

04 **04.10.
2024**

Ct. No. 08

Ab

**MAT 1324 of 2024
IA No. CAN 1 of 2024**

**The School Managing Committee,
Asannagar High School (H.S.)
Vs.
Manojit Biswas and others.**

**Mr. Parthasarathi Sengupta,
Dr. R. N. Jhunjhunwala,
Mr. Ramesh Kr. Patodia,
Ms. MEgha Agarwal,
Mr. Mohit Gupta.**

... for the appellant.

**Ms. Sneha Dutta.
... for the writ petitioner/respondent.**

The respondent approached the Court seeking Mandamus upon the appellant to permit him to sit in the remaining papers of 4th Semester, B.Com(H) Examination for the Academic Year 2023-2024 upon issuing the Admit Card.

By virtue of an interim order passed therein, the writ petitioner/respondent was permitted to sit in one paper of the 4th Semester and the University declared the marks obtained in the said paper showing the writ petitioner/respondent as 'absent' in the remaining papers.

The Trial Court disposed of the writ petition directing the University to permit the writ petitioner/respondent to appear in the remaining examination of the 4th Semester B.Com(H) for the Academic Year 2023-2024 scheduled to be held and also to regularize the participation of the writ petitioner/respondent in the ensuing examination.

What we gathered from the impugned order that despite the writ petitioner being disqualified in appearing in the examination held for 4th Semester because of the shortage in attendance, a direction is passed so that the

shortage in attendance should be ignored and the writ petitioner/respondent should be permitted to clear all the papers of the 4th Semester Examination of B.Com.(H) for the Academic Year 2023-2024.

Mr. Parthasarathi Sengupta, learned Senior Advocate appearing on behalf of the University/appellant, submits that the Court cannot issue a Mandamus upon the authority to act in complete defiance to the statutory law nor may direct the authorities to do a thing, which is forbidden by law. He placed reliance upon the Rules and Regulations for under-graduate degree courses, which, according to him, has a statutory flavor and, therefore, the order passed by the Single Bench runs counter to the said statutory provisions and, therefore, warrant interference.

Ms. Sneha Dutta, learned Advocate appearing on behalf of the writ petitioner/respondent, submits that there has been a miniscule shortfall in the attendance of the writ petitioner/respondent, which can be condoned by the University. It is further submitted that the academic career of the writ petitioner/respondent should not suffer because of the stringent stand of the University as they must show sympathy in relation to the students, who have joined the University for academic excellence.

It is no doubt true that there is miniscule shortfall in the attendance percentage and the question that involves in the instant appeal is whether the University has been bestowed with the power to relax or condone such shortfall beyond the cap encapsulated under the aforesaid Rules and Regulations. The University got the autonomous status by virtue of the St. Xavier's University, Kolkata Act, 2016, which was duly notified in the Official Gazette on January 16, 2017. Section 31(XVI) of the said Act empowers the Executive Council of the said University to make regulations regarding the conduct of the examinations held by the University and

the conditions under which students may be admitted to different courses of the studies and be allowed to appear for examination held by the University.

By virtue of the powers conferred in the parent Act, the Executive Council framed the Rules and Regulations for Under-Graduate Degree Courses containing the exhaustive provisions relating to conducting the examinations, the attendance percentage, the medium, the discipline and so on so forth. The regulation is exhaustive and imbibes within itself the minimum attendance to be adhered by the student in order to qualify in the examination conducted for a particular Semester. Rule 3.4.2 of the said Rules and Regulations are quoted as under:

“3.4.2 – A student who has between 60% (65% for B.A.-LLB & B.COM-LLB) and 74% attendance in a semester will have to seek approval from the Dean of the concerned faculty/Vice-Chancellor on grounds of illness or involvement in extra-curricular activities approved by the University.

- a) In case of illness, leave application must reach the office of the Deana of Faculty within three days of the student's absence. A medical certificate is also to be submitted within 15 days of joining. Mere submission of leave application in itself will not ensure condonation.
- b) In case of extra-curricular activities, a student must obtain prior written confirmation of his/her participation from the concerned authorities : Head of Department/Profs.-in-Charge of University Societies/Sports Officer/Programme coordinator of Social Work, which will be countersigned by the Dean of the concerned faculty. When calculating the attendance percentage of the students representing the University in extra-curricular activities in Inter-University competitions, due consideration will be given to the days when they so represented the University. Condonation in such cases must be in explicit written form, authorized by the Dean of the concerned faculty.
- c) For a student, absence from the classes for the aforementioned reasons may be condoned up to up to 15% (10% for B.A.-LLB & B.COM-LLB) of the total classes delivered. However, in all such

cases, lower limit for condonation will remain as 60%(65% for B.A.-LLB & B.COM-LLB).

A student who is condoned will have to pay a condonation fee within the notified period of time.”

It is manifest from the above quoted provision that the minimum percentage of attendance in each Semester shall be 75 percent. However, the students having attendance percentage ranging between 60 to 74 percent may be permitted to seek approval from the Dean of Faculty/Vice Chancellor on the ground enumerated therein and it is no gain saying that the University is conferred with the power to condone or relax the percentage of attendance in a particular Semester below 75 percent with a minimum cap of 60 percent. The authority, therefore, cannot act beyond the statutory provisions and the moment the outer cap for exercise of discretion or the power to relax is fixed, it becomes inflexible and the University cannot exercise the power de hors the same. In the event if it is so, it would be regarded as an arbitrary and in excess of the power so conferred. The Court shall not direct the authority to act in defiance of the law or to act contrary to law. The authority being the creature of the statute cannot transgress the barriers of the statutory provisions and have to travel within the circumference thereof. The said Clause 3.4.2 does not confer upon the appellant, the power to condone the shortfall below 60 percent of the attendance and, therefore, the direction of the Single Bench to condone the same despite the attendance being short of 60 percent is contrary to the aforesaid statutory provisions and, therefore, cannot be sustained.

At this juncture, Mr. Sengupta hands over to us the decision of the Executive Council taken on 27th June 2024 in the following:

“It is decided that all the 4th semester students of the 3-year hon. programmes who

were debarred from appearing for the semester examinations due to inadequate attendance in the 4th Semester will be promoted to the 5th Semester. They will be required to re-enroll by paying the 4th Semester fees and complete the 4th semester under the old regulations (3-year honours degree) after completing the 6th semester. However, if any of these students was debarred in 3rd semester and was promoted to 4th semester for the same reason stated above will be required to re-enroll in 3rd semester first after completing 6th semester and then will be required to complete 4th semester.”

It appears from the said decision that the students, who could not have the requisite percentage of attendance in the 4th Semester, they may be permitted to complete the 5th and 6th Semester and thereafter may undergo the 4th Semester, which, in our opinion, appears to be reasonable and rational taking into account the academic career of the students.

Learned Advocate for the writ petitioner/respondent also submits after taking instruction from the writ petitioner/respondent, who was personally present in Court, that he is agreeable to undergo 4th Semester after completing the 6th Semester.

Since we find that the order impugned in the instant appeal cannot be sustained in view of the findings made herein above, the same is hereby set aside.

In view of the development having taken place in course of hearing of the instant appeal, more particularly, the resolution of the Executive Council taken on 27th June 2024 and the stand of the writ petitioner/respondent in this regard, we, therefore, direct the University to adhere such resolution and shall permit the writ petitioner/respondent to complete 6th Semester without disrupting the continuity and thereafter shall permit the writ petitioner/respondent to clear the 4th Semester so that the final degree can be awarded to him.

We are informed that the University though

permitted the writ petitioner/respondent to appear in all the papers of 5th Semester yet the result has not been declared because of the pendency of the appeal. We, therefore, permit the appellant to declare the result of the 5th Semester and in the event the writ petitioner/respondent qualifies in all papers, he may be permitted to be admitted in the 6th Semester in terms of the said resolution.

With these observations, the appeal and the connected application being CAN 1 of 2024 are disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Partha Sarathi Sen, J.)