
(2004) 08 CAL CK 0026

In the Calcutta High Court

Case No : M.A.T. No. 1237 of 2003 and C.A.N. No. 4285 of 2003

University of Technology and Others

APPELLANT

Vs

Sumanta Ghosh and Others

RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

West Bengal University of Technology Act, 2000 — Section 25(3), 26

Citation : (2004) 2 CALLT 617

Hon'ble Judges : Ashoke Kumar Mathur, C.J.; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Pratap Chatterjee, Nandini Mitra, Kallol Basu, Manoj Malhotra and Sanjoy Saha, for the Appellant; Ashok Banerjee and J. Bhattacharjee, Sardar Amjad Ali, Ashok Chakraborty, Pallab Chatterjee and P.R. Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

Ashoke Kumar Mathur, C.J.—This is an appeal directed against an interim order passed by the learned single Judge dated 16th May, 2003 whereby the learned single Judge passed an order in terms of prayer (c) of the writ petition. Prayer (c) of the writ petition reads as under:

"(e) Ad interim order of injunction directing the respondents, their men, agents, assigned subordinates to allow the petitioners to appear in the examination on and from 19.5.03 on the basis of acceptance of examination fee made annexure "P-2" herein and further to issue admit card till disposal of the Rule;"

2. It was further observed by the learned single Judge that this order was made without prejudice to the rights and contentions of the parties to the writ petition including the petitioners. Aggrieved against this order the present appeal was filed by the University of Technology. The appeal was filed without the certified copy of the order, however, looking to the nature of the case that interest of students were involved, we permitted to file the appeal without the certified copy of the order.

3. We have heard learned counsel for the parties and perused records. The case of the writ petitioners was that they are students of Haldia Institute of Technology, affiliated to University of Technology, West Bengal, undergoing education in different branches of undergraduate course in Engineering. The writ petitioner Nos. 1 to 3 (however petitioner No. 2, Siddhartha Ghosh withdrew from the writ petition) were going to appear in the 2nd semester examination and petitioner Nos. 4 and 5 were going to appear in the 4th semester examination of the said Haldia Institute of Technology. It was alleged that the petitioners were qualified and eligible to appear in the aforesaid examinations and the college accepted examination fee from the writ petitioners for their respective examinations. The examination was scheduled to commence from 19th May, 2003, but till 15th May, 2003 no admission card was issued to the writ petitioners by the University of Technology, although all the writ petitioners deposited the examination fee either in time or with late fee. Therefore, they rushed to this Court to file the present writ petition. It was alleged that there was no reason for such illegal action of the University not to allow these students to appear in the forthcoming examination. Therefore, these writ petitioners sought a writ of mandamus directing the University to issue admit card to them for appearing in the ensuing examination. Learned single Judge after hearing the writ petitioners passed the aforesaid interim order *ex parte*. Hence the present appeal was filed by the University and an interim order was passed by this Court staying operation of the order of the learned single Judge. Finally, the matter was placed for early disposal dispensing of filing of certified copy of the order. The reason given by the University was that all these writ petitioner lacked requisite 75% of the attendance which was required for a student for appearing in the examination and in that context the University invited our attention to Regulation 4(1) and 4(2) of the Chapter II of the Regulation under the heading "Academic Regulations", which are relevant for our purpose, read as under:

"4. Eligibility for appearing in Examinations:-

4.1. A student shall be eligible to appear in an examination provided he pursues a regular course of study in respective department and attends at least 75% of theoretical, practical and sessional classes on an average, held during the semester. The attendance shall be considered from the date of admission of the candidate in the institution/college.

4.2. Concessions. A student who has been absent for short periods due to participation in cultural, sports, other academic/official assignments in the interest of the Institution/College/University/Government with prior written permission of the head of the Institution/College, shall be permitted a maximum of additional concession of 10% in attendance and would be eligible for appearing in examination of a minimum of 65% of attendance in a semester."

4. As per regulation 4(1), it is apparent that a candidate is required to attend at least 75% of the theoretical, practical and sessional classes on an average, held during the semester and the attendance shall be considered from the date of

admission of the candidate in the Institution/college. Regulation 4(2) gives a concession to the students whose attendance is short due to participation in cultural, sports, other academic/official assignments in the interest of the Institution/ College/University/Government with prior written permission of the head of the institution/college and he could be permitted a concession to the extent of 10% in attendance and he would be eligible to appear in the examination of the University with a minimum of 65% attendance in the semester. The University has pointed out that from the forms received from Haldia Institute of Technology it is apparent that these writ petitioners were not having the requisite attendance. The attendance of the writ petitioners are as under:

Sumanta Ghosh 39% Siddhartha Ghosh 36% Surya Rawlani 38% Soumesh Bhattacharjee 31% Partha Sarathi Banerjee 34%

5. Since the University found that the attendance of these writ petitioners was below 75% they did not issue admit cards to these writ petitioners. Haldia Institute of Technology also filed an affidavit in opposition wherein they pointed out that these writ petitioners did not attend the requisite number of classes in their respective courses. Therefore, they were not eligible to be sent up for their respective semester's examination. It was alleged that initially the institute decided not to send the forms of these writ petitioners to the University for semester's examination. When this fact came to the knowledge of the students a large number of students made a sit in strike demonstration in front of the main door of the administrative building preventing the entry and exit of the officials on 6th May, 2003 at 9 a.m. and a similar incident took place on 30th April, 2003 when the students detained the Director and other officials till 2.30 p.m. and in view of this demonstration and pressure tactics the Institute was forced to hold a meeting of academic council on 6th May, 2003. On account of this compelling situation it was decided to forward the forms of these students to the University and accordingly forms were sent to the University along with details of percentage of classes attended by these students on 7th May, 2003. Therefore, the submission of the Institute was that it knew fully well that these students were not eligible to appear in the examination as they lack requisite attendance but on account of compelling situation of strike and coercive method adopted by the students, the Institute was forced to forward the forms of these candidates disclosing their attendance. The University accordingly acted on these forms and declined to permit them to appear in the semester examination. Thereafter a supplementary affidavit was filed by the writ petitioner No. 1 disclosing that the University permitted some of the students who did not have the requisite attendance. The University filed on opposition to the supplementary affidavit and pointed out that as far as Soumadip Banerjee was concerned, the Controller of Examination found that Sri Soumadip Banerjee did not have the requisite attendance. therefore, a communication was sent to the Institute of Engineering and Management, Salt Lake and a reply was received from the Institute that there was a typographical error regarding the attendance of Soumadip Banerjee,

B. Tech. Computer Science, 2nd year having Registration No. 104010111030 of 2001-2002. The said Soumadip Banerjee had attended 234 out of 270 classes and had actually obtained 86.67 percentage. Similarly, with regard to Partha Karmakar and Prasenjit Dutta it has been submitted that Partha Karmakar attended 198 lectures out of 270 and had a percentage of 73.33 and Prasenjit Dutta had attended 186 lectures out of 270 and had a percentage of 68.89. These students also did not have the requisite attendance. Therefore, inquiry was made from the said Institute and it was informed by the Institute that the said students had participated in the University/College co-curricular activities with the prior permission of the Principal and had the requisite 65 percent attendance as required under Clause 4.2, Chapter II of the regulations and they are entitled to 10% concession. Therefore, the University submitted that no person without the requisite attendance had been permitted to sit in the examination. Learned counsel for the appellant submitted that normally the University go by the details supplied by the Institute/College and on examination if it is found that the incumbent is lacking the requisite attendance they reject the form or they can make inquiry. As far as these writ petitioners were concerned they lacked requisite attendance therefore they were not permitted. Learned counsel for the Haldia Institute of Technology tried to produce the list of candidates who were sent to the University for examination and candidates who did not possess the requisite attendance as their names were sent under pressure. We are not concerned with other candidates.

6. Learned counsel for the writ petitioners/respondents very strenuously urged before us that this was a matter involving student's career and the University was under an obligation to have permitted all these writ petitioners when examination fee was accepted by them. His insistence was that since the Institute had forwarded the names of these students there was no reason of the University to stop them from appearing in the semester examination. Learned counsel also tried to submit that it was the fault of the Institute that they did not examine the matter properly and tried to make certain allegation against the Institute.

7. We have examined the matter and found that this was a simple case of lack of requisite attendance of the candidates and the University rightly declined to permit them to appear in the semester examination. After going through the writ petition also, the grievance of the writ petitioner was that they had been wrongly denied admission card and there was no allegation against the University/Institute except that they were not permitted to sit for the examination. Now from the affidavit filed by the University as well as the Institute it is more than apparent that the students lacked requisite attendance. Nowhere it is stated by the writ petitioners that their attendance had not been properly recorded by the Institute. Since the students ought to have requisite attendance and as per Regulation 4.1, Chapter II and they were not having requisite attendance for appearing in the semester examination, we do not think that the University had committed any illegal act.

8. It was also contended by the learned counsel for the writ petitioner that as per Section 25(3) of the West Bengal University of Technology Act, 2000 regulations were required to be framed by the University. Section 25(3) says that the first Vice-Chancellor, in consultation with the State Government and after giving due regard to any suggestion given by the Government, shall, with the assistance of a committee consisting of not less than six members nominated by that Government, cause the first regulation of the University to be made. It was further required that the first regulation shall, after the Chancellor has approved the same in consultation with the Minister, come into force on such date as the Chancellor may appoint. The first regulations were framed and the Chancellor appointed 27th day of December, 2002 as the date on which the first regulation of University of Technology shall come into force. But the actual notification was issued on 10th April, 2003. The notification had been issued on 10th April, 2003 but it had been brought into force with effect from 27th December, 2002 as the Chancellor fixed this date on which the first regulation would come into force. Therefore, an argument was sought to be raised that it could not come with retrospective effect as Section 25(3) of the West Bengal University of Technology Act, 2000 does not contemplate that the regulation could come into effect with effect from retrospective date i.e., 27th December, 2002. It is true that the notification which has been brought to our notice was issued on 10th April, 2003 but the Chancellor has already fixed 27th December, 2002 as the date on which the first regulation would come into effect. Therefore, from January, 2003 the Institute started regulating its business on the basis of said first regulation. It may be that the notification was issued on 10th April, 2003 but the Chancellor appointed 27th December, 2002 as the date on which the first regulation would come into force. The notification may be afterwards but the actual date which was fixed by the Chancellor was 27th December, 2002. Section 25(3) of the West Bengal University of Technology Act, 2000 says that the regulation shall come into force from the date the Chancellor may appoint. It appears that the Chancellor approved 27th December, 2002 and therefore the University started acting from January, 2003 though the notification had come into force subsequently. The approval of the Chancellor is a must and it is not necessary to have the notification notified and the notification is also not a condition precedent u/s 25(3) of the West Bengal University of Technology Act, 2000. What is relevant is the date which the Chancellor approves. Therefore subsequent notification by the Secretary to the Chancellor will not make the notification retrospective because the date was fixed by the Chancellor as 27th December, 2002. This is purely an administrative act of the Chancellor and the notification might have come subsequently, that will not make it retrospective. What is paramount is the approval of the Chancellor from what date the first regulation shall come into force and that has been fixed as 27th December, 2002. It may be that the same was subsequently notified but that will not make the issuance of this regulation bad on that count. Therefore, the argument that the first regulation had come into force with retrospective effect and it would not apply to students of these semester, cannot be accepted. This regulation has been

uniformly applied by the University to all affiliated institutions.

9. Even assuming for the sake of argument that there is retrospective then too as per Section 26 of the Act of action shall be deemed to have been validly done or undertaken under this Act. Section 26 reads as under:

"26. Notwithstanding anything contained in the foregoing provisions of this Act, anything done or deemed to have been done or any action taken or deemed to have been taken or any appointment made under this Act prior to the date appointed under Sub-section (9) of Section 25 shall, unless it is otherwise provided in this Act, be deemed to have been validly done or taken or made under this Act."

10. Before parting with the case, we like to observe that the requisite attendance of lectures especially in the technical subject is most important. If the students do not attend classes, that will have a bad impact on their education as well in the society. Parents make huge investment on their wards in sending them to these colleges. Technological education in India has become an expensive proposition and if students do not attend classes then it is going to give a bad signal in the society. Minimum attendance is a must so that these students are glued in classes and be serious in their studies. If they spend most of the time in studies, then they will have less time to indulge in anti-social activities. This will also have sobering effect on the teachers as they will not be able to skip their classes as minimum attendance of classes is a must. Therefore, looking to the social point and educational point of view the insistence of the University to have 75% attendance is a laudable object and it should be adhered to. But the University should also ensure that the Institutions where they are studying should not play fast and loose game with the students. The regulations should be adhered to seriously. Whenever University finds that any Institution has not acted properly and forwarded names of students who have not attained minimum attendance, it should come out strongly against them. The University also owes a duty to see that the Colleges/Institutions which are affiliated with them should forward the names of the students who have bonafide attended 75% of classes. Whenever any complaint is received from the students or any quarter it should be properly attended and if the Vice Chancellor finds that any of the Institution has acted in derogation of the Regulations laid down by the University then such institution should be dealt with strongly.

As a result of the above discussion we are of the opinion that the order passed by the learned single Judge cannot be sustained and the same is set aside. Since nothing remains to be decided in the writ petition, we dismiss the writ petition also. The appeal is allowed with no order as to costs.

N.B.:--Prayer for stay of operation of the judgment made by the learned counsel for the respondents is refused.

If an urgent xerox certified copy of this judgment is applied for, the same is to be supplied to the parties at an early date.

A.K. Banerjee, J.

I agree.