

\$~45

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

% **Date of Decision: 21.11.2019**

+ **W.P.(C) 12252/2019 & CM APPL. 50086/2019**

ABHISHEK SINGH

... Petitioner

Through: Mr. D.S. Kauntae, Advocate.

versus

UNION OF INDIA AND ORS.

... Respondents

Through: Mr. Vivekanand Mishra, Senior panel counsel with Mr. Dharmendra Tyagi, Advocate for respondent No.1/UOI.
Mr. Apoorv Kurup with Ms. Nidhi Mittal, Advocates for respondent No. 2.
Mr. Mohinder J.S. Rupal with Mr. Kousik Ghosh, Advocates for the University of Delhi.
Mr. Preet Pal Singh with Mr. Saurabh Sharma, Advocates for the BCI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. The substantive prayer made in the petition is as follows: -

“(a) Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondent No. 5 & 6 to grant one time waiver of shortage of attendance in lectures in favour of the petitioner on medical grounds and allow the petitioner to appear/write in the first semester examination for

the sake of his career and future, in the interest of justice and equity;”

2. As is evident upon a bare perusal of the prayer that the petitioner seeks a one-time waiver *qua* shortage in his attendance score, *albeit*, on medical grounds. The waiver is sought to enable the petitioner to sit in the first semester end-term examination.

3. This matter came up for hearing yesterday when accommodation was sought by counsel for the petitioner to examine the Division Bench judgment dated 19.11.2019, passed in LPA 713/2019, in the matter of ***Guru Gobind Singh Indraprastha University vs. Naincy Sagar & Anr.*** that had been put to him.

4. Mr. Rupal, who appeared on advance notice yesterday i.e. 20.11.2019, on behalf of the University of Delhi (in short “the University”) resists the petition.

5. Before I proceed further, it is pertinent to put down the facts and circumstances which have led to the institution of the captioned petition.

5.1 On 03.07.2019, the University conducted Delhi University Entrance Test 2019 (“entrance exam”) for admissions to various undergraduate and postgraduate courses.

5.2 The petitioner who was desirous of obtaining admission in the Faculty of Law 3-year LL.B. Programme offered by the University *qua* academic session 2019-2020 sat for the entrance exam.

5.3 Upon the result of the entrance exam being declared, the petitioner came to know that he had been ranked 119. It is averred that in the entrance exam the petitioner secured 185 out of a total marks of 388.

5.4 It is also relevant to note that the petitioner falls in the category of

Other Backward Classes-Non-Creamy Layer (hereafter referred to as “OBC-NCL”).

5.5 Having been declared successful in the entrance exam, the petitioner obtained admission in the 3-year LL.B. Programme after fulfilling the requisite formalities and depositing the necessary fee.

5.6 The petitioner asserts that since March 2017, he has been suffering from an illness concerning which there is no clear and certain diagnosis.

5.7 The petitioner also asserts (and there is medical record filed in that behalf) that he has lost, in the past 11 months, nearly 10 kgs of weight.

5.8 Based on the pathological reports, the petitioner asserts that he has been tested “positive” for Salmonella Typhi IgG (Typhidot) and Salmonella Typhi IgM (Typhi DOT), and Mantoux test. These reports are marked as Annexure P-3 and are appended on pages 28, 35 and 36 of the petition.

5.9 The record shows and there is no dispute with regard to the fact that the first semester commenced on 01.09.2019.

6. The petitioner avers, given his deteriorating health condition, he approached the professor-In-Charge, Law Centre-I and other authorities for necessary accommodation and relief. In other words, the petitioner sought waiver of the requirement of attaining minimum attendance.

6.1 It is the submission of the petitioner that he was informed by the professor-In-Charge that because he had failed to attend the prescribed minimum number of lectures, his name would be struck- off from the rolls and that he will not be allowed appear in the end-term examination.

6.2 Faced with this difficulty, the petitioner, it appears, filed a representation dated 03.10.2019 which was marked to the Dean, the Head, Faculty of Law, and the professor-In-Charge. The burden of the petitioner’s

representation was that the concerned authorities should take sympathetic view of the matter given his debilitating health.

6.3 The petitioner emphasizes the fact that he has been ill for the past two-and-a half years and that he is affected by a disease *qua* which the doctors have not been able to come up with a definitive diagnosis and therefore, even at the relevant time, he was advised complete bed rest.

7. Since there was no positive response from the university, the petitioner was constrained, as it appears, to move this Court.

7.1 The instant writ petition was filed on 18.11.2019 and, as noticed above, came up for hearing before the Court on 20.11.2019.

8. I have heard the learned counsel for the parties and perused the record.

9. The record, as it stands filed before me, reveals that the petitioner has been suffering from a disease *vis-a-vis* which the medical fraternity has not been able to reach a definitive conclusion.

9.1 While typhoid is suspected, the fact that the Mantoux test is positive suggests that the petitioner may be suffering from tuberculosis.

9.2 Given these circumstances, the petitioner's inability to attend the classes on the face of it cannot be doubted.

10. The irony is [something that the university and the Bar Council of India (in short "BCI") need to work on] that the Regulation 7 (i), (ii) & (iii) of Ordinance VII¹ of the university, on which reliance is placed by Mr.

¹ "7. *Attendance Rules in conformity with the BCI Legal Education Rules 2008*

xxx

xxx

xxx

(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*

Rupal, which deals with both attendance and promotion, does not factor in circumstances such as the one which have arisen in the present case.

10.1 The reason that this aspect is incongruous is that even if the student is afflicted with an infectious disease (in this case the petitioner probably is) or a serious injury which genuinely degrades the student's ability to attend classes, there is no leeway available to the administration to allow and, therefore, enable the concerned student to continue with his/her studies while a student who may have superficially/ostensibly marked his/her attendance but failed to pass even one paper or even failed to appear in any of the papers in the 1st, 3rd and 5th term would be eligible for promotion to the 2nd, 4th and 6th term.

10.2 The insistence on attaining minimum attendance as prescribed in Regulation 7 seems, at least to my mind, out of place in situations such as this.

10.3 There could be circumstance where a student could be carrying a serious infection such as Human immunodeficiency virus ('in short "HIV") and he insists that he would attend the classes, given the regulatory regime put in place, I wonder what would be the answer of the university in such situation. Swine flu, which has reached, at times, endemic proportions in Delhi is another example where confinement is routinely advised. I could give several other examples, however, to my mind, for the moment, these

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

examples should suffice.

11. It is, thus, in my opinion, important for the university as well as the BCI to revisit the attendance and promotion rules and perhaps make a provision and/or clarify that in genuine cases where students who are otherwise punctual and have a good track record would not be detained only for the reason that in a particular period they were not able to attend classes in circumstances such as the one cited above.

11.1 In today's world where technology rules the roost, the short-attendance issue can be dealt with by having students connected to classrooms *via* video-conferencing mode or having the lectures uploaded on Youtube.

11.2 Requirement of physical presence in classrooms can be overcome during periods of confinement etc., by taking recourse to technology.

11.3 More importantly, the policy makers need to separate the wheat from the chaff. Students who are indolent as against those who are temporarily disabled and/or distracted, and therefore fail to attain, in a given period, prescribed minimum attendance, need to be treated differently.

11.4 One size fits all cannot be the approach of the educators. Engagement with students involves keeping track of several indices. Amongst them, their educational record is one of them. Bereft of necessary leeway, and, in a manner of speech, play-in-the joints lends to the decisions rendered by the college administrators a robotic hue. Harsh and at times disproportionate punishment can imbue frustration in an otherwise diligent student.

12. Thus, while one cannot but agree that high standards should be maintained in the field of education, and therefore attendance is important, it

First, Second, Third and Fourth Term examinations taken together”

has to be borne in mind that even good and brilliant students face difficult circumstances which need to be understood and negotiated with care and compassion. The university has to have the skills of a trapeze artist; a difficult ask but not impossible.

13. I must also note that Mr. Singh who, appeared on behalf of the BCI, has indicated to the Court that issues such as the one which has arisen in this case are presently being deliberated upon by the BCI.

14. That being said, insofar as I am concerned, I am bound by the Division Bench judgment in the aforementioned case which, *inter alia*, rules that, in professional courses, requirement of attaining minimum attendance is “non-negotiable”.

15. Therefore, while I commiserate with the petitioner, I am unable to grant any relief to him.

16. The writ petition is accordingly dismissed. Resultantly, pending application shall stand closed.

RAJIV SHAKDHER, J

NOVEMBER 21, 2019

c