
(1998) 02 DEL CK 0055
In the Delhi High Court
Case No : L.P.A.No. 320 of 1997

Shubhi Khandelwal

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 13-02-1998

Acts Referred:

Citation : (1998) 2 AD 75 : AIR 1998 Delhi 428 : (1998) 71 DLT 886 : (1998) 1 ILR Delhi 461 : (1998) ILR Delhi 461

Hon'ble Judges : R.C. Lahoti, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Mr. Vipin Sanghi, for the Appellant; Mr. S.K. Kaul, Mr. ATS Ansari, Mr. Ravinder Bhat and Mr. Navin R. Nath, for the Respondent

Final Decision : Allowed

Judgement

Dalveer Bhandari, J.—This appeal is directed against the order of the learned Single Judge dated 11.11.1997 passed in C.W.P.NO.1662/97. The brief facts which are necessary to dispose of this appeal are recapitulated as under:-.

2. The appellant, a student of 2nd year B.A. Honours (Philosophy) in the Indraprastha College for Women, fell short of attendance by 3 per cent i.e. 11 lectures over the entire year. She was not permitted to appear in the examination by the respondents because of the shortage of her attendance. The undisputed facts are that for the last about four years, she has been suffering from mental seizure disorders. She received the treatment for tuberculosis of the brain as well as. for neuro cysticereosis (worm infestations in the brain). The appellant is currently on anti-epileptic treatment for the last about two years. She suffered the last episode of seizure in the month of November, 1996 when her dose of the medicines had to be increased to control further seizure. On account of the aforesaid seizure disorder she was advised complete bed rest from 27.11.1996 to 21.12.1996. The appellant has been undergoing treatment at the Department of Medicine at Moolchand Hospital New Delhi. A large number of medical documents have been placed on record to substantiate the plea that for

the last four years, she has been suffering from the aforesaid disease.

3. According to Mr. Vipin Sanghi, learned counsel for the appellant, she was not permitted to appear in the examination because of the shortage of 3 per cent attendance despite her suffering from the serious ailment primarily on the ground that there has been delay of about two weeks in filing the application along with the medical certificate. The appellant made a number of representations and her last representation was dated 21.4.97. Despite a number of representations, the appellant was not permitted to appear in the examination. Ultimately she was compelled to approach this court. The writ petition filed by the appellant (petitioner therein) came up for admission hearing on 23.4.1997. The learned Single Judge issued a show cause notice in the writ petition and also directed the respondents to permit the appellant to appear in B.A. Honours (Philosophy) second year examination from 23.4.97. The appellant had filed an application C.M.6157/97 with the prayer that her result of B.A. Honours (Philosophy) second year course be declared and she should be permitted to take admission to the B.A. Honours (Philosophy) third year course. The appellant also specifically prayed that she be permitted to attend the classes for the third year course pending disposal of the writ petition.

4. The learned Single Judge initially issued notice in the application on 6.8.97, but when the application was listed after notice the court observed that "Since I propose to hear the writ petition itself immediately, Therefore, I do not consider it necessary to pass any orders in the application and the application be dismissed." In view of the dismissal of the application neither the appellant's result was declared nor she was permitted to attend the classes in the third year of BA Honours (Philosophy).

5. The writ petition filed by the petitioner (the appellant herein) was dismissed by the judgment dated 21.11.97. The appellant's request to exempt her from the requirement of attendance during the period when the writ petition was pending in this court was also rejected. Consequently, the appellant could not attend the classes during the pendency of the writ petition in this court. According to the appellant, in fact she had lost two years because the Court did not direct the respondents to declare her result and also did not permit her to attend classes. It was submitted that by approaching the court the appellant had lost one full additional year and put to a much graver disadvantage.

6. Aggrieved by the order of the learned Single Judge, the appellant filed this appeal before this court. The appeal came up for admission hearing on 19.12.97. This court issued show cause notice returnable on 12th January, 1998. Immediately after the respondents filed counter-affidavit, the court directed the respondents to produce record of this matter which revealed that the appellant had passed the second year's examination in which she was permitted by the court to appear in the examination. Looking to the grave urgency, the appeal was heard finally at the admission stage.

7. Mr. Sanghi, learned counsel for the appellant submitted that the learned Single Judge ought to have directed the respondents to declare the appellant's result and in case she had cleared the 2nd year examination, she ought to have been permitted to attend the classes of the third year of B.A. Honours.

8. The judgment was delivered on 21.11.97 when practically a substantial part of the academic session had finished and there was no way that the appellant could maintain the requisite attendance of 66 per cent by attending the remaining part of the academic session so by approaching the court she had lost one more year.

9. The learned counsel appearing for the appellant submitted that the rules and regulations of the university also contemplate the possibility of a student being taken ill and being incapacitated from attending classes and in such contingency, a specific provision has been incorporated leaving it to the discretion of the principal to condone her absence from attending the classes.

10. Clause 2(9) (a) of Ordinance VII of the University provides that subject to provisions of sub-clause (b) and (c), the Principal of a college may consider on the basis of medical certificate produced, exceptionally hard cases of students who had fallen seriously ill or had met with an accident during the year disabling them from attending classes for a certain period. Clause 2(9) reads as under:-.

"2 (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 defense 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 assignments 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 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 lecture etc., in each subject delivered during the period of absence for that purpose shall not be taken into account.

(ii) The Principal of a College may consider, on the basis of the Medical Certificates produced, exceptionally hard cases of students who had fallen seriously ill or had met with an accident during the year disabling them from attending classes for a certain period, with a view to determining whether the lectures etc. delivered during the said period, or a part thereof, could be

excluded for purposes of calculation of attendance of the year and decide each case on its own merits.

(b) A College shall notify on the notice board the final attendance position of each of its students within three days of the dispersal of the classes in the last session of the academic year. Not later than five days, thereafter, a student, may by an application to the Principal of the College, claim benefit of exclusion of lectures under sub-clause (a) above on grounds to be specified and accompanied by the relevant documents. All such applications submitted within time shall be considered and disposed of by the Principal of the College at least 3 days prior to the commencement of the examination in which the student is intending to appear.

(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." 11. Mr. Sanghi submitted that this clause has been incorporated in the rules and regulations of the University to meet only such contingencies. He further submitted that in the facts and circumstances of this case the principal ought to have invoked this provision and permitted the appellant to appear in the examination. The principal was not justified in not invoking the provision merely on the ground that there has been some delay in filing the application. The principal ought to have appreciated the facts and circumstances which led to a delay of about two weeks in filing the application. The discretion has to be exercised fairly and judiciously. According to the appellant the learned Single Judge also gravely erred in affirming the view taken by the principal.

12. Mr. Sanghi strenuously submitted that clause (b) of clause 2(9) of Ordinance VII is directory and not mandatory. Even the respondents had always treated this clause to be directory except in this case. He submitted that after the attendance position is notified on the notice board, the student has to apply for the benefit of exemption of lecture within 5 days. In the facts and circumstances of this case according to Mr. Sanghi, delay in filing the application or certificate ought to have been condoned. The view taken by the respondents has led to immense hardship. Number of circumstances can be enumerated where the student because of the serious accident or ailment is prevented from making an application within 5 days from the date when the final position is notified on the notice board and if he or she cannot ever claim the benefit, then in a large number of cases it would result in extreme hardship which obviously, cannot be the intention of the framers of this clause.

13. Mr. Sanghi contended that the instruction in "Ins and Outs" to submit medical certificate within a week of return to college is not mandatory and there is nothing sacrosanct about the period of 7 days. He also submitted that clause 2 (9)(a) of Ordinance VII being a beneficial provision for the students should be liberally interpreted and that a sympathetic view may be taken since the appellant had already appeared in the examination.

14. Mr. Sanghi also submitted that even the respondents have been interpreting and applying the said rule in a relaxed manner meaning thereby that it was not construed as a directory provision all through. Only in the instant case, it has been interpreted differently. The classes for the relevant sessions were dispersed on 21.3.97 and according to this very clause 2(9)(b) of the Ordinance VII, the respondent college should have put up the list of students who were short of attendance on the notice board on 24.3.97. However, in this case, admittedly, this was displayed on 31.3.97. The college which itself has considered the clause as directory cannot construe the same clause mandatory and insist that the application has to be made by the student claiming the benefit of sub-clauses (a) and (b) of clause 2 (9) of Ordinances VII, within 5 days from the date when the final position is notified on the notice board and cannot be entertained thereafter.

15. Mr. Sanghi also submitted that the respondent college itself has applied this clause in a discriminatory manner. The respondent college itself has relaxed the period while entertaining the applications of other students under the same clause. The appellant had given a specific instance of one student Stuti Bhandari, a student of 1st year of B.A. Honours (Philosophy). In that case, she also gave the application claiming benefit of exclusion of lectures under sub-clause (a)(i) on the ground of pursuing sports activities on or about 10th of April, 1997 even though admittedly the list was put up on 31st March, 1997. We do not propose to determine factual controversies in these proceedings.

16. Mr. Bhatt appearing for the respondents submitted that according to rules and regulations, the Admission Committee was justified in not permitting the appellant to appear in the examination because she was short of the requisite attendance. He further submitted that the appellant ought to have filed the application for claiming the benefit of exclusion of lectures under sub clause (a) (i) within the specified time. Mr. Bhatt also submitted that this court should not interfere in the discretion exercised by the respondents.

17. We have heard learned counsel for the parties at length and perused the relevant documents placed on record. The controversy involved in the entire case is rather narrow. It is not disputed that the appellant has been seriously suffering from severe seizure disorders of brain, for about four years and because of this ailment, the petitioner had claimed and was granted the benefit of exclusion of lectures under clause 2(9)(b) of Ordinance VII. The appellant was not extended the benefit of the said clause because there has been a delay of about two weeks in filing the application.

18. It may be pertinent to mention that the Division Bench of this court had directed that the result of the appellant for the second year (taken by her under the orders of this court) be declared. This Court summoned the record of the result and according to the records, the appellant had passed the second year B.A. Honours (Philosophy) Examination.

19. In the instant case, the interim application of the appellant for declaring her

result and permitting her to attend the classes was rejected on 8.8.97 and consequently, the appellant could not attend the classes till the date of judgment i.e. 21.11.1997. The appellant not only lost the academic year of 1997 but has also lost the academic year of 1998 because she was not permitted to take classes and Therefore she cannot have the requisite attendance enabling her to appear in the examination going to be held in 1998. In case the appellant would not have approached the court, then at the most, she would have wasted only one academic year but by approaching the court, she has lost two years. It is the settled proposition of law that no one should suffer by the act of the court.

20. Mr.Vipin Sanghi, learned counsel for the appellant referred to and relied upon various authorities. In the case of Meenakshi Malik Vs. University of Delhi and Others, , it was observed by the Supreme Court that, rules are intended to be reasonable and should take into account the variety of circumstances in which those whom the rules seek to govern find themselves.

21. Learned counsel for the appellant also placed reliance on another judgment of the Supreme Court in Ganesh Prasad Sah Kesari and Another Vs. Lakshmi Narayan Gupta, , to show that while interpreting a statute or enactment, the court must take into consideration the intendment and consequences flowing from its own construction. In this case, their Lordships of the Supreme Court had the occasion to examine the use of the words "shall" and "may". The court observed that ordinarily, the use of the word "shall" prima facie indicates that the provision is imperative in character. However, the Court should ascertain the intendment of the legislature and the consequences flowing from its own construction of the word "shall". If the word "shall" is treated as mandatory, the net effect would be that even where the default in complying with the direction given by the court is technical, fortuitous, unintended or on account of circumstances beyond the control of the defaulter, yet the court would not be able to grant any relief or assistance to such a person. Once a default is found to be of a very technical nature in complying with the earlier order, the court must have power to relieve against a drastic consequences all the more so if it is satisfied that there was a formal or technical default in complying with its order. The Court further observed that irrespective of the words used by the Legislature the power of the court to interpret the provision to gather legislative intention always remain unshaken and unimpaired. Where the legislature uses two words "may" and "shall" in two different parts of the same provision prima facie it would appear that the legislature manifested its intention to make one part directory and another mandatory. But that by itself is not decisive. The power of the court still to ascertain the real intention of the legislature by carefully examining the scope of the statute to find out whether the provision is directory or mandatory remains unimpaired even where both the words are used in the same provision. Mr. Sanghi, learned counsel for the appellant also placed reliance on Judgment delivered by the Constitution Bench of the Supreme Court in Thakur Pratap Singh Vs. Shri Krishna Gupta and Others, . In this case, the Supreme Court deprecated the tendency of the courts to interpret the words in a

manner in which importance is given to the form and not to substance. The court observed that it is the substance that counts and must take precedence over mere form. Some rules are vital and go to the root of the matter: they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance with the rules read as whole and provided no prejudice ensues; and when the legislature does not itself state which is which judges must determine the matter and, exercising a nice discrimination, sort out one class from the other long broad based, commonsense lines.

22. Mr. Sanghi, learned counsel for the appellant also placed reliance on *Paradise Printers and Others Vs. Union Territory of Chandigarh and Others*, . In this case also, the Supreme Court had the occasion to examine the meaning and import of the word "shall", and observed that generally the use of the word "shall" prima facie indicates that the particular provision is imperative. But that is not always so. The meaning to be given to a word depends upon the context in which it is used. The word takes the colour depending upon the context. We must ask what does the word mean in its context? We must examine why the rule making authority has chosen that word. After examining the purpose and scope of the rule, we must give such meaning as to render the rule workable in a fair manner. We must give that meaning which would promote the purpose and object of the rule. When there is a choice of meanings, there is a presumption that one which produces an unjust or inconvenient result was not intended. Let us now take a brief look at Rule 8. If sub rule (3) of Rule 8 is construed as mandatory, then every person who applies for a site with earnest money must be allotted a site. That means the administration must receive only equal number of applications as there are sites available for allotment. That would be impracticable. The administration cannot restrict the number of applications to be received when the public are notified. Secondly the sites are required to be disposed by auction or allotment. If it is by allotment, it should be after considering all applications. The sites cannot be allotted by private arrangement. All the applications received must be considered and if there are more applications than the available sites, some reasonable procedure should be adopted for consideration and elimination. In our opinion, the right of every applicant under sub-rule (3) of Rule 8 is only the right to have his application considered. The acceptance of application does not create a right for allotment of a site. The word "shall" used in sub-rule (3) must, Therefore, be considered as not mandatory. The imperative meaning would defeat the purpose of the rule.

23. Mr. Sanghi also placed reliance on another judgment of the Supreme Court, *Dalchand Vs. Municipal Corporation, Bhopal and Another*, , in which the court had the occasion to examine the meaning of expression "directory" and "mandatory". The court observed that there are no ready tests to determine whether a provision is mandatory or directory. The weighing of consequences of holding a provision to be mandatory or directory is vital and often determinative of the question. The broad purpose of the statute and object of the particular

provision must be considered and link between the two is important. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in the provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of. Every prescription of a period within which an act must be done, is not the prescription of a period of limitation with painful consequences if the act is not done within that period."

24. Mr. Sanghi, learned counsel for the appellant also placed reliance on another celebrated judgment of the Supreme Court, *State of Haryana and Another Vs. Raghubir Dayal*, . In this case, the court had the occasion to examine the provisions of the Land Acquisition Act, 1894. The court observed that the word "shall" has to be construed in the context. The court mentioned that the word "shall" used in sub-section (2) of Section 6 should be construed to be only directory and not mandatory. The court further observed:-

"Though notice u/s 5-A was issued to the respondent he had not availed of the notice nor objected to the acquisition. The question emerges whether the non-publication of the substance of the declaration u/s 6(1) equally be mandatory and its omission renders the declaration invalid? The purpose of the declaration u/s 6 is to render the land notified there in as that needed conclusively for public purpose. So we are of the opinion that the notification u/s 4(1) should not be invalidated for non-compliance of the notification u/s 6. It is true that the language in Section 6(2) is in pari materia with Section 4(1). The purpose of publication of the declaration is to give effect to the conclusiveness of the extent of the land needed for the public purpose or for a company as made u/s 6(3) of the Act. Since there is an opportunity already given to the owner of the land or persons having interest in the land to raise their objections during the enquiry u/s 5-A, or otherwise in case of dispensing with enquiry u/s 5-A unless they show any grave prejudice caused to them in non-publication of the substance of the declaration u/s 6(1), the omission to publish the substance of the declaration u/s 6(1) in the locality would not render the declaration of Section 6 invalid. We are not intending to say that the officer should not comply with the requirement of law and it is their duty to do it. But their dereliction to do so per se does not render the declaration u/s 6 illegal or invalid.

25. In the instant case, even the word "shall" used in sub-section (2) of Section 6 has been construed not to be mandatory. The courts have repeatedly held that while interpreting the statute, the intention of the legislature must be carefully gathered by the courts.

26. The Supreme Court has echoed the same view in *The State of Punjab and Another Vs. Shamlal Murari and Another*, . In this case, the Court has mentioned that while applying or interpreting any provisions of law, its intention and purpose have to be carefully analysed and interpreted. The rules are really made

in the aid of justice. The court observed as under:-.

"We must always remember that processual law is not to be tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, the procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, courts are to do justice, not to wreck this end product on technicalities.

27. Another constitution bench of the Supreme Court in Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur, , had the occasion to examine the word "shall". The court observed that while interpreting the statute, purpose for which the provision has been made and its nature and the intention of the Legislature in making the provision must remain paramount. As per the majority, the court observed as under:-

"The question whether a particular provision of a statute which on the face of it appears mandatory inasmuch as it uses the word "shall" or is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory."

28. Mr. Sanghi, learned counsel for the appellant also placed reliance on Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others, , in which the Court held as under:-.

"The primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing, the written word if necessary."

29. On a close scrutiny and analysis of the aforesaid cases of the Supreme Court, it is clear that in interpreting the statute, rule, or enactment, the paramount consideration should always be to gather the intention of legislature or purpose for which that statute, rule or enactment has been incorporated. The court cannot be indifferent to the consequences flowing from such construction. Irrespective of the words used in the enactment, the court's powers to interpret the provisions in order to gather the legislative intention always remain unimpaired.

30. In order to apply the law laid down by the Supreme Court, we have to revert to the facts of this case. The only ground on which the respondents did not extend the benefit of sub clause (a) and (b) of clause 2(9) of the Ordinance VII was because the application which ought to have been filed within 5 days from 31.3.97 i.e. or before 5.4.97, was in fact filed on 21.4.97, and because of this delay, the appellant is made to lose two years. According to the judgment of the learned Single Judge, the appellant would be eligible to appear in the second year examination going to be conducted in 1999. whereas in fact she has cleared that examination when she appeared under the orders of the court in 1997. This anomaly has arisen because the appellant's result was not directed to be declared and she was not permitted to attend classes of third year during the pendency of the writ petition.

31. We have carefully analysed all the facts and circumstances of this case and the ratio of cases cited at the bar. Admittedly, the appellant was suffering from serious ailment for the last 4 years and she had major episode of epilepsy on 26.11.96 and she was advised rest for a month. There has been a delay of about two weeks in filing the application and certificate. In our considered opinion, the delay of two weeks in filing the application ought to have been condoned in the peculiar facts and circumstances of this case. The appellant had admittedly cleared her second year B.A. (Honours) examination in which she appeared after obtaining the permission from the learned Single Judge but thereafter the learned Single Judge did not direct the respondents to declare her result of second year B.A. In our opinion, the ends of justice would be met if the appellant is permitted to appear in the 3rd year B.A. Honours (Philosophy) examination to be held in 1998. Since the appellant was not permitted to attend the classes despite her specific request, Therefore, in the facts and circumstances of this case, the respondents are directed to give admission to the appellant forthwith and her attendance shall be computed from the date when she is granted admission by the respondents. We would like to make it clear that since the appellant in this case was not permitted to attend the classes, Therefore, her earlier absence from the classes shall not be construed as disqualification either for attending classes or appearing in the examination of 3rd year B.A. Honours (Philosophy).

32. The appeal is allowed but in the facts and circumstances of this case case, we direct the parties to bear their own costs.