

(2010) 10 DEL CK 0082
In the Delhi High Court
Case No : LPA 539 of 2010

Sukriti Upadhyay

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Bar Council of India Rules, 1975 — Rule 3
Delhi University Ordinances — Ordinance 7

Citation : (2010) 10 DEL CK 0082

Hon'ble Judges : Dipak Misra, C.J.; Manmohan, J

Bench : Division Bench

Advocate : Deepak Anand, for the Appellant; M.J.S. Rupal, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—Calling in question the legal substantiality of the order dated 12th July, 2010 passed by the learned Single Judge in WP(C) 13354/2009, the present intra-Court appeal has been preferred under Clause 10 of the Letters Patent. Be it noted, the learned Single Judge has disposed of the said writ petition along with other writ petitions by a composite order.

2. The facts which are requisite to be stated are that the appellant-petitioner (hereinafter referred to as "the appellant") was a student of first semester in the LL.B course in University of Delhi and her attendance was 56%. It was pleaded that she could not attend classes as she was suffering from back ache and infection in the digestive system as a result of which she was compelled to go to her hometown in Rajasthan from 1st August, 2009 to 1st September, 2009. She was allowed to take the first semester examination and thereafter further examinations because of the interim directions of this Court. It was contended in the writ petition that the appellant had attended all the lectures in the subject of Law of Torts and Family Law but was awarded only 50% and 60% attendance on account of the fact that the attendance was marked on chit papers and not in the attendance registers and due to the said commotion, to get the attendance

marked at the end of the lecture, many students frequently were not able to get their attendance marked. It was averred that Clause 2(9)(a)(ii) of the Ordinance VII of the respondent-University is still applicable and, therefore, the competent authority of the University could exercise the power of relaxation but they have deliberately deprived the appellant the said benefit of relaxation. It was also urged that the stipulation in the Clause in question is not mandatory but directory.

3. The stand put forth by the appellant was combatted by the University stating, inter alia, that Clause 2(8)(a) of Ordinance VII has to be read in conjunction with Bar Council of India Rules, 1975 (hereinafter referred to as "1975 Rules") and on a conjoint reading of the same, it would be graphically clear that a student must secure 66% attendance in each subject in each semester. It was further put forth that under the proviso to the Rules framed by the Bar Council of India, only in exceptional cases, the Dean, Faculty of Law/Professor-in-charge, Law Centre concerned can condone attendance short of those required by the said Rule, if such students have 66% of attendance in aggregate and for that the said Dean or the Professor-in-Charge is required to record reasons for communication of the same to the Bar Council of India.

4. The learned Single Judge referred to the relevant Clauses in the Ordinance, the Bar Council of India Rules pertaining to the attendance and after placing reliance on *S.N. Singh v. Union of India* 106 (2003) DLJ 329, *Satyendra Singh v. University of Delhi* WP(C) No. 3225/2008, *Kiran Kumar v. University of Delhi* and Ors. WP(C) No. 9143/2007, *Komal Jain v. University of Delhi* WP(C) No. 8534/2008, directed as follows:

That the petitioners in all the five writ petitions bearing Nos. W.P.(C) 13314/2009 , 13354/2009, 13391/2009, 13400/2009 and 13456/2009 were students of the Ist semester at the time of the filing of the writ petitions and as an interim measure they were allowed to appear in the Ist semester examinations and thereafter to attend the classes of the IInd semester and then also allowed to appear in the examinations of the IInd semester and their results were directed to be kept in a sealed cover. However, in W.P. (C) No. 13427/2009, the petitioner was also a student of the Ist semester at the time of filing of the present writ petition and was allowed to appear in the Ist semester examination but she did not seek the interim relief to attend either the classes of the IInd semester or to appear in the IInd semester examinations. Be that as it may, as this Court is of the view that these six petitioners are not entitled relaxation for the shortfall of attendance as they were not eligible to sit for the examination of the Ist semester, therefore they are not entitled to get their results of the Ist or even the IInd semester declared, in which exams they had appeared pursuant to the interim orders passed by this Court. However, in the peculiar facts of the case at hand, these six students would not be required to appear in the entrance examination for admission in the Ist semester but would be given re-admission to the Ist semester in this academic year beginning July, 2010. However, this

order shall not be treated as a precedent.

5. Questioning the correctness of the impugned order, it is submitted by Mr. Deepak Anand, Learned Counsel for the appellant that the learned Single Judge has fallen into error in his interpretation of Clause 2(9)(a)(ii) of the Ordinance VII of the University by holding that the same is not applicable to the students prosecuting LL.B course though the same has not been amended. It is urged by him that if the Clauses engrafted in the Ordinance are read in a purposeful manner, they would not convey that obtaining of requisite percentage of attendance is mandatory. The Learned Counsel would submit that it is directory in nature and the Dean or the Professor of the faculty has the power to relax and in the case at hand, the appellant deserved relaxation as under compelling circumstances she had to leave for her hometown.

6. Mr. Rupal, Learned Counsel appearing for the University, submitted that after the 1975 Rules have come into existence covering the issue pertaining to the students having requisite percentage of attendance as a condition precedent for appearing in the examination, the Clause 9(2) of the University Ordinance would not govern the field as the University has to be governed by the 1975 Rules. The Learned Counsel further submitted that the question of mandatory or directory nature of the Clauses in the Ordinance does not call for interpretation in view of the fact that in praesenti the 1975 Rules govern the sphere of attendance, which have been framed under The Advocates Act, 1961. It is his further submission that the students who prosecute the study of law have to understand the significance and importance of the course and should not take it lightly under some pretext or the other.

7. In this context, we may refer to Ordinance VII of the respondent-University. The said Ordinance deals with conditions for admission to examinations. The Learned Counsel for the appellant has invited our attention to the Clauses 8 and 9 of the ordinance. Clause 8 deals with what should be the requirement of minimum attendance for a student. We think it apt to reproduce the said Clause in entirety:

(8)(a) The students shall be required to put in minimum attendance of 66% of the lectures on each of the subjects as also at the moot courts and practical training course.

Provided that in exceptional cases for reasons to be recorded and communicated to the Bar Council of India, the Dean of the Faculty of Law/Professor-in-Charge of the Law Centre may condone attendance short of those required by this Rule, if the student had attended 66% of the lectures in the aggregate for the semester examinations.

Provided further that no person shall be deemed to have satisfied the required conditions in respect of his instructions unless, in addition to the requirement regarding attendance and other conditions, he has appeared and satisfied by his performance the Professor-in-Charge of the Law Centre in such test, written and/

or oral, as may be held by him in his discretion. The Professor-in-Charge shall have, and shall be deemed always to have had, the power to detain a student in the same class in which he has been studying, or not to send him up for the University Examination, in case he did not appear at the tests aforesaid or his performance was not satisfactory.

The Professor-in-Charge of the Law Centre shall have power to strike off the name of a student who is grossly irregular in attendance inspite of warning, or, when the absence of the student is for such a long period that he cannot put in requisite percentage of attendance.

(b) In the case of students studying for the LL.M. Part I Examination, no student shall be deemed to have pursued a regular course of study unless:

(i) he has attended not less than two-thirds of the total

number of lectures delivered during the academic year in which he has been admitted as a regular student, and

(ii) he has submitted not less than seven essays of the requisite standard as prescribed by the Dean during the academic year.

(c) In the case of student studying for the LL.M. Part II Examination, no student shall be deemed to have pursued a regular course of study unless he has attended at least ten of the seminars conducted for the LL.M. Part II classes, five of which must have been attended before he appears at the examination in the written papers.

Note: (i) The term "Lectures" referred to in (b) above will include lectures and discussion classes.

(ii) In determining the exact number of the minimum requisite attendance, i.e., two-thirds of lectures, tutorials, seminars, moots, etc., fraction shall be ignored.

Clause 9 deals with how certain relaxations can be granted to students in case of short attendance. The said Clause is reproduced hereinbelow:

(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 Defence 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 student who is required to participate in 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 lectures 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.

(d) in the case of a married woman student who is granted maternity leave, in calculating the total number of lectures delivered in the College or in the University, as the case may be, for her course of study in each academic year, the number of lectures in each subject delivered during the period of her maternity leave shall not be taken into account:

Provided that Post-graduate Degree students under the Faculty of Medical Sciences who apply for maternity leave either in I year or in II year, may be allowed the maternity leave for a period not exceeding 3 months in an academic year but such students will be required to complete the duration of the course as regular students as required in the Ordinance and the students will be permitted to submit the thesis or to take the written examination, as the case may be, in January instead of August that year.

8. Rule 3 of the 1975 Rules reads as follows:

The students shall be required to put in a minimum attendance of 66% of the lectures on each of the subjects as also at tutorials, moot courts and practical

training course.

Provided that in exceptional cases for reasons to be recorded and communicated to the Bar Council of India, the Dean of the Faculty of Law and the Principal of law colleges may condone attendance short of those required by the Rule, if the student had attendance 66% of the lectures in the aggregate for the semester or examination as the case may be.

9. On a perusal of the aforesaid Rule, it is quite clear that a student is required to have the minimum attendance of 66% of the lectures on each of the subjects as also on tutorials, moot courts and practical training course. The exception that has been carved out is that if the student has 66% attendance of the lectures aggregate for the semester or examination, as the case may be, the Dean of the Faculty of Law and the Principal of law colleges may condone attendance short of those required by the Rule. The Learned Counsel for the parties fairly stated that the case of the present appellant does not fall in the said exceptional class.

10. The question that falls for consideration is whether Rule 3 of the 1975 Rules or the Statutes framed by the University pertaining to obtaining of percentage of attendance would prevail. It is not in dispute that the Ordinance of the University deals with matters relating to admission to the university, transfer of students from one course to the other, migration of students, conditions for admission to examination, conduct of examination and various other aspects. In the case of S.N. Singh (supra), the Division Bench noticing the stipulation in the relevant Clauses in the Statute VII and the Rule framed by the Bar Council of India has held as follows:

28. Since the Bar Council of India recognises the LL.B. Degree Course of the University of Delhi and the Bar Council of India is a statutory body constituted under the Advocates Act 1961 and is empowered to lay down standards of legal education, University of Delhi would be required to bring its rules in conformity with the rules of the Bar Council of India.

Eventually, the Division Bench directed as under:

37. For future, directions contained above, namely, no relaxation would be given from the requirement of clearance of 5 or 15 papers as the case may be for promotion to the third and fifth term shall be adhered to by the University. Further, the attendance rules shall be amended by the University of Delhi and shall be brought in conformity with the attendance rules framed by the Bar Council of India. The permissible relaxation would be as per the rules framed by the Bar Council of India and manner of exercise shall be as so framed there under.

11. In Kiran Kumari (supra), another Division Bench of this Court referred to the decisions in Baldev Raj Sharma Vs. Bar Council of India and Others, , Bar Council of India and another Vs. Aparna Basu Mallick and others, and expressed the view as under:

13. In the light of the above, we find it difficult to appreciate as to how the requirements of 66% in each subject or as a condition of eligibility for appearance in the examination or the requirement of 66% attendance in the aggregate for purposes of granting the benefit of condonation in the shortfall can be said to be either illegal or arbitrary. The decisions delivered by the Supreme Court and by this Court to which we have referred above have in our view authoritatively held that the LLB course was a professional course in which the candidates have to ensure regular attendance of lectures and those who do not attend the stipulated percentage of lectures would not even be eligible for enrolment as members of the Bar. Such being the importance given to the attendance of lectures, there is no question of the requirement stipulated by the Rules being either irrational, unconstitutional or illegal in any manner. The quality of training which a candidate gets during the time he undergoes the course is directly proportional to the number of lectures that he attends. The failure of a candidate to attend the requisite number of lectures as stipulated by the relevant rules can legitimately disentitle him to claim eligibility for appearing in the examination.

14. That brings us to the contention vehemently urged by Mr. Mittal that insistence upon 66% lectures in the aggregate as a condition precedent for the exercise of the power of condonation was irrational, for it amounts to empowering the competent authority on the one hand and denuding him of that power on the other. We do not think so. What is the minimum percentage of lectures which a candidate must attend in each subject or on the aggregate is a matter on which the academic bodies like the University and the Bar Council of India are entitled to take a decision. If in the opinion of the Bar Council and the University, a candidate cannot be said to have taken proper instructions or meaningfully undergone the course, unless he attends a minimum of 66% lectures in the aggregate, this Court cannot but respect that opinion. In matters relating to academics and standards of education, the Court would show deference to the opinion of the academicians unless a case of patent perversity is made out by the petitioners. The present is not, however, one such case where the requirement of the rule can be said to be so perverse or irrational as to call for the intervention of this Court. As a matter of fact, the minimum percentage of lectures having been fixed at 66%, still gives to the students freedom to miss or abstain from 34% of the such lectures. That is a fairly large percentage of lectures which a student may miss for a variety of reasons including sickness or such other reasons beyond his control. No student can however claim that apart from 34% lectures which he is entitled to miss even without a cause, the shortage to make up 66% should be condoned if he shows good cause for the same.

12. In *Smt. Deepti v. Vice Chancellor, University of Delhi* WP(C) No. 18051/2006 decided on 20.04.2007, a learned Single Judge of this Court has observed as follows:

11. The main difference between the amended and un-amended provision is that while the un-amended provision pertained to the number of lectures delivered in a year, after amendment the provision relates to the number of lectures in each of the subjects and has reference, in the proviso, to the aggregate of lectures for the "semester examination". Thus, the Ordinance, by virtue of the said amendment, was sought to be brought in line with the provisions of Clause 3 of Section B of Part IV (Standards of Legal Education and Recognition of Degrees in Law for admission as Advocates) of the Bar Council of India Rules. The implication of this amendment is that rather than requiring an average of 66% attendance in the year, students preparing for the LL.B. Degree must attend 66% lectures in each subject in order to be eligible to sit for semester examinations.

12. Unfortunately, somewhat of a dilemma has emerged. Although the University amended Clause 2(8)(a) of the Ordinance VII to be consistent with The Bar Council of India Rules, it did not bring about any change in Clause 2(8)(b) or 2(9) (a), (b), (c) or (d) of the said Ordinance. This has created an apparent inconsistency in the language of the attendance rules. It seems that although amended Clause 2(8)(a) requires calculation of attendance on a subject-wise semester-wise basis, Clause 2(8)(b) (albeit pertaining to the LL.M. Programme) and Clause 2(9) (which refers to all courses in general and is not limited to the courses offered by the Law Faculty) continue to refer to attendance calculated on a yearly basis. There is no doubt that the piecemeal amendment brought about by the University in the Ordinance has introduced a certain degree of confusion.

13. We entirely agree with the aforesaid pronouncement of law. The University would have been well advised to compartmentalize the Clauses in the Ordinance or put it differently so that such a situation could have been avoided, but the same has not yet been done. Be it noted, the Learned Counsel for the University submitted with all fairness that that the 1975 Rules have to prevail and Clause 9 of the Ordinance VII does not apply to the students who prosecute LL.B course. We have already accepted the said submission. As has been indicated earlier, the appellant has obtained 56% of attendance. That apart, she does not come within the relaxation clause. Thus, extension of benefit of relaxation does not arise.

14. Before parting with the case, we are obliged to state that the field of legal education has its own sacrosanctity. With the passage of time, the field of law is getting a larger canvas. A well organized system for imparting of education and training in law has become imperative. In a democratic society where the rule of law governs, a student of law has a role to play. Roscoe Pound has said "Law is experience developed by reason and applied continually in further experience". A student of law has to be a dedicated person as he is required to take the study of law seriously as pursuit of law does not countenance any kind of idleness. One may conceive wholesome idleness after a day's energetic and effective work. An active mind is the mother of invention. A student prosecuting study in law, in order to become efficient in the stream of law, must completely devote to the learning and training. One should bear in mind that learning is an ornament to

continuous education and education fundamentally is how one engages himself in acquiring further knowledge every day. If a law student does not attend lectures or obtain the requisite percentage of attendance, he cannot think of taking a leap to another year of study. Mercy does not come to his aid as law requires a student to digest his experience and gradually discover his own ignorance and put a progressive step thereafter.

15. In view of the aforesaid, we perceive no error in the conclusion arrived at by the learned Single Judge and accordingly we concur with the same. Thus, the inevitable result is the dismissal of the appeal which we direct. In the facts and circumstances of the case, there shall be no order as to costs.