

(2008) 04 DEL CK 0169

In the Delhi High Court

Case No : Writ Petition (Civil) No. 3356 of 2008

Siddharth Singhal

APPELLANT

Vs

Guru Gobind Singh Indraprastha University and Another

RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 04 DEL CK 0169

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Sanjay Sharawat, for the Appellant; Naresh Kaushik, Aditi Gupta and Manish Kaushik, for the Respondent

Final Decision : Dismissed

Judgement

Sudershan Kumar Misra, J.—The petitioner is a student of B.Tech. Course with Maharaja Surajmal Institute of Technology/respondent No. 2. The institute is affiliated to Guru Govind Singh Indraprastha University/respondent No. 1. By this petition, the petitioner prays that he be permitted by the respondents to appear in the IVth Semester End Term Theory Examination 2007-08 in the said course scheduled to commence from 6th May, 2008.

2. According to the petitioner, by a notice dated 17th April, 2008, the respondents have permitted as many as 74 students who were short of attendance to appear for the End Term Semester Examinations as a special case by giving grace attendance to make up the shortage. He states that inexplicably, the petitioner, who ought to have been treated similarly, has been denied this opportunity.

3. Counsel appearing for respondent No. 2 Institute in response to advance notice has tendered a certificate dated 29th April, 2008 issued by the Director of the Institute certifying that the petitioner's aggregate attendance in all subjects is 20.3% only. He has also brought to my notice the relevant ordinances of the

Guru Gobind Singh Indraprastha University applicable to the institute and in particular Clause 9 of Ordinance 11 which, inter alia, states as follows:

A student shall be required to have a minimum attendance of 75% or more in the aggregate of all the courses taken together in a semester, provided that the Dean of the school in case of University Schools and Principal/ Director in case of University maintained/ affiliated institutes may condone attendance shortage up to 5% for individual student for reasons to be recorded. However, under no condition, a student who has an aggregate attendance of less than 70% in a semester shall be allowed to appear in the semester end examination.

4. An examination of this ordinance makes it clear that at best, the 5% shortage in attendance can be condoned for reasons to be recorded and that there is no scope for any further condensation. Looking to the certificate proffered by counsel for respondent No. 2 at the bar, which is taken on record, it is obvious that even if the requisite relaxation were to be granted, the petitioner's attendance would still remain woefully short. At the insistence of counsel for the petitioner, counsel for respondent No. 2 on instructions from Mr. Samandar Singh, Office Superintendent of the Institute states that no student has been given condensation in attendance beyond what is permitted under the relevant ordinances and regulations.

5. Be that as it may, and regardless of this fact, one thing is clear that the petitioner's case must stand on its own footing. Even if it is assumed for a moment that the Institute has acted in violation of any regulation with regard to the attendance rules in the case of some other students by granting them any relaxation or condensation beyond the permissible limits; that would not confer any right on the petitioner to the benefit of the same infraction. In short, equality cannot be claimed in illegality. In U.P. State Sugar Corpn. Ltd. and Another Vs. Sant Raj Singh and Others, , the Supreme Court held that;

26. Yet again in Union of India (UOI) and Another Vs. International Trading Co. and Another, , this Court opined;

A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matter there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case.

Moreover, Article 14 has a positive concept. Nobody can claim equality in illegality.

Similar observations were made by the Supreme Court in Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, and State of U.P. and Others Vs. Rajkumar Sharma and Others, .

6. Consequently, and without going into this fact, I do not find any merit in this petition. The same is dismissed.

7. Since the petition has been dismissed, this application does not survive and is disposed of as such.