
(1987) 11 AHC CK 0048
In the Allahabad High Court
Case No : Writ Petition No. 7300 of 1986

Devendra Kumar Arora

APPELLANT

Vs

V.C.Lucknow University & Others

RESPONDENT

Date of Decision : 12-11-1987

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (1987) 11 AHC CK 0048

Hon'ble Judges : U.C.Srivastava, J and D.S.Bajpai, J

Final Decision : Allowed

Judgement

1. In the abovementioned writ petition this court while hearing certain applications suo motu issued notice to the newly impleaded opposite parties 3 to 4, Prof. Mrs. Shradha Kumari, Head of the Department Faculty of Law, and Prof. Dr. P.C. Vyas, Dean, Faculty of Law, Lucknow University, on that very date, 15.4.1987. to show cause for disregarding the interim order dated 9.3.87. passed by this court which was duly communicated to them by the Registrar of Lucknow University vide his letter dated 12.3.87 contained in Annexure2 to the affidavit accompanying the application, for not allowing the petitioner to appear in LL. M. Classes, and why action be not taken against them. After issuance of the said notice appearance was put in by them and number of affidavits were exchanged between the parties.

2. In the writ petition filed by the petitioner, he has prayed for issue of a writ of certiorari quashing the ordinance 3 (a) and 5 of the prospectus of Faculty of Law published in session 198384 providing that the students have to pass the LL. M. PartI Examination with 40% marks in each paper and 50% marks in the aggregate. The petitioner has also prayed for issue of a writ of mandamus commanding the Lucknow University to declare the students of LL. M. PartI of 198384 session as passed who secure 40% marks in each group and 50% marks in aggregate in LL. M. Part1 Examination held in May 1986 and has also prayed for a writ of Mandamus commanding the opposite party, Lucknow University, to

amend the Ordinances in the manner as recommended by the Dean Faculty of Law, Head of the Faculty, of Law and Convenor of the Committee appointed by the Board of Studies to the effect that the students who obtain 40% marks in each group and 50% marks in aggregate may be declared successful. It was also prayed that the opposite parties may be directed to give benefit of retake to the petitioner and other students of his batch as availed by the students of Old Course of session 197677.

3. In the counteraffidavit it is stated that the petitioner failed in LL. M. PartI examination and according to the petitioner, in view of the Ordinance applicable to him, he was entitled to the benefit of retake as was availed by the students of Old course prior to semester System 198687 and he was admitted in LL.M. PartII with permission of retake course in which he could not succeed in the Sessions 198687.

4. In the writ petition the petitioner has narrated as to how for three years there was no admission and how he has to suffer, but so far as merits of the case are concerned the same will be decided along with the writ petition. Along with the Writ Petition the petitioner also moved an application for interim relief in which it was prayed that he may be allowed to retake two papers of LL. M, PartI in which he was declared unsuccessful because of not holding examination of LL. M. PartI by the Lucknow University for three continuous sessions and he may be permitted to pursue the course of study prescribed for LL. M. PartII along with other candidates.

5. A Division Bench of this Court on 9.3.1987 passed the following order:

?Shri Umesh Chandra counsel for the opposite parties prays for and is allowed a week's time to file counteraffidavit. The rejoinderaffidavit may be filed within next 10 days. The petition shall comeup for orders/hearing in the month of April, 1987. In the meantime, the petitioner shall be allowed to attend LL. M. PartII classes subject to ultimate decision of the writ petition.

sd/. S. S. Ahmad, J.

sd/ P. Daya , J.

9.3.87.?

According to the petitioner, certified copy of the aforesaid order was served by him personally on the ViceChancellor, Lucknow University, Lucknow, on 12.3.1987 along with the application narrating all the facts and requesting that the Dean, Faculty of Law may be directed to admit the petitioner in, LL. M. PartII so that he may have an opportunity to choose the subjects of his choice and start attending classes. The application was duly received by the ViceChancellor and the Registrar, of the Lucknow University, of which opposite parties 3 and 4 are officers, vide letter dated 12.3.87, by which the Registrar, requested the Dean and Head of the Department of Law to allow the facility of attending classes of LL. M. PartII to the petitioner. According to the petitioner, he met these

two officers but even then no arrangement of teaching was made, a fact which has not been accepted by Dean, Faculty of Law who vide his letter dated March 19, 1987 wrote to the Registrar that the Head of Department of law has been looking after the work of admission and examination for LL. M. Classes and, therefore, all the necessary papers be sent to her for action in the matter and the petitioner vide his letter dated 20th March, 1987 gave his choice of the subjects to the Registrar. Copy of the application is said to have been served on the ViceChancellor and Dean, Faculty of Law and Head of the Department of Law and even then no time table was fixed and the petitioner was not allowed to join LL. M. PartII and at no stage he was offered to come and join the classes. So far as time table is concerned the petitioner will have to adhere to the prescribed timetable and in case subjects are available he may join, but the opposite parties were sitting tight over the matter.

6. Opposite party No. 4 who is Dean faculty of Law, Lucknow University, in reply to the Registrar's letter dated 12th March, 1987, wrote that the Head of the Department of Law has been looking after the work of admission and examination for LL. M. Classes and it was requested to send all the necessary papers to her for further action in the matter and the Registrar vide his letter dated 27th March, 1987 informed the petitioner that his letter dated 20th March, 1987 has been forwarded on 21st March, 1987 to Prof. Shradha Kumari, Head of the Department of Law, opposite party No. 3, to take necessary action as per orders of the Hon'ble High Court. It was mentioned that from his letter it appears that no timetable for the papers which he has offered has been announced and, therefore, a reminder may be sent to the Head of the Department of Law for compliance with the orders of the Hon'ble High Court.

7. Opposite party No. 4 in his affidavit referred to various Ordinances and other procedure and in was pointed out that it was the duty of the Head of the Department and he was not concerned with it. This stand has been maintained by him consistently. The Registrar or opposite party No. 3 too have not challenged this assertion made by him. From the facts it is also evident that after getting information of the interim order he referred the matter to the Head of the department for doing the needful. From any of his action it cannot be said that he disregarded the order passed by this Court referred to above. Though opposite party No. 4 has tendered unqualified apology in case it is found he has committed contempt of Court, but in one of his affidavits before this court he has stated that no interim direction issued by the High Court can be of binding nature. By making such a statement he who is Dean of Faculty of Law has transgressed his limits and has made an attempt to keep one of his step in the arena where one can be hauled up under the contempt of Courts Act. He is reprimanded for the same and is directed to be cautious in future. A plea that the matter is cognizable by a Single Judge and not by the Division Bench has also been raised by him on the ground that it is a civil contempt. The contempt notice was issued by Division Bench suo motu and we do not propose to enter into this question in detail as contempt notice against him is being discharged. Since

under the circumstances we do not propose to proceed against him any further, the notice of contempt issued against opposite party No. 4 is discharged.

8. So far as opposite party No. 3 Mrs. Shradha Kumari, Heid of the Department, Faculty of Law, is concerned, the position is different. Although in her affidavit she tendered an unconditional apology, but had tried to justify her defence. According to her, the petitioner never appeared before her and never made any request to her for admission in LL. M. PartII and never sought permission for choosing the papers in which he wanted to be examined in LL. M. PartII and to submit thesis. She has further pleaded that the High Court never required the opposite parties to the petition to open any new courses of studies only for the petitioner and it was not required of the ViceChancellor of the University to admit the petitioner in the subjects of his choice without seeking the permission of the Head of the Department and even without applying for admission to the Dean, Faculty of Law or the Head of the Department and without complying with the guidelines fixed by the prospectus of the University for admission to the concerned class or without qualifying the conditions of eligibility. She has also pleaded that she has no power to create new courses of studies in LL. M. PartII for an ineligible candidate for admission to LL. M. PartII class. In her affidavit she made reference to the prayer made by the petitioner in his application for interim relief and has drawn her conclusions from the same although the interim order was only limited. It has also been pleaded by her that on 31st January, 1987, she had displayed the timetable on the Notice Board of the Department of Law as well as the Faculty of Law and had provided therein that the lecture programme for LL. M. PartII class would commence from February 2, 1987 and that teaching in the subjects mentioned will be held on particular date and the teachers indicated against the subjects would teach the concerned class on the respective days in accordance with the timetable. According to her the petitioner never went to attend the classes and he never reported to any other teacher and that she was not a party to the writ petition and in case the petitioner would have requested her, she would have permitted him to attend the classes. According to her the courses were prescribed and the papers were mentioned in the notice but the petitioner could not be fitted in it and for him no separate timetable could be prepared.

9. This Court only directed the opposite parties to writ petition to allow the petitioner to attend the classes and the petitioner did move an application in this behalf and according to him he did approach the Head of the Department with the order of the Court which was communicated to opposite party No. 3. She could have allowed the petitioner to attend the classes and could have asked for his choice which was never given and nothing like that was done and rather no action on her behalf was taken and it is only for the first time she came forward with certain pleas after contempt notice was served upon her. The pleadings and her action clearly indicate that she disregarded the order passed by this Court and was in no mood to abide by it and rather has tried to find out faults in it. It was her duty to abide by the order, but she did not do it. Even after contempt

notice, no action has been taken by her to allow the petitioner to attend LL. M. PartII Class or to give choice of his paper, but she tried to point out defects and we hold that she knowingly flouted the orders of this Court and she is liable for committing contempt of Court. It was, however, stated by the learned counsel for the opposite party No. 3 that the petitioner would be allowed to join LL. M. PartII classes and his choice would be accepted. We trust this would not remain a pious hope. While holding her guilty of having committed contempt, we feel ends of justice would be met by reprimanding her and imposing a fine of Rs. 500 on her which if not paid within a week shall be recovered from her by the process of the Court.

10. Ordered accordingly.