

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

**WRIT PETITION NO.1208 OF 2017**

**B. K. Shroff College of Arts  
& M. H. Shroff College of Commerce,  
Mumbai and another**

**..Petitioners**

**Versus**

**Registrar,  
University of Mumbai  
Fort Campus, Fort Mumbai and others**

**..Respondents**

**ALONGWITH  
WRIT PETITION NO.1328 OF 2017**

**B. K. Shroff College of Arts  
& M. H. Shroff College of Commerce,  
Mumbai and another**

**..Petitioners**

**Versus**

**Registrar,  
University of Mumbai  
Fort Campus, Fort Mumbai and others**

**..Respondents**

**Mr. S. C. Naidu a/w Mr. T. R. Yadav, Mr. Aniketh Poojari i/by M/s. C. R. Naidu and Co., Advocate for the Petitioners in both the Petitions.  
Mr. Rui A. Rodrigues a/w Ms. Rimi Jain, Advocate for Respondent Nos.1 and 2 in both the Petitions.**

**CORAM : B. R. GAVAI &  
B. P. COLABAWALLA, JJ.  
DATE : 8<sup>th</sup> FEBRUARY, 2018**

**PC.**

**1] Rule. Rule made returnable forthwith. Heard by consent.**

**2] Though in view of the earlier interim orders passed by two benches of this Court, the issue which requires consideration in the**

Petition in so far as Respondent Nos.3 to 32 are concerned, is academic in nature. However, in view of the important question pertaining to the academic matters of the University, we propose to decide the issue involved in the present Petition.

3] We are aware of the decisions of the Hon'ble Apex Court, wherein Their Lordships have cautioned that this Court should not enter into the issues which are purely academic in nature. However, we are required to decide the issue in view of the stand taken by the Respondent University, which in our view, is a protector of academic interest of the students and not the destroyer of the same.

4] The Petitioner No.1 which is a college of Commerce, upon following the procedure as prescribed under Ordinance 6086 had declared Respondent No.3 to 32 to be not qualified to appear for the examinations, on the ground of their attendance being less than 50%. However, the said Respondents alongwith the other students appealed before the Appellate Authority i.e. Low Attendance Redressal Committee of the Respondent Nos.1 and 2. The Appellate Authority i.e. Low Attendance Redressal Committee by an order dated 18<sup>th</sup> March 2017 allowed the Appeal of 26 students in the first order, while rejecting the Appeal of 9 students. By the subsequent order of 1<sup>st</sup> April 2017, the

Appeals of all the 5 students were allowed. Being aggrieved thereby, the present Petitions.

5] As already discussed hereinabove, in view of the interim orders passed by this Court on 10<sup>th</sup> April 2017, the Respondents students were allowed to appear for the examination, subject to the result of the Petition. By subsequent order dated 12<sup>th</sup> July 2017, to which one of us (B. R. Gavai, J) was party, the Court had modified the interim order dated 10<sup>th</sup> April 2017 and directed that, the result of the students to be declared forthwith. It was further directed that, the students should also be permitted to keep terms for the subsequent semester. Mr. S. C. Naidu in his usual fairness states that, the Petitioners are not interested in seeking adverse orders in so far as the Respondents students who are before this Court are concerned. It is however submitted that in view of the precedent set up by the University, there is likelihood in the present and future academic years, as the Low Attendance Redressal Committee again indulging in the same thing, thereby affecting academic standards of the Petitioners.

6] It is the basic contention of Mr. S. C. Naidu that the question with regard to the minimum attendance condonation and further minimum attendance after permissible condonation is governed by

Ordinance 6086. He submits that the perusal of the said Ordinance would reveal that 75% attendance on an average and 50% in each of the subjects is mandatory. He submits that condonation of absentee further up to additional 25% by the attendance committee of the college can be permitted and that too only on the grounds stated in the clause (4) of Ordinance 6086. He submits that the powers of the Appellate Authority under clause (7) of the said Ordinance would permit the said Appellate Committee only to condone the delay within the parameters as laid down in clause (4) and not further. He submits that conjoint reading of clause (2), (4) and (7) of the said Ordinance would reveal that, the Appellate committee also could not have condoned the average attendance below 50%. He however submits that in the present case, by applying standard rule of 40% the Low Attendance Redressal Committee has condoned the attendance. He submits that the committee was required to apply its mind to the case of each of individuals independently and give conclusion as to whether the grounds which are available in clause (4) are made out for condoning the attendance. In any case, he submits that attendance below 50% on an average could not have been condoned.

7] Mr. R. A. Rodrigues, relying on the judgment of the Division Bench of this Court in Writ Petition No.3776 of 2015 and companion matters dated 10<sup>th</sup> July 2015, submits that co-ordinate bench of this

Court has interpreted Ordinance 6086 and has observed that the Appellate Authority being a supreme committee, has powers to condone the attendance even below 50%. The learned counsel submits that, the judgment of the co-ordinate bench of this Court would bind this Court and therefore, the contention as raised by the Petitioners are required to be rejected.

8] For appreciating the rival controversy, it would be relevant to refer to clauses (2), (4) and (7) of the Ordinance 6086, which reads thus :-

“2) Every bonafide learner shall ordinarily be allowed to keep terms for the given semester in a program of his enrolment, 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) .....

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) .....
- 6) .....
- 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.”

9] The first principle of interpretation is that of plain and literal interpretation. If the words used in the provision are capable of giving meaning to the legislative intent, then it is not necessary to resort to other principles of interpretation. The perusal of clause (2) would reveal

that, it is mandatory for every learner to have minimum 50% attendance for each course and average attendance has to be 75%. The perusal of the clause (2) would reveal that, the bonafide learner shall ordinarily be allowed to keep terms for the given semester in a program of his enrolment, only if he fulfills at least 75% of the attendance taken as an average of the total number of lectures, practicals, tutorials etc. The perusal of clause (4) would reveal that, Principal/ Director/Head of the concerned College/Institute/Department of the University would be competent authority to condone the absentee of any learner further up to additional 25%, if deemed fit and on the recommendation of the attendance committee. It is necessary for the Attendance Committee to follow the principles of natural justice. Not only that, the Competent Authority is also required to verify the genuineness and gravity of problem. It further provides that the ground of absence shall be generally limited to his own sickness, sickness of his parent, death of his parent etc. The same has to be supported by valid evidence, documentary or otherwise.

**10]** Clause (7) deals with a provision of Appeal to the Controller of Examinations i.e. Respondent No.2. The Respondent No.2 is also required to give hearing to the learner alongwith their concerned Principals/Directors/Head of the Department etc.

11] It could thus be seen that the scheme of Ordinance 6086 is that ordinarily a learner is required to have 75% of the attendance taken as an average and minimum 50% in all the subjects. However, the same can be condoned by the Principals/Director/Head of the concerned Department etc. on the recommendation of the Attendance Committee further by 25%. The same can be allowed on the grounds of sickness of learner, sickness of his parent and on death of his parent. The same has to be supported by valid evidence, documentary or otherwise. The Attendance Committee is required to give an opportunity of hearing prior to doing so. A learner aggrieved by the decision of Principal/Director/Head of the concerned Department etc. of the college is granted an opportunity to file an Appeal before the Respondent No.2. It appears that the Respondent No.2 has delegated his powers to the Attendance Redressal Committee. The said committee is also required to give hearing to the learner as well as the Principals of the colleges.

12] It could thus be seen that applying the first principles of interpretation, the Ordinance provides that minimum attendance on an average has to be 75% and in each subjects minimum of 50%. The same can be condoned further up to additional 25% by the Principal on the recommendation of the attendance committee of the said college on the grounds stated hereinabove. It could thus clearly be seen that the

conjoint reading of the provisions leads to a conclusion that in no case learner would be allowed to keep terms if his average attendance is below 50%.

13] In so far as reliance placed by Mr. R. A. Rodrigues on the judgment of the Division Bench of this Court in Writ Petition No.3776 of 2015 and companion matters is concerned, we find that the said judgment cannot be said to be ratio decidendi for deciding the present issue.

14] What is ratio decidendi has been succinctly explained in the case of The Regional Manager and another Vs. Pawan Kumar Dubey reported in (1976) 3 SCC 334. It could thus clearly be seen that Their Lordships have held that it is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi. It is further held that one additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.

15] In the case on which Mr. R. A. Rodrigues relies is concerned, the Court basically was concerned with the issue regarding violation of principles of natural justice and decide each and every individual case

independently. As a matter of fact, the impugned orders are in totally breach of the law laid down by the Division Bench in the aforesaid case. In the said case, it was held that, it was mandatory for the University to give hearing to each and every learner and upon giving such hearing to come to a considered conclusion in each of the cases. The other observations in our considered view are obiter. It is only the obiter dictum of the Supreme Court which binds us. It is only the ratio decidendi of the co-ordinate bench which binds us. The reliance placed on the said judgment in our considered view rather than supporting the case of the Respondent University would support the case of the Petitioners. As a matter of fact, if we have to apply the law laid down in the aforesaid case to the facts of the present case, the Petition will have to be allowed on the short ground of breach of principles of law laid down in the said judgment.

**16]** As already discussed hereinabove ratio decidendi of the judgment in Writ Petition No.3776 of 2015 and companion matters is that the Respondent University is required to follow principles of natural justice. By a single stroke 26 appeals have been allowed and 9 rejected. No reasons as to why such Appeals are either allowed or rejected are given. Similarly in second order dated 1<sup>st</sup> April 2017, all 5 Appeals have been allowed.

17] Upon applying first principles, we have already come to a considered conclusion that, as a rule there has to be an average attendance of 75% and minimum 50% in each of the subjects. The same can be condoned by the principals of the colleges on the recommendation of the Attendance Committee on verifying genuineness of the grounds which are also mentioned in the said ordinance. In so far as the contention of Mr. R. A. Rodrigues that the Respondent No.2 being an Appellate Authority is a supreme authority and therefore its powers are higher than ordinary authority is concerned, in our considered view the said contention is also liable to be rejected. It is settled principle of law that appeal is a creator of statute. The Appellate Authority would have the powers given to it under the statutory provisions. The perusal of the ordinance would not reveal that the Appellate Authority has been bestowed with a power to condone further absence which would go below 50% of an average. The power of the Appellate Authority would only be restricted to find out as to whether the original authority while exercising its powers under clause (4) has acted within the parameters of clause (4) or not. It cannot go beyond the provisions of clause (4). In any case, while dealing with the provisions which deal with the academic matters, one should take into consideration as to what would be in the academic interest. The ordinances are made to ensure that the academic

standards of the students rise and not with the object of deteriorating the academic standards.

**18]** In that view of the matter, we find that the Petition deserves to be allowed. While directing that the present judgment shall not adversely affect interest of Respondent No.3 to 32, the impugned orders are quashed and set aside. A copy of the order is directed to be forwarded to the Registrar of the Mumbai University who is further instructed to circulate this judgment amongst the members of the Attendance Redressal Committee, who are further directed to note the contents thereof and follow the same in the matters that would come up before them in future.

**[B. P. COLABAWALLA, J.]**

**[B. R. GAVAI, J.]**