

(2014) 09 KAR CK 0310

In the Karnataka High Court

Case No : Writ Petition Nos. 26150-26161 and 23819-23832 of 2014 (EDN-EX)

Milind Chaudhary

APPELLANT

Vs

Karnataka State Law University

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka State Law University Act, 2009 — Section 34, 49, 86

Citation : (2015) 1 AKR 34 : (2014) ILR 5920 : (2015) 1 KarLJ 233

Hon'ble Judges : Dilip B. Bhosale, J

Bench : Single Bench

Advocate : H.S. Dwarakanath, Advocate for the Appellant; P.N. Rajeswara, Ganapati Bhat, C.N. Mahadeshwara, Advs., P.S. Rajagopal, Sr. Counsel (Amicus Curiae), Advocate for the Respondent

Judgement

Dilip B. Bhosale, J.—Heard. Rule. By consent of learned counsel for the parties heard forthwith.

1.1. The petitioners, in these writ petitions under Article 226 of the Constitution of India, are students of different years of five year integrated degree course in law and were due to appear for different semesters in June, 2014. By means of these petitions, they seek to challenge mandatory instructions 3 and 4 in the notification dated 08.04.2014, (for short "the Notification") issued by respondent No. 1 - Karnataka State Law University (for short "the University") for provisional registration of the examination application forms for different examinations, including five year B.A. L.L.B., B.A., L.L.B. (Hons.) examinations for regular and repeaters batch students to be held during June, 2014.

1.2 Instructions 3 and 4 in the Notification, in short, state that unless candidates, filling the examination form, fulfill minimum 70% of attendance, their application forms should not be forwarded by the college to the University. Since, the petitioners examination application forms were not forwarded by respondent No. 2-M.S. Ramaiah College of Law (for short "the College") they have filed these

writ petitions for quashing the mandatory instructions 3 and 4 in the Notification.

2. The relevant Instructions 3 and 4, impugned in the writ petitions, read thus:

"Mandatory Instructions:

3. The Applications of such candidates should not be forwarded to University, who could not fulfill minimum 70% of ATTENDANCE.

4. However, the college can forward the application of such candidate who has kept 70% of attendance at the time of filling the Application out of classes conducted up to the date of filling and that the candidate can surely fulfill 70% at the end of the semester. In case the Principal is not sure of the candidate's attendance after filling application, such application should not be forwarded."

3. The petitioners are students of the college. As stated earlier, since they were due to appear for different semesters in June, 2014, they submitted examination application forms to the college. Their application forms were, however, not forwarded to the University, as they did not fulfill the requirement of minimum 70% of attendance.

4. This Court, while issuing notice to the respondents, on 09.06.2014 had issued the following direction:

"In the meanwhile, respondent No. 2 is directed to collect the examination fee and forward the application forms to respondent No. 1. Consequently, respondents No. 1 to 3 shall permit the petitioners to appear for the ensuing examination.

The leave granted to appear for the examination shall remain subject to result of the petitions and the petitioners shall not claim equity in the event of failing in the petitions."

5. Thereafter, vide order dated 25.06.2014, while allowing the petitioners' application for amendment of the writ petitions, interim application No. 2/14 filed by the College for vacating the interim order dated 09.06.2014 was also heard and disposed of with a direction to the University not to declare the petitioners' results until further orders.

6. At this stage, it would be relevant to state that though by way of interim order dated 09.06.2014 this Court had allowed the petitioners to appear for examination, only few of them appeared and those who appeared, did not appear for all the subjects/papers. It is also necessary to observe/record that in the course of arguments learned counsel for the petitioners, on instructions, submitted that result of the petitioners, who appeared for the examination in June, 2014 need not be declared. He further submitted that the petitioners would be satisfied, if they are allowed to appear for the same semester/s in December, 2014 without insisting for attendance, since, according to him, the University has been allowing the students, like the petitioners, to appear for examinations in December.

7. The petitioners had also filed an interim application, seeking amendment of the writ petitions. By way of amendment they sought to add Bar Council of India (for short "BCI") as party respondent and to challenge Rule 12 of the BCI, Legal Education Rules, which also provide for minimum 70% of attendance. However, they did not press the application and the same was dismissed as not pressed vide order dated 11.09.2014. Against this backdrop what remains to be considered is only challenge to the mandatory instructions 3 and 4 in the Notification.

8. Though in the writ petitions the petitioners raised challenge to the impugned instructions on several grounds, learned counsel appearing for the petitioners, based on the doctrine of legitimate expectation, submitted that the petitioners may be allowed to appear for examination in December, 2014, as the University has been doing all these years in case of the students who were denied opportunity to appear for examinations for want of minimum 70% of attendance. He did not raise any other contention. In support of this contention he invited my attention to paragraph-6 in the Writ Petition Nos. 26150-161/2014, which reads thus:

"6. Till this year the procedure adopted with respect to students who were having less than 70% attendance was that their application forms for examination along with the fee payable would be accepted by the College viz. the 2nd respondent and the same would be forwarded to the University the 1st respondent and the 1st respondent would in its discretion permit taking of exams or otherwise. In the event of the 1st respondent not allowing the students to take exams, they were entitled to take the exams in December examination and they were not required to attend the classes again and they were not required to take exams only subsequent to May."

8.1 The submission of learned counsel for the petitioners proceeds on the assumption/footing that during all previous years, the students, such as the petitioners, were allowed to appear for semesters/examinations in December. It was, therefore, submitted that the petitioners would be satisfied if they are allowed to appear in December without insisting for attendance. In support of the contentions urged by learned counsel for the petitioners, based on the doctrine of legitimate expectation", a reliance was placed upon the judgments of the Supreme Court in J.P. Bansal Vs. State of Rajasthan and Another, ; Navjyoti Co-operative Housing Society etc. Vs. Union of India and Others, ; Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others, .

9. Mr. Rajagopal, learned Senior Counsel, who appeared as Amicus Curiae, on the other hand, invited my attention to the relevant Regulation No. 13 of the Regulations Governing the Five Year B.A., L.L.B. (Hons.) Integrated Honor's Degree Course in law (for short the Regulation") made under Section 34 read with Section 49 of the Karnataka State Law University Act, 2009 and submitted that under any circumstances neither the college nor the University has any

power to condone the requirement of minimum 75% of attendance except where the attendance is not less than 70% of the classes in each of the subjects prescribed for the reasons to be recorded in writing. He then invited my attention to Chapter IV of the Bar Council of India Rules titled as Rules of Legal Education made by the BCI and submitted even BCI, which is the apex body of the lawyers, constituted under the Advocates Act, 1961, also has prescribed minimum 70% of attendance of all classes in all the subject taken together as also the Moot Court room exercises, tutorials and practical training conducted in the subjects taken together. He submitted, even this Court in writ jurisdiction under Article 226 of the Constitution of India cannot condone such deficiency and allow the students to appear for examinations. In support of his contentions, he placed reliance upon the following judgments: Baldev Raj Sharma Vs. Bar Council of India and Others, ; Bar Council of India and another Vs. Aparna Basu Mallick and others, ; L. Meenakshi Sundaram Vs. Director of Legal Studies, Madras Law College and others, ; Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman, ; Ashok Kumar Thakur Vs. University of Himachal Pradesh and Others, ; St. Philomena College, Puttur vs. Shanavas and Others (2001 (6) KLJ 493) ; A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, .

In reply to the submissions advanced by the learned counsel for the petitioners based on legitimate expectation", Mr. Rajgopal submitted that legitimacy of an expectation can be inferred only if it is founded on the sanction of law. In support of this contention he placed reliance upon the judgment of the Supreme court in Union of India (UOI) and Another Vs. International Trading Co. and Another, .

10. The University in their statement of objections, after referring to Rule 12 of the Bar Council of India, Legal Education Rules, have categorically stated that in view of the directions issued by the BCI, they have adopted Rule 12 and made Regulation 13, providing minimum 70% of attendance of the classes to appear for examination. The college in their statement of objections, in support of the impugned action based on Instructions 3 and 4, has given percentage of attendance of each of the petitioners. They have specifically stated that for the academic year 2012-13 the college had installed Jagruthi software which records attendance of each student and that the students and their parents were given passwords to access the software to note the attendance status. They have further stated that the Regulations were also provided to the students as Annexure 2 to the application form for admission, and, therefore, the students cannot claim that they were not aware of minimum 70% of attendance.

11. The University was established under the Karnataka State Law University Act, 2009 (the Act of 2009) for the study and research in law in the State of Karnataka. All Law colleges in the State of Karnataka, are affiliated to the University since then. The Vice-Chancellor of the University, in exercise of the powers conferred by Section 86 of the Act of 2009 made the Regulations under Section 34 read with Section 49 thereof, governing the Five year integrated

degree course in law. The Regulations were accorded sanction by the Chancellor on 13.06.2009. Regulation 13 of the Regulations is relevant for our purpose, which reads thus:-

"13. ATTENDANCE:

No student shall be permitted to appear for the end-of-semester examination in a given course unless he/she has, to the satisfaction of the course teacher, fulfilled the course requirements and has put in not less than 75% attendance in the course concerned.

Provided that a student who has attended not less than 70% of classes in each of the subjects prescribed may be permitted to keep the terms for reasons to be recorded in writing and to the satisfaction of the Principal of the College or the Dean of the Faculty as the case may be."

This regulation, according to the University, is based on Rule 12 of the Legal Education Rules. It would be relevant to reproduce the relevant portion of Rule 12, which reads thus:-

"12. End Semester Test

No student of any of the degree program shall be allowed to take the end semester test in a subject if the student concerned has not attended minimum of 70% of the classes held in the subject concerned as also the moot court room exercises, tutorials and practical training conducted in the subject taken together.

Provided that if a student for any exceptional reasons fail to attend 70% of the classes held in any subject, the Dean of the University or the Principal of the Centre of Legal Education, as the case may be, may allow the student to take the test if the student concerned attended at least 65% of the classes held in the subject concerned and attended 70% of classes in all the subjects taken together. The similar power shall rest with the Vice Chancellor or Director of a National Law University, or his authorized representative in the absence of the Dean of Law. Provided further that a list of such students allowed to take the test with reasons recorded be forwarded to the Bar Council of India."

Regulation 13 provides for 75% attendance in the course concerned, for permitting a student to appear for the end-of-semester examination in a given course. Proviso thereto provides for minimum 70% attendance to enable the Principal/Dean of the faculty of a college to permit the student to appear for examination/semester. In other words, the Principal/Dean under this provision is empowered to condone the deficiency in attendance upto 5% for allowing to keep terms for the reasons to be recorded in writing. Thus, Regulation 13 is clear under which if the attendance is less than 70%, the student cannot be permitted to appear for examination. Insofar as Rule 12 of the Legal Education Rules of the BCI is concerned, the requirement is of minimum 70% of attendance with power to condone upto 5% less attendance. Undoubtedly, there is a disparity in the Regulation 13 and Rule 12. However, I need not enter into an apparent disparity

in the requirement of attendance, since that has no bearing on merits of the present case, apart from the fact that none of the learned counsel for parties even raised any contentions, based on the disparity. Insofar as the petitioners are concerned, none of them has more than 57% of attendance. At this stage, it would be relevant to reproduce the percentage of attendance of each of the petitioners, as stated in the statement of objections filed by the college, which read thus:-

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Since the percentage of attendance of each of the petitioners, is ranging from 0% to 57% of attendance, the college did not forward their examination application forms as per the mandatory instructions 3 and 4 in the Notification.

12. The petitioners, in the writ petitions, have stated that if they were aware about the impugned instructions, when the term commenced, they would have attended the classes. In other words, it was submitted that the college was in the wrong in not making the petitioners aware of such instructions, and that they cannot be made to lose their year for the lapse on their (college) part. This argument, in my opinion, deserves to be rejected outright. Though, it is true that the semester classes started on 01.02.2014 and continued till 11.06.2014 and the mandatory instructions were issued on 08.04.2014. The petitioners were made aware about minimum 70% of attendance when they took admission for the law course. Similarly, as urged on behalf of the petitioners, even if it is accepted that the mandatory instructions were issued vide Notification dated 08.04.2014 for the first time during the academic year 2013-14, the fact remains that there is no change in the condition/policy of minimum attendance. Issue of instruction for the first time would at the most amount to change in the procedure. The students cannot take advantage of such change so as to contend that if they were aware about the impugned instructions they would have attended the classes. I do not find any justification whatsoever for not attending the classes. The students were aware of the requirement of minimum 70% of attendance on the date of their admission to the five year Law Course.

13. The submission advanced by the learned counsel for the petitioners, based on legitimate expectation, that during all previous years the University allowed the students, such as the petitioners, to appear for examination in December without insisting for attendance also deserves to be rejected outright. The University in their statement of objections has categorically denied that they ever allowed the students having less than minimum 70% of attendance to appear for examination in December without insisting for attendance, as contended by the petitioners in paragraph 6 of their petition. Petitioners, except the bald statement in paragraph 6 of their writ petitions, have not produced any material whatsoever on record in support of this contention. The judgments relied upon by learned counsel for the petitioners in support of his contention based on the doctrine of

legitimate expectation", therefore, on the facts of the present case, are of no avail to the petitioners. In other words, in view of the specific stand of the University that they never condoned the deficiency in attendance or allowed the students, such as the petitioners, to appear for examination in December or next semester without the requirement of minimum 70% of attendance, none of the judgments relied upon by learned counsel for the petitioners would help them to support of their contentions based on the doctrine of legitimate expectation. In this connection, it would be relevant to reproduce relevant observations made by the Supreme Court in *International Trading Company (Supra)* which read thus:

"The legitimate substantive expectation merely permits the court to find out if the change of policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. A claim based on merely legitimate expectation without anything more cannot ipso facto give a right. Its uniqueness lies in the fact that it covers the entire span of time: present, past and future. How significant is the statement that today is tomorrow's yesterday. The present is as we experience it, the past is a present memory and future is a present expectation. For legal purposes, expectation is not same anticipation. Legitimacy of an expectation can be inferred only if it is founded on the sanction of law."

14. In the present case, the submission, based on legitimate expectation is not founded on any Law/Rule/Regulation. A claim based on merely legitimate expectation without anything more cannot ipso facto give a right. Even the question of finding out whether change in the practice or deviation from the established practice also would not arise in the present cases, in view of the categorical statement made on behalf of the University, that there is no such practice. Thus, the submission of learned counsel for the petitioners based on the doctrine of legitimate expectation must be rejected.

15. It would be relevant, at this stage, to notice the observations made by the Supreme Court in *K.S. Raman (supra)*, while dealing with Regulation 4 regarding minimum attendance. In Paragraph-10 of the judgment the Supreme Court observed thus:

"The tendency in modern times is to bring the students into direct personal contact with the tutors so as to enable the tutors to guide and coach the students individually as far as may be possible."

In paragraph-14 of the report, the Supreme Court observed thus:

"....., it seems somewhat difficult to accept the correctness of the conclusion reached by the High Court that the requirement of about 75 per cent attendance must be taken collectively. It is clear that if the said requirement is read collectively, a student may be entitled to claim to have completed the regular course of study without attending any single practical or tutorial, as the case may be, if he has attended all the lectures in a given subject."

15.1 In *Ashok Kumar Thakur (supra)*, the Supreme Court, while dealing with the question whether the petitioners deficiency in the matter of attendance could be condoned by any authority?, after quoting the relevant rule, made the following observations:

"Since the petitioner's deficiency in the matter of attendance exceeded 18 lectures in Economics and 20 lectures in Civics, it was beyond the jurisdiction or competence of the Principal to condone this deficiency. In our opinion this completely destroys the case of the petitioner. 5. Considering that this case concerns the career of a young student we tried to look at the matter with all possible sympathy and consideration but we do not see how we can direct or compel an authority to do something which is beyond its legal competence to do. Since the Principal is the only authority who can condone and since it was beyond his competence to condone the shortage in question, we do not see how we can intervene in favour of the petitioner even if the petitioner had succeeded in making out a case for condonation. In our opinion, the appeal must fail on this short point. Much as we regret the unfortunate fact that the petitioner is going to lose almost two precious years of his academic life we are in law bound to confirm the decision of the High Court, and dismiss the petitioner's appeal. We, therefore, do so. In the circumstances of this case, however, we are making no order as to costs."

(emphasis supplied)

15.2 In *Christian Medical Education Society (Supra)* the Supreme Court while dealing with the contentions urged on behalf of the petitioners, in Paragraph-10 observed thus:-

"Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws."

(emphasis supplied)

15.3 The observations made by Supreme Court in *Baldev Raj Sharma (supra)* are also relevant, which read thus:

"These rules were replaced by a fresh set of rules in 1984 and the new Rule 1(1) (c) is almost identical. The rule clearly requires that the course of study in law should have been by regular attendance for the requisite number of lectures, tutorials and moot courts and practical training. The rule envisages that for the entire period of the law course there must be a regular attendance of the student before he can satisfy the conditions necessary for enrolment as an advocate under the Advocates Act, 1961."

(emphasis supplied)

15.4 This Court in *St. Philomena College, Puttur (Supra)* while dealing with Regulation providing for attendance requirements in paragraph-9 observed thus:

"It cannot be disputed that the requirement of attending the instructional hours/classes at a minimum given percentage is provided to ensure that the students joining the course are able to attain the prescribed standard in the course of studies as per the above undertaking. This requirement, which is prescribed by the academic experts in the field, has to be uniformly applied to all the students admitted to the course. Maintenance of educational standard and its excellence is a social and national requirement and it can be so maintained only if it is ensured that the Institutions impart courses for a given length of hours and the students necessarily avail it to a certain given percentage to make them eligible for appearing at the aimed examination."

16. This Court is not unmindful of the fact that the question/issue involved concerns the career of young students, who are going to lose a precious year of their academic life. Even if this Court has sympathy for the petitioners, but nothing can be done beyond legal competence to do. The Principal/Dean of the law faculty and/or Vice-Chancellor are the only authorities who can condone the deficiency upto 5% and since it was beyond their competence to condone the deficiency in attendance, I do not see how this Court can intervene in favour of the petitioners in writ jurisdiction under Article 226 of the Constitution of India. This Court, in any case, cannot direct the University to disobey the regulation. In my opinion, the writ petitions must fail even on this short point.

17. Thus, having considered the judgments of the Supreme Court and over all facts and circumstances of the case, these writ petitions fail and dismissed as such.

18. In view of the opinion expressed in this judgment, the question of declaring result of the petitioners of the subjects/papers, they appeared for, in view of the interim order passed by this court, does not arise. Even learned counsel for the petitioners, did not pray for declaration of the results. In the circumstances, the University, is directed not to declare their results of the subjects for which they appeared in pursuance of the order passed by this Court. It is open for the petitioners to attend classes once again and if they fulfill the requirement of attendance, they may be permitted to appear for the examination/semesters. It is open to the petitioners to approach the college for seeking admission, and if they do so, the college may consider their request for admission sympathetically.

Before I part, I place on record a word of appreciation for the assistance rendered by Amicus curiae Mr. Rajagopal, learned Senior Advocate, in deciding these petitions in proper perspective.