

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

% Date of Decision: 27.11.2013

+ W.P.(C) 7177/2013 and CM No. 15445/2013 (interim relief)

AMIT KUMAR Petitioner

Through: Mr Umesh Sharma, Adv.

versus

DELHI UNIVERSITY & ANR. Respondents

Through: Mr Mohinder J. S. Rupal Adv for
DU along with Registrar of the University.

+ W.P.(C) 7425/2013 and CM No. 15905/2013 (stay)

RAID HODA Petitioner

Through: Mr Umesh Sharma, Adv.

versus

DELHI UNIVERSITY & ANR. Respondents

Through: Mr Mohinder J. S. Rupal Adv for
DU along with Registrar of the University.
Registrar of Delhi University

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

W.P.(C) 7177/2013

The petitioner took admission in the LLB course of Delhi University in the year 2007-08. The petitioner, according to his counsel, cleared the first year of the said course in the year 2007-08. The petitioner, however, could not qualify in some of the papers in second year of the course in the year 2008-09 and he was able to clear all the papers of the second year of the course only in the academic year 2012-2013. The petitioner sought admission in the third year of the course in the academic year 2013-14. The application of the petitioner in this regard, addressed to the Professor-in-Charge, Campus Law Centre, was allowed on 16.09.2013 with a fine of Rs 100/-. As would be evident from the application, which was allowed by the Professor-in-Charge on 16.09.2013, the petitioner did not disclose in the said application that he had already completed six years of the course in the year 2012-13.

However, the petitioner has not been allowed to attend classes for the 5th semester and the examination for the said semester is scheduled to be held from 28.11.2013. The University has declined to permit him to attend the classes and appear in the examination for the 05th semester on the ground that he was required to complete the studies in LLB course within a span of six years as per the rules of the University. The

case of the petitioner, however, is that a number of other students, who could not complete the course within a span of six years, were allowed by the University to appear in examinations and, therefore, he is being discriminated in this regard.

2. Mr Rupal, who appears for the University, has today filed a counter-affidavit on behalf of the University and the Registrar of the University is also present in the Court. A perusal of the counter-affidavit would show that as per Appendix II of Ordinance V of the University of Delhi, a candidate taking admission in the LLB course is required to complete the course within a span of six years from the date of admission to the first year of the course. The petitioner in WP (C) No.7177/2013 having taken admission in the year 2007-08, according to the University, is not eligible to take admission in the third year of the course and consequently, allowed to appear in the examination for the 5th and subsequent semester.

3. The counter-affidavit filed by the University shows that in the past there was a practice in the University to give extension for completing the course beyond the stipulated period of six months. However, vide notification dated 10.10.2012, the University decided to stop that practice.

4. The University, in order to mitigate the hardship of the students who claimed to have been taken by surprise on account of the University all of a sudden coming out with the notification dated 10.10.2012, decided that as a purely one time measure, the students to permit submit their application for grant of special chance to enable them to appear in their backlog papers with the specific recommendations of the Principals of their respective Colleges/Heads of Departments, latest by 05.04.2013, for consideration of the Competent Authority. The learned counsel for the petitioner in WP (C) No.7177/2013 states that the petitioner could not have availed benefit of the said notification dated 14.03.2013 since he had not completed six years of the studies by that time and the petitioner at that time was studying in the 4th semester of the course.

5. Appendix II of Ordinance V of the University, to the extent it is relevant for this purpose, reads as under:-

“1. The course for the Degree of Bachelor of Laws shall extend over a period of 3 academic years (i.e. 6 terms in all). It is made clear in clause 8 that “Subject to the provision contained in the Ordinance relating to ex-students as in force from time to time a student must clear all the courses offered in all the terms within a span period of six year from the date of admission to first year of the LLB

course and that no student shall be admitted as a candidate for any LLB Examination after six years from the date of admission to the first year of the course.”

It would thus be seen that in terms of the statutory Ordinance of the University, the candidate taking admission in the LLB course of the University is required to complete the said course within six years from the date of admission to the first year of the course. Since the petitioner in WP (C) No.7177/2013, took admission in the first year of LLB course in the academic year 2007-08, he was required to complete the said course in the academic year 2012-2013. Having failed to complete the course within the maximum period prescribed in this regard in the statutory Ordinance of the University, the said petitioner is clearly ineligible for admission to the third year of the course in the academic year 2013-14.

6. Coming to the past practice of the University, the learned counsel for the University on being asked as to under which authority the University had been allowing the students to appear in the examinations even after they had failed to complete their course, within six years from the date of taking admission in the first year of the course, relied upon the Ordinance 10(c) which reads as under:-

“Ord. X-C. Permissive Provisions”

The Academic Council may, in exceptional cases grant exemption from the operation of any of the Ordinances governing admission of students, migration, the courses to be pursued by them, attendance at lectures or sessional or other work or the examination of candidates and authorise what is proper to be done instead in such cases, provided that no such exemption and authority shall be deemed to have been granted unless not less than two-thirds of the members present of the Academic Council voted in favor of the motion for such exemption and authority made by, or with the written authority of the Vice-Chancellor; and Provided further that this two-thirds majority voting for the exemption should not be less than half the total strength of the Academic Council at the time.”

A careful analysis of the aforesaid provision would show that the Academic Council can grant exemption in exceptional cases only from the Ordinances of governing the following matters; (a) admission of the students; (b) migration; (c) the courses to be pursued by the students; (d) attendance at lectures or sessional or other work; (e) the examination of the candidates. The aforesaid Ordinance, in my view, does not empower the University to permit a student to continue in the LLB course in case he fails to complete the said course within six years from the date of taking admission in the first year of the course, in terms of the requirement of Ordinance V, Appendix II, which prescribes the

duration for completing LLB Course and does not deal with the matters enumerated in Ordinance XC. Therefore, the relaxation granted by the University in the past, in my view, was not authorized and was clearly beyond its powers. Be that as it may, the case aforesaid of the petitioner is not covered under the exemption granted by the University which was a onetime measure. The petitioner cannot claim parity with the students who were allowed in the past to appear in the LLB examination, despite having failed to complete the course within the prescribed period of six years computed from the date of admission in the first year of the course. It is settled proposition of law that no negative equality can be claimed by any person and a person seeking intervention by the Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution must necessarily establish either a the contravention of a legal right or a case of positive discrimination. A person cannot claim in law that merely because something wrong has been committed in one case similar wrong should be committed in his case as well, thereby perpetuating the said mistake. The concept of equality before law and equal treatment by the State pre-supposes the existence of a legal right vesting in the petitioner and a wrongful action on the part of the State. It may be possible for a person to question the validity of an order

passed in favour of a person but in law was not entitled to such an order but he cannot claim passing of an order which is not sanctified by law and would result in contravening a statutory provision. The extraordinary and discretionary power of the High Court under Article 226 of the Constitution cannot be exercised for the purpose of repeating or perpetuating an illegality or a mistake committed by the State. The petitioner under the rules of the University has no legal right to appear in the examination to either take admission in the third year of the LLB course or to appear in the examination for the said year since he failed to complete the course within six years of taking admission in the first year of the course.

W.P.(C) 7425/2013

7. The petitioner in W.P.(C) No. 7425/2013 took admission in the LLB course of the Faculty of Law, University of Delhi in the academic year 2006-07. He was able to pass only 26 out of 30 subjects till the academic years 2011-12. The petitioner filed W.P.(C) No. 7266 of 2012, impugning the notification dated 10.10.2012, whereby the University had decided to discontinue accepting application for grant of special chance beyond the stipulated span period and had required the students to complete their course within the span period of the

prescribed period of the course concerned. The petitioners in the said writ petition were permitted by way of an interim order dated 22.11.2012 to appear in the examination scheduled to commence from 30.11.2012 making it clear that no special equities would flow in their favour and their result would be kept in a sealed cover, till further orders from the Court. It was also directed that the request of the students would be considered by the Academic Council and thereafter by the Vice-Chancellor for grant of permission to appear in the examination as a special case and in case University finds justifiable reasons, the petitioner would be permitted to sit for the examinations which were to commence from 30.11.2012.

8. Pursuant to the interim order of this Court, the petitioner appeared in the remaining four papers which he was unable to clear, but even in the last chance, he was able to clear two out of four papers in which he had appeared. The writ petition, which the petitioner had filed earlier, was dismissed as infructuous on 06.08.2013. The grievance of the petitioner in this writ petition is that the powers to allow the students to appear in the examination beyond the stipulated span period, being the power vested in the Academic Council of the University, could not have been withdrawn by the Registrar or any other official of the University

and the notification dated 10.10.2012 does not have the approval of the Academic Council. In this regard, the petitioner has also referred to the representation made by a number of students of the Academic Council to the Vice Chancellor of the University on 18.10.2012. It is stated in the said representation that at no stage either the sub-Committee or the Standing Committee of the Academic Council had discussed the issue of withdrawal of special chances and the notification had been issued by the Registrar in violation of the decision of the Standing Committee. The petitioner also relies upon in Dissent Note recorded by some members of the Academic Council with respect to the decision of the Standing Committee not to grant special chances to the students who as many as 25 students whose cases were placed for consideration of special chance, without discussing the merits of the case.

The Registrar of the University, who is present in the Court, states that the decision contained in the notification dated 10.10.2012 was taken by the Vice-Chancellor considering that there is no provision either in any brochure or in rules for extension of time beyond six years from the date of admission in the course.

9. In my view, since the Academic Council of the University had no authority to permit a student to continue beyond the span of maximum

period allowed for completing a course, it is immaterial, as to by whom the notification dated 10.10.2012 came to be issued.

10. Since the petitioner in WP (C) No.7425/2013, took admission in the year 2006-2007, he cannot be allowed to continue in the said course in the year 2013-2014.

11. For the reasons stated hereinabove, both the writ petitions are dismissed. No orders as to costs.

V.K. JAIN, J

NOVEMBER 27, 2013
BG