

**(1998) 11 AHC CK 0109**

**In the Allahabad High Court**

**Case No : C.M.W.P. No's. 36981 of 38042 of 1998**

|                                                              |            |
|--------------------------------------------------------------|------------|
| Council for Indian School Certificate Examination, New Delhi | APPELLANT  |
| Vs                                                           |            |
| District Judge, Agra and others                              | RESPONDENT |

**Date of Decision : 25-11-1998**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10  
Constitution of India, 1950 — Article 226, 227

**Citation : (1998) 4 AWC 1 : (1998) AWC 1**

**Hon'ble Judges : O.P. Garg, J**

**Bench : Single Bench**

**Advocate : Atul Kumar, for the Appellant; S.C. and Pankaj Mittal, for the Respondent**

**Final Decision : Allowed**

## Judgement

O.P. Garg, J.—By means of these two writ petitions, in which common questions of law and fact are involved, the various orders passed by the trial court in Original Suit No. 176 of 1998 as well as revisional court are sought to be quashed.

2. Counter and rejoinder-affidavits have been exchanged. Heard S./Sri S. P. Gupta and Ashok Khare, learned counsel for the petitioner--Council for the Indian School Certificate Examination [for short "C.I.S.C.E."] Sri S. N. Varma, assisted by Sri Sharad Varma on behalf of the petitioner-St. Peter's College as well as Sri Pankaj Mittal appearing on behalf of respondent No. 3- Suraj Manchanda, a minor student represented by his father/guardian Dr. Subhash Manchanda.

3. Suraj Manchanda was admittedly a student of class XIIth (P. C. M. Group) in St. Peter's College, Agra. He had filled in the form for appearing in class XIIth examination which was to be conducted by the C.I.S.C.E.. The examinations were to commence w.e.f. 16.3.1998. It is alleged that though the admit card of Suraj Manchanda had been received from C.I.S.C.E.. the authorities of St. Peter's College did not issue the same and threat was held out that Suraj

Manchanda would not be allowed to appear in the ensuing examination. He was, therefore, driven to file Civil Suit No. 176 of 1998 in the Court of Civil Judge (Senior Division), Agra. In the suit, the only prayer which has been claimed is that St. Peter's College-defendant be restrained by means of a decree of permanent prohibitory injunction from detaining or precluding the plaintiff from appearing in the final examination of class XIIth to be conducted by the C.I.S.C.E. starting from 16th March, 1998, in any manner. In this suit, C.I.S.C.E. which admittedly is the examining body, was not impleaded as a party to the suit and no other consequential relief was claimed. An ad interim order of injunction was passed on 14.3.1998 directing that the defendant St. Peter's College shall not prevent the plaintiff-Suraj Manchanda to appear in the examination. Somehow, Suraj Manchanda could not appear in English paper, which was scheduled for 16th March, 1998. In pursuance of the order of temporary injunction, Suraj Manchanda, however, was successful in appearing in all other papers.

4. Subsequently, an application was moved on 16.4.1998 for mandatory injunction to direct St. Peter's College to re-examine him in English paper, which he missed on 16.3.1998. Trial court, by order dated 19.5.1998 allowed the application and directed St. Peter's college, as well as C.I.S.C.E. to re-examine Suraj Manchanda in English paper within a period of 15 days.

5. C.I.S.C.E. was directed to be impleaded as party to the original suit as defendant but it was not done. Subsequently, an application under Order I, Rule 10 of the CPC was moved by C.I.S.C.E. for impleadment which was allowed. Incidentally the trial court held that the C.I.S.C.E. though was impleaded as a party at a subsequent stage, would also be bound by the interim orders passed against St. Peter's College. It was in these circumstances that two separate revision applications came to be filed before the learned District Judge, Agra--one on behalf of St. Peter's College, and the other on behalf of the C.I.S.C.E.. Both these revision applications have been summarily dismissed by the in charge District Judge, Agra by order dated 17.10.1998. The tone and tenor of the order passed by the In charge District Judge dismissing the two revision applications filed by the present petitioners indicate that by order dated 19.5.1998 whereby the mandatory direction has been issued to re-examine Suraj Manchanda in English paper, the trial court had preserved the dignity of the Court. A reference was also made to the decision of the Apex Court in *Central Board of Secondary Education v. Nikhil Gidati and another*, 1998 II (AD) SC 290.

6. Learned counsel for the petitioners assailed the order dated 19.5.1998 passed by the trial court and the subsequent orders as well as the order dated 17.10.1998 passed by the in charge District Judge rejecting the revision applications on a variety of grounds. One of the common grounds of attack canvassed by the learned counsel for the petitioners is that the attendance of the respondent No. 3-Suraj Manchanda fell short of the requirement and consequently, he could not be allowed to appear in the examination and when it

came to the notice of the authorities of St. Peter's College, an intimation to this effect was sent to C.I.S.C.E. and the candidature of Suraj Manchanda to appear in the examination was withdrawn. It was pointed out that the attendance of Suraj Manchanda was only 32% with the result he could not have appeared in the XIIth class final examination. A reference was made to the Regulations, relevant extract of which is Annexure-1 to the writ petition of St. Peter's College. Paragraph (C) of Chapter 1 of the Regulations lays down the condition of entry in the examination. This provision runs as follows :

"Entry to the Indian School Certificate Examination in the case of eligible candidates who are being entered for the first time is restricted to candidates with a minimum of 75% attendance of the working days during each year of the two year course at school(s) affiliated to the Council and registered for the Indian School Certificate Examination....."

Paragraph (D) of the Regulations provides for minimum attendance requirement. It reads as under :

"Candidates whose attendance is below 75% of the working days are ordinarily not eligible to sit for the examination. However, the Chief Executive and Secretary has authority to condone the shortage in the case of candidates whose minimum attendance is not less than 60% of the working days. Heads of Schools may represent to the Chief Executive and Secretary cases of candidates who deserve special consideration for condonation provided that the attendance of such candidates is not less than 60% of the working days....."

On the strength of the above provisions in the Regulations, it was urged that since the petitioner had only 32% attendance to his credit he could not be allowed to find an entry in the examination. According to learned counsel, these Regulations have been framed to be followed by all concerned and cannot be violated on extraneous considerations, such as, sympathy in favour of a student who is at the threshold of his career or for the consideration that his future career and the prospects may be marred. The other submissions made by the learned counsel for the petitioners related to the procedural aspects of the suit, which it is not necessary to consider in the writ jurisdiction as the suit is still pending and has ultimately to be decided on merits.

7. Sri Pankaj Mittal, appearing on behalf of the respondent No. 3-Suraj Manchanda urged firstly, that the present writ petitions are not maintainable as the validity of the earlier order of injunction dated 14.3.1998 in pursuance of which the respondent No. 3 appeared in the examination had not been challenged by means of an appeal or revision ; secondly, there is a specific provision in the regulations for withdrawal of a student and no proper application for withdrawal was made ; thirdly that there is a bona fide and genuine dispute about the shortage of the attendance of the respondent No. 3 . which came to be disclosed much after the filling in of the examination form and fourthly, there is a specific provision for holding re-examination of a candidate under certain

circumstances.

8. I have given thoughtful consideration to the matter and find that none of the points canvassed on behalf of the respondent No. 3 are workable. As regards the maintainability of the present writ petitions, it may be pointed out that the order dated 14.3.1998 by which St. Peter's College was directed not to prevent the respondent No. 3 to appear in the examination has exhausted and it is not the subject-matter of challenge. The petitioners are aggrieved by the order dated 19.5.1998 whereby a mandatory injunction has been granted in favour of the respondent No. 3 that the petitioners shall arrange for his re-examination in English paper which he could not take up on 16.3.1998. Against this order, the petitioners did file revision applications, which have been dismissed. After the dismissal of the revision applications, the only course left open to the petitioners was to have approached this Court under Articles 226 and 227 of the Constitution of India. If the impugned order of mandatory Injunction is found to be Illegal and against well-established norms, this Court in the exercise of its supervisory powers under Article 227 of the Constitution shall not be a silent spectator but would step in to rectify the mistake committed by the trial and revisional courts. The present writ petitions to challenge the order dated 19.5.1998 passed by the trial court, and the order dated 17.10.1998 passed by the revisional court at the instance of defendants are maintainable.

9. As regards the plea of the respondent No. 3 that no proper application for withdrawal of respondent No. 3 was moved as is contemplated by Paragraph (E) of the Regulations, it may be observed that this clause is subject to and is controlled by preceding Paragraphs (C) and (D). The question of withdrawal of a candidate on the grounds of illness or at the express written request of the parents arises if the candidate is eligible to find an entry to the examination. If the basic requirement/condition of entry is not fulfilled by the candidate, the question of his withdrawal from the examination would not arise as he is not qualified or eligible to enter the examination. Therefore, the controversy with regard to Paragraph (E) dealing with the withdrawal of candidate is wide off the mark and being otiose, is hereby ignored.

10. Now comes the moot point with regard to the dispute of attendance of the respondent No. 3. As per calculation arrived at by the petitioners, the attendance of respondent No. 3 is around 32%. No candidate who has a minimum attendance of 75% can enter the examination. This minimum requirement of 75% may, however, be waived in certain circumstances as contemplated in Paragraph (D) above, but in no case, a candidate whose attendance is less than 60% can enter the examination, meaning thereby, the attendance of a candidate having less than 60% cannot be waived and such a student has, of necessity, to repeat the class again. Neither the Principal of the College nor C.I.S.C.E. is authorised under the Regulations to allow a candidate to appear in the examination, whose attendance is less than 60%. On behalf of the petitioners, a reference was made to a decision of a Division Bench of this Court in Parvez

Ahmad and others v. Aligarh Muslim University. 1987 UPLBEC 517 . In that case also, there was a requirement of minimum attendance of 75%. In the context of this provision, it was held that once the Court intervenes by saying that shortage in attendance can be condoned, the Court does not know the limit at which it would stop. To condone shortage by laying down different percentage in attendance can be provided for but doing so would amount to legislation. It is the legislation which the Courts must not do as law prohibits them to do so. The requirement of attending classes is also connected with discipline. To give different interpretation of 75% which is being followed in the University for the last several years would result in indiscipline. The matter also came to be considered in an earlier decision of the Apex Court in Ashok Kumar Thakur Vs. University of Himachal Pradesh and Others, . At times, a student alleged to be having shortage of attendance may be given admission card for the examination provisionally at his own risk and if ultimately it was found that he was short of required number of attendance his result may be withheld. His appearance in the examination was conditional, in such cases the approach of the Court is that if it becomes clear after the student has taken the examination that he was really short of attendance, the educational authorities would be within their legal rights to withhold his result. The power to withhold the result in the above circumstances was conceded in favour of the educational authorities. A passing reference may also be made to a recent decision of Delhi High Court in Arjun Singh and others v. Vice-Chancellor Jamia Millia Islamia and others AIR 1998 Del 82 in which the cut off point of attendance was held to be not arbitrary and unreasonable. In that case, the students could not give any explanation for failure to secure minimum attendance. The students lost the petition.

11. Sri Pankaj Mittal placed reliance on the decision of Apex Court in The Principal, Cambridge School and another Vs. Ms. Payal Gupta and others, I have carefully studied the said decision and find that it does not apply to the facts of the present case. In that case, it was held that once a student is given admission in any educational institution, he would continue class after class in the same institution until he leaves the school. Sri Pankaj Mittal further urged that the question of shortage of attendance is a disputed and controversial one. The respondent No. 3 has applied for condonation of his absence or for the grant of leave but no orders have yet been passed by the concerned authorities. It was also urged, as said above, that the respondent No. 3 was never told about the shortage of attendance at the time of filling of the form or till he appeared in the examination. This question has to be decided by the trial court after framing a proper issue. Its decision would depend upon evidence of the parties. Lest the trial court is influenced by any of the observations of this Court, I would do better to refrain to make any observation on the point. Suffice it to say that attendance of the respondent No. 3 was around 32%. It is much below the limit upto which condonation may be granted.

12. There is no dispute about the fact that there is a provision in Paragraph (J) for re-examination. The Chief Executive and Secretary of the Council has the

power to hold re-examination or additional examination if he is satisfied that such re-examination or additional examination is necessary. In the instant case, re-examination of the respondent No. 3 would be possible only if he succeeds in establishing that his attendance was within the condonable limit. The Court would be slow enough to substitute its own wisdom to the policy decision of the educational authorities. In order to be successful in the suit, the respondent No. 3 has to satisfy the minimum requisite conditions which have to be complied with before he becomes eligible for appearing in the final examination. An inspiration may be drawn from the decision of this Court in *Anil Kumar Srivastava and others v. Kashi Vidhyapith, Varanasi* and another 1996 (1) ALJ 711, to observe that filling in of the form and deposit of fee by a candidate should not be held to mean that he has been given an entry for the examination, in accordance with law. The entry of the respondent No. 3 in the examination against Regulations or in pursuance of the order of the civil court, cannot operate as an estoppel against the present petitioners. Undue sympathy or mercy, if it is in direct conflict with the mandatory provisions of Regulations, would be uncalled for and unwarranted as it would lead to an arbitrariness. In *Arjun Smart's* case (supra), it was observed that misplaced sympathy and compassion of the Courts can adversely affect the academic standard and discipline of the educational institutions. The observations of the Apex Court made in *Nikhil Gulati's* case (supra) cannot also be lost sight of. Occasional abrasions by the Courts whereby ineligible students are permitted to appear in the examination, have to be avoided. The Apex Court has held that casual directions by the Courts amount to an abuse of the process.

13. In the result, I find that there was no justification for grant of mandatory order of injunction pending decision of the suit on merits. The parties would swim or sink with the finding on the percentage of attendance of respondent No. 3. If he is able to establish that his percentage of attendance was 60% or more, he may be successful in the suit but if it is established that his attendance was around 32%, he is bound to sink. It is amazing to note that neither the trial court nor the revisional court have even touched this aspect of the controversy. This controversy is to be decided after evidence of the parties. In the absence of the determination of the percentage of attendance of the respondent No. 3, the order or mandatory injunction to arrange for the re-examination of respondent No. 3 is legally untenable. The trial court as well as revisional court have failed to appreciate the real controversy. Without ridiculing the orders passed by the Courts below, it would be proper if the mistake committed by them is corrected by this Court.

14. Accordingly both the writ petitions succeed and are allowed and the impugned order dated 19.5.1998 passed by the trial court directing the petitioners to arrange for re-examination of the respondent No. 3 in English paper of XIIth class as well as order dated 17.10.1998 passed by the revisional court dismissing the revisional applications filed by the petitioners are hereby quashed.

15. The petitioners shall file their written statement before the trial court within one month from today. "After filing of the written statement, necessary issues shall be framed and after recording of the evidence of the parties, the suit shall be decided with all expedition.