

(2004) 03 JH CK 0028
In the Jharkhand High Court
Case No : L.P.A. No. 14 of 2004

Indo Danish Tool Room and Another

APPELLANT

Vs

Purbasha Ghosh and Others

RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 JCR 300

Hon'ble Judges : P.K. Balasubramanyan, C.J.; Tapen Sen, J

Bench : Division Bench

Advocate : Sheela Prasad, for the Appellant; R.S. Mazumdar and Ananda Sen for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is by respondents 4 and 5 in W.P. (C) No. 4032 of 2003. Respondent No. 4 is a Society, registered under the Societies Registration Act conducting Diploma courses. Respondents 1 and 2 herein, the writ petitioners, are the students of the course "Diploma in Tool Die Making". They took the first Semester examination during the first year and passed the same. The second semester examination was approaching. Their parents were given notice that as there was lack of requisite attendance, the students were not eligible for appearing in the second semester examination. The minimum attendance required, as per the Rules for the Examination, is 80 per cent. Under Rule 18, the Governing Council or its Chairman or any of its delegated authority has the power to amend or relax the rules. The writ petitioners appear to have produced medical certificates a week before the examination, seeking relaxation of the rules relating to minimum attendance. As the request for relaxation was not granted, they rushed to this Court with the writ petition praying for the issue of a writ of mandamus directing the concerned respondents to allow them to appear in the second semester examination of the first year that was being conducted by the appellants. Their main grievance was that two other students were permitted

to take the examination notwithstanding that they did not have the minimum 80 per cent required attendance, and they were denied that privilege and this was discriminatory calling for interference by this Court. The appellants explained the circumstances by pointing out that the other two students involved had reasonable cause for not having the requisite percentage of attendance, that they were regular students who had more than the requisite attendance except for the period in which one of them became the victim of an accident and the other was struck by viral hepatitis and admitted in a hospital for treatment and, in that situation, the discretion was exercised in their favour, whereas the writ petitioners were habitual absentees, even without intimation or without any sustainable reason and, in that situation, the discretion was not exercised to relax the concerned rule in respect of the writ petitioners. Documents were also produced in support of their case.

2. The learned Single Judge took the view that the writ petitioners have been treated with discrimination when compared with the other two students and consequently, interference by the High Court was warranted. The learned Single Judge then proceeded to observe that the writ petitioners were entitled to be absent for 20 per cent of the days and if the balance period is covered by reasonable explanation offered by them for their absence, they had to be permitted to take the examination and the discretion ought to have been exercised by the appellants and the Governing Council in favour of the writ petitioners. Thus the learned Single Judge issued a mandamus, not for reconsidering the case of the writ petitioners, but directing the appellants to relax the attendance rule for the petitioners as was done in the case of two other students and to hold a special second semester examination of the first year for them and to allow the writ petitioners to appear in that examination and in the meantime admit the petitioners provisionally in the third semester of the second year, subject to the result of the second semester special examination. The learned Judge also directed that whatever attendance the petitioners have obtained during the pendency of the writ petition, should be counted for the purpose of their attendance in the third semester of the second year. The appellant Institute challenges this judgment in this appeal.

3. Learned counsel for the appellants submitted that the learned Single Judge has exceeded his jurisdiction under Article 226 of the Constitution of India. In any event, this was an academic matter and the institution has acted according to its rules and the High Court should not have interfered with it, especially on the question regarding the eligibility of the students to take the examination, on having the requisite attendance and the qualification needed. It is also submitted that the discretion was fairly exercised by the Governing Council and the learned Single Judge could not have substituted his discretion in the place of the discretion of the Governing Council. It is also submitted that the reasoning adopted for interference was not tenable since while considering the question of exercising discretion, the authorities were taking note of the absence of the writ petitioners and their explanation for the period covered by that absence and the

process of calculation adopted by the learned Single Judge was not warranted. Thus it is submitted that the judgment required to be interfered with as this was an academic matter and the appellants had acted only in terms of the regulations. It is also pointed out that the Institute is a Society registered under the Societies Registration Act and it is not a State within the meaning of Article 12 of the Constitution.

4. On, behalf of respondents 1 and 2, the writ petitioners, it is contended that the learned Single Judge was justified in exercising the discretion in favour of the writ petitioners, that compared with the other two students to whom relaxation was given, the writ petitioners were discriminated against, and in that situation, there is no reason to interfere with the decision of the learned Single Judge. The reasoning adopted by the learned Single Judge is commended for our acceptance.

5. We find that under the relevant regulations, the appellants could disqualify students from different examinations who did not have the requisite attendance which was 80 per cent of the total working days. Admittedly, the writ petitioners did not have 80 per cent attendance and they, almost at the final stage, sought to explain their absence, when two medical certificates were produced. Of course, there is force in the submission of learned counsel for the appellants that writ petitioner No. 1 had obviously procured a medical certificate and the doctor who issued the medical certificate has not even seen the patient or student. The said medical certificate relates to a male whereas the first writ petitioner is a female. Whatever it may be, the medical certificate did not cover the entire period and was of doubtful authenticity in the circumstances of the case. It may be noted that while in the representation, the first writ petitioner had stated that she was suffering from chicken pox, the medical certificate did not show that she was suffering from chicken pox; rather she was said to be suffering from fever, vomiting, "head pain". Regarding writ petitioner No. 2, he produced a medical certificate to the effect that he was suffering from jaundice, would recover within such a short time and would be found fit. Whatever it may be, it was for the Governing Council to assess the authenticity of the certificates in the light of the facts and to take a decision in exercise of its discretion, either in their favour or against. This Court cannot substitute its discretion in the place of the discretion to be exercised by the Governing Council, not can this Court issue a mandamus directing the appellants to exercise the discretion in a particular manner. The Governing Council apparently did not accede to the request of the students and it is in that context that they rushed to this Court with the writ petition. In dealing with an academic matter especially relating to admission to examination, the Court is expected to be cautious notwithstanding that the jurisdiction under Article 226 of the Constitution of India may be wide. But when the Institution acts in terms of its regulations, there is hardly any scope for the High Court to interfere on the basis of its impression as to what should have been or what ought not to have been done. This aspect is clear from the decisions of the Supreme Court relating to the academic matters. In this context, reference may be made to U.P. State Road Transport Corporation and another Vs. Mohd. Ismail

and others, .

6. Here we find that the Governing Council came to the conclusion that the two students are not entitled to the exercise to discretion in their favour, in view of the fact that there was no proper explanation for the days of their absence and that too even a without intimation. In the circumstances, it cannot be said that discretion has been exercised by the Governing Council so perversely or unreasonably so as to justify interference by this Court in such an academic matter. We are therefore, satisfied that the learned Single Judge was not justified in substituting his discretion in the place of the discretion to be exercised by the governing Council. We are also not in a position to agree with the observation of the learned Single Judge that the writ petitioners have a right of absence for 20 per cent of the days and they need only explain the absence for the short fall, after deducting the 20% and if they do so, the Governing Council is bound to exercise its discretion in favour of the students. When the Governing Council considers the total shortfall in attendance of the students and the reasons for their absence, it is entitled to take note of the circumstances as a whole to decide whether it should permit the students to take the examination notwithstanding the short fall in attendance. We are also of the view that the method of calculation adopted by the learned Single Judge and his finding thereof that the absence above 20% of the days need alone be explained and that alone is relevant for the purpose of deciding whether the discretion should be exercised in their favour or not is not sustainable. We are also not in agreement with the discretion of the learned Single Judge to the Institute to relax the attendance criteria for the writ petitioners as has been done in the case of two others. The learned Single Judge has not only issued a mandamus directing the respondents to hold a special second semester examination of the first year and allow them to appear in such an examination but has also further directed the Institute to permit the students to attend the second year third semester, even though they have not passed the second semester of the first year. These directions, in our view, are not warranted in the proceedings under Article 226 of the Constitution of India on the facts of the case and even otherwise they appear to be beyond the normal scope of a proceeding under Article 226 of the Constitution of India in such academic matters. We cannot also forget that the Institute is a Society registered under the Societies Registration Act and there is a limitation on this Court in interfering in its matters. We do not find any violation of the fundamental rights of the writ petitioners or flouting of the regulations by the authorities justifying interference in any event. The direction to hold a special examination is also not warranted in this case.

7. Thus, on the whole, we are satisfied that the appeal deserves to succeed. We, therefore, allow this appeal and set aside the decision of the learned Single Judge and dismiss the writ petition. No order as to costs.