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

Date of decision: 6th May, 2019

+ W.P.(C) 4861/2019 & CM Nos. 21621/2019, 21622/2019

KARTIK CHOPRA Petitioner

Through: Mr. Subodh K. Pathak,
Mr. Shashi Ranjan and Mr. Adil, Advs.

versus

GOVT. OF N.C.T. OF DELHI AND ORS. Respondents

Through: Ms. Warisha Farasat, Panel
Counsel-GNCTD with Ms. Hafsa Khan,
Adv./R-1
Mr. Jasbir Bidhuri, Adv. for R-2 and 3

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T (O R A L)

1. Sympathy must always inform and temper, but can never be allowed to substitute, justice.

2. In the present case, the claim of the petitioner is, effectively for the Court to grant relief solely on the ground of sympathy, even though it is an admitted position that grant of such relief would fly in the face of the applicable statutory provisions.

3. Consequent to passing his Class XII Examination in 2017, the petitioner who is the sufferer of an ailment known as paroxysmal supra ventricular tachycardia (PSVT), took admission in the B.Com

(Honours) Course in the Vivekanand Institute of Professional Studies, which is affiliated to the Guru Govind Singh Indraprastha University (Respondent No.2 herein and referred to, hereinafter, as “the GGSIPU”). Despite suffering from the said ailment, avers the petitioner, he has successfully cleared the examination of the first three semesters of the said course.

4. The fourth semester examination of the petitioner is scheduled to commence tomorrow i.e. on 7th May, 2019. Owing, however, to the fact that the petitioner has attended only 21% of the classes in the fourth semester, the GGSIPU has refused to issue an admit card to him. The petitioner approached the GGSIPU, with a request that his case be treated as a special case, in view of his long-standing medical history. The said request having fallen on deaf ears, the petitioner is before this Court.

5. The writ petition admits, with admirable candour, that Clause 9.1 of Ordinance 11 governing the GGSIPU, requires a student to attend 75% classes in order to be eligible to appear in the end semester examination and permits relaxation, from the said requirement, of only up to 5%, with the express stipulation that a student who has aggregate attendance of less than 70% in a semester shall not be allowed to give the end semester examination. A student who is detained for shortage of attendance as, as per Clause 9.2, has necessarily to take re-admission in the semester in which his attendance fell short and repeat all papers of the said semester.

6. Mr. Jasbir Bidhuri, learned counsel appearing for the GGSIPU emphasises that Clause 9.2 is the only course of action available to the petitioner, and he cannot be permitted to write the 4th semester examination as grant of any such permission would directly infract Clause 9.1 (*supra*). He also places reliance in this context, on a judgment of a Coordinate Bench of this Court in ***Neeraj Bahl v. Guru Gobind Singh Indraprastha University, 2011 SCC OnLine Del 5562***, in which a similar issue arose, though the shortage of attendance, in that case, was not attributable to medical grounds. Para 26 of the said decision, which relies on the judgment of the Supreme Court in ***Ashok Kumar Thakur v. University of H.P., (1973) 2 SCC 298***, may be reproduced, to advantage, as under :

“26. The Court also finds merit in the submission of the learned counsel for the respondent/University that in any event, condonation of attendance cannot be permitted beyond the rules of attendance as stipulated in the Ordinance and neither any authority or a Court ought to direct relaxation thereof beyond what is permissible. The Supreme Court has stated in very clear terms that an authority bound by a statute cannot be compelled to do something by the court which is beyond that authority's legal competence. In the case of *Ashok Kumar Thakur v. University of H.P.* reported as (1973) 2 SCC 298, sympathy was expressed with the appellant/student therein, but the Supreme Court did not return any finding in his favour. It was held in the above case that:-

“5. Considering that this case concerns the career of a young student we tried to look at the matter with all possible sympathy and consideration but we do not see how we can direct or compel an authority to do something which is beyond its legal competence to do. Since the Principal is the only authority who can condone and since it was beyond his competence to condone the shortage in question, we do not see how we can intervene in favour of the petitioner even if the

petitioner had succeeded in making out a case for condonation. In our opinion, the appeal must fail on this short point. Much as we regret the unfortunate fact that the petitioner is going to lose almost two precious years of his academic life we are in law bound to confirm the decision of the High Court, and dismiss the petitioner's appeal.” (emphasis added)

In any event, the facts of the present case are not such which merit issuance of any direction to the respondent/University to grant any relaxation to the petitioner in the form of condonation of the deficiency in his attendance, which has been abysmally poor.”

7. The petitioner, admittedly, attended only 21% of the classes in the 4th semester of his B.Com (Honours) Course.

8. I may also note that, though certain prescriptions and discharge summaries have been annexed to the writ petition, they pertain to other periods, and there is no prescription or other document which would explain the shortage of attendance of the petitioner in the 4th semester of his B.Com (Honours) Course which, I am informed, commenced in January, 2019.

9. In any event, it is not possible for this Court to issue any mandamus to the GGSIPU, directly contrary to Clauses 9.1 and 9.2 of Ordinance 11, which binds it.

10. This Court regrets, therefore, that it is unable to offer any succour to the petitioner, though it sympathises with his condition.

11. The writ petition is, therefore, dismissed *in limine*.

12. No costs.

C. HARI SHANKAR, J

MAY 06, 2019/kr

