

(2010) 08 AHC CK 0137
In the Allahabad High Court

Saurabh Kulshreshth

APPELLANT

Vs

Dr. Bhim Rao Ambedkar, University and Others

RESPONDENT

Date of Decision : 23-08-2010

Acts Referred:

Aligarh Muslim University Regulations — Regulation 4.1, 4.2, 4.3

Citation : (2010) 08 AHC CK 0137

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The petitioner, who was a student of LL.B. III Year in Dr. Bhim Rao Ambedkar University, Agra (hereinafter referred to as the ?University?) in the Academic Session 2007-08, filed this petition on 7th May, 2009 for a direction upon the respondent-University to permit him to appear at the final year examination scheduled to start from 14th May, 2009.

2. It is stated that the petitioner was admitted to the LL.B. Ist Year Course in the University in the Academic Session 2005-06 and after passing the first year and second year examinations he was admitted to the LL.B. IIIrd year after depositing the requisite fees in the Academic Session 2007-08. The Incharge, Faculty of Law demanded a sum of Rs. 15,000/- from the students and distributed the examination forms to only those students who paid him Rs. 15,000/-. The application form was not supplied to the petitioner as he did not pay the said amount even though he had moved an application on 18th April, 2009 for supplying the examination form so that he could appear at the examination which was scheduled to begin from 11th May, 2009. It has further been stated that subsequently the examination date was shifted to 14th May, 2009. This petition was, accordingly, filed for a direction upon the respondent-University to permit him to appear at the final year examination scheduled to start from 14th May, 2009.

3. A counter affidavit has been filed on behalf of the University. It has been stated that after passing LL.B. IInd Year, the petitioner submitted his admission form for admission to the LL.B. IIIrd Year on 15th December, 2008 even though the classes had started on 4th December, 2008. After taking admission, the petitioner attended the class only on 31st March, 2009 in the month of March and thereafter he attended classes on 1st, 2nd, 3rd, 4th, 7th, 8th, 9th, 11th, 13th and 15th in the month of April, 2009. It has also been stated that the department sent information to the students who were not regularly attending the classes on 16th January, 2010 and 6th March, 2010 since the requirement of 75% attendance is mandatory. The petitioner did make a complaint against the Incharge, Faculty of Law to the Vice-Chancellor of the University on 2nd May, 2009 but in the meantime the petitioner also filed writ petition in which an interim order was passed on 11th May, 2009 provisionally permitting the petitioner to appear at the LL.B. IIIrd Year examination since the examination was to commence from 14th May, 2009.

4. It has also been stated that LL.B. IIIrd Year examination actually started from 30th November, 2009 and not from 14th May, 2009 and in view of the interim order, the admit card of the petitioner was kept ready but the petitioner did not collect the same though all other students collected it and on the request made by the Superintendent (Legal) for collecting the admit card, the petitioner only stated that he will not appear in the examination as his case is pending in the High Court and in fact he also filed a Contempt Petition. It is for this reason that the admit card of the petitioner had to be served on the counsel for the petitioner on 11th December, 2009. The petitioner thereafter appeared in the examination on 14th December, 2009 and 16th December, 2009 but he did not deliberately appear in the earlier papers. It has, therefore, been stated that the petitioner had attended classes only for 10 days and his attendance was well short of the requirement of 75% attendance and, therefore, he was not eligible for appearing at the LL.B. IIIrd year examination.

5. In the rejoinder affidavit, so far as the attendance of the petitioner is concerned, all that has been stated is that the documents annexed with the counter affidavit includes the names of only 11 students though 30 students were studying and that the University claims that the classes started on 15th December, 2008 but still the general notice regarding shortage of attendance was issued on 6th January, 2009. It has also been stated that the entire attendance register has not been filed with the counter affidavit.

6. Learned Counsel for the petitioner submitted that the petitioner was deliberately not permitted to appear at the examination and it cannot be said that the attendance of the petitioner was short of the required percentage. It is also his submission that the University has not provided the details of the attendance of the petitioner and nor has it filed the records to give any indication about the attendance of the petitioner. It is also his submission that initially the University had announced that the examination would commence from 14th May,

2009 but subsequently the examination dates were postponed and, therefore, it is not correct on the part of the University to state that the petitioner had deliberately mentioned a wrong date in the petition regarding commencement of the examination.

7. Learned Counsel appearing for the respondent-University, however, submitted that in paragraph 6 of the counter affidavit, it was specifically stated that the petitioner attended the classes only on 11 days which included one day in March and ten days in April, 2009 and therefore, his attendance was short as the classes had started from 4th December, 2008. Learned Counsel for the respondent-University has also placed before the Court Ordinance 10 of the Ordinances relating to Bachelor of Laws Examination which provides that a candidate should attend at least 75% of the lectures in each of the subjects. He has also submitted that in spite of the fact that the admit card of the petitioner was ready, the petitioner did not deliberately take the admit card and only appeared on 14th December, 2009 and 16th December, 2009 after the contempt petition filed by him was dismissed and the admit card was supplied to his counsel on 11th December, 2009.

8. I have considered the submissions advanced by the learned Counsel for the parties.

9. Clause 10 of the Ordinances dealing with Bachelor of Laws provides that every candidate shall be required to attend at least 75% of the lectures in each subjects and no candidate shall be allowed to appear at the examination unless he has put in required percentage of attendance. The said Ordinance is quoted below:

10.0 ATTENDANCE:

(a) Every candidate shall be required to attend at least 75% of the lectures in each of the subjects as also the tutorials, Moot Courts and Practicals or such other minimum percentage as may be prescribed by the Bar Council of India from time to time.

(b) Attendance for each semester will be counted separately and no candidate will be allowed to appear at the examination unless he has put in the required attendance provided in a particular semester and was absent or has failed in a paper or papers of that semester will not be required to pursue a further regular course of study when he re-appear in the same paper or papers.

10. In paragraph 6 of the counter affidavit, the University has specifically stated that the LL.B. IIIrd year classes started with effect from 4th December, 2008 but the petitioner took admission on 15th December, 2008 and attended the LL.B. IIIrd year classes only on 11 days namely 31st March, 2009 and 1st, 2nd, 3rd, 4th, 7th, 8th, 9th, 11th, 13th and 15th April, 2009. In the rejoinder affidavit there is no averment that the petitioner attended the classes on other dates also and all that has been stated is that the complete attendance register has not

been filed. In fact in paragraph 7 of the rejoinder affidavit which is in reply to the averments made in paragraph 6 of the counter affidavit, all that has been stated is that the University has only filed loose sheets of the attendance of certain days and the entire attendance register has not been filed. The stand of the University is that they have indicated the attendance of the petitioner of only those days on which he attended the classes and it is not possible to annex the entire attendance register. In any case, it was for the petitioner to have made a positive statement that he had attended the classes on other days also and the University has not taken them into consideration while calculating his attendance. In the absence of any such statement, it is not possible to accept the submissions advanced by the learned Counsel for the petitioner that the petitioner had attended the classes on other days also and that his attendance was not short.

11. Clause 10 of the Ordinances of the University relating to Bachelor of Laws, clearly provides that every candidate shall be required to attend at least 75% of the lectures in each subjects and no candidate will be allowed to appear at the examination unless he has the required attendance.

12. The requirement of having requisite percentage of attendance for appearing at the examination has been emphasized by Courts time and again. In *Parvez Ahmad and Ors. v. Aligarh Muslim University*, Aligarh and Ors. 1987 UPLBEC 517 a Division Bench of this Court examined the provisions of the Attendance Regulations of the Aligarh Muslim University which provided that the attendance should 75% but the Condonation Committee could condone the shortage of attendance in cases where attendance was upto 65%. The Court refused to grant relief to the students whose attendance was less than 65%. This decision of the Division Bench of the High Court was affirmed by the Supreme Court in Civil Appeal No. 2820 of 1987 (*Syed Nusrat Z. Ahmed and Ors., v. Aligarh Muslim University and Ors.,*).

13. In *Regional Engineering College, Hamirpur and Anr. v. Ashutosh Pandey JT 2000 (10) 216* the Supreme Court examined the provisions of the attendance regulations of the University which provided that though the requirement of attendance was 75%, but the Principal could condone further shortage upto 10% only if the candidate satisfied the conditions mentioned therein. The Supreme Court held that in view of the Regulations, under no circumstances the Principal could condone shortage of 11% attendance below the normal requirement of 75% since the Principal had the power to condone only upto 10%. The relevant observations are as follows:

A perusal of the Regulation shows that a candidate should first have 75% of minimum attendance in that course under Regulation 4.1. Regulation 4.2 mentions the circumstances under which further exemption can be granted by the Principal. The Principal can give further credit upto an extent of 10% of the total classes held in each course during the period of a student's participation in the programmes/competitions mentioned in Regulation 4.2. The Principal can exempt upto 10% of the total classes only in contingencies as mentioned in

Regulation 4.2. Thus, 10% is the maximum in addition to 25%.

In addition, Regulation 4.3 is specific that the condonation on account of reasons listed under (4.2) shall not exceed 10% of the total lectures delivered during the semester. It also states that a candidate will have to apply to the concerned Head of Department on prescribed proforma along with the reasons and documents in proof of his absence. Condonation can be granted by the concerned Head of Department with the prior approval of the Principal. Thus, 10% in excess of 25% alone, is the maximum that can be condoned.

In the present case, the respondent did not make any application in the prescribed pro forma. Therefore, it is not possible to say whether his case comes within the contingencies mentioned in Regulation 4.2. It is no doubt stated that the respondent had gone to Delhi to appear in the examination/interview, but it is not clear whether that was an examination/interview held by a Government Organization/Public Limited Company. In any event, admittedly after deducting admissible 25% exemption, further absence of the respondent comes to 11% which is more than the permissible discretionary percentage granted to the Principal. Therefore, the Principal was right in saying he had no power to condone the absence in excess of 10% in addition to 25%.

We are, therefore, of the opinion that the High Court fell into an error in permitting condonation of absence beyond 10% in addition to 25%. We, therefore, set aside the judgment of the High Court and the directions given therein.

(emphasis supplied)

14. It is for this reason also that the petitioner could not have appeared at the LL.B. Part-III examination conducted by the University.

15. Learned Counsel for the petitioner then contended that a sympathetic attitude should be adopted since the petitioner had appeared at the LL.B. Part-III examination under the interim order of this Court and so a direction should be issued for declaration of the result.

16. This contention of the learned Counsel for the petitioner cannot also be accepted. The Supreme Court has held that misplaced sympathy should not be shown merely because a student has appeared at the examination under an interim order of the Court. In this connection reference can be made to the decision rendered by the Supreme Court in the case of Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others, wherein it was observed:

This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations....

In the background of the law as laid down by this Court, we find that in the case in hand the fact situation was even worse as compared to the decision cited above. The student, namely, Respondent 1 had failed to clear her Class IX examination which was a necessary requirement as provided under the bye-laws of the Board so as to be entitled to appear in Class X examination conducted by the Board. Despite notice, no one has put in appearance on behalf of Respondents 1 and 2 to indicate any fact or circumstance so as to take any different view. Condoning the lapses or overlooking the legal requirements in consideration of mere sympathy factor does not solve the problem, rather breeds more violations in the hope of being condoned. It disturbs the discipline of the system and ultimately, adversely affects the academic standards.

(emphasis supplied)

17. It also needs to be noticed that for ensuring compliance of the interim order passed by the Court provisionally permitting the petitioner to appear at the LL.B. final year examination, the University made attempts to serve the admit card upon the petitioner but instead of receiving the admit card so that he could appear at the examination, the petitioner filed a contempt petition in this Court and the counsel of the University had to supply a copy of the admit card to the learned Counsel for the petitioner appearing in the contempt petition. This document has been annexed as Annexure CA-11 to the counter affidavit and the letter of the counsel clearly states that in spite of repeated information and request, the petitioner is not receiving his admit card and, therefore, the counsel may accept the admit card on behalf of the petitioner and the Court may advise him to appear at the examination. This apart, the petitioner had only appeared at the examination of two papers.

18. Thus, for all the reasons stated above, the petitioner was not eligible to appear at the LL.B. IIIrd year examination since his attendance was short. No relief, therefore, can be granted to the petitioner.

19. The writ petition is, accordingly, dismissed.