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

+ W.P.(C) 5394/2012

% ***Judgment Delivered on: 30.11.2012***

RISHABH MALHOTRA Petitioner
Through : Mr.Rishi Kapoor and Mr.Mukesh
Kumar, Advs. along with the petitioner.

versus

UNIVERSITY OF DELHI AND ORS Respondents
Through : Mr.Mohinder J.S. Rupal, Adv.

+ W.P.(C) 5400/2012

PUSHPENDER Petitioner
Through : Mr.Shantanu Kumar, Adv.

versus

UNIVERSITY OF DELHI THROOUGH
VICE CHANCELLOR AND ORS Respondents
Through : Mr.Mohinder J.S. Rupal, Adv.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

CM 11004/2012 IN W.P.(C) 5394/2012
CM 11012/2012 IN W.P.(C) 5400/2012

1. Since the basic facts in the present writ petitions are common, the applications for interim relief are being heard together and disposed of by a common order.
2. The necessary facts, to be noticed for disposal of the present

applications, are that the petitioners had appeared in the graduation examination conducted by the University of Delhi through the School of Open Learning, respondent no.4. The examinations for graduation were held between 6.6.2012 to 12.6.2012. The petitioners thereafter appeared in the Common Entrance Test for Faculty of Law conducted by the University of Delhi, respondent no.1, on 10.6.2012. The result of the entrance test was declared on 17.6.2012. The petitioners were found successful. The petitioners were called for counselling, however, admission was not granted to them solely on the ground that their result for graduation was awaited. At the time, when the writ petition was filed and the matter was taken up for hearing the results of the petitioners had not been declared by the School of Open Learning, respondent no.4. During the course of hearing, it has been pointed out by counsel for the parties that the results of the petitioners have now been declared and both the petitioners have cleared the examination and they meet the eligibility criteria for admission to the LL.B course.

3. The petitioners seek admission in LL.B. course primarily on the ground that they cannot be faulted for non-declaration of result by respondent no.4 and more so when it is for the University of Delhi to regulate the conducting of examination and declaration of results.
4. Learned counsel for the petitioners have strongly urged before this Court that the petitioners have tried very hard to rejoin the main stream of education after they appeared from the School of Open Learning. Counsel further submit that not only the petitioners are eligible for admission in LL.B. course but even as of today 117 seats are lying vacant. Counsel contends that in case if the seats are left vacant and the petitioners are denied admission, it would be a national loss, besides the student would lose one academic year. It is also urged before this court

that in case admission is not granted the entire efforts and hard work put in by the petitioners would be wasted. It is also contended that the petitioners have succeeded in the CET and in case admission is not granted to the petitioners, they would have to appear again in the CET and they may or may not clear the same. It is further contended that even in case the petitioners succeeded in the CET in the next year, they may still not be eligible on account of the rank they may achieve.

5. Counsel next contends that since the petitioners are not to blame for the delay in declaration of result the cut-off date cannot be made applicable to them. In support of his submission counsel for the petitioners has relied upon *Asha v. Pt. B.D. Sharma University of Health Sciences and Ors.*, reported at 2012 (6) SCALE 287, wherein the Supreme Court of India has taken a view that in case student is not to be blamed for the delay an exception can be carved out for extending the cut-off date.
6. Counsel further submits that in order to meet the objection of attendance, which is likely to be raised by the respondents, the petitioners are willing to give an undertaking that they will attend extra classes, regularly and/or they are also willing to give the examination of the first semester along with the examination of the third semester and attend classes to make up the loss by attending the 1st semester classes, and the petitioners will follow the rules. Counsel also contends that in case the petitioners are unable to clear the necessary papers, they will not raise any protest against the same.
7. Reliance is also placed on *Deepika Chaudhary v. University of Delhi*, reported at 64 (1996) DLT 503. Para 16 of the judgment reads as under:

“(16) The petitioner was duly successful in the admission test and was admitted for the course and part of the fee was accepted from her. The only ground of her rejection at a subsequent stage is that she failed to furnish her result/ marks sheet for M.A.(Pol. Science)

Examination. The said result was obviously not declared by the University of Delhi over which the petitioner exercised no control. Therefore, it was not on account of her lapse that the necessary result could not be communicated within the stipulated period. In this background, respondents 4 and 5 should have permitted the petitioner to continue her course and not maintained a strict posture in following the prescribed regulation fixing the last date as 14th August, 1996 in a rigid manner. The University has to consider the welfare of the student and the impact of cancellation for non-compliance of one of the conditions for admissions, when fees have already been paid and no fault could be attributed to the petitioner. Surely this discretion can be easily exercised by even the statutory body which is empowered to consider each case on its own merits. The provision has to be benevolently interpreted and reasonably administered. This will not in any manner amount to disrespect and discredit to the Academic Council.”

8. Counsel for the petitioners have also relied upon *Utkarsh Sharma v. UOI & Ors.*, reported at 2010 Law Suit (Del) 2317 in support of his plea that the petitioners can be made to appear in the examination of the first semester along with third semester. Para 7 of the judgment reads as under:

“7. Dr. A.L Sangal however insists that the course being a professional one, the petitioner without attending the classes, would not acquire proficiency. He further states that even if the petitioner is permitted to take the theory examinations, he has already missed the practical examinations and if the Court directs the respondent no.3 to hold fresh practical examinations for the petitioner it would put the respondent no.3 Institute to a lot of difficulty. He states that rather than making the petitioner take the examination without attending the classes, it would be more appropriate if the petitioner joins with effect from Second semester commencing in January, 2011. On enquiry as to how the same is possible, he states that the First year of the course comprises of twelve papers; that the said twelve papers are divided into two groups of six papers each and the first year students are also divided into two groups, with one group studying

one group of six papers and the other group studying the other group of six papers in the First semester and vice-a-versa in the Second semester. He states that in this way the petitioner, though will suffer delay of six months in completing the course in comparison to the others admitted along with him but would at least have an opportunity to attend the classes and which is essential.”

9. Learned counsel for the respondents has opposed the present applications for interim relief firstly on the ground that the University Rule no.8 and Sub-Rule 3 of Rule 12 makes it abundantly clear that mere appearance in the Common Entrance Test does not mean that a student would have a claim to admission unless he or she produce all the prescribed documents. Counsel further submits that even otherwise once the admission procedure is closed the students cannot be granted admission and lastly even if the students are granted admission since they do not meet the attendance criteria no benefit can accrue in their favour as the first semester classes have come to an end.
10. Learned counsel for the respondents has relied upon *S.N. Singh v. Union of India & Others*, reported at 106 (2003) DLT 329 (DB), wherein a Division Bench of this Court has held that LL.B. course cannot be equated with a normal academic course, and attendance of lectures, tutorials and seminars are essential to train a law student.
11. I have heard learned counsel for the parties, considered their rival submissions and also perused the relevant documents placed on record.
12. It is not in dispute that the petitioners appeared in their third year B.Com (pass) examination from the School of Open Learning, conducted by the University of Delhi. The results of the petitioners were awaited. The petitioners had appeared in the Common Entrance Test conducted by University of Delhi. The petitioners were declared successful and they were called for the counselling, which was dully attended by them. The

petitioners were granted admission, however, later the admission granted to the petitioners were cancelled on account of the fact that their results for graduation were not declared before the cut-off date. Even after the filing of the writ petition the School of Open Learning, respondent no.4, did not declare the result of the petitioners. The Results of the petitioners were declared only in the end of November, 2012, when admissions already stand closed.

13. Declaration of result lies purely in the domain of the University of Delhi. Since, the University Calendar and Schedule for Admission are also proposed by the University of Delhi, in my view it is the University of Delhi, which has to ensure that students are not made to suffer and lose either an academic year or unable to secure admission in a subject of their choice on account of non-declaration of result. It is also not in dispute that exception has only been carved out for the LL.B. course where the University has decided not to grant provisional admission to await the result of the graduation courses. In all other post-graduation courses the University has made a provision to grant provisional admission to a student to await the result of the University. The cut-off date ranges from end of September to end of October in different courses. Since the results of the petitioners have now been declared and the petitioners are found eligible and successful and the petitioners cannot be faulted for non-declaration of results by the University at the appropriate time, University is directed to grant admission to the petitioners in LL.B. course. The petitioners will be permitted to appear in the IInd semester examination as they have not attended any classes of the 1st semester, however, the petitioners will attend the first semester classes for which their attendance will be marked separately in any of the evening classes in the Campus Law Centre-I and only in case they

attend 66.6% classes would they be entitled to appear in the first semester examination along with third semester examination. For the second semester the petitioners will attend classes regularly.

14. Learned counsel for the respondents contends that promotion rules will also come in the way of the petitioners as they cannot be promoted without meeting the criteria of admission and thus they cannot be granted re-admission.
15. Having regard to the peculiar facts of this case, where the University is itself to be blamed for the delay in declaration of results, the University cannot take advantage of its own wrong and penalize the students and further it cannot be said that the students did not attend the classes voluntarily.
16. Accordingly, present applications stand disposed of in view of above. It is made clear that this order has been passed in the peculiar facts of the present case and the same shall not be treated as a precedent.

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17. Let the respondents file a detailed counter affidavit specifically addressing the question with regard to delay in declaration of results and steps which are likely to be taken by the University so that the results are declared within the time for the next academic session onwards.
18. List on 26.2.2013.

G.S.SISTANI, J

NOVEMBER 30, 2012

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