

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 996 OF 2018

1. Ms. Parimal Gauns Desai,
Aged 26 years, Daughter of Mr.
Vallabh Gauns Desai, R/o. AF-2,
First Floor, Shubha Residency,
Stadium Road, Fatorda, Margao,
Goa.
2. Mr Sachin Vandagekar,
Aged 22 years, Son of Vijay C.
Vandagekar, R/o. H. No.60,
Mestwada, Curti, Ponda-Goa.
3. Ms. Midithuri Venkata Sathya
Kumar,
Aged 46 years, Daughter of M. S.
Nagraja, R/o. AF-2, First Floor,
Shubha Residency, Stadium Road,
Fatorda, Margao, Goa.
4. Ms. Sevana Jacques, (Deleted)
Aged 39 years, Daughter of
Antonio Jacques, R/o. H. No.320,
Tibet, Cavelossim, Salcete, Goa.
5. Ms. Nivedita Naik,
Aged 24 years, Daughter of Dipu
Naik, R/o. H. No.7, Parshuram
Nagar, Bandora, Ponda, Goa.
6. Ms. Manjita Dessai,
Aged 30 years, Son of Anil G.

Desai, R/o. H. No.221, Patnem
Colomb, Canacona-Goa. Petitioners

V e r s u s

1. Vidya Vikas Mandal,
Having office at Shri Damodar
Educational Campus, G. R. Kare
Road, Tansor, Somba, Margao, Goa
40360, Through its Secretary
2. Govind Ramnath Kare College of
Law
G. R. Kare Road, Tansor, Comba,
Margao, Goa. Through its
Principal Mr. Saba Da Silva, C/o.
Govind Ramnath Kare College of
Law, Comba, Margao, Goa.
3. Mr. Saba Da Silva,
C/o. Govind Ramnath Kare College
of Law, Comba, Margao, Goa.
4. Goa University
Through its Vice Chancellor,
Taleigao Plateau – Goa
Through its Viuce Chancellor
5. Bar Council of India,
21, Rose Avenue Institutional Area,
Near Bal Bhavan, Through its
Secretary, New Delhi Respondents

Mr. D. Vernekar and Ms. G. Pai, Advocates for the Petitioners.

Mr. C. A. Ferreira, Advocate for the Respondent nos. 2 and 3.

Mrs. A. Agni, Senior Advocate with Ms. Jay Sawaikar, Advocate for the Respondent no.6.

Coram :- C. V. BHADANG &
NUTAN D. SARDESSAI, JJ.

Reserved for Judgment on : 11th October, 2019
Judgment pronounced on : 19th November, 2019

JUDGMENT (*Per C. V. Bhadang, J.*)

1. This petition is placed before this Bench as one of the members of the Regular Bench had expressed his inability to take up the matter in view of a letter dated 05.02.2019 sent by one of the petitioners in this petition. On 22.10.2019, a precipe is filed on behalf of the petitioners stating that they have no objection if this Bench takes up the matter and decides the same. Be that as it may, the petition is taken up for final disposal by consent of parties.

2. By this petition, under Article 226 and 227 of the Constitution of India, the petitioners are challenging the action of the respondents in debarring the petitioners from appearing in the Repeat semesters in the academic year 2018-19 of the BA LLB examination of the three year degree course in law on the ground of inadequate attendance.

3. The petition, as originally filed, was amended with a prayer to direct the respondent to accept the admission forms of the petitioners and admit them being eligible to the IIInd year and allow them to answer semester IV examination. By virtue of the said amendment, the petitioners are also challenging the enquiry report prepared by Dr. Gaurish Naik in the matter of attendance of the petitioners.

4. We have heard the learned Counsel for the parties and perused record.

5. Mr. Vernekar, the learned Counsel for the petitioner, has contended that as per University OA No.17.3(ii) pertaining to attendance and eligibility criteria to attend the examination, the attendance has to be taken on a day to day basis for all the students and shall be cumulative of all the months of the Semester/Term/Year (in case of annual examination), as the case may be, for deciding the eligibility to appear for the respective examination. It is submitted that the statement of the attendance is to be prepared paper/course wise/month wise and the same shall be displayed on the notice board and the copy of the same shall be sent to the University for records. It is submitted that the second respondent-College has not prepared or maintained the attendance as required by the said ordinance. It is submitted that the enquiry report by Dr. Gaurish Naik is tainted and does not depict the correct attendance of the petitioners. Except this, there are no other contentions raised.

6. The learned Counsel for the respondents have supported the impugned action. It is submitted that the attendance of the petitioners falls short of the required percentage as per the rules of the Bar Council of India (BCI) which are applicable in the matter. It is submitted that Dr. Gaurish Naik, after considering the entire matter has given his report holding that the petitioners do not satisfy the requirement of the necessary attendance.

7. We have carefully considered the rival circumstances and the submissions made and we express our inability to interfere in the matter. It is necessary to note that on 05.10.2018, when the present petition came up for hearing, it was not controverted on behalf of the petitioners that they do not have the requisite attendance and, therefore, they were not permitted to appear for the examination of the III Semester. This Court noted that the attendance required in law degree course is mandatory as held by various decisions. In view of the fact that on 05.10.2018 the material aspect of the required attendance was not controverted,

the petition was adjourned in order to enable the learned Counsel for the petitioners to take instructions whether to prosecute the petition or not. However, on the subsequent date, i.e. on 23.10.2018, when the petitioners were represented by another Senior Advocate, there was a change in the stand and the petitioners stated that they have decided to prosecute the petition. This Court has noted in its order dated 23.10.2018 that ordinarily this could not have been permitted. However, considering the fact that the petitioners are students, by way of indulgence, the petition was entertained further. On the said date, by way of an ad-interim relief, the second respondent-College was directed to forward the form of the petitioners to the respondent no.4-Goa University for the II and III Semesters of the three year LLB Programme which had already commenced on 04.10.2018 and 20.10.2018 respectively upon the petitioners paying the requisite examination fee to the College. The University was directed to issue the Hall Tickets making it clear that this shall be subject to further orders that may be passed in

this petition. This Court made it clear that the ad-interim relief so granted was subject to the condition that the petitioners shall not claim any equity whatsoever on the ground of they being permitted to appear for the said examination on the basis of the interim order and the petitioners were directed to file undertaking to that effect. The petitioners have accordingly filed separate undertakings, to that effect on 23.10.2018.

8. It is now well settled that in the matter of requirement as to attendance the rules framed by the BCI, would take precedent over the ordinance/statutes of the University. This has been so held by this Court in the case of **Mr. Sharmad Pai Kane vs. Vidya Vikas Mandal (Writ Petition No.389 of 2018)**. A similar contention based on OA 17.3(ii) as has been raised in this petition was also pressed into service in the case of **Mr. Sharmad Pai Kane** (supra) and has been negated by this Court.

9. The record discloses that by an order dated 23.10.2018, the Vice Chancellor of the University had appointed Professor (Dr.)

Gaurish Naik, Dean, Faculty of Natural Sciences and Head of Department of Electronics, Goa University, to inquire into the representation received from the students of the College regarding the alleged irregularities and arbitrary manner of functioning and the alleged discriminatory acts by the Principal of the College preventing the representationist from answering the LL.B Semester examination. Dr. Gaurish Naik, has submitted his report on 06.12.2018. The grievances of the petitioners including the petitioner no.4 (who has since been deleted) are considered in the said report as “case 2”. Dr. Naik, in his report has noted the following grievances of the petitioner :

- “1. There is some discrepancy in attendance record maintained by the college.
2. Many other students were admitted to SYLLB even with shortage of attendance at FYLLB, except them.
3. They complained that attendance was not put on notice board month wise as per provision of University Ordinance OA-17.3(ii).”

10. The report notes that the committee visited Kare College of Law, Margao on 26th Nov. 2018 at 10AM and discussed the issue with the Principle, the Candidates and the Mentor separately so as to get first hand information.

11. Dr. Naik, has found that the petitioners do not fulfill the requirement of 70% attendance mandated by Rule 12 of BCI, which the students agreed. Dr. Naik has ultimately found that the stand taken by the College of not allowing the petitioners to seek admission to SYLLB course is correct. He has further found that the College however has defaulted by allowing other ineligible students to appear for the examination. He has recommended that the request by the petitioners to admit to SYLLB as the college has allowed other students (with lesser attendance at FY LLB) for admission to SYLLB may be declined.

12. There are affidavits, counter affidavits, rejoinders and sur-rejoinders filed in this petition both in support of the report by the respondents and challenging the same filed by the petitioners.

13. We are of the considered view that an independent Officer of the rank of Dean, Faculty of Natural Sciences and Head Department of Electronics of the Goa University, after holding an enquiry into the grievances raised by the petitioners, has found that the petitioners do not satisfy the requirement of 70% attendance mandated by Rule 12 of the BCI Rules. As regards the challenge to the said report is concerned, we are of the considered view that, it is not possible for this Court to go into such disputed questions of fact in the present petition.

14. It was contended on behalf of the petitioners that the petitioners had never agreed before the Inquiry Committee that they do not fulfil the 70% attendance as has been recorded in the enquiry report vide observation 1. It is not possible to accept the said contention particularly when, even before this Court on 05.10.2018, the said aspect was not controverted and subsequently there was a change of stand on 23.10.2018.

15. At one stage, it was submitted on behalf of the petitioners that some of the other students who were also not complying with the

requirement of the minimum attendance were allowed to appear for the examination by the College which aspect has been confirmed by Dr. Naik in his report. It is true that in his report, Dr. Naik has found that some of the students having less attendance than what is required, were allowed to appear for the examination. However, that may not come to the aid of the petitioners inasmuch as two wrongs do not make a right. There cannot be an equality or parity which can be claimed in such a case. If the relevant rules which apply in the matter require minimum attendance, which is not fulfilled by the petitioners, the fact that some others having lesser attendance are allowed to appear for the examination is of no consequence so as to grant relief in the present petition. This would only amount to compounding the irregularity, if any, committed by the College.

16. For the aforesaid reasons, we are not inclined to interfere in the matter. The petition is without any merit and is accordingly dismissed with no order as to costs.

NUTAN D. SARDESSAI, J.
arp/*

C. V. BHADANG, J.