

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) No. 2640/2011

% Judgment delivered on: 28th April, 2011

Mr.Fahad Hassan Petitioner.

Through: Mr. Sulaiman Mohd. Khan, Adv.

versus

Jamia Milia Islamia University & anr. Respondent

Through: Mr. M.A. Siddiqui, Adv.

And

W.P.(C) No. 2641/2011

Mr.Udayan Biswas Petitioner.

Through: Mr. Sulaiman Mohd. Khan, Adv.

versus

Jamia Milia Islamia University & Anr. Respondent

Through: Mr. M.A. Siddiqui, Adv.

And

W.P.(C) No. 2765/2011

Mr.Arhan Sett Petitioner.

Through: Mr. Vikramjeet Banerjee, Adv.

versus

Jamia Milia Islamia University & Anr. Respondent

Through: Mr. M.A. Siddiqui, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J. Oral

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1. This common order will dispose of three petitions bearing W.P.(C) No. 2640/2011, W.P.(C) No. 2641/2011 and W.P.(C) No. 2765/2011 filed under Article 226 of the Constitution seeking relaxation of attendance and to be allowed to appear in the forthcoming final examinations.

2. The facts shorn of unnecessary details common to the three petitions are that the petitioners are the students

pursuing M.A. (Mass Communication) from A.J.K. MCRC of Jamia Millia Islamia University. The petitioner in W.P.(C) No. 2640/2011, a student of Ist year has 71.05% attendance; the petitioner in W.P.(C) 2641/2011 is also a student of the Ist year and has secured 71.05% attendance and the petitioner in W.P.(C) 2765/2011 , a student of IInd year has secured 65.78% attendance. The short point involved in the present petitions is that the requisite attendance for appearing in the annual examinations is 75% as per the relevant rules and therefore, the petitioners herein being short of attendance have been debarred from appearing in the forthcoming annual examinations. Being aggrieved with the said action of the respondent University, the petitioners have preferred the present petitions.

3. Mr. Sulaiman Mohd. Khan, learned counsel for the petitioner submits that the petitioner in W.P.(C) No. 2640/2011 was suffering from jaundice and was thus disabled to attend his classes from 15.10.2010 to 22.10.2010. Counsel further submits that a duly qualified MBBS Doctor practicing in Patna issued a medical certificate dated

22.10.2010 in favour of the petitioner. Counsel also submits that the petitioner has even submitted the investigation report dated 16.10.2010 with the respondent University which further proves the fact that the petitioner was suffering from jaundice during the said period. Giving explanation for the late submission of the medical certificate, counsel states that the respondent University is itself entertaining the medical certificates at the fag end, therefore the petitioner cannot be blamed for submission of the medical certificate at the fag end. Counsel also submits that the petitioner in fact had a medical history of suffering from jaundice and to prove this fact, the counsel has placed reliance on the similar medical report dated 1.6.2010 which is placed on record at page 12 of the paperbook. Counsel submits that the petitioner is entitled to the benefit of relaxation of 15% of the total attendance under the category of 'sickness' as has been provided in the Ordinance 15 (XV) of the respondent University governing University Examinations. Counsel also submits that in the investigation report dated 16.10.2010, the

concerned laboratory has clearly observed that SGPT and SGOT levels are above the normal range.

4. Mr. Sulaiman Mohd. Khan, learned counsel for the petitioner in W.P.(C) No. 2641/2011 submits that the petitioner was suffering from very high grade fever and was thus disabled to attend his classes from 7.11.2010 to 13.11.2010. Counsel further submits that duly qualified MBBS Doctor practicing in Delhi issued a medical certificate dated 14.11.2010 in favour of the petitioner. Counsel also submits that the petitioner has duly submitted the said medical certificate with the respondent University. Counsel submits that the petitioner could not file copy of the said certificate as it was not retained by him and the same must be in the records of the respondent. Counsel further submits that the petitioner who is a first year student of M.A.(Mass Communication) was quite regular in attending his classes. Counsel submits that it is an admitted case that the petitioner had secured 71.05% attendance till 31.3.2011 and is short of merely 3.95% and to meet the target of 75% attendance the petitioner was required to attend 23 classes.

Giving explanation for the late submission of the medical certificate, counsel states that the respondent University is itself entertaining the medical certificates at the fag end, therefore the petitioner cannot be blamed for the late submission of the medical certificate at the fag end. Counsel submits that the petitioner is entitled to the benefit of relaxation of 15% of the total attendance under the category of 'sickness' as has been provided in the relevant Ordinance of the respondent University.

5. Mr. Banerjee, counsel for the petitioner in W.P.(C) No. 2765/2011 submits that the petitioner has secured 65.78% of attendance and could not complete the target of securing 75% attendance due to bona fide and genuine medical reasons. Counsel further submits that the petitioner has a medical history of suffering from debilitating attacks of migraine for the past three years and when such a attack strikes, the petitioner cannot function at all. Counsel further submits that the petitioner was diagnosed with migraine for the first time in the year 2008 and since then he has been under medication. Counsel further submits that in the year

2010 also the petitioner has suffered severe attacks of migraine and on various occasions he had to return back to Kolkata for proper medical treatment. Counsel further submits that the petitioner had submitted medical certificate and prescription of the Doctor attending him during which period the petitioner could not attend his classes. Counsel also submits that the petitioner made various representations to the respondent University for kind consideration of his case but vide letter dated 7.4.2011, the request of the petitioner to allow him to appear in the forthcoming exams was declined by the respondent University.

6. Opposing the present petitions, Mr. Siddiqui, learned counsel for the respondent University submits that the petitioners had failed to submit their medical certificates within the prescribed time of two weeks as provided in the University Ordinance 15 (XV) Clause 2.2. Counsel further submits that throughout the year the respondent has been repeatedly intimating not only the petitioners but the parents of the petitioners as well about the shortfall in their attendance. Counsel also submits that besides the said

intimation, the attendance position of each and every student is being placed on the notice board of the respondent University. Counsel submits that each and every medical certificate as submitted by the students is being thoroughly scrutinized by the medical experts of the Ansari Health Centre of the University in terms of the Ordinance 15 (XV) Clause 2.2.

7. Counsel submits that the petitioner in W.P.(C) 2640/2011 was not found to be suffering from jaundice during the relevant period as enzymes of the petitioner as per the report submitted by him were near to normal range. Dr. Irshad Husain Naqvi, Medical Officer in the respondent University is present in the Court. He submits that any person suffering from jaundice will denote extremely high SGOT and SGPT i.e. 100 or more but the same below 50 are treated near normal. Dr. Naqvi further submits that in the present case the petitioner's SGOT and SGPT reached at the level of 45 and 40 respectively which are absolutely within the normal range and the medical report submitted by the

petitioner thus falsifies the claim of the petitioner that he was suffering from jaundice during the relevant period.

8. Counsel for the respondent submits that the petitioner in W.P.(C) No. 2641/2011 was called upon to submit a complete investigation report to prove the fact that he was suffering from very high grade fever w.e.f. 7.11.2010 to 13.11.2010 but he failed to submit the same. Counsel for the respondent also submits that the respondent University is not inimical against any of its students and a strict view is being taken to enforce high academic standards and discipline in the University. Counsel also submits that for the past many years, the respondent has been observing the tendency of the students submitting fabricated medical certificates with a view to meet the attendance target. In support of his arguments, counsel for the respondent has placed reliance on the recent order passed by this court in ***W.P.(C) No. 2553/2011*** titled as ***Arunima Sen Vs. Vice Chancellor, Jamia Milia Islamia University*** dated 21.4.2011, denying relief to a similarly placed student. Counsel also submits that 15% relaxation under the category

of 'sickness' is available in extreme cases, where the students are suffering from some medical problem which can prevent the students to attend their respective classes.

9. I have heard learned counsel for the parties at considerable length.

10. In all these cases, the petitioners who are students of M.A.(Mass Communication) from A.J.K. MCRC of the respondent Jamia Millia Islamia University are seeking relaxation in attendance under the category of 'sickness' as per Clause 2.2 of Ordinance 15(XV) of the respondent University. The case of all these petitioners is that if the period of sickness during which they could not attend their respective classes is taken into consideration, then they would make up the shortfall in their attendance to meet the target of 75% of the required attendance. It is not in dispute between the parties that as per the said University Ordinance it is imperative for the students to be regular in their classes and attend not less than 75% of the aggregate of the lectures, tutorials of all compulsory/optional/honours and subsidiary subjects in order to be eligible to appear in their respective

examinations. It is also not in dispute that the relaxation to the extent of 15% of the total attendance is permissible by the University under the category of “sickness”. For better appreciation, the relevant clauses of Ordinance 15(XV) The University Examinations of the respondent University are reproduced as under:

Ordinance 15 (XV)

The University Examinations

2. Attendance (for Regular Students)

2.1 A Candidate shall be deemed to have under-gone a regular course of study in the University, if he/she has attended atleast 75% in the aggregate of lectures, tutorials and practicals in order to be eligible to appear at the Examination. Provided that the Majlis-i-Talimi (Academic Council) may, in special circumstances, condone any shortage in such attendance except otherwise provided by the Academic Council.

2.2 A relaxation to the maximum extent of 15% of the total attendance shall be accorded to student on account of sickness, participation in University functions and the prescribed Educational Tours/Field Trips/Field work, provided that the attendance record, duly counter signed by the Teacher incharge, is sent to the Head of the Department concerned/Principal, University Polytechnic within two weeks of the function/activity etc.

Provided further in case of sickness/medical disability an application for the condonation shall be supported by a medical certificate issued by a registered Medical Practitioner/Public Hospital and duly authenticated by the Ansari Health Centre of JMI. Such applications must be submitted either during the period of treatment/hospitalization or within two weeks following recovery.”

11. As would be seen from the aforesaid clauses of Ordinance 15 (XV) of The University Examinations, a student is required to attend 75% of the lectures, tutorials and practicals to qualify to appear in his/her final exams. If a student achieves the said target, still there remains 25% which can take care of many eventualities and exigencies which any student may be confronted with for not attending the classes as held by the Division Bench of this court in the case of ***Kiran Kumari vs. Delhi University WPC No. 9143/2007.***

12. To gain complete knowledge of any subject, attendance of the student in a class is a must. No student can excel in his/her life unless he or she devotedly attends the classes of a course which he/she undertakes. Attendance is thus a rule and absence from class is an exception. Undoubtedly, there can arise certain unforeseen situations and exigencies where a student may not be able to attend his classes and medical ground is one such exception which can be considered by the Universities and Institutions to give the

benefit of relaxation in attendance. In Clause 2.2 of the Ordinance 15(XV), the University has prescribed a period of two weeks for submission of such medical certificates by the student after the resumption of his classes but this rule is not being strictly observed either by the students or by the University. The plea taken by the University is that they entertain the medical certificates even at the fag end so that the students should not have any grievance that the medical certificate although submitted late by them was not entertained by the University. The University by entertaining such medical certificates at the fag end is itself creating a kind of indiscipline in the University, besides defying its own rules. In certain cases the student may not be able to submit the medical certificate within the prescribed time but certainly the student is required to submit a medical certificate within a reasonable time after he/she resumes attending his/her classes. In any case it cannot be at the fag end of the academic session. It is a matter of common experience that when a student comes to know that he/she would not be able to fulfill the laid down requirement of

attendance then he/she adopts such type of fraudulent means to procure one or the other medical certificates so as to cover up the shortfall in his/her attendance. This court in the case of ***Vandana Kandari vs. University of Delhi 170(2010)*** ***DLT 755*** with regard to medical certificates held that :

" It is also observed that the students after knowing that they are short of attendance at the last moment rush to the doctors who can make their medical certificates to claim condonation of attendance on medical grounds. Therefore, if a student seeks to avail the benefit of relaxation bringing his case within the four corners of an exceptionally hard case in terms of the proviso of Rule 2(8) (a), then in such circumstances it is directed that such a student after returning from medical leave should submit the medical certificate for the same period immediately on rejoining the college and not at the end of the semester so that the University has a record of the period the student was on medical leave."

Thus the University is directed to strictly follow its own rules and regulations and any relaxation in the said rules, would lead to making a mockery of them in which situation, the students would not have any remedy but to rush to the courts alleging discrimination on the part of the University.

13. Dealing with the contention of the University which was fortified by the presence of Dr.Naqvi in the Court today, that

the report of the petitioner in WPC No. 2640/2011 alleging that he was suffering from jaundice is false, this court is of the clear view that the court would not go into adjudicating upon the medical reports or their truthfulness in exercise of its writ jurisdiction. In cases where the petitioners before this court allege their absenteeism on medical grounds, it would be preposterous to state whether who was more ill and who was less ill to decide as to who would be entitled to relief by this court.

14. This court has time and again, through numerous judicial pronouncements, stressed the importance of attendance in educational institutions. As the incorrigible lot of students still approaches the portals of law for seeking relief, it has but become incumbent upon this court to reiterate in black and white the dicta of law. In the detailed judgment of this court in the case of ***Vandana Kandari & Ors. vs. University of Delhi 170 (2010) DLT 755***, while crystallizing the legal position, declined to grant relief to the students falling short of attendance in L.L.B course of the Delhi University. This court observed that the problem of

absenteeism has taken the face of a chronic disease plaguing the edifice of the education system as the students who do not attend classes have a strong belief that they are not suffering significantly by their absence as the absenteeism does not affect their clearing the examinations with good grades. However in the same matter, relaxation of attendance was given to two students who were pregnant, but setting aside the same, the Division Bench of this court in LPA No.662/2010 decided on 10.1.2010 declined such exemption as well, elucidating the legal position that in no case whatsoever, relaxation of attendance can be given.

15. However, the Hon'ble Division Bench of this court while upholding the abovesaid order in ***Vandana Kandari(supra)*** whereby relaxation of attendance was declined to seven other students, in LPA 539/2010 titled ***Sukriti Upadhyay vs. Delhi University*** decided on 4.10.2010 held that the quality of training which a candidate gets during the time he undergoes the course is directly proportional to the number of lectures he attends and the failure to attend the requisite number of

lectures can legitimately disentitle him to claim eligibility for appearing in the examination.

16. In the subsequent order of this court in the case of ***Gagandeep Kaur vs. Govt of NCT of Delhi*** WPC No. 2790/2010 decided on 20.10.2010 this court held that even if it were to be held that the petitioners were prevented for bonafide reasons beyond their control from attending some of the classes, there is no explanation as to why the petitioners could not have attended all the other classes during the remaining duration so as to fulfill/secure their eligibility for attendance. Thus it has to be stated firmly here that once the student by regular letters and notices put up on the notice board of the University is made aware of his shortage in attendance compelled by whatever reason, it becomes the solemn duty of the student to try and attend all the subsequent classes to make up for the attendance so that he does not stand the risk of getting ineligible for appearing in examinations.

17. The strict view in not granting relief to the students has been further reiterated in the recent orders by this court in ***Choudhary Ali Zia Kabir vs. Guru Gobind Singh Indraprastha University*** WPC No.3129/2010 and ***Vibhor Anand vs. Vice Chancellor, GGSIP University*** WPC No. 3163/2010. In view of the above cited detailed judgments, it is unnecessary to burden this judgment with more reasoning.

18. The importance of attendance can hardly be overemphasized. The students must understand that the attending the classes is not only important in terms of their clearing the examinations but also to shape their minds, aims and perspectives in life. It would be befitting to quote here the observations of the Division Bench of this court in the case of ***Ashutosh Bharti & Ors. vs. The Ritanand Balved Education Foundation (regd) & Ors. MANU/0024/2005*** as under:

"3. It may be noted that the 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 recognised all over the world. If the student is not attending the classes regularly, the teacher will not be in a position to watch the progress of that student. Academic authorities are best judges in the field of education to make suitable rules, regulations or ordinances. It is for

the college or the University to put the conditions on the students to attend a particular number of classes so as to be satisfied that the student has attended regular classes and he has taken education at the college/school.

4. Attendance is a must. Curriculum does not mean only examination, but it includes various other aspects such as discipline, behavior in the class room with the teachers and other co-students, answering the questions, time taken for answering the questions etc. These are the relevant aspects to be taken into consideration by a teacher and this can be done only if a student is attending the classes regularly. The University has prescribed 75% minimum for this purpose and it cannot be said that it is not in accordance with law or it is an arbitrary provision.

5. If any step is taken towards better educational method and standard, not only the Court should not come in the way, but must command and encourage it. Those who fail to maintain such standard round the year may lose the very valuable year of the young career, just as they lose if they fail in the examination. Matters of academic judgment are not for the courts to entertain. Better standards are required for learning and it can be only from experiences and different modalities. Educational institutions are the best judges to impose appropriate restrictions and conditions. Merely because the conditions which are imposed may be found inconvenient to some students, it cannot be challenged as being arbitrary. All the students who are appearing in the examinations have attended classes for not less than 75%. Merely because a few students are before the Court, it cannot be said that the rule or regulation is arbitrary."

Thus, the students must understand that there is no royal road to education and education teaches only those in attendance.

19. However, before parting with the judgment, this court is constrained to observe that the similar seekers of relief in hope of garnering sympathy and pity are pouring manifold everyday before this court. It has thus become imperative for them to hear the clarion call of the court that

for the protection of rule of law as is luculent from the various judicial pronouncements referred above and of maintaining discipline, the law courts are not inclined to grant relief to students falling short of attendance.

20. Certainly, this court has great sympathy with these petitioners who due to shortage of marginal percentage of attendance would waste their one precious academic year, but if any indulgence, if given, to such students due to sympathy and compassion then the same would result in total indiscipline and chaos thus opening a Pandora's box. Strict view in such like cases would be in the larger interest not only of a student but also of any institution or University.

21. In the light of the above discussion, I do not find any merit in these petitions, and the same are hereby dismissed.

DASTI under the signature of Court Master.

April 28, 2011
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KAILASH GAMBHIR, J