

**In the Matter of Vs. Guru Gobind Singh Indraprastha**

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**Court :** Delhi

**Decided On :** Dec-23-2011

**Appellant :** In the Matter of

**Respondent :** Guru Gobind Singh Indraprastha

**Judgement :**

IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 6814/2011 Reserved on: 09.12.2011 Date of decision 23.12.2011 IN THE MATTER OF NEERAJ BAHL ..... Petitioner Through: Mr. Karan Singh Thukral, Advocate versus GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY ..... Respondent Through: Mr. Mukul Talwar, Advocate CORAM HON'BLE MS.JUSTICE HIMA KOHLI HIMA KOHLI, J..

1. The present petition is filed by the petitioner praying inter alia for issuance of directions to the respondent/University to conduct the three theory examinations again, for which he was restrained from appearing and further to declare his results for those Second Semester examinations which he had undertaken, along with the other students, for the course of B.Tech (M.Tech dual) Degree..

2. The facts of the case lie in a narrow compass. Respondent/University had admitted the petitioner as a student in the B.Tech course (M.Tech dual degree) for the academic year 2010-11. On completion of his first semester, he was promoted to the second semester, the classes for which began on W.P.(C) No.6814/2011 *Page 1 of 18* 07.02.2011. There were two sets of internal examinations which

were conducted viz. from 08.03.2011 to 15.03.2011 and from 12.04.2011 to 18.04.2011. The petitioner appeared for both the sets of examinations and cleared the same. It is the case of the petitioner that on the last working day of the second semester, i.e., on 29.04.2011, he was informed by the Dean of the Department of Information Technology in the respondent/University that his attendance was falling short by 4% of the prescribed minimum requirement of 75%. As per the petitioner, the Dean of the University had condoned his shortfall of the attendance and he had been allowed to take the Final Semester Practical Examinations for five subjects, which had commenced from 02.05.2011. The final theory examinations began on the 23.05.2011, and the petitioner sat for the theory examinations in four subjects on 23.05.2011, 25.05.2011, 27.05.2011 and 31.05.2011. However, on 02.06.2011, he was called by the Dean of the University and informed that the shortfall in his attendance had not been condoned, and as he was detained, he would not be allowed to appear for any further examinations and his earlier examinations shall be treated as null and void. Aggrieved by the said action, the petitioner filed the present petition on 08.09.2011..

3. The sheet anchor of the arguments of learned counsel for the petitioner was that having been allowed to appear for the five final practical examinations and four final theory examinations held for the second W.P.(C) No.6814/2011 *Page 2 of 18* semester in the month of May, 2011, would impliedly mean that the shortfall, if any, in his attendance, had been duly condoned by the respondent/University. It was his contention that the discretion vested in the respondent/University to condone the shortage in his attendance had been duly exercised in favour of the petitioner by permitting him to sit for the examinations and having done so once, such a discretion could not have been exercised once again and that too against the petitioner. In support of his submission, learned counsel for the petitioner relied on the following decisions: - (i) Purshottam Das Dulichand Zargar and Anr. vs. Board of Secondary Education AIR 1962 MP 3 (ii) Premji Bhai Ganesh Bhai Kshatriya vs. Vice Chancellor, Ravishankar AIR 1967 MP 194 (iii) Shri Krishnan vs. Kurukshetra University AIR 1976 SC 376 (iv) Nilamadhaba Nanda and Ors. vs. Orissa University of Agriculture and Technology and Anr. AIR 1983 Ori 17.

4. Counsel for the petitioner also drew the attention of the Court to a list dated 18.5.2011, displayed on the notice board by the Dean of the respondent/University, enlisting the names of those students who had been detained on account of shortage in their attendance, wherein the name of the petitioner did not feature. He stated that Clause 9 of Ordinance 11 governing the issue of attendance in the respondent/University clearly lays W.P.(C) No.6814/2011 *Page 3 of 18* down that the names of those students who are not eligible to appear for the semester-end examinations should be announced by the respondent at least 5 calendar days prior to the said exams commencing, which was not done in the present case and any subsequent notice issued by the respondent/University displaying the name of the petitioner as a detainee was impermissible as per the aforesaid provision..

5. Counsel for the petitioner further submitted that the alleged shortfall in attendance of 4% was not on account of the absence of the petitioner from his classes, but because of a miscalculation of his attendance on the part of the teachers of the respondent/University, who were careless and negligent in that regard..

6. The aforesaid submissions made on behalf of the petitioner were vehemently opposed by learned counsel for the respondent, who stated that in the first place the present petition was highly belated and would not be maintainable on account of delay and laches as the cause of action accrued in the present case on 2.6.2011, whereas the present petition was filed after over two months. He further submitted that the petitioner failed to point out that the only reason for allowing him to appear for the four final theory papers on the aforesaid four dates in the last part of May, 2011, was because the petitioner had submitted an undertaking to the invigilator to the effect that he had forgotten to carry his admit card and that if anything was found wrong after verification of his identity and candidature on perusal of W.P.(C) No.6814/2011 *Page 4 of 18* his original records submitted with the respondent/University, then his examinations would be cancelled and the authorities would be free to take other action as deemed fit..

7. To refute the contention of the petitioner that his attendance was within condonable limits, counsel for the respondent/University submitted that the attendance of the petitioner was not 71% as alleged by him. Instead, it was around 32.15%, which was far below the condonable limits as governed by Clause 9 of Ordinance.

11. He disputed the stand taken by the petitioner, that the Dean of the respondent/University had orally condoned the shortfall in his attendance, by relying on the Ordinance governing the issue of attendance in the respondent/University. Clause 9 of Ordinance 11 is relevant and states as below:- "A student shall be required to have a minimum attendance of 75% or more in the aggregate of all the courses taken together in a semester, provided that the Dean of the School in case of University Schools and Principal/Director in case of University maintained/affiliated institutes may condone attendance shortage upto 5% for individual students for reasons to be recorded. However, under no condition, a student who has an aggregate attendance of less than 70% in a semester shall be allowed to appear in the semester end examination."

8. It was the submission of the counsel for the respondent that it was inconceivable that the Dean of the respondent/University could have condoned a shortage of almost 42.85% from the requisite attendance of 75%. He however conceded that in the notice dated 18.05.2011 issued by W.P.(C) No.6814/2011 *Page 5 of 18* the respondent/University enlisting the names of the detainees, the name of the petitioner had not appeared. However, he submitted that the same was an inadvertent error and the said error was rectified immediately thereafter by issuing a subsequent notice dated 20.05.2011, which duly included the name of the petitioner as a detainee..

9. It was the contention of the counsel for the respondent/University that even if the story set up by the petitioner that his attendance was 71% and the Dean had orally condoned the shortage of his attendance is accepted, any shortage of attendance below the mandatory limit of 70% could not, in any event, have been condoned by the Dean. He stressed the fact that the Ordinance is mandatory in nature and is binding not only on the students, but also on the Dean who had no

power to condone a shortage in attendance which was far below 70% and under no circumstances, could he have condoned such a shortage in attendance as in the case of the petitioner. It was further submitted that where an aspect of education, such as attendance, is governed by a statute, then such a statute is supreme, and no authority can deviate from the same. To support his submission, he referred to the decision of a Division Bench of the Calcutta High Court in the case of Ashoke Saha vs. State of West Bengal reported as 1999 LawSuit (Cal) 45, where it was held that where an authority is a creature of a statute, then it can act only within the four corners of the statute and if it is given the power to make any condonation/exemptions, adhering to the W.P.(C) No.6814/2011 *Page 6 of 18* conditions in the statute, then it has no option but to pass an order in terms of the said statute..

10. This Court has heard the counsels for the parties and carefully perused the documents and examined the judgments placed on record..

11. The first question which arises for consideration is as regards the maintainability of the petition on account of delay and laches. The contention of the counsel for the respondent/University that the petition is highly belated on account of the fact that the end-semester examinations, in respect of which the petitioner was aggrieved, were held in May, 2011, whereas the petition was filed as late as in September, 2011, cannot be accepted. It may be noted that in matters of education, where the academic career of a student is involved, some amount of leniency has to be shown to the students in approaching the Court by filing a writ petition. Further, the petitioner has sought to explain in his rejoinder that in the intervening period, he alongwith his mother had been regularly approaching the Vice-Chancellor and the Dean of the respondent/University in respect of his grievance of being wrongly detained and they were hopeful of a positive outcome. This Court sees no reason to disbelieve the petitioner on this issue. Hence, the explanation offered by the petitioner for the delay in filing the writ petition is found to be just and sufficient and the petition is therefore held to be maintainable..

12. The main plank of the argument of the counsel for the petitioner was W.P.(C) No.6814/2011 *Page 7 of 18* that once an authority had exercised its discretion in one manner, it could not subsequently backtrack and take an entirely different stand from that taken previously. It was submitted by learned counsel for the petitioner that once the petitioner had been allowed to sit for the examinations, in effect, implying that his shortage of attendance had been condoned, the respondent/University could not have subsequently restrained him from taking the rest of the exams, on the ground of shortage of attendance. Reliance was placed on a judgment of the Supreme Court in the case of Shri Krishnan(supra) to stress the aforesaid point, wherein the observations made in para 6 as below were pointed out:- "6. ... once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the university to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear"..

13. While making the aforesaid observation, the Supreme Court had relied on the reasoning given in a decision of the Division Bench of the Madhya Pradesh High Court in the case of Premji Bhai Ganesh Bhai Kshatriya(supra), where it was held:- "From the provisions of Ordinance Nos.

19. and 48 it is clear that the scrutiny as to the requisite attendance of the candidates is required to be made before the admission cards are issued. Once the admission cards are issued permitting the candidates to take their examination, there is no provision in Ordinance 19 or Ordinance 48 which would enable the Vice Chancellor to withdraw the permission. The discretion having been clearly W.P.(C) No.6814/2011 *Page 8 of 18* exercised in favour of the petitioner by permitting him to appear at the examination, it was not open to the Vice Chancellor to withdraw that permission subsequently and to withhold his result."

14. The ratio laid down in Shri Krishnan(supra) has to be seen in the light of the peculiar facts and circumstances of that case. In the said case, the appellant therein had sat for the examinations based on an undertaking given by him that he

would produce a document from his employer permitting him to join the law classes, and otherwise he would abide by any order passed by the University. Subsequently, the appellant therein had refused to furnish such a document as he had later on found out that there was no statutory provision under which he was required to produce such a document. Thereafter, the declaration of his result was withheld by the University on various other grounds such as shortage of attendance, lack of approval from the superior officer, absence of certificate of good moral character, etc. While taking note of the inconsistencies in the stand of the respondent/University in that case, the Supreme Court tested the argument of the counsel for the appellant therein that once the appellant was allowed to appear in the examination, his candidature could not be withdrawn, on the anvil of clause 2 of Ordinance X of the Statute contained in the Kurukshetra University Calendar and it was observed that last part of the said Statute showed that the University could withdraw the certificate issued by it if the candidate failed to attend the prescribed course of lectures. But W.P.(C) No.6814/2011 *Page 9 of 18* the Supreme Court further noted that this could be done only before the examination, but not thereafter..

15. The facts of the aforesaid case are however entirely distinguishable from the present case, inasmuch as in the aforesaid case, the undertaking given by the appellant therein was for production of a document from his employer, which he later found out, was not statutorily required to be produced by him. Further, the Supreme Court was of the opinion that if the appellant therein fell short of attending the prescribed number of lectures, then it was for the University to have found out the defect well in time and if the University therein acquiesced to the infirmities contained in the admission form of the appellant therein, and went on to allow him to appear in the examination, it had no power under the Statute to withdraw his candidature. In those specific circumstances, the Supreme Court had found it expedient to strike down the decision of the University of withholding the results of the appellant therein..

16. On the other hand, in the present case, the undertaking given by the petitioner to the invigilator was due to non-compliance of a statutory requirement of production of his admit card before sitting for the examination. Fact of the matter is

that the failure on the part of the petitioner to produce his admit card was for the reason that the same had not been issued to him by the respondent/University due to shortage of attendance. This fact was deliberately concealed by the petitioner from the W.P.(C) No.6814/2011 *Page 10 of 18* invigilator, who while accepting on face values the explanation offered by the petitioner that he had forgotten to carry the admit card, permitted him to sit for the examinations by accepting a written undertaking offered by the petitioner at that time. The situation in the present case was in fact envisaged by the Supreme Court in the decision of Shri Krishnan (supra), where it was observed as below: "7. ...This was not a case where on the undertaking given by a candidate for fulfilment of a specified condition a provisional admission was given by the university to appear at the examination which could be withdrawn at any moment on the non-fulfilment of the aforesaid condition. If this was the situation then the candidate himself would have contracted out of the statute which was for his benefit and the statute therefore would not have stood in the way of the university authorities in cancelling the candidature of the appellant."

17. In the present case, by giving an undertaking that he be provisionally allowed to appear in the end term examinations and if he was found guilty of any wrong, then his examination be cancelled, the petitioner had, in effect, opted out of the contract/Ordinance and hence, he cannot be permitted to turn around now and seek the benefit of the very same Ordinance by taking a stand that in having permitted him to sit for the exams, the respondent/University had, impliedly, condoned his shortfall of attendance, as stipulated in the said Ordinance. By taking such a ground, the petitioner is only trying to run with the hares while hunting with the hounds, which is impermissible. Therefore, the ratio laid down in the case of Shri W.P.(C) No.6814/2011 *Page 11 of 18* Krishnan(supra) that discretion exercised in one manner, cannot subsequently be exercised in a contrary manner, would have no application to the facts of the case in hand..

18. Similarly, in the case of Premji Bhai Ganesh Bhai Kshatriya(supra), admission cards to sit for exams had already been issued. The University therein was therefore reprimanded for not having properly scrutinized the attendance of the petitioner therein before issuing admission cards and letting him sit for the ensuing

examinations. In the present case, admittedly, no such admit card had ever been issued to the petitioner in the first place. Nor is it the case of the petitioner that an admit card was issued to him later on. The shortage of attendance of the petitioner had already been informed to him, the first time orally on 29.4.2011 and for the second time vide notice dated 20.5.2011. This is not a case where there was a lack of due diligence which was required to be exercised by the respondent/University in scrutinizing the attendance of the petitioner. Furthermore, the petitioner was fully aware of the fact that as per the Ordinance, even the Dean could have condoned only 5% of shortage of attendance and unless and until the same was condoned, he would be ineligible to sit for the semester-end examinations..

19. As for the argument of the counsel for the petitioner that the undertaking given by the petitioner at the time of taking the examinations was under pressure and given in *terrorem*, for which again reliance was W.P.(C) No.6814/2011 *Page 12 of 18* placed on the decision in *Shri Krishnan(supra)*, it may be noted that it is not a case where the petitioner was unaware of his legal rights. Nor is it a case where the petitioner was unaware of the fact that he had been repeatedly missing his classes for one reason or the other and that his attendance was perpetually short. Rather, at the time of giving his examination, the petitioner was conscious of the fact that he was short of attendance, which had not been condoned and communicated to him in writing and as per the procedure prescribed in the Ordinance, unless the said shortage was condoned, he would not be allowed to take his examinations. The inevitable conclusion is that the petitioner would also have been aware of the fact that his admit card had been withheld due to shortage of attendance. Secondly, a point which has eluded the petitioner is that a perusal of the undertaking given by the petitioner shows that he had specifically tick marked the option of "I have forgotten to carry my admit card", in the form, even though there were two other options available to him, which were "No admit card received by me from the University" or, "My admit card..... has been lost/spoiled/destroyed on account of conditions beyond my control", either of which the petitioner could have ticked if it was his case that the admit card had not been issued to him on 23.5.2011 or that his admit card had been misplaced by the University..

20. It appears that the petitioner has spun an elaborate web of half truths and falsity, so as to place the blame entirely on the University and the W.P.(C) No.6814/2011 *Page 13 of 18* teaching faculty, without producing a single scrap of paper to substantiate his claims. In the first instance, the petitioner furnished a false undertaking to the Invigilator and managed to sit for the examinations and then having sat for the examinations based on the false undertaking, he has tried to claim a vested right for taking the remaining examinations, on the specious plea that he was not informed of the shortfall in his attendance within the time stipulated in the Ordinance. Pertinently, learned counsel for the petitioner did not even bother to address the Court on the issue of shortfall of attendance in his arguments, till the said issue was broached by the other side. The consistent stand of the petitioner was that his attendance was short by a mere 4%, which had been orally condoned by the Dean of the respondent/University, which stand has not been supported by any document placed on record..

21. Counsel for the respondent/University has rightly sought to refute the contention of the petitioner that discretion exercised in one manner cannot be changed subsequently i.e. to say that the respondent/University would be bound by the principles of promissory estoppel, by adverting to the decision of the Supreme Court in the case of Central Airmen Selection Board vs. Surender Kumar Das reported as (2003) 1 SCC 152, where it was held as below:- "7. ... It is well known that the principle of promissory estoppel is based on equitable principles. A person who has himself misled the authority by making a fake statement, cannot invoke this W.P.(C) No.6814/2011 *Page 14 of 18* principle, if his misrepresentation misled the authority into taking a decision which on discovery of the misrepresentation is sought to be cancelled."

22. This Court is in complete agreement with the aforesaid submission made by the counsel for the respondent/University that it does not lie in the mouth of the petitioner to invoke the principle of promissory estoppel, inasmuch as, he had made a false representation to the Invigilator and had deliberately given a false undertaking that he had forgotten to carry his admit card, even though no such card was ever issued to him. Hence he cannot now raise the plea of promissory estoppel to bind the respondent/University to its decision to allow him to sit for the

semester-end examinations and insist that he be permitted to take the remaining three papers which he was not allowed to take..

23. This Court is also of the opinion that not much turns on the argument of the counsel for the petitioner that 5 days prior notice had not been given to him as required under the aforesaid University Ordinance for the reason that admittedly, the first time the petitioner was informed of the shortage of attendance was on 29.4.2011, so it was not as if he had been unaware of the shortfall of attendance 5 days prior to his end-term examinations. Furthermore, as noted above, the contention of the petitioner that the Dean had orally communicated to him that the shortage in his attendance had been condoned can also not be accepted since the petitioner has not been W.P.(C) No.6814/2011 *Page 15 of 18* able to place on record any written application submitted by him to the Dean for condonation of shortage of attendance either subsequent to 29.4.2011, the first date on which he received such an information or after 20.05.2011, the date on which the second list of detainees was issued and displayed. The petitioner has also failed to place on record any written authorization by the Dean of the respondent/University condoning the said shortage in attendance. He has merely made a bald averment to the said effect in the petition without substantiating the same by filing relevant documents, which is not permissible..

24. Further, as pointed out by learned counsel for the respondent/University that condonation of shortage of attendance beyond 5% was not within the powers of the Dean and hence there was no question that such a condonation, oral or otherwise, could have been made by the Dean in favour of the petitioner. There is no reason to disbelieve the submissions made on behalf of the respondent/University. Nor has any allegation of malafides been levelled by the petitioner against the University, which could be offered as a possible explanation for failure to mark his attendance for classes he had attended or for non-condonation of his absence from class..

25. The petitioner having miserably failed to place on record any document in support of his claim that the respondent/University had condoned the 5% shortfall in his attendance, the Court declines to accept the argument of the W.P.(C)

No.6814/2011 *Page 16 of 18* counsel for the petitioner that the shortfall in the attendance of the petitioner had been condoned by the respondent/University, albeit orally. In the light of the aforesaid observations, the arguments raised by the counsel for the petitioner that the Dean had condoned the shortfall in his attendance and further, that he could not be bound by his undertaking as it was offered by him under duress, are turned down as being entirely devoid of merits..

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 vs. 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 W.P.(C) No.6814/2011 *Page 17 of 18* 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..

27. In the light of the abovementioned facts and circumstances, this Court finds that the plea of the petitioner that he be allowed to sit for the remaining semester-end exams of the second semester and be promoted to the third semester, cannot be granted either in law or in equity. Rather, it is a case of *suppresio veri, suggestio falsi*, as the petitioner has not revealed the true and correct facts to the Court and has deliberately withheld material information so as to mislead the Court, which in itself disentitles him from calling upon the Court to exercise its extraordinary powers of judicial review in his favour..

28. The petition is, therefore, dismissed with costs of ` 7,500/- imposed on the petitioner as counsel's fee. (HIMA KOHLI) DECEMBER 23, 2011 JUDGE pm W.P.(C) No.6814/2011 Page 18 of 18

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