

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement reserved on 23.10.2019

%

Judgement pronounced on 31.10.2019

+

W.P.(C) 10909/2019

NAINCY SAGAR

..... Petitioner

Through : Mr. Raj Kamal, Mr. Aseem Atwal,
and Mr. Kartavya Batra, Advocates

versus

VIVEKANANDA INSTITUTE OF PROFESSIONAL
STUDIES AND ANR.

..... Respondents

Through : Mr. Rakesh Munjal, Sr. Adv. with
Mr. Annirudh Sharma, and Mr.
Nitisha Goyal, Advocates for R-1.
Ms. Ekta Sikri, and Mr. Shashwat
Sharma, Advocates for R-2.

+

W.P.(C) 8697/2019

PRATEEK SOLANKI

..... Petitioner

Through : Mr. Raj Kamal, Mr. Aseem Atwal,
and Mr. Kartavya Batra, Advocates

versus

VIVEKANANDA INSTITUTE OF
PROFESSIONAL STUDIES AND ANR.

..... Respondents

Through : Mr. Rakesh Munjal, Sr. Adv. with
Mr. Annirudh Sharma, and Mr.
Nitisha Goyal, Advocates for R-1.
Ms. Anita Sahani, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

Preface: -

1. These are two writ petitions in which a common prayer is made. The prayer made by the petitioners is, in effect, to direct respondent no.1 to promote them to the next semester i.e. the 9th semester based on their record *qua* academic session 2018-2019. The petitioners thus, seek permission to appear for the 8th semester end-term examination in the concurrent even semester i.e. the 10th semester. As to how and why the petitioners have come to this pass needs to be detailed out.

1.1. Before I do so, it would be necessary to indicate that the petitioner in W.P.(C)No.10909/2019 would be referred to as by her first name Naincy while the petitioner in W.P.(C)No.8697/2019 will be referred likewise by his first name i.e. Prateek.

1.2. Insofar as respondent no.1 i.e. Vivekananda Institute of Professional Studies is concerned, it would be referred to as VIPS. Respondent no.2 i.e. Guru Gobind Singh Indraprastha University would be referred to hereafter as the University. Wherever necessary, both Naincy and Prateek would be collectively referred to as petitioners and likewise, VIPS and the University, wherever necessary, would be collectively referred to as the respondents.

Backdrop: -

2. In 2015-2016, the petitioners sat for the Central Examination Test (in short "CET") conducted by the University *qua* B.A. LL.B./B.B.A.

LL.B. integrated course. The petitioners qualified the CET and thus were admitted to VIPS which is affiliated to the University. The petitioners successfully sailed through the first three years of the B.A. LL.B./B.B.A. LL.B. course. They encountered difficulties in the 8th semester which pertains to the fourth academic year. It is important to note that in the 7th and 8th semesters of the fourth academic year, the petitioners, like other students, had to take exams in six papers in each semester. Each paper had a credit rating of five. The petitioners cleared all six papers in the 7th semester and thus obtained a total credit score of 30.

3. Insofar as the 8th semester was concerned, because the petitioners were detained, for reasons that I would advert to, their credit score was zero. Therefore, in sum, for the fourth academic year which consisted of 7th and 8th semesters, out of a maximum credit score of 60, the petitioners had obtained a credit score of 30.

3.1. The petitioners, based on their credit score and the provisions of Clause 11.3(v)(i) of Conduct and Evaluation of Examinations for Programmes Leading to All Bachelor's/Master's Degrees and Under Graduate/Post Graduate Diploma following The Semester System of Examination (hereafter referred to as "Ordinance 11") seek promotion to the next academic year i.e. the fifth year which comprises the 9th and 10th semester.

4. The respondents, on the other hand, resist the plea of the petitioners on the ground that the petitioners were detained in the 8th semester (which, as noted above, falls in the fourth academic year) on account of failure to achieve minimum attendance as provided in Clause 9.1 of Ordinance 11. In other words, the stand of the respondents is that the petitioners cannot

be promoted to the 9th semester which, effectively means that they will not be able to complete their B.A. LL.B./B.B.A. LL.B. integrated course within five years as originally envisaged.

5. The moot question which arises for consideration is: What exactly is the interplay between Clause 9 of Ordinance 11 (which comprises sub-clauses 9.1 to 9.3) and Clause 11, 11.3(v)(i) and (ii)? Before I embark on this exercise of ascertaining the scope and ambit of aforementioned clauses of Ordinance 11, it may be relevant to touch upon the reasons for the detention of the petitioners in the 8th semester to lend a human face to a problem which has legal connotations and degrading ramifications for the petitioners.

6. Naincy and Prateek, as has been alluded to hereinabove, have been students who have successfully cleared the first seven semesters.

6.1. Naincy suffered an injury to her right arm in an accident on 08.02.2019. The x-ray revealed that she had suffered a fracture. The visit to an orthopaedic confirmed that she had suffered a fracture in the distal end of her right radius bone in her wrist. Naincy was advised complete bed rest by the orthopaedic.

6.2. Naincy claims that because of extreme discomfort and pain in her right arm, she visited the orthopaedic, once again, on 12.02.2019. The doctor prescribed pain killers and advised bed rest for 20 days.

6.3. The next visit to the orthopaedic was made by Naincy on 12.03.2019. The orthopaedic advised complete bed rest for another six weeks.

6.4. Naincy avers that the medical report dated 12.03.2019 was submitted to VIPS and that she was assured that she did not need to worry

about missing out on classes/lectures.

6.5. On 23.03.2019, Naincy, once again, visited the orthopaedic for a check-up. She informed the doctor that her pain had increased and there seemed to be no improvement. The doctor advised Naincy to take another x-ray. The x-ray revealed that at the site of the fracture, serious angulation had occurred which could only be corrected through surgery. Naincy was thus, advised to undergo open angulation under general anaesthesia. The orthopaedic advised Naincy to get herself admitted into a hospital.

6.6. On 12.04.2019, Naincy visited the doctors at All India Institute of Medical Sciences, New Delhi (in short “AIIMS”) for a second opinion on whether or not she would be required to undertake a surgery.

6.7. In the first instance, the Department of Radio Diagnosis at AIIMS advised physiotherapy and further rest to take care of the angulation caused at the fracture site.

6.8. The problem persisted, which ultimately, resulted, I am told, in Naincy being put under a surgeon’s knife. Naincy claims that she is undergoing physiotherapy up until today.

6.9. Notably, while Naincy was beset with worries concerning her physical health, she received intimation on 25.04.2019 that admit cards for the 8th semester end-term examination were being circulated by the class representative. She was told that the admit cards could be collected on 26.04.2019 between 03:00 P.M. and 04:00 P.M.

7. Naincy reached VIPS for the collection of her admit card on the appointed date and time. She was, however, in for a rude shock. On arrival, she was told that she had been detained due to short attendance

and hence, would not be allowed to take the 8th semester end-term exam. Naincy asserts that she was handed over a tampered and distorted admit card.

7.1. Given this circumstance, Naincy approached VIPS on several occasions between 27.04.2019 and 29.04.2019 with a request that she be issued a proper admit card given the fact that she had suffered an injury. The medical record concerning the injury was placed before the concerned authority in VIPS with the hope that the decision taken to detain her would be reviewed.

7.2. Naincy was not successful in her endeavours. The 8th semester end-term examinations were conducted by the University on 29.04.2019.

7.3. This was followed by a declaration of the 7th semester end-term examinations result on 20.05.2019. As alluded to above, Naincy had cleared all her papers and thus, attained a total credit score of 30 *qua* the 7th semester end term examination.

7.4. Once the 8th semester end-term examinations were concluded, on 08.07.2019, Naincy approached VIPS to enquire as to whether she would be promoted to the 9th semester. It appears that Naincy was orally informed by the concerned authorities at VIPS that because she had been detained on account of short attendance, she would have to seek re-admission and thus, repeat the 8th semester in the fourth year concerning the academic session 2019-2020.

7.5. Since no formal communication was served on Naincy, she approached the concerned authorities at VIPS that her case should be considered for promotion to the 9th semester as her percentage fell short on account of injury to her wrist.

7.6. No heed was paid to the request made by Naincy and in the meanwhile, the classes for the 9th semester commenced from 15.07.2019. The result for the 8th semester end-term examination was declared by the University on 30.07.2019, wherein, insofar as Naincy was concerned, it disclosed that she had been marked as detained against each paper.

7.7. The fact that Prateek, in the meanwhile, who had been similarly detained, had approached this court by way of a writ petition [W.P.(C)No.8697/2019], propelled her to move to the court by way of the instant writ petition.

8. Prateek's reasons for detention are not as heart-rending as those of Naincy. Prateek seems to be a student who is involved in a whole host of activities. He appears to be a student who is interested in music and is an avid mooter. Prateek has placed on record several certificates of appreciation, (none of which have been questioned by the respondents), to demonstrate that he did participate in various music and moot court competitions. That being said, most of the certificates relate to the period spanning between February 2016 and October 2018, except for one, which is dated 22/23.02.2019. Besides this, there is a certificate that offers a sliver of hope. This certificate is issued by Mr. Arvind Kumar Gupta, Advocate and is dated 17.02.2019. The certificate depicts that Prateek had interned with Mr. Arvind Kumar Gupta between 14.01.2019 and 16.02.2019.

8.1. Though this information is part of the additional affidavit dated 16.10.2019 filed by Prateek, there is no assertion by VIPS that the internship undertaken by Prateek was without its knowledge. What VIPS has stated in its affidavit-in-reply, though, is that students are allocated

specific periods during the entirety of the five-year course for completion of internships and for gaining experience and, therefore, the time allocated for attending classes cannot be substituted with time spent in the internship.

8.2. Prateek, with the very same additional affidavit, which is, as noted above, dated 16.10.2019, placed on record, *inter alia*, the following documents:

- i. The attendance record available on the online portal of VIPS concerning another student i.e. Mr. Aakash Yadav
- ii. The notification dated 28.07.2014 concerning the University of Delhi.
- iii. Copy of Ordinance VII (2) of the University of Delhi.
- iv. Copy of Ordinance 8 of the University of Delhi.

8.3. Other documents pertaining to the credit score obtained by Prateek and Naincy in the 7th and 8th semester have also been placed on record. Since I have already referred to the credit score achieved by Prateek and Naincy in the earlier part of my judgment, the inclusion of these documents needs no further elaboration.

9. The documents placed on record concerning Aakash Yadav were relied upon by Prateek to show that he was promoted to the 9th semester despite a very poor attendance record. The download from the web-portal of VIPS disclosed that in two subjects, he had an attendance of 6.98% and 5.56% and in the other two subjects, he had zero attendance.

9.1. The VIPS in its affidavit-in-reply has refuted this assertion made by Prateek. VIPS has averred that its online portal was being managed by an outside agency and since complaints were received, the service was

discontinued. The online portal, according to VIPS, was set up to enable students to know their attendance and other information relating to their respective courses. VIPS, in its affidavit-in-reply, emphasizes the fact that Aakash Yadav had made a complaint concerning the information uploaded on the online portal whereupon the errors which had crept in were corrected. Aakash Yadav, according to VIPS, had an overall attendance of 85.52% and not what Prateek had projected based on the information available on the web-portal.

9.2. For the purpose of completeness of narration of the essential facts pertaining to Prateek, it needs to be mentioned that he had approached this Court by way of a writ petition i.e. [W.P.(C) 4690/2019] ostensibly for reversal of the detention order which was dismissed as withdrawn on 02.05.2019.

Analysis and Reasons: -

10. Given this backdrop, what one would have to construe, is the scope and ambit of Clause 9 and Clause 11.3(v)(i) of Ordinance 11. Before I commence the exercise, I would like to state at the outset that the parties will have to live (and therefore in a figure of speech) perish by the provisions put in place in the Ordinance. For the sake of convenience, the relevant parts of these two clauses are set forth hereafter:

“9. Attendance

9.1 A student shall be required to have a minimum attendance of 75% in the aggregate of all the courses taken together in a semester, provided that the Dean of the School in case of University Schools and Principal / Director in case of University maintained / affiliated institutes may condone attendance shortage up to 5% for individual student for reasons to be recorded. However, under no condition, a student who has an aggregate

attendance of less than 70% in a semester shall be allowed to appear in the semester term end examination. Additional (not decreasing the provisions above) attendance requirement may be specified by Syllabi and Scheme of Teaching and Examination.

For programmes regulated by a statutory regulatory body, if the statutory regulatory body provides for any specific guideline for attendance, the same shall be applicable as approved by the Board of Studies of the concerned school.

9.2 Student who has been detained due to shortage of attendance shall not be allowed to be promoted to the next academic year or semester and he/she will be required to take re-admission and repeat all courses of the said semester with the next batch of students. The University Enrolment number of such student shall however remain unchanged and he or she shall be required to complete the programme in a maximum permissible period as mentioned in clause 4.3.

Dean of the School / Director / Principal shall announce the names of all such students who are not eligible to appear in the semester term end examination, at least 5 calendar days before the start of the examination and simultaneously intimate the same to the Controller of Examinations.

9.3 In case any detained student appears in the semester / supplementary examination, his / her result shall be treated as null and void.

xxx

xxx

xxx

11. Criteria for Passing Courses, Marks, Promotion and Divisions

xxx

xxx

xxx

(v) Promotion Policy to the Next Academic Year

(i) A student will be promoted to the next academic year

only if such student has obtained at least 50% (rounding to full digits) of the total credits of the existing academic year from which the promotion to next academic year is being sought.

(ii) All such students who fail to get promoted to next academic year for the reason of deficiency in required credits, as stated above or due to being detained in a particular academic year, will automatically be declared to have taken academic break to repeat such examinations of the year in which the student has failed or has been detained, so as to obtain sufficient credits to be promoted to the next academic year. Such a student shall not be required to repeat any course that student has already completed successfully.

On acquisition of sufficient credits for promotion, such students who have taken at least one academic break, shall be automatically readmitted in the regular batch of that academic year of the concerned programme. The Syllabi and Scheme of Teaching and Examination applicable to such students on readmission (from the year of readmission) shall be Scheme as offered to the students of the regular batch. If the total credits of all courses offered to the student is less than the minimum credits of the regular batch students then the minimum credits for the award of the degree of such students shall be as proposed by the Controller of Examinations and approved by the Vice-Chancellor otherwise it shall be equal to the minimum credits of the regular batch in which the student has studied the final year of the programme.

Academic break shall be applicable only to students-

- 1. Who are detained due to shortage of attendance.*
- 2. Who do not attain the required credits for promotion.*
- 3. Those who want to drop the acquired credits of an academic year and repeat the full academic year (feat is, appear in all academic components), such students shall be required to apply through School of Study / Institute / College for readmission. This break shall be deemed as an academic break.*

Only two academic breaks are permissible for a student for fee completion of the academic programme, a student will not be

allowed to take more than two academic breaks, for any reason whatsoever. A student who has exhausted two academic breaks and a further occasion arises for him / her to take academic break, in such cases the admission of such student would automatically stand cancelled. If due to this clause, a situation arises where the student shall not be able to complete the requirements for the award of the degree in stipulated time as per clause 4.3, the admission of such students shall automatically stand cancelled. If such students, whose admission have been cancelled as per this clause, and the student appears for examinations, the result of such students shall be declared null and void.

In programmes of studies governed by a statutory body, if the regulations/rules of the statutory body specify any promotion policy the same shall be applicable, after approval for implementation by the concerned Board of Studies. The Board of Studies governing the concerned programme of study may impose additional requirements for promotion to the next academic year by incorporating the same in the Syllabi and Scheme of Teaching and Examination for the concerned programme.”

11. Let me try and decipher the import of the two clauses which frankly would require some bit of mental calisthenics. A perusal of Clauses 9.1 and 9.2 would show that in case a student fails to acquire minimum attendance in all courses taken together in a semester, the student will be detained and would not be allowed to be promoted to the next academic year or semester. The student will thus, be required to take a re-admission and repeat all courses of that semester with the next batch of students. The minimum attendance provided in Clause 9.1 is 75% in the aggregate of all courses taken together in a semester. The Dean of the School or the Principal or Director as the case may be is empowered to condone attendance deficit up to a limit of 5% *qua* an individual student for reasons to be recorded. Thus, the aggregate minimum attendance can be

brought down from 75% to 70% where a plea for condonation is accepted to enable a student to appear in the semester end-term examination.

12. On the other hand, Clause 11.3(v)(i) provides that a student can be promoted to the next academic year only if he or she has obtained at least 50% of the total credits of the “**existing academic year**” from which promotion is sought to the next academic year.

12.1. It may be relevant to note here that Clause 5.1 of the very same ordinance, *inter alia*, provides that an academic year shall be apportioned into two semesters and each of the two semesters shall have a working duration of about 21 weeks. It goes on to say that there shall be a break of about two weeks after the first semester and a vacation of approximately six weeks after the second semester.

12.2. Therefore, as long as the student has obtained at least 50% of the total credits in the academic year (comprising two semesters each) from which he seeks promotion, the student can be promoted to the next academic year.

13. This, however, comes with a caveat which is provided in Clause 11.3(v)(ii) which provides that students who fail to get promoted to the next academic year for any of the following reasons, shall automatically be declared as having suffered an “**academic break**”. The failure to get promoted on account of an academic break could be on account of deficiency in attaining the required credits (i.e. **50% or more of the total credits stipulated for an existing academic year**) or due to detention. The other category which is covered by the expression ‘academic break’ is the category where a student wants to drop the acquired credits obtained in an academic year and repeat the full academic year.

13.1. In cases, where an academic break is on account of deficiency in obtaining the minimum required credits or on account of detention due to short-attendance, the student is required to repeat the examinations of the year in which the student has failed or has been detained so as to obtain “*sufficient credits*” to be eligible for promotion to the next academic year. The student is, however, not required to repeat any course which he or she has already completed successfully.

13.2. Where the academic break is on account of a student dropping the acquired credits of an academic year, such student is required to apply through the school of study/institute/college for readmission.

13.3. The students who fail to get promoted on account of deficiency in obtaining the required minimum credits and have not taken more than two academic breaks, they are required to be automatically re-admitted in the regular batch of that academic year of the concerned programme.

13.4. The permissible number of academic breaks given to a student for completion of the academic programme is only two in number. A student who has exhausted two academic breaks and an occasion arises for him/her to take another academic break, in such cases, the admission of such student shall automatically stand cancelled. If a student despite this limitation appears for examination, his/her result shall be declared as null and void.

13.5. Furthermore, the syllabi and the scheme of teaching and examination upon readmission in such circumstances, according to the provision, would be the scheme as offered to the students of the regular batch. If, however, the total credits of all courses offered to the student are less than the minimum credits of the regular batch of students, then,

the minimum credits for award of degree to such students would be the one that would be proposed by the Controller of Examinations and approved by the Vice-Chancellor. In case, such a situation does not obtain, then, it shall be equal to the minimum credits of the regular batch in which the student has studied the final year of the programme.

14. To my mind, Clause 11.3(v)(i) & (ii) read together encapsulate a situation where an academic break happens, *inter alia*, on account of short attendance, and the student fails to obtain at least 50% of total credits of the existing academic year. Thus, denial of promotion can only happen if twin conditions are fulfilled which is there is a detention on account of short attendance and the short attendance has led to the attainment of credits which is less than 50% of the total credits. This comes through if one were to give meaning to the expression stipulated in sub-clause (ii) of Clause 11.3(v) i.e. ***“or has been detained, to obtain sufficient credits to be promoted to the next academic year”***. The emphasis appears to be on giving a second chance, so to speak, to a student who has suffered academic breaks for whatever reasons (which includes deficiency in the required number of credits or short attendance) to complete his academic programme. Thus, those students who are short of attendance but have obtained at least 50% of the total credits of the existing academic year will have to be promoted, with the caveat though that they would have to pass the papers in which they have failed in a given semester.

14.1. It is because of this reason that a provision is made for automatic readmission for students who do not acquire sufficient credits for promotion in the regular batch of that academic year of the concerned programme.

14.2. Insofar as students who are detained on account of short attendance but have obtained credits of 50% or more of the total credits are concerned, these cases would have to be dealt with by construing Clause 9.2 and Clause 11.3(v)(i) harmoniously without doing violence to the plain language of the provisions. Thus, if Clause 9.2 is read harmoniously with Clause 11.3(v) of Ordinance 11, one can only conclude that while the former denies promotion to the student who is detained on account of short attendance, it does not deal with a situation where a student despite being detained in a semester has acquired credits in the existing academic year of at least 50% of the total credits. Therefore, since some meaning has to be given to Clause 11.3(v)(i) [and especially when it is read in conjunction with Clause 9.2], one can only conclude that if a student is detained on account of short attendance, he will have to repeat the examination of the semester in which he has been detained but if his credits are equivalent to at least 50% of the total credits of the concerned academic year, he/she will have to be promoted so that he/she has the opportunity to complete the course within the total period stipulated for the academic programme. If such a construction is not placed on Clause 11.3(v)(i) of Ordinance 11, then, the entire clause would be rendered redundant.

14.3. In this particular case, as noted above, both, Naincy and Prateek, have attained 50% of the total credits required for the fourth academic year. The fact that they were detained ought not to come in their way of being promoted to the next year so that they can complete their academic programme i.e. B.A. LL.B./B.B.A. LL.B. course within the stipulated five-year period. The Vice-Chancellor/Principal/Director does not seem

to have applied his mind to this aspect of the matter at all.

15. The respondents, in fact, have lent no help or assistance to either Naincy or Prateek as to how they were required to move further in the matter after they were detained in the 8th semester. The entreaties of Naincy and Prateek in this behalf have gone unanswered. It is also pertinent to note that the discretion vested in the Dean, the Principal/Director to condone short attendance up to 5% seems rather narrow. It does not take into account the fact that a student may require leave of absence for a variety of reasons which may not fit into the leeway of 5% given to the Dean or the Principal or the Director as the case maybe for condonation.

16. The University of Delhi, which is one of the universities cited by way of example by the petitioners seems to have covered such eventualities by providing for leave of absence in the following situations in an undergraduate course where a student:

- i. is selected for participation in NCC camps or is deputed to undertake civil defence work and allied duties
- ii. is enrolled in the National Service Scheme.
- iii. is selected to participate in sports as a part of his/her curricular activities.
- iv. represents the college in inter-college tournaments.
- v. represents the Delhi State in national tournaments organized by National Sports Federation.
- vi. represents the university in tournaments organized by the Association of Indian Universities.
- vii. represents India in international tournaments organized by

International Federations, Associations, etc.

- viii. represents India in Olympics, commonwealth games, youth games, world championships organized by the Indian Olympic Committee.
- ix. participates in national/international sports and fixtures approved by international sports bodies.
- x. is required to represent the university in inter-university youth festival
- xi. is required to participate in periodical training in the territorial army.
- xii. is deputed by the college to take part in inter-college sports or fixture, debates, seminars, symposia or other social work projects.

16.1. The ordinance provides that the number of lectures delivered during the period of absence as approved by the Principal or the Head for the aforesaid purpose shall be deemed to have been attended by the students.

16.2. Importantly, the Ordinance VII (2)(c) of the University of Delhi vests in the Principal of the college the power to exclude for the purposes of calculation of attendance of a given year those lectures which were delivered and could not be attended by the student on medical grounds where he/she had fallen seriously ill or had met with an accident disabling him/her from attending classes for a certain period. The Principal is given the power to decide each case on its merits.

16.3. While the provisions in the aforementioned Ordinance of the University of Delhi cannot bind the respondents, there is some weight in the argument that such provisions should form part of Clause 9 of Ordinance 11. It is perhaps for these unarticulated reasons that under Clause 11.3(v)(ii), promotion is denied only if twin conditions get

triggered i.e. short-attendance and securing credit score which is less than 50%

17. The other argument advanced on behalf of the respondents is rooted not in Ordinance 11 but Clause 12 of Bar Council of India Rules of Legal Education, 2008 (in short “BCI Rules”). For the sake of convenience, the same is extracted hereafter.

“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 of 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 fail 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.”

17.1. This rule stipulates, in effect, that no student of any degree programme is permitted to take the end-semester test in a subject if he has not attended a minimum of 70% of classes held in the subject which includes moot courtroom exercises, tutorials and practical training conducted in the subject. The Dean, however, is given the leeway to reduce the rigour to 65%, *albeit*, for exceptional reasons.

17.2. The facts in the present case show that because the respondents triggered Clause 9 of Ordinance 11, the rigour of Clause 12 of the BCI Rules was also fulfilled. Both Naincy and Prateek were detained in the 8th semester precisely for the reason that they did not have the minimum requisite attendance. The threshold provided in Clause 9 of Ordinance 11 being higher, it automatically takes into account the baseline provided in Clause 12 of the BCI Rules. The BCI Rules, however, do not in any manner, at least nothing was shown to me, deal with a situation which is contemplated in Clause 11.3(v) of Ordinance 11.

17.3. A common detention order *qua* 29 students including the petitioners has been passed. There is no application of mind to the facts and circumstances obtaining in each case. Therefore, quite naturally, there is no discussion *qua* provisions of Clause 11.3(v) of Ordinance 11 or Clause 12 of the BCI Rules. The minimum threshold for attendance under Clause 9.1 of Ordinance 11 is set at 70% while in Clause 12 of the BCI Rules, the rigour is reduced to 65%. Those are aspects *qua* which respondents have not applied their minds to.

17.4. Importantly, the point in issue in the present case veers around the situation where a student though detained in a particular semester acquires the stipulated minimum credits required for promotion to the next academic year.

18. I must indicate that both sides have cited a whole bunch of judgments none of which deals with the situation which arises for consideration in the present case. While the judgments cited by the respondent's counsel emphasise the point that no leeway can be given to

the students who fail to attain the requisite percentage of attendance¹, the judgments cited on behalf of the petitioners elucidate the point that wherever there is ambiguity the benefit has to go to the student².

18.1. In my view, the judgments cited by both sides operate in their own-field and, as indicated above, do not deal with the point in issue.

19. The arguments advanced on behalf of the respondents *via* Mr. Munjal, learned Senior Advocate, Ms. Anita Sahani, Advocate and Ms. Ekta Sikra, Advocate have one singular and common strain which is that Clause 9.2 of Ordinance 11 trumps every other provision. In other words, Clause 11.3(v) should give way to Clause 9.2 of Ordinance 11 and therefore if a student does not clock the minimum attendance, he/she cannot be promoted.

¹ **Judgements cited on behalf of the respondents:**

- i. Judgement dated 15.05.2018, passed in W.P. (C) 5194/2018, titled *Ankita Meena vs. University of Delhi*.
- ii. Judgement dated 04.10.2010, passed in LPA No. 539/2010, titled *Sukriti Upadhyay vs. University of Delhi*.
- iii. *University of Delhi vs. Vandana Kandari*, (2011) SCC OnLine Del III.
- iv. *Neetu Sharma vs. Delhi University*, (2010) SCC OnLine Del 2568.
- v. *Neeraj Bahl vs. GGSIPU*, (2011) SCC OnLine Del 5562.
- vi. *Ashutosh Bharti & Ors. vs. The Ritnand Baldev Education Foundation & Ors.*, MANU/DE/0024/2005.
- vii. Judgement dated 18.08.2010, passed in W.P.(C) No. 3129/2010, titled *Choudhary Ali Zia Kabir vs. GGSIPU & Anr.*
- viii. Judgement dated 20.10.2010, passed in W.P.(C) No. 2790/2010, titled *Gagandeep Kaur vs. Govt. of NCT of Delhi & Ors.*

² **Judgements cited on behalf of the petitioners:**

- i. *Mohinish Sharma vs. University of Delhi & Ors.*, (2019) SCC OnLine Del 8682.
- ii. Judgement dated 02.05.2008, passed in W.P. (C) No. 8145/2007, titled *Santosh Kumar Singh vs. Sri Guru Gobind Singh College of Commerce & Ors.*
- iii. *Avijit Bhushan vs. University of Delhi*, (2007) SCC OnLine Del 52.
- iv. *Ayushi Sethi and Ors. vs. Delhi University & Anr.*, (2017) SCC OnLine Del 10199.
- v. *Kumar Gandhrva and Ors. vs. Principal, M.M.M. Engg. College and Ors.*, (2002) SCC OnLine All 1057.

19.1. This argument has weight and not for the moment is the importance of attendance and therefore by logical sequitur acquisition of knowledge being degraded, the point which arises is as to how the consequences of the shortage of attendance should pan out for those who have attained minimum credits in a given academic year. Should they be dealt with similarly as those who have neither clocked the minimum attendance nor the credits?

19.2. The provisions of Clause 11.3(v) seek to etch out that difference. It is not as if the Court is reading into the Ordinance what is not provided. Naincy's, if not Prateek's circumstances, are a case in point which starkly brings forth the need to have a provision such as Clause 11.3(v)(i).

20. One of the difficulties which arises in almost all the matters concerning the field of education is the inability of the students to attend classes unless there is an order to that effect pending the disposal of their actions filed in the Court. Resultantly, they lose out on their attendance apart from the instructions imparted in various subjects.

Conclusion: -

21. Thus, for the foregoing reasons, the captioned petitions are disposed of with the following directions: -

- i. The respondents will promote the petitioners to the 9th semester and in this behalf make suitable adjustments in the form of extra classes, if found necessary.
- ii. The respondents will inform the petitioners as to how they can take extra classes for the 8th semester and when they can sit for the exam *qua* the said semester.
- iii. The petitioners will file undertaking in the form of an affidavit with

the Principal, VIPS to the effect that they will attend the stipulated classes.

RAJIV SHAKDHER, J

OCTOBER 31, 2019

