

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

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WP(C) NO.3022/2010

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Date of decision: 16th November, 2010

MR. ADITYA SINGH

..... Petitioner

Through: Mr. R.K. Saini & Mr. Sitab Ali
Chaudhary, Advocates

Versus

**INDIAN INSTITUTE OF TOURISM & TRAVEL
MANAGEMENT & ANR.**

..... Respondents

Through: Mr. Sachin Datta & Ms. Gayatri
Verma, Advocates for R-1.
Mr. B.V. Niren & Mr. Aarumugam
M., Advocates for R-2.

AND

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WP(C) NO.3023/2010

MR. GAURAV

..... Petitioner

Through: Mr. R.K. Saini & Mr. Sitab Ali
Chaudhary, Advocates

Versus

**INDIAN INSTITUTE OF TOURISM & TRAVEL
MANAGEMENT & ANR.**

..... Respondents

Through: Mr. Sachin Datta & Ms. Gayatri
Verma, Advocates for R-1.
Mr. B.V. Niren & Mr. Aarumugam
M., Advocates for R-2.

AND

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WP(C) NO.3024/2010

MR. ANURAG DOBHAL

..... Petitioner

Through: Mr. R.K. Saini & Mr. Sitab Ali
Chaudhary, Advocates

Versus

**INDIAN INSTITUTE OF TOURISM & TRAVEL
MANAGEMENT & ANR.**

..... Respondents

Through: Mr. Sachin Datta & Ms. Gayatri
Verma, Advocates for R-1.
Mr. B.V. Niren & Mr. Aarumugam
M., Advocates for R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported
in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. All the three petitioners at the time of filing of these petitions were students of the Post Graduate Diploma & Management (Tourism & Leisure) Course conducted by the respondent No.1 Institute. The said course is a two year course divided into four semesters. The counsel for the petitioners has today informed that the petitioners had joined the said course in the year 2009 and successfully completed the First Semester towards the end of the

year 2009 and were promoted to the Second Semester. The petitioners on being denied permission to take the Second Semester end term Examination for promotion to the Third Semester, on the ground of not meeting the attendance criteria, filed these petitions.

2. The petitions came up before this Court first on 4th May, 2010 when the counsel for the petitioners informed that the Second Semester Examination had already commenced on 3rd May, 2010 and which the petitioners were unable to take. This Court while issuing notice of the petitions directed the respondent No.1 Institute to issue admit cards to the petitioners and to allow the petitioners to appear in the remaining exams. It was however made clear that no special equities would flow in favour of the petitioners owing to the said interim directions. The result of the petitioners was also directed to be kept in a sealed cover.

3. The petitioners pursuant to the aforesaid order appeared in the remaining examination. The respondent No.1 has filed a counter affidavit. The counsel for the parties have been heard.

4. The Rule of the respondent No.1 Institute regarding attendance is as under:

“Attendance 20. Students are expected to put in as much attendance as possible as it is an integral part of learning. A minimal attendance is mandatory. Attendance is also a part of evaluation.

21. A student to be eligible to appear at semester end examination must have at least 60% attendance in aggregate all the courses in the concerned semester, and, at least 30% attendance in each course. Failing this student will have to repeat the semester.

A relaxation of 10% (overall and in each course) may be considered on grounds on ill-health and other reasons and engagements. In this case the candidate shall have to undertake make-up assignments as decided by the programme coordination committee.

22. Attendance in each course shall have a 10% weightage in evaluation. Attendance may be evaluated as follows out of 10 points.

Above 85%	10 marks
65% to less than 75%	07 marks
75% to less than 85%	05 marks
60% to less than 65%	03 marks
Less than 60%	00 marks”

5. The counsel for the petitioners has argued that the attendance of each of the petitioners after relaxation of 10% in terms of above which is

given as a matter of routine is short by 1.1%, 0.8% and 2.63% respectively. It is argued that the petitioners ought not to be directed to repeat the Second Semester when the deficit in attendance is miniscule. It is further argued that even though the results of the Second Semester Exam of the petitioners has not been declared as yet but the respondent No.1 Institute has been permitting the petitioners to attend the classes of the Third Semester of which also only about 1½ months now remains. It is contended that the attendance of each of the petitioners in the Third Semester is over 90%. It is contended that since the Rules aforesaid permit relaxation of 10%, subject to the candidates undertaking to submit make up assignments as decided by the Programme Coordination Committee, the further deficit over and above 10% can also be relaxed subject to making up of assignments and which the petitioners are ready to do. Attention is invited to the Rules of the Delhi University qua attendance which permit relaxation subject to making up deficiency in the following year / semester. It is argued that the petitioners also have already made up for the deficiency in the Second Semester by attending all the classes of the Third Semester and will in the remaining 1½ months of third semester also attend all the classes and a sympathetic view of the

matter should be taken. It is further informed that as per the curriculum of the respondent No.1 Institute there are no classes in the Fourth (Final) Semester and which comprises of on-the-job training only. It is informed that each of the petitioners has already been selected by the prospective employers and would be undergoing the on-the-job training in the Fourth Semester and if the petitions are dismissed their prospective employment would also be derailed. With respect to the examination held on 3rd May, 2010 in which the petitioners could not appear, it is contended that, that exam would also be taken by the petitioners along with the examinations of the Third Semester.

6. The counsel for the respondent No.1 Institute has argued that even though the results of the Second Semester examination of the petitioners have not been declared as yet, the petitioners were permitted to attend the classes of the Third Semester under interim order of this Court; emphasis is placed on the interim order whereunder no equities are to flow in favour of the petitioners. It is argued that no reliance can be placed on the Rules of Delhi University; there is no provision in the Rule aforesaid of the respondent No.1 Institute for making up of deficiency of attendance in one semester in the following semester; on the contrary, the consequence of

deficiency in attendance is expressly provided for i.e. of repeating the semester. Reliance is placed on the judgments of this Court in ***Vandana Kandari Vs. University of Delhi*** MANU/DE/1614/2010 and in ***Syed Shabeeb Raza Bilgrami Vs. School of Planning & Architecture*** 2010 VII AD (Delhi) 229.

7. The counsel for the petitioners in rejoinder has argued that in the respondent No.1 Institute, attendance is also a part of evaluation; that the petitioners for the reason of having less than the required 60% attendance have got zero marks out of the 10 marks allotted for attendance; that they having already suffered, should not be made to also repeat the semester. Reliance is also sought on the reply dated 26th August, 2010 to the RTI query to the effect that another student Ashwani Kumar Sahu was given relaxation of more than 10%. It is thus contended that it is not as if the respondent No.1 Institute never gives relaxation in attendance of more than 10%. It is also contended that the petitioners could not attend classes owing to health reasons and because of events in the family.

8. The counsel for the respondent No.1 clarifies that Ashwani Kumar Sahu was granted relaxation because he was stopped from attending the

classes in order to prevent the spread of Chicken Pox from which he had suffered.

9. I do not find any merit in the arguments of the counsel for the petitioners on the basis of the Rules of Delhi University. A writ normally is issued when a party / Body acts in contravention of its Rules and Regulations. The Supreme Court in *Maharishi Dayanand University Vs. Surjeet Kaur* JT 2010 (7) SC 179 held that the Court has no competence to issue a direction contrary to law, nor the Court can direct an authority to act in contravention of statutory provisions. It was held that the High Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory Rules & Regulations. In the absence of any Rule of the respondent No.1 Institute permitting the deficit in attendance in one semester to be met in the next semester no order directing so can be made. I also do not find any merit in the contention of the petitioners suffering double jeopardy i.e. on the one hand being deprived of marks allotted for attendance and on the other hand being made to repeat the semester. The requirement for minimum attendance is different from the weightage in terms of marks given for attending more than the minimum number of

classes; the two are different. The zero marks allocated for below 60% attendance are not by way of punishment but a part of evaluation. Moreover when the petitioners have to repeat the semester, the evaluation mark are irrelevant.

10. The argument of the counsel for the petitioners hinges on the deficit being minuscule. However while calling the deficit to be minuscule, the counsel for the petitioners forgets that the deficit of 1.1%, 0.8% and 2.6% is after presuming the entitlement to relaxation of 10% to be as a matter of right. The Rules do not provide it to be as a matter of right. A student is entitled to such relaxation only after satisfying the existence of the ground therefor. Else the deficit in the case of each of the petitioners is over 10%.

11. I have during the hearing repeatedly enquired from the counsel for the petitioners that if the Courts were to start interfering in such Rules of attendance, where should they stop. If the Courts are to interfere when the deficit is 2.6% as claimed in the present case, why not when deficit is 5% or may be 10%. It is not as if the students are required to attend 100% of the classes. The Rules already permit the students to miss / skip 40% of the classes. Once the rules provide for attendance of minimum 60% of the

Classes, the Courts ought to respect the same and ought not to device their own cut offs. If the Courts start doing so, there would be no end. If the Courts in one case, on sympathetic grounds, relax the Rules by 5%, in another case it may be argued that why not to 6 or 7%. It would make the matter unending and make the Rules of Educational Institutions qua minimum attendance farcical. The same cannot be permitted to be done. The Supreme Court in *Guru Nanak Dev University Vs. Parminder Kr. Bansal* (1993) 4 SCC 401 observed that sympathy, quite often wholly misplaced does no service to anyone. Loose, ill-conceived sympathy was held to expose judicial discretion to the criticism of degenerating into private benevolence and subversive of academic discipline and leading to serious impasse in academic life. It was held that the Courts should not embarrass academic authorities by itself taking over their functions.

12. I have recently dealt with the aspect of attendance in detail also in WP(C) No.2790/2010 titled *Gangandeep Kaur Vs. GNCTD* decided on 20th October, 2010 besides the judgments aforesaid. In view thereof, need is not felt to enter into the lengthy discussion herein.

13. There is no merit in the petitions; the same are dismissed. Axiomatically, the result of the examination taken by the petitioners under the interim orders in this petition is annulled / cancelled. The petitioners are directed to repeat the Second Semester. However, since owing to the pendency of the present writ petitions, the petitioners could not till now attend the classes of the Second Semester, it is directed that the attendance of the Third Semester attended by the petitioners shall be counted for the attendance of the Second Semester. The petitioners to hereafter attend the classes of the Second Semester and would be entitled to appear for the examination for promotion from the Second to the Third Semester.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

16th November, 2010/‘gsr’