

(2019) 03 J&K CK 0164

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 288 Of 2019, IA No. 01 Of 2019

Falaq Rafiq Bakshi And Another

APPELLANT

Vs

Islamic University Of Science & Technology And Others

RESPONDENT

Date of Decision : 27-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2019) 03 J&K CK 0164

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Hamza Bhat, M. Y. Bhat, Moksha Kazmi

Final Decision : Dismissed

Judgement

1. Petitioners claim that they are pursuing Masters in Business Administration (MBA) in respondent University.
2. Petitioners, on the edifice of case set up, seek a direction to respondents to relax requirement of 75% attendance in their favour as has been done in case of similarly situated candidates and as a consequence whereof conduct examination of petitioners for the subjects of Strategic Management and Marketing of Services.
3. Ms Moksha Kazmi, learned counsel representing respondent University, has stated that similar issue as has been raised in instant writ petition, has been set at rest by a Division Bench of Delhi High Court in LPA no.582/2017 titled Deen Dayal Upadhyaya College v. Ayushi Sethi and others and therefore, writ petition is liable to be dismissed.
4. I have heard learned counsel for parties and considered the matter.
5. Petitioners are before this Court in a writ petition under Article 226 of the Constitution of India, imploring interference in the matter for condoning shortage of attendance enabling them to appear in the examination. Can this Court, in

exercise of powers vested in it under Article 226 of the Constitution, permit condonation of shortage of attendance. Answer thereto is in negative. This Court cannot vouchsafe the relief(s) beseeched for by petitioners and direct respondent University to condone shortage of attendance as it would be beyond what is provided for in the University Regulations. The prescribed standards fixed under the Regulations of respondent University, as shown by petitioners themselves in writ petition, are that minimum number of lectures, tutorials, seminars and practicals, which a student shall be required to attend for eligibility to appear at the examination shall be prescribed by the University, which ordinarily shall not be less than 75% of the total number of lectures, tutorials, seminars, practicals and any other prescribed requirements. Be that as it may, it is within the exclusive domain of respondent University to prescribe standards vis-à-vis attendance of students and not that of this Court. This Court cannot normally interfere with such prescribed standards and especially when they are intended to improve academic standards in the university.

6. It is most apposite to elaborate that the candidates/students, pursuing MBA in respondent University, including petitioners, have to ensure regular attendance of lectures, tutorials, seminars and practicals, and those who do not attend stipulated percentage of such lectures etcetera, would not even be eligible for appearing in the examination(s). The quality of training that a student gets during the time he undergoes the course is directly proportional to the number of lectures, tutorials, seminars and practicals, which he attends. Student's failure to attend requisite number of lectures etcetera, as stipulated by relevant Regulations, can legitimately disentitle him to claim eligibility for appearing in the examination. What is the minimum percentage of attendance, which a student must have in each subject/semester or on the aggregate is a matter on which the academic bodies like respondent University is entitled to take a decision. If in the opinion of respondent University, a student cannot be said to have taken proper instructions or meaningfully undergone the course, unless he attends a minimum of 75% of lectures, tutorials, seminars and practicals, in the aggregate, this Court cannot, but, respect that opinion. In the matters relating to academics and standards of education, this Court, obviously, would show deference to the opinion of the academicians. The present is not, however, one such a case where the aforesaid requirement of attendance can be said to be so perverse or irrational as to call for intervention of this Court. Worth to be seen is the fact, that minimum percentage of attendance in lectures, tutorials, seminars and practicals is fixed at 75%, which still gives students freedom to miss or abstain from 25% of such lectures, tutorials, seminars and practicals. That is fairly large percentage of lectures, which a student may miss for a variety of reasons including sickness or such other reasons beyond his control. In that view of matter, no student can claim that apart from 25%, which he is entitled to miss even without a cause, the shortage to make up 75%, should be condoned if he shows good cause for the same.

7. Furthermore, negative equality claims cannot be ground(s) for permitting the

students to be permitted to appear in examination(s) or promoted to the next academic year(s), more particularly when the Regulations provide definite guidelines qua the same. This has been so highlighted in a catena of decisions, such as, *State of Bihar v. Upendrea Narayan Singh and ors*, 2010 (4) ALT 6 (SC); *Basawaraj and ors v. The Spl. Land Acquisition Officer*, AIR 2014 SC 746; *Arup Das and ors v. State of Assam and ors*, 2012 (2) ALLMR 54; *Hari Ram and anr v. State of Haryana and ors*, 2010 (2) CTC 336; *Vishal Properties Pvt Ltd v. State of U.P. and ors* AIR 2008 SC 183.

8. Pertinent to mention here that it is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or Court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far, for otherwise it would make functioning of administration impossible. It has been so said by the Supreme Court in the case of *Basawaraj and ors v. The Spl. Land Acquisition Officer*, (supra).

9. As rightly pointed out by Ms Moksha Kazmi, learned counsel representing respondent University, the subject-matter of controversy raised in the instant petition has been squared off by Delhi High Court in cited judgement rendered in *Deen Dayal Upadhaya College* (supra), and, therefore, has binding precedent to the instant case as well. Even otherwise, the facts tailored in writ petition on hand cannot be gone into under writ proceedings.

10. Given the foregoing analysis and settled position of law, I am not inclined to entertain the instant writ petition and the same is, accordingly, dismissed in limine.