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

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Date of Decision: 21.11.2019

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W.P.(C) 11800/2019 & C.M. No. 48388/2019

AJAY KUMAR RAO AND ORS.

..... Petitioners

Through Mr. Colin Gonsalves, Sr. Adv with
Ms. Chubalemla Chang, Adv.

versus

THE UNIVERSITY OF DELHI AND ORS.

..... Respondents

Through Mr. Dayan Krishnan, Sr. Adv with
Mr. Mohinder J.S. Rupal, Adv for
University of Delhi.
Ms. Apoorv Kurup and Ms. Nidhi
Mittal, Advs for UGC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

JUSTICE RAJIV SHAKDHER (ORAL):

1 Notice in this petition was issued on 07.11.2019, when I had passed the following order:

“2 Mr. Gonsalves says that the University of Delhi has changed the modalities of the examinations from annual to semester mode. It is the learned senior counsel’s submission that the course material has not been made available to some students while others have been given course material almost at the nth hour.

2.1 In sum, learned senior counsel says that the students have not been prepared by the faculty to take the ensuing exam which is slated for 24.11.2019.

3 To be noted, in the connected writ petition i.e. W.P.(C) No.10982/2019, on 16.10.2019, I recorded the following:-

“1. The petitioners before me are aggrieved by the action taken by respondent No.2 i.e. School of Open Learning (in short “SOL”), pursuant to a resolution passed at an emergency meeting of the Executive Council held on 17.8.2019.

2 A perusal of the impugned resolution passed on 17.8.2019 shows that SOL has decided to introduce reforms in the manner in which examination would be held. It appears that a decision has been taken to switch over to annual mode [Sic: semester system] from semester system [Sic: annual mode]. Notably, the impugned resolution records dissent of four members. Their dissent inter alia is on the ground that the change in the examination should not take place mid-stream.

3 The dissent recorded by these members of the Executive Council, prima facie, appears to have weight. Several difficulties which could crop up, making it difficult to effect the change mid-stream have been adverted to by the dissenting members. These being :

- (a) lack of complete syllabus;
- (b) lack of self-learning material;
- (c) lack of mode of examination; and
- (d) lack of name of the learning centre for each centre for each student (roll number wise).

4 It appears that 1,15,000 students took admission in SOL with effect from 1.6.2019 on the premise that the pattern of examination would be annual and not based on semester system.

4.1 The dissenting members have also touched upon this aspect and thus taken the view that the change in the pattern of examination mid-stream may not be legally tenable.

5 Accordingly, issue notice. Mr. Koushik Ghosh accepts notice for respondent No.1/University of Delhi, while Ms. Nidhi Mittal accepts notice for respondent No.3/UGC.

6 On steps being taken, notice shall issue to respondent No.2/SOL. In addition, service be effected via private mode as well.

7 *Renotify the matter on 1.11.2019.”*

4 *As would be evident from the order dated 16.10.2019 passed in the connected writ petition, there is much to be said qua the change brought about by the University of Delhi mid-stream without tying up the loose ends.*

4.1 *The only difficulty that I have, at the moment, concerns the timing of the petition. The petitioners have approached this Court a little late in the day and, therefore, at this juncture, to pass an interim order injuncting the examinations, in my view, would not be appropriate as the remedy may, perhaps, be worse than the malady without knowing the gamut of facts obtaining in the matter.*

5 *Mr. Gonsalves, however, presses for interim injunction. In support of his plea that the exams slated for 24.11.2019 should be injuncted, Mr. Gonsalves says that classes have been cancelled, if not more, at least three times. It is stated that the classes commenced as late as on 27.09.2019, the faculty was appointed on 22.09.2019, and the course-material furnished to the students was either incomplete or illegible, and hard copies of the same had not been furnished.*

6 *To my mind, these concerns should be placed by the petitioners before the Vice-Chancellor of the University of Delhi as he would be able to obtain a full-picture of the issue at hand.*

6.1 *Therefore, the petitioners are permitted to make a representation to the Vice-Chancellor. The Vice-Chancellor will meet the petitioners and similarly circumstanced students tomorrow i.e. 08.11.2019 at 03:00 PM. If for any reason, the date given by the Court is not convenient to the Vice Chancellor, he will fix a date which is proximate to the date fixed by the Court.*

6.2 *The petitioners and students who will participate in the meeting will ensure that civility and decorum is maintained during their interaction with the Vice-Chancellor. The Vice-Chancellor will place his views before the Court in the form of a report. The Vice-Chancellor while taking a decision in the matter will also bear in mind the dissent recorded by certain*

members of the Executive Council in the meeting held on 17.08.2019.

7 Renotify the matter for directions on 18.11.2019.

8 Dasti under signatures of the Court Master.”

2 The University of Delhi (in short ‘University’) has come up with constructive suggestions. The Vice-Chancellor’s report was placed before me. The report of the Vice-Chancellor was accompanied by an affidavit of the Registrar of the University.

3 Broadly, the report gives two alternatives for bringing about an amicable resolution with regard to the grievances put forth by the petitioners and those who are similarly circumstanced. The two alternatives, which the report touches upon are as follows:

“Alternative 1:(a) rescheduling of the Undergraduate (Hons.) examinations, which were scheduled to commence from 27.11.2019, are now proposed to commence w.e.f. 20.12.2019; (b) increasing gaps between the exams of other courses; and (c) learning have been conducted so far, by extending the dates of exams-ranging from seventeen days to twenty-three days: beginning on 20 December 2019 and ending on 30 December 2019.

Alternative 2: Postponing the exams of all the first semester courses and conducting them along with second semester exams.”

4 On the previous date i.e. on 18.11.2019, I had asked Mr. Gonsalves, learned senior counsel, who represents the petitioners to mull over the report and return with instructions. Mr. Gonsalves has returned with instructions. Mr. Gonsalves says that alternative 2 is acceptable to the petitioners.

5 As is evident, alternative 2 involves postponement of exams of all first semester courses and having them being conducted along with second

semester exams.

5.1 This alternative if worked upon, would involve holding the first and second semesters exams for all courses in May-June, 2020.

5.2 Mr. Krishnan also assures the Court that exercise for removing deficiencies will be carried out with due expedition so that sufficient time is made available to the petitioners and other students to undertake studies in their respective courses.

6. Since there is a consensus on the issue of postponement of the exams, nothing further needs to be said on the issue, except that the stance taken in Court today will be adhered to.

7. Besides the aforesaid issue, Mr. Gonsalves had pointed out that the course material had deficiencies. Mr. Krishnan, learned senior counsel, who appears for the University has assured the Court that the deficiencies will be removed and, for ironing out these deficiencies as also other attendant difficulties, a Nodal Officer will be appointed.

7.1 Apart from this, Mr. Gonsalves says that, perhaps, the strength of faculty and the number of class-rooms may have to be enhanced. This aspect of the matter falls within the administrative domain of the university and therefore will require examination of rules/regulations and the fund position. The university, to my view, can consider any constructive suggestion made in this behalf keeping in mind the students' best interest. However, this by itself will not derail what has been agreed to i.e. that the first and second semesters exams for all courses will be held in May-June, 2020.

8 The petitioners and the students who are similarly circumstanced should now concentrate, in my view, on their studies and leave the rest to the university. The university should, in the same spirit, engage with the

students, as noted above, and remove the deficiencies concerning course material and having the same furnished within time. The petitioners and students may, perhaps, have to make do with whatever is available in terms of faculty and class rooms in the immediate future.

9 Mr. Krishnan has also indicated to me that under Regulation 13 (2) of the UGC Notification dated 23.12.2017, the university is not required to go back to the Academic Council or the UGC for shifting the first semester examinations for all the course to May-June, 2020. Mr. Krishnan says, however, by way of abundant caution, information in that behalf will be provided not only to the Academic Council but also to the UGC and Ministry of Human Resource Development. Mr. Krishnan's statement, in this behalf as well, is taken on record.

10 Since Ms. Apoorv Kurup, who appears for UGC, is present in Court, she is made aware of the directions passed today. Ms. Apoorv Kurup will place a copy of the order before the Chairperson, UGC.

11 The petition is disposed of in the aforesaid terms.

12 Resultantly, pending application shall stand closed.

13 *Dasti* under signatures of the Court Master.

NOVEMBER 21, 2019

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RAJIV SHAKDHER, J