PRINCIPAL, PATNA COLLEGE, PATNA, AND OTHERS

v.

KALYAN SRINIVAS RAMAN

September 24, 1965

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, M. HIDAYATULLAH, J. C. SHAH AND S. M. SIKRI, JJ.]

Patna University Act, 1951 (25 *of* 1951), *s.* 34(*b*)—*Regulations framed under—Regulation* 4 *requiring* 75% *attendance in lectures, tutorials and/or practicals in each subject—Percentage whether to be taken together in all these or separately.*

Certiorari—*High Court when should interfere with decision taken by educational authorities.*

The respondent who was a student in the college of which the first appellant was the Principal, was declared non-eligible to appear at the B.A. Part I examination of the Patna University because his attendance in Geography practicals was only 24% whereas the percentage required under Regulation 4 framed by the Academic Council of the University was 75%. He filed a writ petition under Art. 226 and obtained from the High Court interim orders directing the authorities to allow him to appear at the examination. On the merits the High Court held that under Regulation 4 the percentage of attendance in lectures tutorials and/or practicals in a particular subject had to be taken together and not separately and so taken the respondent's percentage in the subject of Geography as a whole was 66%. The shortage being less than 15% it was open to the Vice-Chancellor under Regulation 5 to condone it. The High Court therefore by a writ of *certiorari* quashed the order of the first appellant declaring the respondent non-eligible for appearing at the examination, and directed the authorities to refer the question of condonation of shortage in attendance to the Vice-Chancellor and if it was condoned to declare respondent's result. The appellants came to this Court against this order by special leave.

HELD : (i) The requirement of 75% attendance in lectures tutorials and practicals has to be read disjunctively and not by taking them all together. Otherwise it will be possible for a student in certain subjects to complete the percentage required by attending all the lectures and no tutorials at all. This could not be the intention in framing the Regulation and would not be in keeping with the methodology of modern education which lays great stress on tutorial and practical work. [980 G; 981 F]

(ii) It is true that the second clause of Regulation 4 requires that the percentage in question shall be calculated on the total number of lectures, tutorials and practicals delivered and provided during the session; but the provision is in the nature of a mere corollary to the main provision prescribed by Regulation 4, and if the requirement as to 75% attendance has been prescribed separately in relation to lectures, tutorials and/or practicals, the second clause must be read accordingly. Thus read it only means that when the percentage is determined with reference to lectures, tutorials and practicals what has to be taken into account is the total number of lectures delivered, or tutorials or practicals held during the session. [981 G, H]

A (iii) The petitioner filed his petition under Art. 226 only on the evening before the examination had to begin although he could have filed it earlier. In the circumstances it would have been better if the High Court had not passed interim orders. Even on the merits, where the question is one of interpreting a regulation framed by the Academic Council of a University the High Court should ordinarily be reluctant to issue a writ of *certiorari* where it is plain that a regulation is capable of two constructions and it would generally not be expedient to reverse a B decision of the educational authorities on the ground that the construction placed by the said authorities on the relevant regulations appears to the High Court less reasonable than the alternative construction which it is pleased to accept. [985 B-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 743 of 1965.

C Appeal by special leave from the judgment and order dated May 14, 1965 of the Patna High Court in Civil Writ Jurisdiction Case No. 345 of 1965.

C. K. Daphtary, Attorney-General, R. N. Sinha and *S. P. Varma,* for the appellants.

D *Basudev Prasad, K. Rajendra Chaudhri,* and *K. R. Chaudhuri,* for the respondent.

The Judgment of the Court was delivered by

Gajendragadkar, C.J. This appeal raises a short question E about the construction of Regulation 4 of the Regulations framed by the Academic Council of appellant No. 3, the Patna University, under s. 34(b) of the Patna University Act, 1951 (Bihar Act XXV of 1951). The respondent Kalyan Srinivas Raman was a student who appeared at and passed the test examination held by the Patna College for sending up students for the University F examination B.A. Part I. His name was shown in the list of candidates who were eligible to appear for the said University Examination and this list was published on March 26, 1965 by the college authorities. On March 29, 1965, however, a notice was put up on the notice-board by appellant No. 1, the Principal of the Patna College, indicating that the respondent was not G eligible to be sent up for the said University Examination, 1965 and that his roll number had been included in the list published earlier due to a clerical mistake. The respondent felt aggrieved by this notice and filed a writ petition in the Patna High Court on Sunday, the 18th April, 1965 and presented it to the learned Chief Justice of the High Court at his residence. By this writ H petition, the respondent prayed for a writ of *mandamus,* or for any appropriate order or direction for quashing and cancelling the notice issued by appellant No. 1 on the 29th March, 1965;

he further prayed for an appropriate order or direction to appellant No. 1; the Vice-Chancellor of the Patna University, appellant No. 2; and appellant No. 3 to permit him to appear at the said University Examination. A

The learned Chief Justice received the writ petition and directed that the same should be heard by a Bench of two Hon'ble Judges of the said High Court at night. Accordingly, the Division Bench heard the said writ petition at the residence of one of the two learned Judges and passed an interim order admitting the writ petition and directing that pending its hearing, the respondent should be permitted to appear at the said Examination, but that his result should not be published until disposal of his application. It appears that the writ petition itself had not been sworn to and no vakalatnama had been filed when it was presented to the learned Chief Justice and was subsequently admitted by the Division Bench. After passing the interim order, the Division Bench directed that the respondent could get the affidavit sworn and vakalatnama filed the next day. B C D

In obedience to the said interim order, appellant No. 1 forwarded the respondent's application to appellant No. 3, though he made it clear that the respondent had not attended adequate number of practical classes and his record of practical work was not satisfactory and as such, he did not fulfil the requirements of the relevant Regulations. As a consequence, the respondent was allowed to appear at the said Examination. E

The appellants then appeared before the High Court and resisted the respondent's claim. They urged that the relevant Regulations did not justify the respondent's contention that he was eligible to appear at the said Examination and they contended that the impugned notice issued by appellant No. 1 was fully justified. F

The learned Judges who heard the writ petition have, however, rejected the contentions raised by the appellants in regard to the construction of the relevant regulations and have held that under the said regulations, it was obligatory on appellant No. 2 to have considered the question whether the deficiency in the respondent's attendance in the practicals of Geography should be condoned or not. That is why the High Court has directed that a writ in the nature of *certiorari* should be issued to quash the impugned notice, and that a writ in the nature of *mandamus* should be issued to the appellants directing them to act in accordance with regulation 5 in the light of the construction placed G H

A by the High Court on the said regulation. The High Court has also ordered that if the shortage in the respondent's attendance was condoned by appellant No. 2, the respondent's result in the examination which he had taken under the interim order of the Court will be published; otherwise his appearance at the said examination will have to be ignored. It is against this order B that the appellants have come to this Court by special leave; and so, the principal point which arises for our decision in the present appeal is whether the High Court has properly construed Regulation 4.

The relevant facts are not in dispute. In Geography, the C respondent attended 73 out of 93 lectures, 15 out of 20 tutorials, and 6 out of 25 practicals. His percentage of attendance taken separately was 75, 75, and 24; but if the said percentage was taken together, it would come to 66. The respondent's case was that under Reg. 4, he is required to keep at least 75 per cent attendance at lectures, tutorials and practicals all taken together, and D that the requirement of 75 per cent attendance has not to be satisfied disjunctively by reference to lectures, tutorials and practicals. On the other hand, the appellants argued that the requirement of about 75% attendance has to be satisfied by a candidate in reference to lectures, tutorials and practicals taken separately, and not collectively; and unless that requirement is satisfied, the E student does not become eligible to appear for the examination. subject to this that the shortage in attendance may be condoned as provided by the relevant regulations and in that case, the student may be permitted to appear at the examination. It is common ground that if the interpretation for which the appellants contend is accepted, the notice issued by appellant No. 1 would F be valid; on the other hand, if the interpretation for which the respondent contends is upheld, the order passed by the High Court could not seriously be challenged, because on the construction suggested by the respondent and accepted by the High Court, the shortage in attendance, which is proved, could have been condoned by the Vice-Chancellor if he thought G it fair and reasonable to do so; and it is not disputed that the matter about condoning the shortage in attendance of the respondent was not referred to the Vice-Chancellor and he has not decided the question as to whether the said shortage should be condoned.

H Let us, therefore, proceed to construe Regulation 4. The Academic Council of appellant No. 3 is an authority whose powers and duties have been defined by s. 22 of the Patna University Act; these include the power of superintendence and control over

maintenance of standards of instruction and education. The said Council is authorised by s. 34 to make regulations about the conditions under which a student shall be admitted to the Degree or Diploma Course and to the examinations of the University and shall be eligible for Degrees and Diplomas. It is in pursuance of the powers thus conferred on the Academic Council that the relevant Regulations have been framed. These Regulations were brought into force on the 23rd January, 1961.

Regulation 1 deals with lectures, tutorial instruction and practical work. It provides that a college or a University Department or an Institute shall provide for the delivery of at least so many lectures and so many periods of tutorial instruction and practical work as may be fixed by the Academic Council from time to time for students who are admitted in that College or the University Department or the Institute. Proviso (1)(d) to the said Regulation lays down that in the Faculties of Arts, Science and Commerce, in any subject in which practical examination has been prescribed, there shall be at least one practical class of two periods' duration in the Pre-University class. For the B.A. and B.Sc. examinations in which practical examination is prescribed, there shall be in each year two practical classes per week each of two periods' duration. Proviso (4) to Reg. 1 requires that except as provided in (1)(a) & (d) of this Regulation, in all Faculties in subjects in which practical work is prescribed, every student shall be required to do practical work prescribed by the Academic Council, regularly and under proper supervision and the number of lectures and hours of practical work for each subject shall be fixed by the Academic Council after considering the recommendations of the Faculty concerned. This Regulation clearly brings out the fact that the Academic Council attaches considerable importance to the practical work and the tutorials along with the lectures, and provides that the student has to attend not only the lectures delivered, but has to do the practical work and to attend tutorials.

Regulation No. 4 which falls to be construed in the present appeal reads thus :—

> "Every candidate, presented by a College or a University Department at any University examination shall be required to complete the regular course of study, prescribed by these regulations, in each subject which he offers for the examination. No student shall be considered to have completed the regular course of study in any subject unless he has attended at least

A seventy-five per cent of the lectures, tutorials and/or practicals, as the case may be, delivered or provided in that subject, in one or more colleges or University Departments admitted in that subject, and has devoted due attention to that part of the course which consists of tutorial instruction or practical work.

B The percentage, specified above, shall be calculated on the total number of lectures, tutorials and practicals delivered or provided during the session".

Regulation No. 5 deals with the question of condoning shortage in attendance; it reads thus :—

C "In case of serious illness or other unavoidable circumstances, a shortage of attendance at lectures, tutorials and practicals to the extent of fifteen per cent may be condoned.

D Shortages up to five per cent shall be considered and may, in suitable circumstances, be condoned by the Principal of a College or the Head of a University Department or the Director of the Institute or the Head of the Institution concerned.

E Shortages exceeding five per cent but not exceeding fifteen per cent shall be considered and may, in suitable circumstances, be condoned by the Vice-Chancellor".

The last regulation to which reference must be made is regulation No. 7; it reads thus :

F "Every candidate for each University Examination shall produce a certificate from the Principal of the College, the head of the University Department or the Institute concerned of (a) good conduct, (b) completion of the regular course of study, (c) having fulfilled the prescribed requirements regarding attendance at

G lectures, tutorials and practicals, and (d) satisfactory record of tutorial and/or practical work".

In dealing with Reg. 4, it is necessary to bear in mind two broad considerations. The first consideration is that the modern methodology of education in all civilised countries attaches

H considerable importance to the tutorials and the practical work done by the student in addition to attending lectures. The tendency in modern times is to bring the students into direct per-

sonal contact with the tutors so as to enable the tutors to guide and coach the students individually as far as may be possible. For that purpose, small groups of students are formed who are placed under different tutors for different subjects. The importance of practicals has also been well-recognised and education does no longer depend merely upon lectures as it used to do at one time in our country. The second consideration which may not be irrelevant is that ever since the present regulations were brought into force in 1961, appellant No. 3 and colleges within its jurisdiction appear to have consistently interpreted Reg. 4 in the manner suggested by appellant No. 3. It is of course true that the two considerations to which we have just referred cannot materially govern the construction of the regulation; that must inevitably depend upon the words used by the regulation itself; but in interpreting the words, these two considerations may not be treated as irrelevant.

The appellants contend that the High Court was in error in holding that the requirement of about 75% attendance had to be considered collectively by taking the lectures, tutorials and/or practicals together. Their case is that the said requirement applies to lectures, tutorials and/or practicals separately. It is plain that the words "and/or" have been used in the regulation, because in some subjects both tutorials and practicals are prescribed; whereas in some others either tutorials or practicals are prescribed; and so, the effect of the words "and/or" is that where tutorials and practicals are both prescribed, the requirement of 75% attendance has to be satisfied in reference to each one of them; where, however, either tutorials or practicals are prescribed, the said requirement has to be satisfied by reference to either the tutorials or the practicals whichever may have been prescribed in a given subject. The High Court has, no doubt, made an emphatic finding that the relevant words used in this regulation admit of only one construction, and that is that the requirement of 75% attendance has to be judged by reference to lectures, tutorials and/or practicals all taken together. We are unable to agree. It seems to us that in the context, it is more reasonable to hold that the said requirement must be read disjunctively; and so, it must be satisfied by the student by reference to lectures, tutorials and/or practicals as the case may be.

In construing Reg. 4, we must have regard to the fact that the last part of the Regulation requires that the student must have devoted due attention to that part of the course which consists of tutorial instruction or practical work; and this requirement neces-

A sarily postulates that the student has to do some practical work and has to receive tutorial instruction.

The requirement of Reg. 7 also emphasises the fact that every student who can be said to have completed the regular course of study as prescribed by Reg. 4, must satisfy the requirement as B to attendance at lectures, tutorials and practicals and must claim satisfactory record of tutorial and/or practical work. Reg. 7(d) which we have already cited, emphasizes, as does the last portion of Reg. 4, that every student has to do tutorials and/or practical work, as the case may be. In other words, where tutorials and practicals are both prescribed, the student must not only do tuto- C rials and practicals, but must have satisfactory record in that behalf. Where tutorials or practicals are prescribed, a similar test has to be satisfied.

In view of this position, it seems somewhat difficult to accept the correctness of the conclusion reached by the High Court that D the requirement of about 75% attendance must be taken collectively. It is clear that if the said requirement is read collectively, a student may be entitled to claim to have completed the regular course of study without attending any single practical or tutorial, as the case may be, if he has attended all the lectures in a given subject. Take, for instance, the case of English, History, or E Political Science in the group for which the respondent was studying. It is not disputed by Mr. Basudev Prasad that in these subjects theoretically, it would be open to the student to attend the maximum number of lectures and not to do any tutorial at all. In other words, the construction placed by the High Court upon Reg. 4 leads to this unreasonable consequence that attendance F at the lectures alone may, in a given case, entitle a student to appear for the examination, though he may have done no tutorial at all. In our opinion, this could not have been the intention of the regulation. It is true that the second clause of Reg. 4 requires that the percentage in question shall be calculated on the total number of lectures, tutorials and practicals delivered or provided G during the session; but this provision is in the nature of a mere corollary to the main provision prescribed by regulation 4, and if the requirement as to 75% attendance has been prescribed separately in relation to lectures, tutorials and/or practicals, the second clause in question must be read accordingly. Thus read, it only means that when the percentage is determined in reference H to lectures, tutorials and practicals, what has to be taken into account is the total number of lectures delivered, or tutorials and practicals held during the session in question. We have carefully

considered the reasons given by the High Court in support of its conclusion, but we are not satisfied that those reasons justify the construction which the High Court has placed on the material words used in Reg. 4.

The High Court appears to have taken the view that its conclusion about the effect of Reg. 4 is supported by the old regulation which was superseded in 1961. The old regulation was 1(7); it read thus :—

> "1. A College or a University Department admitted in any University examination shall provide for the delivery of at least so many lectures and for at least so many periods of tutorial instruction and practical work as may be fixed by the Academic Council from time to time for students who take up that subject, provided that—
>
> .. ..
>
> .. ..
>
> (7) in order to qualify to appear at any of the University examinations in any Faculty a candidate shall be required—
>
> (i) to attend at least 75 per cent of the lectures delivered in each subject offered by him for such University examination,
>
> (ii) to attend in each subject at least 75 per cent of the tutorials classes, of the Moot Courts and of the practical classes, as the case may be;
>
> (iii) in the case of I.A., I.Sc., I.Com., B.A., B.Sc., and B.Com. examinations, to secure marks not less than 25 per cent out of the total marks of 3 periodical examinations in each subject within two years, subject to the condition that a candidate should secure 20 per cent of the marks allotted for the practical examination.
>
> .. ..

Regulation 5 of the said old Regulations reads thus :—

> "(1) No student shall be considered to have completed the regular course of study in any subject for the I.A., I.Sc., I.Com., B.A., B.Sc., and B.Com. exa-

A minations unless he has satisfied the conditions laid down in clause 7 of regulation 1 of this Chapter and for examinations other than these, unless he has attended at least 75 per cent of the lectures, tutorials and practicals, as the case may be, delivered in that subject, in one or more Colleges or University Depart-
B ments admitted in that subject, and has devoted due attention to that part of the course which consists of tutorial instruction or practical work;

(2) The percentage, specified in clause (1), shall be calculated on the total number of lectures delivered
C during the prescribed session".

It would be noticed that under Reg. 1(7) read with Reg. 5 of the old Regulations, the position was that with regard to the examinations specified in the first part of Reg. 5(1), the requirement as to 75% attendance was expressly specified separately in
D reference to the lectures, tutorial classes, Moot Courts, and the practical classes, as the case may be. Sub-clauses (i) & (ii) of cl. (7) of Reg. 1 are quite clear and unambiguous in that behalf. With regard to the other examinations falling under the latter part of Reg. 5(1), however, the position was that Reg. 1(7) was not made applicable to them just as it was made applicable to
E the examinations mentioned in the first part; and so, Reg. 5(1) compendiously prescribes the requirement as to 75% by putting the lectures, tutorials and practicals all together. The context shows that the requirement as to 75% attendance by reference to the lectures, tutorials and practicals which is prescribed for this latter category of examinations, was not of a different character
F at all. This requirement had to be satisfied by reference to each one of them, *viz.*, the lectures, tutorials and practicals as the case may be. Instead of repeating sub-clauses (i) & (ii) of Reg. 1(7), Reg. 5(1) merely for the sake of convenience, has compressed the said two clauses into one clause; and so, we think the High Court was in error in assuming that under the old regu-
G lations with regard to this latter class of examinations, the requirement as to 75% attendance was in any way different from the same requirement in regard to the examinations mentioned in the first part of the said regulation.

But assuming for the sake of argument that the said requirement was different in regard to the latter category of examina-
H tions, it is not easy to see how that can support the conclusion that the present Reg. 4 has assimilated all the examinations to the said latter class of examinations in Reg. 5(1) by prescribing that

75% attendance need not be in relation to the lectures, tutorials and practicals separately, but should be in relation to all the three taken collectively. In our opinion, having regard to the context, it would be more reasonable to hold that the present regulation prescribes the requirement as to 75% attendance in lectures, tutorials and/or practicals separately in relation to all the examinations.

Mr. Basudev Prasad has sought to rely on regulation 9 contained in Chapter VI of the Examination Regulations which deal with B.A. Part I Examination of the Three-Year Degree Course in Arts. The said regulation provides that in order to pass the Degree Part I examination, a candidate must obtain not less than 30 per cent of the total marks in each subject and 33 per cent in the aggregate. He argues that the provision of Reg. 9 would support the respondent's case that it could not have been the intention of Regulation 4 to require that the regular course of study contemplated by it postulates 75 per cent attendance at lectures, tutorials and/or practicals taken severally and not conjointly. We are unable to see how the provision made by Reg. 9 dealing with the examinations can be material in construing the words used in Reg. 4. Therefore, we do not think Mr. Basudev Prasad is right in contending that Reg. 9 of the Examination Regulations supports the respondent's case.

It appears that before the writ petition was filed by the respondent in the present case, his father Mr. C. K. Raman, I.C.S., wrote a long letter on April 11, 1965 to appellant No. 1 inviting him to reconsider his decision in the case of his son and to allow his son to take the University examination in question. In this long communication which is argumentative, the respondent's father has adopted a tone which indicates that he attempted to throw his weight about in persuading appellant No. 1 to cancel the impugned notice. Appellant No. 1 promptly replied to the said communication and informed the respondent's father that he had referred the case of the respondent to the Vice-Chancellor with a statement of his attendance together with his letter for such action as he thought best under the circumstances. Appellant No. 1 added that the Vice-Chancellor had decided that it was not possible to accept the request made by the respondent's father as the University regulations did not permit the same.

It would be recalled that the impugned notice was published on March 29, 1965, and the letter written by the respondent's father on the 11th April was replied by appellant No. 1 on the

A 12th April. Even so, the respondent did not file his writ petition until Sunday, the 18th April; and as we have already mentioned, the writ petition was presented at the bungalow of the Chief Justice and was heard for admission and interim orders on Sunday night. It is true that if justice demands that the Court should receive a petition even on Sunday, the Court should and ought B to accept the petition; but having regard to the fact that the petitioner postponed the filing of the application until Sunday (18-4-1965) night, and other relevant circumstances to which we have already adverted, we think it would have been better if the High Court had not passed an interim order on the said night as it has done. It is hardly necessary to emphasise that in dealing C with matters relating to orders passed by authorities of educational institutions under Art. 226 of the Constitution, the High Court should normally be very slow to pass *ex parte* interim orders, because matters falling within the jurisdiction of the educational authorities should normally be left to their decision, and the High Court should interfere with them only when it thinks it must do D so in the interests of justice. Even on the merits, we think we ought to point out that where the question involved is one of interpreting a regulation framed by the Academic Council of a University, the High Court should ordinarily be reluctant to issue a writ of *certiorari* where it is plain that the regulation in question E is capable of two constructions, and it would generally not be expedient for the High Court to reverse a decision of the educational authorities on the ground that the construction placed by the said authorities on the relevant regulation appears to the High Court less reasonable than the alternative construction which it is pleased to accept. The limits of the High Court's jurisdiction F to issue a writ of *certiorari* are well-recognised and it is, on the whole, desirable that the requirements prescribed by judicial decisions in the exercise of writ jurisdiction in dealing with such matters should be carefully borne in mind.

In the result, the appeal is allowed, the order passed by the High Court is set aside and the writ petition filed by the respon- G dent is dismissed. Under the unusual circumstances of this case, we direct that the respondent should pay the costs of the appellants throughout.

Appeal allowed.