

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

Order Reserved on: **12th May, 2011**

% Order Pronounced on: **May 16, 2011**

+ **W.P.(C) No. 822/2011**

DELHI UNIVERSITY TEACHERS ASSN. & ANR Petitioner

Through: Mr. V.K. Rao, Sr. Adv. with
Mr. Saket Sikri, Advs.

Versus

UNIVERSITY OF DELHI AND ANR. Respondents

Through: Mr. P.P. Tripathi, ASG with
Mr. M.J.S. Rupal, Ms.Monisha
Handa, Adv.

+ **W.P.(C) No. 2764/2011**

NANDINI DUTTA & ORS. Petitioners

Through: Mr. Colin Gonsalves, Sr. Adv.
with Mr.Prashant Bhushan,
Mr. Tariq Adeeb, Advs.

Versus

UNIVERSITY OF DELHI AND ANR. Respondents

Through: Mr. P.P. Tripathi, ASG with
Mr. M.J.S. Rupal, Ms.Monisha
Handa, Adv.
Mr. Sachin Datta, Adv. for UOI
Mr. Amitesh Kumar, Adv. for
UGC

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

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| 1 | Whether reporters of the local papers be allowed to see the judgment? | Yes |
| 2 | To be referred to the Reporter or not? | Yes |

DIPAK MISRA, CJ

This Court on 12th May, 2011, while hearing these two petitions, had passed the following order:

“Though this matter was listed for final disposal yet Mr.Parag P.Tripathi, learned Additional Solicitor General along with Mr. Jayant Nath, learned senior counsel along with Mr.Mohinder J.S.Rupal, learned counsel for the respondents, submitted that there should be a delineation first on the facet highlighted in the counter affidavit relating to a resolution passed by a College which creates an impediment in giving effect to the semester system. It is urged that the same tantamount to contempt of the Court’s order as it creates an obstruction in implementation of the order passed by the Court.

Mr.V.K.Rao, learned senior counsel with Mr.Prashant Bhushan, Mr.Saket Sikri and Mr.Tariq Adeeb, learned counsel for the petitioners would submit that there is no contempt and in any case the resolution has been passed keeping in view that semester system cannot be imposed on the institutions without following the due process of law.

We have heard learned counsel for the parties on this limited issue, namely, whether the Dayal Singh College could have passed such a resolution when the matter is subjudice.

Learned counsel for the parties are requested to file their respective written notes of submissions.

Order reserved.”

2. Keeping in view the aforesaid order, we shall proceed to deal with the issue.

3. At this juncture, we think it appropriate to reproduce the order passed on 8th February, 2011 in WP(C) No.7248/2010:

“Heard Mr. Saurabh Prakash, learned counsel for the petitioner and Mr. V.P. Singh, Mr. V.K. Rao, learned senior counsel, Mr. MJS Rupal, Mr. Saket Sikri, Mr. A.P.S. Ahluwalia, Mr. S.S. Ahluwalia, Mr. Mayank Manish, Mr. Yashish Chandra, Ms. Beenashaw Soni, Mr. Anurag Mathur and Mr. Rajinder Dhawan, learned counsel for the respondents. Learned counsel appearing for all the parties stated that by virtue of the orders passed on 15th November, 2010 and 24th November, 2010, nothing survives in this writ petition and the directions given therein have to be treated final for all purposes.

2. We may note with profit that Mr. V.K. Rao, learned senior counsel had on earlier occasion fairly stated that the respondents would take recourse to legal mode assailing the order or the decision introducing the semester system in Delhi University and till there is an order of stay or injunction by this Court in this writ petition, they shall teach in the semester mode. Thus, it is quite vivid that the aforesaid two orders shall be treated final for all purposes. The teachers teaching in the University or the affiliated colleges shall not go on strike and impart education in the semester system.

3. We may hasten to clarify the Delhi University

Teachers Association has approached this Court challenging the decision of the University in W.P.(C) 822/2011 wherein this Court has issued notice and fixed a date for final hearing. Decision of the University qua semester mode shall be debated in the said writ petition, as in this writ petition the said issue was not addressed and leave was granted. Thus, nothing remains to be adjudicated in the present writ petition.

4. The writ petition is accordingly disposed of. No order as to costs."

4. When the matters were listed on 28th April, 2011, this Court referred to its earlier order passed on 8th February, 2011 in WP(C) No.7248/2010 and proceeded to state as follows:

"Today Mr. V.K. Rao, learned senior counsel appearing for Delhi University Teacher Association fairly stated that as far as the members of association are concerned, they are following the order passed by this Court in letter and spirit and they have no intention to commit contempt of the Court. Mr. Rao states that if there is any kind of violation by any member of the association, he shall bring it to the notice of the Court.

Be it noted, in W.P.(C)2764/2011, which has been listed for the first time, Mr. P.P.Tripathi, learned Additional Solicitor General accepts notice.

Mr. Colin Gonsalves, learned senior counsel appearing for the petitioner submitted that he has been compelled to file another writ petition as the respondents have passed various orders and there is no bar to go for

‘peaceful protest’. We are at a loss to understand when the matter is sub-judice and we are addressing the lis, why should there be any need and cause for ‘peaceful protest’. There can be difference of opinion, but that has to be expressed with dignity and virtuosity which is expected from a teacher.

In view the aforesaid, we hope and trust that the teachers of the university do not disrupt teaching schedules or harbour the notion of ‘peaceful protest’ by teaching outside the classrooms or in tents, but follow the semester system as per our previous directions. Interest of the students and the institution is paramount. If they have any grievance, they can file an application in the pending cases or even seek review of the earlier order.

Let these two writ petitions be listed for hearing at the admission stage on 11th May, 2011. Pleadings shall be completed in the meantime.”

5. As has been indicated earlier, a counter affidavit has been filed by the University wherein apart from justifying the introduction of the semester system, a resolution passed by Dyal Singh College Staff Council in its meeting held on 2nd May, 2011 has been brought on record. The said resolution reads as follows:

“The following resolution was overwhelmingly passed and adopted with five (5) dissents by the Staff Council of Dyal Singh in its meeting held on 02.05.2011:

Dyal Singh College Staff Council decides to frame or

send any additional eligibility criteria for admission only after the issue of semester is decided by the Hon'ble Court. University of Delhi vide notification dated 19/04/2011 had asked for the details with clause No.10 that specified all undergraduate courses in 2011-12 to be taught in semester mode. Dyal Singh College Staff Council condemns this notification that was issued without the concurrence of statutory bodies like Academic Council (AC) and Executive Council (EC) of University of Delhi."

6. Referring to the said resolution, it is submitted by Mr. Tripathi, learned ASG along with Mr. M.J.S. Rupal, learned counsel appearing for the respondent-University, that the resolution is in flagrant violation of the orders passed on earlier occasion in the writ petitions inasmuch as this Court had clearly directed that until an order of stay or injunction is passed by this Court, the teachers teaching in the University or the colleges affiliated to it shall teach in the semester mode and shall not go on strike. It is his further submission that though a contention was canvassed that the teachers can go for peaceful protest, yet this Court had held that there can be difference of opinion but that has to be expressed with dignity and virtuosity which is expected from a teacher and no teacher of the University or any affiliated college can disrupt the teaching schedule or harbor the notion of peaceful protest by teaching outside the classroom or

in tents and instead ought to follow the semester system as per the directions of the Court.

7. Mr.Prashant Bhushan, learned counsel for the petitioners, submitted that the introduction of the semester system is an imposition on the teachers without following the due procedure of law and it would cause tremendous hardship to the teachers as well as to the students and hence, the said mode can be taken recourse to only after apposite debate on law and pragmatic parameters of such a system.

8. As had been indicated earlier, this Court had stated in categorical terms that the lis in this regard could be adverted and dwelled upon on merits but the teachers were directed to teach in the semester mode and not show any deviancy. On a perusal of the resolution, it is luminescent that Dyal Singh College Staff Council had shown total non-cooperation and has, in fact, taken a decision not to teach in the semester mode. It is also perplexing that the Staff Council of the said college has used the words "Dyal Singh College Staff Council condemns this notification that was issued without the concurrence of statutory bodies like Academic Council (AC) and Executive Council (EC) of University of Delhi." It needs no special emphasis to state that the said issue is sub judice in these two

writ petitions and they are yet to be addressed. Pending advertence to the same, this Court had issued a direction in earlier writ petition, namely, WP(C) 7248/2010, and reiterated the same in the present writ petitions, but, despite the same, the Dyal Singh College Staff Council has shown the audacity to pass a resolution of the present nature. Be it noted, in the earlier orders, this Court had expressed the view that the teachers are expected to conduct themselves with dignity and virtue. We may repeat that teachers are expected to be the role models for the students. They are required to respect the orders of the Court and cannot be the law unto themselves. When this Court in a categorical manner had directed that all the teachers of the University and the colleges affiliated to it shall teach in the semester mode and extend cooperation, such a kind of resolution was totally unwarranted. As advised, at present, we are not inclined to proceed for contempt, but we command that all the teachers of the University of Delhi and all colleges affiliated to the said University shall cooperate in all aspects and teach in the semester mode and not proceed on the path of deviation which would, in the slightest manner, bring them in the net of the violators of the orders of the Court, for the order of Court

has to be treated with respect regard being had to its sanctity in a country governed by Rule of Law.

9. We may note with profit that when these matters were heard, this Court had, apart from hearing the learned counsel for the petitioners, also heard some of the teachers who had shown their concern for the students but we cannot, at present, ignore the stand of the University that the semester system is in the interest of the students. We may clearly state here that which system will be in the interest of the students may not be a facet to be gone into in these writ petitions as this Court is not an expert in that regard and the academic matters are to be decided by the competent authorities of the University after following due procedure of law. What would be delved into by this court is whether the introduction of the semester system has been done in accordance with the provisions of the University Act and the statutes framed thereunder or not. Pending the same, we repeat our command so that no teacher or staff shall pave the path of deviancy. We treat the resolution of Dyal Singh College Staff Council as a resolution passed in anxiety and decidedly misguided in law. While expressing our displeasure in respect of the resolution, we advisedly refrain ourselves from taking any action against the teachers or the staff . However, we repeat our order which was passed

on earlier occasion and command the teachers of the University and the affiliated colleges not to deviate and to extend fullest cooperation on all aspects and in all spheres pertaining to teaching in the semester mode.

10. We hope and trust that the teaching community, which is expected to be a disciplined one, shall not compel this Court to take any stringent action because of their conduct or action in future. They should await the verdict of this Court.

11. Regard being had to the lis in question, let the matters be listed on 12th July, 2011 for final disposal under the heading 'After Notice Misc. Matters'. The learned counsel for the parties are requested to file their written notes of submissions prior to the said date. This Court hopes and trusts that the learned counsel for the parties shall not seek any adjournment on the date fixed.

CHIEF JUSTICE

SANJIV KHANNA, J

MAY 16, 2011
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