

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

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Date of Decision: 06.12.2013

+ WP(C) No.7247 of 2012 & CM No.18688 of 2012

MS/SRISHTI GUPTA

....Petitioner

Through: Mr. R.K. Saini and Mr. Mayur Sharma,
Advs.

Versus

AMITY UNIVERSITY AND ANR.

....Respondents

Through: Mr., Rajesh Yadav, Mr. Rajan Chawla,
Mr. Kameshwar Nath Tripathi, Advs.
for R-1

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

The petitioner before this Court is a student of respondent no.1 – Amity University. The Attendance Rules of the University expect a student to have 100% attendance. The relaxation upto a maximum of 25%, however, can be allowed by the Head of the Institution / Head of Department in a case of sickness or some other valid reasons beyond the control of the student. A student whose attendance is less than 75%, however, is not permitted to appear in the End- Semester Examination. In special circumstances, the Vice-Chancellor of the University can condone the attendance upto 5% below 75% on the recommendation of the Head of Department.

The petitioner before this Court could not attend classes for the period from 4.9.2012 to 12.10.2012 in the Third Semester of the B.Sc. (Hons.) Bio-Technology Course though for the rest of the period, her attendance is alleged to be 90%. On 19.11.2012, the petitioner was informed that she has been detained and will not be issued Admit Card for the Third Semester commencing 20.11.2012. She is, therefore, before this Court seeking the following reliefs:

- (a) A writ of certiorari calling for the records of the case and pursue the same;
- (b) A writ of certiorari quashing the action on part of the respondents in detaining the petitioner to sit for the third semester/ second year examination of B.Sc Biotechnology course to be held from 20th of November 2012 on the ground of shortage of attendance (less than 75%), without considering the factual position that she could not attend classes for the five weeks due to serious illness and hospitalization and for the rest of the period she has about 90% attendance and being a second year student can be promoted to the third year with the requirement to make up the deficiency in the third year of the course, being illegal, arbitrary, discriminatory, whimsical, unjust and in violation of the Rules and Regulations and the Principles of Equity, Justice and Good Conscience;
- (c) A writ of mandamus commanding the respondents to allow the petitioner to sit for her third semester/ second year examination of B.Sc. (Hons) Biotechnology course.

2. The writ petition has been contested by the respondents and in its counter affidavit, the respondent no.1 – Amity University has taken a preliminary objection that since the said University is outside Delhi, this Court has no territorial jurisdiction in the matter. The respondent no.2, which is a society, has in its counter affidavit denied the averment that it is managing the respondent no.1 – university and has stated that it only sponsored the said university at the time it was established, whereafter the respondent no.1 became a separate juristic entity.

3. Admittedly, the respondent no.1 – Amity University was set up by an Act passed by the Uttar Pradesh Legislature, known as Amity University Uttar Pradesh Act, 2005. Therefore, the respondent no.1 is now a statutory body capable of suing and being sued. As far as respondent no.2 is concerned, it is a society which had initially sponsored Amity University, but since the university is now a statutory body, managing its own affairs, the respondent no.1 is neither a necessary nor a proper party to the writ petition. The name of respondent no.2 is, therefore, deleted from the array of respondents.

4. The petitioner was studying at Noida where the campus of Amity University is situated. The admission by the petitioner was taken at Noida. The order detaining the petitioner on account of shortage of attendance has been passed by the University at Noida. Therefore, neither the respondent – university is situated nor any cause of action to file the present writ petition arose within the territorial jurisdiction of this Court.

5. Clauses (1) and (2) of Article 226 of the Constitution, read as under:

“226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”

6. Clause (2) of the Article was added by way of 15th Constitutional Amendment and was initially numbered as (IA). By way of 42nd Amendment, it was renumbered as Clause (2). The Article, before it was amended, came up for consideration of the Supreme Court in *Hari Vishnu Kamath v. Syed Ahmed Ishaque & others* [1955(1) SCR 1104] and the following view was taken by 7 Judges Bench of the Apex Court:

“What we have to see, therefore, is whether the words of Art.226 mean that the person or authority to whom a writ is to be issued has to be resident in or located within the territories of the High Court issuing the writ ? The relevant words of Art.226 are these -"Every High Court shall have power... to issue to any person or authority... within those territories....". So far as a natural person is concerned, there can be no doubt that he can be within those territories only if he resides therein

either permanently or temporarily. So far as an authority is concerned, there can be no doubt that if its office is located therein it must be within the territory. But do these words mean with respect to an authority that even though its office is not located within those territories it will be within those territories because its order may affect persons living in those territories ? Now it is clear that the jurisdiction conferred on the High Court by Art. 226 does not depend upon the residence or location of the person applying to it for relief; it depends only on the person or authority against whom a writ is sought being within those territories. It seems to us therefore that it is not permissible to read in Art. 226 the residence or location of the person affected by the order passed in order to determine the jurisdiction of the High Court. That jurisdiction depends on the person or authority passing the order being within those territories and the residence or location of the person affected can have no relevance on the question of the High Court's jurisdiction. Thus if a person residing or located in Bombay, for example, is aggrieved by an order passed by an authority located, say, in Calcutta, the forum in which he has to seek relief is not the Bombay High Court though the order may affect him in Bombay but the Calcutta High Court where the authority passing the order is located. It would, therefore, in our opinion be wrong to introduce in Art. 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court which can give relief under Art. 226. The introduction of such a concept may give rise to confusion and conflict of jurisdictions.”
(underlining added)

The introduction of Article 226(2) widened the area in respect of which writs could be issued by the High Courts. As a result, while

Article 226(1) empowers this Court to issue writs to a person, authority or government within the National Capital Territory of Delhi, even if the cause of action does not arise in Delhi, Clause (2) of the said Article enables this Court to issue writ to the person, authority or the government located outside Delhi in a case where a cause of action, either wholly or in partly arises within the National Capital Territory of Delhi.

7. The learned counsel for the petitioner drew my attention to the interim order dated 26.9.2012 passed by this Court in Prithivi Singh Narula versus Amity University W.P(C) No.6103/2012 whereby this Court by way of an interim order, while issuing notice to the respondents in the said petition including Amity University, permitted the petitioner in that case to attend classes. The aforesaid order being an interim order does not help the petitioner in any manner and does not amount to a decision of the Court on the issue of territorial jurisdiction. In any case, even if the plea of want of jurisdiction is not raised in one petition, that by itself does not prevent the respondent from raising such plea in another writ petition.

8. Since this Court exercises jurisdiction only in National Capital Territory of Delhi, and Amity University is situated in Uttar Pradesh, the case of the petitioner is not covered under Clause (1) of Article 226 of the Constitution. Since the petitioner took admission, pursued the course of study and the order detaining her in third semester was passed in Noida, no cause of action arose within the territorial jurisdiction of this Court. Therefore, neither under clause (1) nor clause (2) of Article 226, the present writ petition can be entertained by this Court.

9. Since this Court has no territorial jurisdiction in the matter, the writ petition is dismissed. It is, however, made clear that dismissal of the writ petition does not come in the way of the petitioner filing an appropriate petition before the court having territorial jurisdiction in the matter. All pending CMs also stand disposed of.

There shall be no orders as to costs.

DECEMBER 06, 2013/*rd*

V.K. JAIN, J.