

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

Date of decision: 8th September, 2010.

+W.P.(C) No.3419/2010 & CM No.6864/2010 (for stay) & CM No.9917/2010 (for direction).

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SYED SHABEEB RAZA BILGRAMI & ORS. Petitioners
Through: Mr. M. Dutta, Advocate.

Versus

THE SCHOOL OF PLANNING & ARCHITECTURE Respondent
Through: Mr. Rakesh Tikku, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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. This petition has been preferred by 64 students of the respondent School of Planning & Architecture. The petitioners are either the 1st or the 2nd or the 3rd year students of the Bachelor of Architecture course, an approximately five year course. They were all prevented from appearing in the examinations commencing from 17th May, 2010 for the reason of not meeting the requisite attendance criteria. The petitioners claim that prior to 17th May, 2010 they did not know that they did not have the requisite attendance or that they will be so prevented from taking the exams. The writ

petition came up before this Court first on 18th May, 2010 when while issuing notice thereof, by interim orders the petitioners were permitted to take the exams subject to the final outcome of the writ petition. It was however provided that merely because the petitioners had been permitted to take the exam, would not create any special equities in their favour. However by then – one or two examinations were already over. The counsel for the petitioners during the hearing has informed that the respondent Institute had prevented a total of 105 students from taking the examination for similar reason and of which only 64 students are before the Court. It is further informed that the respondent Institute however gave the benefit of the interim order in the present petition to the others also and hence the fate of total of 105 students of the respondent Institute including the 64 petitioners before this Court hangs on the outcome of the present petition.

2. The petition, of course filed in a hurry, pleads:-

- i. that the respondent Institute for the last several years has never insisted adherence to any specific format of an attendance schedule; the students have been instructed and led to believe that the respondent Institute does not follow a conformist attendance schedule and is only keen on the students pursuing their courses. In consonance with the said practice, no attendance list is published at any time and no warnings qua attendance is given;

- ii. that the examination in the Institute comprises of practical and theoretical papers; that in further consonance of the above each of the petitioners was permitted to take the practical exam for the current year. However they were prevented from appearing in the theory examinations only commencing from 17th May, 2010;
- iii. that the practical exam is of 1200 marks while the theory exams are only of 200,400 & 600 marks for the 1st, 2nd & 3rd year respectively;
- iv. It is contended that the petitioners having been allowed to take the exam of 1200 marks ought not to be prevented from taking the exam for the balance 200/400/600 marks;
- v. that the respondent Institute by permitting the petitioners to take the practical exams waived their objection even if any qua attendance.

3. The case made out in the petition is certainly very attractive and led to the interim order in favour of the petitioners. It defies logic as to why the respondent Institute should detain the students mid-way during the exams.

4. However the respondent Institute in its counter affidavit (and which part is not controverted in the rejoinder) informs that the practical exam of

1200 marks comprises of assessment of the works/projects submitted by the students; the students do not even need admit card for the same. It is thus contended that merely because the petitioners submitted their projects, would not mean that the respondent Institute has waived observance of the Rule regarding attendance.

5. The case made out in the petition is thus false. It is not as if the respondent Institute by allowing the petitioners to submit the project or by assessing the performance of the petitioners during the course of the year, permitted the petitioners to appear in the examination. The records of attendance are generally computed only at the time of issuing the admit cards to the examination hall and it is not as if the students are prevented from attending the Institute/College upon failing to meet the attendance criteria. I am unable to find any plea by the petitioners of the respondent Institute before accepting the projects being submitted by the students or before evaluating the performance of the petitioners during the year being required to verify whether the petitioners had requisite attendance or not. The attendance count as aforesaid is to be made only before the examination for which admit card is required. During the hearing it was informed that the said projects etc. were submitted one or two months prior to 17th May, 2010. The reliance by the counsel for the petitioners on *Shri Krishnan v. The Kurukshetra University* (1976) 1 SCC 311 is not found apposite.

6. Else, the Rule of attendance in the respondent Institute is the same as in other Institutes/Colleges. The students are required to attend not less than 75% of lectures/studio/laboratory classes held for the relevant course of study preceding each semester examination and minimum attendance is also required in subjects that have only internal assessment. A student not found to have minimum attendance in a subject is not to be permitted to appear for external evaluation in that subject if any, by way of either theory paper or external jury. The attendance requirement of 75% is in terms of the University Grants Commission Regulations. The petitioners have not even pleaded that they have the requisite attendance or near about.

7. The respondent Institute in the counter affidavit has controverted the other grounds in the petition, of the respondent in the past having not enforced the Rule regarding attendance or of having made the petitioners believe that they need not have the requisite attendance. It is also pleaded that even letters to parents of students short in attendance were sent. Copies of such letters are annexed to the counter affidavit. The petitioners in their rejoinder dispute the said position.

8. The aforesaid factual controversy cannot be resolved in writ jurisdiction.

9. Be that as it may, the pleas of the petitioners do not inspire confidence. The pleas are bereft of any particulars. No name of any lecturer,

teacher, and official of the respondent Institute who may have led the petitioners to so believe has been given. It is well nigh impossible to believe that any representation contrary to the written Rules would be made or would be believed or acted upon.

10. The counsel for the petitioners laid considerable emphasis on the marks for the “practical exam” being several times those for the theory exam. I have enquired from the counsel as to whether a student would pass merely by achieving a high passing score in the practical exam, even if not appearing in the theory exam. The answer is in negative. That being the position, the high proportion and the marks attributed to the practical in comparison to the theory portion is irrelevant qua attendance.

11. Even if it were to be believed that the respondent Institute in the past had not been enforcing the Rule of attendance, this Court would not issue a mandamus in contravention of the written Rule. If this Court on sympathetic grounds were to be persuaded to allow the petition, the next batch of students of the respondent Institute would again plead that attendance is not a criteria in the respondent Institute. Even if in the past, none was ever detained on account of attendance, that is no ground for granting indulgence to the petitioners who are violators of the written Rules.

12. Faced with the aforesaid, the counsel for the petitioners urged that the nature of the course is such where the creativity of the student is more

important than attending classes. The respondent Institute however in the counter affidavit has pleaded that it is only by attending classes that the students can get the requisite exposure to the knowledge for which they joined the respondent Institute; that the students passing out from the respondent Institute are expected to design buildings including structural designing and any slackness in the training of any of the said disciplines can have dangerous consequences not only for the buildings but also its occupants. Moreover the syllabus and curriculum of the respondent Institute requires the students to attend the classes. I tend to agree with the respondent Institute that brilliance in creativity can be no substitute for regular attendance in classes. After all, if the petitioners felt that without attending classes they could create and design, they were free to do so; once they have joined the respondent Institute they are required to conform to the norms thereof and not fall back on the pleas of the course not requiring them to attend classes.

13. The Division Bench of this Court in *Ashutosh Bharti Vs. The Ritnand Balved Education Foundation* MANU/DE/0024/2005 held that grooming up and progressing of the students at the College is an important aspect for assessing the students; their presence is a must - that system has been recognized all over the world; academic authorities are best judges in the field of education to make suitable rules, regulations or ordinances. It was further held that attendance is a must and curriculum does not mean

only examination but it includes various other aspects such as discipline, behaviour in the classroom with the teachers and other co-students, answering the questions etc. It was further held that merely because the conditions which are imposed may be found inconvenient to some students, it cannot be challenged as being arbitrary.

14. Another Division Bench of this Court in *Arvind Gupta Vs. University of Delhi* MANU/DE/0238/1980 agreed with the view of the University that the requirement to attend a certain percentage of lectures delivered is not only to enable a student to acquire requisite proficiency in the subject for the examination but also to ensure that a student who is pursuing a regular course of study acquires a discipline of education and a disciplined outlook towards his classes, courses and academic life. It also held that academic discipline will be best preserved by all concerned including the executive and even the courts abstaining from encroaching upon the autonomy and internal discipline within the portals of university and academic institutions. The Division Bench also observed that its order would serve as a warning to the students that the regulation of the requirement of attendance of lectures cannot be ignored with impunity.

15. Even though no basis has been made in the pleadings but the counsel for the petitioners perhaps appreciating the difficulty vis-à-vis the grounds taken in the petition referred to the University Grants Commission (Minimum Standards of Instruction for the Grant of the First Degree

through Formal Education), 2003 to contend that the course syllabus comprises besides of lecturers and tutorials, also of laboratory sessions, seminars, field work, projects and contended that credit for attendance should be given to the students for the time when he/she, even if sitting in his/her room was designing or creating a project or indulging in similar other activity; it is argued that credit for attendance should also be given if the student for the purposes of his/her project goes for any field work. It is urged that when the course syllabus comprises of all these things, attendance should be marked for each of these activities and not only for the lectures and laboratory sessions attended.

16. I cannot accept the contention aforesaid. If such arguments were to be accepted, it would follow that a student should also be marked attendance for his homework in preparation of and after the class. The Educational Institution can have no control over the activities of the students outside the classroom. The test for attendance can only be qua the classes and not qua the time spent by the student in making a project required to be submitted. The Educational Institutions have however, as in case of Law courses (LL.B.) devised policies for giving credit for attendance for permitted activities in relation to the course. However that is a matter for the experts in the educational field and not for this Court to comment upon. If the petitioners as students of the respondent Institute felt that credit for attendance for any particular activity should be given, they ought to have

drawn attention of the respondent Institute for the matter to be examined. The petitioners were however aware of the Rule requiring them to attend 75% of the lectures. After having failed to attend the same, they cannot aver that the Rules should have been different.

17. Self study is not sufficient. Even though distance learning has come to be widely accepted as a universal mode of acquiring knowledge, skills and qualifications, traditional form of knowledge dissemination holds great relevance where instructional interference is mandatory. The requirement of minimum attendance is not a mere formality but a term of eligibility to sit for examination.

18. The respondent Institute has also controverted the plea of the petitioner of no warnings if any being issued. The respondent Institute has as aforesaid, filed copies of letters stated to have been sent to the parents of the students not meeting the attendance criteria. It is also pleaded that list of candidates not meeting the attendance criteria was put up on the Notice Board from time to time. It is also stated that the respondent Institute has given benefit of 5% relaxation, permitted under the Rules to the petitioners but the petitioners fail to even then meet the criteria. The counsel for the respondent Institute has also contended that the respondent Institute cannot be expected to act contrary to its Rule; that the petitioners could not have any legitimate expectation of an illegality and the earlier laxity even if any of the respondent Institute in enforcing the Rule regarding attendance cannot

entitle the petitioners to the relief claimed. The Supreme Court in ***Food Corporation of India v. Kamdhenu Cattle Feed Industries*** (1993) 1 SCC 71 held that whether expectation is reasonable or legitimate in the context is a question of fact in each case; whenever the question arises, it is to be determined not according to claimant's perception but in larger public interest. The reliance by the counsel for the petitioners on ***Babulal Badriprasad Varma Vs. Surat Municipal Corporation*** (2008) 12 SCC 401 and ***Union of India Vs. Hindustan Development Corporation*** (1993) 3 SCC 499 is not found appropriate.

19. The subject of attendance in Law Colleges has been a subject matter of a recent detailed judgment dated 12th July, 2010 of another Single Judge of this Court in ***Vandana Kandari Vs. University of Delhi*** and several other petitions. This Court, for plethora of reasons given therein has held that minimum percentage of lectures having been fixed at 66% (in that case), still gives the students freedom to miss or abstain from 34% of such lectures and which was considered 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. Reliance in this regard was placed on the judgment dated 16th May, 2008 of a Division Bench of this Court in W.P. (C) No. 9143/2007 titled ***Kiran Kumari Vs. Delhi University***, order dated 1st December, 2008 of another Division Bench of this Court in W.P. (C) No. 8534/2008 titled ***Komal Jain Vs. University of Delhi*** and on judgment dated

20th April, 2007 of another Single Judge in W.P. (C) 18051/2006 titled ***Smt. Deepti Vs. Vice Chancellor, University of Delhi.***

20. Mention may also be made of ***Preeti Srivastava Vs. CBSE*** MANU/DE/0484/1994, ***Yogesh Bhatia Vs. University of Delhi*** MANU/DE/0784/2003 and ***Neera Dadhwal Vs. Deepak Paintal*** MANU/DE/8392/2007 all of which have also emphasized the importance of attendance and that Rules with regard thereto cannot be given a go by on sympathetic grounds.

21. The petitioners have filed an additional affidavit also stating that the attendance has not been properly marked; it is stated that paper-wise attendance has not been disclosed and if any of the petitioners had the requisite attendance in a particular paper he/she should have been permitted to appear in that paper at least. The respondent Institute has had no opportunity to meet the said case and this was not the case with which the petitioners had approached this Court.

22. There is no averment as to why the respondent would be prejudiced against the petitioners and would be interested in detaining them. I have recently in judgment dated 18th August, 2010 in W.P.(C) No.3129/2010 titled ***Choudhary Ali Zia Kabir Vs. GGSIP University*** held that such pleas by students against educational institutions to which they are admitted are to be deprecated. They show the scant regard of the students for the

institutions. It was also held that the rules of natural justice or *audi alteram partem* cannot be extended to such matters. Need is not felt to repeat the reasons given in this regard.

23. The petitioners are therefore not entitled to any relief. The petition is dismissed. The result of the examination which the petitioners were permitted to take under orders of this Court is accordingly cancelled.

**RAJIV SAHAI ENDLAW
(JUDGE)**

8th September, 2010
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