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

Decided on: 12.09.2017

+ **LPA 582/2017, C.M. APPL.32363/2017**

DEEN DAYAL UPADHYAYA COLLEGE Appellant

Through : Ms. Beenashaw. N. Soni, Advocate.

versus

AYUSHI SETHI AND ORS. Respondents

Through : Dr. Ashutosh Pratap Singh, Advocates,
for Respondent Nos. 1 to 7.

Sh. Mohinder. J.S. Rupal and Sh. Prang Newmai,
Advocates, for Respondent No.8.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUNIL GAUR

MR. JUSTICE S. RAVINDRA BHAT

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1. The appellant is a constituent college of the Delhi University (hereafter, also, "the college") and is funded and maintained by the grants received from the Government of NCT of Delhi (GNCTD). The college follows University statutes & Ordinances and is required to follow all the rules and regulations and notifications issued by the Delhi University, as the case may be, from time to time.

2. The Respondent Nos. 1 to 7 are students (hereafter "the students") of the college enrolled in the B. Com (Hons) course, and are in their second

year, IVth semester. The students are aggrieved by the fact that admit-cards were not issued to them due to shortage of attendance.

3. The college, in accordance with its practice displays the attendance of all students for all the papers/subjects at the end of each month on the college website. In terms of Ordinance VII of the Ordinances of the University of Delhi (also hereafter referred to as “the Ordinance”), each student should necessarily have 66.7 % ($\frac{2}{3}^{\text{rd}}$) attendance in aggregate as a condition of eligibility to appear in the examinations. The Principal of the college, in terms of the discretion, as provided in Ordinance VII(2), however, can allow students with a minimum of 40% attendance to take the examination.

4. On 08.05.2017, a revised list of 172 students with shortfall in attendance was displayed by the college administration. However, many of the candidates, including the respondent/students, sought permission to rely on and to submit Medical Certificates, claiming ignorance of the practice that they (such certificates) were to be furnished within a week of recovery from illness. The college administration entertained the Medical Certificates of all the aforesaid requests. The college claims that students were given all the concessions in terms of the extant rules, including the maximum permissible benefit on medical grounds; however, the respondent-students nevertheless, did not satisfy eligibility conditions to be issued admit cards under the rules.

5. The examinations for the IVth semester began on 09.05.2017; after the first exam, the students along with one of the teachers of the Commerce department, namely, Dr. Abha Wadhwa, approached the authorities, and Dr.Wadhwa gave a letter to the authorities stating that the seven respondents

had applied for a change of option to the subject “E-filing of Returns” and were attending her classes regularly (of the said subject) and that due to inevitable reasons, their names were not included in her attendance records.

6. The college, after going through the records found that none of the said students had opted for the subject “E-filing of Returns” taught by Dr. Abha Wadhwa. Rather, six of them had opted for “Entrepreneurship Development” and one for “Cyber Crime and Laws” and their names appeared in the attendance sheets of the said papers, respectively. Dr. Wadhwa, upon this fact being brought to her notice, submitted another application stating that they attended her classes regularly in the month of January, 2017 and had changed their options in the month of February, 2017. Dr. Abha Wadhwa further stated that each one of the respondents had attended all 18 classes out of the total 18 classes held in January, 2017. The statement of Dr. Abha Wadhwa was though, found to be contrary to the records of the college with numerous discrepancies in the entry of the names of the students.

7. The appellant college thus contends that it did not accept the attendance records submitted by Dr. Abha Wadhwa and the students were not issued the admit cards to appear in the examination. The attendance records of the students are as follows:

<i>S.No.</i>	<i>Name of the Student</i>	<i>Classes attended out of classes held</i>
<i>1.</i>	<i>Ruchika</i>	<i>16 out of 96</i>
<i>2.</i>	<i>Abhinav</i>	<i>35 out of 96</i>
<i>3.</i>	<i>Ayushi</i>	<i>20 out of 93</i>

4.	<i>Rimpy</i>	<i>8 out of 89</i>
5.	<i>Dipankar</i>	<i>23 out of 89</i>
6.	<i>Vinay</i>	<i>35 out of 86</i>
7.	<i>Divya</i>	<i>out of 78</i>

8. The college's rejection of the students' applications and the resultant inability to appear in the semester ending examination led them to file a writ petition before the Single Judge before the last examination of IVth Semester was to be held. The matter was listed in court on a day before the last examination was to be held. The appellant college appeared on advance notice and the matter was heard.

9. The learned Single Judge by order dated 26.05.2017 issued notice and only allowed two students i.e., Respondent nos. 4 and 7 to appear in the last examination to be held on 27.05.2017. The notice was issued to the appellant college which filed its counter and additional affidavit. The writ petition was heard on 10.08.2017 and the judgment was thereafter delivered on 25.08.2017.

10. By the impugned judgment, the learned Single Judge has allowed the petition of the students and has directed the appellant college to promote the students to the next academic year.

11. The college is aggrieved by the decision of the learned Single Judge and has preferred the present appeal. It argues that Ordinance VII (2) stipulates that the basic requirement to appear in the examination is that the student must have attended 2/3rd of the lectures/practicals /presentations/

tutorials during the respective semester. However, this condition can be relaxed to the extent that the Principal of the college has the discretion to allow, if the student has attended not less than 40% of the total attendance lectures/practicals /presentations /tutorials, and she/he undertakes to make-up the deficiency in the next ensuing semester of the same academic year or if the deficiency of the said attendance can be made-up by combining the attendance of previous semesters; in the ensuing semester of the same academic year. Thus, it is mandatory for each student, to appear in any University examination, to have attended 66.7% classes of courses in the academic year either way, and to have 40% attendance in the respective semesters of the academic year to qualify to sit in the examination.

12. The college argues that the discretion to allow or not allow a student is hedged with conditions and not left entirely to the whim of the Principal. In case she is of the opinion that the student can make up the deficiency in the attendance, provided the minimum attendance norm of 40% is fulfilled, permission may be granted in the facts of any given case, to appear in the University examination. In this case, the respondent students clearly had very poor attendance during the academic year, especially in the fourth semester. Given such a record, the discretion exercised by the college Principal was neither injudicious nor arbitrary; it was to ensure compliance with essential academic norms. The learned Single Judge, submitted the appellant's counsel, fell into error in issuing the impugned directions. Learned counsel submitted that the record of attendance to the extent the students relied on the certificate of Dr. Wadhwa, should not have been given credence. It was also submitted that in the absence of arbitrariness, discrimination, illegality or *mala fides*, it was not open for the learned Single

Judge, to exercise jurisdiction under Article 226 of the Constitution.

13. It was argued on behalf of the student/respondents that the impugned judgment does not call for interference. Learned counsel urged that the college's stand, in attacking and undermining its teachers' record, is unwarranted. The aspersions cast on Dr. Wadhwa, it is urged, are unfounded. Without seeking to implead her, the college could not level allegations of the manner that it did. It was next urged that the college's conduct in not disclosing the attendance of the candidates and alerting them to the possibility of their candidature being withheld, cannot be supported. It was urged that University regulations and norms direct that each student should be allowed to reach the next academic year. The conditions stipulated in Ordinance VII (2) relied on by the college, submits counsel, was correctly interpreted by the learned Single Judge. It was further argued that the second and third proviso to Ordinance VII are to be read beneficially. Viewed so, the students, in the present case should have been given the benefit. Its denial clearly amounted to wrong exercise of discretion, which was corrected for proper reasons, by the learned Single Judge. It was also argued that as long as the students performed and excelled on merit, in the subject, the issue of attendance should not impede their further progress. If this Court were to upset the findings of the learned Single Judge, the students' careers would be gravely imperiled.

14. The students rely on their attendance records, which are shown in the form of a tabular statement, for each year. That data is extracted in the following comprehensive table/chart:

S. No.	Name of Student	1 st Semester Attendance	2 nd Semester Attendance	3 rd Semester Attendance	4 th Semester Attendance
		<u>Classes attended</u> (Classes held)	<u>Classes attended</u> (Classes held)	<u>Classes attended</u> (Classes held)	<u>Classes attended</u> (Classes held)
1.	Divya Gupta	168 (241)	96 (167)	138 (223)	63 (365)
2.	Ruchika	173 (189)	155 (184)	167 (201)	101 (402)
3.	Ayushi Sethi	138 (240)	54 (167)	140 (217)	93 (366)
4.	Rimpy	150 (232)	136 (171)	175 (219)	46 (354)
5.	Deepankar Rana	170 (235)	84 (175)	152 (232)	78 (352)
6.	Abhinav	143 (182)	128 (187)	153 (199)	100 (395)
7.	Vinay Varma	103 (232)	94 (165)	156 (217)	367)

Note: The figures shown in brackets denote the total number of classes held during the semester.

15. The clubbing of attendance of two semesters in an academic year can be done if the student attends minimum 40% classes in a semester. The ordinance, in this case, reads as follows:

“ORDINANCE-VII (2)

- a) A candidate for the semester I/III/V Examination shall not be deemed to have satisfied the required conditions of attendance unless s/he has attended, in all the subjects taken together, not less than two thirds of the*

lectures/practical/presentations/tutorials required to be attended. Provided that a student of the Semester I/III/V who does not fulfill the required conditions of attendance, as above but has attended, in ail the subjects taken together, not less than 40 per cent of lectures/practical/presentations during the respective semester, may at the discretion of the Principal of the college concerned, appear for the ensuing semester examination but such a candidate shall be required to make up the deficiency at lectures and practicals, in the next semester of the same academic year.

Provided that a student of the I/III/V semester who does not fulfill the required conditions of attendance as above, but has attended in all the subjects taken together, not less than 40 per cent of the lectures/practical/presentations/tutorials, held during the respective semester, may at discretion of the Principal of the College concerned, be allowed to appear at the ensuing examination provided that she/he makes up the deficiency of the said attendance by combining the attendance of the previous semester in the ensuing semester.

Provided further that the Principal of the College concerned may permit a student to appear in an examination notwithstanding that the student has not fulfilled the attendance requirement, if in the opinion of the Principal, such student shall make up the deficiency in the succeeding academic year.

Provided further that a student of the VI semester shall be allowed to appear at the VI Semester Examination, if by combining the attendance of the three academic years, the candidate has put in two-thirds of attendance, in ail the subjects taken together, held during the respective years.”

16. However, as can be noticed in this case, even after clubbing the attendance of the third and or fourth semesters, none of the students among the students qualify for the required percentage of 66.7% in the academic

year which disqualifies them to be promoted to the next year. If the 18 classes certified by Dr. Wadhwa are taken into account then only three of the respondent students, namely Ayushi Sethi (respondent no. 1), Ruchika (respondent no. 3) and Abhinav Verma (respondent no. 6) would be able to satisfy the condition of possessing more than 40% attendance, and the rest of the respondents, i.e. respondent nos. 2, 4, 5 and 7 would not qualify in terms of clause (a) of Ordinance VII(2). The college/appellant argues that only when a candidate has a minimum of 40% attendance, can the discretion be exercised, permitting her to appear for the exam and she be allowed to fulfill their attendance criteria in the subsequent semester, and not otherwise.

17. In *Regional Engineering College, Hamirpur and Anr. v. Ashutosh Pandey* (2002) 9 SCC 720, the Supreme Court set aside the judgment of the High Court that permitted condonation of shortage of attendance that was beyond what was provided for in the college regulations. The Court then held as follows:

“8. A perusal of the Regulation shows that a candidate should first have 75% of minimum attendance in that course under Regulation 4.1. Regulation 4.2 mentions the circumstances under which further exemption can be granted by the Principal. The Principal can give further credit upto an extent of 10% of the total classes held in each course during the period of a student's participation in the programmers/competitions mentioned in Regulation 4.2. The Principal can exempt upto 10% of the total classes only in contingencies as mentioned in Regulation 4.2. Thus, 10% is the maximum in addition to 25%.

9. In addition, Regulation 4.3 is specific that the condonation on account of reasons listed under (4.2) shall not exceed 10% of the total lectures delivered during the semester. It also states that a candidate will have to apply to the

concerned Head of Department on prescribed pro forma along with the reasons and documents in proof of his absence. Condonation can be granted by the concerned Head of the Department with the prior approval of the Principal. Thus, 10% in excess of 25% alone, is the maximum that can be condoned.

10. In the present case, the respondent did not make any application in the prescribed pro forma. Therefore, it is not possible to say whether his case comes within the contingencies mentioned in Regulation 4.2. It is no doubt stated that the respondent had gone to Delhi to appear in the examination/interview, but it is not clear whether that was an examination/interview held by a Government Organization/Public Limited Company. In any event, admittedly after deducting admissible 25% exemption, further absence of the respondent comes to 11% which is more than the permissible discretionary percentage granted to the Principal. Therefore, the Principal was right in saying he had no power to condone the absence in excess of 10% in addition to 25%.

11. We are, therefore, of the opinion that the High Court fell into an error in permitting condonation of absence beyond 10% in addition to 25%. We, therefore, set aside the judgment of the High Court and the directions given therein.”

18. Like in *Ashutosh Pandey (supra)*, it was held in *Thapar Institute of Engineering & Technology & Anr v. Gagandeep Sharma & Anr* (2001) 9 SCC 157, that the Court would normally not interfere with such prescribed standards and especially when they are intended to improve the academic standards in their respective institutes.

19. The Ordinance, in the present instance, states that the Principal may permit a student to appear in an examination notwithstanding that the student has not fulfilled the attendance requirement, if the student has at least 40% attendance, and they deem that such student shall make up the deficiency in attendance in the succeeding academic year; however, the Court cannot and

ought not to interfere in such exercise of discretion by the Principal. Likewise, in *Sukriti Upadhyay v. University of Delhi* [LPA 539/2010, decided on 04.10.2010], the Delhi High Court, while disallowing the condonation of shortage of attendance held as follows:

“11. In Kiran Kumari (supra), another Division Bench of this Court referred to the decisions in Baldev Raj Sharma v. Bar Council of India and Ors. 1989 Supp. (2) SCC 91, Bar Council of India and Anr. v. Aparna Basu Mallick and Ors: (1994) 2 SCC 102, S.N. Singh (supra) and expressed the view as under:

13. In the light of the above, we find it difficult to appreciate as to how the requirements of 66% in each subject or as a condition of eligibility for appearance in the examination or the requirement of 66% attendance in the aggregate for purposes of granting the benefit of condonation in the shortfall can be said to be either illegal or arbitrary. The decisions delivered by the Supreme Court and by this Court to which we have referred above have in our view authoritatively held that the LLB course was a professional course in which the candidates have to ensure regular attendance of lectures and those who do not attend the stipulated percentage of lectures would not even be eligible for enrolment as members of the Bar. Such being the importance given to the attendance of lectures, there is no question of the requirement stipulated by the Rules being either irrational, unconstitutional or illegal in any manner. 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. 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.

14 . That brings us to the contention vehemently urged by Mr. Mittal that insistence upon 66% lectures in the

aggregate as a condition precedent for the exercise of the power of condonation was irrational, for it amounts to empowering the competent authority on the one hand and denuding him of that power on the other. We do not think so. What is the minimum percentage of lectures which a candidate must attend in each subject or on the aggregate is a matter on which the academic bodies like the University and the Bar Council of India are entitled to take a decision. If in the opinion of the Bar Council and the University, a candidate cannot be said to have taken proper instructions or meaningfully undergone the course, unless he attends a minimum of 66% lectures in the aggregate, this Court cannot but respect that opinion. In matters relating to academics and standards of education, the Court would show deference to the opinion of the academicians unless a case of patent perversity is made out by the appellants. The present is not, however, one such case where the requirement of the rule can be said to be so perverse or irrational as to call for the intervention of this Court. As a matter of fact, the minimum percentage of lectures having been fixed at 66%, still gives to the students freedom to miss or abstain from 34% of the such lectures. That is 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. No student can however claim that apart from 34% lectures which he is entitled to miss even without a cause, the shortage to make up 66% should be condoned if he shows good cause for the same.”

20. The Supreme Court similarly held in *Ashok Kumar Thakur v. University of Himachal Pradesh and Ors.* (1973) 2 SCC 298, that since the appellant’s deficiency in the matter of attendance exceeded the required minimum, it was beyond the jurisdiction or competence of the Principal of the college to condone the deficiency; and the Court held that it cannot

intervene in this capacity of the Principal.

21. The Ordinance, no doubt, accords for leniency and permission to forgo the specific attendance requirements, even in the absence of the minimum of 40% attendance, upon a conjoint and harmonious reading of all the provisos to that provision. However, this is subject to the exercise of discretion: “*if in the opinion of the Principal, such student shall make up the deficiency in the succeeding academic year.*” The subsequent provisos only clarify that calculation of two thirds’ attendance can be made even by taking into account subsequent semester/year requirements, provided overall 66.7% attendance (of all classes) can be achieved by the student.

22. In this case, the data relied upon by the students’ counsel, extracted above, reveals that Divya Gupta had attended 465 out of 996 classes in four semesters (46.68% overall); Ruchika had attended 596 out of 976 classes in four semesters (61.06% overall); Ayushi Sethi attended 425 out of 990 classes in four semesters (42.92% overall); Rimpay attended 507 out of 976 classes in four semesters (51.94% overall); Devender Rana attended 484 of 994 classes in four semesters (48.69% overall); Abhinav attended 523 of 963 classes in four semesters (53.31% overall) and Vinay Verma attended 433 out of 981 classes in four semesters (44.13%).

23. The question, therefore, in this case, is whether having regard to these facts, the decision of the college’s Principal, not to permit the respondent students to appear in the examination was improper or illegal.

24. As discussed, it is not for Courts, ordinarily to interfere with the exercise of this administrative discretion. Similarly, the Court in *Arvind Gupta v. University of Delhi* (1981) ILR 1 Delhi 28, while holding that it is not the purpose of the Court to tell the academic council as to what decision

it should take, except to point-out that sometimes considerations of mercy rather than insistence upon rigid and inflexible application of the rule will better serve the purpose, stated as follows:

"We have only indicated the various courses open to it in the recognition that sometimes considerations of mercy rather than insistence upon rigid and inflexible application of the rule will better serve the purpose for it hasn't been well said:

*"The quality of mercy is not strain'd,
It droppeth as the gentle rain from heaven,
Upon the place beneath: it is twice blest;
It blesseth him that gives and him that takes."
(Merchant of Venice of Shakespeare)*

We have said enough and need not dilate any further on it.

(9) With the above observations, the writ petition is dismissed but there will be no order as to costs."

25. The terms of the Ordinance are that students who are unable to comply with the prescribed attendance requirements (whether it is 40% or below) may to be permitted to appear for the ensuing semester examination is based on the discretion of the Principal. During the hearing of the appeal, it was contended that the Principal acted in an arbitrary manner in allowing some students (Tanvi Jain and Raj, who were allowed to appear in the exams and had been promoted last year despite having attendance below 26.7%, and they were given grace attendance because of extra curricular activities), to appear, despite shortage of attendance, and detaining the respondents. Those cases and their particulars are not before the Court. Moreover, negative equality claims cannot be grounds for permitting the students to be promoted to the next academic year, when the Ordinance provides definite guidelines

regarding the same; this has been highlighted in a catena of decisions, such as, *State of Bihar v. Upendra Narayan Singh and Ors.* 2010 (4) ALT 6 (SC); *Basawaraj and Ors. v. The Spl. Land Acquisition Officer* AIR 2014 SC 746; *Arup Das and Ors. v. State of Assam and Ors.* 2012 (2) ALLMR 54; *Hari Ram and Anr. v. State of Haryana and Ors.* 2010 (2) CTC 336, *Vishal Properties Pvt. Ltd. v. State of U.P. and Ors.* AIR 2008 SC 183 etc. In *Basawaraj (supra)*, the Supreme Court held as follows:

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible.”

26. The fact that two other students - Tanvi Jain and Raj, who were allowed to appear in the exams and had been promoted last year despite having attendance below 26.7%, (they were given grace attendance because of extra curricular activities), and that other students were granted the benefit

of additional attendance and had their shortage of attendance condoned, cannot be grounds for urging the same treatment for the students. Furthermore, this Court is not called upon to judge the merits of exercise of that discretion, which may have been justified or not depending on the circumstances.

27. The respondent students' submission that each one of the respondents had attended all 18 classes out of the total 18 classes of the subject "E- filing of returns" held in January, 2017, was found to be contrary to the college records, some of which reasons have been cited by the appellant as follows:

"i) Respondent no 4 Divya Gupta was on medical leave from 22nd January, 2017 onwards, therefore she could have not attended all the 18 classes in any manner but Dr. Abha Wadhwa claims that she has attended 18 classes which is unbelievable.

ii) The names of these students i.e., the respondent nos 1 to 7 appear in the Attendance Sheet of the respective teacher for the subject "Entrepreneurship Development" and "Cyber Crime and Laws" whose option the respondents had taken since beginning of January, 2017. A student cannot attend two subject classes of the option subject at the same time and take benefit of attendance from both subjects. The rules only allow the student to take one option and attendance of only one subject option is considered.

iii) The attendance record submitted by Dr. Abha Wadhwa for the month of January 2017 did not have the names of the petitioner, it is submitted that Dr. Wadhwa had added the names of two other students by pen in her own handwriting and she had no explanation as to why at that time also she did not add the names of any of these seven respondents in the attendance records if they were missed out inadvertently as alleged by her. In any case since the respondent no 1 to 7 have already given option of other subject in January 2017 itself and

have also attended the classes of their opted subjects no weightage can be given to the respondents for the paper e-filing of returns.”

28. As seen from the above, the explanation given by the teacher, with respect to attendance of the concerned students, strains credibility. Even otherwise, such facts cannot be gone into, under writ proceedings. If the Court were to decide the issue, instead of the Principal, and exercise discretion, possibly it could be said that having regard to the overall attendance, perhaps two students could have been given the benefit of condonation. However, what appears also to have weighed with the college Principal was not merely the overall records, but the attendance record of the relevant semester, which is certainly a relevant and vital consideration.

29. In light of the above analysis, the decision of the learned Single Judge to permit the promotion of the students to the next semester, in the present case, cannot be sustained. That decision is solely for the Principal of the appellant college to make, as adequately provisioned for in the Ordinance. This Court also holds that the discretion exercised by the Principal in the present case was not arbitrary, illegal or lacking in *bona fides*. The impugned judgment is, therefore, set aside. The appeal and accompanying applications are allowed without order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**SUNIL GAUR
(JUDGE)**

SEPTEMBER 12, 2017