

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.444 OF 2017

Anirudh Devansh

Petitioner

versus

1. Shri Vile Parle Kelwani Mandal, Mumbai
2. Mukesh Patel School of Technology, Management
and Engineering, Mumbai;
3. Narsee Monjee Institute of Management Studies
Deemed University, Mumbai.

Respondents

WITH
WRIT PETITION (L) NO.621 OF 2017

Pranav Hajirnis

Petitioner

versus

1. Shri Vile Parle Kelwani Mandal, Mumbai
2. Mukesh Patel School of Technology, Management
and Engineering, Mumbai;
3. Narsee Monjee Institute of Management Studies
Deemed University, Mumbai.

Respondents

WITH
WRIT PETITION (L) NO.674 OF 2017

Rubin Jhambani

Petitioner

versus

1. Shri Vile Parle Kelwani Mandal, Mumbai
2. Mukesh Patel School of Technology, Management
and Engineering, Mumbai;
3. Narsee Monjee Institute of Management Studies
Deemed University, Mumbai.

Respondents

WITH
WRIT PETITION (L) NO.678 OF 2017

Shivam Mahana

Petitioner

versus

1. Shri Vile Parle Kelwani Mandal, Mumbai
2. Mukesh Patel School of Technology, Management
and Engineering, Mumbai;
3. Narsee Monjee Institute of Management Studies
Deemed University, Mumbai.

Respondents

Mr.Mihir Desai, Senior Advocate, with Mr.Sarnath Sariputta Pramod
for Petitioner in Writ Petition (L) No.444 of 2017.

Mr.Uday Warunjikar with Mr.Omkar C. Geedh for Petitioners in Writ
Petition (L) Nos.621/2017, 674/2017 and 678/2017.

Ms.Manorama Mohanty with Mr.A.PSingh i/by M/s.S.K.Srivastava &
Co. for Respondent nos.1 to 3 in all writ petitions.

**CORAM : SHANTANU S. KEMKAR AND
PRAKASH D. NAIK, JJ.**

Date of reserving the Judgment : 21st March 2017
Date of pronouncing the Judgment : 13th April 2017

CAV JUDGMENT – (Per : Prakash D. Naik) :-

1. The Petitioners in all these petitions have raised a common issue and hence the petitions are disposed of by common judgment and order. The Petitioners are students of Respondent no.2, which is managed by Respondent no.1 management and is affiliated to Respondent no.3 deemed university. The Petitioners have invoked

writ jurisdiction of this Court under Article 226 of the Constitution of India and have challenged the communication dated 22nd November 2016 issued by Respondent no.2 debarring them from appearing in their examination as well as the order dated 31st January 2017 passed by the Dean of Respondent no.3.

2. The Petitioner in Writ Petition (L) No.444 of 2017 was studying in the first semester of Master in Business Administration-Tech (Electrical) course which is of five years. He was admitted to the said course in the academic year 2015-16. However, he could not pass the said examination and was required to appear for the additional examination conducted by Respondent no.2. The results of additional examination were declared on or about 5th August 2016. He again failed to achieve success. According to him, he had to enroll to the course only after the results were declared and therefore, missed the lectures till the date he was enrolled to the course. The course had commenced from 18th July 2016 and he was able to obtain admission on 19th August 2016. He was not allowed to attend the lectures prior to the admission. It is contended by the said Petitioner that he was ill from 19th September 2016 to 23rd September 2016 and despite that, made attempts to attend the lectures, but was able to attend a few lectures. He relied upon the medical certificate dated 24th September 2016. He further contended that he had to undergo mental trauma and depression and was attending counseling sessions during the period from 25th August 2016 to 25th September 2016. He placed reliance upon medical certificate dated 15th November 2016. According to him, he attended additional compensatory lectures to compensate the loss of

attendance, as the same was allowed by the faculty members but the head of the department did not sanction the additional attendance. These additional lectures were not considered. Notice dated 22nd November 2016 was displayed on the notice board mentioning that the said Petitioner was debarred from end of semester examination and that his term will not be granted. He preferred an application to the Respondent authorities for consideration of his case by giving reasons to condone the absence. The Respondents sent letter to the parents of Petitioner and were informed that the Petitioner has not been granted term due to lack of attendance vide letter dated 19th November 2016. It was stated that the Petitioner will have to appear for the course in the next year. Similar communication was issued on 21st November 2016. The said Petitioner preferred Writ Petition (L) No.3173 of 2016 before this Court. By an order dated 5th January 2017, the petition was disposed of by directing the Petitioner to approach the Respondent no.1 management vide representation, which shall be decided by the management after granting hearing to the Petitioner. The Petitioner, therefore, submitted his representation dated 9th January 2017. Hearing was given to him vide letter dated 31st January 2017. The said Petitioner was informed that his case was considered and the request for grant of relaxation to continue the course was rejected as he lacks 80% attendance in two subjects, viz. Engineering Mathematics and Engineering Mechanics.

3. The Petitioner in Writ Petition (L) No.621 of 2017 took admission on 19th June 2015 with the Respondents for five years Master in Business Administration-Tech course. The examination of the second semester of the first year course was scheduled from 30th

June 2016 to 7th July 2016. As the results were not declared of the first semester and the second year course had started on 18th July 2016, the Petitioner started attending the lectures. The results were declared on or about 5th August 2016. The Petitioner was unable to pass his academic year of the course. The lectures of the first semester of the first year course had already commenced on 18th July 2016. He took re-admission for the said course on 23rd August 2016. He attended the lectures in the first semester of the second year course from 18th July 2016 to 5th August 2016. However, he missed out the first year course lectures prior to the date of his re-admission. On account of his ill health, he was unable to attend the lectures on 29th September 2016 and 27th October 2016. He relied upon medical certificate which was submitted to the college. His grand-father expired on 3rd October 2016 and he had to go through the mental trauma on account of said loss. He did not attend the lecture on 4th October 2016. He contended that compensatory lectures to compensate the loss of attendance were attended by him which was allowed by the faculty members but not sanctioned by the head of department. Although he attended the lectures regularly, he had to miss few lectures due to unavoidable circumstances. Notice dated 22nd November 2016 was displayed with the similar contents as stated in case of Petitioner in Writ Petition (L) No.444 of 2017. He approached the Respondent college by an application dated 26th November 2016 by attaching the medical certificate dated 26th November 2016 and requested to consider his case. The Respondents forwarded the letter dated 19th November 2016 to the parents of the Petitioner which is similar to the letter referred to in the earlier paragraph. The Petitioner, therefore, approached this

Court by preferring Writ Petition (L) No.3173 of 2016 which was disposed of by order dated 5th January 2017 with similar order as referred to hereinabove. The Petitioner submitted a representation dated 9th January 2017. He was heard by the management. By letter dated 31st January 2017, the Petitioner was informed that the request for grant of permission to continue the course was rejected on account of lack of 80% attendance.

4. The Petitioner in Writ Petition (L) No.674 of 2017 took admission on 19th June 2016 for the four years Bachelor in Technology-Civil course. According to him, due to ill health, he could not attend the lectures for the period from 28th September 2016 to 30th October 2016, 12th September 2016 to 20th September 2016 and 3rd November 2016 to 9th November 2016. He placed reliance upon medical certificates which were submitted to the college. According to him, the Respondent college did not consider his medical leave for the period from 3rd November 2016 to 9th November 2016 while calculating his percentile of attendance. He also attended the compensatory lectures to compensate his loss of attendance, which was allowed by the faculty members but were not considered for calculation of percentile of attendance. The Respondents pasted notice dated 22nd November 2016 and letter dated 19th November 2016 debarring the Petitioner from attending the semester. The said Petitioner, therefore, approached this Court by preferring Writ Petition (L) No.3173 of 2016. The said petition was disposed of by order dated 5th January 2017 by directing the Petitioner to approach the Respondent no.3 for hearing. The Petitioner was heard on 23rd January 2017. By order dated 30th

January 2017, the Respondent no.3 rejected the request of the said Petitioner for continuation of the first semester. The Petitioner has, therefore, preferred this petition.

5. The Petitioner in Writ Petition (L) No.678 of 2017 took admission on 30th August 2016 for the four years Bachelor in Technology-Mechatronics course. According to him, due to ill health, the Petitioner could not attend the lectures for a period from 10th October 2016 to 15th October 2016 and 26th October 2016 to 7th November 2016. He placed reliance on medical certificates. According to him, he attended compensatory lectures to compensate the loss of attendance which was not considered by the Respondents while calculating the attendance. He regularly attended the lectures but missed few lectures due to unavoidable circumstances. However, the Respondents displayed a notice dated 22nd November 2016 stating that the Petitioner was debarred from the end of semester examination. The Respondents also issued letters to the parents informing them about aforesaid fact. The Petitioner approached this Court by preferring Writ Petition (L) No.3173 of 2016 which was disposed of vide order dated 5th January 2017. The Petitioner was directed to approach the Respondent management and make a representation which was to be decided by the Respondents after giving hearing to the Petitioner. The Petitioner submitted his representation dated 9th January 2017. He was given hearing on 23rd January 2017. By order dated 30th January 2017, the request for continuation of the admission of the Petitioner for the said semester was rejected by the Respondent management.

6. We have heard learned Senior Advocate Mr.Mihir Desai and learned advocate Mr.U.P.Warunjikar appearing for the Petitioners and learned advocate Ms.Manorama Mohanty for Respondents. The Respondents have also placed on record affidavit-in-reply in respect to all the petitions and countered the submissions of the Petitioners. The Petitioner in Writ Petition (L) No.444 of 2017 has also filed additional affidavit. We have perused the contents of the petitions, affidavit-in-reply as well as additional affidavit.

7. Mr.Desai, learned Senior Advocate, appearing for the Petitioners submitted that the order dated 30th January 2017 was passed in most mechanical manner and without adhering to the directions issued by this Court vide order dated 5th January 2017. He submitted that the Petitioners have complied with the requirement of rules embodied in Student Resource Book in respect to the attendance. He submitted that the documents and the reasons furnished by the Petitioners for continuation of their absence, was not considered in proper perspective by the Respondents. He submitted that the fact that the results of the Petitioners were declared belatedly and thus the petitioners could enroll themselves to the course belatedly resulting in inability to attend the classes, was not considered by the Respondents. The said period ought to have been condoned by the Respondents, as the course had commenced prior to re-admission of the Petitioners. The Petitioners had missed out the lectures due to medical conditions and they submitted medical certificates, which ought to have been taken into consideration while calculating the percentile of attendance by the Respondents. He further submitted that the Petitioner in Writ

Petition (L) No.444 of 2017 had attendance of more than 80% in all the subjects, except two subjects viz. Engineering Mathematics and Engineering Mechanics. The entire decision making process of the Respondents was arbitrary, capricious and in flagrant violation of principles of natural justice. There was no personal hearing, case by case, and proper individual verification of genuineness and gravity of the problems, which was justifying the absence of students. He submitted that Rule 3.2.3 of the Student Resource Book of Respondent college permits condonation of absence between 70% to 80%, which power can be exercised by the Dean/Directors. There was a failure on the part of Respondents to use discretion in favour of the students by Respondent no.3. He submitted that rules are not clear whether attendance of the Petitioners was considered subject-wise or at an aggregate for the purpose of appearing for the examination. He relied upon the contents of additional affidavit filed on behalf of Petitioner in Writ Petition (L) No.444 of 2017 wherein it was stated that the Respondents have erroneously mentioned that total number of theory lectures were 34 wherein upon calculating the total in the primary attendance record provided by the Respondents, shows that there were 32 theory lectures. It is further stated that the attendance in the subject of Engineering Mechanics is indicated in the attendance sheet provided to the said Petitioner and the said attendance sheet calculates to have conducted 32 theory lectures out of which the said Petitioner has attended 16 theory lectures, while 22 practical lectures were conducted in the semester wherein he had attended 22 practical lectures including additional lectures. He submitted that the percentage of attendance qua the said Petitioner calculates to 70.37%. He submitted that considering

the exemption granted on the basis of medical certificates, percentage of attendance of the said Petitioner stands to be between 70% to 80%. There were arithmetical errors in calculating the attendance percentile of the students by Respondents.

8. Mr.Warunjikar, learned advocate appearing for other Petitioners submitted that there was error apparent on the face of the record in calculating the attendance of the Petitioners. He submitted that the Respondents are not following transparent procedure in marking the attendance of the students. He submitted that in the reply filed by the Respondents it has been stated that internal faculty every day recorded the attendance of the students and after completion of the class, entered the same in the computer. With reference to the said averments, Mr.Warunjikar submitted that the procedure adopted by the Respondents is defective as it is difficult to note the attendance of the students who are present in the class without maintaining any attendance register in the class and it is difficult to believe that attendance is recorded after the class is over by the Respondent college, as stated in the affidavit-in-reply. He, therefore, submitted that the benefit of the irregular procedure must be given to the students. He submitted that in view of the issues involved in the matter, the Petitioners be allowed to attend the classes by admitting the Petitions. He submitted that the Petitioners will not claim any equity in case the petitions are subsequently dismissed. He further submitted that the Respondents had not considered the explanation tendered by the Petitioners for condonation of their absence and the rules were misinterpreted by the Respondents to the disadvantage of Petitioners-students.

Mr. Warunjikar contended that the procedure followed by the Respondents is arbitrary and in violation of principles of natural justice. They were not given personal hearing case by case and not properly verified individual data, which could justify the calculation of percentile of attendance. The Respondents have primary data of external faculty members of inspection but not primary data of internal faculty members for inspection. The Respondents did not give inspection of primary data of attendance taken by internal faculty members on daily basis. The Respondents gave inspection of the data which has been submitted by them before this Court, which was arbitrary and unjust. According to the Petitioners, Rule 3.2.3 of the Student Resource Book of the Respondent college permits condonation of absence between 70% to 80% to be exercised by the Dean/Director while considering/adopting debarment procedure. The said power was not exercised by the Respondents.

9. The Petitioners further contended that compensatory lectures attended by them were not taken into consideration. The notice dated 22nd November 2016 was issued without giving any show cause notice to them and deprived them of opportunity to give an explanation. It is submitted that on account of arbitrary action of the Respondents, several students have lost academic year. The Respondents having deemed university status is not at par with other universities. The procedure followed by the Respondents of not maintaining records of primary data creates doubt about the action taken by the Respondents. It is further pleaded that in spite of demand of primary data of attendance, the Petitioners were provided inspection of computer generated attendance sheets.

10. Ms.Mohanty, learned counsel appearing for Respondents submitted that the submissions made by the Petitioners are devoid of any merit. The Respondents have followed the correct procedure while calculating the attendance of the Petitioners. She further submitted that the Petitioners have failed to comply with the rules of attendance and, therefore, the communication debarring them from continuing the semester is justifiable. She further submitted that in pursuance of the order passed by this Court, proper hearing was given to the Petitioners, the documents submitted by them were taken into consideration and in spite of giving all the exemptions to the Petitioners, they were found not entitled for the benefit. Therefore, the requests made by them could not be accepted. She further submitted that the objections raised by the Petitioners in these petitions with regard to the genuineness of the calculations of the attendance of the Petitioners is after thought. She submitted that the calculations submitted by the Petitioners by way of chart etc. and by producing the documents in support of their representations, were taken into consideration by Respondents and were considered in proper perspective. But the case of the Petitioners was not falling within the purview of rules contained in Student Resource Book, and therefore, the decision of debarment was confirmed by order dated 30th January 2017. She further submitted that in the admission form itself it was categorically mentioned that the Petitioners-students will adhere to the norms of attendance. For instance, in the admission form of the Petitioner in Writ Petition (L) No.444 of 2017, which is placed on record by the Respondents in its affidavit-in-reply, at page 64, it is reflected that he will put in minimum 80% of the attendance

for each subject, in the absence of which he will not be eligible to write the examination for the concerned subject. She further submitted that e-mails were forwarded to students intimating them that they were short of attendance and they should adopt corrective measures. She further submitted that the Petitioners were aware that they are not complying with the norms of attendance and were alerted by the college. The grounds of illness or justification for their absence came at belated stage which is apparently after thought. She also submitted that the Petitioners have submitted medical certificates in support of their prayer for condonation of absence for a particular period, although practically they were present for the lectures on some of those days. She, therefore, submitted that the genuineness of the certificates submitted by the Petitioners is doubtful.

11. Learned counsel for Respondents placed reliance upon decisions of this Court, which are as follows :

- (i) Nikita Garg and others Vs. Vile Parle Kelwani Mandal and others - 2016(3)-ABR-450;
- (ii) Judgment of a Division Bench of this Court in Writ Petition (L) No.865 of 2016 decided on 28th April 2016; in the case of Shantanu R. Godara Vs. Shri Vile Parle Kelwani Mandal & ors.
- (iii) Aishwarya V. Jain V/s. Maharashtra State Board of Technical Board, Mumbai Sub-Region and others – 2016(5)-Mh.L.J.-176;
- (iv) Judgment of a Division Bench of this Court in Writ Petition No.840 of 2016 decided on 29th June 2016; in the case of Kum.Kamakshi Roy Vs. The State of Maharashtra & others.

12. The Respondent no.3 has provided the Student Resource Book to the students which clearly states guidelines and the rules to be followed by the students for the term being granted during completion of every semester. The Respondent no.3 is strictly following the rules and regulations framed in the student resource book. This rule book has been agreed upon by the Petitioners during admission in the admission form. Rule No.3.0 which relates to attendance and gave guidelines for all the students, can be quoted herebelow, which read as follows :

"3.0 Attendance and leave guidelines for all students :

3.1 General Guidelines -

3.1.1 A student is required to monitor his/her own attendance. The attendance reports will be shared on monthly basis and discrepancy (if any) to be informed by the student to the concerned course coordinator within 3 working days from the date when report has been shared. No changes will be permitted once attendance reports are finalized.

3.1.2 For ALL absence, prior intimation through prescribed leave application form is to be given to the Course Coordinator. In emergent situations, intimation must be given to Course Coordinator on phone/fax/email within 24 hours of the absence. Any leave without written intimation will be treated as unauthorised leave and will be reflected in the records as such.

3.1.3 Students must refrain from approaching the visiting and full time faculty members for attendance related issues and exemptions. They must submit an application to the coordinator concerned for necessary approvals.

3.2 Attendance rules for all School :

3.2.1 100% attendance in classes for each subject is desirable. However, for medical reasons/personal reasons/contest/placement/institutional work/other activities etc. absence upto 20% may be allowed.

3.2.2 Students, who are having attendance, in a Trimester/ Semester, in each subject, equal to or more than 80% are eligible to appear at the respective Trimester/Semester term and examinations.

3.2.3 Exceptional cases for students having attendance between 70% to 79.9% in any subject(s), will be dealt with on case to case basis by Dean/Directors of the respective schools. Such students will be eligible to appear for the regular trimester/semester and term examination, subject to approval of exemption from attendance is granted from the Dean of respective School/Director of the respective campus.

3.2.4 Students who are having attendance less than 80% in individual subject/s in a Trimester/Semester and if the Dean of the respective School/Director of campus has not given exemption, have to take re-admission in the same Trimester/Semester in the same class of subsequent academic year by paying requisite fees on prorata basis as per the prevailing rules of NMIMS and complete all the requirements of the program.

100% attendance in each subject is desirable.

Attendance % (In each subject/s)	Remarks
80% and above	Eligible to appear for Trimester/Semester End Examinations.
70% to 79.9% (10% Exemption)	Eligible to appear for Trimester/Semester End Examinations subject to approval of exemption granted from the Dean of respective School/ Director of the respective campus/Associate Dean.
Below 80% (Not eligible for exemption)	Have to take re-admission in the same Trim/Sem same class in the subsequent academic year."

13. As per Clause 3.2 of the student resource book of 2016-17, the student has to secure minimum 80% of attendance in each subject to be held eligible for trimester/semester end examination. The student whose attendance is 70% to 79.9%, are not eligible to appear for the trimester/semester end examination subject to approval of exemption granted by the Dean of respective school/Director of the respective campus/Associate Dean (Medical reasons/personal reasons/contest/absence/institutional work/ other activities etc.). Hence, the students who secure less than 80% attendance had to take re-admission in the said trimester/semester in the subsequent academic year. The Respondents have placed on record the admission forms filled up by the Petitioners wherein they have agreed upon the attendance clause and declared that they would record minimum 80% attendance for each subject and in the absence of which the Petitioners will not be eligible to write the examination for the subjects. Clause No.F-9 of the admission form categorically mentions that the student has fully understood that he will put in minimum 80% of the attendance for each subject and in the absence of which he will not be held eligible to write the exams for the subject.

14. The grievance made by the Petitioners in all these petitions is devoid of any substance. From the reply filed by the Respondents and the documents annexed to the reply it is crystal clear that whatever benefits which were required to be provided to the Petitioners, have been granted in their favour. As far as Petitioner in Writ Petition (L) No.444 of 2017 is concerned, it was brought to our

notice that he had attended 17 lectures in Engineering Mechanics (theory) out of 34 lectures. After giving medical benefit for the period from 19th September 2016 to 23rd September 2016, his attendance has increased to 20 lectures out of 34. The Petitioner had attended 12 practical sessions out of 24 practical sessions in the said Engineering Mechanics (practicals) from 19th August 2016 to 19th November 2016. After giving the medical benefits for the period from 19th September 2016 to 23rd September 2016, his attendance was 14 out of 24 in the subject Engineering Mathematics (practicals). The said Petitioner had attended extra sessions (practicals). He was given 100% benefits and his attendance in the subject in Engineering Mathematics (practicals) is 24. The total attendance of the said Petitioner was, therefore, 59% after giving all the benefits claimed by him. The subject Engineering Mechanics-1 consist of theory and practical sessions. There were 34 theory lectures and 22 practical sessions conducted by the faculty in the subject Engineering Mechanics for the period 19th August 2016 to 19th November 2016. The said Petitioner attended about 16 lectures out of 34. As there was no lectures conducted by the faculty during the period from 19th September 2016 to 23rd September 2016, no medical benefit is granted to the said Petitioner. He had attended about 22 practical sessions out of 22 practical sessions in the said subject Engineering Mechanics. Hence, the attendance of the said Petitioner in the subject Engineering Mechanics came to about 68%. It is pertinent to note that total attendance for each of the subject taken into account of the aggregate of Engineering Mechanics (theory) and Engineering Mechanics (practicals). The Respondents have relied upon a chart which was annexed to the reply which shows the calculation of

attendance of the Petitioner and the exemptions granted to him. All the requisite details as to how the benefits were granted to the said Petitioner has been furnished in detail in the reply filed by the Respondents, however, we do not wish to elaborate more on the said aspect. We have noted that the said Petitioner has not given 80% attendance in each and every subject which is the requirement as per Student Resource Book. The said Petitioner had lacked the attendance in two subjects even after granting exemption on the medical ground and the certificates produced by him.

15. As far as Petitioner in Writ Petition (L) No.621 of 2017 is concerned, it is pointed out to us that the said Petitioner has been granted maximum benefits of exemption in each and every subject in accordance with the rules of Student Resource Book. Hence, even thereafter the Petitioner's attendance in three subjects was less than 80%. The Respondents have considered each and every fact and grounds raised by the Petitioner and after taking into consideration the same, he has been finally debarred to appear in the examination of the first semester. It is pertinent to note that he has not produced any medical certificate with the Respondents till he was debarred. In spite of repeated notices were issued to him, he did not submit any medical certificate before the Respondents. The benefits of extra lectures/practicals attended by the said Petitioner have been considered by the Respondents. The chart prepared by the Respondents in respect to the calculation of attendance of the said Petitioner for the period from 23rd August 2016 to 19th November 2016 in each and every subject was placed on record by annexing the same to the affidavit-in-reply filed by the Respondents. The learned

counsel representing the said Petitioner and two other Petitioners, raised doubts about the procedure adopted by the Respondents institution with reference to recording of the attendance of the students of the said college. The Respondents have denied that there were calculation errors, as alleged by the Petitioner. It was also denied that the Respondents had provided the data of attendance of external faculty and not provided internal faculty of the primary data of the attendance. In the affidavit-in-reply, the Respondents had stated that the internal faculty record the attendance of the students and after class, fills the same in computer and e-mail it to the course coordinator. The course coordinator processes the attendance in SAP on every day. At the first week of next month, the attendance report of each students is sent to them and their parents and the notice is displayed on BPLM notice board. Hence, internal faculty does not maintain register as it is recorded in the computer every day. In respect to the said averments, learned counsel for the Petitioner representing the said Petitioner had submitted that this not a transparent procedure adopted by the Respondents in maintaining the attendance. He had submitted that there will be difficulty to memorize the attendance of the students who were present in the class after the class is over and, therefore, there is doubt with regard to recording of attendance of the students in the computer as stated in the affidavit-in-reply. He submitted that the benefit of the said doubt ought to have been given to the Petitioners-students. However, it is pertinent to note that all the precautions were taken by the Respondents in displaying the attendance as stated hereinabove and the notice was given to the students and in case there was doubt about marking of attendance by Respondent no.3, it

was open to the Petitioners to raise objections in that regard, which is not done in the present case. The Respondents have pointed out that the external faculty do not have access to the computers in the institute and they are meant to maintain register for recording attendance. The calculation chart which was annexed to the reply clearly states that the attendance of the Petitioner has been taken into account from the date of his enrollment.

16. The Petitioner in Writ Petition (L) No.674 of 2017 was also granted all the benefits which were required to be granted qua attendance. The Respondents have considered the medical certificates submitted by him. The additional lectures attended by him were also taken into consideration and the benefits of the extra lectures/practicals attended by the said Petitioner have already been granted to him. The chart prepared by the Respondents in respect to the calculations of the attendance of the Petitioner for the period from 18th July 2016 in each and every subject was also placed on record by the Respondents by annexing the same to the affidavit-in-reply. We have also noted that the internal faculty recorded the attendance of the students after the class and filled the same in the computers and e-mail the same to the course coordinator.

17. The Petitioner in Writ Petition (L) No.678 of 2017 had also relied upon the medical certificates. The exemptions were granted to him on the basis of medical certificates submitted by him. However, the Respondents have denied that the Petitioner has attended any compensatory lectures as stated by him. It is also pointed out that the attendance report was sent to the said Petitioner and his parents

from time to time. However, no objection was raised by the Petitioner or his parents thereto. Before the Petitioner was debarred, the Respondents had informed the Petitioner about his poor attendance from time to time. A chart prepared by the Respondents in respect to the calculations of the attendance of the said Petitioner for the period from 31st August 2016 to 19th November 2016 in each and every subject was also placed on record by the Respondents by annexing the same to the affidavit-in-reply. It is pertinent to note that the said Petitioner at the time of taking admission in respect of the course in the month of June-2016, had executed a declaration that the Petitioner will put in minimum 80% attendance for each subject in the absence of which the Petitioner will not be eligible to write the examination for the said subject. The form was also signed by the parent of the said Petitioner. The said documents are part of the record placed before this Court by Respondents.

18. Petitioners' made a grievance that the attendance was counted from the date of their enrollment. The Respondents have justified the said decision by stating that the Petitioners had failed in the first year of MBA-Tech course for the academic year 2015-16 and they were required to enroll themselves on 23rd August 2016 only after the results of the re-examinations were declared. Therefore, attendance of the Petitioners has been taken into consideration from the date of their enrollment i.e. 23rd August 2016 and not from the commencement of the course i.e. 18th July 2016.

19. Except the Petitioner in Writ Petition (L) No.621 of 2017, the Respondents had raised doubts in respect to the genuineness of

medical certificates produced by the Petitioners in other petitions. The Petitioner in Writ Petition (L) No.444 of 2017 had placed reliance upon medical certificates to condone the absence resulted in non-attendance of classes. The said Petitioner had requested for exemption for the period from 19th September 2016 to 23rd September 2016 on medical ground. It was submitted by Respondents that such medical certificates were created only for seeking exemptions from attendance. It was further submitted that even the Petitioner apparently had forgotten the dates when he remained absent in the class. From the records it was pointed out by the learned advocate for the Respondents that the Petitioner had attended the classes on 19th, 20th and 21st September 2016. The Petitioners had, however, tried to over come the said discrepancy by stating that on some occasions although they were not keeping well, they had attended the lectures. However, as far as Petitioner in Writ Petition (L) No.444 of 2017 is concerned, the benefits of medical certificates submitted by him, were given to him while calculating his attendance including the period from 19th September 2016 to 23rd September 2016. The Petitioner in the Writ Petition (L) No.674 of 2017 had placed reliance upon medical certificates for the period from 3rd November 2016 to 9th November 2016. The said medical certificate was issued by doctor from Apollo Hospital, Ahmadabad for the period between 3rd November 2016 and 9th November 2016 during which period the said Petitioner was attending the classes in Mumbai. The Respondents, therefore, have raised doubt about the genuineness of the said certificate. The said medical certificate was produced by the said Petitioner with a representation. Although the students are required to submit their leave applications or intimation

to the course coordinator on phone/fax or e-mail within 24 hours of the absence, there was no such leave application filed by the Petitioners. The Petitioner in Writ Petition (L) No.678 of 2017 has placed reliance upon medical certificates for the period from 10th October 2016 to 15th October 2016, 26th October 2016 to 7th November 2016. Then from 28th October 2016 to 3rd November 2016. As far as last period is concerned, there was Diwali vacations and hence there was no lecture during the said period. The Petitioner had attended the classes on 13th October 2016, 26th October 2016, 27th October 2016, 5th November 2016 and 7th November 2016. It is very clear that the medical certificates were also provided for the period on which the Petitioner had attended the classes and, therefore, the Petitioner himself was not aware as to on what date he had attended the classes and on which dates he was absent from the classes. In spite of these infirmities and the genuineness of the medical certificates was under shadow of doubt, the Respondent college and management had granted exemptions to the Petitioner in respect to the said medical certificates submitted by the Petitioner.

20. It was also brought to our notice that first semester of the courses Bachelor of Technology-Civil and MBA-Tech started from 18th July 2016 and ended on 19th November 2016. As per the rules, the Respondents informed the attendance of each and every student by displaying it on the notice board and subsequently parents were informed by sending e-mails. The attendance for the period between 18th July 2016 and 7th September 2016 was displayed on the notice board on 12th September 2016 and an e-mail was also sent to the

parents on 16th September 2016. A meeting with the defaulters was conducted on 30th September 2016 by the Dean/Associate Dean to apprise serious consequences of the non-attendance. Again attendance for the period between 18th July 2016 and 9th October 2016 was displayed on the notice board on 14th October 2016 and a letter was sent to parents on 13th October 2016. Similarly, by e-mail dated 13th October 2016, the Respondents informed the Petitioners and their parents that the Petitioners had defaulted in attendance in the classes conducted till 9th October 2016 and suggested to ensure that the Petitioners regularly attend the classes and maintain requisite attendance. The said letters were sent by the Respondents through Black Board Learning Management System (BBLMS). The attendance of the students is entered in SAP system by the Respondents on daily basis. Again by letter dated 19th November 2016 the parents of the Petitioners were informed that they are not allowed to appear for semester and examination due to poor attendance as per academic requirements. The students were informed about the attendance after each month through BBLMS, e-mail/letters to the parents indicating that there ward is defaulting in the attendance as on that date. The Respondents had placed on record the aforesaid communications in the nature of letters, notices, e-mails etc. by exhibiting the same to the reply filed in respect to all these petitions. The Respondents further brought to our notice that each student and their parents have the access to BBLMS system and therefore, the attendance of the students can be apprised individually. Apart from that, potential defaulter list has been displayed on the notice board indicating the students who are likely to be defaulted. A meeting of the CRs was also conducted to apprise

the students of the rules regarding attendance at the beginning of the session. A meeting of the defaulters was also conducted by the Dean/Associate Dean and the students were apprised of the attendance rules and consequences thereof. However, the Petitioners never raised any objections in respect to their attendance as informed to them. As per Rule 3.1.1, a student is required to monitor his attendance. It was categorically stated that the attendance reports will be shared on monthly basis and discrepancies, if any, to be informed by the students to the concerned course coordinator within three working days from the date when the report has been shared. No changes will be permitted once the attendance reports were finalised.

21. We have considered all the aspects and perused all the documents as stated hereinabove. Although we have all the sympathies to the Petitioners who are young students, we cannot brush aside the fact that the requirement of attendance is one of a necessity and mandatory requirement for continuation as a student for particular semester or for appearing in the examination. We have also noted that the issues raised by the Petitioners are the disputed questions of fact which cannot be gone into in exercise of power under Article 226 of Constitution of India. We have also considered the fact that the Dean has given opportunity to tender explanation to the Petitioners and after going through the documents submitted by them and calculating the attendance in the proper perspective as put up by the Petitioners before the said Dean, the benefits for which they were entitled to, have been provided to the Petitioners by the Dean.

22. This Court in the case of **Nikita Garg (supra)** had come across a similar situation and has dealt with the same by assigning several reasons for not considering the claim of the Petitioner-student therein. In the said decision also, the students were debarred from attending the classes on account of lack of attendance or for the fact that there was no requisite attendance. In this case also, the students were put to notice from time to time as in the present case. There was default on the part of the said students in attending the classes and they were cautioned that they should clear the said default as early as possible. In paragraph 17 of the said judgment, this Court has observed as follows :

"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 wilful 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."

23. In another decision of this Court delivered in **Writ Petition No.865 of 2016 (O.S.) (supra)**, the Court had considered a similar situation wherein the students had not attended the classes in spite of cautioning them that there was default on their part in attending the classes. In paragraph 18 of the said decision, it was observed as follows :

"18. The learned counsel for the petitioner relied upon a decision of the Division Bench of this Court in Preeti Mulji Sondarwa and others Vs. The Controller of Examinations, University of Mumbai and others in Writ Petition No.3776 of 2016 and submitted that there is violation of rules of natural justice. The petitioner was not given benefit of guidelines suggested by the courts in the said guidelines. The learned counsel also relied upon decision of the Supreme Court in Ravi Yashwant Bhoir Vs. District Collector, Raigad and others (2012)4-SCC-407 and submitted that the petitioner could not be prevented from writing his examination on the ground that there were no speaking order giving reasons as to why he is debarred from writing examination or the salutary requirement of natural justice viz. spelling out the reasons to ensure that the party affected is provided the reasons why he was so debarred and that the right to receive reasons is an undisputed part of judicial system. We do not find the judgment in Bhoir's case (supra) being of any avail to the petitioner. Apart from the fact that the said judgment was concerning removal from office of elected office bearers under Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, the said judgment is of no avail. As far as judgment in the case of Preeti Sondarwa (supra) is concerned, we find the college complied with the guidelines laid down and in this respect. We may also make reference to the order passed by this Court in Nikita Garg and others Vs. Vile Parle Kelwani Mandal and others in Writ Petition (L) No.908 of 2016, dated 31.3.2016 in which the guidelines laid down by this Court in Preeti Sondarwa (supra) were considered. The fact situation was similar to that in the present case involving the very same college. Ordinance 6086 was duly considered and it was held that the college had adopted all measures consistent with guidelines in Preeti Sondarwa (supra).

24. In the case of *Aishwarya V. Jain (supra)*, this Court had come across another situation wherein the Petitioner therein was refused

permission to appear in the examination for having not cleared the first year of said course. The Court was pleased to observe that the Petitioner was not qualified as per the rules for admission to the third year course and the examination form of the said Petitioner was, therefore, rightly not accepted as admission itself was faulty and contrary to the rules. The Petitioner cannot seek a writ which would go contrary to the admission rules. This Court in the said decision has referred to several decisions relied upon by the Petitioners therein. In paragraph 11 of the said decision, it was observed that **it is a settled principle of law that this Court in exercise of its writ jurisdiction would not interfere in academic matters. The rules in question set out academic standards in education and are framed by the experts in the field. The standards cannot interfere and/or dilute and ought to command highest respect from all stakeholders and students are clearly bound by these rules and standards contained in it in pursuing the course of such a high academic value.**

25. In another decision of this Court in *Writ Petition (L) No.840 of 2016 (O.S.) (supra)*, it was observed by this Court that **it would not be possible to interfere with the discipline of the college on the basis or for the reason of non attendance, as now assigned by the Petitioners therein. It was further observed that it is common ground that private professional institutions imparting education ought to be strict with the students and maintain discipline so that not only the reputation and image of the institution is not affected, but the students appreciate the efforts of the teachers and the management of such institution in**

providing them not only basic amenities and facilities but some modern 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. In paragraph no.9 of the said decision, it was observed as follows :

"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 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 the 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."

26. We have given our anxious consideration to the issues raised by the Petitioners in the present petition. We have all sympathy

towards the students. However, the rules are meant to be complied with by the students which is in their interest. We do not think it proper that in spite of violation of mandatory rules, the students be allowed to appear for the course or the respective examinations. Although the Petitioners had tried to dispute the reasoning given by the Respondents, we find that these are all disputed questions of facts which cannot be gone into in exercise of powers under Article 226 of the Constitution of India. We have, however, noted that the Respondents have given maximum benefits to the Petitioners-students to condone their absence from attending the classes. We, therefore, are of the view that no ground is made out to set aside the decisions taken by the Respondents on account of non attendance by the Petitioners-students. Although our sympathies are with the Petitioners-students who are debarred by impugned decisions, we cannot over look the fact that there was no compliance of the rules as stipulated in the Student Resource Book. We have also noted, as stated in detail hereinabove, that from time to time, the students were put to notice that there is default in compliance with the requirement of attendance on the part of Petitioners-students. We have also noted that the Petitioners and the parents were aware that there was lack of attendance on the part of students. The grounds raised by the Petitioners seeking condonation of non-attendance of the lectures by producing the medical certificate etc. appears to be after thought and is not a genuine ground to condone the absence. In the light of the observations made by this Court in the aforesaid decisions and in the facts and circumstances of the cases involved and in the facts of the present cases, we do not find it appropriate to exercise the powers under Article 226 of the Constitution of India

and to grant the reliefs as prayed by the Petitioners in these petitions.
For all the aforesaid reasons, we pass the following order :

ORDER

(a) Writ Petition (L) No.444 of 2017, Writ Petition (L) No.621 of 2017, Writ Petition (L) No.674 of 2017 and Writ Petition (L) No.678 of 2017 are dismissed;

(b) No order as to costs.

(PRAKASH D. NAIK)

(SHANTANU S. KEMKAR)

MST