

2003 Vol. 105 (3) Bom. L. R. 646

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Before Mr. Justice J. A. Patil

First Appeal No. 472 of 2002, decided on 5.7.2002

DR. G. RAMCHANDRAM

v.

MS. GANDHI BINDIYA RAJESH &amp; ORS.

**Maharashtra Universities Act, 1994 - Secs. 28, 53 - Ordinances 119 and 120 - Minimum attendance for keeping terms - 75% for each term in each subject - Attendance of two terms together not to be considered for working out percentage of minimum attendance - Provisions mandatory - Students having less than 75% attendance not qualified to appear for annual examination - Power to condone deficiency upto 25% with the Principal of the College and with the Management Council in excess of 25% - Deficiency must be due to bona fide illness or other reason considered to be sufficient.**

**Held :** A careful perusal of the Ordinance No. 119 will make the following things clear. The first is that term is granted for each subject. Secondly, the attendance in theory/lectures/practicals/tutorials in each subject has to be minimum 75%. Thirdly, the minimum attendance of 75% is required for each term. Fourthly, attendance of two terms together is not to be taken for working out the percentage of required minimum attendance. Lastly participation of a student in any of the extra curricular activities such as sports, N.C.C., etc. gives him full credit of attendance for the periods which he has missed on that ground. This is however, subject to production of certificate of participation by the concerned student. It will thus be seen that attendance of one or two lectures in a day is not attendance for all the lectures conducted on that day. There is a general misimpression that attendance at one or two lectures in a day would be sufficient for grant of term. This wrong impression will be repelled if one takes into consideration the stringency of the rule contained in Ordinance 119. The object of the Ordinance is obviously to secure maximum attendance of students at all lectures, practicals etc. This is not only a question of discipline but also a question of the interest of the students. It is expected that the students should be sincere in their attendance and must put in minimum attendance of 75%. The Ordinance thus aims at curbing the tendency among the students to go easy, miss the periods, practicals etc. as and when they like. The Ordinance has thus an object of making the students to concentrate on their studies and promote a sense of sincerity and discipline amongst them. At the same time, due credit in terms of attendance is given for the extra curricular activities, like sports, cultural programmes, N.C.C., for which the students may be required to miss periods.

There is no indication in the rule that the minimum attendance of 75% has to be calculated by taking the two terms together. On the contrary the minimum attendance of 75% is required to be in each subject separately. There is intrinsic evidence in the Ordinance itself which negatives the contentions of Shri Vashi. For the students of the faculty of Dentistry, the Ordinance provides for 75% attend-

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ance in two terms taken together. Similarly, for students in the faculty of Medicine 75% attendance in three terms taken together is necessary. However, so far as the rule relating to the faculty of Arts, Science, Commerce, Law and technology is concerned, there is no use of the expression "two terms taken together", what is contemplated is separate assessment of attendance in each subject in each term.

A careful perusal of Ordinance 120 will show that if the deficiency in any one term is not more than 25%, then the power to condone the deficiency is with the principal of the College. If however, it is more than 25%, then the power to condone it lies with the Management Council. It is however important to note that condonation in the former case is subject to two important conditions. The first is that deficiency must be on account of bona fide illness or any other reason deemed sufficient by the principal. The second condition is that the attendance in both the terms when taken together must make minimum percentage of 75%. If any one of these two conditions are not fulfilled, then the deficiency of attendance cannot be condoned. Ordinance 120 thus offers a complete reply to the contention of Shri Vashi that under the Ordinance 119, the attendance has to be assessed by taking two terms together. If this interpretation is accepted then Ordinance 120 becomes redundant as there may be several cases wherein there will be no question of condonation of deficiency since the sum total of attendance in both the terms may make up the minimum attendance of 75%. In such an event, there is no question of condoning the deficiency on the ground of illness or any other reasonable ground. The very fact that a separate Ordinance i. e. Ordinance 120 has been made to meet the situations of the deficiency on account of certain grounds, shows that the Ordinance 119 does not permit deficiency of attendance below 75% in any single term.

In the latter case where the deficiency in attendance is more than 25%, the power to condone deficiency vests with the Management Council and it can exercise that power even when the attendances kept in two terms together fell short at 75% attendance. Thus the second proviso to Ordinance 120 carves out a further exception to the rule of minimum attendance at 75% in two terms taken together. The deficiency in attendance must obviously be due to bona fide illness or some other reason which the Principal of college may deem sufficient. It is only then the Management Council can condone the deficiency.

It is true that the condition requiring minimum attendance of 25% in each term was relaxed by the L.M.C. in its meeting dated 18.2.2002 as per the minutes of the meeting held on that day. It is seen that the students not having 50% in both the terms separately were decided to be detained and not permitted to take annual examination. This norm of 50% attendance was further sought to be relaxed in the case of 3 students by the resolution passed in the meeting of the L.M.C. on 27.2.2002. The provisions of Ordinances 119 and 120 are mandatory at the cost of repetition. The normal rule is minimum attendance of 75% in each subject, practicals, tutorials etc. in each term and that the deficiency in attendance can be made good only on the ground specified in the exception provided by Ordinance 119 and Ordinance 120.

The table of attendance shows that deficiency of attendance of some of the respondents in one term was less than 25% while in the other term is was more than 25%. Ordinance 120 makes it clear that in the former case power to condone

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deficiency lies with the principal of the College but subject to the condition that the sum total of attendance in both the terms taken together should be as per the requirements of Ordinance 119 i.e. 75%. In the latter case, power to condone deficiency vests with the Management Council.

Therefore, in the facts and circumstances of the case, the learned Judge of the Trial Court was not right in granting *ad interim* reliefs to the appellants. As pointed out above the appellant did not qualify themselves to appear for the examination. [Paras 8, 9, 10, 11, 21, 27]

**Cases Cited :**

- A. P. Christian Medical Educational Society v. Government of A. P., (1986) 2 SCC 667 : AIR 1986 SC 1490 : 1986 (2) S.C.R. 749.  
Krishan v. Kurukshetra University, AIR 1976 SC 376 : 1976 (2) S.C.R. 722 : 1976 (1) SCC 311 : 1976 U.J. 15.  
Ku-Arshdeep v. Maharashtra State Board of Education Nagpur, 1991 (1) Bom. C. R. 375 : 1991 (1) Mah. L.J. 304.  
Prafull Moreswar v. Amravati D. S. H. S. E. Board, 2001 (4) Mah. L. J. 346 : (2001) 4 Bom. L.R. 925 : (2001) 4 Bom. C.R. 312 : 2001 (4) All M.R. 9.  
S. P. Chengalvaraya Naidu v. Jagannath, AIR 1994 SC 853 : 1994 (1) SCC 1 : 1993 (6) J.T. 331 : 1993 (4) Scale 277 : 1993 (2) Rent L.R. 746.

Shri S. C. NAIDU i/b M/S. C. R. NAIDU and CO., for the Appellant.  
Shri M. M. VASHI i/b M/S. M. P. VASHI & ASSOCIATE, for Respondent Nos. 1 to 9.  
Shri S. J. PANICKER, Advocate, for Respondent Nos. 10 and 11.  
Shri R. A. RODRIGUES with A. L. GORE, Advocate, for Respondent No. 12.

**ORAL JUDGMENT (Per J. A. Patil, J.)**

This appeal arises out of the order dated 8.3.2002 passed in Notice of Motion No. 961 of 2002 in S. C. Suit No. 1303 of 2002 by a learned Judge of the City Civil Court, Mumbai. By the impugned order, the learned Judge granted *ad interim* reliefs in favour of the respondent Nos. 1 to 9 (Original plaintiffs) permitting them to appear for the final internal examinations for F. Y. B. Com. and S. Y. B. Com. which were due to commence from 22.3.2002 and 15.3.2002 respectively. By the same order the learned Judge also directed the respondent No. 11 (original defendant) to declare the results of the plaintiffs. Feeling aggrieved thereby Dr. G. Ramchandran, Principal of KES's College of Arts and Commerce, Kandivali which is run by Respondent No. 10 has filed this appeal.

2. Respondent Nos. 1 to 9 who are the original plaintiffs, are the students of Respondent No. 11, college which is run by Respondent No. 10 Society. The appellant is the principal of the said college. During the academic year 2001-2002, respondent Nos. 1 to 4 were studying in F.Y.B.Com. class while Respondent Nos. 5 to 9 were studying in S.Y.B.Com. class in the said college. As per the rules, students are required to put in requisite percentage of attendance in the college. It appears that on 18.2.2002, respondent No. 10 society had put up a notice on the Notice Board of the College stating that 46 students including respondent Nos. 1 to 9 will not be allowed to appear for the final examination of F.Y.B.Com. and S.Y.B. Com. It may be pointed out that both the examinations are conducted by the college. According to the Respondent Nos. 1 to 9, their deficit in 50 percent attendance was only in one term and that after the

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notice dated 18.2.2002, they made representations to Respondent No. 10 society requesting it to allow them to appear in the examination. According to the respondent Nos. 1 to 9, initially they were told by the Joint Secretary of the Local Managing Committee (for short 'L.M.C.') of Respondent No. 10 society that a decision had been taken to permit Respondent Nos. 1 to 9 to appear in the final examination. But later on 4.3.2002, the said Joint Secretary informed the Respondent Nos. 1 to 9 that they would not be permitted to appear for the final examination. Respondent Nos. 1 to 9 therefore, rushed to the City Civil Court, Mumbai and filed the above mentioned suit on 7.3.2002. They also took out a separate Notice of Motion for *ad interim* reliefs in terms of the above mentioned main reliefs sought by them. The learned Judge after being satisfied that a *prima facie* case was made out, granted *ad interim* reliefs prayed for by Respondent Nos. 1 to 9. By the same order, the learned Judge disposed of the Notice of Motion as well as the suit as the learned advocates of both the parties stated before him that in view of the reliefs granted, nothing survived in the suit.

3. The present appeal is filed by Dr. G. Ramchandram who is the principal of Respondent No. 11 College. He was not a party to the suit filed by Respondent Nos. 1 to 9. So also Respondent No. 11 *i. e.* the College and respondent No. 12 *i. e.* the Registrar of University of Mumbai were not parties to the said suit. A preliminary objection regarding the *locus standi* of the present appellant to file this appeal was raised by Shri Vashi at the time of hearing a Civil Application in this appeal regarding grant of stay. My learned brother Chitre, J. however, by his order dated 5th April, 2002 over ruled the objection raised in this behalf and ruled that the appellant is the aggrieved person and therefore he has *locus standi* to file this appeal. In view of this findings, it is not necessary for me to consider maintainability or otherwise of this appeal on that ground.

4. It is necessary to point out that by the time this court could pass any order on the application of stay filed by the appellant. Examinations of F.Y.B.Com. and S.Y.B.Com. were over. Therefore, the prayer for staying the operation of the order passed by the City Civil Court became infructuous. My learned brother Khandeparkar, J. however by his order dated 29th April, 2002, directed the parties to maintain status-quo in relation to the results of the respondent Nos. 1 to 9. He further directed that the result would not be declared and would be kept in seal until further order. Having regard to the urgency involved in the matter, he further directed the appeal to be placed for final hearing at the admission stage itself immediately after the summer vacation. Accordingly, the appeal came up before me. I have issued rule and heard the appeal finally with the consent of the learned advocates of the parties.

5. I have heard Shri Naidu, Advocate, for Appellant, Shri M. M. Vashi, Advocate, for respondent Nos. 1 to 9, Shri Panicker, Advocate, for respondent Nos. 10 and 11 and Shri Rodrigues, Advocate, for Respondent No. 12.

6. Admittedly the respondent No. 11 college of which the appellant is the Principal is run by Respondent No. 10 society and the said college is affiliated to Respondent No. 12 university. There is no dispute of the fact that none of the respondent Nos. 1 to 9 had put in the requisite attendance

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of 75% in any single term for the Academic year 2001-2002. The respondent Nos. 1 to 4 were at the relevant time studying in F.Y.B.Com class where the respondent No. 5 to 9 were studying in the S.Y.B.Com. class. It is not in dispute that both these examinations are internal examinations. They are held by the college and not by the University.

7. Before turning to the factual aspect of the case, it would be proper to refer to some of the provisions of the Maharashtra Universities Act, 1994 (for short, the Act) and Ordinance 119 and 120 issued thereunder. The Bombay University Act, 1974 which previously governed such matters has been repealed and substituted by the Act which came into force on 21st July, 1994. The preamble of the Act contains its object and one of them is to take measure for curbing or for eradicating undesirable non-academic influences detrimental to the maintenance of discipline and standards of education or academic excellence in the University and to provide for matters connected with or incidental thereto. Section 24 enumerates various authorities of the University and one of them is the Management Council. Sections 28 and 53 deal with the powers of the Management Council to make Ordinance to provide for the matters enumerated therein. Clause (iii) of Section 53 refers to the discipline of the students of the University and clause (vi) refers to conduct of examination and other test. Clause (xiv) gives general powers to the Management Council to make Ordinance on all matters which in itself are necessary for the exercise of powers conferred upon it under the Act and statute. Accordingly, the Management Council of respondent No. 12 University, in exercise of its power under section 54(1) of the Act has amended the Ordinances 119 and 120 relating to the minimum attendance necessary for keeping terms and condonation of deficiency in attendance. Both the Ordinance have been brought into force from the Academic year 1999-2000. Ordinance 119 is as under :-

"O. 119 : The following shall be the minimum attendance necessary for keeping terms :

Faculty	First term	Second term
Ayurvedic Medicine	75 percent of the total number of lectures and practicals hold in a term.	
Dentistry	75 per cent attendance of lectures, practicals clinics, demonstrations and seminars held in the two terms taken together at each of the examinations leading to the B.D.S. and M.D.S.	
Medicine (only for First, Second and Third M.B.B.S. Examinations)	75 per cent of the total number of lectures delivered and 75 per cent of the total number of practicals hold during the three terms taken together.	
Arts, Science, Commerce, Law and Technology	For granting the terms in each subject minimum attendance of 75% of the lectures, practicals and tutorial (wherever prescribed) separately will be required out of the total number of lectures, practicals and tutorials in the subject conducted in the term.	

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Notwithstanding what is stated above students participating in sports, cultural activities, N.S.S., N.C.C., Adult and Continuing Education & Extension will be permitted full credit for lectures/practicals/tutorials missed by them as a result of their participation in N.C.C./N.S.S./A.C.E.E. camps, Inter-collegiate, Inter-University, State, National and international tournaments/competitions and coaching camps/training sessions organised in preparation of these tournaments/competitions. This credit should be allowed on the basis of production of certificate of participation in such authorised activity from the concerned organisers."

8. A careful perusal of the above Ordinance will make the following things clear. The first is that term is granted for each subject. Secondly, the attendance in theory/lectures/practicals/tutorials in each subject has to be minimum 75%. Thirdly, the minimum attendance of 75% is required for each term. Fourthly, attendance of two terms together is not to be taken for working out the percentage of required minimum attendance. Lastly participation of a student in any of the extra curricular activities such as sports, N.C.C., etc. gives him full credit of attendance for the periods which he has missed on that ground. This is however, subject to production of certificate of participation by the concerned student. It will thus be seen that attendance of one or two lectures in a day is not attendance for all the lectures conducted on that day. There is a general mis-impression that attendance at one or two lectures in a day would be sufficient for grant of term. This wrong impression will be repelled if we take into consideration the stringency of the rule contained in Ordinance 119. The object of the Ordinance is obviously to secure maximum attendance of students at all lectures, practicals etc. This is not only a question of discipline but also a question of the interest of the students. It is expected that the students should be sincere in their attendance and must put in minimum attendance of 75%. The Ordinance thus aims at curbing the tendency among the students to go easy, miss the periods, practicals etc. as and when they like. The Ordinance has thus an object of making the students to concentrate on their studies and promote a sense of sincerity and discipline amongst them. At the same time, due credit in terms of attendance is given for the extra curricular activities, like sports, cultural programmes, N.C.C., for which the students may be required to miss periods. In this context, it would be appropriate to refer to the observations made by a Division Bench of this Court in *Ku-Arshdeep v. Maharashtra State Board of Education Nagpur*,<sup>1</sup> and they are :-

"6. The submission though attractive in the first flush, is fallacious it proceeds upon the wrong assumption that holding the examination is the only object of Secondary or Higher Secondary education and equipping the student with ability to pass the examination is the only object of giving education. Examination is not an end in itself, but only a means to achieve the real object of education, which is to help the all round development of a personality of a student in formative years and consequently, as George Palmer has very succinctly put "to be able to do what one has not done before". Bookish knowledge is not at all. There are enumerable advantages of regularly attending

1. 1991 (1) Bom. C. R. 375 : 1991 (1) Mah. L.J. 304.  
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the classes. Attendance aims at instilling into the alumni sense of discipline, brotherhood and regard, by being together with fellow students under the guidance and supervision of the teachers. Indeed close and intimate personal association between the teacher and the taught has always been recognised as an ideal form of education since years in our country. Extra-curricular activities like debates, sports, symposiums, sight seeing, etc. are the regular features of college activities and they have as important a place in education as curricular activity and syllabus, if not more. A student is deprived of all these advantages by not attending the College."

9. Shri Vashi contended before me that the minimum attendance of 75% for a student in Arts, Science, Commerce, Law and Technology is to be assessed on the basis of the attendance in two terms taken together. According to him, Ordinance 119 does not contemplate working out of minimum attendance separately for each term. It is not possible to accept the contentions of Shri Vashi for more than two reasons. The first is that there is no indication in the rule that the minimum attendance of 75% has to be calculated by taking the two terms together. On the contrary the minimum attendance of 75% is required to be in each subject separately. There is intrinsic evidence in the Ordinance itself which negatives the contentions of Shri Vashi. For the students of the faculty of Dentistry, the Ordinance provides for 75% attendance in two terms taken together. Similarly, for students in the faculty of Medicine 75% attendance in three terms taken together is necessary. However, so far as the rule relating to the faculty of Arts, Science, Commerce, Law and Technology is concerned, there is no use of the expression "two terms taken together". What is contemplated is separate assessment of attendance in each subject in each term. For the purpose of better appreciation, I may illustrate this point from the following hypothetical instance give in a tabular formula. A student in Arts Faculty proposes to offer himself for examination in 3 subjects namely English, History and Political Science and his attendance of lectures in each subject in each term is as under :-

Term	No. of Lectures Conducted	Lectures Attended	Percentage
I Term	(i) English - 60	50	83%
	(ii) History - 60	25	45.5%
	(iii) Political Science - 60	48	80%
II Term	(i) English - 50	35	70%
	(ii) History - 50	40	80%
	(iii) Political Science - 50	42	84%

In the above instance, the student's attendance for lectures in Political Science is more than 75% in each term but in English, it is more than 75% in the first term only and less than 75% in the second term. As regards, History, it is much less than the minimum percentage of 75% in the first term but it is more than the prescribed minimum percentage of 75% in the second term. Although his attendance for the lectures in English for both the terms together comes to 70.5% still he cannot be said to have fulfilled the requirement contemplated by the rule provided by the Ordinance 119

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as it does not permit combination of attendance of two terms to work out the minimum percentage of 75%. If however, the student has missed, say 5 lectures in English in the second term on account of his participation in any of the extra curricular activities mentioned in the Ordinance, he will be entitled to get full credit of attendance of those 5 lectures in English, with the result that his attendance for all lectures in English in the second term will be  $35 + 5 = 40$  i. e. 80% and he will be entitled to grant of term in that subject. The same will be the case with regard to the deficient attendance of lectures in History for the first term. Here it may be noted that the deficiency of attendance in lectures in History in the first term is more than 25% and even if the attendance of the second term is taken together, it does not make the minimum attendance of 75%.

10. Ordinance 120 contemplates condonation of deficiency of attendance and it reads as under :-

"O. 120 : When on account of a *bona fide* illness, or any other reason deemed sufficient by the Principal, the total attendance of a student of an affiliated college in any one term falls short of the minimum number of days/lectures/practicals/tutorials, required by Ordinance 119 by not more than 25% of days/lectures/practicals/tutorials, it shall be competent to the Principal of the College to permit a candidate in such a case to add together the attendances kept by him/her in two consecutive terms in any one class, provided that the total of the attendances kept in the two terms so counted together amounts to the total required for minimum attendances of two terms under Ordinance 119. Provided nevertheless that where the deficiency exceeds 25% of the days of lectures/practicals/tutorial, in one term or is such that the attendances kept in the two terms taken together fall short prescribed by Ordinance 119, it shall be competent to the Management Council to condone the deficiency."

A careful perusal of Ordinance 120 will show that if the deficiency in any one term is not more than 25%, then the power to condone the deficiency is with the Principal of the College. If however, it is more than 25%, then the power to condone it lies with the Management Council. It is however important to note that condonation in the former case is subject to two important conditions. The first is that deficiency must be on account of *bona fide* illness or any other reason deemed sufficient by the principal. The second condition is that the attendance in both the terms when taken together must make minimum percentage of 75%. If any one of these two conditions are not fulfilled, then the deficiency of attendance cannot be condoned. Ordinance 120 thus offers a complete reply to the contention of Shri Vashi that under the Ordinance 119, the attendance has to be assessed by taking two terms together. If this interpretation is accepted then Ordinance 120 becomes redundant as there may be several cases wherein there will be no question of condonation of deficiency since the sum total of attendance in both the terms may make up the minimum attendance of 75%. In such an event, there is no question of condoning the deficiency on the ground of illness or any other reasonable ground. The very fact that a separate Ordinance i. e. Ordinance 120 has been made to meet the situations of the deficiency on account of certain grounds, shows that the

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Ordinance 119 does not permit deficiency of attendance below 75% in any single term.

11. In the latter case where the deficiency in attendance is more than 25%, the power to condone deficiency vests with the Management Council and it can exercise that power even when the attendances kept in two terms together fell short at 75% attendance. Thus the second proviso to Ordinance 120 carves out a further exception to the rule of minimum attendance at 75% in two terms taken together. The deficiency in attendance must obviously be due to *bona fide* illness or some other reason which the Principal of College may deem sufficient. It is only then the Management Council can condone the deficiency.

12. In order to secure and maintain the attendance of students the Management Council has issued a Circular No. UG/235 dated 3rd July, 1998 which provides certain guidelines. The modified circular reads as under :

"(1) In order to monitor the process of maintaining attendance records, the Principal of the College should constitute an attendance committee consisting of at least 3 members at the beginning of the academic year. Composition of the committee should be such that it will involve senior faculty members from each of the major departments and preferably Vice-Principal or the senior member of the teaching staff should be the Convener of the Committee.

The Committee should explain to the teachers at the beginning of the term itself the procedure to be followed by the teachers for making the attendance.

(2) Each department shall maintain the attendance of the students subject-wise and class-wise.

(3) The methods of maintenance of attendance is to be worked out by the Head of the Department in connection with teachers of the respective subjects and concurrence of the Principal. The attendance shall be maintained for lectures, practicals and tutorials of every subject for every class and the teacher/s concerned shall submit to the Head of the Department the record of total number of lectures/practicals/tutorials (conducted by him/her for the class and the number attended by each student) every month.

(4) The defaulter's list for each month will be exhibited on the Notice Board of the College in the first week of the following month.

(5) At the end of the term, the Principal will issue letters to the parents/guardians of the defaulting students informing them of the deficiency in attendance of their ward and drawing their attention to the provisions of the Ordinance 119, Ordinance, 120 and Ordinance 125.

In addition, the parents/guardians should be warned that, unless their ward fulfills the attendance requirements as stated in the relevant Ordinance/s, his/her form/s will not be granted, and he/she will not be permitted to appear for the Annual Examination, and his/her performance if any, during the term/s will be treated as null and void.

(6) The withdrawal of forms should be intimated by the Principal to the student/s and parents/guardians at least 20 days prior of the commencement of the examination of the respective class.

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(7) The report of the defaulters shall be sent to the Director, Board of College and University Development at the end of the first and second terms three weeks prior to the commencement of the examination of the respective class.

(8) A University Committee constituted by the Board of College and University Development may inspect, without prior intimation, students attendance records maintained by the College.

(9) Any complaint of the student shall be forwarded through the Principal of the respective college, to the Convener, Students Grievance Redressal Committee, University of Mumbai, in the prescribed format."

13. It will thus be seen that the circular provides for constitution of special machinery to record the attendance of students. It contemplates constitution of attendance committee and maintenance of record of attendance of the students subjectwise and classwise. The circular further requires the attendance committee to explain to the teachers the procedure to be followed by them for marking the attendance. It further provides for giving notice to the students as well as to their parents/guardians about deficiency of their attendance. It also contemplates giving of warning to the parents/guardians of the concerned students that they will not be granted terms unless deficiency is made good. A report of defaulter students is required to be submitted to Director, the Board of College and the University Development. Lastly, it provides that if a student has any complaint in connection with his attendance record, he can file the same to the Principal who will forward the same to the Students Grievance Redressal Committee of the University.

14. After having understood the relevant provisions regarding the attendance of students in their colleges, it will be proper to turn to the factual aspect of this case.

15. As stated above, respondent No. 1 to 4 were the students of F.Y.B.Com. class and respondent Nos. 5 to 9 were the students of S.Y.B.Com. class during the relevant academic year. Shri Naidu drew my attention to the prospectus issued by the respondent No. 11 college which gives first notice to the students regarding the attendance requirement. A summary of Ordinance 119 is incorporated in the prospectus. Shri Naidu then drew my attention to the application forms submitted by respondent Nos. 1 to 9 at the time of taking admission in the College. Respondent Nos. 1 to 9 each has acknowledged the fact that he or she is aware that he or she will have to attend minimum 3/4 of the days of which the lectures are delivered of each term. Shri Naidu further pointed out that the college had regularly notified attendance position in respect of the defaulter students. He then referred to the letters addressed by the Chairman of the Attendance Committee to the parents/guardians of the defaulter students including respondent Nos. 1 to 9 wherein a caution was given that if the concerned students fail to keep the required attendance they will be detailed and will not be permitted to take annual examination. Such letters appear to have been issued in both the terms. It is further seen that at the end of the second term, meeting of the L.M.C. of Respondent No. 11 college was called wherein two lists of 46 defaulter students of F.Y.B.Com. and S.Y.B.Com. were finalised and confirmed and they were notified on the Notice Board of the

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college on 20.2.2002 stating that the enlisted students do not have satisfactory attendance as required in Ordinance 119 and therefore, they will not be permitted to take F.Y.B.Com./S.Y.B.Com. examination to be held. The ground of detention stated in the notice was that the concerned students were having less than 50% of attendance in both first and second term separately. The list of F.Y.B.Com. class contains 26 students and that of S.Y.B.Com. class 20 names. Needless to say that the names of the respondent Nos. 1 to 9 appear in one or other lists. At Exh. J page 136 shows that the committee had taken a decision that the students having less than 50% attendance in both the first and second term separately were not to be permitted to appear for the Annual Examination.

16. It is further seen that the Chairman of the L.M.C. by his letter dated 26.2.2002 requested the appellant/principal to call a special meeting of the L.M.C. on 27.2.2002 to consider and finalise the list of students whose names had been sent by the appellant as per his letter dated 18.2.2002. Accordingly a special meeting of L.M.C. came to be called on 27.2.2002 wherein a proposal was mooted for relaxing the norms of attendance in the case of three students. The minutes of the meeting Exh. Q page 155 show that the appellant pointed out to the members present that the norms of the detention were already finalised. He further requested the members not to bring any pressure on him to relax further the norms of detention. The appellant appears to have appealed to the members of the L.M.C. that as the head of the institution he was responsible to maintain academic discipline and raise academic standard of the College. It appears that after some discussion the Chairman put his proposal of permitting students having 47.50% attendance in both the terms and a S.Y.B.Com. student having 38.84% attendance in the first term and 72.13% attendance in the second term to take their annual examination. It is seen that out of 11 members 10 were present in the meeting and out of them, 4 members voted in favour of the proposal while 5 including the appellant voted against the proposal. Thereafter, the Chairman of the L.M.C. exercised his right to vote in favour of the proposal. In addition, he also exercised his right of casting vote. The minutes mentioned that the Chairman made an announcement that the proposal was carried by a majority of 6 votes against 5 votes. These facts were not disputed before me since they are matters of record. But neither respondent Nos. 1 to 9 nor respondent No. 10 who were parties to the suit thought it necessary to bring the same to the notice of the learned judge of the City Civil Court.

17. The above mentioned special meeting of the L.M.C. was held on 27.2.2002 but prior to that the appellant in his capacity as the Principal of the College and member secretary of the Committee had forwarded the list of the defaulter students to the University. Examination of the S.Y.B.Com., was to commence on 15.3.2002 and that of F.Y.B.Com. students 22.3.2002. Respondent Nos. 1 to 9 however, approached the City Civil Court, Mumbai on 7.3.2002 by filing S. C. Suit No. 1302 of 2002. They averred in the plaint that they were given to understand by Respondent No. 10 society that they would be allowed to appear for final examination. They further pleaded that they had genuine reasons for having deficit attendance. Respondent Nos.

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1 to 9 made an averment to the effect that the Joint Secretary of the respondent No. 10 informed some of the parents that respondent Nos. 1 to 9 would not be permitted to appear for final examination. In view of this apprehension, respondent Nos. 1 to 9 filed the above mentioned suit against Respondent No. 10 society, praying for direction to allow the respondent Nos. 1 to 9 to appear for the examination and to declare their results. The notice of motion taken out by Respondent Nos. 1 to 9 for *interim* reliefs came to up before the Trial Court for hearing on the next date i. e. 8/3/2002 and the learned Judge granted *ad interim* reliefs in terms of prayer clauses (a) and (b).

18. Shri Naidu contended before me that the impugned order obtained by Respondent Nos. 1 to 9 is collusive in as much as no opposition was put up by respondent No. 10, society which was defendant in that suit. He further pointed out that the claim in the plaint was based on an erroneous footing that for grant of term, 50% attendance was required. Shri Naidu further pointed out that the plaint does not contain any reference to the relevant ordinance, attendance list, notices published on the notice board of the College as well as those given to the parents/guardians of the concerned students. Shri Naidu further pointed out that in the plaint it is falsely stated that the deficiency of attendance of respondent Nos. 1 to 9 was less than 3% though as a matter of fact it was more than 50%. The contention of Shri Naidu cannot be said to be devoid of any substance having regard to the fact that the respondent No. 10 society is supporting the cause of Respondent Nos. 1 to 9. At any rate, it must be said the credit of Respondent Nos. 1 to 9 that they obtained the *ad interim* reliefs from the City Civil Court by suppressing the true facts regarding the requirement of rules of attendance. The provisions of Ordinance 119 and Ordinance 120 were not brought to the notice of the Court. In *S. P. Chengalvaraya Naidu v. Jagannath*,<sup>1</sup> the Supreme Court strongly disapproved such attitude and observed that a party who withholds a vital document in order to gain advantage on the other side would be guilty of fraud. It is further pertinent to note that after having obtained both the *ad interim* reliefs, the advocate of respondent Nos. 1 to 9, as also the advocate of respondent No. 10 told the Court that nothing was surviving in the suit and the same was hurriedly got disposed of on the same day. No submission was made on behalf of respondent No. 10 that it proposed to oppose the grant of the second *ad interim* relief viz. direction to declare the results of respondent Nos. 1 to 9. All these facts give a clear indication that respondent Nos. 1 to 9 and respondent No. 10 were hands in gloves.

19. The question regarding the powers of the L.M.C. to fix the norms of attendance and condone deficiency of attendance was seriously debated before me. It was contended both by Shri Naidu and Shri Rodrigues that the role of L.M.C. is purely advisory and that the disciplinary powers vests in the Principal of the College. In this connection reference may be made to the Section 85 of the Act which *inter alia* deals with the powers of the L.M.C. Clause 5(f) which is relevant for our purpose reads as under :

1. AIR 1994 SC 853 : 1994 (1) SCC 1 : 1993 (6) J.T. 331 : 1993 (4) Scale 277 : 1993 (2) Rent L.R. 746.

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"The powers and duties of Local Managing or advisory committee shall be to -

- (a) .....
- (b) .....
- (c) .....
- (d) .....
- (e) .....

(f) advise the principal regarding capacity of various classes, preparation of time tables, distribution of the available teaching work load and such other matters relating to the internal management of the College and discipline of the college students as may be referred to it by the principal from time to time.

It will thus be clear that the L.M.C. has only an advisory role in the matter of discipline of the College students. Reference may further be made to Section 95(1), of the Act, which states that -

"All powers relating to discipline and disciplinary action in relation to the students of the University department and institution and colleges maintained by the University shall vest in the Vice Chancellor."

Sub-section 8 further states that :-

"All powers relating to disciplinary action against students of an affiliated college or recognised institution not maintained by the University shall vest in the Principal of the Affiliated college or head of the recognised institution and the provisions of foregoing sub-section including rules if any made thereunder shall *mutatis mutandis* apply to said colleges, institutions and students thereunder."

It is nobody's case that respondent No. 11 college is maintained by the University. Therefore, it is obvious that the powers relating to disciplinary action against students vest in the Principal of the College. Consequently, even assuming that the proposal of permitting students having 47.50% attendance in both the terms and S.Y.B.Com. student (respondent No. 7) having 38.84% attendance in first term and 72.13% in second terms was duly passed by majority, it cannot have any effect of overriding the rule prescribing minimum percentage of attendance to entitle a student for grant of term. It is therefore not necessary for me to deal with the question as to whether the Chairman of the L.M.C. has right to cast only one vote or two votes including a casting vote.

20. Respondent Nos. 1 to 9 were notified to have been detained in their respective standards and not permitted to appear for the Annual Examination on the ground that their attendance in both the terms was less than 50%. This does not appear to be a correct statement of fact having regard to the table of attendance at page 26 which is as under :

Sr. No.	Roll No.	Name of the Students	% Attendance in Term		% of Marks in Exam	
			I	II	Term	Other
<b>F.Y.B.Com. : Standard</b>						
3	62	Gandhi Bindia Rajesh	68.29	48.17	35.71	62.86
10	136	Mistry Raju Jivrajbhai	62.24	47.68	45.00	52.86
20	268	Shah Binal Bipinbhai	72.73	48.67	45.00	59.57
21	284	Sudra Sandip Hasmukh	66.29	48.67	33.57	50.00
<b>S.Y.B.Com. : Standard</b>						
7	83	Jain Vishal Revachand	48.08	60.00	44.17	61.17
9	125	Mehta Mayur Pradeep	64.90	48.70	33.33	58.33
16	291	Solanki Reena Mahendra	61.43	48.67	47.50	55.00
20	332	Vora Sonal Manohar	47.53	70.80	41.67	61.67
11	216	Sagar Varsha Babulal	38.84	72.13	33.33	56.67

One thing is however clear from the above table of attendance that none of the respondent Nos. 1 to 9 had put in 75% of attendance in any single term. The maximum percentage attendance in the first term is of Respondent No. 3 and it is 72.73% while maximum percentage of attendance given in the second term is by respondent No. 9 and it is 70.80. Even if the attendance of respondent Nos. 1 to 9 in both the terms is taken together, it does not fulfil the requirement of minimum attendance of 75%.

21. It is true that the condition requiring minimum attendance of 25% in each term was relaxed by the L.M.C. in its meeting dated 18.2.2002 as per the minutes of the meeting held on that day. It is seen that the students not having 50% in both the terms separately were decided to be detained and not permitted to take annual examination. This norm of 50% attendance was further sought to be relaxed in the case of 3 students by the resolution passed in the meeting of the L.M.C. on 27.2.2002, I have however, dealt with the provisions of Ordinance 119 and 120 and pointed out that they are mandatory at the cost of repetition. The normal rule is minimum attendance of 75% in each subject, practicals, tutorials etc. in each term and that the deficiency in attendance can be made good only on the ground specified in the exception provided by Ordinance 119 and Ordinance 120. The perusal of the plaint filed by respondent Nos. 1 to 9 contains an averment that "due to reasons like ill-health of the some of the plaintiffs or their parents, participation in the sports activities, cultural activities, N. C. C. etc. there was a deficit of less than 3%." However it is not specified in the plaint as to which of the respondents had participated in which extra curricular activities during the relevant academic year and how many periods or lectures were required to be missed by them on that ground. The statement made in the plaint in this respect is too vague and general. Moreover, it is not supported by production of any certificate contemplated by Ordinance 119. It is not the case of the respondent Nos. 1 to 9 that they have obtained necessary certificates in that behalf. Therefore, there was no question of granting any credit of attendance on

the ground of participation in the extra curricular activities to any of these respondents. The table of attendance reproduced above shows that deficiency of attendance of some of the respondents in one term was less than 25% while in the other term it was more than 25%. Ordinance 120 with which I have already dealt with makes it clear that in the former case power to condone deficiency lies with the principal of the College but subject to the condition that the sum total of attendance in both the terms taken together should be as per the requirements of Ordinance 119 i. e. 75%. In the latter case, power to condone deficiency vests with the Management Council.

22. Shri Vashi relied upon the decision in *Shri Krishan v. Kurukshetra University*,<sup>1</sup> and submitted that once the respondent Nos. 1 to 9 are allowed to take examination, then Ordinances which govern the eligibility of students on the ground of the requisite condition of minimum attendance become irrelevant. The reliance upon the said decision by Shri Vashi is not correct having regard to the facts of the case. In that case, it was the fault of the University and the head of the department which failed to scrutinise the admission form of the petitioner in order to find out whether it was in order or not. It appears that in the admission form shortage of percentage of attendance was not disclosed and yet the petitioner was allowed to appear for examination. It was at a subsequent stage that the University sought to withdraw the permission granted to him. The Supreme Court held that if the University had acquiesced in the infirmities which the admission forms contained and allowed the petitioner to appear in the examination, then by force of the University Statute, University had no power to withdraw the candidature of the petitioner. This ruling cannot have application to the facts of the present case for the simple reason that the Respondent Nos. 1 to 9 were allowed to take their examinations not on account of any fault on the part of the College or University but on account of *ad interim* relief granted to them by the City Civil Court.

23. Reference may be made to a Division Bench decision of this court in *Prafull Moreshwar v. Amravati D. S. H. S. E. Board*,<sup>2</sup> wherein the fact of deficiency in attendance was considered with reference to the provisions of the Maharashtra Secondary and Higher Secondary Education Boards Regulations 1977. The petitioner in that case was pursuing his studies in 12th Standard Science and during the first academic session he attended 83% of classes while in the second session, he attended only 42.6% of classes. Under the Regulation 88, a candidate attending second year of the Junior College Classes is eligible for appearing for H.S.S.C. examination on fulfilment of conditions mentioned in Clause 1(a) and (b) of the said Regulation. Attendance in the final standard of one of the recognised junior colleges for not less than 75% of the working days spread in 2 parts is one of the conditions of eligibility for appearing in the 12th standard examination conducted by the Board. The Divisional Chairman is empowered to condone deficiency in percentage attendance up to 15% for special medical

1. AIR 1976 SC 376 : 1976 (2) S.C.R. 722 : 1976 (1) SCC 311 : 1976 U.J. 15.
2. 2001 (4) Mah. L. J. 346 : (2001) 4 Bom. L.R. 925 : (2001) 4 Bom. C.R. 312 : 2001 (4) All M.R. 9.

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reason and circumstances beyond the control of the candidate. The State Chairman is further empowered to condone deficiency in percentage of attendance up to 10% more for the special reasons as specified. The petitioner appeared in the examination of H.S.S.C. However, the respondent board declared the petitioner as no candidate and consequently did not declare his result. The petitioner then filed a Writ Petition seeking redress. The Division Bench held that the petitioner's case being hopeless he cannot be helped. The Court observed :

"Mercy to some extent may be invoked while administering justice but justice cannot be tempered with all mercy. Mercy is supplemental to justice but cannot supplant the justice. In the present case, with all latitude and opportunity given to the petitioner, on the face of the fact that he had attended only 42.6% of the classes in the second session from 16.10.1999 to 5.2.2000, the said absence is not condonable under Regulation and Law."

24. Shri Naidu further relied upon an unreported Judgment of Division Bench (Jahagirdar & Kurdukar, JJ.) of this Court decided on 18th February, 1984 in Writ Petition No. 4557 of 1983 to point out that the provisions of Maharashtra Secondary and Higher Secondary Education Board Regulations, 1977 which are *pari materia* the same as the provisions of Ordinances 119 and 120 were held to be mandatory and no exception was made for relaxation of the condition of minimum attendance even in the case of a student who during the relevant academic year was required to be taken abroad for medical treatment. In the first term, the student attended on 25 days out of 94 working days. The percentage of attendance was thus obviously much lower than the 75% prescribed under the Regulation 88. In the second term of the academic year, the student however, attended all the 74 working days and as such his attendance was 100%. The total number of working days in both the terms was 168 days out of which he attended 95 days and this combined attendance of two terms taken together fell short of 75%. The Division Bench observed that the attendance of not less than 75% of the working days must be in each of the two parts of the academic year. The Division Bench found that the provisions of Regulations 88 were valid and not *ultra vires* Article 14 of the Constitution. The further observations of the Division Bench are relevant and they are as under :

"It is true, as has been rightly pointed out by Miss Jaising, that in the case of the present petitioner, whose disability is genuine and patent, certain amount of injustice results. It is indeed a hard case. Unfortunately, hard cases do not make good law. If the provision is found to be valid one cannot but uphold the same, though one can have only the maximum sympathy for a student who is unfortunately in such an exceptional case."

25. In Appeal (Lodging) No. 999 of 2000 decided on 19.10.2000, another Division Bench of this Court (B. N. Srikrishna & Smt. Ranjana Desai, JJ.) observed :-

"The contention that lack of attendance should be condoned was rightly rejected by the University as we are of the view that the rules regarding attendance should be strictly complied with."

In Writ Petition No. 528 of 2000, a Division Bench consisting of N. J. Pandya, Acting C. J. and Smt. Ranjana Desai, J. had to consider the

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question of 24 students whose attendance was short of the required minimum attendance of 75% in a year. The periodical lack of attendance was brought to the notice of the concerned students and their names were also notified. The Division Bench observed that the act of the concerned students to rush to the Court at the last moment was really an exercise in futility and that such an act of indiscipline in a school or college cannot be accepted. It will thus be seen that the consistently this Court has taken a view that the requirement of minimum attendance by a student is a must and that relaxation in attendance can be allowed only to the extent of the exception stated in the relevant Rules and Regulations.

26. Reference may also be made to the decision in *A. P. Christian Medical Educational Society v. Government of A. P.*,<sup>1</sup> in which the question of permitting to students to appear for the examination of M.B.B.S. course was involved. It was submitted on their behalf that the interest of the students should not be sacrificed because of the conduct or fally of the Management and they should be permitted to appear in the University examination notwithstanding the circumstance that the permission and affiliation had not been granted to the Institution. It was further suggested that the Court should issue appropriate directions to the University to protect interest of the students. The Apex Court however, declined to accede to the request made on behalf of the students and observed :-

"Any direction of the nature sought by Shri Venu Gopal would be clear transgression of the provisions of the University Act and Regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and regulations made by the University itself. We cannot imagine anything more destructive of rule of law than a direction by the Court to disobey the laws."

27. Therefore, in the facts and circumstances of the case, I am of the opinion that the learned Judge of the Trial Court was not right in granting *ad interim* reliefs to the appellants. As pointed out above the appellant did not qualify themselves to appear for the examination. However, the crucial questions regarding the eligibility of the appellants to appear for the examination was not brought to the notice of the learned Judge. Therefore, the impugned order cannot be sustained as it is patently illegal. The appeal will have therefore to be allowed. The Trial Court granted two *ad interim* reliefs to the appellants. By virtue of the first *ad interim* reliefs, the appellants could appear for the examination. Therefore, no question of setting aside the grant of that *ad interim* relief now survives. The second *ad interim* relief granted to the appellant is a direction to respondent No. 10 society to declare the results of the appellants of the annual examination. Appeal can be allowed to the extent of grant of this second *ad interim* relief, since the appellants had not qualified themselves for appearing for the examination, there is no question of declaration of their results.

28. In the result, appeal is allowed. The impugned order dated 8.3.2002 passed by the Trial Court is set aside in so far as it relates to the grant of prayer clause (b) in the notice of motion *i.e.* direction to declare the results

1. (1986) 2 SCC 667 : AIR 1986 SC 1490 : 1986 (2) S.C.R. 749.

of the appellants of the annual examination. It is directed that the results of the appellants shall not be declared. In the circumstances of the case, parties to bear their respective costs of the appeal.

C.C. expedited.

Ordinary copy of the order duly authenticated by Shirastedar is allowed.

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

*Before Mr. Justice H. L. Gokhale and Mr. Justice S. J. Vazifdar*

**Letters Patent Appeal No. 280 of 2001 in Writ Petition No. 4631 of 2001 with Letters Patent Appeal No. 30 of 2002 in Writ Petition No. 4762 of 2001 and Letters Patent Appeal No. 42 of 2002 in Writ Petition No. 5007 of 2001, decided on 14.10.2002**

SHRI VISHWANATH BABURAO CHOKOTE, THE CHIEF PROMOTER, MAHATMA BASWESWAR SAHAKARI SAKHAR KARKHANA LTD. (PROPOSED)

v.

THE STATE OF MAHARASHTRA THROUGH THE SECRETARY, CO-OPERATION AND TEXTILE DEPARTMENT & ORS.

**[A] Maharashtra Co-operative Societies Act, 1960 - Secs. 4, 9(1) - Press Note No. 12 (1998 Series) dated 31.8.1998 of Government of India - Government of Maharashtra Co-operation and Textile Department, Resolution No. CSF 1799/6490/Case No. 145/138 dated 5th May, 1999 - Constitution of India, 1950 - Article 14 - Registration of Co-operative Sugar Factories - Criteria - Seniority in the matter of filing Industrial Entrepreneur Memorandum (I.E.M.) - Transfer of private sector - I.E.M. to a Co-operative Sector - Permissible - Seniority of the I.E.M. cannot be retrospective - It will be from the date of amendment of I.E.M. taking the factory from private to co-operative.**

**Held :** *As far as transfer of a private sector I.E.M. to a co-operative sector is concerned, one cannot have much grievance about that if the Central Government is permitting such transfers. The first objection of the Appellants on that ground therefore cannot stand. However, as far as the second issue of claiming the seniority based on the amendment to I.E.M. is concerned, it has to be looked at from a purposive point of view. If any such amendment is permitted to have a retrospective effect, such construction will permit some promoters of co-operatives to buy the I.E.M. of a private factory and to claim seniority over those who are organising farmer - members into a co-operative and spending time on that. A genuine co-operative effort for a sugar factory requires a large number of people coming together for such purpose. They have to be explained the proposal to bring them together. It requires a good deal of effort and time. The reasoning of the Commissioner of Sugar as also of the learned Single Judge, therefore, in that behalf are fallacious and will have to be interfered with. The learned Commissioner of Sugar has completely erred in laying emphasis on the fact that the serial*

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