

DELHI HIGH COURT

Kumkum

Vs.

Principal, Jesus and Mary College, (Delhi)

Civil Writ No. 398 of 1975

(V. S. Deshpande and Yogeshwar Dayal, JJ.)

19.8.1975

JUDGMENT

V.S. Deshpande, J.

1. Is a writ petition maintainable against the Principal of a private college recognized by the University of Delhi in accordance with the Delhi University Act, 1922 and the statutes and Ordinances framed there-under? Is the Principal of such a college found to grant an opportunity to a student to show cause why she should not be prevented from appearing at her examination on the ground of shortage of the required attendance before debarring her from such examination on such a ground? In exercising a statutory discretion to exclude periods of serious illness etc. in calculating the attendance of a student, is the principal justified in being guided by her own administrative policy? These questions arise in this and the connected writ petitions (Civil Writs 411 465 to 470, 478 and 568 of 1975) in the following context.

2. The University of Delhi is established as a teaching and affiliating University by the Delhi University Act, 1922. Section 2 (a) of the Act defines a "college" to mean an institution maintained to admitted to its privileges by the University, Jesus and Mary College is a private college admitted to the privileges of the University. Section 2 (d) of the Act defines "Principal" to mean the Head of a College. Under Section 4 (2) (a) the University has the power to hold examinations and to grant degrees to persons who have pursued a course of study in the University or in any college. Under Sections 30 and 31 of the Act, the Executive Council of the University may make Ordinances subject to the provisions of the Act and the Statutes to provide, for *inter alia*, conduct of examinations and maintenance of discipline among students. Ordinance VII -

Conditions for Admission to Examinations-provides that:

"Clause 1 (1). Subject as hereinafter provided, no member of the University shall be admitted to any examination for a degree of the University other than a post-graduate degree unless he has pursued a regular course of study as hereinafter prescribed for not less than three academic years."

"Clause 2 (1). No person shall be deemed to have pursued a regular course of study unless the Principal of his College..... is satisfied that the required conditions in respect of his instruction have been fulfilled."

"Clause 2 (2). The required conditions shall not be deemed to have been satisfied ...unless the candidate has attended not less than two-thirds of lectures, practical's and preceptorials/tutorials separately.....in each academic year."

There are two exceptions to the above rule which are relevant here. Clause 2 (9) (a) provides that in calculating the total number of lectures delivered in the college for a particular course of study in an academic year, the number of lectures in each subject delivered during the period when a student was absent for the purpose of participating in extra-curricular activities at the instance of his college shall not be taken into account. Clause 2 (9) (c) provides that "the Principal of a College may consider exceptionally hard cases of students who had fallen seriously ill or had met with an accident during the year disabling them from attending classes for a certain period, with a view to determine whether the lectures etc. delivered during the said period or a part thereof could be excluded for purposes of calculation of attendance of the year and decide each case on its own merits." Clause 3 of Appendix II to Ordinance VII provides that a student who has attended not less than 40 per cent. of the lectures and tutorials separately in an academic year may be allowed to appear at the annual examination of the first or the second years of the graduate course at the discretion of the Principal but he shall be required to make up the deficiency in the lectures and tutorials during the second and/or the third years. A candidate who has put in attendance of not less than 40 per cent. of the lectures and tutorials separately in the third year shall be allowed to appear at the third year examination if by combining the attendance of the third year with the attendance of first and second years, he makes up two-thirds of attendance in all the subjects taken together separately in lectures and tutorials held during the three years. Ordinance X-A provides that on a motion made by or with the

authority of the Vice-Chancellor, the Academic Council may, in exceptional cases, grant exemption to candidates from operation of any of the Ordinances governing, *inter alia*, attendance at lectures of the examination of the candidates.

3. Thirty students of the Jesus and Mary College were prevented by the Principal from appearing at their examinations at the end of the academic year 1974-75 on the ground of shortage of attendance. They have filed this and the connected writ petitions against their Principal and the Delhi University for the setting aside of the detention orders alleging that they were not given the benefit of the provisions of clauses 2 (9) (a) and 2 (9) (c) of Ordinance VII. They also contend that before the Principal decided to detain them, an opportunity should have been given to them to show that they could claim the benefit of these provisions with the result that they would not be found to be short in attendance. They contend that such an opportunity was not given to them and this has vitiated the orders of detention. They also point out that the Principal has wrongly adopted an administrative practice of not considering medical certificates regarding illness of the students unless these medical certificates are submitted by the students contemporaneously with the illness along with application for leave. They contend that it is the illness and not the medical certificates which are only evidentiary that is the reason for which the benefit of clause 2 (9) (c) of Ordinance VII is to be given. They go further and say that proof of illness even without medical certificate should be considered by the Principal before deciding whether the benefit of clause 2 (9) (c) is to be given or not. The refusal of the Principal to exercise the discretion under clause 2 (9) (C) was vitiated by these irrelevant considerations being taken into account. The student petitioners prayed that the Principal be directed to permit them to for their examinations.

4. During the pendency of the writ petitions, the Court ordered that the petitioners may be allowed to appear for their examinations provided that the publication of their results would be subject to the decision of the Court in respect of each petition.

5. The writ petitions are opposed by the Principal as also by the Delhi University. The Principal has replied to the petitioners' contentions as follows:-

(1) The procedure for giving the students the benefit of participation in

extracurricular activities under clause 2 (9) (a) was that the teacher in-charge was to report the absence of the student due to such participation to the lecturers concerned. Thereupon a note was made in the register by the lecturers that the student was granted leave or was considered on duty.

(2) The Principal denied that she was bound to give a hearing to the students before passing the detention orders. The shortage of attendance of the students was brought to their notice from time to time and particularly at the beginning of the third year. As the petitioners knew and were expected to know of the lectures and tutorials attended by them, the question of giving them a hearing by the Principal before declaring them short of attendance did not arise.

(3) The administrative practice adopted by the Principal that medical certificates should be submitted contemporaneously with the illness is sound. If the student is diligent, the production of such a medical certificate immediately after the illness should be always possible. Certificates produced late would not inspire confidence. The Principal, therefore, decided not to accept certificates which were produced after the end of the academic session.

(4) The Principal has actually given a hearing to those students who came to her to explain the causes of the shortage of their attendance. The decision is ultimately of the Principal and it has been given on good grounds and cannot be reviewed by this Court.

(5) No writ petition under Article 226 of the Constitution can be maintained against the Principal of a private college as such a Principal is not a public authority.

6. Let us now consider seriatim the three questions which arise for decision as stated at the beginning of the judgment.

IS THE PRINCIPAL OF A PRIVATE COLLEGE A PUBLIC AUTHORITY?

7. The basic difference between a suit and a writ petition is that the right of the plaintiff is decided in the former while a relief based on the established right of the petitioner is given in the latter. A suit lies against a private person the relief against whom is obtained under the rules of private law. Under Article 226 of the institution, a writ petition lies against "any person or authority, including in appropriate cases any Government". The meaning of the word "person" is coloured by the context. Firstly, it appears in the Constitution which is the basis

of public law. Secondly, it is associated with the words "authority" and "Government". Thirdly, proof of private rights such as those based on contract or tort cannot be given by way of a writ petition which is confined to rights arising out of the public law and the public law remedies specified in Articles 32 and 226.

8. The remedy by way of mandamus is available against "any person, corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty" (1 Halsbury's Laws of England 111, paragraph 89, 4th Edition (Administrative Law) corresponding to 11 HLE 84, paragraph 159, 3rd Edition, which has been frequently referred to with approval by the Supreme Court).

9. In *Praga Tools Corporation v. C.V. Imanuel*¹, the respondents had filed a writ Petition against the appellant claiming a writ of order in the nature of mandamus against the appellant. The High Court held that the writ petition was not maintainable and the Supreme Court upheld the decision in paragraph 6 of the report in the following words:-

"The writ obviously was claimed against the company and not against the conciliation officer in respect of any public or statutory duty imposed on him by the Act...it is well understood that a mandamus lies to secure the "performance of a public or statutory duty."

The Court then stated the law in the words from Halsbury quoted above and observed:-

"It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorizing their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities."

10. On the one hand, the use of the word "person" in Halsbury quoted above and in Article 226 of the Constitution does not mean a private person in his private capacity. For, a person is subject to mandamus only when he is required

to do a public duty appertaining to his office. If the duty is of a public nature and if it appertains to an office, the office would also be of a public nature and its holder would be acting in a public capacity. The Context of public law and the association of authority and Government with the word "person" suggests that a person must be acting in a public capacity as a holder of a public office and in the performance of a public duty before he can become the subject of a public law remedy like mandamus. Certiorari is also issued in relation to persons, bodies or tribunals having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially (*R. v. Electricity Commrs.*,² per Atkin L. J. and H.M. Seervai, Constitutional Law of India, page 586, para 16.20). Here also a person or a body of persons would be exercising a power of a public nature before it becomes subject to *certiorari*. As observed by Professor S. A. de Smith, commenting on the classic statement of law in *R. v. Electricity Commrs.*, "for this purpose, 'legal authority' generally means statutory authority. Neither *certiorari* nor prohibition will issue to a private arbitral body which derives its jurisdiction from contract, or to a voluntary association or domestic tribunal which derives its jurisdiction solely from the consent of its members". Professor Smith then goes on to say:-

"It would seem to follow that *certiorari* will issue to other non-statutory bodies (e.g. those established by royal charter) discharging comparable functions of a public nature. The proceedings of university disciplinary authorities not resting on a statutory basis are a marginal case, for their responsibilities are not so manifestly of a public nature: but in one recent case (*R. v. Aston University Senate, ex parte Roffey*),³ it was assumed that they were reviewable by *certiorari*."

(Judicial Review of Administrative Action, 3rd Edition, page 341).

11. On the other hand, the use of the word "person" in the above statements of law in relation to mandamus and *certiorari* would show that the person or authority against whom these remedies are given need not be invariably created by a statute. Only a legal person can be created by a statute. But these writs can be issued against a natural person provided that he is exercising a public or a statutory power or doing a public or a statutory duty. The following observation of Professor S. A. de Smith makes this clear:-

"To be enforceable by mandamus a public duty does not necessarily have to be

one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract....It is thought that if a domestic tribunal wrongfully declines jurisdiction in a particular case, mandamus will issue to it provided that its jurisdiction is regulated by statute, but not if its jurisdiction is based merely on contractual or other non-statutory foundations". (Judicial Review of Administrative Action, 3rd Edition, page 482).

It would appear, therefore, that a person though not created by a statute, would be exercising a statutory power or discharging a statutory duty if such a power is conferred or such a duty is imposed by a statute. The action of a person is statutory though the person is not created by a state. It is in the light of this legal position that the question whether a writ of mandamus or *certiorari* would lie against the Principal has to be considered.

12. A private college may be formed and its principal may be appointed without attracting the applicability of public law. But when a college is admitted to the privileges of the University, it ceases to be an entirely private institution. It becomes the subject of statutory provisions and is regulated by it. The Academic Council is an authority of the University created by a statute. The power now conferred on the Principals of affiliated and constituent colleges by Ordinance VII was formerly exercised by the Academic Council. As pointed out in *Amir Jamia v. Desharath Raj*⁴ education is essentially a State function. The very essence of a University is its universality and its public nature. The Delhi University is a teaching and an affiliating University. The colleges, whether Private or Government, maintained by the University are, therefore, parts of the University. The Ordinances of the University are "law" as they are enacted in exercise of the power conferred by Sections 30 and 31 of the Delhi University Act (*Sukhdev Singh v. Bhagat Ram*,⁵ and *Sirsi Municipality v. Cecelia Kom Francis Tellis*,).⁶ The power exercised or duty performed under Ordinance VII is, therefore, a statutory power and a statutory duty. Acting under Ordinance VII, therefore, the Principal is acting in a public capacity. Though the office of the Principal can exist outside a statute, it becomes a statutory office when the college is admitted to the privileges of the University. This is why such a college and its principal have been defined in clauses (a) and (d) of Section 2 of the Delhi University Act. Even if the office of the Principal is not regarded statutory in the sense that it is created by a statute, it is a public office

because the powers and duties of the Principal relate to a large section of the public, namely, the students of the college, There is no private or contractual relationship between the students and the Principal. The power of the Principal to enforce the requirement of two-thirds of attendance is given to her by Ordinance VII, that is, by a statutory provision. Similarly, the power to deny permission to students to appear at the examination on the ground of shortage of attendance is also a statutory power. For the same reason, the discretion of the Principal to give benefit to the students under clause 2 (9) (c) of Ordinance VII is also a statutory discretion. The exercise of these powers and the performance of these duties is, therefore, subject too mandamus and *certiorari* under Article 226 of the Constitution.

13. In *Vidya Ram Misra v. Managing Committee, Shri Jai Narain College*,⁷ the dismissal by the High Court of a writ petition filed by a lecturer against his college was upheld, *inter alia*, by the following observation in paragraph 13 of the report:-

"Besides, in order that the third exception to the general rule that no writ will lie to quash an order terminating a contract of service, albeit illegally, as stated in *S.R. Tewari v. District Board, Agra*⁸ might apply, it is necessary that the order must be the order of a statutory body acting in breach of a mandatory obligation imposed by a statute, The college, or the Managing Committee in question, is not a statutory body and so the argument of Mr. Setalvad that the case in hand will fall under the third exception cannot be accepted. The contention of counsel that this court has sub-silently sanctioned the issue of a writ under Article 226 to quash an order terminating services of a teacher passed by a college similarly situated in *Prabhakar Ramakrishna Jodh v. A.L. Pande*⁹ and, therefore, the fact that the college or the Managing Committee was not a statutory body was no hindrance to the High Court issuing the writ prayed for by the appellant has no merit as this Court expressly stated in the judgment that no such contention was raised in the High Court and so it cannot be allowed to be raised in this Court."

14. Two points are made in the above observation, namely, (1) the college or the Managing Committee is not a statutory body, and (2) the order terminating the contract of service was not an order of statutory body acting in breach of mandatory obligation imposed by a statute. There need be no dispute regarding the first observation. As we have stated above, a private college and its Managing Committee can exist outside a statute. They are not created by a

statute and in that sense they are not statutory bodies. But if statutory powers and duties are conferred on them, then they will be acting under a statute. But the decision of the Supreme Court in Vidya Ram Misra's case (AIR 1972 SC 1450) was that the termination of the service of the lecturer Misra was not made in breach of a mandatory obligation imposed by a statute. In this respect, it is to be distinguished from the present case where the only authority or discretion possessed by the Principal is under Ordinance and, therefore, of a statutory nature. There is no question of it being of a contractual nature. The main thrust of the decision of the Supreme Court in Vidya Ram Misra's case was that the writ petition could not be maintained for the breach of a service contract. It is to be noted that even a suit for specific performance of a service contract could not be maintained. The rights of the petitioners in the present case are not based on contracts but on statutory provisions. In Vidya Ram Misra's case, the college was said to be not a statutory authority. In the present case, the Principal is a statutory authority in the sense that hers is a public office recognised and governed by the Delhi University Act, 1922 and Ordinance VII confers statutory powers on the holder of that office. The ratio of the decision in Vidya Ram Misra's case is limited by the particular facts of that case which are quite different from the facts of the present case. Private colleges admitted to the privileges of a statutory University were held to be amenable to the writ jurisdiction of the High Court in the following two recent Full Bench decisions after distinguishing the Supreme Court decision in Vidya Ram Misra's case, namely, (1) *Vaish College (Society) Shamli v. Sri Lakshmi Narain*,¹⁰ and (2) *Harijander Singh v. Selection Committee, Kakatiya Medical College*,¹¹ Therefore, in these respects, the present case is more analogous to *Prabhakar Ramakrishna Jodh v. A.L. Pande*, (1965) 2 SCR 713 in which the termination of the services of a lecturer by his college was held to have been in breach of the College Code which was "law" being Ordinances framed under the University of Saugar Act. The observation of the Supreme Court in Vidya Ram Misra's case has to be taken as a whole. With respect, it would not exclude the jurisdiction of this Court in the present case in dealing with the power and/or the discretion of the Principal governed by Ordinance VII. If the Principal is shown to have acted contrary to the provisions of Ordinance VII, this Court would have power under Article 226 to deal with the action of the Principal because it would be action of a person holding the public office and acting in public capacity. A public office need not be created by a statute. Even if it is

governed and regulated by a statute, it would be regarded as public.

"A public authority is a body, not necessarily a county council, municipal corporation or other local authority, which has public or statutory duties to perform, and which performs those duties and carries out its transactions for the benefit of the public and not for private profit.....A natural or individual person might, when acting in execution of a public duty, be a public authority..... In general, a public officer may be said to be one who discharges any duty in the discharge of which the public are interested." (30, Halsbury's Laws of England, 682 and 684, paragraphs 1317 and 1319, 3rd Edition).

When a public officer is paid out of a fund provided by public, he is more clearly regarded as the holder of a public office. But it is the nature of the office and not the fund from which its salary comes which is the more important consideration. Even a director of a private limited company was held by the House of Lords to occupy a public office in *McMillan v. Guest*,¹²

15. On the first question, therefore, we hold that the Principal of Jesus and Mary College is a person or authority (i.e., a public authority) within the meaning of Article 226 of the Constitution and the writ petitions are maintainable in respect of the exercise of the statutory power and discretion and the performance of statutory duties by her.

NOTICE AND HEARING UNDER CL. 2 (9) (c) OF ORDINANCE VII:-

16. The rule established by *Ridge v. Baldwin*.¹³ and applied in several decisions by the Supreme Court in India is that an administrative authority exercising a statutory power or performing statutory duties so as to act adversely to the rights and interests of a person must hear such person before acting against him. This rule applies whether the nature of the action is quasi-judicial or executive. It is the rights and the nature of the power or duties which would determine whether the administrative authority has to hear a person. If the administrative action is not going to have "civil consequences" or the administrative authority is to be guided by policy and not objective considerations, then a hearing may not 'be given (*Union of India v. col. J.N. Sinha*),¹⁴ Did the petitioners in the present case have a right to appear at the examination or to claim the benefit of clause 2 (9) (c) of Ordinance VII? It was contended for the Principal that the petitioners have no right to appear for the examination due to the shortage in their attendance and, therefore, they have no right to the benefit of clause 2 (9) (a)

and equally they have no right to the benefit of clause 2 (9) (c) under which the Principal has got unfettered discretion to consider exceptional hard cases or not. She cannot be compelled to consider such cases. It is true that primarily clause 2 (9) (c) confers a power on the Principal. But firstly the power is to be exercised for the benefit of the students. Secondly, the Principal has also to decide each case on its own merits, that is objectively. These two considerations imply that the Principal has a duty to exercise the power. She cannot refuse to exercise the power at her sweet will. The law was long ago settled by the following dictum of Earl Cairns L. C. In *Julius v. Bishop of Oxford*,¹⁵

"here a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise that power ought to be exercised, and the Court will require it to be exercised."

This has been followed in numerous decisions since then. Clause 2 (9) (c) is made expressly for the benefit of students. They have, therefore, a right to seek its benefit by fulfilling its terms. Such a right cannot be denied to them merely because the Principal is not inclined to exercise her power. On the other hand, the Principal is under a duty to do so.

17. A general statement is made by the Principal in her affidavit in Civil Writ 398 of 1975 that every student who came to her for a hearing was heard. But this statement is coupled with the assertion that medical certificates produced at the end of the year could not be considered. The Principal has also said regarding late certificates as to why they could not be accepted. We would impress upon the Principal that she should keep the two aspects separate from each other, namely, (1) the necessity of giving a hearing to every affected student whether the medical certificates produced by her were early or late, whether apparently trust-worthy or otherwise, and (2) the ultimate decision of the Principal on the merits of each case based on a finding whether the explanation given by the student including the medical certificate produced early or late is believable or not. Natural justice requires that a premature decision should not be made on the merits of the case before hearing the student. Observations regarding unreliability of the explanations given by the students and the medical certificates produced by them in the counter-affidavits filed by the Principal are unfortunate as likely to bias the Principal's mind and

also premature inasmuch as hearing has not been given to any petitioner at the end of the year. The first stage is to give the hearing and it is the second stage to make observation about the merits of the case of the students.

18. During the pendency of the writ petitions, five students made representations to the Principal and/or the Vice-Chancellor without prejudice. The Principal has replied to the students. Since these representations were made, without prejudice, they cannot be taken into account. It cannot be said that these students need not now be given a hearing. They will, therefore, stand along with the other students and will fall into one of the three categories into which all thirty petitioners will be divided by us later. We hold that the Principal is bound to hear these students before preventing them from appearing at their examinations on the ground of shortage of attendance.

FETTERING STATUTORY DISCRETION BY ADMINISTRATIVE POLICY.

19. It is true that in acting under clause 2 (9) (c) the Principal exercises a discretion in assessing the nature of the illness and in deciding the merits of the case. But the discretion has to be exercised according to the terms of clause 2 (9) (c). The Principal has to consider cases illness, accident etc. "during the year" with a view to determine whether lectures and tutorials delivered "during the said period or a part thereof" could be excluded for the purposes of calculation of the attendance of the year. Such a calculation can be made only at the end the year. It is at that time that the Principal has to consider periods of absence during the year and whether such periods of absence should be excluded for calculating the total attendance of a student for the whole year. It is then that the Principal has to decide each case on its own merits. Such a decision cannot made before the end of the year nor can several such decisions be made each time there is an absence in a particular period during the year. It is only when the year is completed that the total number of tutorials and the percentage attended by the student can be calculated. It would follow, therefore, that the hearing to student has to be given at the end of the year and before taking the decision whether the student has or has not fulfilled the requisite percentage so as to be able to appear for the examination.

20. The administrative instruction regarding the leave of absence in the College prospectus is intended only to ensure that a student does not remain absent without the permission of the Principal. The object is to maintain discipline. At

that time no decision is taken whether the period of absence of the student has to be excluded in the calculation of his attendance. That has to be done only at the end of the year. Such leave of absence could be granted for much less serious reasons than are required for exemption of periods of absence for calculation of attendance under clause 2 (9) (c). The medical certificate to be submitted for obtaining leave of absence may not thus be of such serious illness as had disabled the student from attending the College. In the nature of things, the Principal cannot be as strict in granting leave as she would be in granting exemption under clause 2 (9) (c). The Principal has, however, made it a rule of practice that only those medical certificates which are submitted contemporaneously in obtaining leave would be taken into consideration in granting exemption at the end of the year under clause 2 (9) (c). It was contended for the petitioners that only such guidelines for the exercise of her discretion under clause 2 (9) (c) can be laid down by the Principal which are in tune with clause 2 (9) (c) and which do not conflict with it. The law has been ably summarized recently as follows:-

"Fettering discretion by own rules. A public body endowed with a statutory discretion may "legitimately adopt general rules or principles of policy to guide itself as to the manner of exercising its own discretion in individual cases, provided that such rules or principles are legally relevant to the exercise of its powers, consistent with the purpose of the enabling legislation and not arbitrary or capricious. Nevertheless, it must not disable itself from exercising a genuine discretion in a particular case directly involving individual interests; hence it must be prepared to consider making an exception to the general rule if the circumstance of the case warrants special treatment. These propositions, evolved mainly in the context of licensing and other regulatory powers, have been applied to other situations, for example the award of discretionary investment grants and the allocation of pupils to different classes of schools. The amplitude of a discretionary power may, however, be so wide that the competent authority may be impliedly entitled to adopt a fixed rule never to exercise its discretion in favor of a particular class of person; and such a power may be expressly conferred by statute." (1. Halsbury's Laws of England, 35, Paragraph 33, 4th Edition).

21. The practice followed by the Principal is subject to the following objections. Firstly, under clause 2 (9) (c), it is the illness which is a ground for exemption

and not the medical certificate. The insistence of medical certificate as the only proof of illness cannot be said to be in tune with clause 2 (9) (c). It is conceivable that no doctor was called or was available during the illness. Consideration of the question whether exemption should be granted to a student at the end of the year cannot be ruled out merely because a medical certificate was not produced during the year at the time of the illness. Secondly, the extent of the discretionary power of the Principal is not so wide under clause 2 (9) (c) as to enable the Principal to adopt a fixed policy that no evidence other than medical certificate would be considered and that too only if the medical certificate is filed contemporaneously. Thirdly, the necessity to decide each case on its merits indicates that no inflexible rule of practice can be followed by the Principal. She is bound to consider exceptional cases on their peculiar facts. For these reasons, we hold that the Principal was not justified in fettering her discretion under clause 2 (9) (c) by following an administrative practice contrary to the terms of clause 2 (9) (c). She is, therefore, bound to consider all cases in which exemption is claimed under clause 2 (9) (c) at the end of the year and decide each case on its own merits in the light of such evidence as may be adduced by the students. Such evidence as may include medical certificates which are produced for the first time at the end of the year. A fair construction of clause 2 (9) (c) of Ordinance VII would show that the Principal has to decide on the merits of each case objectively whether the benefit of exemption there under should be given to a particular student. The hearing has to be given by the Principal to the students before deciding whether, after granting the exemption, if any, the student is short of attendance.

22. In some English Universities, the disciplinary jurisdiction being vested exclusively in the Visitor is regarded as an internal matter of the University in which the Courts will not interfere. This doctrine has not been imparted into India. The Supreme Court has only observed, in some decisions such as, *Board of H. S. and Intermediate Education v. Bagleshwar Prasad*,¹⁶ that the exercise of the discretion by the educational authorities would generally be respected by the Courts who would be slow to interfere with their decision. But even in England, violation of rules of natural justice by the University authorities would lead to judicial review of their action by the Courts (S. A. de Smith *Judicial Review of Administrative Action*, page 200, Footnote 44 and 45, 3rd Edition). In the *Board of High School and Intermediate Education v. Chittra Srivastava*,¹⁷ also the Court granted an opportunity to be heard to a student even though

such opportunity was not likely to be of much use. The Court did not feel inhibited by the fact that the appellant was an educational authority.

23. "It is the duty of persons upon whom statutory powers are conferred to keep strictly within those powers" (30, Halsbury's Laws of England, 686, paragraph 1324, 3rd Edition). The remedy available to an aggrieved person against the wrongful exercise of a statutory power is two-fold. If the person exercising a statutory power is not a public authority, the remedy against him may be a special remedy provided by the statute or a general remedy such as injunction of damages under the rules of private law. If, on the other hand, such a person acts as a public authority in exercise of a statutory power or in the performance of a statutory or public duty, then the public law remedies such as the issue of a writ under Article 226 would be available against him. The action of the Principal under Ordinance VII in detaining the petitioners and in not given hearing before deciding that they are not entitled to exemption under clause 2 (9) (c) is liable to be remedied by an order under Article 226 because the Principal acts in exercise of a statutory power in her public capacity.

24. As for the benefit under clause 2 (9) (a) of Ordinance VII, the Principal has filed an affidavit that such benefit was given whenever participation in extracurricular activities covered by clause 2 (9) (a) was reported to the lecturer concerned by the teacher in-charge. There is no definite averment by any of the petitioners that on a particular day she was participating in such activity at the instance of the College and that the benefit of such participation for that particular day was not given under clause 2 (9) (a). On the contrary, the Principal has sworn an affidavit that such benefit has been given. If there is any dispute between the parties then it is a disputed question of fact. It cannot be decided in the present case. The Principal is, however, free to hear any petitioner and give her the benefit of clause 2 (9) (a) also.

25. The action of the Principal in detaining certain petitioners on the ground of shortage of attendance is liable to be set aside in respect of two kinds of petitioners. Firstly, those petitioners who sought such hearing but were denied the same on the ground that medical certificates had not been filed contemporaneously and who were not allowed to show cause why they should not be detained and the merits of those cases were not, therefore, considered would have to be given a hearing. Secondly, those petitioners who did not seek the opportunity to be heard before the Principal decided their cases under clause

2 (9) (c) would also be entitled to hearing if they have made definite averments in pleading that they have some cause to show why exemption should be granted to them under clause 2 (9) (c). There is a third category of petitioners who would not be entitled to any relief. They are those who did not seek the hearing before the order was passed by the Principal and who have not made any definite averment in the writ petitions that they have such cause to show as would be covered by clause 2 (9) (c) as to why they should not be detained. We shall now examine the cases of each of the petitioners to decide in which of the three categories they fall.

[Paras 26 to 58 which deal with the individual cases of the petitioners in all the writ petitions are not printed as not being material for the purposes of this report,-Ed.]

Orders accordingly.

Cases Referred.

1. AIR 1969 SC 1306,
2. 1924-1 KB 171 at p. 250.
3. 1969-2 QD 538
4. , ILR (1969) Delhi 202,
5. 1975-1 SCC 421 = (AIR 1975 SC 1331)
6. 1973-1 SCC 409 = (AIR 1973 SC 855)
7. (1972) 1 SCC 623 : (AIR 1972 SC 1450),
8. (1964) 3 SCR 55 = (AIR 1964 SC 1680),
9. (1965) 2 SCR 713,
10. AIR 1974 Allahabad 1 (FB)
11. AIR 1975 Andhra Pradesh 35 (FB).
12. (1942) AC 561.
13. (1964) AC 40,

14. AIR 1971 SC 40

15. (1880) 5 AC 214:-

16. (1963) 3 SCR 767 = (AIR 1966 SC 875)

17. AIR 1970 SC 1039,