

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24th November, 2010.

+ W.P.(C) No.7165/2010

% TUSHAAR KUTHIALA PETITIONER

Through: Mr. Sanjay Jain & Ms. Ruchi Jain,
Advocates

Versus

UNIVERSITY OF DELHI & ANR RESPONDENTS

Through: Ms. Maninder Acharya, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No. |
| 2. | To be referred to the reporter or not? | No. |
| 3. | Whether the judgment should be reported in the Digest? | No. |

RAJIV SAHAI ENDLAW, J.

1. The petitioner was a student of B.A.(Hons.) Mathematics Course in St. Stephen's College affiliated to the respondent University of Delhi during the years 2006-09. The petitioner while still awaiting the result of his final year examination, applied for and was granted admission to the Asian College of Journalism, Chennai. The eligibility for admission to the said course was a Degree in Graduation. However the petitioner failed the final year examination. It is the case of the petitioner that the Asian College of Journalism, Chennai, impressed with the performance of the petitioner,

nevertheless allowed him to continue with the course on the condition that the Postgraduate Diploma in Journalism would be awarded to him only after he had acquired his Graduation Degree. The petitioner thus while continuing with the journalism course enrolled himself as an ex-student of Delhi University and took the examination of final year of B.A. (Hons.) Mathematics again in April/May 2010. The petitioner could however still manage a percentage of 37.6% only while that required for a Degree in B.A. (Hons.) Mathematics was 40%.

2. The petitioner applied to the respondent University of Delhi for awarding him a Degree in B.A. (Pass)/B.Com. (Pass) without Division instead of the Degree in B.A.(Hons.) Mathematics, the course which he had pursued. Reliance was placed on Ordinance IX.3(1) of the University in this regard which permitted candidates of B.A.(Hons.)/B.Com. (Hons.) Part-III examinations, who have passed in the Subsidiary subjects but have failed in the main subject but have secured in the main subject not less than 33% marks in the aggregate of Part-I, Part-II & Part-III, to be granted B.A.(Pass)/B.Com.(Pass) Degree without Division. It is the case of the petitioner that a Degree of B.A.(Pass) /B.Com.(Pass) without Division would entitle him to pursue the Journalism Course.

3. The respondent University however declined the aforesaid request of the petitioner on the ground that Ordinance IX.3(1) was applicable only to the students of old course and not to the students of restructured course of

B.A.(Hons.)/B.Com.(Hons.) introduced with effect from the year 2005. Challenging the said decision of the respondent University, the present writ petition has been filed.

4. Notice of the writ petition was issued. The respondent University has filed a counter affidavit. The counsels have been heard.

5. The senior counsel for the petitioner has contended that the Ordinance IX.3(1) remains unaffected by restructuring of the B.A.(Hons.) / B.Com.(Hons.) Course. It is contended that the course, as far as the main subjects are concerned has not been restructured and the restructuring is only qua the Subsidiary Subjects which stand substituted by Concurrent Courses. Attention is invited to the Minutes of the Meeting dated 25th October, 2004 of the Academic Council of the respondent University regarding restructuring of B.A.(Hons.) Programmes wherefrom it is pointed out that the course content of the main discipline remained as it existed and the examination scheme and marks for internal assessment continued as per the existing Ordinances. It is contended that thus the examination scheme remains unaltered. Attention is also invited to the index of “Amendment to Ordinances and Appendices to Ordinances” published by the respondent University of Delhi which does not record any amendment to the Ordinance IX. It is further argued that though the Academic Council has while approving the restructuring aforesaid resolved that the consequential amendments/additions/modifications, if any to the relevant Ordinances, be

carried out but no such amendment or modification has been made to Ordinance IX (supra). It is thus argued that the Ordinance IX.3(1) entitling issuance of a B.A.(Pass) Degree remains unaltered notwithstanding the change and the petitioner is entitled to a Pass Course Degree without Division. Reliance is also placed on *State of M.P. Vs. Kedia Leather & Liquor Ltd.* (2003) 7 SCC 389 to contend that there is presumption against a repeal by implication. Reference is also made to *State of Tripura Vs. Roopchand Das* (2003) 1 SCC 421 to contend that a beneficial provision as Ordinance IX is contended to be, is to be given full effect and to be construed purposely. Attention is also invited to Ordinance X-C empowering the Academic Council, in exceptional cases to grant exemption from the operation of any of the Ordinances. It is thus contended that even if Ordinance IX.3(1) is to be held to be not available, the Academic Council of the respondent University was empowered to nevertheless direct issuance of a Pass Course Degree without Division to the petitioner on the principles contained in the Ordinance IX.3(1). It is argued that the respondent University has failed to exercise the said power, even though a case therefor was made out.

6. The counsel for the respondent University has fairly stated that the University inspite of having sympathetically considered the case of the petitioner, cannot apply Ordinance IX.3(1) to the students of restructured B.A.(Hons.)/B.Com.(Hons.) Courses admitted from the year 2005 onwards.

7. In my opinion, the aforesaid stand of the respondent University cannot be interfered with. The settled legal principle is that the Courts generally do not interfere with the decision of educational bodies comprising of experts unless their decision is found to be contrary to the Rules & Regulations by which they are governed or so arbitrary or perverse as to shock the conscience of the Courts. No such case is made out in the present case. The applicability of Ordinance IX demands the students to have passed in the subsidiary papers and to have secured not less than 33% marks in the main subject in all the three years of graduation. Once there are no subsidiary papers upon restructuring of the Hons. Courses, the said Ordinance would not be attracted. The contention that the Concurrent Courses introduced by way of restructuring in lieu of the subsidiary papers, should be read as subsidiary papers in the Ordinance IX.3(1), cannot be accepted. This Court on its own cannot amend the Ordinance in the manner aforesaid. Similarly, the applicability of Ordinance cannot be guided by the index/list of contents of Amended Ordinances. Even if the Academic Council of the respondent University has, pursuant to restructuring aforesaid failed to carry out the amendment to Ordinance IX, the only relief which the petitioner could possibly have claimed was of a direction to carry out the consequential amendment but which has not been claimed. Without the Ordinance IX.3(1) having been amended, I am unable to hold the petitioner entitled to relief thereunder.

8. However to my mind, that is not the end of the matter. The petitioner got admitted to the prestigious St. Stephen's College for the reason of having secured more than 90% marks in his Class-XII examination. Though the petitioner did his three years of graduation in the subject of Mathematics but has not opted to pursue post-graduation courses/diplomas in the subject of Mathematics. The petitioner not finding a flair in the subject of Mathematics and having found a flair, during his graduation years, in the field of debating & publishing, decided to and has pursued his future/career in the field of Journalism. The petitioner has pleaded with the support of documents that he was the Secretary and President of the Debating Society of the College in the second and third year of graduation and represented the College all over the country in prestigious debates and also organized the first ever University Debating League and earned laurels for himself and the College. The petitioner also claims to have started, along with his co-students, a fortnightly publication called S.O.U.L. The petitioner has filed a few articles published in the said magazine.

9. The question which arises is, should the petitioner be not permitted to pursue his career/future in the field of Journalism and which would be the result of dismissal of this writ petition. The petitioner has filed along with the writ petition a Certificate of the Asian College of Journalism whereby he has been permitted to complete his third term from January to April, 2011 upon furnishing his Bachelors Degree Certificate by 15th December, 2010.

Unless the petitioner is granted the relief, the petitioner not only would be required to again take the B.A.(Hons.) third year examinations (if entitled to) but the two terms of Post-Graduate Diploma in Journalism already pursued by him, shall also be wasted.

10. I would not have been inclined to grant any relief to the petitioner, had the petitioner been pursuing his career/future in the subject of Mathematics only inasmuch as the petitioner has admittedly not cleared the test of having acquired proficiency in Mathematics. However the position here is different. I do not see any reason for depriving the petitioner of a simplicitor Graduation Degree without Division, required him to pursue his career.

11. The petitioner now appears to have ultimately found his vocation in life. Impediment should not be created in the petitioner pursuing the same. I fear that denying the Graduation Degree to the petitioner at this stage may completely disillusion the petitioner and may derail his career and future and lead to frustration and ruination and render him a vagabond. I have in judgment dated 14th September, 2010 in W.P.(C) No.1687/2008 titled ***Akhlaque Ahmad Khan Vs. Jamia Millia Islamia*** held that a student in the hands of Principal/Head is like a child in the hands of a parent and a parent would never want the career of a child to be completely destroyed. Shakespeare in Merchant of Venice: “Justice should be tempered with mercy” can be quoted with benefit. Even in the field of punishment, the

view of modern penologists is for it to be rehabilitative and not retributory. The state in which the petitioner today is, has to be seen in perspective of youth of the petitioner.

12. The majesty of law is thus in allowing this writ petition. Rather, in holding back the petitioner in his career, the respondent University and the Court may nip the enthusiasm and the lure for learning of the petitioner and sear him for life. The duty of the respondent University as of the Court is to nurture the career and not damage it. The respondent University has also not shown anything, making the principle enshrined in Ordinance IX inconsistent with the restructured Hons. Programme. Once it is found that the respondent University itself had introduced the principle of granting the Pass Course Degree without Division in lieu of Hons. Degree, even though the said Ordinance is not strictly applicable, the principle will remain applicable. The hyper technicalities cannot be allowed to come in the way of granting the relief.

13. I have during the hearing also considered remanding the matter back to the respondent University for decision to be taken by the Academic Council under Ordinance X-C (supra). However the counsel for the respondent University fairly stated that convening a meeting of the Academic Council which consists of a large number of members, is a long drawn process and cannot be done at short notice. Here, the College of Journalism has desired the Graduation Degree to be produced by the

petitioner by 15th December, 2010. Moreover, the respondent University had an option to, on the representation of the petitioner made within time, place the matter before the Academic Council but which was not done.

14. In the circumstances this Court directs and commands the respondent University to, in application of Ordinance X-C issue a Pass Course Degree without Division to the petitioner within ten days hereof.

The writ petition is accordingly allowed and disposed of with no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

24th November, 2010
bs..