

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.840 OF 2016

KUMARI KAMAKSHI ROY

)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA & ORS.

)...RESPONDENTS

Ms.Pratibha Shelke a/w. Ms.Aditi Naikare, Advocate for the Petitioner.

Mr.Asadullah Shaikh i/b. Mr.Rui Rodrigues, Advocate for Respondent No.2.

Ms.Manorama Mohanty a/w. Mr.Ambika Prasad Singh i/b. M/s.S.K.Srivastava & Co., Advocate for Respondent No.3.

**CORAM : S.C.DHARMADHIKARI, &
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 29th JUNE 2016.

P.C. :

1 Perused the writ petition and all annexures thereto.

2 The contention of petitioner's counsel is that being satisfied with the bonafides of the claim raised in the petition, this court by an ad-interim order had protected the educational career

by allowing the petitioner to appear for an examination which was scheduled on 22nd March 2016, namely, Semester II of Bachelor of Management Sciences course at the third respondent institution.

3 It is submitted that now that the petitioner has appeared for the exam in pursuance of such ad-interim order passed by this court and is awaiting results, a sympathetic and lenient view may be taken of the earlier lapse by the petitioner.

4 The writ petition proceeds on the footing that the petitioner was enrolled as a bonafide student in the third respondent institution for the above course, she was regularly attending the college. She appeared for First year examination held in October 2015. During her Second Semester she found that her attendance was deficient. The explanation that is given is that the parents of the petitioner are working and for their job profile they are required to travel out of Mumbai. It is for such reason, the petitioner was taking care of her ailing and old grandmother.

She does not dispute that the college brought to the notice of her parents as also herself, the shortfall in the attendance. There were regular meetings convened and it was also attended on one occasion by the maternal grandmother of the petitioner. Repeatedly the college was warning and cautioning the petitioner and her parents that she should be regular in attending the classes, else a valid ordinance framed by the University of Mumbai and duly followed and applied by the college would visit her with drastic consequences. Ordinance No.6086 of the University of Mumbai has been relied upon by the respondents. In such a situation, the relief that the petitioner sought on the eve of the examination was that she be allowed to appear at the same. She is a bright student and was hopeful of clearing the same.

5 Now the argument is that having appeared for the examination, the only compliance that is needed on the part of the petitioner is clearing is by passing it with a requisite minimum percentage. The college, therefore, should disclose her results and she be allowed to pursue her studies for the above course.

6 An Additional affidavit has been filed by the petitioner explaining as to how despite the shortfall in attendance, the college has allowed appearance in this examination.

7 We are not impressed by the contentions for the simple reason that the ad-interim order itself clarifies that it was subject to further directions and final orders in the writ petition. Secondly, no equities can be claimed merely on the strength of a appearance at the exam pursuant to intervention by the court. This clearly means that the issue of shortfall in attendance remains and if the attendance is deficient, by such ad-interim order or pro-term arrangement, the petitioner cannot claim any right, much less vesting in her.

8 The respondent no.3 Institution has filed a detailed affidavit pointing out as to how the petitioner claims the relief on the foundation that she had regular attendance. The College has clarified that the attendance of the petitioner in the Second

Semester of Business Management Studies (BMS) for the academic year of 2015-16 is only 35.29%. The minimal attendance required is 75%. Even if any relaxation or concession is to be extended that would be to the extent of 25% only. Even if that is extended, the petitioner's attendance is not compliant with the minimum requirement. We do not think that the reasons for non-attendance as now assigned would enable us to interfere with the discipline of the college. It is common ground that private professional institutions imparting education ought to be strict with the students and maintain the discipline so that not only the reputation and image of the institution is not affected, but the students appreciate the effort of the teachers and the management of such institutions in providing them not only basic amenities and facilities, but some modern and high-tech teaching and researching tools such as well furnished classrooms, libraries, computers, learning aids etc. The students would do well to appreciate that it is in their interest if they devote themselves to studies and co-operate with the teachers.

9 The affidavit in reply and annexures thereto indicate as to how the maternal grandmother gave an explanation to the Management of the Institution about the illness of the paternal grandmother. We do not think that a statement made during the course of a Parents Teachers Meetings would suffice. There are absolutely no particulars, much less proper and complete pleadings which would enable this court to interfere in its extraordinary jurisdiction with the requirement of minimum attendance. We do not think that merely because in some cases the college has been lenient with such students and has allowed the pupils to attend classes or appear at the examination, that would be a precedent or a guide to be followed in all such cases irrespective of the nature of the explanation. It is well settled that equality is a positive concept and two wrongs do not make one right. Merely because in some cases despite shortfall in attendance students have been allowed to appear for the exams or the college has not cancelled their admission, such course automatically follows in other cases of similar nature. That is not

how we will view these matters, particularly when judicial review of a academic decision taken by academic experts is a exception and not a rule.

10 In the circumstances, we do not find any merit in the petition. It is dismissed. We attach no significance nor confer any right in the student for the appearance in the examination of March 2016. If the petitioner is required to repeat the semester, she will have to do it.

(DR.SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)