
(2001) 09 KAR CK 0038

In the Karnataka High Court

Case No : Writ Appeal No's. 3299 and 3300 of 2001

St. Philomena College, Puttur

APPELLANT

Vs

Shanavas and Others

RESPONDENT

Date of Decision : 05-09-2001

Acts Referred:

Citation : (2001) 6 KarLJ 493

Hon'ble Judges : G.C. Bharuka, J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : P.S. Rajagopal, for the Appellant; Srinivasa Gowda, A.G.A., Basavaprabhu S. Patil and M.I. Arun, for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—The appellant-Institution is affiliated with Mangalore University. It also imparts education and training in BBM course consisting of 6 Semesters. This course of study is regulated by the Regulations framed by the University which are known as "Regulations of the Bachelor of Business Management Programme (BBM) (Semester Scheme)" (hereinafter referred to as "Regulations").

2. Regulation (vi) of the Regulations provides for attendance requirement which reads as follows:

"Attendance and change of subjects.--(a) A candidate shall be considered to have satisfied the requirement of attendance for a semester if he attends not less than 75 per cent of the number of classes actually held upto the end of the semester in each of the subjects. However, the shortage of attendance of students whose attendance is 60 per cent and above but below 75 per cent may be condoned by the Syndicate on the specific recommendation of the Principal on payment of condonation fee as prescribed by the University.

(b) A candidate who does not satisfy the requirements of attendance even in one subject shall not be permitted to take the whole University examination of that

Semester and he shall repeat all the subjects of that Semester as a regular student in a subsequent Semester.

(c).....".

3. In the facts before us, admittedly the students being respondents 1 and 2 could not fulfill the attendance requirement for the 5th Semester. According to the Principal of the appellant-College, in view of the past conduct of these students, he did not find it appropriate to recommend to the University for condonation of shortage in attendance.

4. Aggrieved by the said action of the Principal of the appellant-College, the students preferred a writ petition before this Court. The learned Single Judge after hearing the parties disposed of the writ petition by taking a view that the Principal of the College should have been more sympathetic towards the students and directed him to recommend to the University for condonation of shortage of attendance.

5. The appellant-College being aggrieved by the above order has preferred the present writ appeal, primarily on the ground that under the statutory regulations, the power to recommend for condonation of shortage in attendance, has been conferred on the Principal of the College and unless this Court finds any error in the process of taking such a decision the same cannot be interfered with.

6. Sri P.S. Rajagopal, learned Counsel appearing for the appellant vehemently submitted that even if any material defect could have been found in the decision taken by the Principal, this Court under writ jurisdiction could have at best directed the Principal to take appropriate decision by following the procedure known to law. But, according to him this Court could not have issued mandamus to recommend the case of the petitioner for condonation of attendance.

7. We tentatively agree with the proposition raised at the Bar and directed the first respondent-student to file his representation with the Principal with a direction to the Principal that on consideration of the representation and materials furnished by the respondents he should pass a speaking order with a copy to be furnished to the respondent-student.

8. Subsequently in compliance to our order above, Sri Rajagopal, learned Counsel for the appellant has filed a memo enclosing a copy of the order dated 27-8-2001 passed by the Principal of the College rejecting the prayer for recommending to condone the shortage of attendance, after considering all the pleas raised by the respondent-student.

9. 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. (See Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman, and Ashok Kumar Thakur Vs. University of Himachal Pradesh and Others, .

10. In the above view of the matter, we are of the considered opinion that the learned Single Judge could not have issued mandamus to the Principal to exercise his discretion conferred under the Regulations in the matter directed by this Court.

11. Anyhow we want to make it clear that since the condonation of shortage of attendance has serious repercussion on the educational career of the students, therefore whenever the concerned authorities including the Principal of the College do not find it feasible to pass orders in favour of the students, they should comply with the principles of natural justice, by at least giving an opportunity to the student concerned to place his case through a written explanation/representation and thereafter pass reasoned order considering his pleas. The order so passed should be served on the concerned student so that, if he feels aggrieved by the same he may have an opportunity of moving the appropriate Forum for seeking the appropriate relief.

12. In the present case since this exercise has already been done, we leave it open to the 1st respondent-student to seek his remedy before the appropriate Forum.

13. So far as the 2nd respondent is concerned Sri Rajagopal, learned Counsel appearing for the appellant-College states that he had not filed any representation for condonation of shortage of attendance rather he has preferred to continue with the studies in 5th Semester itself. Sri Patil, learned Counsel appearing for the 2nd respondent does not dispute this fact.

14. Accordingly, subject to the observations and directions made above, the order of the learned Single Judge is set aside. The appeal is allowed. The parties to bear their own costs.