

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 13.10.2011

W.P.(C) 7344/2011

Rishabh Sheonk

.....Petitioner

Through: Mr. M.R. Shamshad and
Mr. Ahmad S. Azhar, Advs.

Vs.

Jamia Milia Islamia & Ors.

.....Respondents

Through: Ms. Jaya Goyal and
Mr. Rohit Gandhi, Advs.

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. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to direct the respondents to permit them to appear in the BDS Second Year (Supplementary) Examinations.

2. The controversy involved in the present case is that the petitioners have been deprived of appearing in the second year annual examinations due to shortage of attendance and now are seeking a direction for permitting them to appear in the supplementary examinations.

3. The first argument raised by the learned counsel for the petitioners is that the respondent failed to follow the mandate of the Dental Council of India respondent no.2 herein which prescribes minimum hours for undertaking the class for any particular subject. The contention of the counsel for the petitioners is that so far the subject of Dental Materials in BDS, 2nd year course is concerned, the respondent has devoted only 138 hours in contravention of the period of 200 practical hours prescribed by the Dental Council of India. The contention of the counsel is that so far the petitioners are concerned, they were short of only 12 hours. The counsel further submits that the petitioners were short of only some percentage in completing the target of 75% attendance in the DM theory, DM Lab and Pre-Clinical Prosthodontics. The contention of the counsel for the petitioners is that the petitioner no. 1 has scored 57% attendance in DM Theory and 67% in DM Lab and 58% in Pre-Clinical Prostho Lab while the petitioner no.2

has scored 68% attendance in DM Theory and 67% in DM Lab and 60% in Pre-Clinical Prostho Lab. The counsel submits that the respondent did not follow the mandate to complete duration of hours as laid down by the DCI for the subjects in which the petitioners were short of attendance. Counsel further submits that in fact the petitioners had attended all the classes but due to some wrong calculations, the petitioners have been shown to be short of attendance. The counsel also submits that both the petitioners had attended extra classes conducted by the respondent, in the month of June, and the petitioners have also been denied the benefit of the attendance of the said classes by the respondent for the reasons best known to them. Counsel also submits that as per the provisions of the rules, the respondent could have given assignment based attendance to the petitioners. Counsel also submits that these petitioners are also entitled to the relaxation to the extent of 15% of the total attendance in terms of sub-Rule 8 of Rule 10 dealing with the attendance in the prospectus issued by the respondent university. Counsel for the petitioners submits that the petitioners had participated in extracurricular activities which entitle them for the grant of 15% relaxation in the attendance. Counsel also submits that the respondent has not

given the benefit of the extra classes attended by the petitioners whereas the petitioners attended the extra classes up to August, 2011 and that is the reason the respondent has issued the notice on 17.8.2011, through which the petitioners were detained due to the deficiency in attendance. The contention of the counsel is that if the petitioners had not been attending the extra classes, then the decision as taken by the respondent on 17.8.2011 could have been taken by them much prior to the said date.

4. Opposing the present petition, Ms. Jaya Goyal, counsel for the respondent states that as per the rules of Jamia Milia Islamia respondent no.1 herein and Dental Council Regulations respondent no.2 herein, the petitioners are required to secure minimum 75% attendance in the exam going subjects and 70% attendance in non-exam going subjects. Counsel also submits that the petitioners were duly informed by the respondent through notice dated 14.6.2011 that they were detained due to the shortage of attendance. Counsel also submits that the other students who are detained due to the shortage of attendance have already rejoined the second year of BDS course. Counsel also submits that the course of BDS commenced from 2.8.2010 and the regular classes were held up to 31st July, 2011 and as a

compassionate measure, the respondent had also conducted extra classes for the benefit of those students who were short of attendance. The contention of the counsel for the respondent is that the petitioners had even failed to attend all the extra classes as were held for the said purpose. Counsel further submits that even the parents of the petitioners were duly informed about the status of the attendance of these petitioners vide Notice dated 10.2.2011 and 2.5.2011. Counsel further submits that so far the plea raised by the petitioners that they were entitled to the grant of 15% relaxation in their attendance because of their participation in the extra curricular activities is concerned, counsel submits that no such request was made by the petitioners and it is for the first time that the petitioners have urged such a ground after they have failed to secure the minimum percentage of attendance. Counsel also submits that the representations made by the petitioners were also considered by the Vice Chancellor of the respondent university and he did not find any merit or substance in the said representations made by the petitioners. Counsel also submits that even after giving benefit of extra classes to these petitioners, they still failed to make upto 75% of the attendance.

5. I have heard learned counsel for both the parties at a considerable length and gone through the records.

6. The petitioners are the students of BDS Course and after having passed in first year examination they were promoted to the second year. The academic session of the second year BDS Course commenced on 2.8.2010 and the same ended on 31.5.2011. The respondent also conducted extra classes from 1.6.2011 till 10.6.2011 for the students who were falling short of attendance. The annual examination of the second year course was held from 7.7.2011 till 18.7.2011 and the petitioners were not allowed to appear in the said examinations due to shortage of attendance. It is not in dispute between the parties that 70% minimum attendance was required in the non exam going subjects and in rest of the subjects minimum 75% attendance was required. The respondent has placed on record a chart in a tabulated form indicating the percentage of classes attended by the petitioners in various theory and practical subjects in the second year BDS course without reckoning the attendance in the extra classes and also after reckoning the extra classes attended by the petitioners. For better appreciation the attendance position of the petitioners as indicated in the said chart is reproduced as under:

Name Subject/Classes	Rafey Hasan Minimum attendance required	Without extra class 2 August 2010 to 31 st May 2011	With extra class 2 nd August 2011 to 10 th June 2011	Rishab Sheonk Without extra class 2 nd August 2010 to 31 st May 2011	With extra class 2 nd August 2010 to 10 th June 2011
Dental Material Theory	75%	57%	68%	48%	57%
Dental Material Practical	75%	59%	67%	59%	67%
Pre-Clinical Prosthodontics practical	75%	60%	60%	58%	58%
Prosthodontics Theory	70%	67%	67%	58%	58%
Pre-Clinical Conservative Practical	75%	68%	75%	35%	53%
Conservative Dentistry Theory	70%	70%	70%	62%	62%
Pathology Theory	75%	72%	75%	61%	76%
Pathology Practical	75%	71%	76%	71%	76%
Microbiology Theory	75%	57%	75%	54%	75%
Microbiology Practical	75%	67%	75%	67%	75%
Pharmacology Theory	75%	66%	75%	61%	76%
Pharmacology Practical	75%	64%	75%	64%	75%

A bare look at the aforesaid chart would show clearly that the petitioners were not able to make up the deficiency in their attendance even after the extra classes attended by them from 1.6.2011 to 10.6.2011.

7. There is a wide gap if the attendance of these petitioners is reckoned from 2.8.2010 to 31.5.2011 as opposed to from 2.8.2010 till 10.6.2011, but since the petitioners failed to fill the gap to secure the minimum percentage of attendance even after having attended the extra classes, therefore, this court cannot come to the rescue of these petitioners. This court cannot ascribe to the plea taken by the petitioners that there was inaccuracy in calculating the attendance of the petitioners, as no allegation of any kind of mala fides or any bias has been attributed by the petitioners against any of the members of the respondent. There is also no force in the plea taken by the counsel for the petitioners that the petitioners were given extra classes up to the month of August 2011 and the same were not accounted for by the respondent, as admittedly the petitioners were not permitted to appear in their annual examinations due to shortage in their attendance and therefore, there could arise no occasion for the respondent to hold extra classes for the petitioners alone up to the

month of August 2011. The petitioners also could not have been permitted by the respondent to appear in the supplementary examination of the second year after they were detained to appear in the annual examination itself on account of shortage of attendance.

8. It has been the consistent view of this court that no sympathy or leverage can be given to those students who do not care to even attend the minimum number of classes of a particular course of the colleges/institutions as per the norms and regulations. This court had the occasion to deal with the issue of shortage of attendance in the case of ***Vandana Kandhari & Ors. Vs. Delhi University 170(2010)DLT 755*** where it was held that the requirement of attendance cannot be given a go by and is important for the overall development of the student. The said judgment was challenged and was upheld wherein it was held by the learned Division Bench that the quality of training which a candidate gets during the time he undergoes the course is directly proportional to the number of lectures that he attends and the failure of a candidate to attend the requisite number of lectures as stipulated by the relevant rules can legitimately disentitle him to claim eligibility for appearing in the examination. In another case

of ***Fahad Hassan vs. Jamia Milia Islamia 170(2010)DLT755***, I had the occasion to deal with a batch of writ petitioners claiming relief wherein they had been detained by the respondent and I held as under:

"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 and Ors. v. 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 v. 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 v. 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 v. Guru Gobind Singh Indraprastha University WPC No. 3129/2010 and Vibhor Anand v. 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 and Ors. v. The Ritanand Balved Education Foundation (regd.) and Ors.*

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."

The abovesaid order was challenged and was upheld by the Division Bench of this court wherein it held that attendance by a student in a college is a matter of paramount concern and there cannot be any kind of deviation from the same and it is to be borne in mind that by attending classes one gets systematic education, which is required and necessary for a student attending a regular course.

9. In this case also the petitioners were careless in not meeting the target of securing 75/70% attendance in their respective theory and practical examinations and the petitioners could not achieve said target even after they were allowed to attend the extra classes up to 10th June, 2011. The petitioners

thus, now cannot raise the grievance that they were just falling short of a small percentage to meet the target of securing minimum attendance of 75/70% as this court in exercise of its writ jurisdiction will not give any direction to protect the interest of the students contrary to the laid down rules and regulations of any academic institution. The petitioners also cannot take the advantage of 15% relaxation as never before the petitioners claimed such relaxation in terms of the rules and regulations of the respondent university.

10. The other argument taken by the counsel for the petitioners, that the respondent had failed to follow the mandate of the Dental Council of India in not undertaking the classes of various subjects for a particular duration of hours, it would be suffice to state that the petitioners alone cannot raise such a grievance, that too at the end of the academic session. It is not the case of the petitioners that they alone were left out or deprived while the remaining students were taught for the full duration of the prescribed hours for each subject laid down by the Dental Council of India. It is also not the case of the petitioner that the respondent could not complete the course of various subjects as per the curriculum and therefore, the petitioners could

not prepare themselves to appear in the annual examinations. Indisputably, the respondent university is obligated to follow the duration of hours for each course laid down by the Dental Council of India, but certainly all the students including the petitioners were taught in various subjects for the same duration of hours without any discrimination. In any case of the matter, the respondent had also conducted extra classes and the same classes certainly would have further increased the duration of hours of various courses for which these extra classes were held. Therefore the said argument of the petitioners also does not cut much ice to give any concession or relaxation to the petitioners to score the said target of 75/70% of the attendance.

11. In the light of the above discussion, this court does not find any merit in the present petition and the same is accordingly dismissed.

October 13, 2011
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KAILASH GAMBHIR, J