

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

+ LPA No.433/2014 & CM No.10026/2014 (for stay)

Reserved on: 16th July, 2014.
Pronounced on: 1st August, 2014.

APOORV YADAV

..... Appellant

Through: Mr. R.K. Saini with Mr. Anil Kumar
Yadav, Advocates.

Versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Mr. Mohinder J.S. Rupal, Adv. for R-
1/DU.
Ms. Priyam Mehta, Adv. for BCI.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

MS. G. ROHINI, CHIEF JUSTICE

1. The unsuccessful petitioner in W.P.(C) No.256/2014 is the appellant before us.
2. The appellant/writ petitioner was given admission in the L.L.B. (3 year degree course) in Law Centre-II, Faculty of Law, University of Delhi for the Academic Year 2013-14. However, he was not allowed to appear for the First End Semester examinations scheduled from 30th November, 2013 to 16th December, 2013 on the ground of shortage of attendance.

3. Aggrieved by the same, he filed W.P.(C) No.256/2014 and the same was dismissed by the learned Single Judge by the order under appeal dated 27th May, 2014.

4. We have heard the learned counsel for both the parties and perused the material available on record.

5. The appellant / writ petitioner was admitted to the LL.B. three year degree course of the respondent University in June / July, 2013. The first semester end term examination of the said course was scheduled to commence with effect from 30th November, 2013. However the respondent University, finding the appellant to be not having the requisite minimum attendance in the classes of the first semester, did not issue the admit card to the petitioner. Though the appellant filed W.P.(C) No.7857/2013 impugning the action of the respondent University of refusing to allow him to appear in the examination and also sought interim relief to enable him to appear in the said examination but according to the appellant, for reasons not attributable to him, the said application for interim relief could not be considered till the entire examinations were over and he accordingly withdrew the said writ petition with liberty to file afresh. The appellant

thereafter, in or about January, 2014, filed the writ petition from which this appeal arises.

6. The only argument urged by the counsel for the appellant before us is that the appellant, in two of the five subjects of the first term had more than 70% attendance and was wrongly not permitted to take the examination in the said two subjects and if permitted to take the examination in the said two subjects, would be eligible for promotion to the second year of the course.

7. The counsel for the appellant has in this regard argued:

(a) that under Section 7(1)(h) of the Advocates Act, 1961, the respondent Bar Council of India (BCI) is empowered to lay down standards of legal education; that the standards of legal education and recognition of degrees in law for admission as advocates as formulated by the respondent BCI in the year 1975 in Rule 3 in Section B of Part IV of the said rules, relating to attendance in LL.B. course provided as under:

“Rule 3:-

The Students shall be required to put in a minimum attendance of 66% of the lectures on each of the subjects as also at tutorials, moot courts and practical training course. Provided that in exceptional cases for reasons to be recorded and communicated to the Bar Council of India, the Dean of the Faculty of Law and Principal of Law colleges may condone attendance short of those

required by the Rule, if the student had attendance 66% of the lectures in the aggregate for the semester or examination as the case may be.”

(b) however the Rule of the respondent University as contained in Ordinance VII Clause 2(8) relating to attendance in LL.B. course was as under:

“(8)(a) In the case of students studying for the LL.B. Degree Examination, no student shall be deemed to have pursued a regular course of study unless he has attended at least two-thirds of the total number of lectures delivered in each year including tutorials, seminars and discussion classes held during the academic year in which he has been admitted as a regular student of the Faculty.

Provided, however, that the Dean, may for reasons to be recorded in writing, permit a student of the 2nd or the 4th Term to take the examination if he is short by not more than 10% of the total number of lectures delivered including tutorials, seminars and discussion classes held during the 1st or the 2nd year of the course, as the case may be. Such a student shall have to make up the deficiency in attendance of the previous year in the next following year in which he is admitted failing which he shall not be deemed to have fulfilled the attendance requirements of the year:

Provided further that in cases of students who are not admitted at the time of the commencement of the courses due to non-clearance of the required courses and are admitted late after the declaration of the results of the Supplementary examination, the attendance shall count from the date of declaration of the supplementary examinations results.”

(c) that the Division Bench of this Court in *S.N. Singh Vs. Union of India* 106 (2003) DLT 329, finding the rule aforesaid of the respondent University to be at variance with the BCI Rule, held that the respondent University is required to bring its Rule in conformity with the Rule of the BCI and issued a direction to the respondent University to bring its Rules in conformity with the corresponding rules framed by the BCI;

(d) in compliance with the aforesaid direction, the respondent University modified its Rule as under:

“(8)(a)The students shall be required to put in minimum attendance of 66% of the lectures on each of the subjects as also at the moot courts and practical training course.

Provided that in exceptional cases for reasons to be recorded and communicated to the Bar Council of India, the Dean of the Faculty of Law / Professor-in-Charge of the Law Centre may condone attendance short of these required by this Rule, if the student had attended 66% of the lectures in the aggregate for the semester examinations.

Provided further that no person shall be deemed to have satisfied the required conditions in respect of his instructions unless, in addition to the requirement regarding attendance and other conditions, he has appeared and satisfied by his performance the Professor-in-Charge of the Law Centre in such test, written and / or oral, as may be held by him in his discretion.

The Professor-in-Charge shall have, and shall be deemed always to have had, the power of detain a student in the same class in which he has been studying, or not to send him up for the University Examination, in case he did not appear at the tests aforesaid or his performance was not satisfactory.

The Professor-in-Charge of the Law Centre shall have power to strike off the name of a student who is grossly irregular in attendance inspite of 'warning', or, when the absence of the student is for such a long period that he cannot put in requisite percentage of attendance."

- (e) the BCI formulated new rules of legal education titled the Rules of Legal Education, 2008 which came into force on 14th September, 2008 and the Rule relating to attendance therein is as under:

“Rule 12 – End Semester Test

No student of any of the degree program shall be allowed to take the end semester test in a subject if the student concerned has not attended minimum 70% of the classes held in the subject concerned as also the moot court room exercises, tutorials and practical training conducted in the subject taken together.

Provided that if a student for any exceptional reasons fails to attend 70% of the classes held in any subject, the Dean of the University or the Principal of the Centre of Legal Education, as the case may be, may allow the student to take the test if the student concerned attended at least 65% of the classes held in the subject concerned and attended 70% of classes in all the subjects taken together.

The similar power shall rest with the Vice Chancellor or Director of a National Law University, or his authorized representative in the absence of the Dean of Law.

Provided further that a list of such students allowed to take the test with reasons recorded be forwarded to the Bar Council of India.”

(f) though the BCI directed all law schools / colleges to report compliance with the aforesaid changed rule but the respondent University has not done so as is evident from the following appearing in the bulletin of information of the year 2013-14 (we are herein below in addition to the rule qua attendance are also setting out the Promotion and Re-admission Rules which also have relevance to the subject):-

“10. Attendance Rules

All the students of LL.B. shall have to put in minimum attendance of 66% of the lectures in each of the subjects as also at the moot courts and practical training course:

Provided that in exceptional cases for reasons to be recorded and communicated to the Bar Council of India, the Dean, Faculty of Law / Professor-in-Charge of the Law Centre concerned may condone attendance short of those required by this Rule, if the student had attended 66% of the lectures in the aggregate for the semester examinations.

The Professor-in-Charge of the Law Centre shall have power to strike off the name of a student who is grossly irregular in attendance inspite of warning, or, when the

absence of student is for such a long period that he cannot put in requisite percentage of attendance.

11. Promotion Rules

(i) No student shall be promoted to the next Term, if he / she has been detained in the examination for shortage of attendance.

(ii) Subject to sub-rule(i) above, a student of LL.B. First, Third or Fifth Term shall be eligible for promotion to Second, Fourth or Sixth Term, respectively irrespective of the number of courses in which he / she has failed to pass or failed to appear in the First, Third or Fifth Term examinations.

(iii) Subject to sub-rules (i) and (ii) above, a student of LL.B. Second Term shall be eligible for promotion to Third Term if he / she has passed in at least five papers of First and Second Term examinations taken together and a student of Fourth Term shall be eligible for promotion to Fifth Term if he / she has passed in at least fifteen papers of First, Second, Third and Fourth Term examinations taken together.

Note:-The students eligible for admission to III/IV Term must seek admission not later than two weeks from the date(s) of announcement of the results of LL.B. II/IV Term Annual Examinations or within one week of commencement of teaching, whichever is later, failing which they will forfeit their right to be admitted to III/IV Term in the particular year.

12. Re-admission Rules

(i) There shall be no re-admission in the LL.B. First Term under any circumstances including detention for shortage of attendance in that Term.

(ii) A student who has been detained for shortage of attendance or for applying late for admission in Second, Third, Fourth, Fifth or Sixth Term shall be eligible for

re-admission in the same Term in which he / she had been detained provided (a) he / she seeks readmission before commencement of teaching in the relevant Term; (b) his / her conduct has been satisfactory; and (c) he / she shows sufficient cause for his / her discontinuance of studies or for not having put in the requisite percentage of attendance to the satisfaction of a Committee consisting of the Dean, Faculty of Law and the Professors-in-Charge of the Law Centres.

(iii) An applicant who has failed in examination or failed to appear at the examination and who is otherwise eligible to appear at the examination as an ex-student, shall not be admitted as a regular student. In exceptional cases, however, where such an applicant is a foreigner, studying under the Cultural Scholarship Scheme of the Government of India, etc., re-admission may be allowed.

(iv) In respect of an applicant seeking re-admission, his previous record shall be carefully scrutinized at the concerned Law Centre.”

(g) that the rule of BCI is couched in negative language; it does not mean that a student having 70% attendance in the subject has to be allowed to take end semester examination in that subject.

8. The contention of the counsel for the appellant is that as per the BCI Rules of the year 2008, the appellant is entitled to appear in the end semester examination in a subject in which the appellant has minimum 70% attendance and the respondent University, wrongly applying its own rules prescribing 66% aggregate attendance, is not permitting the appellant to

appear in the examination of two of the subjects in which the appellant has 70% attendance. Reliance in this regard is also placed on *Sukriti Upadhyay Vs. University of Delhi* MANU/DE/2600/2010 (DB) also laying down that the BCI rules will prevail over the rules of the respondent University.

9. Per contra, the counsel for the respondent University has contended:

(i) that the respondent University is always entitled to have higher standards than the minimum laid down by the BCI. It is informed that the National Law University (NLU), Delhi has instead of 70% attendance in a subject, prescribed attendance of 75%;

(ii) that besides the Attendance Rules, the Promotion Rules (supra) as set out herein above from the Bulletin of Information, provide that no student shall be promoted to the next term/semester if he / she has been detained in the examination for shortage of attendance and the appellant having been so detained, in any case was not entitled to promotion to the second term;

(iii) it is yet further contended that yet another rule of the respondent University as also set out herein above provides that there shall be no re-admission in the LL.B. first term under any

circumstances including detention for shortage of attendance in that term; the challenge to the said rule was negated in the order dated 10th May, 2012 of the Division Bench of this Court in W.P. (C) No.41/2012 titled *Samadhiya Vevek Kumar Vs. University of Delhi*.

10. We have considered the rival contentions.

11. The only question for adjudication in our opinion is, whether the rule of the respondent University requiring a student to have 66% attendance in the aggregate is inconsistent with the rule aforesaid of the BCI. If there is any inconsistency, in accordance with the judgments in *S.N. Singh* and *Sukriti Upadhyay* (supra), the BCI rule will prevail.

12. The rule aforesaid of the BCI places a prohibition against appearing in the end semester examination in a subject in which 70% of the classes have not been attended. The BCI in the rules framed by it has not dealt with the aspect of promotion from one semester to another or re-admission in a semester. No other rule of the BCI in this regard has been cited. The power of the respondent University to regulate promotion and re-admission otherwise is not under challenge. Only if the BCI has also framed rule regulating the same aspect of legal education, is the rule of BCI to prevail

over the corresponding rule of the University. We, in the BCI Rules, are unable to find anything which can be said to prevail over the rule of the respondent University requiring a student to have a minimum of 66% of the attendance in aggregate.

13. We may note that the respondent BCI in its counter affidavit filed to the writ petition, has stated, i) that the BCI rules provide for minimum standard of legal education and the universities and / or institutions can set higher standards of education in conformity with the minimum standards of legal education as prescribed by the BCI; ii) that the criteria for promotion from one semester to the next semester are governed by the rules / regulations made by the respective universities and / or institution; and, iii) that the BCI has no role to play with the internal rules framed by the University with regard to promotion of student from one semester to another as long as those rules are in conformity with minimum standards as set out in the BCI rules.

14. On the contrary, the first proviso to the BCI Rule, by permitting relaxation of the prohibition contained in the main rule on the condition that the student concerned has attended 70% of the classes in all the subjects taken together, also suggests the BCI Rule to be also requiring 70%

attendance in aggregate of all the subjects. That also follows from the rule requiring minimum 70% attendance in each subject.

15. We have also considered whether the rule of the respondent University requiring a student to have 66% aggregate attendance in all the subjects of a semester, to be able to appear in the examination even in the subject in which the student may have 70% or more attendance can be said to inconsistent with the rule aforesaid of BCI placing a bar on allowing any student to take the end semester test in a subject in which the student has not attended minimum 70% of the classes. Though on first blush it may appear to be inconsistent because the BCI Rule appears to be permitting a student to appear in a subject in which the student has attended 70% of the classes and the respondent University rule not permitting so far the reason of the student not having 66% aggregate attendance in all subjects but on deeper consideration, we conclude otherwise. BCI is concerned only with a student not acquiring a degree in law without attending classes and has laid down a standard of 70%. BCI is not concerned with promotion from one semester to another and which falls in the domain of the University. University in this regard has provided that without 66% aggregate attendance in all subjects, cannot take the test/examination in any one subject even and

consequently cannot be promoted to the next semester. For the first semester it is further provided that there can be no re-admission also in first semester; the student will have to go through the process of seeking admission all over again. It will thus be seen that the rule of the University providing for 66% aggregate attendance operates in a different arena than the rule of the BCI which is only concerned with taking exam without having 70% attendance in the subject concerned. We are of the view that there can be no inconsistency/repugnancy between the two rules if the field of operation and effect thereof is in different fields. We are also of the opinion that the rule of the BCI is in the nature of a prohibition against appearing in the end semester test/examination in a subject without attending minimum 70% classes thereof rather than a licence to appear in such test/examination. Had the rule of the BCI been in a language “entitling” a student to take test/examination in a subject in which the student had attended minimum 70% classes, it could have been said that the rule of the University also requiring the student to have 66% aggregate attendance takes away the right given to the student under the BCI Rule. It is the settled principle of law of interpretation of statutes that it has to be interpreted from the language thereof.

16. The Supreme Court in *State of U.P. Vs. Daulat Ram Gupta* (2002) 4 SCC 98 held that the expression “inconsistent” means lacking consistency, not compatible with. Similarly in *Basti Sugar Mills Co. Ltd. Vs. State of U.P.* (1979) 2 SCC 88 the definition of inconsistent as “mutually repugnant, contradictory, contrary, the one to the other so that both cannot stand and the acceptance of one implies abrogation of the other” was accepted. Yet again in *M. Karunanidhi Vs. UOI* (1979) 3 SCC 431 the test of “absolutely irreconcilable” and “a situation where it is impossible to obey one without disobeying the other” was propounded and it was held that where there is a possibility of both operating in the same field without coming into collision with each other, there cannot be said to be any repugnancy. Applying the said test also, no case of inconsistency / repugnancy requiring us to hold the rule prescribed by the respondent University to be bad owing to the BCI Rule is made out. The Supreme Court in *Vijay Kumar Sharma Vs. State of Karnataka* (1990) 2 SCC 562 undoubtedly cautioned that there may be cases where it is possible to obey both by obeying the more stringent of the two and thereby not resulting in inconsistency if a narrow test thereof were to be adopted and it was held that if the effect of one is of nullifying the other it would still be a case of inconsistency / repugnancy. But even if the

said test is applied we do not find a case of the BCI Rule being nullified by the rule of the respondent University to be made out.

17. We thus conclude that there is nothing inconsistent in the BCI rule to the rule of the respondent University requiring a student to have 66% attendance in aggregate. The said rule of the respondent University will thus have a full play and a student even if having more than 70% attendance in a subject, would not be entitled to appear in the end semester examination in that subject also if does not have attendance in aggregate in all the subjects of 66%.

18. The counsel for the appellant has invited our attention to para no.9 of the counter affidavit aforesaid of the BCI where it is *inter alia* stated “that under the aforesaid rule of the BCI, a student shall be allowed to take end semester test in the student concerned has attended minimum of the 70% classes held in the subject concerned and also in the moot court etc.” and has contended that as per the BCI, its rule creates a right in favour of the student to take the examination in the subject in which the student has more than 70% attendance.

19. Though undoubtedly the BCI has stated so in its counter affidavit but reading of the counter affidavit in entirety does not show the version of the BCI to be any different from our interpretation of the rule aforesaid.

20. We, therefore, do not find any merit in the sole ground urged before us. The appeal is accordingly dismissed.

21. Needless to state that the examinations which the appellant was permitted to take by way of interim orders in the writ petition are rescinded.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

AUGUST 01, 2014

kks/gsr..