
(2012) 12 DEL CK 0167

In the Delhi High Court

Case No : LPA No. 795 of 2012 and C.M. No. 20255 (Stay) and 20257 of 2012
(Additional Document)

Heena Bahal

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 19-12-2012

Acts Referred:

Citation : (2013) 197 DLT 469

Hon'ble Judges : D. Murugesan, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Akhil Sibbal with Ms. Pallavi Langar and Ms. Smirti Dutta, for the Appellant; Mohinder J.S. Rupal, for the University of Delhi and Mr. A.P.S. Ahluwalia with Mr. S.S. Ahluwalia, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Darmar Murugesan, Chief Justice

1. This Letters Patent Appeal is directed against the order of the learned Single Judge dismissing the writ petition filed by the appellant. The

appellant was not allowed to appear in the 2nd Year final examinations in B.A. (Hons.), Economics on the ground that there was shortage of

attendance. Having noticed that as per the prospectus requiring a minimum attendance of 66.66% in lectures and in

tutorials/preceptorials/practicals separately in each subjects and the appellant did not have the said minimum attendance, the learned Judge rejected

the request. The prospectus relating to attendance rules reads thus:-

All students are expected to attend classes regularly, University Rules requiring a minimum attendance of 66.66% both in lectures and in

tutorials/preceptorials/practicals separately, held in each subject, failing which a

student shall not be allowed to appear for the University

Examinations.

2. One more clause relating to the minimum attendance in the Ordinance VII may also be referred to:-

2 (1) No person shall be deemed to have pursued a regular course of study unless the Principle of his College/ Head of the Department concerned

in the case of candidates for the B.A. (Pass), B.A. (Vocational Studies), B.Com (Pass), B.Sc. (General), B.A. (Honours), B.Com (Honours),

B.Sc. (Honours) Degrees, the Principal, School of Correspondence Courses and Continuing Education in the case of students registered with the

School, and Head of the Department concerned in the case of candidates for any other Degree or Diploma or Certificate Examination is satisfied

that the required conditions in respect of his instruction have been fulfilled.

(2) The required conditions shall not be deemed to have been satisfied in respect of the following degrees unless the candidate has attended not

less than two-thirds of lectures and practicals, separately, delivered in his College or the University, as the case may be, for the course of study in

each academic year.

(9)(a) Subject to the provisions of sub-clauses (b) and (c)

(i) In the case of a student who is selected as a member of the N.C.C. to participate in the annual N.C.C. Camps or is deputed to undertake Civil

Defence work and allied duties or in the case of a student who is enrolled in the National Service Scheme and is deputed to various public

assignment by or with the approval of the Head of the institution concerned, or a student who is selected to participate in sports or other activities

organized by the Inter University Board or in national or international fixtures in games and sports approved by the Vice-Chancellor, or a student

who is required to represent the University at the Inter-University Youth Festival, or a student who is required to participate in periodical training in

the Territorial Army, or a student who is deputed by the College to take part in Inter-College sports or fixtures, debates, seminars, symposia or

social work projects, or a student who is required to represent the College concerned in debates and other extra-curricular activities held in other

Universities or such other activities approved by the Vice-Chancellor, for this purpose, in calculating the total number of lectures etc. delivered in

the College, or in the University, as the case may be, for his course of study in each academic year, the number of lectures etc., in each subject

delivered, during the period of absence for that purpose shall not be taken into account.

(c) The benefit of exclusion of lectures contemplated in categories (i) or (ii) of sub-clause (a) above, either separately or jointly, shall in no case

exceed 1/3 of the total number of lectures delivered.

3. The grievance of the appellant is that she was not allowed to appear in 2nd Year Final Examination. It is her contention that list of students being

detained from appearing in the examinations held on 12.05.2012 did not mention the name of the appellant thereby indicating that she was eligible

to take the examination. However, a further list was displayed in the notice board on 15.05.2012 showing the name of the appellant also as having

detained to appear for the said examination. According to the appellant, once the admit card was issued for examination, the University cannot

deny her from appearing in the examination. It is further submitted that the attendance record maintained by the respondent/University was not

accurate.

4. The further grievance of the appellant is that the attendance of a subject which was not chosen by her was also taken into consideration to say

that she did not require the minimum attendance. According to the appellant if the attendance of the subject which was not opted by her was not

taken into consideration, she would have come within the minimum norms of attendance.

5. As against the above grievance, it is the stand of the respondent/University that the attendance records were put up on the notice board every

month for students to verify their attendance and the attendance details relating to the appellant was also displayed. However, the appellant never

approached the University with a complaint of any discrepancy in the attendance. As per the records, the appellant did not have the minimum

attendance of 66.66% of classes and for that reason failed to fulfil the necessary requirement to take the examination.

6. It is a well settled law that the University is empowered to prescribe the Rules relating to the requirement of minimum attendance for entitlement

of the candidate to take the examination. As extracted above, for taking

examination, the University Rules require a minimum attendance of 66.66% both in lectures and in tutorials/preceptorials/practicals separately in each subject. Clause 2(1) of the Ordinance VII also mandates that a candidate, who have pursued a regular course of study and for that reason the concerned Principal of the College/Heads of the Department as the case may be should satisfy themselves that the required conditions in respect of instructions have been fulfilled. The required conditions shall not be deemed to have been satisfied in respect of the degrees unless the candidate has attended not less than 2/3rd of lectures and in tutorials/preceptorials/practicals separately held in each subject which is mandatory. It is the specific case of the University that the appellant had not appeared in 2/3rd of lectures or practicals separately and for that reason, she is not eligible.

7. In our opinion, in academic matters, the Court would be very slow to interfere on the decision of the authority. The appellant challenges the records maintained by the University relating to the attendance on the ground that they are not accurate. In this context, it would be relevant to point out that such a decision cannot be the subject matter of a judicial review unless there has been a patent error without there being any dispute. It is seen that as per the College record, for the academic year 2011-12, the appellant had attended only 59.57% lectures in the second year which is less than required percentage 66.66%.

8. It is the specific case of the University that the attendance is displayed in the notice board periodically indicating the shortage in attendance including that of the appellant and there has been no grievance made by the appellant with regard to the same. In these circumstances, it would not be justified for the Court to go into the question as to whether the shortage of attendance displayed on the basis of the percentage of the attendance put by the appellant during the academic year 2011-12 was incorrect.

9. Further grievance of the appellant is that the appellant did not opt for Linear Algebra Calculus and she had only opted for English and for that reason she did not attend Linear Algebra Calculus classes. The learned Judge considered the said aspect and factually found that even assuming that the said attendance relating to Linear Algebra Calculus subject is not taken into consideration, still the appellant fell short of 7.09% of

attendance as against 66.66% in the second year. Hence, the said contention has rightly been rejected by the learned Judge. The last contention of

the appellant that she has been permitted to take the examination by this Court by way of interim order in first two semester and, therefore, she be

allowed to complete the course by taking the remaining examinations.

10. In our opinion, an order of this Court allowing the petitioner cannot be taken advantage of as such orders are always subject to the final

outcome of the petition and is an interim arrangement keeping in mind that in case the candidate succeeds in the petition, she should not lose the

opportunity to take the examination. The ground of compassion is not available in such case merely because the candidate has taken some of the

examination by virtue of the interim orders of the Court. The learned Judge having gone into the relevant clause in the Ordinance VII which has

been incorporated into attendance rules factually found that the appellant failed to secure the minimum attendance and for that reason he rejected

the request of the appellant to sit for the examination.

11. The Rules relating to the requirement of minimum attendance is mandated only for the reason that the students would attend the classes at least

for a minimum number of working days so as to make him/her eligible to take the examination. The percentage of minimum requirement is on the

basis of various relevant considerations gone into by the experts and, therefore, the Courts would not be justified in relaxing the norms to allow the

candidate to take the examination in case such candidates fail to meet the said requirement. That apart, we are not informed of any rules entitling

the University to relax the attendance below 66.66% and in the absence of such rules empowering the University to relax the same, it would not be

justified for the Court to relax the Rules and allow the student to take the examination. The only clause relating to relaxation of attendance is Clause

9(a)(1) of Ordinance VII. However, that clause is not applicable to the appellant on the facts of this case as it is related to candidates who were

selected as a member of NCC and so on.

12. That apart, we have no reasons to doubt the records of attendance maintained by the respondent No. 3/college. Whether a challenge to the

record of attendance maintained by an educational institution can be the subject matter of review came up for consideration before a Division

Bench of this Court in LPA No. 792/2012 titled as Nishant Gupta Vs. University of Delhi & Anr. decided on 4th December, 2012 wherein this

Court held as under:-

9. Even otherwise, if the appellant disputes the attendance, such disputed questions of fact cannot be adjudicated in writ jurisdiction. One of

us i.e. Rajiv Sahai Endlaw, J has in Choudhary Ali Zia Kabir Vs. Guru Gobind Singh Indraprastha University and Another , Vibhor Anand and

Others Vs. Vice Chancellor, GGSIP University and Others and in Vikash Kumar Singh Vs. University of Delh and Others held that this Court

cannot in writ jurisdiction entertain such pleas and the record of attendance maintained by the University or its affiliate Colleges have to be believed

and the Colleges/Universities cannot be put to proof thereof and if so directed, would forever be involved in the same only, rather than in their

academic pursuits. LPA No. 191 of 2011 preferred against the judgment in Vibhor Anand supra was dismissed vide judgment dated 3rd March,

2011.

In view of the above, none of the contentions raised in this appeal merits consideration. Accordingly, the appeal fails and the same is dismissed.

The accompanying applications are also dismissed.