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

% *Date of Decision : 12th January, 2021*

+ LPA 209/2020

ABHISHEK SINGH Appellant

Through: Mr. Kamal Mehta, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Vivekanand Mishra, Advocate
for R-1

Mr. Apoorv Kurug & Ms. Nidhi Mittal, Advocates
for R-2

Mr. Preet Pal Singh & Mr. Saurabh Sharma,
Advocates for BCI

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

: **D. N. PATEL, Chief Justice (Oral)**

Proceedings in the matter have been conducted through video conferencing.

CM APPL.19347/2020 (condonation of 237 days in preferring the appeal)

This application has been preferred under Section 5 of the Limitation Act, 1963 for condonation of delay of 237 days in preferring the appeal.

Having heard the learned counsels for the parties and looking to the facts stated in this application, there are reasonable reasons for condonation of delay. We, therefore, condone the delay in preferring the appeal.

LPA 209/2020

Page 1 of 7

The application is allowed and disposed of.

LPA 209/2020 & CM APPL.19345/2020 (Stay)

1. Being aggrieved and feeling dissatisfied by the judgment and order dated 21st November, 2019 in W.P.(C) 12252/2019 (Annexure A-1 to the memo of this appeal) and order dated 29th January, 2020 (Annexure A-4 to the memo of this appeal) passed in Review Petition No.37/2020, the original petitioner has preferred the present Appeal.
2. The issue involved in this appeal concerns granting one time waiver of shortage of attendance in favour of the petitioner on medical grounds for First Semester LL.B. Degree Course in Delhi University.
3. We have heard learned counsels for the parties and looked into the facts and circumstances of the case. Appellant/petitioner was suffering from Tuberculosis when he was in his First Semester of LL.B. Degree Course in the respondent University. The First Semester of LL.B. Degree Course commenced from 1st September, 2019 and concluded on 25th November, 2019.
4. The minimum attendance requirement in LL.B. Course is 70%. It further appears from the facts of the case that because of the sickness of the appellant/petitioner, the attendance of the appellant in First Semester of LL.B. Degree Course, Delhi University is zero percent. No Rule or Regulation or any law has been brought to our notice which permits concession by condoning shortage of 100% attendance. The learned Single Judge while deciding the writ petition has rightly held that in professional courses, requirement of attaining minimum of attendance is “non-

negotiable”. It is an undisputed position that the attendance of the appellant/petitioner in First Semester is NIL. The appellant seeks to appear in the First Semester examination, LL.B. Degree Course, without attending the classes and with zero percent attendance, which is impermissible in law. Attending classes and having minimum 70% attendance is a *sine qua non* to be eligible to appear in the examination. Since the appellant did not attend the classes at all, the Rules which permit waiver of attendance will also not inure to his advantage. These aspects of the matter have been correctly appreciated by the learned Single Judge while passing the impugned order.

5. The Hon’ble Supreme Court in ***Bar Council of India v. Aparna Basu Mallick***, (1994) 2 SCC 102 has held as under:

“14.

If the acquisition of a degree in law is essential for being qualified to be admitted as an advocate on a State roll, it is obvious that the Bar Council of India must have the authority to prescribe the standards of legal education to be observed by Universities in the country. On a conjoint reading of these provisions of the Act with Rule 1(1)(c) in Part IV of the Rules which prescribe the standards for legal education and recognition of degrees in law as well as admission as advocates, it is difficult to understand how one can say that the said Rule is inconsistent with any of the provisions of the Act. What Rule 1(1)(c) requires is that the course of study in law must be completed by regular attendance at the requisite number of lectures, tutorials and moot courts in a college recognised by a University. As pointed out earlier, this Court in Baldev Raj Sharma case [1989 Supp (2) SCC 91] pointed out that there was a substantial difference between a course of studies pursued as a regular student and the course of studies pursued as a private candidate. The policy underlying the relevant provisions of the Rules is to lay emphasis on regular attendance of the law classes. It is, therefore, clear that a candidate desiring enrolment as an

*advocate must fulfil the conditions set out under the relevant clause of Section 24 read with Rule 1(1)(c) of the Rules. In the present case since both the candidates admittedly did not pursue any regular course of study at any college recognised by the University by attending the law classes, lectures, tutorials and moot courts, they cannot be said to have complied with the requirements for enrolment as an advocate. In that view of the matter we think that the view taken by the Calcutta High Court in *Aparna Basu Mallick v. Bar Council of India* [AIR 1983 Cal 461] is erroneous.”*

(emphasis supplied)

6. In ***Kiran Kumari v. University of Delhi and Ors.*** [W.P.(C) 9143/2007], a Division Bench of this Court has held as under:

"13. In the light of the above, we find it difficult to appreciate as to how the requirements of 66% in each subject or as a condition of eligibility for appearance in the examination or the requirement of 66% attendance in the aggregate for purposes of granting the benefit of condonation in the shortfall can be said to be either illegal or arbitrary. The decisions delivered by the Supreme Court and by this Court to which we have referred above have in our view authoritatively held that the LLB course was a professional course in which the candidates have to ensure regular attendance of lectures and those who do not attend the stipulated percentage of lectures would not even be eligible for enrolment as members of the Bar. Such being the importance given to the attendance of lectures, there is no question of the requirement stipulated by the Rules being either irrational, unconstitutional or illegal in any manner. The quality of training which a candidate gets during the time he undergoes the course is directly proportional to the number of lectures that he attends. The failure of a candidate to attend the requisite number of lectures as stipulated by the relevant rules can legitimately disentitle him to claim eligibility for appearing in the examination.

14. That brings us to the contention vehemently urged by Mr. Mittal that insistence upon 66% lectures in the aggregate as a condition precedent for the exercise of the power of condonation was irrational, for it amounts to empowering the competent authority on the one hand and denuding him of that power on the other. We do not think so. What is the minimum percentage of lectures which a candidate must attend in each subject or on the aggregate is a matter on which the academic bodies like the University and the Bar Council of India are entitled to take a decision. If in the opinion of the Bar Council and the University, a candidate cannot be said to have taken proper instructions or meaningfully undergone the course, unless he attends a minimum of 66% lectures in the aggregate, this Court cannot but respect that opinion. In matters relating to academics and standards of education, the Court would show deference to the opinion of the academicians unless a case of patent perversity is made out by the petitioners. The present is not, however, one such case where the requirement of the rule can be said to be so perverse or irrational as to call for the intervention of this Court. As a matter of fact, the minimum percentage of lectures having been fixed at 66%, still gives to the students freedom to miss or abstain from 34% of the such lectures. That is a fairly large percentage of lectures which a student may miss for a variety of reasons including sickness or such other reasons beyond his control. No student can however claim that apart from 34% lectures which he is entitled to miss even without a cause, the shortage to make up 66% should be condoned if he shows good cause for the same."

(emphasis supplied)

7. A Division Bench of this Court has held in **Guru Gobind Singh Indraprastha University v. Naincy Sagar & Anr.** [LPA 713/2019] as under:

"31. Thus, for the respondents/students to state that on obtaining a minimum of 50% credit score as prescribed in an academic year, they are entitled to be promoted to the next academic year notwithstanding the fact that they did not cross

the threshold of the minimum attendance prescribed, is found to be untenable and liable to be rejected outright. A degree in law cannot be treated as an empty formality. A law degree encompasses all that a University stands for and is a reflection of the nature of knowledge that it has imparted to its students. The process is not about simply cramming and disgorging during the examinations. It is about assimilating, absorbing and soaking up for being imprinted permanently in the mind of a student. In this context, the condensed classes that the respondents/students are presently rushing through, in compliance of the directions issued in the impugned judgment, that are going on from 8.30AM to 4.00PM on a daily basis, till the 9th semester end term examination are conducted at the end of this month, can hardly be equated with the daily piecemeal knowledge transmitted by teachers spread over an entire academic session and assimilated slowly by the students. What is being done now, is nothing but an empty formality which is impermissible. The Court may empathize with the respondents/students who would have to take an academic break but empathy cannot translate into a positive order in their favour when the legal position is loaded against them.”

(emphasis supplied)

8. In view of the aforesaid decisions also, no error has been committed by the learned Single Judge in deciding the writ petition preferred by the appellant.

9. At this stage, learned counsel appearing for the appellant submits that the appellant had appeared afresh in the examination for admission to the LL.B. Degree Course, Faculty of Law, University of Delhi and having cleared the examination has got admission, although he has lost out on a crucial year. Learned counsel submits that he has been given admission in Campus Law Centre, whereas he desires to be admitted in Law Centre- I,

Faculty of Law, University of Delhi.

10. It is open to the petitioner to make a representation to the concerned authority for change from CLC to Law Centre – I, enumerating therein the reasons seeking a transfer. As and when such a representation is preferred, the concerned authority looking into the grievances of the appellant, in accordance with law and applicable Rules, Regulations and Policies.

11. With the aforesaid observations, this appeal is hereby disposed of along with pending application.

CHIEF JUSTICE

JYOTI SINGH, J

JANUARY 12, 2021

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