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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION (L) NO.908 OF 2016**

Nikita Garg & Ors.

..Petitioners

Versus

Vile Parle Kelwani Mandal

Through the Secretary & Ors.

..Respondents

.....

Mr. Mihir Desai, Senior Advocate i/b. Sariputta Sarnath for the Petitioners.
Ms. Manorama Mohanty i/b. S. K. Srivastav & Co. for Respondent Nos.1 to 3.

Mr. Rui Rodrigues for Respondent Nos.4 and 5.

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**CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.**

DATE : 31ST MARCH, 2016

ORDER (PER A. K. MENON, J.):

1. This is a Petition under Article 226 of the Constitution of India challenging the decision for Respondent No.1 to 3 and the Respondent No.5, University of Mumbai debaring the Petitioners from appearing in the Third Year B.Com (T.Y.B.Com) examination to be held by Respondent No.5 commencing from 1st April, 2016.

2. The Petition was filed on 28th March, 2016 and was mentioned before us on 29th March, 2016 due to the inability of the regular Bench to

take up the matter. Accordingly the matter was heard on 30th March, 2016 when only the University of Mumbai was represented, no notice having been served on the College authorities the petition was taken up for urgent hearing today 31st March, 2016. We have since heard the counsel on behalf of the parties. The impugned decision of the Respondents debarring the petitioners from appearing for the T.Y.B.Com examination to be conducted by Respondent No.5 and the consequent withdrawal of the T.Y.B.Com examination forms of the students has its genesis in an Ordinance issued by Respondent No.5-University of Mumbai whereby it was necessary for all students covered by the Ordinance to have secured atleast 75% attendance on an average, subject to a mandatory 50% minimum attendance in each semester.

3. The Petitioners are 56 in number and it is the grievance of the Petitioners that they have good attendance and they have good academic record in the previous semester and hence they should be allowed to appear for the semester examinations. They have relied upon mark sheets of about nine Petitioners from the previous semester in support of their contention. The second semester we are informed, commenced on 16th November, 2015 and the classes ended on 3rd March, 2016. The final semester examination to be conducted by Respondent No.5 from 1st April,

2016. It is the case of the Petitioners that on 27th February, 2016 which was the day of their farewell, rumour had it that students having low attendance would not be allowed to appear for the ensuing examinations but there was no official communication received. It was only on 10th March, 2016 that the College uploaded on their website a list of students with low attendance. According to the Petitioners, out of the requisite number of 320 lectures to be conducted the College had conducted 276 lectures. The shortfall in attendance was recorded in respect of these 276 lectures. The Petitioners were required to have attended at least 50% of these lectures and it is their case that they fell short of the required 50% average attendance by “narrow margin”.

4. According to the Petitioners they have submitted all relevant documents in support of their individual cases to demonstrate their inability to attend sufficient number of lectures but the Respondent did not consider the documents including medical certificates and rejected their claims seeking condonation of shortfall in attendance. On 16th March, 2016 the College informed the Petitioners regarding withdrawal of their examination forms and intimated the Petitioners as per Ordinance No.6086 that the Petitioners could approach the Controller of examinations and the committee appointed by the Controller to take a

decision in the matter. The Ordinance provides that students could approach the said Committee which would consider their case and either agree or disagree with the decision of the College to withdraw the examination forms.

5. In the instant case, the Petitioners have relied upon a tabulated form appearing at Exhibit G, of the petition, reproducing the names of 56 Petitioners, their percentages of attendance and the reason for low attendance. The attendance recorded in respect of these 56 Petitioners were all below 50%. They range from 6.14% in the case of Petitioner No.21 to 47.29% in the case of Petitioner No.51. Various other Petitioners have recorded attendance, between these two figures. The grievance of the Petitioner is that after having appealed to the University of Mumbai, on 18th March, 2016 the University released the results of the appeal in which it was found that out of a total number of 87 students who have applied for reconsideration of their respective cases in only 24 cases the University had approved the reasons given for shortfall in attendance and had permitted these 24 students to appear for the examination. As far as remaining students are concerned, they were debarred from appearing in the examination. It is the Petitioners case that after receiving the aforesaid intimation they wrote to the Vice Chancellor of the Respondent No.5-

University seeking his intervention but to no avail.

6. Mr. Desai, the learned Senior Advocate, who appeared before us on behalf of the Petitioners submitted that the case of the Petitioners is not without a precedent. He made three submissions. According to Mr. Desai no reasons have been given either by the College authorities or by the University for their decision to debar the students. Secondly, some students who had approached the Appellate Authority pursuant to the Ordinance were allowed to appear for the examination although their attendance was below the 50% limit. Thirdly, at least 10 students who had between 40% to 45% attendance were denied the opportunity to appear. Thus, the University has arbitrarily chosen some students to qualify for the examination. He therefore assailed the decision of the authorities on these three grounds. In support of his submissions he relied upon the decision of a Division Bench of this Court in Writ Petition No.3776 of 2015 Preeti M. Sondarwa & Ors. v/s. The Controller of Examination, University of Mumbai & Ors. rendered on 10th July, 2015. wherein the Division Bench had allowed the Writ Petition and connected matters observing that the Respondents must regularise the terms of the Petitioners to their respective courses. The Ordinance No.6086 came in for consideration in those group of Petitions whereby the manner of

dealing with the case of students attendance falling below 50% was considered and which pertained to the very same Respondent Institute as in this case. In that case the list of defaulters were displayed on the notice boards. However, that group of petitions related to students who were appearing for the internal examination of the institute for the First Year B.Com and Second Year B.Com. We may straightway observe that in these petitions there was no challenge to the legality or constitutional validity of the Ordinance. The Court observed that scope of judicial review in such matters is limited but if it affected the civil rights of a students on account of the same being unjust or contrary to law, particularly the denial of principles of natural justice, the Court could examined the same.

7. Relying upon the aforesaid decision Mr. Desai submitted that the Division Bench had observed that the day the College published the defaulters list, an adverse decision was taken against the students which affected their civil rights. In these cases no separate show cause notices were issued to the learners/students dealing with the alleged default for want of attendance. There was no provision to deal with specific material which would be used against the students with particular reference to the attendance record since all the attendance records were always in the exclusive possession and control of the College. The Division Bench

observed that there was no procedure in the Ordinance which permitted the students to inspect and verify their attendance record. The whole material for calculation of low attendance was with the College and there was no provision to offer explanations or an opportunity to rectify the record of the students allegedly in default leading them to be debarred without a proper opportunity to show cause.

8. Mr. Desai relied upon the observations in paragraph 18 of the said judgment where the Division Bench observed that students civil rights being affected no procedure had been followed and no show cause notices were issued asking him to explain the default every month and no reasoned individual or separate orders had been passed. According to Mr. Desai in that case, by a common order, the Appellate Authority had decided the case of the Petitioners without separate case to case reasons thereby resulting in violation of basic principles of natural justice. Mr. Desai therefore submitted that the Petitioners be permitted to appear for the examinations.

9. On behalf of University, Mr. Rodrigues, opposed the petition and submitted that every opportunity was given to the students- Petitioners to explain their stand. He submitted that as a matter of practice and

pursuant to the judgment in the earlier case cited by Mr. Desai several procedures had been laid down and followed. The College had collected all information pertaining to the students inability to attend, had given a hearing to the students and their parents and thereafter found it necessary to debar them from appearing for the examination. The Appellate Authority had thereafter considered each of the Petitioners case and had recommended some of them for appearing in the examinations based on the merits of each case. The University according to Mr. Rodrigues had relied upon the records of the College in this respect and was satisfied that due process had been followed. Mr. Rodrigues further submitted that the Petitioners have chosen to approach the Court at the very last moment when exams are to commence from 1st April, 2016. He alluded to the practical difficulties in permitting these students to appear at this last minute even if the Court was inclined to so direct in view of the fact that allotment of centres, examination halls, distribution of hall tickets and all other administrative machinery was already in place for conduct of the examinations and if a last minute direction is given to the University to permit the Petitioners to now appear it would throw entire establishment into disarray. He therefore submitted that the Court should decline the reliefs on these grounds itself.

10. According to us, this is a hardly a ground that could be urged by the University if in fact there has been violation of principles of natural justice. The College and the University was bound to consider the Petitioners appeals in accordance with law. We had therefore on 30th March called upon Mr. Rodrigues to produce the relevant Minute Book, if any, available with the Respondent No.5 since he stated that due process will be followed however since the entire staff of the University has now been inducted for examination duties, it was not possible for him to have all the records produced at short notice. He further submitted that University had relied upon the College records to assist them in their decision making process and that the college records were the basis of the enquiry at the appellate stage. He however produced a few documents to demonstrate that each case had been considered and approved or disapproved.

11. We therefore called upon Ms. Mohanty who appears for Respondent No.2 -College to address us on the aspect as to how the Petitioners came to be debarred. Ms. Mohanty has submitted that the College was served only on last evening and in the short time it was unable to respond on oath but sought leave to produce, refer to and rely upon various steps taken by the College authorities with documents in

support of her contentions. We have allowed her to do so. At the beginning of the year the student and his/her guardian while taking admission gave a written undertaking as part of the Admission forms to the effect that they would attend classes regularly. This undertaking was given after recording the fact that the failure to attend classes regularly may result in the student not being able to attend the examinations. They agreed to abide by the decision of the College on this account. According to Ms. Mohanty the second semester started from 16th November, 2015 and it was soon found that the Petitioners were falling short of attendance. Accordingly from 5th December, 2015 onwards right upto 27th January, 2016, the Petitioners were informed of their shortfall of attendance. This was done in two ways. Firstly, the attendance reports for each Division for the period 16th November, 2015 to 22nd December, 2015 was displayed on the notice board. This continued for further periods upto 28th January, 2016 and 3rd March, 2016 thereby covering the entire semester in this attendance report. Copies of these reports have since been perused by Mr. Desai appearing for the Petitioners. The College has recorded the number of lectures held and attended and the percentage of attendance. This is provided in respect of all the students and we find from this record that some of the students had recorded 100% attendance and several are ranging between to 85% to 96%. The Petitioners we find

have recorded a percentage i.e. below 50% attendance of lectures. After this attendance report was displayed, each of the students were sent emails on 7th January, 2016 setting out their attendance from 16th November, 2015 to 22nd February, 2015. The postscript of the emails read as follows:-

“Representation about the veracity of the above attendance details may be made to the college within 48hrs from the receipt of this mail failing which it will be deemed that you and your ward have accepted the above record as true and correct.”

12. Another email was sent to the students dated 5th February, 2016 intimating them of their attendance figures during the period 16th November, 2015 to 31st January, 2016. This included the average attendance, total number of classes conducted, number of classes attended and the percentage. The copies of the email have since been perused by Mr. Desai. It contains a postscript note which reads as follows:-

“If you have anything to say, please let us know.”

It is not the case of any of the Petitioners that these emails have not been received nor is it the case of the Petitioners that having received these emails they have disputed the figures of low attendance.

13. The College did not stop at this but in the meanwhile published a

notice on the notice board dated 28th November, 2015 inviting their attention to the fact that they should maintain 75% attendance of lectures, tutorials and practical's conducted during the semester, failing which they will not be permitted to appear for the semester and that this was likely to lead to a loss of the academic year (Emphasis supplied). The College thereafter published notices on 7th December, 2015 and 13th January, 2016 intimating students who are defaulters in attendance calling upon them to attend meetings along with their parents on 12th December, 2015 and 15th January, 2016 respectively. The parents and the students attended and all of them were informed of the shortfall in attendance. Written undertakings were obtained from each of these students addressed to the Principal wherein the parents and the students both have signed. They have acknowledged the contents of Ordinance No.6086 and its mandatory requirements. They acknowledged their shortfall in attendance. They acknowledged of having been counselled by Class-mentors to maintain the minimum attendance and finally undertook that they will henceforth attend all lectures, tutorials and practicals failing which they may be debarred from appearing in the semester examinations. Ms. Mohanty has produced before us originals of all these undertakings. None of the contents of these undertakings have been disputed and although the fact situation in the present case is quite different from those before the

Division Bench hearing Writ Petition No. 3776 of 2015, we have no doubt in our minds that the College has complied with the guidelines suggested by the Division Bench in the order dated 10th July, 2015 so as to ensure that the mechanism of providing an opportunity to the students is followed in the best interest of the students.

14. Ms. Mohanty has also produced before us an acknowledgement by 92 students who fell short of attendance of having attended the meeting on 14/15th March, 2016 at the hearing of the appeal before the University Authorities and each of these persons are seen to have signed on the attendance sheet against the total attendance recorded. Thus, we find it is not possible to accept the submissions of Mr. Desai that no opportunity was given to students and no personal hearing was given to the students or that no reasons were given for debarring them. Although the fact situation of the present case is distinguishable from the fact situation at the time the Division Bench disposed of the Writ Petition No.3776 of 2015 and connected matters, at that time none of these steps now shown to us by Ms. Mohanty were taken by the College or University, whereas after the said judgment we are satisfied that the College has left no stone unturned to ensure that the students were given every opportunity of complying with the requirements and of rectifying short fell in attendance. On 15th

March, 2016 the College is seen to have written to the Controller of Examinations enclosing list of 93 students of T.Y.B.Com, 33 students of T.Y.B.A. and 24 students of T.Y.B.Sc. who were debarred from appearing in the semester VI examination for want of attendance. The College informed the University that the following steps were taken in accordance with Ordinance No.6086 and despite of the aforesaid efforts the students have failed to fulfill the norms.

“The following measures were taken to ensure attendance as per the University of Mumbai Ordinance 6086.

- 1) Undertaking duly signed by the Students and the Parents from the admission form.*
- 2) Orientation Session/Lecture is conducted for the students.*
- 3) Notice dated 28/11/2015 displayed on the notice board as well as circulated in the class room to create awareness about the importance of attendance.*
- 4) Day-wise, class-wise, division-wise and lecture-wise attendance is taken and recorded in our SAP software.*
- 5) Attendance data displayed every month on the notice board as well as email sent to the parents about the attendance of their ward.*
- 6) Parent's meetings were conducted twice in the month of December- 2015 & January-2016 and undertaking was obtained duly signed by students and parents.*
- 7) The list of students whose term is not granted and debarred from examination was displayed on the notice board as well as on the website providing opportunity to the students to appeal to the Principal.*
- 8) The decision on appeal was communicated to the students.”*

15. Thereafter on 16th March, 2016 the College had individually

communicated to each of the students who were being debarred from taking the final examination (87 in all including the 56 Petitioners) that as per Ordinance they can approach the University Authorities. All 87 students approached the University Authorities i.e. Low Attendance Redressal Committee in terms of the Ordinance on 17th March, 2016. Out of 93 students 87 students including the Petitioners were offered an opportunity of personal hearing and on 18th March, 2016 the Redressal Committee allowed 24 of the 87 students to appear at the examination rejecting the others including the 56 Petitioners before us.

16. It is in this background that the present facts have to be viewed. After having heard the learned counsel for the parties in the context of the present facts we have no manner of doubt that College has done all that it could in bringing to the notice of the students the attendance and calling upon them to remedy the situation. Ms. Mohanty in support of her contention pointed out that although the Division Bench had earlier set out the guidelines in Writ Petition No.3776 of 2015 in a subsequent matter being Writ Petition No.11168 of 2015, wherein the sole Petitioner sought similar reliefs seeking permission to appear in the examinations which were to commence on the following day, the petitioner was declined any relief in view of the fact that the Petitioner therein was

intimated of her low attendance and she was fully aware of her attendance being insufficient. In this case we find that the guidelines in the judgment of the Division Bench in Preeti Sondarwa (supra) have been followed by the College Authorities and accordingly we find that the facts in the present case do not justify any interference in our writ jurisdiction.

17. We are therefore constrained to observe that although our sympathies are with the students who will now not be able to attend examination we cannot overlook the basic and undeniable position that lectures are necessary to be attended and are not optional. The education curriculum which requires students to attend College classes have been evolved by experts in the field who are best equipped to decide the necessity of students attending classes to be fully quipped to undertake the voyage of life. As observed by Albert Einstein, the role of college education is not merely learning of facts, but the training of the mind to think. The best opportunity for this to happen is when the student attends classes and interact with the teachers and fellow students with regard to the subject being taught. As observed by Socrates , Education results in kindling of the flame not mere filling up of the vessel. This kindling of the flame occasions when questions are asked of the teachers and the resultant interaction. One more fact which must be not

lost sight of is every person carries with him for his life a large part of the values and knowledge received at his Alma mater. Every person is an advertisement for the good or bad of his Alma mater. Thus every institution is aware of and therefore keen to impart the best education to its wards. It is not adversarial to the students' interests. The parents of the students must appreciate this and encourage their wards to attend classes for the students personality to flower. If students are unable to attend lectures, online studies may be suitable in specific cases but when one opts to take education in College, one must follow the discipline of the College. This discipline would help to shape the student in a manner such that the journey of life is comfortably travelled. Though the Petitioners are losing a year, one must remember it is insignificant in the context of a life of three score and ten if not 100 years. The parents must appreciate this and bring it to the notice of their wards, the petitioners. We are all aware that obtaining admissions to institution today is in itself an arduous task. Having secured admissions we cannot take kindly to willful abstinence from classes. We must bear in mind that the petitioners may have displaced several hopefuls by securing admission in the first place. The admission forms of some of the students were shown to us and it contains a clear provision inviting the attendance of students and parents that attendance is compulsory. The fact situation

reveals that every opportunity was given to them to remedy the shortfall in attendance but they have omitted to remedy the shortfall. In the course of extensive submissions made before us, we called upon Mr. Desai to demonstrate as to how the College and University has behaved in arbitrary fashion but we are not convinced that the students have been wronged.

18. In view of the fact that the students who are likely to lose an academic year and given the short time we have made every effort to investigate whether they have been wronged and were unfairly and hastily denied the opportunity to appear for the exams but the records produced by the College reveals an entirely a different fact situation. We are therefore constrained to decline to entertain the Petition.

19. In the circumstances, we pass the following order:-

- (i) Writ Petition is dismissed.
- (ii) There will be no order as to costs.

(A. K. MENON, J.)

(M. S. SANKLECHA, J.)