

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

Decided on: 23.01.2018

+ **LPA 624/2017, C.M. NOS. 44396/2017, 34415/2017 & 2639/2018**

PADMA LANDOL

.... Appellant

Through: Mr. Ramesh Mishra and Mr. Rahul Dutta,
Advocates.

Versus

UNIVERSITY OF DELHI AND ANR.

.... Respondents

Through: Mr. Mohinder J.S. Rupal with Ms. Slomita Rai
and Mr. Prang Newmai, Advocates, for University of
Delhi.

Mr. Preet Pal Singh, Advocate, for BCI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The appellant is aggrieved by the order of a learned Single Judge by which her writ petition for relief against Delhi University, which required her to enroll in the three year LL.M degree (instead of the two year degree, opted by her) was rejected.

2. The petitioner/appellant applied for the two year LL.M degree course, after completing her LL.B degree. She was selected but asked to join the three year LL.M course, instead of the two year course she had applied for. Her grievance was that the brochure issued by the University gave no indication that she had to necessarily apply for the three year course, *because* she had enrolled as an Advocate. Initially, the writ petition was joined by another student; he was also a party to this appeal. Rebuffed by the

University, which maintained that she was a professional as she had enrolled as an Advocate, she approached the Court under Article 226 of the Constitution.

3. A learned Single Judge, by order dated 04.08.2016; noted the petitioners' contentions that the University's stand that a professional cannot pursue a two year LL.M. course is arbitrary and irrational and violates his fundamental rights; what a student does in his or her free time, i.e. at the time when the classes are over cannot be regulated by it. The learned Single Judge also noticed the Bar Council of India's Resolutions in its meeting held on 18.12.2009 and 20.12.2009 to the effect that practicing advocates can join in LL.M. course as regular students without suspending his practice. The petitioner's argument was that once the Bar Council of India (which regulates the legal profession) allows an advocate to join an LL.M. course, the University cannot impose any other conditions/restrictions on his practice of law. On the basis of this argument, and the submissions of the University, interim orders were made directing admission to the two-year course. The University was directed to place on record its notification in this regard- i.e. notification (bearing No. CNC-II/093/2015-16/Delhi, the 26th June, 2015). It was placed on record. The University's stand was that this notification is part of its policy and that it clearly stipulates that the two year LL.M. degree is a full-time course available to a candidate who is not in any employment or not engaged in any other trade, business or occupation. The semesters are spread out over four terms and there would be minimum of 30 contact hours per term. The minimum qualification for the two year LL.M. course was 55% marks in LL.B. The criteria for the three-year LL.M course is different.

4. The learned Single Judge dismissed the writ petition, holding as follows

“The contrast in the two courses is evident. The 2 years LL.M. course is for those persons who are not engaged in any employment, trade, profession or occupation. It is treated as a full time course. The 3 years LL.M. course is for those persons who are employed or engaged, in any trade, profession, business or occupation. The rational appears to be clear. The rational being that a person who is not engaged in any trade, profession or business or employment can devote not only more hours to college study but also more hours to home study; that is why such a person is entitled to complete this course in a period of 2 years. A person who is engaged in a trade, profession, occupation or business or employed (as is so in the present case) would have much less time to devote to his study which include not only the study period during classes but also the home study which is required for such a post-graduate course. The petitioner who is one such applicant admittedly being a practising lawyer is spending several hours in the courts and as such the time available to him in the course of the day to study his LL.M. study is lesser; that is why the course has been spread out over six semesters and qualifies as a 3 year course.

The stand of the Department is clear and unequivocal on this count. The Notification of the Department also evidences that this has been indicated to all candidates/applicants at the time of their entrance test and it is fully known to them at the time when they choose the particular course which they want to enrol in. The Bar Council of India has no role to play in regulating the LL.M. course and the criteria thereof. Even otherwise, in the minutes of the meeting held on 18.12.2009 and 20.12.2009 (as is reflected in the order dated 04.8.2016) it only states that a practising advocate can join an LL.M. course as a regular student without suspending the practice; meaning thereby that a practising advocate can take up an LL.M. course but this LL.M. course has to be 3 year course. In this meeting it

had nowhere been recommended by the Bar Council of India that a practising advocate can complete his LL.M. course in 2 years. This is also not the case of the petitioner in this background. In this background, the contention of the petitioner that he should be allowed to do 2 years LL.M. course while engaged in practice has no merit. Petition dismissed.”

5. Counsel for the appellant contends that the impugned judgment is erroneous. It was argued that the petitioner cannot be said to engage in a profession, merely because she had enrolled as a lawyer. She is not practicing in the legal profession full time. It was submitted that she did not join any lawyer or chamber, nor is she involved in the practice of law. For a while she was working as an intern in the Delhi Commission for Women but not on any formal basis. Furthermore, she is not gainfully employed or paid on regular or part-time basis. Being from the remote area of Ladakh, she finds it difficult to sustain herself and engages in research work for her friends practicing in the legal profession, for which she is paid sometimes. This is neither full-time practice, nor even part-time practice of the profession of law. The appellant's counsel submitted that ever since she approached the Court, especially after she filed the present appeal, she has become the subject of some harassment by the University, which is determined to ensure that she is deprived of facilities, such as hostel seat, etc. It was submitted that the appellant was required to and had been furnishing non-employment declarations, ever since October, 2016 and now, has been issued Show Cause Notices stating that her enrolment and the documents furnished by her amount to practice, thus disentitling her from the hostel facility. It is submitted that the University has gone to the extent of even

changing the declaration form, recently to oust her from the woman's hostel facility enjoyed by her, which is arbitrary and questionable.

6. Mr. Rupal, counsel for the University, relies upon the relevant provisions of the notification, delineating the difference between the two and three year courses. It reads as follows:

“ 8. Duration of LL.M. Course

(i) LL.M. One-year (two terms) Course This is full timeopen only to LL.B. with 55% marks. The semesterof 30 contact hours per term.

(ii) LL.M. Two-Year (Four Terms) Course (LL.B. with 50% marks) This is full time course meant only for those who are not in employment or engaged in any trade, profession, business or occupation.

(iii) LL.M. Three-Year (Six Terms) Course: (LL.B. with 50% marks) This course is meant for all applicants including those who are employed or otherwise engaged in any trade, profession, business or occupation.”

7. Counsel pointed out that the relevant provisions are those framed by the University. The Bar Council of India's resolutions and regulations only deal with the practice of the profession of law and do not in any manner undermine the University's regulatory powers with respect to academic matters such as contents of courses offered by it, eligibility conditions in relation to its undergraduate and other courses, nature and structure of such courses, etc. Therefore, once the University mandated that anyone engaged in any profession, calling or trade, wishes to join the LL.M course, subject to other eligibility conditions, can do so only in the three year course, there cannot be any dilution of such requirement. As regards the allegations by the appellant with respect to threat to withdrawal of the hostel facilities is

concerned, it was argued that she had stated on affidavit about her enrolment and the nature of engagement in the legal profession. This clearly did not entitle her to continue in hostel and the University would be within its rights to deny it, so that others who are deserving get it.

8. What falls for consideration is whether the appellant's case entitles her to admission in the two year LL.M course. In contrast to Para 8(ii) which talks of the two year course – and the candidate who is “*not in employment or engaged in any trade, profession, business or occupation*”; the LL.M three year course in Para (iii) is meant “*for all applicants including those who are employed or otherwise engaged in any trade, profession, business or occupation.*”. Now, though not binding, the Bar Council rules are also to be considered; the two resolutions enable those practicing the legal profession to also continue their LL.M course. The functional autonomy of the University no doubt entitles it to make a distinction between those practicing a profession, or employed or engaged in trade, profession or business, and those who are not. At the same time, there cannot be a stereotypical application of the rules, which ostensibly place all those not engaged in full time (or even on regular part time basis) in the legal profession, at par with those *employed or engaged in trade or business*. The facts of this case, speak for themselves, so to say. The appellant frankly stated that she was enrolled; she has also stated as follows (response dated 23rd November, 2017 to the Show Cause Notice issued by the University in respect of the hostel facility on 13th November, 2017):

...“*In my appeal before the Hon'ble High Court of Delhi, I have stated that I work to earn my work to earn my livelihood along with pursuing my LL.M. Course, I have nowhere submitted that I have taken up any employment, either part time*

or full time to earn my livelihood. I am neither under a regular practice nor working as a junior with any advocate. It is only that sometimes my friends who are under active practice ask me to do some research work or drafting for which I am being paid/I do such work in my leisure time without attending any Court or office. So, for all practical purposes I am not under any kind of employment. Sometimes, I even provide private tuitions to earn some pocket money or my livelihood.”

9. The University has not rebutted the nature of activity carried on by the appellant, which appears to be irregular, sporadic and dependent upon friends and well wishers. By all accounts, the appellant is not practicing in the legal profession; she appears to be maintaining herself by providing some kind of legal research assistance, and also guiding students. This enables her to eke out her living, while completing the LL.M course. The kind of employment contemplated in Rule 8 (ii) and (iii) seems to be economic activity that involves some regularity: even part-time employment entails the employee attending to the duties required for a part of the day or for defined periods. There is nothing on the record to suggest that the appellant is attending the chambers of any practicing lawyer, or has set-up practice, or is practicing along with someone else. Furthermore, in any case, this Court notices that the appellant was admitted to the two year course, which she has attended all the while (and in which she is currently in the third semester). Even if the Court were to agree with the learned Single Judge, the end result would be that she would have to stop attending the course, and seek admission in the three year course. This would entail unnecessary wastage and loss of time for her; it would be highly inequitable. Therefore, the Court is of the opinion that the appellant should be allowed to continue with the two year course and complete it, according to schedule.

10. As regards the Show Cause Notices issued by the University, this Court is of opinion that they *prima facie* disclose some kind of prejudice. The Court only hopes that this is merely overzealous, and misplaced *literal* application of the regulations (as the allusion to the meaning of practice in the Bar Council rules reveal, as well as the new declaration form together with the Show Cause Notice of 11th January, 2018) and not anything more to suggest vindictiveness. In view of the Court's holding that the appellant is not engaged in any regular, or even part-time engagement, the fact that she is enrolled *per se* would not disentitle her to the hostel seat. We say nothing more.

11. In view of the above discussion, the impugned judgment is set aside. The appellant shall be permitted to continue in the two year course and complete it according to schedule, and also continue to occupy the hostel for the duration of her course. The appeal is allowed in the above terms. No costs.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

JANUARY 23, 2018