

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Jay Sengupta

**WPA 16324 of 2024
Rhine Ghosh
Vs
St. Xavier's University and others.**

For the petitioner : Mr. Nilotpall Chatterjee
Mr. Satyaki Banerjee
.....Advocates

**For the respondent
nos. 1 to 6** : Mr. Partha Sarathi Sengupta, Id. Sr. Adv..
Dr. R. N. Jhunjhunwala
Mr. Ramesh Kumar Patodia
Ms. Megha Agarwal
Mr. Mohit Gupta
Mr. Milind Mohul Ghosh
.....Advocates

Heard lastly on : 07.07.2026

Judgment on : 29.09.2026

Jay Sengupta, J:

1. This is an application praying, inter alia, for direction upon the respondent University not to withhold the candidate/the petitioner from moving to the next semester and from taking all examinations on the ground of alleged lack of attendance. Several other similar matters were taken up for hearing together, but one after the other. Common points were canvassed. Therefore, this Court would be taking into consideration all the contentions raised by the concerned parties while deciding this petition.

2. Learned counsel appearing on behalf of the petitioner has submitted and has relied on the written notes as follows. The writ petitioner was pursuing her 6 semester B.COM LLB Hons course from the St. Xavier's University; ii) The petitioner's father had died in the year 2023, she had to undertake loan from SBI to pursue her studies (pg 23 of WP); iii) Petitioner suffered chicken pox and on 06.02.24 was advised 2 week of isolation by the treating doctor (Pg 5 para 6 of WP) (medical certificate Pg 26 of WP) such serious illness has contributed to absence, that apart the petitioner suffers from multiple cyst in both her ovaries (Lab report Pg 33 of WP) and owing to such serious gynaecological problem she had missed a number of classes in a fragmented manner (para 7 pg 6 of WP); iv) The University authorities had never mandated strict compliance of the minimum attendance criteria in the previous sessions and assured the petitioner that the necessary condonation will be done before the commencement of the examination.; v) The 6th semester examination were to commence from 15.05.2024 and the petitioner

did not receive any formal communication allowing condonation on 09.05.2024 the petitioner had written to Dean Law enclosing the medical certificate requesting condonation of her absence (Pg 27 of WP); vi) On 10.05.2024 and 13.05.2024 mother of the petitioner had further requested the dean law for allowing the petitioner to participate in the 6th sem exams. (Pg 28 & 29 of WP); vii) The University did not publish any debarment list nor was any communication made to the petitioner regarding rejection of her prayer and on and from 15.05.2024 examination of 6 Semester commenced and petitioner was not allowed to participate therein; viii) The University had all along been liberal and never insisted upon strict compliance with the minimum prescribed attendance, no word of caution, no extra classes, no declaration of the total number of classes during the present semester, unless the total number of classes are declared, a students cannot ascertain his actual status of attendance before the end semester. University Regulations :- 1. Clause 3.4.2 A student who has between 60% (65% for B.A.-LLB & B.COM-LLB) and 74% attendance in a semester will have to seek approval from the Dean of the concerned faculty/Vice-Chancellor on grounds of illness or involvement in extra-curricular activities approved by the University; a) In case of illness, leave application must reach the office of the Dean of Faculty within three days of the student's absence. A medical certificate is also to be submitted within 15 days of joining. Mere submission of leave application in itself will not ensure condonation; b) In case of extra-curricular activities, a student must obtain prior written confirmation of his/her participation from the concerned authorities: Head of

Department/Profs.-in-Charge of University Societies / Sports Officer/Programme Coordinator of Social Work, which will be countersigned by the Dean of the concerned faculty. When calculating the attendance percentage of the students representing the University in extra-curricular activities in Inter-University competitions, due consideration will be given to the days when they so represented the University. Condonation in such cases must be in explicit written form, authorized by the Dean of the concerned faculty; c) For a student, absence from the classes for the aforementioned reasons may be condoned up to 15% (10% for B.A.-LLB & B.COM-LLB) of the total classes delivered. However, in all such cases, lower limit for condonation will remain as 60% (65% for B.A.-LLB & B.COM-LLB). A student who is condoned will have to pay a condonation fee within the notified period of time."

2. Clause 3.4.3 "A student will be debarred from appearing for the semester examination if i) he/she has less than the required attendance without condonation." Thus the prescription in terms of this clause is first condonation is to be done to arrive at the average attendance, if even after condonation if the attendance is below the required percentage the student will be debarred;

3. Clause 3.6.1 - A student must have at least 75% aggregate attendance in a semester. Condonation may be granted (refer section 3.4.2) in exceptional cases;

4. Clause 3.6.2 If a student does not fulfil the attendance requirement, as mentioned in Section 3.4.3, he/she will be debarred from appearing for the semester examinations. Thus, in terms of 3.4.3 first condonation is to be done to arrive at the aggregate attendance and then if the student doesn't fulfil the required attendance

then the student can be debarred; 5. Clause 4.8 Arrear Papers 4.8.1 An arrear paper is one in which a student fails to secure the minimum pass marks. 4.8.2 Arrear paper may arise either through failure or absence this will be indicated in the semester mark sheet. A student will be permitted to appear for an arrear paper in the next appropriate semester. A copy of the relevant rules are annexed herewith marked with letter R1. Submissions of the Petitioner :- 6. Consistent stand of the University that the students are well aware of their attendance as the same is available at the student's portal in the form of Student's Attendance view, (pg 30 of WP) the foot note of the same reads as "Aggregate Attendance is calculated after the adjustment of classes for sports, events & off campus Placement." in other words it can be said is what is reflected in the attendance view is the attendance after condonation. Thus, it is apparent that the Aggregate attendance is arrived at after adjustments/condonation. Sport, events & off campus placement is mentioned in clause 3.4.2" (b)", while clause 3.4.2 "(a)" provides grounds for condonation for illness, the rules of the University doesn't permit any distinction between the two; 7. The University has allowed every student who has secured 65% of aggregate attendance in terms of the Students attendance view, the touchstone was 65% and not 75%; a) University has specifically submitted that the students were aware of their attendance status from the attendance view as the attendance view was live i.e., after adjustment/condonation. Thus all students who had 65% of attendance and allowed actually had below 65% of attendance before adjustment/condonation but condonation was allowed to them, this vitiates

the stand of the University that below 65% attendance is not condonable. It is submitted that the University had failed in implementation of its own Regulation as no list prior to condonation and after condonation was prepared at the end of the semester before the examination and unless the condonation is done at the end of the semester i.e., just before the examination the implementation of rule i.e., no condonation below 65% was not possible, University's stand that the condonation was live/spontaneous thus throughout the semester condonation was made whenever the students have applied throughout the semester, thus it can be safely concluded that if someone's aggregate attendance was 65% at the end of the semester as per Attendance view it will include numerous condoned classes, thus students with below 65% was actually allowed condonation in violation of clause 3.4.2 c). Unless the condonation was done/calculated at the end of the semester it's implementation of clause 3.4.2 c) remains a fallacy as it is impossible to foresee which student will fall short of attendance at the end of the semester;

b) Clause 3.4.3" A student will be debarred from appearing for the semester examination if i) he/she has less than the required attendance without condonation. Thus, the prescription in terms of this clause is first condonation is to be done to arrive at the aggregate attendance, if even after condonation if the attendance is below the required percentage the student will be debarred. The foot note of attendance view fortifies such submission that first condonation and then evaluation of the percentage of attendance; c) For all students who had secured attendance between 65 to 74% attendance before the examination are allowed to participate in the examination by

paying a condonation fee, the University is not insisting for adherence to clause 3.4.2 i.e., leave application & medical certificate must reach the office of the dean of faculty within 3 and 15 days respectively. However in case of the petitioner the condonation is not allowed allegedly on the pretext of the non submission of medical certificate within time specified in 3.4.2 and the same amounts to violation of Article 14 of the Constitution; d) The stand of the University that below 65% the attendance is not condonable is not contrary to record in case of Bhavini Sinha a 6th semester student with 55.76% attendance the reasoned order dated 14/09/2024 reveals that 15 classes were adjusted in other words condoned for participation in XUCUS, this is a glaring example that students below 65% were allowed condonation, the said reasoned order was passed by the Vice Chancellor in terms of the report submitted by a 3 member committee. A copy of the reasoned order is marked as R2. In case of another semester 6 student, Himadri Poddar the attendance view (at page 32 of writ petition No WPA No 17553 of 2024) reveals that she has attended 173 out of 287 delivered classes) average attendance should be 60.27% however the attendance view reflects 61.57% thus 3.7 classes have been added to arrive at the aggregate attendance though the University in the affidavit in opposition had contended that she was not entitled to condonation as the leave application was not submitted within the prescribed time, it is not the stand of the University in the opposition that such condonation was granted for participation in extra-curricular activities neither had Himadri Poddar claimed her participation in any extra-curricular activities far less condonation on such ground the

reason of condonation of 3.7 classes remains unexplained and illusive. Thus, there is no sanctity to the procedure of arriving at the aggregate attendance. A copy of attendance view of Himadri Poddar is annexed as R3; e) Paragraph 10 pg 11 of the affidavit in opposition (5th line of para 10 of AO) the University percentage of attendance of 4 out of 24 students are although less than the required 65% (after condonation of their period of absence) but more than the percentage of attendance of the petitioner, goes to show that others were allowed condonation but in petitioner's case the same was not allowed on the pretext of below 65%; f) Everyone between 65 to 74% attendance is allowed with a mere payment of condonation fees without even a medical certificate; g) The University cannot act arbitrarily and make a discrimination in adherence to clause 3.4.2 a) in case of students below 65% and not insisting on the same in students who had secured attendance between 65 to 74% attendance; h) Regulation 3.4.2.c) For a student, absence from the classes for the aforementioned reasons may be condoned up to 15% (10% for B.A.-LLB & B.COM-LLB) of the total classes delivered, it is submitted that students cannot evaluate the status of their attendance as the total number classes to be delivered were never disclosed by the University before the examination. In the present case the attendance view shows that the petitioner had attended 183 classes out of 287 (total delivered classes); a) Advised 2 weeks of isolation by the treating doctor on and from 06.02.2024 (pg26 of writ); b) The University in its affidavit in opposition (Pg 9 para 7) had admitted she had missed 16 classes during said period, none of the missed classes during this period were condoned as the medical

certificate was not submitted within the timeframe ie in terms Clause 3.4.2 a); c) Though a prayer for condonation was made to the university on 09/05/2024, 10/05/2024 and on 13/05/2024 (pg 27,28,29 of writ)the same was not considered on the ground that it is not within the prescribed time in terms of clause 3,4.2.a) however at the end of the semester, whosoever had 65% attendance are allowed participate in the examination without insisting on compliance of clause 3,4.2.a); d) Petitioner suffered chicken pox and was advised 2 week of isolation by the treating doctor on 06.02.2024 (pg 26 of writ petition), University had had admitted that the petitioner had missed 16 number of classes during such period, but none of the said classes were condoned Petitioner also suffers from severe gynaecological problem and had missed a number of classes in a fragmented manner(para 7 pg 6 wp), doctor's prescription dt 30.05.2024 and pathological reports dt 30.06.2024 would reflect the petitioner suffers from "Multiple small cyst in both her ovaries". Total number of classes attended as per attendance view is 183 and the aggregate attendance is 63.76 total classes delivered were 287 condoning 3.5 classes (183 +3.5 186.5) would have made her aggregate attendance to 65% and like every other student between 65 to 74% of attendance petitioner would have participated in her 6h semester examination. Admittedly 16 classes were missed during the period when. The petitioner was advised isolation by the treating doctor but not a single class was condoned. Due to severe gynaecological problems 2 weeks of classes were missed (pg 8 para13 of writ) (pathological report pg 33 of writ) not a single class was condoned. The stand of the University that

attendance below 65% is not condonable is misconceived as in terms of 3.4.3 first condonation is to be done to arrive at the aggregate attendance and if after condonation the aggregate attendance is less than 65% the same is not condonable. Unless the calculation for condonation is made at the end of the semester the implementation of the regulation that below 65% is not condonable remains illusory and cannot be achieved, unless the list of condonation is prepared before the semester examination. The foot note of attendance view as well as the records of other students including Bhavini Sinha more particularly the specific stand of the University that condonation was spontaneous goes to show that the actual condonation were not made at the end of the semester. Clause 3.6.1 "A student must have at least 75% of aggregate attendance in a semester. Condonation may be granted (refer to Section 3.6.1) in exceptional cases. It is unfortunate that the University did not even consider the prayer for condonation. It was obligatory for the University to consider if the case of the petitioner falls under exceptional cases in terms of clause 3.6.1. A conjoint reading of clause 3.4.2c), clause 3.4.3 and clause 3.6.1 and morefully the conduct of University in condoning attendance of other students including Bhavini Sinha and Himadri Poddar (as described hereinabove written in clause 7.d) would show that it was permissible to condone the absence of the petitioner and the University had condoned classes even below 65%. The petitioner had duly attended the classes of semester 7,8 and 9 has secured the required attendance also duly participated in the 78 and 9% semester examination, however the University has not regularized the admission to 7,8 and 9 semester neither evaluated

the answer scripts of 7,8 and 9 semester. The University has never adhered to the its regulation regarding the required attendance (clause 3.4.2) on previous semester/semesters in the present semester no word of caution to the students, unless the total number of classes are declared, a students cannot ascertain his actual status of attendance before the end semester, the University could have taken extra classes in the interest of the students but it didn't. Judgements relied upon by the petitioner :- a) Sri Bamang Nabam vs North Eastern Hill University, wherein the Hon'ble Division Bench of High Court at Meghalaya has held that "rule could cover a situation where in normal circumstances a student is absent and his attendance falls below 70% .But this rule certainly does not cover extraordinary circumstances like illness or bereavement in a student's family natural disaster, riot strike, political upheavals other act of God and so on which prevents a student or students from attending classes. In such case, this rule would not apply. The Administrators of the college are to consider each case on its own merit." The said judgement is squarely applicable in the instant case as held by the Hon'ble Division Bench rule could cover a normal circumstance but not illness which the petitioner suffered. A copy of said Judgement is annexed herewith marked with letter Annexure R4; b) WPA 14385 of 2024 Aditya Chatterjee Vs St Xavier's University and others wherein the student had 63.22% attendance and the Hon'ble Single Judge was pleased to allow the writ petition. The University might submit that they have preferred an appeal against order dated 20.05.2024, fact remains in spite of no stay order rather no interference as on date the University has evaluated the answer script of

the subsequent semesters of the said students and the petitioner herein is discriminated. A copy of said Judgement is annexed herewith marked with letter Annexure RS. Direction for production of Records by the University in the instant proceedings:- The petitioner in the instant writ petition had alleged nepotism (para 29 pg 13), on 11.07.2024 in WPA 17553 of 2024 Himadri Poddar the Hon'ble Court was pleased to observe "One needs to know whether such condonation as claimed had actually been done in favour of anyone and if so, what was the basis for the same. The University needs to produce the records to show whether they have condoned such shortage in attendance in other cases. Let the University file an opposition within four weeks from this date. Reply, if any, be filed within two weeks therefrom. List this matter for hearing after six weeks. On the next date, the University shall produce the records of students' attendance view for the last semester in respect of all its students of LLB." On 03.01.2025, 14.01.2025 and 20.01.2025 the court has insisted on production of records in terms of previous direction dated 11.07.2024. On 28.01.2026 the Hon'ble Court was further pleased to direct production of records regarding condonation of absence from classes for whatever reasons in relation to the petitioner's sixth semester for the year 2023-2024. On 13.02.2026, further direction for production of records regarding condonation of absence of all students from classes for the course and batch for whatever reasons. On 20.02.2026 the University failed to provide record in relation to all students to whom condonation was granted on medical grounds, allegedly 18 students were granted condonation on medical ground but records of only 5 students could

not be traced out. The record of condonation granted on participation in extra-curricular activities does not confirm to compliance of clause 3.4.2 b), no written confirmation from the head/professor in charge/sports officer/programme coordinator could be placed before the Court, no explicit written form authorized by the Dean of faculty could be placed before the Court. Submission in this regard: When the petitioners have specifically averted discrimination and or nepotism, especially when the Hon'ble Court is adjudicating the lis, it was the obligation of the University to preserve and produce the record, failure of the University to do so confirms to the averments/allegations being true. Petitioner prays for :- a) Treating the examination of semester 6 as Arrear papers and in terms of clause 4.8. and 4.8.2 participation in the all the papers of 6th semester as Arrear papers of semester 6 at the next appropriate semester and take the 6th semester examination at the end of the course i.e., after 10th semester if required the petitioner can undergo remedial classes; b) Evaluate the answer scripts of 7th, 8th and 9th semesters and declare the results wherein the petitioner has duly participated;

3. Learned senior counsel appearing on behalf of the respondents has submitted and has relied on the written notes as follows. Before advertng to the facts of the case and the written notes of the petitioner, the respondents humbly point out that: - i. The Rules and Regulations of the Respondent University (hereinafter referred to as the University Regulations which are statutory in nature and in fact has been so held in a recent judgment of St. Xavier's University Kolkata and Ors. vs. Yash Shroff, being MAT No. 1324 of

2024 [Cal. HC]) have not been challenged in the Writ Petition; ii. Whether a case should be considered sufficient for the purpose of condonation is a question of fact, and it has been repeatedly held by the Hon'ble Supreme Court that the error of fact, however grave, cannot be entertained in a Writ Jurisdiction (reference: AIR 1964 SC. Pg 477. 5 judges Bench); iii. If the view taken by the authority is a possible view of the matter, then this Hon'ble High Court cannot substitute the said view with its own; iv. The petitioner, having knowledge that a minimum percentage of attendance is to be maintained for appearing in the examination and provision of twenty-five per cent (25%) concession or allowance has already been made to take care of the possible contingencies by virtue of the rules, one cannot act in contravention of the said University Regulations and more so when, necessary undertaking as stated hereinbelow was given by the petitioner and her guardian with regard to maintenance of the percentage; v. If any lenient view is taken of the said University Regulations, it will destroy the basic purpose of the introduction of the five-year law course, as without attending the classes as prescribed, one cannot get adequate knowledge of the subject so as to be able to render the services to the clients and society at large; vi. The entire writ petition is based on the allegation that the University has been lenient in respect of many students, but Article 14 has no negative application, and the Court cannot direct the authority to act contrary to law. As per the said University Regulations, a law student must have 75% of the attendance to be eligible to be promoted to the next Semester. However, the Petitioner's attendance in the 6th Semester was 63.76% only, as a result of

which she was debarred from promotion to the 7th semester. As such, on or about 24 June 2024, the student Rhine Ghosh filed the instant Writ Petition seeking reliefs as prayed for in the Petition. The petitioner, Ms Rhine Ghosh, is a student of the B. Com LLB (Hons.) course. She joined in Academic Year 2021-22, the duration of which is five years spread across ten (10) semesters. At the time of admission, the petitioner and her guardian/parent signed a Declaration Form on August 06, 2021, undertaking to maintain a minimum of 75% attendance (in aggregate) in order to be eligible to appear in the semester examinations as per Regulation 3.4.1 of the University Regulations as framed by the Executive Council of the University pursuant to the powers contained in Section 31(XVI) of the St. Xavier's University, Kolkata Act, 2016. The said University Regulations in Regulation 3.4 deal with Students' Attendance and Regulation 3.4.1, 3.4.2 and 3.4.3 of the said Regulations are quoted as under: "3.4.1 - A student must maintain a minimum of 75% aggregate attendance in a semester; 3.4.2 - A student who has between. 60% (65% for B.A.-LLB & B.COM-LLB) and 74% attendance in a semester will have to seek approval from the Dean of the concerned faculty/Vice-Chancellor on grounds of illness or involvement in extra-curricular activities approved by the University; a) In case of illness, leave application must reach the office of the Dean of Faculty within three days of the student's absence. A medical certificate is also to be submitted within 15 days of joining. Mere submission of leave application in itself will not ensure condonation; b) In case of extra-curricular activities, a student must obtain prior written confirmation of her/her participation from the concerned

authorities: Head of Department/Profs.-in-Charge of University Societies/Sports Officer/Programme coordinator of Social Work, which will be countersigned by the Dean of the concerned faculty. When calculating the attendance percentage of the students representing the University in extra-curricular activities in Inter-University competitions, due consideration will be given to the days when they so represented the University. Condonation in such cases must be in explicit written form, authorized by the Dean of the concerned faculty; c) For a student, absence from the classes for the aforementioned reasons may be condoned up to 15% (10% for B.A.-LLB & B.COM-LLB) of the total classes delivered. However, in all such cases, lower limit for condonation will remain as 60% (65% for B.A.-LLB & B.COM-LLB). A student who is condoned will have to pay a condonation fee within the notified period of time. 3.4.3 - A student will be debarred from appearing for the Semester Examination if (i) he/she has less than the required attendance without condonation; (ii) if the student has not paid the semester fees by the notified last date. A student so debarred will not be eligible for promotion to the next semester. Such student will be required to repeat the Semester in the next academic session. If, in the meantime, there has been a change in the syllabus, the student will have to appear for the CIA and the Semester Examinations in the revised syllabus.” The Respondents state that after admission, the petitioner was given a link through email dated August 21, 2021, so as to enable the petitioner to register herself on the University Student Portal 'www.sxuk.edu.in' and upon such registration, the petitioner had access to all academic information, including her attendance, from the

Student Portal. During the 6th semester, relevant for this writ petition, classes commenced on 15.01.2024 and ended on 06.01.2024 with total delivered classes being 287, out of which the petitioner attended only 183 classes being 63.76% of the classes delivered and thus the petitioner's attendance being less than the required minimum as per Regulation 3.4.1 of the said Regulations, the petitioner was attendance debarred from appearing in the 6th semester examinations which commenced from 15.05.2024 in pursuance of Notification No. SXUK/COE/Exam/001/04/24, published by the University on April 04, 2024, on the University's website and also displayed on the Notice Boards in the University campus. Thus, the petitioner was unable to download her admit card on 09.05.2024, at 4:00 PM, being the date and time from which the admit cards could be downloaded as per the above notification issued by the University. Upon being debarred from appearing in the semester examinations on account of shortfall in attendance, the petitioner filed a writ petition being WPA No. 16324 of 2024 on 24.06.2024, citing reasons for her absence from classes, being her illness for which the petitioner claims to have missed about sixty (60) classes, her father's death and her engagement in some other work related assignments (without specifying the number of classes missed for the said two reasons being father's death and engagement in some other work related assignments) and praying that the petitioner's absence from January 2024 to May 2024 for illness be condoned and she be allowed to clear her arrear papers of 6th semester examinations along with her 8th semester examination or at any appropriate time in accordance with the University

rules and regulations and she be allowed to admit herself in the 7th semester and attend classes for the 7th semester. The petitioner's father expired on some day of 2023 or 2024 (vide Page 5-para 5, Page 6-para 9 and Page 28-Annexure P/6 of the writ petition). It is further pertinent to mention that as has been mentioned in Page 6 para 9 of the writ petition, the mother of the petitioner had written to the Dean Law of the College bringing to his notice that due to the sudden death of her father was a factor that contributed to her absence whereas at page no 25-Annexure P/3, she was describing herself as a single mother in the letter dated 04.03.2022. The petitioner had filed the instant writ petition on 24.06.2024, on which date, all the examinations for the 6th Semester were over. The instant writ petition was heard by this Hon'ble Court on several dates, and in pursuance of directions of this Hon'ble Court, affidavits were exchanged. The petitioner had filed a written note of arguments before the Hon'ble Court and served a copy of the same upon the advocate for the respondents. Upon checking the contents of the writ petitions, affidavits, petitioner's written note of arguments and material on record, it is found that certain points have been raised and argued by the petitioner during the course of hearing, which are outside the scope of the averments contained in and the case made out in the writ petition which is not permissible as such the respondents in this note of arguments confining their (respondent's arguments), some of which the petitioner did not press in the arguments. At the outset, before dealing with the petitioner's submissions as contained in the aforesaid written notes, I would like to state that the Respondent University is a Juristic Person having

limited powers as defined under the Statute and being a creature of the Statute, it cannot transgress the barriers of the statutory provisions and has to travel within the circumference thereof. The Respondent University got the autonomous status by virtue of the St. Xavier's University, Kolkata Act, 2016, which was duly notified in the Official Gazette on 16.01.2017 and in pursuance of the powers contained Section 31(XVI) of the said Act, the Executive Council of the University has framed the Rules and Regulations as referred to hereinbefore, which the University is bound to adhere to and cannot exercise any powers *de hors* the said Regulations as such an act would be regarded as arbitrary and in excess of powers conferred. In light of the above and the facts of the given case, I say that the petitioner's absence from classes in the sixth (6th) semester could not be condoned by the University on account of the following reasons: - a. The petitioner has claimed condonation of her absence for 60 classes during the period of fourteen days from 06.02.2024 to 19.02.2024, when she claims to have been absent on the ground of illness being high fever, where the medical certificate annexed as Annexure P/4 to the writ petition states that she was advised 14 days isolation and rest as she was down with chicken pox; b. The attendance records maintained digitally by the University show that during the aforesaid period of fourteen days from 06.02.2024, to 19.02.2024, 42 classes were held and not 60 classes as alleged by the petitioner; c. The attendance record further reveals that during the aforesaid period, out of 42 classes held, she attended 26 classes and she was absent for 16 (42-26) number of classes; d. For her absence in 16 classes, she has not made any application for

condonation of absence within 3 days, nor has she submitted any medical certificate within 15 days of her joining the classes as per the requirements of Regulation 3.4.2 (a) of the University Regulations, and no reason has been given for the same; e. The purported medical certificate dated 06.02.2024, which is being relied upon by the petitioner for condonation of her absence during the aforesaid period, was submitted to the University for the first time as an attachment to the petitioner's email dated 09.05.2024, which is incidentally the date when the admit cards were issued; f. It may be pertinent to mention that from the purported medical certificate dated 06.02.2024, it would appear that in the said certificate, it was stated inter alia that the petitioner had chicken pox and had been advised to be in isolation for a period of 14 days from 06.02.2024. Interestingly the attendance record maintained digitally reveal that during most of the said 14 days the petitioner had actually attended classes save and except on 5 days namely 10.02.2024, 11.02.2024, 14.02.2024, 17.02.2024 and 18.02.2024 which were holidays, which raises doubts as to the veracity of her contention that she was suffering from any illness which prevented her from attending classes during the said period and also raises doubt as to the genuinity of the medical certificate disclosed by her for the first time on 09.05.2024; g. In the premises, the alleged period of absence of the petitioner was not considered, and rightly so, while arriving at her percentage of attendance of 63.76%; h. The Respondents further state that the medical documents annexed as Annexure P/9 to the writ petition are dated 30.05.2024 and 03.06.2024, which dates are after the completion of the 6th semester

examinations and therefore have not been considered by the respondent authorities; i. The Respondents also state that the plea of the father's death, which took place in the year 2023 as per para 5 or 2024 as per para 9 of the writ petition, is an historical effect and/or engagement in work related assignments cannot be considered for the purposes of condonation of absence as per the Regulations; j. The Respondents further state that Regulation 3.6.1 clearly states that a student must have at least 75% aggregate attendance in a Semester. Condonation may be granted (refer to section 3.4.2) in exceptional cases. It is pertinent to state that something which occurs in the regular course cannot be termed as exceptional. A student may have an illness during the course, but that has been taken care of by fixing the attendance at 75%, as the remaining 25% will take care of such exigencies; k. The prayers made by the petitioner, whose attendance is below 65%, to allow her to sit in the 6th semester examination and/or to promote her to the next semester, i.e., 7th semester cannot be granted in view of specific provisions of the University Regulations as the same would be contrary to the rules and regulations of the University as also contrary to the law laid down in several decisions of this Hon'ble Court as also by the Hon'ble Supreme Court. In the aforesaid facts, the petitioner was not entitled to condonation of her period of absence as prayed for in her letter dated 09.05.2024, inter alia, the following reasons: a. As per the University records, the petitioner's attendance was 63.76%. Since the petitioner's percentage of attendance was below 65% and was therefore not between 65% to 74%, she did not come within the zone of consideration for having her

period of absence condoned in terms of the specific provision of Regulation 3.4.2 of the University Regulations. These regulations stipulate a mandatory attendance limit that must be met before any condonation of attendance is to be allowed. Since the Petitioner's attendance percentage does not meet even the required limit for invoking the University's discretionary powers, the request for condonation was not allowed; b. Without prejudice to what has been stated in the preceding sub-paragraph, and assuming, though not admitting, that the petitioner could still pray for condonation of her absence, her prayer for condonation of her absence could not be and was not acceded to by the University authorities because of the reasons stated in the following sub-paragraphs; i. The petitioner was not entitled to condonation of her absence on the ground of her illness as prayed for by the petitioner in her email dated 9th May, 2024 under any of the relevant clauses of the University Regulations relating to attendance namely clauses 3.4, 3.4.1, 3.4.2 and 3.4.3 and the sub-clauses thereunder; ii. The petitioner was also not entitled to condonation of her absence on the ground of her illness because she has failed to make any application and submit her medical certificates in such manner and within such time as stipulated in the University Regulation and in clause 3.4.2(a) thereof; iii. Under University regulations, requests for condonation must be made in a timely manner; iv. The petitioner's period of absence, if any, (as the number of classes missed for such reasons has not been specified) on account of her father's death, which is an historical effect and/or engagement in work-related assignments, cannot be considered for the purposes of condonation of absence as per the

Regulations. Moreover, the prayer relates only to condonation on account of illness; v. The prayers made by the petitioner, whose attendance is below 65%, to allow her to sit in the 6th semester examination and/or to promote her to the next semester, i.e., 7th semester cannot be granted in view of specific provisions of the University Regulations as the same would be contrary to the rules and regulations of the University as also contrary to the law laid down in several decisions of this Hon'ble Court as also by the Hon'ble Supreme Court; c. It is a settled position of law that an Article 226 Writ Petition cannot be filed to do a roving and fishing enquiry against the Respondents. A Petition can succeed only if a Petitioner makes out a case and not to give a chance to establish the claim. [A Hamsaveni v State of TN (1994) 6 SCC 98]. It is not for the High Court to, at the instance of unsuccessful candidates, place itself into a position of fact-finding commission and to commence a roving enquiry. (Sadananda Halo v Momtaz Ali Sheikh (2008) 4 SCC 619]. Therefore, contentions made by the Petitioners that there were students who were given the benefit of condonation despite having less than 65% attendance, without any evidence being adduced to the Petition, are liable to be dismissed; d. It is a settled position of law that allegations of Mala Fide are serious in nature, and they essentially raise a question of fact. It is, therefore, necessary for the person making such allegations to supply full particulars in the petition. If sufficient averments and requisite materials are not on record, the court would not make "fishing" or roving enquiry. Mere assertion, vague averment or bald statement is not enough to hold the action to be mala fide. It must be demonstrated by facts. Moreover, the burden of

proving mala fide is on the person levelling such allegations, and the burden is “very heavy. [Dhampur Sugar v State of Uttarakhand (2007) 8 SCC 448, para 83.] Therefore, it is submitted that since no evidence was provided by the Petitioner regarding any student being provided with preferential treatment, their contention should be dismissed; e. Further, it was held in Padam Sen and Anr v State of Uttar Pradesh 1960 SCC OnLine SC 77 para 10 that the defendants' request really amounted to the Court's collecting documentary evidence which the defendants considered to be in their favour at that point of time. It is no business of the Court to collect evidence for a party or even to protect the rival party from the evil consequences of making forged entries in those account books. It was also held that “The courts cannot be used as a tool to create evidence” [Tejo Ratna Kongara v National Housing Bank and Ors. W.P. (C) 4113/2024 and CM Appl. 16783/2024, para 13). Therefore, the Respondents submit that since evidence was not provided by the Petitioners in furtherance of allegations of discrepancies in promotion of students having less than 65% attendance, the same should be dismissed by the Hon'ble Court; f. The Respondents submit that the Hon'ble Calcutta High Court had dismissed the Petition of a student in IIM Calcutta who had claimed relaxation of the attendance requirement and passage to the next Semester on sympathetic grounds of health. The Court held that “The Petitioner being awarded degree in such circumstances, would send a bad message to the student community at large and in such cases, sympathy and compassion should have no role to play, and in the event of a doubt, the benefit should go to the institution rather than the student (Shubham Pal

and Ors. vs Staff Selection Commission and Anr. (Civil Appeal No(s). of 2026 (arising out of SLP (c) No(s). 21999/2024)) as such indigence will not create difficulties for the institution but also for the students.” [Harish v Union of India and Ors WPA 24155 of 2025, para 32]. It is further submitted that the Respondents further submit that pursuant to the order dated 13.02.2026, the Petitioners submitted documents available in the office of the Dean, Xaviers Law School, relating to condonation and attendance adjustment records of the concerned batches, namely: BALLB (Hons) Semester VI - Even Semester AY 2023-24; B.Com LLB (Hons) Semester VI Even Semester AY 2023-24 B.Com LLB (Hons) Semester IV - Even Semester AY 2023-24; In compliance with the requisition, the following documents were submitted before the court; i. Original letter of condonation prayer/recommendation submitted to the Vice Chancellor in May 2024; ii. Original medical applications/documents submitted by the students, as available in the records of the Dean's office; iii. A detailed statement indicating the availability and non-availability of original medical documents/applications in respect of the concerned students. It was further submitted before the court that, as reflected in the enclosed statement, certain original medical documents/applications could not be traced in spite of the best possible efforts of 13 students (non petitioners). This was because the current Dean of St. Xavier's Law School took charge on 01.07.2024 and was not handed over the papers from the previous Dean. A perusal of the records submitted by the Respondents will show the Hon'ble Court that the condonation was granted only to students who had more than 65% attendance. No student

who had less than 65% attendance was granted condonation of attendance on health grounds. Therefore, there was no arbitrariness or prejudice in the decisions taken by the Respondents. Thus, the petition filed by the petitioner is devoid of any merit and deserves to be dismissed with costs. Decisions relied upon by the respondents: - i. By virtue of the powers conferred in the parent Act, the Executive Council framed the Rules and Regulations for Under-Graduate Degree Courses containing the exhaustive provisions relating to conducting the examinations, the attendance percentage, the medium, the discipline and so on so forth. The regulation is exhaustive and imbibes within itself the minimum attendance to be adhered by the student in order to qualify in the examination conducted for a particular Semester. Rule 3.4.2 of the said Rules and Regulations are quoted as under: “3.4.2 - A student who has between 60% (65% for B.A.-LLB & B.COM-LLB) and 74% attendance in a semester will have to seek approval from the Dean of the concerned faculty/Vice-Chancellor on grounds of illness or involvement in extracurricular activities approved by the University; a) In case of illness, leave application must reach the office of the Deana of Faculty within three days of the student's absence. A medical certificate is also to be submitted within 15 days of joining. Mere submission of leave application in itself will not ensure condonation; b) In case of extra-curricular activities, a student must obtain prior written confirmation of his/her participation from the concerned authorities: Head of Department/Profs.-in-Charge of University Societies/Sports Officer/Programme coordinator of Social Work, which will be countersigned by the Dean of the concerned faculty. When calculating the

attendance percentage of the students representing the University in extra-curricular activities in Inter-University competitions, due consideration will be given to the days when they so represented the University. Condonation in such cases must be in explicit written form, authorized by the Dean of the concerned faculty; c) For a student, absence from the classes for the aforementioned reasons may be condoned up to up to 15% (10% for B.A.-LLB & B.COM-LLB) of the total classes delivered. However, in all such 4 cases, lower limit for condonation will remain as 60% (65% for B.A.-LLB & B.COM-LLB). A student who is condoned will have to pay a condonation fee within the notified period of time.” It is manifest from the above quoted provision that the minimum percentage of attendance in each Semester shall be 75 percent. However, the students having attendance percentage ranging between 60 to 74 percent may be permitted to seek approval from the Dean of Faculty/Vice Chancellor on the ground enumerated therein and it is no gain saying that the University is conferred with the power to condone or relax the percentage of attendance in a particular Semester below 75 percent with a minimum cap of 60 percent. The authority, therefore, cannot act beyond the statutory provisions and the moment the outer cap for exercise of discretion or the power to relax is fixed, it becomes inflexible and the University cannot exercise the power *de hors* the same. In the event if it is so, it would be regarded as an arbitrary and in excess of the power so conferred. The Court shall not direct the authority to act in defiance of the law or to act contrary to law. The authority being the creature of the statute cannot transgress the barriers of the statutory provisions and have to travel within

the circumference thereof. The said Clause 3.4.2 does not confer upon the appellant, the power to condone the shortfall below 60 percent of the attendance and, therefore, the direction of the Single Bench to condone the same despite the attendance being short of 60 percent is contrary to the aforesaid statutory provisions and, therefore, cannot be sustained. a) *St. Xaviers University Kolkata and Ors. vs. Yash Shroff*, being MAT No. 1324 of 2024 (Cal. HC), para 2 on page 4; ii. In instances of occasional aberrations, whereby ineligible students are permitted under court orders to undertake university examinations, such orders should not be treated as precedents and unless the High Court can justify its decision on principle and precept, it should better desist from passing such orders, for it puts the “Rule of Law” to a mockery and promotes rather the “Rule of Man”; a. *Central Board of Secondary Education vs. Nikhil Gulati and Anr.*, reported in (1998) 3 SCC 5, para 1. iii. When an order states that it is not to be treated as a precedent, it should not be followed by the High Courts and the courts below. Also, the Rules laid down cannot be made redundant; a. *Maharshi Dayanand University vs. Dr. Anto Joseph and Ors.*, reported in (1998) 6 SCC 215, para 7. iv. This five years law course is being sought to be frustrated by permitting this kind of indulgence to the students that they may not attend 65% of the lectures and they may be permitted to appear in examination on grounds like medical and other grounds then the whole purpose of improving the standard of legal education will be frustrated. The relaxation should be granted only in exceptional cases and not in mass scale as has been granted. a. *University of Calcutta & Ors. vs. Amit Jalan & Ors.*, reported in 1999 SCC

Online Cal 152, para 12, 13, 16 and 19. v. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc. a. State of Maharashtra vs. Vikas Sahebrao Roundale and Ors.. reported in (1992) 4 SCC 435, para 12; vi. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect; a. Tarun Kundu and Ors. vs. State of West Bengal & Ors., reported in 2000 SCC Online Cal 649, para 7; b. Jyostnamavee Mishra vs. The State of Odisha and Ors., in SLP (C) No. 13984 of 2023, para 31; c. U.P. State Sugar Corpn. Ltd. and Anr. vs. Sant Raj Singh and Ors., reported in (2006) 9 SCC 82, para 26; d. Vice-Chancellor. M.D. University vs. Jahan Singh, reported in (2007) 5 SCC 77, para 28; vii. It is a trite law that the Court while adopting an interpretative tool in ascertaining the meaning, object and the language of a statutory provision should firstly take endeavour to make the provisions workable rather to render it otiose or redundant. Mere one word or an expression should not be viewed jealously so as to render the entire provisions unworkable. Since the writ petitioner/appellant did not challenge the vires of the said provision on the test of a reasonability, we do not delve to go into the aforesaid aspect as an appellate court, more particularly, in absence of any pleading having made in

the writ petition filed before the Trial Court. a. Tanusree Mazumdar vs. The State of West Bengal & Ors., in MAT No. 156 of 2024, para 10, 12; viii. If a law student does not attend lectures or obtain the requisite percentage of attendance, he cannot think of taking a leap to another year of study. Mercy does not come to her aid as law requires a student to digest her experience and gradually discover her own ignorance and put a progressive step thereafter; a. Chaudhary Ali Zia Kabir vs. GGSIP University & Ors., reported in 2011 SCC Online Del 1356, para 13, 14; ix. When there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim 'dura lex sed lex' which means the law is hard, but it is the law'. Equity can only supplement the law, but it cannot supplant or override it; a. State of Uttarakhand and Anr. vs. Archana Shukla and Ors., reported in (2011) 15 SCC 194, para 6; x. Ld. Single Judge held to have committed a serious error in making an order based on compassionate endowment directing the appellant-corporation 'as a special case' to reappoint an employee whose date of birth was erroneous in the records; a. General Manager (Marketing) Hindustan Fertilizer Corporation of India Ltd. and Ors. vs. Subodh Chandra Das and Ors.. reported in (1988) 1 SCC 594, para 2; xi. While construing a statute, 'sympathy' has no role to play. Sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision; a. State of

Bihar and Ors. vs. Amrendra Kumar Mishra, reported in (2006) 12 SCC 561, para 15; b. Maruti Udyog Ltd. vs. Ram Lal and Ors.. reported in (2005) 2 SCC 638, para 44; c. Guru Nanak Dev University vs. Parminder Kr. Bansal and Ors.. reported in (1993) 4 SCC 401. para 7; xii. This court in several cases deprecated the practise of allowing students to appear provisionally in the examinations of the Board or the University and then ultimately regularising the same by taking a sympathetic view of the matter. The Court cannot by its fiat direct the University to disobey the Statute to which it owes its existence and the Regulations made by the University itself as that would be destructive of the rule of law; a. C.B.S.E. and Anr. vs. P. Sunil Kumar and Ors., reported in (1998) 5 SCC 377, para 3; xiii. It would not be correct to say that this Court in B.C. Chaturvedi case has accepted the view that the High Courts/Tribunals possess the same power which this Court has under Article 142 of the Constitution for doing complete justice, even in the absence of such a provision. a. Sanchalakshri and Anr. vs. Vijayakumar Raghuvirprasad Mehta and Anr., reported in (1998) 8 SCC 245, para 8. The petitioner has not relied upon and referred to any judicial decisions in support of her claim. Countering the Submissions made by the Petitioner: a. The petitioner has claimed that the University has condoned delay below 65% and has thus not followed its own Rules, and it vitiates the stand of the University that below 65% attendance is not condonable. The University states that in respect of the extra-curricular activities which were attended by a student during the course of a semester, were consistently considered and adjusted as and when such events were attended by the students, and

this has been consistently followed for all the students. In so far as the petitioner is concerned, she was not eligible for any such adjustment, and the petitioner has also not claimed any such adjustment in her petition; b. Insofar as condonation on account of illness is concerned, the University has consistently followed the regulations by considering the condonation on account of illness and/or medical issues in case the attendance of the student was above 65%. Thus, the submissions made by the petitioner in her written notes are denied and disputed; c. The submission on behalf of the writ petitioner is that in terms of clause 3.4.3, first condonation is to be done to arrive at the aggregate attendance and if, after condonation, the aggregate attendance is less than 65%, the same is not condonable. The said submission is thoroughly misconceived inasmuch as the Rules and Regulations do not anywhere contemplate condonation at more than one stage because once condonation is allowed, the question of second condonation will not arise; d. The contention made by the petitioner in Para 6(a) of the written notes submitted by the petitioner that "all students who had 65% of attendance and allowed actually had below 65% of attendance before adjustment/condonation but condonation was allowed to them" is absolutely misconceived because the respondent University has uniformly followed the practise of adjustment of classes missed on account of extra-curricular activities as and when such activities were held for the purpose of arriving at the attendance of 65% and above. Condonation on account of illness in terms of Regulation 3.4.2(a) has been granted thereafter uniformly to all the students. The misconception arises from the fact that condonation

arises in case of absence for medical reasons, whereas adjustment is made in case of a student participating in extra-curricular activity representing the University. Condonation is an act which is driven upon happening of an event from the student's side, whereas adjustment is done upon happening of an event from the respondent University's side, which difference has not been appreciated by the petitioner; e. It has been repeatedly harped on behalf of the petitioner that those who have crossed the threshold of 65% have been allowed, but the petitioner, having not reached that threshold, cannot equate herself with those students, and therefore there cannot be a question of any discrimination; f. With respect to the contention of the petitioner as contained in paragraph 13 of the written notes, I say that the University has consistently followed the Regulations for all the students uniformly; In view of the background facts and circumstances of the case and for the reasons as stated herein above, the writ petition is not maintainable in law and in the facts of the case and hence should be dismissed with cost, being wholly misconceived.

4. I heard the learned counsels for the parties, perused the writ petition, the affidavits and the written notes of submissions.

5. First, the respondent University was requested to produce the relevant records, especially as some of the petitioners expressed doubts about proper maintenance of the same. The records were produced in respect of the two courses of LL B and BMS. On 20.02.2026, it was submitted on behalf of the University that out of 18 students who had sought condonation of absence / leave on medical ground, records were available only for 5 students. It was

also submitted that as regards the attendance record for programme / events, the documents were themselves forwarded by the Dean, but there was no prior approval given by the Dean to each of the students, separately. However, it appears from the Form itself that there is a clause no 2 which stated that copy of prior approval letter from the Dean of the respective Faculty was to be attached. Although the records were not complete and it was argued on behalf of the University that they do not contain details of all students and that some parts may be missing, it appears that records have been maintained in respect of certain number of students who had prayed for leave and the like. Therefore, there is a substantial compliance regarding maintenance of records by the University. Although there was an allusion made on behalf of some of the students that some other students might have been unduly favoured in this regard, there is no specific allegation leveled or example given in this regard nor were such candidates made parties herein. Therefore, it will be futile to go into this aspect. As found earlier, the University has been able to show maintenance of records as regards grant of leave to students.

6. As rightly contended by the respondent University, both the University and the reputed College in Kolkata have maintained high standards in education and have contributed greatly to the society. According to them, discipline is a thing which came in handy in achieving such goals. Perhaps, no one can dispute this. However, no one is infallible. Therefore, if there is an erroneous handling of matters regarding dealing with lack of attendance of

students by the University or any of their staff, this Court would be duty bound to look into it if the student's rights were prejudiced by the same.

7. Withholding of students from the next semester for lack of attendance cannot be a means to punish students, far less an end by itself. However, there are certain rules in life that all have to adhere to. A curriculum in a study course is prepared carefully by keeping in mind its requirements including as regards attendance of classes. Law has traditionally been a mature subject studied after an under graduate course. But, now it is taught even after Class 12 as an integrated 5 years course. Thus, the requirement of attending classes in order to have a proper feel of the subject from an early stage is perhaps more pronounced now than ever before. Just as we expect doctors coming out of medical institutes to be of a particular standard, we cannot expect any less of lawyers. This is what our society requires. Incidentally, unlike certain other professions, the avocation of an Advocate is not covered by the provisions of the Consumer Protection Act. So, there is a greater need to train our would-be legal professionals well and as per the curriculum formulated. In *University of Calcutta & Ors. vs Amit Jalan* (supra), a Division of this Court had been very categorical in holding legal education as a thing to be taken seriously and if a student is supposed to attend certain minimum number of classes, then the same has to be scrupulously followed. A similar view had been taken by the Hon'ble Apex Court in a catena of decisions as regards maintenance of such discipline in an educational course.

8. In this regard, it would not be out of context to say that we who have been able to complete our education to some extent and the students who are in the process of completing their education are a privileged lot. In our country, there are several persons who do not get the opportunity to start, far less complete their education. Due to financial strain or otherwise, students drop out even from schools. To them, College education is a distant dream. Moreover, the students of Colleges and Universities are young, but adults. They are not juveniles. They should be aware of their rights and responsibilities as well. One wonders whether if a young man of the same age as a student of the College who works in a farm or in a factory infringes the rules of engagement in an organization, he would be spared the consequences only because of his or her age. Therefore, a student cannot claim a similar advantage, as of right, for non-adherence to the rules of engagement in a College.

9. That apart, it is the case of the University that not only were the students made aware of the strict rules regarding attendance. In some cases, either the students or their parents had to sign undertakings that they would be abiding by such conditions.

10. The other impediment in showing undue leniency as regards attendance of classes is the supposed wrong that would be perpetrated on the numerous others who had, despite all odds, scrupulously attended the classes as required. They might then very well object claiming that they could have honed their skills in some sports or tried their luck in some other

avocation if they had known that absence from classes would be condoned anyway.

11. However, all these do not mean that if there is an overall violation of natural justice or if the University had contributed to or had acquiesced to the leave or absence of a candidate or that the student had been able to prima facie show that he or she had good grounds to claim exemption, the candidate would not be able to get necessary benefit.

12. A question of law has been raised by the petitioners that the rules framed by the University regarding attendance were defective. According to them, the students need to attend minimum number of classes. Certain absence would be excused upon strict compliance of the provisions. However, according to this petitioner, there have been occasions where the rules were not scrupulously followed. More importantly, the calculation was to be done by deducting the excusable absence from the total number of days attended. But, in some cases, like in the case of one Bhavini Sinha, the same was not done. There even before the total calculation could be done, certain days were excused. In fact, as per the petitioners, permissions required were not given in time and it was assured verbally that such strict compliance would not be required.

13. For the sake of clarity, the relevant provisions of the rules as framed by the University regarding attendance may be set out as under:

“3.4 Student' Attendance

3.4.1 A student must maintain a minimum of 75% aggregate attendance in a semester.

3.4.2 A student who has between 60% (65% for B.A.-LLB & B.COM-LLB) and 74% attendance in a semester will have to seek approval from the Dear of the concerned faculty/Vice-Chancellor on grounds of illness or involvement in extra-curricular activities approved by the University.

a) In case of illness, leave application must reach the office of the Dean of Faculty within three days of the student's absence. A medical certificate is also to be submitted within 15 days of joining. Mere submission of leave application in itself will not ensure condonation.

b) In case of extra-curricular activities, a student must obtain prior written confirmation of his / her participation from the concerned authorities: Head of Department / Profs.-in-Charge of University Societies / Sports Officer/ Programme Coordinator of Social Work, which will be countersigned by the Dean of the concerned faculty. When calculating the attendance percentage of the students representing the University in extra-curricular activities in Inter-University competitions, due consideration will be given to the days when they so represented the University. Condonation in such cases must be in explicit written form, authorized by the Dean of the concerned faculty.

c) For a student, absence from the classes for the aforementioned reasons may be condoned up to 15% (10% for B.A.-LLB & B.COM-LLB) of the total classes delivered. However, in all such cases, lower limit for condonation will remain as 60% (65% for B.A.-LLB & B.COM-LLB)."

14. It is true that in the case of one Bhavini Sinha, it appeared from the reasoned order passed by the Vice Chancellor that certain days were exempted from the total number of attendance although the total attendance was below 65%. This was indeed a one-off case and the matter was being taken up for decision by the Vice Chancellor pursuant to a direction passed by this Court. Any action taken therein and the manner of calculation adopted therein, thus, cannot be used against the University.

15. Otherwise, it does not appear that the rules framed by the University in this regard were inherently defective. However, the University is requested to scrupulously follow what they laid down regarding grant of permission to students for engaging in extra-curricular activities and the like. They should also maintain their records better and in a complete manner and preserve the records for a term not less than 7 years.

16. Now, let us come to the particular facts of the present case. The petitioner's main grievances with the University are that it failed to appreciate that her lower attendance in the Sixth Semester was primarily due to her being diagnosed with chickenpox on 06.02.2024, for which she was advised 14 days' isolation, resulting in absence from approximately 16 classes. She was also suffering from multiple small cysts in both ovaries. Her attendance was also affected by the death of her father on 21.02.2023, which, according to her mother's representation, had placed sudden pressure and additional responsibilities upon her. So, the petitioner is aggrieved with the debarment from appearing in the Sixth Semester examination; the refusal to condone the petitioner's shortage of attendance on account of her medical condition; the purported failure to consider her representations seeking condonation; the alleged inconsistent application of condonation regulations and non-evaluation and non-declaration of the results of the Seventh, Eighth and Ninth Semester examinations in which she had participated, despite her seeking appropriate directions for permitting her to clear the Sixth Semester papers as arrear papers.

17. According to the University, the petitioner's attendance was 63.76%, below the 65% threshold prescribed for consideration of condonation. The University stated that she was therefore outside the zone of consideration under Regulation 3.4.2. She was also not entitled to condonation on medical grounds as the prescribed leave application and medical certificates had not been submitted within the time stipulated under Regulation 3.4.2(a). The University also did not accept her father's death as a ground for condonation under the attendance Regulations, particularly as the prayer before the University had been made on the ground of illness. The University further stated that her absence on account of work-related assignments could not be considered for condonation.

18. Here, a practical distinction is required to be made in respect of extra-curricular activities and illness. Perhaps, there is more force in the University's stipulation in Clause 3.4.2 b) that in case of extra-curricular activities, a student must obtain prior written confirmation of his / her participation from the concerned authorities, than in Clause 3.4.2 a) that in case of illness, leave application must reach the office of the Dean of Faculty within three days of the student's absence and a medical certificate was also to be submitted within 15 days of joining. The reason is quite elementary. While the issue of prior permission to be given in case of extra-curricular activity by an instrumentality of the University itself may be subjected to greater scrutiny and distrust by an affected party, thereby requiring stricter compliance, the existence of a medical certificate issued by an independent medical professional / concern would be more sacrosanct in the present

facts unless it is found patently erroneous or irreconcilable. Hence, a delay on the part of a student afflicted by illness in either making a leave application or providing a medical certificate beyond time cannot be treated as fatal. The furnishing of the medical certificate itself should be sufficient compliance of the requirement stipulated. Incidentally, the records do not show recording of prior according of sanction in case of leave for extra-curricular activities. But, this also has been accepted as sufficient compliance of the Rules by the University in view of their contention that in cases where such permission was granted, the papers were forwarded for necessary action.

19. First, it is an admitted position that the petitioner's father passed away. According to the final written notes of the University, it only has a 'historical effect' as it happened in the year before. It would be rather cruel to term it as a historical fact, especially if it had happened in the immediately preceding year. Whoever (William Shakespeare in *The Merchant of Venice*) had written -

"The quality of mercy is not strain'd.

It droppeth as the gentle rain from heaven

Upon the place beneath. It is twice blest:

It blesseth him that gives and him that

Takes."

- seems to have been long forgotten. It is quite possible that one may fairly choose not to be merciful. But, there is no justification in acting with such insensitivity and spite. It would not be out of place here to refer to the pleadings of the petitioner present at paragraph 3 of the writ petition that owing to the financial strain, the petitioner had to look for part-time work like acting assignments. The death of her father and her consequent travails have to be read in such context and not as a 'historical' fact. In such supervening circumstance, the respondent University could have fairly treated such part-time acting assignment as an extra-curricular activity.

20. That apart, the petitioner was once diagnosed with Chicken Pox and was medically advised isolation for 14 days. If she had complied with such direction, it was not only beneficial to her health, but also good for the students and the teachers. If she had not fully complied with the isolation advised, as claimed by the University, it would be wrong on her part. However, she cannot be denied attendance adjustment for such serious infection only on technical grounds of delay in making an application. By now, the authorities must be prudent enough to separate the grain from the chaff and to find out who is coming with a genuine plea and who is not. Incidentally, the petitioner has also relied on medical documents evincing that she had been suffering from certain gynecological issues. The authorities clearly erred in not allowing attendance adjustments on such serious medical grounds.

21. In view of the above, this Court is inclined to allow the petitioner's application.

22. In view of the fact that during the pendency of the application, without prejudice and without creating any equity in favour of the petitioner, the petitioner had been allowed to sit in examinations and move to the subsequent semester / s, the present application is disposed of with the following directions -

(i) The petitioner shall not be debarred from clearing the semester in question and moving to the next on the ground of inadequate attendance;

(ii) All her examination results for the said and / or the following semesters, which had been kept unpublished, shall be published at the earliest;

(iii) For such purpose, if the examination papers have not been evaluated till now, shall be promptly evaluated;

(iv) At the completion of the course as contemplated above, the petitioner shall receive all certificate / s, mark sheets /s and other relevant documents, if any, without further delay.

23. Urgent certified copy of the order shall be provided to the parties upon compliance of usual formalities.

(Jay Sengupta, J.)

Later:

Learned counsel appearing on behalf of the respondent University prays for stay of the order.

The prayer is considered and is rejected.

(Jay Sengupta, J.)