

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE CIVIL JURISDICTION****WRIT PETITION NO. 3776 OF 2015**

- 1 Preeti Mulji Sondarwa
G5, B-Wing, B Bldg, R.K. Apartment,
Talav Road, Bhayander (East),
Thane-401105
 - 2 Vatsal Mazani,
 - 3 Krishna Pawan Gupta,
 - 4 Namit Lalit Singal,
 - 5 Amrita Sukhbir Sahney
 - 6 Vraj Desai,
 - 7 Khushali Rajesh Vakharia,
 - 8 Nazia Shamsuddin Shaikh,
 - 9 Aditya Sanjay Lalpuria,
 - 10 Jash Kaushal Vatani
-Petitioners

Vs.

- 1 The Controller of Examinations,
University of Mumbai,
having office at Jyotiba Phule Bhavan,
Vidya Nagari, Kalina Campus,
Mumbai-400 098.
- 2 The Vice Chancellor,
University of Mumbai,
having office at University
Fort Building, M.G. Road,
Mumbai-400 032.
- 3 Dr. Sunil Mantri,
The Principal,
SVKM's Narsee Monjee College of

Commerce and Economics,
having office at Juhu Scheme,
Vile Parle (West),
Mumbai-400 056.

- 4 SVKM's Narsee Monjee College of
Commerce and Economics,
Through its Registrar,
having office at Juhu Scheme,
Vile Parle (West),
Mumbai-400 056.

- 5 The Convener,
Attendance Committee, being the
Vice Principal,
SVKM's Narsee Monjee College of
Commerce and Economics,
having office at Juhu Scheme,
Vile Parle (West),
Mumbai-400 056.

....Respondents

**WITH
WRIT PETITION NO. 3778 OF 2015**

Pratik Prakash Kadu & Ors.

....Petitioners.

Vs.

The Controller of Examinations,
University of Mumbai & Ors.

....Respondents.

Mr. Mihir Desai, Senior Advocate a/w Mr. Swaraj S. Jadhav for the
Petitioners in both the matters.

Ms. Prachi Tatke a/w Ms. Kavita P. Srivastav Sharan, Ambika P. Singh,
Urjita Badhake, Ms. Manorama Mohanty, i/by M/s. S.K. Srivastav &
Co. for Respondent Nos. 3 to 5 in both the matters.

Mr. R.A. Rodrigues a/w Ms. Pranali Dixit for Respondent Nos. 1 and 2
in both the matters.

**ALONG WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (LODGING) NO. 1536 OF 2015**

Nishant N. Joshi & Anr.	Petitioners.
Vs.	
The Controller of Examinations, University of Mumbai & Ors.	Respondents.

**WITH
WRIT PETITION (LODGING) NO. 1537 OF 2015**

Shreya Shah & Ors.	Petitioners.
Vs.	
The Controller of Examinations, University of Mumbai & Ors.	Respondents.

**WITH
WRIT PETITION (LODGING) NO. 1541 OF 2015**

Maitri Anil Shah	Petitioner.
Vs.	
The Controller of Examinations, University of Mumbai & Ors.	Respondents.

**WITH
WRIT PETITION (LODGING) NO. 1554 OF 2015**

Titiksha N. Gandhi & Ors.	Petitioners.
Vs.	
The Controller of Examinations, University of Mumbai & Ors.	Respondents.

**WITH
WRIT PETITION (LODGING) NO. 1600 OF 2015**

Sandeep Vora & Ors.	Petitioners.
Vs.	
The Controller of Examinations, University of Mumbai & Ors.	Respondents.

Mr. Mihir Desai, Senior Advocate i/by Jadhav Swaraj Sanjay for the Petitioners in WPL No. 1536 of 2015.

Mr. Mihir Desai, Senior Advocate i/by Vinamra Kopariha for the Petitioners in WPL Nos. 1537 of 2015, 1541 of 2015 and 1554 of 2015.

Mr. Mihir Desai, Senior Advocate i/by Chetan Mali for the Petitioners in WPL No. 1600 of 2015.

Mr. Rui Rodrigues for Respondent Nos. 1 and 2 in all Petitions.

Mr. Vijay Thorat, Senior Advocate with Mr. S.K. Srivastav i/by M/s. S.K. Srivastav & Co. for Respondent Nos. 3 to 5 in WPL 1536 of 2015.

Mr. Ranjeet Thorat, with Mr. S.K. Srivastav i/by M/s.S.K. Srivastav & Co. for Respondent Nos. 3 to 5 in WPL 1537 of 2015.

Mr. S.K. Srivastav i/by S.K. Srivastav & Co. for Respondent Nos. 3 to 5 in WPL 1541 of 2015.

Ms. Prachi Tatake with Mr. S.K. Srivastav i/by M/s. S.K. Srivastav & Co. for Respondent Nos. 3 to 5 in WPL 1554 of 2015 and WPL No. 1600 of 2015.

**CORAM:- ANOOP V. MOHTA AND
V.L.ACHLIYA, JJ.**

RESERVED ON:- 06 JULY 2015

PRONOUNCED ON:- 10 JULY 2015.

JUDGMENT (PER ANOOP V. MOHTA, J.):

Rule. Rule made returnable forthwith.

Heard finally, by consent of the parties.

2 By this common Judgment, we are inclined to dispose of all these Petitions as the basic facts, Respondents statute and University Ordinances 6086/2014 (the ordinance) are common and

so also the related issues. The details of Petitioners are provided in the chart/table which are part of record and taken on record and marked “X” and “Y” respectively, for identification purposes.

3 The Petitioners (students/learners) are debarred/detained because of shortage of attendance i.e. below 50% in each subject/course and 75% in overall, which is the foundation of Ordinance 6068 issued by Respondent No.1 University of Mumbai, which has been brought into force with effect from 5 May 2014 for the academic year 2014-15 and onwards, relating to the attendance for learners. The basic clauses of Ordinance are as under:-

O. 6086: Attendance of learners

- 1 *There shall be the Attendance Committee, for smooth conduct of this ordinance, in every college/institute/Department of the University comprising of at least three members (to be nominated from other departments in case of the University Departments having less than 3 teachers), the Vice-Principal/Senior Teacher (Convener) and at least two more teachers ensuring representation of the concerned faculties, nominated by the Principal/Director/Head.*
- 2 *Every bonafide learner shall ordinarily be allowed to keep terms for the given semester in a program of his enrollment, only if he fulfills at least seventy five percent (75%) of the attendance taken as an average of the total number of lectures, practicals, tutorials etc. wherein short and/or long excursions/field visits/study tours organized*

by the college and supervised by the teachers as envisaged in the syllabus shall be credited to his attendance for the total no of periods which are otherwise delivered on the material day/s. Further it is mandatory for every learner to have min 50% attendance for each course & average attendance has to be 75%.

- 3 The same ratio shall be applied for computing the attendance of the learners by crediting the number of periods which are missed while participating in an extracurricular/co-curricular activity/competition/camp/workshop/convention/symposium/seminar etc. where the said learner is officially representing the college/University/District/State/Country with the permission of the Principal/Director/head of the College/Institute/University Department or by the direction of the University Officer as the case may be wherein for the purpose of computing the average attendance the periods missed for what is envisaged here-in-above, at Sr. No.2, shall be deemed to have been attended by the said learner.*
- 4 Without prejudice to what is stated here-in-above, the Principal/Director/Head of the concerned College/Institute/Department of the University shall be the competent authority to condone the absentee of any learner further up to additional 25%, if deemed fit and on recommendation of the attendance committee of the said college/Institute/Department of the University, wherein it is mandatory on the said committee to do natural justice by giving personal hearing to every learner falling short of minimum attendance for keeping terms and recommending case by case to the competent authority having verified the genuineness and gravity of the problem that justifies the learner to remain absent, which generally shall be limited to his own sickness, sickness of his parent, death of his parent etc. supported by valid evidence, documentary or otherwise.*

- 5 *The attendance committee ensures that the attendance records are maintained in order and that the warning letters are issued to the defaulting learners at least twice in every semester & that in the first week of every month for the previous month default list it display on college notice board. If they are falling short of attendance while also displaying the list of defaulters declaring their respective attendance for the month. The defaulting learners should also be called (along with the parent/guardian wherever necessary) to meet the Convener, attendance committee in the middle of the semester with a view to make the consequences adequately clear while understanding the difficulties if any and encouraging the learner to comply with the requirement of the attendance. Needless to say that the learners should be made aware of the provisions of the ordinances for attendance at the time of admission and an undertaking may be obtained from them (countersigned by the parent/guardian wherever necessary) assuring regular attendance while understanding the consequences of defaulting.*
- 6 *At the end of the semester on recommendation of the attendance committee the Principal/Director/Head of the college/Institute/University Department shall display list of the learners who are not allowed to keep terms, allowing them to appeal to the Principal/Director/Head of the college/Institute/Department of the University within 3 days from the date of display of the notice. After disposing the appeals the Principal/Director/Head shall intimate the same to the In-charge of Examinations/the Controller of examinations to withdraw the examination forms of such defaulting learner sunder intimation to those learners ensuring that this communication reaches the concerned at least 10 clear days before the commencement of the respective examinations.*
- 7 *The learners whose terms are not granted by the college/institute/department of the University can appeal*

to the controller of examinations, if desired, in a prescribed form and by paying fees prescribed by the Management Council within 3 days from the receipt of this intimation and that the controller of examinations shall arrange a hearing of the learners along with their concerned Principals/Directors/Heads of the Department, represented in person or through a teacher nominated by them before the committee (one each for every faculty) nominated by the Management Council comprising of 3 members including the convener. The respective committees shall convey their decisions to the controller of examinations which shall be final and binding on the learners once accepted and communicated by the controller of examinations.

(The existing Ordinances).119, O.120 & O.125 are repealed)

4 The Petitioners have been undergoing respective courses (F.Y. B.Com., S.Y. B.Com. etc.) under the Respondents-Management in the year 2014-15. By the respective impugned orders/notices ranging from 24 February 2015, 30 April 2015, 20 May 2015, 27 May 2015, 3 June 2015, they have been debarred/detained from the College/Management/Courses from semesters end examinations. Some Petitioners have filed the Petitions in the month of April 2015 and some in the month of May 2015. This Court, initially on 30 April 2015, granted prayer clause (d) in Writ Petition Nos. 3776 of 2015 and 3778 of 2015, thereby permitted a batch of the Petitioners to appear in the examinations by observing as under:-

“Considering the submission so made by the learned counsel appearing for the parties, including the averments so made and as the question of interpretation of basic Bombay University Ordinance 6086 relating to attendance for the learners and the power of Principal/Management to condone the delay and thereafter, power of Appellate Authority, to re-consider the same. This requires re-consideration, in the present facts and circumstances.

2 The specific reasons referring to individual cases required to be given and communicated and not only the conclusion, even by the Principal/Management, as the Appeal provision is available for the students/such candidates. The Appellate Authority is also required to consider such Appeals, in accordance with law, as ultimately, it is a question of particular student's career. All these material elements are missing. Therefore, at this stage, by keeping all points open, we are inclined to grant ad-interim relief in terms of prayer clause (d) of respective Petitions, if they are otherwise eligible. This order is subject to further orders of this Court.

3 The Respondents to file affidavit and/or additional affidavit, if any, by the next date.

4 Stand over to 23 June 2015.

The parties to act on the basis of an authenticated copy of this order.”

In other Writ Petitions, similar reliefs are granted to other Petitioners.

5 Respondent Nos. 3, 4 and 5-the Management by affidavit dated 30 April 2015, resisted all the prayers of the Petitioners based

upon the record and the interpretation of the Ordinance. The Respondent-University by affidavit dated 2 July 2015 resisted the case and claim of the Petitioners and averred as under:-

- “3. I say that Ordinance 6086 relating to the attendance in respect of the learners/students came into force with effect from the Academic year 2014-15, as duly notified in advance vide a Circular dated 5th May 2014 (being Exhibit 'L' to the above Petition). I say that as per the said Ordinance it is mandatory for every learner to have a minimum 50% attendance for each course and average attendance of 75% as more particularly set out in Clause 2 of the said Ordinance. As regards the condonable component of an additional 25%, it is set out in Clause 4 of the said Ordinance 6086 and therefore the concerned Attendance Committee in the affiliated college and/or the University Appeal Committee for Low Attendance (“UACLA” in short) is bound by the aforesaid attendance parameters laid down in the said Ordinance.*
- 4. I say that the University received applications of the concerned students on 24th February 2015, in regard to their grievance concerning low attendance. A copy of the said grievance application dated 24th February 2015, signed by the respective students against their names (being EXHIBIT “M- and EXHIBIT-M-1” to the petition). Thereafter the University sent a letter dated 25th February 2015 (being Exhibit - “N” and EXHIBIT- “N-1” to the petition) addressed to the Respondent No.3 Principal of the Respondent No.4 College calling for the relevant papers documents with regard to the complaint been made with letter dated 24th February 2015 and to further submit a detailed report to the Respondent University so as to facilitate a proper action to be taken with regard to the same.”*

and justified their action of common order/rejection.

6 The final conclusion of the Respondent's as communicated in letter dated 3 March 2015, is as under:-

“On enquiry they stated that the College had followed the procedure of putting-up the defaulters List, meeting with parents, explanation of detention rules, etc.

However, students requested to consider the borderline cases of 49+ percentage attendance favourably. Similarly, they requested to consider students illness and sickness of parents too beyond 25% concession granted, on the basis of merit. The TY students insisted on conducting some extra lectures so that their lack of attendance can be covered.

On the basis of the above facts and the ordinance O.6086 guidelines the Committee concluded as under:

- * The students cannot get any benefit as the College has already given the maximum benefits of condoning attendance upto 50% on an average and 25% per subject, after considering medical and other reasons.*
- * So the applications are disposed off and the students are not eligible to get any benefit.”*

7 As per the Respondents-Management, they have followed all the procedure in timely manner and thereby relied upon the following events and proceedings.

On 13 June 2014, notice was displayed by the Respondent

College informing that every bonafide learner shall be allowed to keep terms for the given Semester in a programme of his/her enrollment, only if he/she fulfills at least 75% of the attendance. It was also informed to students that a minimum of 50% attendance is mandatory for each course/subject and informed the students that a list of defaulting learners shall be displayed on the Notice Board by every 5th of every month. On 5 December 2014, a notice was displayed on the Notice Board informing students that the summary of attendance of the students of FY/SY/TY/Bcom for the period from 03/11/2014 to 30/11/2014.

8 On 5 January 2015 and 2 February 2015, similar notices and defaulters list are displayed on the Notice Board for the subsequent months i.e. for the period of 3 November 2014 to 22 December 2014 and 3 November 2014 to 31 January 2015. The defaulters list was circulated in the classrooms of the college. The students signed against their names in the list. On 29 January 2015, notice was displayed on the Notice Board of the Respondent College informing the defaulting students to attend a meeting with their parents on 5 February 2015 and 6 February 2015 as per the schedule.

Similar notices issued for other courses. The above defaulters list was circulated by the college in the classrooms of the students for their signatures. On 6 February 2015 and 7 February 2015, letter addressed by Respondent No.3 College to the Director of BCUD for detention of the students from appearing at FYBCOM/SYBCOM/TYBCOM, SY, BAF, BMS, Bsc. IT Classes. The Director was informed that the final list of the students, who are detained, should be submitted by 23 February 2015. On 20 February 2012 the last lecture was conducted.

9 On 21 February 2015, by a stereo type letter, the college informed the parents of the defaulting students that their ward is debarred for appearing in the examinations scheduled in February-March, 2015. Show cause notices were issued by the college to the parents of defaulting students calling upon them for a personal hearing with all supporting documents. All were called only after unilateral adverse decision taken by the college. On 23 February 2015, formality of personal hearing was given to them. A common Report was submitted by the Attendance Committee (“the Committee”) to the Principal. An Appeal was preferred to the

Principal by some defaulting students. By a letter, the Respondent college informed the Controller of Examination about the students who are debarred from the examination. On 24 February 2015, confirming order was passed by the Principal and the same was communicated to the parents of the defaulting students that their ward is disqualified for appearing at the semester end examinations. In the aforesaid manner, Respondent Nos. 3 to 5 have complied with the Ordinance is the case.

10 The learned Senior counsel appearing for the Respondent-college has relied upon the following Judgments with basic contention that the minimum required attendance 50%, as well as, 75%, at any circumstances in view of the Ordinance itself cannot be condoned, specifically by the Management/Principal and/or the Committee. The Ordinance is clear and so also the practice and law in this regard.

- a) Regional Engineering College, Hamirpur & Anr. Vs. Ashutosh Pande¹
- b) Prafull Moreshwar Wagh Vs. Amravati Divisional Secondary and Higher Secondary Education Board, Amravati & Ors.²
- c) G. Ramchandran (Dr.) Vs. Gandhi Bindiya Rajesh & Ors.³

1 (2002) 9 SCC 720

2 2001(4) Mh.L.J. 346

3 2003 (2) Bom.C.R. 337

The Judgments so cited, based upon the distinct & distinguishable facts and circumstances of those cases and then existing provisions of law.

11 The learned counsel appearing for the Petitioners cited the judgment of this Court (Raj. A. Pandit & Anr. Vs. University of Mumbai & ors.)⁴ and has relied upon the basic principles of natural justice; “show cause notice”, “hearing”, “missing reasons” and no individual and or separate orders are passed by the college. Respondent No.1 also while deciding the Appeal filed by some of the Petitioners, has not assigned separate reasons and, therefore, prayed to allow the Petitions.

12 The learned Senior counsel appearing for the Respondents-college submitted that the plain reading of the Ordinance, as per the affidavit placed on record, shows that the college/the Committee has no power to condone the attendance, if the students' attendance is below 50%.

4 O.S., WP(L) No. 2732 of 2013, dated 24 October 2013.

13 There is no challenge to the legality and the constitutional validity of the Ordinance. Substantial events, as recorded above, are not in dispute, except the procedural aspects of principle of natural justice. There is no dispute that no individual orders were passed dealing with the material of respective Petitioners. There are no separate reasons given by the Respondents, while passing and/or deciding the rights and/or debarring the Petitioners on the ground of attendance. The Appellate Authority-Respondent No.1 has also, by common order, maintained the action of Respondents-Management without assigning specific separate reasons. The basis of decision, so recorded above, is stated to be interpretation of the Ordinance.

14 Normally, there is no question of interfering with the academican and/or experts body decision. The judicial review in such matters are quite limited, but if it goes to the civil rights and/or taking away the rights and/or passing such order of debarring of students/learners even for the one semester, which according to the Petitioners, was unjust, impermissible, contrary to the law, apart from the basic principle of natural justice, the Court cannot overlook it. There are no other circular and/or material, except the interpretation

so placed on record to justify their action. Therefore, we have proceeded to deal with the matters, keeping in mind the basic settled principle of interpretation and principle of natural justice, apart from the requirement of discipline and compulsory attendance, so insisted upon.

15 The Ordinance itself contemplates and so also reflected in the reply filed by the respective Respondents that, if sufficient case is made out with supporting material, and or in the exceptional case, the Respondents-college/the Committee and/or the Principal is empowered to condone the attendance. The Appellate Authority, therefore, being a supreme body is entitled to further condone the attendance to bring up to the requisite percentage, so that a candidate can appear in the examination. There is no issue that the Ordinance empowered the Respondents to condone the attendance provided, it should be based upon the supporting material. This procedure itself contemplates equal and fair opportunity to the concerned students. There is no question of denying and/or taking decision by passing common/mass order without considering the individual cases and/or grievances.

16 The Ordinance so reproduced above, requires any College/Institute/ Department to constitute the Attendance Committee (the committee) for smooth operation of the Ordinance. The purpose and object of the Committee is to ensure that the attendance records are maintained in order. The warning letters were issued to the defaulting learners/students at least twice in every semester, in the first week of every month for the previous month default list. It is required to display the short of attendance for the month. The defaulting learners require to call along with parent/guardian to meet the Convenor and the Committee, in the middle of the semester with a view to understand the difficulties, if any, and to encourage the learners to comply with the requirement of the attendance. It is obligatory on the part of the Institute/College to publish the provisions of Ordinance for attendance at the time of admission by all possible ways and means and so also the effect of below 50% attendance and overall 75% attendance for appearance in the ensuing examination. The requirement of undertaking, countersigned by the parents, if necessary, to assure the regular attendance, is also provided. As per the Ordinance, at the end of the

semester the Committee/Principal /Director/Head of the College/Institute/Department require to display the list of the learners who are not allowed to keep terms. It is also provided for them to appeal to the Principal/Director/Head of Department within 3 days from the date of display of the notice. However, there is no procedure prescribed by circular and/or otherwise and/or not pointed out the Committee and/or Principal/Head to follow or not, the procedures revolving around the basic principle of natural justice. The day, they published the defaulters list, the adverse decision is taken against the defaulters. Such adverse decision definitely affect their civil rights. Nothing pointed out and/or shown that they have issued any individual/ separate prior show cause notices to each learners/students dealing with the alleged defaults for want of attendance. There is no provision to provide specific material, which are used against the students/learners, based upon the attendance record, which the College/Institute maintained. All these attendance record are always in exclusive possession and control of the College. There is no procedure pointed out in the Ordinance, which permit the Petitioners/students to inspect and/or verify their attendance record. The whole material for calculation of less attendance, lecture-wise, are

with the College/Department. There is no provision to give detailed show cause notice and dealing with even the aspect of below 50% attendance. There is no provision to give the explanation and/or opportunity to challenge such declaration of default, thereby debarred/to keep the terms. There is no provision to permit the parents and/or students to place on record the material to justify their case/reason, even for below 50% default. There is also no provision to pass reasoned order by the Committee after giving the equal opportunity to all the concerned parties after permitting them to verify and confirm the attendance record. This is not the case where all the students and/or learners have admitted that their attendance was less than 50% and/or they have no justification and/or material to justify their case and reason for the respective defaults. The Ordinance itself contemplates to justify the learner, his absentee, due to his own sickness/sickness of his parents, death of his parents, genuineness and gravity of problems supported by valid evidence, documentary and/or otherwise. This itself means the learner may provide material and/or evidence in support of his case before the Committee itself every month or at appropriate time. This lack of opportunity, for want of provisions, is definitely crystallized the case against the

learner/student, the moment the list is published of the defaulters.

17 Once list of all students, who have below 50% attendance and/or below 75%, attendance, is published, this culminates into in the present scenario, and as contended by the learned Senior counsel appearing for the Respondents, based upon the reading of the Ordinance, that no opportunity and/or hearing is required to be given to such learners/students. Less than 50% attendance, itself debars such students from appearing in the terms/examination. The issue, below 50% attendance, itself should be the foundation on the attendance record of the College/Institute. Therefore, the basic burden lies upon the Department to show that the learner/student are defaulters. The students/learners, if admit the less attendance, but has some justification, this can be considered only by giving opportunity either before displaying such lists and/or even after displaying first monthly list of defaulters. If the case is made out, the Committee may consider the issue before finalizing such final list of defaulters, who have below 50% attendance. The procedure of declaring below 50% first and even not asking the explanation and/or by not giving any opportunity to the learners and/or students, in our

view, cause great injustice and hardship and is in breach of principle of “natural justice”, “equity” and “fair play”.

18 The reasons, after giving opportunity, even after publication of such list, for want of equal opportunity and hearing is also not provided and/or stated to be not contemplated. This, in our view, is also unacceptable. There is nothing pointed out whereby the statute, has prohibited that such Committee/Head /Department and/or such other Appellate Authority not to follow the basic principle of natural justice. Such rights, definitely affects their civil rights. In the present case also, no such procedure has been followed for want of specific provisions. No individual show cause notices were issued by calling them to explain their default and/or case every month. Admittedly, no reasoned individual/ separate orders of debarring the Petitioners were passed. The justification, even if any, placed on record, through the affidavits and documents in writing and/or orally not even reflected in the individual orders/letters, in detail.

19 The principle of natural justice is inherent, even in the Ordinance. The Appellate Authority, if empowers to arrange the

hearing of the learners/students along with their Principals/Directors/Heads, therefore, all such authorities are also required to follow the basic principle of natural justice, though expressly stated and/or not, specifically when there is no prohibition and/or exclusion of this principle of natural justice. The importance of reasons, are to be decided from the point of view of the provisions whereby, the learner, after such adverse order is provided with an Appeal provision also to the Controller of examination in a prescribed form within 3 days from the receipt of intimation, the College/Department is also required to communicate to the Controller of examinations/Appellate Authority, at least 10 days before commencement of the respective examinations about such defaults. The Appellate Authority, the Controller of examination, requires to hear the learners along with their concerned Department/Head or representative, in-person and/or teacher nominated by them. Here also, we have noted that there is no provision of giving reasons. Admittedly, in the present case by a common order Respondent No.1-Appellate Authority has decided the case/issue against the Petitioners. Such decision is definitely without any sufficient separate, case to case basis reasons. The Committee and/or Head of the Department has

not passed any such reasoned order and the Appellate Authority for want of provisions, has maintained the unreasoned order without assigning any specific reason inspite of oral and in writing submission so made by the learners/students. The Ordinance is silent even with this regard, as recorded. The basic principle of natural justice, though not specifically provided even at this appellate stage, just cannot be overlooked basically when that resulted into deciding the civil rights of the pupils/students/learners. In the present case, both the Authorities have not assigned any specific reason by deciding and/or not considering individual case of the learners and/or students, on a foundation of ordinance that "it is mandatory for every learner to have a minimum 50% attendance for each course and every attendance have to be 75%". Both the Authorities therefore, not granted any opportunity or even issued timely show cause notice asking for explanation and/or not passed even reasoned order, from time to time for a conclusion.

20 We have noted, based upon the chart of students in Narsee Monjee College filed in Writ Petition Nos. 3776 of 2015 along with Writ Petition No. 3778 of 2015 that the attendance percentage of

some of the students was above 50 and about 13 students percentage were above 49.50. Other students percentage were 48, 47, 46, 45 and 2 students percentage were only above 26. The cases of students, who have above 50% attendance, their cases could have been considered by giving equal opportunity to all to claim further additional 25% by the College/Institute and/or could have considered to condone such absentee on the recommendation of the Committee. Though provision is made to follow the principle of natural justice by giving personal hearing to all the learners, falling short of minimum attendance for keeping terms by the Committee, no timely procedure followed to give full opportunity to such students. The students/learners who have above 49.50% attendance could have been considered as have minimum 50% attendance by rounding it off .50% and above and/or by following other such procedure. For want of such provisions, even these cases could not be considered which, in our view, is also unjust. The calculation of below 50% in other cases, even if so arrived at, that should have been after giving prior and timely hearing and opportunity before declaring them as defaulters. That is also missing basically, for want of specific provisions and individual reasons, dealing with each and individual

cases.

21 All the percentage they have calculated, as stated, is based upon the actual subject-wise classes/lectures within declared working days conducted by the colleges and not on the basis of teaching days and/or number of working days. It is not clear the basis of percentage, so calculated, in the background, when averments are also made that the lectures were not regularly held and/or were not conducted, though such contentions were not pressed further in the arguments. The issue still remains that the "finding" and the "reasons" thereof, required to be provided by the Authorities at every stage as basic burden lies upon them to place on record that the lectures were regularly held and they have maintained the positive record accordingly. All these allegations and/or counter allegations, whether pressed or not pressed, but remained part of averments in all the petitions, just cannot be overlooked while deciding the findings and/or the conclusion arrived at, without reason, by the College/Management to declare the Petitioners as defaulters. The submission is made that they have complied with all the procedural aspects, but the same day, orders/communications and their

submissions that they required not to pass any reasoned order, clearly shows admitted breach of principle of natural justice.

22 This power to condone additional upto 25%, in a given facts and circumstances could have been used and utilized by leaving the balance percentage if any, to achieve overall 75% for the Appellate Authority to decide which, unable the learners/students to appear in the examination. But, as noted with pre-judged mind that they have not given opportunity and/or to follow the principle of natural justice to those, whose attendance is below 50%, has, in our view, caused injustice and hardship, apart from it is in breach of principle of natural justice and/or wrong interpretation of the Ordinance itself. The Attendance Committee and/or College after giving hearing to the Petitioners could have passed the reasoned order declaring and/or not to declaring such students/learners as defaulters. In the present case, they have not done this and declare the candidates as defaulters unilaterally. The Appellate Authority also in the matters, where some Appeals were preferred, without following the basic principle of natural justice, by common order confirmed the said action and thereby debarred the Petitioners from appearing in the examination.

23 We are not inclined to accept the case and submission of the learned Senior counsel appearing for the College/Management that the Statutory/Appellate Authority in question has no power and jurisdiction to go beyond the decision taken and/or given by the Facts Finding Committee. Considering the scheme and purpose, the Appellate Authority's power is wide. They are not Appellate Court and/or Authority as contemplated under the Civil jurisprudence. If the case is made out, in our view, having power and/or authority to condone the percentage, it may grant further additional percentage to enable such students to appear in the examination.

24 The averments so remained in the Petition with regard to no opportunity and/or hearing and/or completion of formality of hearing and/or not conducting the lectures timely and/or regularly, and passing anti dated and/or pre-signed letters/orders and same date letters/orders and further the allegation that the college forced the Petitioners to sign the letters inspite of their objections and given threat to affect their academic career and/or ruin future and even filing of NC complaint itself means that the findings and/or reasons

are necessary to be recorded by the Facts Finding Committee i.e. Attendance Committee/College. The affidavit even if filed by the College/Management that itself, in our view, cannot justify their action of not following the basic principle of natural justice before passing the impugned orders/actions, without assigning specific reasons and without giving timely opportunity to the students.

25 The Respondent-University also has taken decision based upon the report dated 3 March 2015 and by finding that the college has followed all the rules. They also noted the request of students to conduct some extra lectures so that their attendance could be covered, but the Committee rejected the case so recorded above by common order by observing as under:-

“The students cannot get any benefit as the College has already given the maximum benefit of condoning attendance upto 50% on an average and 25% per subject, after considering medical and other reasons. So the applications are disposed off and the students are not eligible to get any benefit.”

26 The communication was addressed to the Controller of examination, University of Mumbai and this report ultimately, became foundation for the action which was communicated to all the

Petitioners vide letter dated 4 March 2015, which was forwarded through Respondent No.3-Principal. All the procedures, therefore, which the Respondents have followed is on the basis of misinterpretation and/or wrong interpretation of the Ordinance. The procedure so adopted, and the orders/actions so initiated, in our view, are totally in breach of principle of natural justice, illegal, impermissible and therefore, contrary to the law.

27 Another aspect is that whether the expert body and/or academician body and/or Appellate Authority are bound by the principle of natural justice or not. These elements are necessary in the interest of justice, fair-play, equity and equality. It is also essential to remove the doubts of the apprehension of parties and prejudicial mind and/or pre-judged decision and also to avoid the allegations of “empty formality”, specifically when the lower Authority/College/Committee is empowered to exercise their discretion. The students/learners, if volunteers and/or surrender to the unreasoned decision and/or such other action, knowing fully its consequences, the controversy and/or such issues should end there, but not when the objections and/or issues are raised, at every stage and of various types, as it affects their

civil and legal rights. The judicial review against such action even of expert body or academic body, therefore, just cannot be denied to such students/Petitioners, under Article 226 of the Constitution of India.

28 In the present case, the Appellate Authority has also mechanically affirmed the College/Institute's unreasoned order/action and without assigning sufficient and separate reasons against the individual learners and maintained the orders/actions. In Bhagat. Raja Vs. Union of India & Ors.⁵ in para 13 it is observed as under :

“.....The least a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimises arbitrariness; it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory Court to keep the tribunals within bounds. A reasoned order is a desirable condition of judicial disposal.”

.....

“A Judge is trained to look at things objectively, uninfluenced by considerations of policy or expediency; but, an executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the least they should

5 AIR 1967 SC 1606

do is to give reasons for their orders.”

In *Institute of Chartered Accountants of India v. L.K. Ratna and ors.*⁶, in para 17 it is observed as under:

“17 “Some of those cases as mentioned in Sir William Wade's erudite and classic work on “administrative Law”, 5th Edn. But as that learned author observes (at p. 487), “in principle there ought to be an observance of natural justice equally at both stages”, and

If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing; instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial.”

“As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body.”.

The availability of Appeal itself contemplates reasoned order by the lower Authority/tribunal/committee, as well as, by the higher Authority/tribunal.

29 The unreasoned order cannot be permitted to justify by subsequent explanation and/or affidavit in the Court and in such other proceedings. (Mohinder Singh Gill & Anr. Vs. The Chief Election

6 (1986) 4 SCC 537

Commissioner, New Delhi & Ors.)⁷. The Expert Authority's power to take decision, also run with obligation to give reasons, as it is the duty and responsibility when it comes for passing adverse and/or orders which affects the rights of the students. It is inherent and clear even from the plain reading of the Ordinance itself, specifically as recorded above, there is no statutory exclusion and/or provision to overlook the basic principle of natural justice.

30 It is quite settled that the student's merit is judged by the marks, he obtained in the examination. The said criteria of merit needs to be respected. The attendance is also important, but the strictness and to take action in such fashion, definitely cause great injustice and hardship. Even if a student is failed in one subject, he is entitled to participate in the further examination and can appear in other subjects. The student/learner, if has below 50% attendance in one lecture, he is still debarred from would be examination for want of not achieving the target of minimum 50% attendance, apart from maximum 75%, so referred above. The point is, a balance needs to be struck on all level by taking all effective steps by declaring and/or

7 AIR 1978 SC 851

announcing in advance even by formulating and/or preparing a modality of guidelines and/or otherwise, that every month there should be check and control of such attendance issues, including the opportunity to control and/or take decisions to avoid such drastic conclusion of listing the names of defaulters and by giving hearing to them for their justification. The monthly mechanism and/or such other mechanism would curtail and/or would be controlled by the College/Management and which would be in the interest of students, also to avoid such drastic action and/or conclusion by the College or Institute. It is ultimately the expert/academician body to deal and decide to frame policy/circular.

31 There is no provision provided and/or pointed out whereby, a student whose attendance is more than 50% in respective subjects, but below in one or two subjects, which empowers the Principal/College to grant some grace percentage to cover and/or consider to reach minimum 50% attendance in the respective lectures, apart from additional 25%. There is no procedure even to cover such marginal cases, so that students/such defaulters could have able to achieve the minimum 50% attendance by conducting extra classes.

32 There is no case that the learners/students are defaulters for every course/subject and/or for every attendance. There is no provision to deal with the situation where a student/candidate, one who has attended 4 lecturers out of 5, above 50%, and lectures of one subject below 50%, whether can appear in the examination for the other subjects, whether he has attended more than 50% by considering over all attendance, if the case is made out to grant the additional 25% to reach upto 75%, so that he can appear in the examination and/or similar other circumstances.

33 The basic principle of natural justice again reiterated by the Apex Court in Anand Brothers Private Limited Vs. Union of India & Ors.⁸ and Gorkha Security Services Vs. Government (NCT of Delhi) & Ors.⁹. In Gorkha Security Services (Supra) the principle of natural justice even considered in administrative law, including covering proper show cause notice, purpose and reasoned orders are elaborated though not in education matter, but principle just cannot be denied as referred in other connected and supreme Court Judgments in the

8 (2014) 9 SCC 212

9 (2014) 9 SCC 105

matter. Academician and/or expert body's decision are bound by such principle, when it goes to taking adverse decision and/or passing any order affecting the legal rights of the parties. Duty to give reasons and/or recording reasons and/or passing speaking order, is essential not only the Court, Tribunal, Judiciary but to all who takes decision, covering the rights of the parties.

34 The Apex Court in Gorkha Security Services (Supra) has further observed as under:-

29. No doubt, rules of natural justice are not embodied rules nor can they be lifted to the position of fundamental rights. However, their aim is to secure justice and to prevent miscarriage of justice. It is now well-established proposition of law that unless a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, in exercise of power prejudicially affecting another must be in conformity with the rules of natural justice.

35 The elements of “natural justice”, “Show-cause notice”/”notice”, “disclosure of material”, “opportunity of all kind including of rebuttal”, “aspects of burden of proof”, “oral or personal hearing”, “pre-decisional and post-decisional hearing”, “reasoned order”, “decision” “speaking order”. This also includes, “Appellate

Authority and powers of applying same principles, hearing and reasoned order.” All these cannot be just read and/or need to be a “empty formality”. This is in the background of duty to act judicially and to act fairly, keeping in mind the elements of bias, prejudice and influence of various kind. The effect of such elements and/or breaches of principle of natural justice are all interlinked and interconnected, the order of action is null and void and unsustainable in view of settled position of law declared by the Supreme Court and/or various High Courts. In the present facts and circumstances, and for the reasons so recorded above, we are also inclined to declare so.

36 *In Anand Brothers Private Limited (Supra)*, the Apex Court has further dealt with the aspect of importance of findings and conclusion and the reasons on the facts and law and/or mixed question of law and facts. It is also observed as under:-

11.

“33.A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker,

provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”

The elements of natural justice are still available to/for all.

37 Now, the question still remains of effect of final order of setting aside the action and/or order if any, for the above reasons. In the peculiarity of the matters and as the method and methodology adopted for want of specific circulars and/or guidelines in advance by the University and/or such Authority, by passing such unreasoned common order by both the Authorities, we are inclined to permit the students/learners to appear in the further classes and the examination for next semester also. We are also inclined to direct the Respondents to declare the results as they appeared in the examination, pursuant to the orders passed by this Court. No question of re-opening of issues afresh for the aforesaid reasons. There would be great injustice and hardship to re-open the issue and to re-start all the procedure by and before the same Authority and or to bring evidence again for want of

unclear or undeclared position or circular and/or guidelines revolving around the principle of natural justice, at all stages. This will definitely further affects the requirement and/or concentration of future studies and specifically in alternate situational background. The background is pre-judged and fixed and so also the minds of parties/Authorities. The result of failure to follow elements of natural justice at appropriate steps/stages by both the Authorities, in our view, in the present case has attracted the consequences of declaring such action/order illegal and impermissible action, therefore, liable to be quashed and set aside. We are not inclined to direct the Authority to re-consider the matter again and/or record fresh reasons in view of the background and the reasons so recorded. Even otherwise, no such case is made out. This approach is not foreign as it is settled in following cases.

- a) State of Gujarat v. M/s. Krishna Cinema and ors¹⁰.
- b) Raipur Development Authority etc. Vs. M/s. Chokhamal Contractors etc.etc.¹¹
- c) Collector of Monghyr and ors v. Keshav Prasad Goenka and ors¹².

10 1970(2) SCC 744

11 AIR 1990 SC 1426

12 AIR 1962 SC 1694

- d) Institute of Chartered Accountants of India Vs. L.K. Ratna & Ors.¹³

38 To affirm this position and to illustrate further even in administrative law including service and labour jurisprudence, it is settled that any action including termination and/or departmental inquiry conducted in violation of rules of natural justice, it is liable to be quashed and set aside with requisite and/or relevant order of benefits including reinstatement with or without back-wages. (Ramesh Chandra Vs. Delhi University & Ors.)¹⁴.

39 In the result, the following order :

ORDER

- (a) All the Writ Petitions are allowed.
- (b) Impugned letters/respective notices/actions dated 21.02.2015, 23.02.2015, 24.02.2015, 04.03.2015, 11.3.2015 and dated 03.04.2015, 30.04.2015, 20.05.2015, 27.05.2015 and 03.06.2015 (S. Y. B. Com and S. Y. B.M.S.) (F.Y. B.Com and S.Y. B.Com), or similar such

13 (1986) 4 SCC 537

14 (2015) 5 SCC 549

notice/action, debarring the Petitioners from appearing in the respective examinations of respective semesters in the Academic Year 2014-2015, are quashed and set aside.

- (c) The Respondents are directed to regularise the terms of the Petitioners to their respective courses/terms in question.
- (d) The Respondents are directed to declare the results of the examinations in which the respective Petitioners appeared pursuant to the orders passed by this Court on 30.04.2015 in Appellate Side Writ Petition No.3776 of 2015 and another dated 20.05.2015 in Original Side Writ Petition (L) No.1536 of 2015 and ors and permit them to continue to attend classes of next semesters and future examinations, if they are otherwise eligible.
- (e) Respondent No.1 or such authority may decide to issue additional Circulars and/or Guidelines how to deal with or about students/learners attendance and related aspects for all the concerned.

- (f) Any such defaults of the Petitioners in future would be noted seriously by all the concerned in future.
- (g) No order as to costs.
- (h) The parties to act on the basis of an authenticated copy of this Judgment/order.
- (i) Certified copy expedited.

40 The learned counsel appearing for Respondent Nos. 3 to 5 College/Management submitted to stay the effect and operation of this order. Considering the reasons already given, we are rejecting the same. It is also for the reason that the College/Management need to comply with the orders which we have passed today in the open court and as it affects and relates to the students, no case is made out to grant any stay even for temporarily. Oral application for stay is rejected.

(V.L. ACHLIYA, J.)

(ANOOP V. MOHTA, J.)