

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P. (C) 9147/2008

Date of decision: 16.01.2009

MS. AKRITI JAYANT

..... Petitioner

Through : Mr. Mukesh Kalwani, Advocate.

versus

NATIONAL INSTITUTE OF FASHION
TECHNOLOGY & ORS.

..... Respondents

Through: Ms. Vibha Datta Makhija
with Mr. Philemon Nongbri, Advocate.

**CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J. (ORAL)

% Issue Rule. With consent of counsel for parties, the Writ Petition was heard finally.

2. The petitioner seeks direction to the second respondent to allow her to appear in the 3rd Semester examination conducted by the National Institute of Fashion Technology (hereafter called "NIFT").

3. The brief facts of the case are that the petitioner was admitted to a four years degree course in NIFT in August, 2005. She avers to having attended important classes during the semester ending November-December, 2008, except for the period when she was unwell. It is alleged that in spite of this, the NIFT arbitrarily determined that she had insufficient attendance and denied her participation in the examination which was held on 1.12.2008 to 19.12.2008.

4. The petitioner approached this Court claiming that the re-examination was scheduled for 5.1.2009. On the initial date of hearing, the Court had, while issuing notice passed the following orders: -

"The grievance of the petitioner is that since she was on medical rest and thus she could not attend the classes due to illness.

As per petitioner's case, she was on medical rest from 3rd October, 2008 to 17th November, 2008 and re-examination is scheduled to be held on 5th January, 2009.

There is no document on record to show that re-examination is going to be held on 5th January, 2009.

Moreover, petitioner has not placed on record, any prescription slip of the treatment taken by her in respect of ailment.

The medical certificate is dated 27th December, 2008, i.e., it was issued one month and ten days after the petitioner became fit and moreover no fitness certificate has been placed on record.

Petitioner seeks time to place on record all the relevant documents in this regard. She may file the same before the next date of hearing.

List before Regular Bench on 6th January, 2009."

5. The petitioner thereafter filed an additional affidavit on 12.1.2009. The Court had in the meanwhile heard the matter on 6.1.2009 and permitted the NIFT to file its counter affidavit. Thereafter the case was adjourned to 13.1.2009 when the petitioner was permitted to file the rejoinder to the counter affidavit. In the circumstances, the matter was adjourned for today.

6. The NIFT relies upon the Students' Rules & Regulations which governs the issue, particularly Rule D-7 & D-8. The same read as follows: -

"D-7 Minimum 75% attendance of total sessions/classes conducted during the semester (minimum of 65% attendance in each subject taught in the semester) will be a prerequisite for the student to be allowed to appear in the final assessment/end semester exams/ jury of the subjects. Uninformed absence of more than four weeks due to any cause or zero percent attendance till midterm will mean loss of candidature for the student i.e. name of the student would be struck off rolls of the Institute.

*D-8 **Medical Certificate** In the case of a student proceeding on medical leave, he/she is required to inform his/her department authorities for permission and also required to submit Medical Fitness Certificate within two working days of resuming his/her studies."*

7. The NIFT submits that all students are made aware about the importance of attending classes; a Circular issued on 22.4.2008 has been pressed into service; copy of the same is part of the record. That circular is in the form of advisory. The relevant part of the Circular reads as follows: -

"The overall attendance has to be minimum 75% excluding the Modules having attendance less than 65%. Students meeting this condition shall only be considered as under: -

a) In case the shortfall of attendance can be made up by attending all classes till the end of the semester, the students may be allowed to sit for the main examination.

b) In case it is not possible to make up the short fall in attendance as indicated in point (1) above, extra inputs/assignments for the same may be considered to cover input loss during the semester break. The assignments may be designed on a case to case basis keeping in view the extent of shortage of attendance. The results of the examination in such cases shall be withheld in sealed cover and declared only after the extra input/assignment given is satisfactorily completed."

8. The NIFT further contends that its procedures include intensive interface of students with not only teachers but also mentors assigned to certain students, meant to highlight each individuals points of weaknesses, which have to be followed up. In this regard, the Minutes of Mentor meeting dated 15.9.2008 and 20.10.2008 both concerning several students (including the petitioner), have been placed on record. These minutes warned that the students concerned should be extremely regular and fulfill the mandatory requirement of minimum over all 75% attendance. NIFT also has placed on record a copy of the communication dated 1.9.2008 to two students including petitioner which states that her attendance at that point of time was 59.2%.

9. According to the NIFT, the petitioner apprised about her medical condition and submitted a certificate only on 28.11.2008. The NIFT further alleges that on an overall examination of her records as well as the other students, a resume containing the percentage of said students was prepared and put up on the notice board. This indicated that petitioner had 66.7% attendance. After considering the records including the medical record, the

NIFT decided not to permit her and the others placed in the similar situation to appear in the examination.

10. Mr. Kamlesh Anand, learned counsel submitted that the approach and decision of the NIFT are unsustainable and arbitrary. He submitted that the resume said to have been prepared on 28.11.2008 was in fact never put up on the notice board nor was it brought to the knowledge of the petitioner. It was contended that the minimum requirements of natural justice were that the petitioner should have been afforded an opportunity to furnish materials in support of her case of illness at the relevant time – September – October, 2008.

11. Counsel relied upon the decision of a Division Bench of this Court reported as **Kumkum Khanna and Ors. v. The Mother Aquinas and Anr.** AIR 1976 Delhi 35. It is submitted that though the petitioner informed about her absence (to the NIFT), for which medical records were kept, she was asked to submit them for the first time on 28.11.2008. Learned counsel submitted that a copy of the representation made by the petitioner on 1.12.2008 has been wrongly shown as having been made on 28.11.2008. It was submitted that the petitioner was not even informed on 28.11.2008 about any decision but merely prevented from appearing in the examination which commenced on 1.12.2008.

12. Ms. Vibha Datta Makhija, learned counsel for the NIFT relied upon the averments in the reply and submitted that although NIFT possesses discretion to waive the condition of a minimum 75% attendance, yet such

discretion has to be exercised after considering the overall circumstances of the case. It was submitted that a joint reading of Rules D-7 & D-8 would reveal that much importance is placed on regularity and attendance and any truancy in that regard is not acceptable. Learned counsel submitted that uninformed absence would not ordinarily qualify a student for any relief. Nevertheless the NIFT being a public authority would consider any reasonable request having regard to the nature of the illness and other such relevant and material circumstances.

13. Learned counsel contended that in this case the petitioner had sought to place reliance on two apparently contradictory medical certificates. First was submitted along with an application dated 28.11.2008. The second was dated 27.12.2008. One describes the petitioner's illness as gastroenteritis & enteric fever for the period 3.10.2008 to 17.11.2008 whereas the stated that the petitioner had suffered enterocolitis & vomiting since September – October, 2008. It is lastly submitted that the NIFT did not rely upon either certificate because the petitioner did not produce any supporting documents, prescriptions, blood reports etc. which undermines the credibility of the documents.

14. The above factual position discloses that the petitioner was not permitted by the NIFT to appear in the examination which started on 1.12.2008 and ended on 19.12.2008, on the ground of her not fulfilling the requisite attendance i.e. 75%. The relevant criteria is Rule condition D-9 prescribes the norm as 75%. Facially D-9 shows that NIFT the appropriate

authority can reasonably waive the condition for relevant considerations, including illness of the students. The conditions further stipulate that the student should inform the Department for permission for such leave. Although such condition appears to be highly onerous (because there can be situations where the student may not be in a position to inform the Institution), yet the intention which can be discerned is that the student should contemporaneously (with the ailment) inform the grounds or inability to attend classes. This is underscored by the further requirement of the students having to furnish the requisite certificates within two working days after resuming studies. Though such time limit too cannot be construed as inflexible, yet in the opinion of the Court, this condition also reflects the anxiety of the Institution and the premium placed on attendance.

15. What can be gathered in these proceedings is that the petitioner despite grant of opportunity did not furnish the medical records, sought for by the orders of the Court on 31.12.2008. The averments in the counter affidavit too have not been traversed by way of rejoinder. In the circumstances, the Court is left to infer whether on the present facts, the NIFT's position can be termed arbitrary.

16. The stand of the NIFT is that the petitioner was truant on several occasions – and was informed about shortage of attendance has not been disputed. Equally there is no denial about the fact that when the Mentor's meeting took place on 15.9.2008 and 20.10.2008 the petitioner's presence has been recorded. Similarly copies of the documents placed on record also

show that the petitioner was cautioned about the shortfall in her attendance on 1.9.2008. No doubt according to her the medical record was sought by NIFT, for the first time on 28.11.2008, yet the fact remains that the resume containing particulars of 13 students, show that a similar view was taken for other students who were facing shortage of attendance. In fact the list shows that there were at least four other students with the better records but were detained for want of attendance. In case of two others also the medical records were submitted like the petitioner, on 28.11.2008.

17. The requirement of attendance wherever prescribed are to be taken seriously. Though the petitioner was afforded sufficient opportunity to substantiate the conflict between the two medical records, no further documents or materials are forth coming in support of either certificate. In the circumstances, the exercise of discretion – as the power to relieve the students from the rigors of the minimum requirements, undoubtedly is - by not permitting her to attend the examination, cannot be termed as arbitrary, in the circumstances of this case.

18. In view of the above findings, the Court is of the opinion that the relief claimed cannot be granted. The Writ Petition is accordingly rejected.

**S. RAVINDRA BHAT
(JUDGE)**

JANUARY 16, 2009
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