

(2001) 12 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 11179, 13020, 13402, 13551, 14010, 14158, 14172, 14358, 15158, 15163, 15444, 17109, 17945, 22826 and 141153 of 2001

Tarique Arafat and Others

APPELLANT

Vs

Aligarh Muslim University and Others

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 1 UPLBEC 690

Hon'ble Judges : S. Rafat Alam, J

Bench : Single Bench

Advocate : S.U. Khan, Anurag Khanna and Anil Sharma, for the Appellant; Dilip Gupta, S.C., for the Respondent

Judgement

S. Rafat Alam, J.—In all these petitions the controversy involved is common and identical, therefore, with the consent of the learned Counsel for the parties they are heard together and are being disposed of by this common order.

2. The short grievance of the petitioner is that the they have not been permitted to appear in the University examination on the ground that their lectures fell short and thus in terms of the provisions of the Ordinance, they are not eligible to appear in the University examination.

3. When this matter was earlier taken up as fresh before another Bench of this Court on 26-3-2001 the University was granted time to file counter affidavit and by an interim order petitioners were provisionally permitted to sit in the examination which was scheduled to commence from 28.3.2001. Pursuant to that order all the petitioners appeared in the examination but their results were not declared. However, when the matter was again taken up on 22-5-2001, it was ordered to be listed in the second week of July, 2001 for admission final disposal and in the meanwhile, University was directed to declare the result of the petitioners within a period of two weeks from the date a certified copy of the

order is produced before the Registrar of the Aligarh Muslim University. Similar order directing to declare the result was also passed in Writ Petition No. 14238 of 2001 on 25-5-2001. The University being aggrieved with the aforesaid order dated 25.5.2001 preferred Special Appeal No. 696 of 2001 of which was heard by a Division Bench of this Court and disposed of vide order dated 12-6-2001. The operative portion of the order dated 12.6.2001 is as under ;

"Considering the facts and circumstances of the case, it is directed that the University will examine the answer book of the petitioner-respondent and mark-sheet will be prepared but it shall not be disclosed to the petitioner until further orders passed in the writ petition by the learned Single Judge.

It is, however, open to the petitioner respondent to apply to this Court in writ petition in respect of admission to higher courses and the Court may pass appropriate orders on such applications.

The Special Appeal is, accordingly, disposed of finally."

4. Sri S.U. Khan, learned Counsel appearing for some of the petitioners vehemently argued that since 1995 to 2000 the University did not strictly adhere to the requirement of attendance and the students even if short of attendance, were permitted to sit in the examination and, therefore, because of the practice prevailing during the last several years these petitioners also remained under the impression that the attendance is not necessary for appearing in the University examination. It is also argued that some of the candidates who have also not completed or attended the required number of classes have been permitted to appear in the examination and, therefore, the action of the University is arbitrary and discriminatory. It is further submitted that the petitioner of writ petition No. 13402 of 2001 has already been admitted in MBA course in Jamia Hamdard Deemed University, Delhi and, therefore, if his result is not declared he shall suffer irreparable loss. Reliance is placed on the Division Bench Judgment of this Court in the case of Khalid Anwar Haque and Ors. v. Aligarh Muslim University, Aligarh and Ors. 1986 UPLBEC 1514.

5. Sri Anurag Khanna, learned Counsel for the petitioner of writ petition No. 17109 of 2001 although adopted the arguments of Sri S.U. Khan, Advocate but further submitted that the petitioner is a student of Mass Communication in Journalism, and at times he is required to go outside the University to cover the documentary aspect, which is a part of his curriculum and as such in his case the attendance should not be made necessary.

6. Mr. Anil Sharma learned Counsel for the petitioner of writ petition No. 14158 of 2000 also adopted the above argument but further added that the students, who have fallen short of lectures were given show cause notice but similar notice was not given to the petitioner. In support of his contention he drew my attention to the documents annexed in the counter affidavit as Annexure CA 2 A, 2-C & 2-D. He further added that the petitioner fell ill in the month of October and November, 2000 on account of which he could not attend the classes. Therefore,

the University may be directed to condone the shortfall of attendance. Learned Counsels appearing in other petitions adopted above argument and did not address separately.

7. On the other hand Mr. Dilip Gupta learned Standing Counsel vehemently opposed the prayer and cited the Judgment of Hon''ble the Apex Court in the case of Regional Engineering College, Hamirpur and Another Vs. Ashutosh Pandey, and also the Judgment of Division Bench of this Court in the case of Parvez Ahmad and Ors. v. Aligarh Muslim University and Ors. 1987 UPLBEC 517 and submitted that the University in exercise of power u/s 29 of the Act has framed ordinances dealing with examinations which provides that a student must attend 75% of lectures to be eligible for appearing in the University examination. The petitioners having failed to attend the required number of classes in terms of the Ordinance were rightly not allowed to appear in the examination. It is also submitted that because of interim order of this Court the petitioners were provisionally permitted to appear in the examination but their result cannot now be declared, as they did not attend the minimum required lectures practicals. Relying on a Judgment of the Apex Court in the case of Regional Engineering College, Hamirpur and Anr. v. Ashutosh Pandey, (supra). It is urged that this Court while exercising jurisdiction under Article 226 of the Constitution of India, cannot issue mandamus directing condonation of lectures beyond the minimum required number of lectures which a candidate must attend in terms of the Ordinance.

8. It has been asserted in the wilt petition that for the last five years i.e. from May, 1995 to May, 2000 absolutely no attendance was required for appearing in the examination of any class in the University and, therefore, the petitioners and several other students of the University were under the impression that like previous years this year also requirement of attending minimum number of classes would not be necessary for appearing in the examination. There is no categorical denial by the University about the aforesaid fact in its counter affidavit. It has, however, been averred in the counter affidavit that the Ordinance requiring 75% attendance was not amended or deleted by the University during the period 1995 to 2000. It has also been stated that during that period about 146 students belonging to Class IX and professional courses like MBBS were detained due to shortage in attendance. However, during the course of argument. Sri Dilip Gupta, learned Counsel for the University could not point out that during the period from 1995 to 2000 the University did not permit a single student to sit in the examination who failed to achieve 75% of attendance.

9. Be that as it may, it is admitted position that all the petitioners have appeared in the examination by virtue of interim order of this Court but their results have not been declared. Chapter XVII (Examinations) of the Ordinance framed u/s 29 of the Act provides that the examination of University other than Doctorate examination shall be open to regular students i.e., the candidates who have

undergone regular course of study in the University or in an institution maintained by the University for a period specified for that course of study. It further provides that a candidate shall be deemed to have undergone regular course of study for the period specified for the course to be eligible to appear at the examination if he has attended 75% of lectures, practical and tutorials/seminars. However, proviso of Chapter-XVII enables the Academic Council to condone any shortage of attendance in special circumstances. Therefore, the Academic Council which is the principal academic body of the University and exercises general supervision over the academic policies of the University can in special circumstances condone any shortage of attendance. It is a well-settled legal position that matters relating to academic policies should normally be left to decision of the educational authorities and the Court should interfere with them only when it is necessary in the interest of justice. Reference may be made to the Judgment of the Apex Court in the case of Bhushan Uttam Khare Vs. The Dean, B.J. Medical College and others,

10. In that view of the matter, I am of the opinion that the petitioners should have approached the Academic Council by moving a proper application for condonation of their shortage of attendance and the writ petition is not the appropriate remedy. Sri Dilip Gupta, learned Counsel for the University fairly states that if the petitioners file application representation before the University for condonation of shortage of attendance the same shall be placed before the Academic Council and appropriate decision will be taken in the matter expeditiously.

11. In that view of the matter and taking into account the entire facts and circumstances of the case. I dispose of this petition at this stage with the direction that the petitioners may approach the University by filing proper application representation. If such application representation is filed by the petitioners or by other candidates similarly situated, within two weeks from the date of issuance of certified copy of this order, the University shall place such application representation before the Academic Council for its decision in the matter of condonation of their attendance. The Academic Council shall, thereafter, look into the grievance of petitioners and shall consider their application/representation sympathetically keeping in view the fact that for the last five years, i.e. from May, 1995 to May, 2000, the requirement of attendance was not strictly adhered to and pass appropriate order in accordance with law. It is, however, made clear that the Academic Council while considering the cases of petitioners, shall not be influenced by the observations made by this Court and shall take its own decision considering the hardship of the students. If the Academic Council arrives to the conclusion that the shortage of attendance of the petitioners is required to be condoned, in that event the result of petitioners shall be declared forthwith by the University. This Court hopes and trust that the Academic Council shall take its decision expeditiously preferably within two weeks from the date of filing of such representation.

12. With the aforesaid direction, all the writ petitions are disposed of.