attendance. However, there is no averment as to why the respondent No. 1 University would be prejudiced against the petitioner and would be interested in detaining him. In the absence of any such case having been made out, such pleas by a student against the educational institution to which he / she is admitted are depreciable. It shows the regard which the student has for his educational institution. Such allegations show that the petitioner for the sake of relief is willing to blame one and all and without any basis. Justice Gulam Mustafa and Others Vs. The State of Maharashtra and Others, stated "It (mala fide) is the last refuge of a losing litigant". In Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others, it was held "it is well settled that the burden of proving mala fide is on the person making the allegations and the burden is very heavy" (vide E.P. Royappa Vs. State of Tamil Nadu and Another, . There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility".

18. The petitioner also contends that inspite of his pleas, he was not given a hearing and not shown the record to satisfy the University that he was wrongly marked absent when he was present.

19. In my opinion, the Rules of natural justice or audi alteram partem cannot be extended to such matters. The Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, has held that the rule of audi alteram partem cannot be extended to checking of the answer sheets in an examination. In my view the same has to be applied in the matter of attendance also. The factual disputes as to attendance if are permitted to be raised, the educational institutions would forever be embroiled in such disputes only and would be running to the Courts to prove the attendance rather than imparting education to the students. Moreover, it would be well nigh impossible for the Courts also to decide as to whether the student has been correctly marked absent on a particular day or not. A teacher who is imparting education and learning to a student cannot be expected to mark a student present in the class absent.

20. There is no merit in the petition. The same is dismissed. The result of the examination which the petitioner was permitted to take under orders of this Court is accordingly ordered to be cancelled. However, no order as to costs.