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CASE COMMENT: A JUDGMENT IS ONLY AS GOOD AS THE ARGUMENTS ADVANCED: A CASE COMMENT ON: ANKITA MEENA V. UNIVERSITY OF DELHI WP (C) 5194/2018

by

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ABSTRACT

Attendance must not be used as a whip. In the present case, The Delhi University deliberates on the right of a student to claim relaxation on grounds of pregnancy. On a reading of the relevant rules, The Delhi High Court decides that such a relaxation cannot be given. The Supreme Court subsequently dismissed the Special Leave petition upholding the verdict of the Delhi High Court. The author contemplates how this decision has failed to give true meaning to the intention of a beneficial legislation by reading it strictly.

Keywords: Beneficial legislation, Attendance, Bar Council, Maternity Benefit, Bar Council of India

The Delhi High has recently passed an order[1], disallowing a pregnant woman to appear for her LLB examinations due to a shortfall in her attendance. Regrettably, the Supreme Court has upheld this decision[2].

In fact, various High Courts across the country have held that attendance is a prerequisite for allowing a candidate to appear for his/her examinations, as it *prima facie*, establishes the sincerity of the student in the subject of study. This reveals a disturbing trend that bases the quality of a student on his/her physical presence in class.

The petitioner, Ankita Meena, a second year LLB student of the Faculty of Law, University of Delhi, was disallowed to attempt her Semester IV examinations on account of not having completed the minimum attendance requirement. The minimum attendance requirement of the Faculty of Law, University of Delhi, is 70% for every semester.[3] The Petitioner had obtained an 86% attendance in semester III, but due to pregnancy related issues, she was able to attend only 49.19% of the remaining lectures. Since her attendance fell below the requisite 70% attendance, she was put on a list of defaulters and as a result of which, was subsequently denied a hall-ticket for the Semester IV exams.

The two coextensive rules that are at play here are:

1. Rule 2(9) (d) of the Ordinance of Delhi University, which, *inter alia*, states that married women who are granted maternity leave may avail of the benefit of reduced number of total lectures for calculation of the attendance.
2. Rule 12 of the Rules of Legal Education, Bar Council of India, which, *inter alia*, states that a minimum of 70% of the classes in every given subject have to be attended by a student in order to appear for his/her exams. Additionally, a

limited discretion has been given to the Head of the Institution to allow students who have covered 65% attendance to attempt the examination.

The Delhi High Court in the Petitioner's case, *inter alia*, observed that the Bar Council Rule[4] clearly states that the mandatory attendance of every student is at least 70% of total number classes. The abovementioned Rule 2(9)(d) on the other hand, entitles a married woman to seek benefit of relaxation in attendance. When the aforesaid provisions are looked at together, and the standard rule of interpretation is applied, then it follows logically,

that the Petitioner would be denied permission to appear for her examinations. The Delhi High Court, held that since the Bar Council Rules are a specific legislation and the University Rules, a general legislation, the standard rule that a special law prevails over the general law[5] would apply, making the 70% attendance criteria mandatory. Technically, it may be pointed out that the Petitioner would not even be entitled to the discretion of relaxation since her attendance was below the 65% required in order to enable the Head of the Institution to exercise discretion. The Delhi High Court further held that the Petitioner was not entitled to any relaxation in attendance and as a result of which, she was barred from appearing for the Semester IV examinations. The judgment by the Delhi High Court was subsequently confirmed by the Supreme Court of India[6].

This judgment, in the opinion of this author, is assailable on the following fronts.

- The Beneficial Construction Rule: According to this rule, the court, while harmonizing two different laws, ought to focus to reduce the hardship of the parties by adopting the law which benefits the parties more in comparison than the other. It is the duty of the court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning than a restrictive one which would negate the object of the rule.[7] On a plain reading, Rule 2(9) (d) of Ordinance VII of the Delhi University, gives the benefit of attendance requirement for married women. Since there was no dispute that the Petitioner was pregnant during the course of the semester in question, the grounds on which the High Court had given a restrictive meaning to the provisions, as it did, seem baseless. A key principle employed by the High Court in giving its decision was the standard rule of interpretation which, states that specific legislation overrides general legislation. This, however, defeats the beneficial aspect of the intended legislation. It's been previously held by the Supreme Court[8], that when two views are possible on the applicability of a legislation, then the view that furthers legislative intent must be preferred. Socio-economic legislation must not be interpreted narrowly. Evidently, any act that gives relaxation on the basis of gender and maternity in the Petitioner's case, must be treated as a beneficial statute. The ultimate purpose of remedial statutes is to advance human rights and relationships.[9] It is thus, proper to assume that legislations which are intended to advance laws that further the

idea of justice and proper conduct can be categorized as beneficial legislations.

Rule 2(9)(d), was purported to be a beneficial piece of legislation, as it

provides a maternity benefit to students in the form of concessions and hence must be given the widest amplitude of interpretation. In fact, the Supreme Court has held[10] that beneficial pieces of legislation intended to further social justice to women workers would squarely fall within the purview of Article 42 of the Constitution of India. The High Court goes on to state that the beneficent rule of construction would enable the woman worker not only to subsist but also to make up for her dissipated energy, nurse her child, preserve her efficiency as a worker. This statement may be categorically applied to the present scenario, when the woman is a student as well.

- Discrimination based on status of marriage: The High Court failed to make an important observation, namely that, the Rule 2(9)(d), which, allows the benefit of relaxation on grounds of maternity only to married women. In a day and age, where live-in relationships have been granted the status of marriage by the courts and children born from live-in relationships have been legally recognized by the Supreme Court more than decade ago[11], the reasoning adopted by Delhi High Court in its decision the Petitioner's case seems archaic and prejudicial.
- Attendance cannot be used as a whip to ensure quality: The author of the Delhi High Court's decision in the Petitioner's case makes a statement that *"the quality of training which a candidate gets during the time he undergoes the course is directly proportional to the number of lectures that he attends. The failure of the candidate to attend the requisite number of lectures as stipulated by the relevant rules can legitimately disentitle him to claim eligibility for appearing in the examination"*[12].

  This seems to be a sweeping statement, as there is no established correlation between physical attendance by students and their attentiveness in such class. In this author's opinion, this can be borne out by the testimony of any lecturer/professor in any field. Several factors can influence the level of attendance of a student, including university culture, workload, teaching methods, and the teacher himself. Class attendance can vary considerably across countries, universities, and courses. For example, Marburger studied economics students in the United States, finding that their average lecture

attendance rate was 81.5%[13]. By contrast, attendance rates in universities in Finland have been found to be as low as 40-50%[14] In fact, there are several papers that demonstrate that grades actually fall when attendance is made compulsory.[15] Another research conducted in the European University stated that policies designed to ensure student attendance may have neutral or even undesirable effects on student learning[16]. If attendance is correlated with ability and motivation, it is unlikely that instructors can improve student achievement by changing the course structure or by establishing mandatory attendance policies. Per contra, under this assumption, unmotivated students forced to attend lectures are unlikely to pay attention or participate and therefore gain minimally from such policies. In the light of such research, it is imperative that universities change their approach towards attendance, in general.

- Law a qualified professional course: Law is still classified as a sub-set under Humanities in many universities. Additionally, in order to be qualified as an Assistant Professor in Law, students have to pass a National Eligibility Test exam, which is conducted under the aegis of CBSE/UGC NET. Traditional professional

courses such as Medical Sciences and Engineering have a separate admission process. On the other hand, recognized professional courses, like engineering and medicinal sciences like MBBS, do not have such a qualifying examination. Moreover, certain Universities have categorically stated that LLB is not a professional degree[17]. Additionally, the examination pattern of law courses including the type of courses as well as period of instruction does not follow the course of a professional degree. The mere presence of a governing authority like the Bar Council of India should not regard law as a professional course. Arguably, Section 2(36) the Income Tax Act[18] defines a professional to include a vocation and thereby, lawyers are expected to pay a professional tax. However, this does not automatically conclude that the study of law is itself a technical course. Under the tax statute, there are various other professionals that are required to professional tax,

but do not belong to the category of a professional course, such as advertising or interior decoration. There are various unresolved lacunae in procedural and substantive laws, regarding classification of law as a professional course and conclusions must not be drawn to the same effect.

- Not treating prior performance as relevant: The Petitioner was decidedly sincere since her attendance in the third semester was 86%. Moreover, even in the present semester, she had an attendance of 49.19%. The court ought to have taken past performance and character of the Petitioner as a factor in passing the Order. Evidently, this was a student who intended to pursue the degree in earnest as, despite having delivered a child, she managed to cover nearly 50% of the lectures conducted. Courts are bound to take circumstances and prior conduct into account, while gauging intent and authenticity of the party, and in the present case it has failed to do so.
- Arguments based on Article 15 and 21 not raised: The repository of beneficial legislation as well as common law flows from Articles 15[19] and 21[20] of the Constitution. Article 15(3) has admittedly, been a game-changer for equal rights for women in the country. Human rights activists all over the country have used these set of Fundamental Rights to garner equal rights for women. Various judgments and subsequently many legislations have been passed which have, *inter alia*, created special benefits and concessions for women. All such rights are based on universal principles of equality, liberty and dignity. Regrettably, in the present case, neither the advocate nor the judge, both women, felt it necessary to take such views into consideration. So much so, that even the Supreme Court which confirmed the decision of the Delhi High Court, failed to make any such observation to that effect.
- To deny a woman the permission to attend her examinations, despite her pregnancy and demonstrated sincerity, is an unfortunate viewpoint adopted by the Delhi High Court and the Supreme Court.

CONCLUDING REMARKS

Earl Warren, former Chief Justice at the Supreme Court of United States, had famously quoted that it was the spirit and not the form of law that kept justice alive.

Access to higher education must be given the widest possible amplitude. The present case, unfortunately fails to set a precedent to that effect. The

decision suffers from the circumstance that the lawyer for the Petitioner was unable to raise key issues of constitutional status before the courts and regrettably, the courts did not consider the same, *suo moto*, either.

The High Court failed to draw conclusions to the effect of a beneficial legislation. The law is a dead letter without the courts to expound and define its true meaning and operation. Arguably, the purpose of the attendance rule is to ensure a basic discipline among the students as well as to better the academic performance of the students. There are several studies as well which show a correlation between attendance and better grades. However, attendance can neither be the sole repository for judging academic excellence nor can it be used as a whip to ensure physical presence in a classroom. The attendance rule must be read to allow students with genuine problems to cope with the same. In the absence of such a system, there is a violation of not only human rights as well as principles of natural justice.

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[1] *Ankita Meena* v. *University of Delhi*, 2018 SCC OnLine Del 9049.

[2] *Ankita Meena* v. *University of Delhi*, SLP (C) No. 14660 of 2018, decided on 23-5-2018 (SC).

[3] R. 12 of the Rules of Legal Education of the Bar Council of India, http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartIV.pdf.

[4] R. 12 of the Rules of Legal Education of the Bar Council of India.

[5] Amita Dhanda, *Interpretation of Statutes*, 729-730 (LexisNexis, 12th edn., 2017).

[6] *Ibid.* at 2.

[7] *Madan Singh Shekhawat* v. *Union of India*, (1999) 6 SCC 459.

[8] *Transport Corpn. of India* v. *ESI Corpn.*, (2000) 1 SCC 332.

[9] Amita Dhanda, *Interpretation of Statutes*, 797-801 (LexisNexis, 12th edn., 2017).

[10] *B. Shah* v. *Labour Court*, (1977) 4 SCC 384 : AIR 1978 SC 12.

[11] *Tulsa* v. *Durghatiya*, (2008) 4 SCC 520 : AIR 2008 SC 1193.

[12] Para 13, *Ankita Meena* v. *University of Delhi*, 2018 SCC OnLine Del 9049.

[13] Marburger, D.R., "Absenteeism and Undergraduate Exam Performance", 322, JEE, 99-109 (2001).

[14] Anna Lukkarinen et al., "Relationship between Class Attendance and Student Performance", 228 Procedia — Social and Behavioral Sciences 341-347 (2016), http://www.headconf.org/wp-content/uploads/pdfs/2709.pdf.

[15] Matthijs Oosterveen et al., "The Price of Forced Attendance" 15-4-2017 http://www.headconf.org/wp-content/uploads/pdfs/2709.pdf, http://conference.iza.org/conference_files/SUM_2017/oosterveen_m23625.pdf.

[16] Vincenzo Andrietti et al., "Does Class Attendance Affect Academic Performance? Evidence from 'D'Annunzio' University" 30-1-2012, http://www.siecon.org/online/wp-content/uploads/2012/08/Andrietti-DAddazio.pdf.

[17] Shaswati Das, "DU Does Not Recognise LLB as a Professional Course", HT, September 2011, https://www.hindustantimes.com/delhi-news/du-does-not-recognise-llb-as-a-professional-course/story-c912ah0NGUH1KoIfQg7i6J.html.

[18] Income Tax Act, 2018, S. 2(36) (4 of 2018) (India).

[19] Indian Const. Art. 15(3).

[20] Indian Const. Art. 21.