University of Calcutta and Others Vs Amit Jalan

Court: Calcutta High Court

Date of Decision: April 17, 2000

Acts Referred: Calcutta University Act, 1979 â€" Section 9

Citation: (2000) 3 CALLT 1 : 105 CWN 222

Hon'ble Judges: Ashok Kumar Mathur, C.J; Altamas Kabir, J

Bench: Division Bench

Advocate: B.R. Bhattacharjee, Mr. Jayanta Biswas and Mr. D. Dutta, for the Appellant;Jayanta Mitra, Saktinath Mukherjee, Utpal Bose, P.K. Mullick, P.K. Roy, Pratap Chatterjee and Mr. Pranab Kumar Chattopadhyay, for the Respondent

Final Decision: Allowed

Judgement

A.K. Mathur, C.J.
All these four appeals and the stay applications arise from a common order, therefore, all these four appeals and the

stay applications are disposed of by the common order. Two appeals and stay applications are from the Original Side and two appeals and stay

applications are from the Appellate Side. The Appeal Nos. T. 334 and 336 of 2000 and stay applications being T. No. 333 and 335 of 2000 are

from Original Side and appeals being MAT No. 869 and 870 of 2000 and stay applications being CAN No. 2274, and 2275 of 2000 are from

the Appellate Side. In all these matters the sole question is that whether all the students who have not been able to secure 65% of the total

attendance are entitled to appear in regular examination of LLB of 5 years duration or not. All the petitioners are students of 1st year, 2nd year,

3rd year, 4th year and 5th year and they are short of minimum required attendance i.e. 65%. Therefore, the matter was agitated by the students

through their Union to the Faculty of Law as well as to the University for condonation of their attendance and to permit them to appear in the

ensuing examinations of law for 1999.

2. There are two classes of cases one which is known as dis-collegiate students and the other is known as non-collegiate students. The distinction

between the two classes is that dis-collegiate students are those candidates who have not even secured attendance of 55% and non-collegiate

students are those who have secured 55% of the attendance and they have been given a grace of 10% attendance so as to enable them to appear

in the examination. But the Syndicate of University by its resolution date 20th July, 1999 has declined to permit both these class of students to

appear in the 1st, 2nd, 3rd, 4th and 5th year examination of LLB for the year 1999 who have failed to secure 65% of attendance and passed the

following resolution:

That applications of candidates who are dis-collegiate as per rules, including those which had earlier been condoned by the Department on medical

and other grounds, be regretted.

3. Therefore, all these students rushed to file a petition in this Court and Justice Amitava Lala by order dated 23rd July, 1999 permitted the

students to appear in the examination provisionally and directed the respondent university to issue admission card and permit them to appear in

ensuing examination of 1999, however, the result of the students was withheld and directed the same shall not be published without the leave of the

Court. Thereafter some more petitions were filed before another Judge Justice Samaresh Banerjea and both petitions were dismissed by the

Hon"ble Judge by order dated 26th July, 1999, relying on the decision of the Apex Court, though it was brought to the notice of the learned Judge

about the earlier order passed by Justice Amitava Lala, however, the learned single Judge felt that the interim order does not lay down any

precedence and he was satisfied that relaxation of the minimum attendance cannot be permitted and consequently dismissed the writ petition by

order dated 26th July, 1999. However, subsequently, the main writ petition filed by the petitioner Manas Sarkar, Ajoy Kumar Singhania, Debnath

Ghosh and Amit Jalan came up for final disposal before Justice Lala and Justice Lala after hearing both the parties passed and order on 8th March,

2000 and directed the University to declare the results of all the candidates and accordingly allowed the writ petitions filed by the petitioners.

Aggrieved against this order passed by the learned single Judge dated 8th March 2000 the University has preferred the aforesaid appeals.

4. We have heard the learned counsel for the parties and perused the record. Before we enter into the controversy involved in the matter, it may

not be out of place to mention the relevant provision bearing on the subject. The University of Calcutta was constituted by West Bengal Act 38 of

1979, known as University of Calcutta Act, 1979 (hereinafter referred to as the Act of 79). Section 9 deals with the powers and duties of the Vice

Chancellor. The Vice Chancellor is the Principal Executive and academic officer of the University. Section 17 says that following shall be the

authorities of the University:

1. The Senate;

2. The Syndicate;

3. The Faculty Councils for post-graduate studies;

4. The Council for undergraduate studies;

5. The Board of Studies;

6. The Finance Committee;

7. The Tripura Council;

Such other authorities as may be established under the Statute.

5. Section 21 deals with the constitution of Syndicate. Section 22 deals with the power and duties of the Syndicate. Section 22(xix) empowers the

Syndicate to make regulation for conduct of examination etc. Section 22 (xix) which is relevant for our purpose reads as under:

22. Powers and duties of the Syndicate. Subject to the provisions of this Act, the Syndicate shall exercise the following powers and perform the

following duties: -

xxxx

(xix) To make regulations regarding the conduct of examinations held by the University and the condition under which student may be admitted to

different courses of studies and the examinations held by the University;

6. Section 24 deals with the power and duties of the Faculty Council for post-graduate studies. Section 25 deals with the council for

undergraduate studies. Section 26 deals with the power and duties of the council for undergraduate studies. Clause 26 (xiv) deals with the

collection of fees of examination and condonation of short percentage for appearing at an examination as non-collegiate student, mark sheet, late

admission, change of examination center, scrutiny of answer script and change of name or surname and any other charge for registration and

migration of students and grant of diplomas, certificates or any other documents at such rate as may be prescribed by the Syndicate. Syndicate in

its exercise of power under Clause (xix) of section 22 framed the necessary regulation for conduct of the examination and laid down the minimum

percentage of attendance for appearing in the examination and that was issued by under Notification No. CSR/10/99 dated 24th May 1999, which

reads as follows:

It is notified for information of all concerned that the Syndicate at its meeting dated 16.2.99 approved the continuity of existing provisions of the

Regulations with regard to the minimum percentage of attendance in the classes required for being eligible to appear at the examinations in different

courses of studies under this University as mentioned herein below:

Sl.	Name of	Minimum percentage of attendance	Minimum percentage of condonation
1.	B.A./B.Sc./B.C. (General/Hons./ Vocational)	75	60
2.	M.A./M.Sc./M.Com	65	55
3.	M. Phil	75	65
4.	B. Ed	75	65
5.	LLB	65	55
6.	B. Tech/M. Tech	65	No provision for con donation of short percentage.
7.	B. Tech/M. Tech.	65	No provision for con donation of short percentage

7. It is further notified for information of all concerned that for all other courses of study except those mentioned hereinabove and for those for

which separate regulations are in vogue, the minimum percentage of attendance as mentioned in C.U. First Regulations framed under the Calcutta

University Act, 1951 will be applicable. The said provision runs as follows :

No student shall be considered to have prosecuted a regular course of study in any subject for any examination unless he has attained at least 75

percent of lectures delivered and at least 60 percent of the tutorial classes held in the subject.

The Syndicate in special cases may relax the Rule for attendance upto 10 percent of the total number of lectures delivered.

The above will take immediate effect.

8.According to this notification issued by the University of Calcutta for LLB classes the minimum percentage of attendance was 65% and minimum

percentage of attendance for condonation was 55%. Syndicate reserved the right in a special case to relax attendance upto 10% of the total

number of lectures delivered. This was brought into force with immediate effect. Therefore as per this notification of the Syndicate minimum

attendance for appearing in the LLB examination was that the students should have attended minimum of 65% of the lectures and only relaxation

was permitted by the Syndicate to the extent of 10%. As per this clause the minimum attendance which was insisted for the relaxation was the

candidates should have at least attended 55% of the lectures and the Syndicate in special case could relax upto 10% of the attendance i.e. the

candidate should have a minimum percentage of attendance for condonation i.e.55%. A bare reading of this notification makes it clear that the

students for appearing in the LLB examination for 5 years course i.e. from 1st year to 5th year should have attended at least minimum of 55% of

the total lectures and only 10% relaxation could be given by the Syndicate in exceptional cases. The power to relax in the special case has been

conferred on the Syndicate and none else. This consonance is also subject to levy of fees of Rs. 50/-. The notice was issued for admission to the

LLB course for 1998-99 on 22nd June 1999 by the Faculty of Law and it stated that all the students who have already secured 65% of the total

lectures delivered were declared collegiate for appearing in all the ensuing LLB examination of 1999. It was also announced that the list of non-

collegiate candidates was published in which students who have attended 55% and above but less than 65% of the total number of lectures

delivered were provisionally allowed to sit for their respective examination of the ensuing LLB examination, 1999 as non-collegiate candidate and

they were directed to pay a sum of Rs. 50/- as non-collegiate fee. Thereafter from time to time some more lists of the candidates as non-collegiate

was issued. Then some of the dis-collegiate students agitated the matter and in that connection, some correspondence transpired with the

department of Faculty of Law and Vice Chancellor of the Calcutta University. On 12th July, 1999 a communication was sent by the Faculty of

Law of University of Calcutta that the department of law has published several lists of collegiate and non-collegiate students for appearing at the

ensuing LLB examination, 1999. But several applications have been received from students who have been found dis-collegiate for permission to

sit for the LLB examination. The said communications was put up before the Vice Chancellor for his consideration. The Vice Chancellor on 13th

July 1999 regretted it thereby that the request was rejected. Again another letter was sent on 14th July, 1999 to the Vice Chancellor by the

Faculty Department of Law, Calcutta University and informed that the complaint regarding irregularity/partiality committed by members of the

teaching staff in preparation of lists of collegiate and non-collegiate students and acceptance of medical certificates submitted by the concerned

students/candidates was objectively considered by the teachers of the Department of Law and no partiality or discrimination was made. It was also

mentioned that medical certificates had been accepted by the teachers of the Department of law keeping in view the University regulation, which

stipulate 65% attendance for being collegiate and 55% attendance after condonation for being non-collegiate. It was also mentioned that regulation

is silent about acceptance or non-acceptance of medical certificate therefore the Committee of Teachers of Faculty examined that and accepted

which were genuine. Therefore, it was decided to take medical certificate to be good ground for condonation. Then again on 16th July 1999

another communication was sent to the Vice Chancellor and it was reiterated that the condonation of attendance on medical ground was

considered by all the whole time teachers of the Department of Law. It was also pointed out that in view of the absence of the specific guidelines

and looking to the gravity of the situation the teachers of the Law Department decided to condone attendance on medical ground. Then all these

matters were ultimately placed before the Syndicate on its meting on 20th July, 1999 and the Syndicate resolved to reject the applications of the

candidates who were dis-collegiate as per rules and including those who have been earlier condoned by the Department (Law Department) on

medical and other grounds.

9. Therefore, so far as dis-collegiate candidates are concerned who have not secured a minimum of 55% attendance even the Syndicate also has

no power to relax. So far as non-collegiate candidates are concerned who have secured 55% of the attendance then the Syndicate has a power to

relax to the extent of 10% attendance. But strangely enough in the present case it appears that the so called committee of the teachers of the Law

Faculty took upon themselves to condone the attendance on medical ground which power they did not possess.

10. It is very unfortunate that Law Department of the University of Calcutta has acted in a most cavalier fashion and without there being any power

to condone even 10% of the attendance has done it, taking a shelter that since there is no guideline therefore they condoned the minimum

attendance. The learned counsel for the appellant University has submitted in fact first teachers granted three months condonation enmasse to bring

them to level of 55% on medical ground and permitted them to appear in examination on payment of fees of Rs. 50/-. These fact emerges from

memorandum of appeal of the University in MAT No. 870 of 2000 (University of Calcutta v. Debnath Ghosh). This was objected by other side

that University has not filed the reply to writ petition and they cannot raise these facts in memo of appeal. Be that, as it may, the fact remains that

teachers of Faculty of Law had no jurisdiction to condone the delay. When these facts were brought to the notice of the Syndicate they regretted

and did not permit these students to appear in examination. Students filed the present writ petitions and the learned single Judge permitted them

provisionally whereas another learned single Judge took a very strong exception and dismissed the writ petition. Subsequently, the learned single

Judge, Justice Amitava Lala after hearing the arguments allowed the writ petitions of all the petitioners and directed the University to release the

result of the examination.

11. We have heard the learned counsels for the parties and perused the record and we cannot resist from lamenting the state of affairs of the Law

Faculty of the Calcutta University. It shows that majority of the students have not attended the classes and the lectures, this serious problem was

even not attended by the University authorities. It is not understandable that the authorities of the University were not aware of the state of affairs.

It is equally unfortunate that the lecturers of the Faculty of Law who have no power to condone the shortage of attendance or authority to permit

any grace of attendance acted in most unfortunate manner. They arrogated the power, which they did not possess. This act on the part of the Law

Department of Calcutta University and its teachers was totally unauthorized, illegal and arbitrary. From the notification, which has been reproduced

above, it clearly transpires that it is only the Syndicate and the Syndicate is competent to grant a 10% relaxation in a special case. It is not that this

notification was not in the knowledge of the Faculty of Law. The Faculty of Law had full knowledge about this notification still they acted contrary

to it. In such a state of affairs we are firmly of the opinion that the decision taken by the Syndicate not to permit dis-collegiate and non-collegiate

students who were permitted by the Faculty on so called medical and other grounds was fully justified.

12. We regret that the view taken by the learned single Judge in the present case does not appear to be correct. The learned single Judge has

drawn adverse inference on non-filing of affidavit in opposition by the University. He, therefore, observed that the number of allegations made in

the writ petition remained uncontroversial. It was also observed that only 319 out of 1500 students were declared collegiate and the rest were

declared non-collegiate and dis-collegiate and not permitted to appear in examination because of the lack of requisite attendance. The learned

single Judge applying the principle of maxim semper in dubiis benigniora praeferenda meaning thereby in all doubtful matter the beneficial

interpretation should be preferred and he accordingly allowed the, writ applications of all the petitioners. Though attention of the learned single

judge was drawn to the various decisions of the Apex Court but the learned single Judge did not feel persuaded. It was also observed that the

students were provisionally admitted as non-collegiate students on payment of fees of Rs. 50/- therefore the students have reasonable expectation.

13. After giving the best of our consideration we are of the opinion that the view taken by the learned single Judge is against all settled principles of

law as enunciated by the Apex Court in the series of decisions. In this connection, reference may be made to the case of Central Board of

Secondary Education Vs. Nikhil Gulati and Another, , it was observed:

1. Occasional aberrations such as these, whereby ineligible students are permitted, under Court orders, to undertake Board and/or University

examinations, have caught the attention of this Court many a time. To add to it further, the Courts have almost always observed that the instance of

such aberrations should not be treated as a precedent in future. Such casual directions by the Court is nothing but an abuse of process; more so

when the High Court at its level itself becomes conscious that the decision was wrong and was not worth repeating as a precedent. And yet it is

repeated time and again. Having said this much, we hope and trust that unless the High Court can justify its decision on principle and precept, it

should better desist from passing such orders, for it puts the ''Rule of Law'' to a mockery, and promotes rather the ''Rute of man''.

14. In the case of C.B.S.E. and Another Vs. P. Sunil Kumar and Others, their Lordships held that the direction given by the High Court

compelling the Secondary Board to admit students of unaffiliated institutions to public examination was wholly impermissible. It was observed:

There is no dispute that the institution in which these students had perused their studies have not yet received any affiliation from the Central Board

of Secondary Education, who is the appellant in these appeals. Under the byelaws of the Board only regular students of affiliated schools with the

Board are entitled to appear in the Secondary School Examination and the Senior Secondary School Examination conducted by the Board. Since

the institutions in which the respondent students have prosecuted their studies are admittedly not affiliated to the Board but the students have been

allowed to appear at the examination pursuance to the interim direction of the Court, which is in contravention of the Rules and Regulations of the

Board, the question that arises for consideration is : whether the High Court was justified in issuing these impugned directions ? This question no

longer remains res integral. This Court in several cases deprecated the practice of allowing students to appear provisionally in the examinations of

the Board or the University and then ultimately regularizing the same by taking a sympathetic view of the matter. In the case of A.P. Christians

Medical Educational Society Vs. Government of Andhra Pradesh and Another, this Court held that the Court will not be justified in issuing

direction to the University to protect the interest of the students who had been admitted to the Medical College in clear transgression of the

provisions of the University Act and the regulations of the University. It was also observed that the Court cannot by its fiat direct the University to

disobey the statute to which it owes is existence and the regulations made by the University itself as that would be destructive of the rule of law. In

the case of State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another, , this Court held that the direction of the

admitting students of unauthorized educational institutions and permitting them to appear at the examination has been looked with disfavor and the

students of unrecognized institutions who are not legally entitled to appear at the examination conducted by the Education Department of the

Government cannot be allowed to sit at the examination and the High Court committed error in granting permission to such students to appear at

the public examination. All these cases were again considered by three Judge Bench of this Court in the case of State of Maharashtra Vs. Vikas

Sahebrao Roundale and others, and it was held that the students of unrecognized and unauthorized educational institutions could not have been

permitted by the High Court on a writ petition being filed to appear in examination and to be accommodated in recognized institutions. The Court

ultimately stuck down the directions issued by the High Court. In yet another case Guru Nanak Dev University Vs. Parminder Kr. Bansal and

another, another three Judge Bench of this Court interfered with the interim order passed by the High Court to allow students to undergo internship

course even without passing the MBBS, examination. The Court observed at page 2697 of the AIR SCW:

We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to

anyone. From the series of orders that kept coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as

interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline,

or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates.

Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications

might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates that by an

accurate assessment of even the prima facie legal position such orders couldn"t be allowed to stand. The Courts should not embarrass academic

authorities by themselves taking over their functions.

15. In the case of Maharshi Dayanand University Vs. Dr. Anto Joseph and Others, their Lordships criticized the direction given by the High Court

to Medical Council of India and University to admit students, who, admittedly, on account of 42 days'' shortage in the required training period

were not eligible. It was observed as under:

We might not have interfered had this been an isolated case but we find though from reading the orders which have been placed on the record that

though the impugned order stated that it was not to be treated as a precedent, it has been followed repeatedly by the High Court and by Courts

below. It appears then that it is necessary to interfere to uphold the sanctity of the requirements of the Medical Council of India and the University.

These requirements are laid down to ensure that the full period of training necessary for acquiring the qualification is completed and it is in the

public interest that they are not lightly deviated from.

The University was not obliged to give the first respondent exemption for 30 days'' absence because the leave it gave the first respondent

contemplated a full training period by having to repeat it. The first respondent fell short of the required training period at least by 42 days. He must,

therefore, appear and pass the next examination.

16. Our attention was invited to an unreported decision of the Division Bench of this Court in APOT No. 282 of 1998 (judgment dated 11.9.98)

there also the Division Bench of this Court did not approve of permitting students to take up the examination who were short of attendance.

Attention of the learned single Judge was also invited to this decision but the learned single Judge distinguished the same on facts.

17. The learned counsel for the respondents tried to submit that in fact the Syndicate was not called upon to decide the question of non-collegiate

students as the same was not before them and the only question before them was with regard to dis-collegiate students. Therefore, the resolution of

the Syndicate should only be confined to the dis-collegiate students. This submission of the learned counsel is not correct. After reading all the

communications in sequence it transpires that the cases of both the students i.e. dis-collegiate as well as non-collegiate were before the Syndicate

and the resolution of the Syndicate was that they do not approve the relaxation with regard to dis-collegiate students and including those who had

been earlier condoned by the department on medical and other grounds. Therefore, the Syndicate was called upon to decide the fate of both dis-

collegiate and non-collegiate students. In fact the expression ""those which had earlier been condoned by the Department on medical and other

grounds, be regretted"" clearly shows that this relates to non-collegiate students. The Department has condoned the shortage of the attendance by

accepting medical and other grounds, these relates to non-collegiate students. Therefore, the contention of the learned counsel for the

respondents/petitioners that the University was called upon to decide the fate of dis-collegiate students and not non-collegiate students is not

correct.

18. It was also contended by the learned counsel for the respondents/writ petitioners that the students have already appeared in the examination

and the result is only required to be declared. Therefore, this time it may be permitted on humanitarian ground. The submission of the learned

counsel for the writ petitioners cannot be countenanced for the simple reason that the law has been declared by the Apex Court time and again and

it has not been followed by authorities. One has to call it a day and we call it a day. No more this kind of indulgence by authorities or by Courts.

These emotional pleas will frustrate the whole purposes of alleviating the standard of teaching be it law or any other subject. We regret that the

view taken by the learned single Judge in the present case is wholly unwarranted and it was against decisions of the Apex Court and therefore it

cannot be countenanced.

19. It is too well known to everybody that legal education in our country is in a very lamentable state of affairs. Time and again this anxiety has

been shown from various quarters especially by the Hon''ble Chief Justice of India as well as by the Law Commission. In this connection it will not

be out of place to reproduce the recommendation of the Law Commission of India way back in 1958 in its 14th report highlighted the deteriorating

condition of the standard of the legal education obtaining in the country and portrayed a dismal picture and observed:

The portals of our law teaching institutions-manned by part-time teachers-open even wider and are accessible to any graduate of mediocre ability

and indifferent merits. It is not surprising that in this chaotic state of affairs in a number of these institutions there is hardly pretence at teaching....

This character is followed by Law examinations held by the Universities, many of which are mere tests of memory and poor ones at that, which the

students manage to pass by scramming short summaries published by enterprising publishers.... The result, a plethora of LLB, half baked lawyers,

who do not know even the elements of law and who are let loose upon society as drones and parasites in different parts of the country.

20. This was the picture depicted in 1958 since then the situation has worsened. A committee was appointed headed by the then Chief Justice of

India, Shri A. M. Ahmedi in 1993 in the Chief Justice'' Conference and that Committee has also observed:

Broadly, it was accepted that the general standard of the law colleges in the country and of the students was deteriorating day by day. It was also

suggested that the standard of new entrants into the Bar leaves much to be desired.

21. The committee had suggested that the legal profession should be treated as professions like medical and engineering courses. Therefore, this 5

years" course was designed and in that connection the Bangalore Law School was established then another school at Madhya Pradesh was

established and various other States have started 5 years" law course. But this 5 years" law course is being sought to be defeated by students who

have not even attended 65% of lectures delivered then what good could this bring to the legal education and consequently to the profession. This 5

years law course is being sought to be frustrated by permitting this kind of indulgence to the students that they may not attend 65% of the lectures

and they may be permitted to appear in examination on grounds like medical and other grounds then the whole purpose of improving the standard

of legal education will be frustrated. The relaxation should be granted only in exceptional cases and not in mass scale as has been granted. The

attention of the members of the Bar and of the Branch has all through been to upgrade and uplift the teaching of law in order to improve the

profession. A very glaring example has been cited by the petitioner that one police sergeant who did not attend 5% of the lectures was sought to

be cleared by the Faculty and in another case of Mohammed Boiai Hossain Chowdhury who only attended 9 lectures and he was also permitted

to be treated as non-collegiate student. What can be more sadder state of affair than this. We are constrained to hold that the action of the Faculty

of Law of Calcutta University is most unfortunate, arbitrary, unwarranted and without jurisdiction. The Vice Chancellor of Calcutta University

should take appropriate action for such unauthorized act by the Faculty of Law of the, University of Calcutta and put the legal education in its

proper perspective.

22. An attempt was made by one of the counsels for the petitioners to submit that when the notification remained dormant for a long time therefore

if it was to given effect to then a fresh notification should have been issued. This argument is only mentioned for its rejection. Once the law is there

and it does not cease to be law simply because it has not been implemented in right earnest. However, this is not the case here. This notification

was issued on 24th May 1999 therefore this argument has no merit to stand.

23. Hence as a result of the above discussion we are of the opinion that the writ petition filed by the petitioners have no merit and should have been

rejected at the thresholds as was done by Justice Banerjea by his order dated 26th July, 1999. Hence we allow the appeals filed by the University

of Calcutta being MAT Nos. 869 and 870 of 2000 and T. Nos. 334 and 336 of 2000 and dismiss the writ petitions. In the facts of the above case

there will be no order as to costs.

A. Kabir, J.

24. I agree.

Appeals allowed.