

\$~39

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 1st May, 2018*

+ W.P.(C) 11083/2017

MADHUSHREE MAITRA AND ORS. Petitioners

Through Dr. Sarbjit Sharma with Ms. Leeza
Taneja, Advocates.

versus

UNIVERSITY OF DELHI Respondent

Through Mr. Mohinder J.S. Rupal, Mr. Prang
Newmai & Ms. Slomitra Rai,
Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. Rule D.B. Pleadings are complete. With the consent of the counsels for the parties, the writ petition is set down for final hearing and disposal.
2. 17 petitioners have filed the present writ petition being aggrieved by the action of the University for not promoting them to the next semester on account of shortage of attendance. We may note that the 17 students pertain to different law centres and pertain to different semesters. 9 petitioners are in the first semester, 6 petitioners are in third semesters and 2 petitioners are in fifth semester.
3. Dr. Sarabjit Sharma, learned counsel for the petitioners submits that there is a prerequisite of achieving 70% attendance in aggregate and

66% attendance in each subject for appearing in the examination. The attendance of each semester is considered for allowing or debarring a student. The present petitioners have been debarred from appearing in the current semesters. Learned counsel for the petitioners and, petitioner no.1, who has appeared in person, submit that the attendance of the petitioners have not been correctly reflected in the record of the University. It is also submitted that the University did not have the necessary record as a C.P.U., which contained the entire attendance record of the students was stolen. A strong reliance is placed on the copy of FIR, which has been placed on record. It is next contended that the University has not acted in a fair and just manner as many students have been granted attendance of the class they did not attend, however, the present petitioners are faced with discrimination at the hands of the University. It has also been contended before us that in case the petitioners are not permitted to appear in their respective examinations, they will be put to great hardship, more particularly, 9 students of the first semester, who would have to appear again in the entrance test and on account of growing competition, there may be a possibility of their not being able to succeed in seeking fresh admission. Learned counsel for the petitioners and petitioner no.1 have also made serious efforts to bring to the notice of the Court how extra attendance has been granted to some students while the petitioners have been discriminated.

4. Mr. Rupal, learned counsel appearing for the University of Delhi categorically submits on instructions that no doubt there was a theft of the C.P.U. but the C.P.U. did not contain the attendance record of the

students, which is also evident from the fact that the record of the students was produced in Court and examined by the petitioners. Additionally, he submits that the petitioners have not been discriminated, in fact, every effort has been made to grant attendance to the students as a whole and in fact across the board, the students have been granted benefit of 48 lectures without going into technicalities as to whether they had attended the moot courts, seminars etc. or not. Counsel further submits that the effort of the University is to ensure that the regulations are enforced but University also makes every attempt to accommodate the students wherever it is possible in accordance with rules. Counsel denies and disputes that students have been discriminated or some students have been favoured. Mr. Rupal submits that the University has followed a transparent policy and the relevant record was produced and the petitioners were allowed to inspect the same and satisfy themselves. Mr. Rupal also submits that not only records pertaining to the petitioners were produced and inspected by the petitioners, but records pertaining to those students, who according to the petitioners had been favoured were also produced and inspected by the petitioners.

5. We have heard learned counsel for the parties. This matter was listed for the first time on 12.12.2017 and adjourned for 13.12.2017 at 10:30 AM. On 13.12.2017, when the following order was passed :

“The matter was listed yesterday at 4:00 pm and directed to be listed today at 10:30 am to enable learned counsel for the respondent to obtain instructions relating to shortage of attendance.

2. Learned counsel for the respondent has produced before this court a chart with percentage of attendance in the case of the 17 petitioners. The figures give a poor impression and would not justify an interim direction. The attendance figures, as given by learned counsel for the respondent, are given below:

S. No	Petitioner/Student Name	Percentage of Attendance.
1.	Madhushree Maitra (LC2)	39%
2.	Shri Bhagwan (LC2)	41%
3.	Ridhema Jain (LC2)	45%
4.	Sumit Rai (LC2)	37%
5.	Vijay Pujari (LC2)	49%
6.	Kanwar Singh (LC2)	29%
7.	Rahul Kumar (LC2)	43%
8.	Richa Porwal (LC2)	43%
9.	Rakshanda (LC2)	33%
10.	Rohit Sharma (CLC)	33.67%
11.	Rajesh Kumar Meena (CLC)	28.24%
12.	Manjeet Singh (LC1)	38.4%
13.	Prativindya Poonia (CLC)	40.76%
14.	Vijay Singh Meena (LC1)	47.5%
15.	Vikas Kumar (LC1)	44.4%
16.	Ankit Gupta (LC1)	40.7%
17.	Shahjad Ali Nagra (LC1)	33.2%

3. Contention of learned counsel for the petitioners, that CPU containing the attendance record was stolen, has been controverted by learned counsel for the respondent on instructions. It is stated that backups were available and after

proper check and verification the petitioners herein have been detained on account of shortage of attendance.

4. We also are not impressed with the argument that the students with shortage of attendance should be permitted and allowed to sit in the examination as students, who have failed or have not appeared in 1st, 3rd and 5th semesters examination, are permitted to attend 2nd, 4th and 6th semester classes. The two situations are different. LL.B. in a professional course and attendance is mandated and as per rules is compulsory.

5. However, during the course of the hearing learned counsel for the petitioners, had submitted that the students in the first semester will have to take re-admission i.e. have to appear in the entrance examination and only on selection will be enrolled. In other words, the said students will lose their admission. Learned counsel for the petitioners prays for adjournment for today as he would like to amend the writ petition and challenge the aforesaid stipulation in the rules annexed as Annexure P4. We note that specific ground in this regard has not been raised in the writ petition.

6. Another contention raised by the petitioners is that some of the students have managed attendance. It is open to the petitioners to highlight the said cases to the authorities who would then examine the issue raised and in case some students have managed attendance, appropriate action in accordance with law would be taken. Article 14 is a positive and cannot be used in a negative manner as suggested by learned counsel for the petitioners.

7. In view of the aforesaid position, we are not inclined to pass any interim order.

8. In the meanwhile, the respondent to file the affidavit within 3 weeks stating aforesaid facts stated orally today in the Court.

9. Rejoinder, if any, may be filed within three weeks thereafter.

10. At the request of learned counsel for the petitioners, relist on 5th February, 2018.

11. Copy of the order be given *dasti* under signature of the Court Master. ”

6. We are informed that this order was carried in appeal before the Apex Court, however, the petitioners were not successful. Since the earlier Bench, which was seized of the matter had declined to hear the matter, as an application has been filed by one of the petitioners for the matter to be transferred, this matter was marked before us on 20.03.2018. Post 20.03.2018, this matter has been heard on six occasions and every effort was made to allow inspection of the original records regarding attendance of the petitioners and those students, who according to petitioners have been favoured.
7. The main grievance of the petitioners is that their attendance has not been marked properly. Strong reliance is placed on the copy of FIR, which has been placed on record to show that there was a theft of the C.P.U., which contained the entire attendance record of the students including the petitioners herein and thus the attendance so marked does not correctly reflect the dates when the petitioners had actually attended the classes.
8. Today, learned counsel for the petitioners including petitioner no.1, submit that they wish to make a representation to the Dean (faculty of law) and seek a direction to the Dean (faculty of law) not only to consider the representation expeditiously but also favourably, having regard to the career of these 17 students.
9. Counsel for the petitioners at this stage does not wish to press this petition but seeks leave to make a representation to the Dean (faculty of law) and a direction that the representation may be disposed of

expeditiously having regard to the age, the acute hardship including the financial hardship faced by the students.

10. Dr. Sharma, counsel for the petitioners also submits that the Dean has discretion to condone the attendance upto 15 days in a semester as per rules, which is denied by Mr. Rupal, learned counsel for the University of Delhi.
11. We have noted the submissions made before us in detail. Should a representation be made by the petitioners, the same would be decided by the Dean (faculty of law) within one week. We hope that the Dean (faculty of law) would consider the representation sympathetically.
12. Keeping the fact which we have noted above, the writ petition, as prayed, is disposed of in above terms.
13. Copy of order be given *Dasti* to the parties under signature of the Court Master, as prayed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

MAY 01, 2018/ck