

supplementary List 3.
Bpg.

November 25,
2020

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
(Via Video Conference)**

**W.P.A. No. 6017 of 2020
With
CAN 1 of 2020 (Old No.CAN 4205 of 2020)**

**Soudip Bhaduri
Versus
Sister Nivedita University and others**

Mr. Pappu Adhikari.
...for the petitioner.

Mr. Anil Kr. Gupta.
...for the UGC.

Mr. Tapan Kumar Mukherjee,
Mr. Somnath Naskar.
...for the State-respondents.

Mr. Kumar Jyoti Tewari.
...for the respondent nos.1 to 4.

The grievance of the petitioner is that the petitioner is a student of the Sister Nivedita University and is on scholarship, but failed to appear in his fourth semester examination due to several debilitating ailments, which also prevented the petitioner from long exposure to a computer screen sufficient to complete the examination.

In such view of the matter, the petitioner approached the said university, which had initially

raised an objection in the affidavit-in-opposition as regards certain dues still payable by the petitioner in that regard, but subsequently takes a fair stand as regards the university being agreeable to the petitioner sitting for a special examination, to be conducted for the petitioner by the university, in the light of the circumstances.

Learned counsel for the petitioner relies upon the University Grants Commission's guidelines, annexed at page 68 of the writ petition, where, in clause 2, it has been stipulated that provisions of examination through special chance may be made in case a student of terminal semester/final year is unable to appear in the examination conducted by the university for whatsoever reason may be, in which case he/she may be given opportunity to appear in special examinations for such course/paper, which may be conducted by the university, as and when feasible, so that student is not put to any inconvenience/disadvantage. It was further clarified in the said guideline that the above provisions shall be applicable only for the current academic session 2019-20 as a one-time measure.

Learned counsel for the petitioner further submits on the basis of the document annexed at page 18 of the petitioner's affidavit-in-reply that the petitioner holds a scholarship for 100% on course fee,

which is Rs.88,000/- per semester. Learned counsel for the petitioner also places reliance upon photocopies of the receipt of payments of a certain portion of the additional fees to be paid by the petitioner over and above the course fee, as annexed at page 20 of the affidavit-in-reply.

Learned counsel for the university submits in his usual fairness that the university has no objection to hold a special examination for the petitioner in the circumstances, more so since it will be a one-time measure as per clause 2 of the University Grant Commission's guidelines, annexed at page 68 of the writ petition.

Learned counsel appearing for the University Grants Commission hands up a copy of a judgment of the Supreme Court dated August 28, 2020, rendered inter alia in Writ Petition (Civil Appeal) No.724 of 2020, for the proposition that the State is at liberty to make an application to the University Grants Commission for extending the deadline of September 30, 2020, which was not availed of by the State of West Bengal. As such, it is argued that the last date for holding such examination, that is, September 30, 2020, being already over, there is no scope for the university to hold a special examination to accommodate the petitioner.

A perusal of the cited judgment shows that the Supreme Court categorically issued certain directions in paragraphs 111 of the judgment. It is clear from the said directions that the decision previously taken by the State Disaster Management Authority/State, not to hold final year/terminal semester examination by September 30, 2020 in exercise of power under Disaster Management Act, 2005, shall prevail over the deadline fixed by the University Grants Commission, that is, September 30, 2020 in respect of the concerned State. It was further clarified in the judgment that the State and University cannot promote the students in the final year/terminal semester without holding final year/terminal examination and that if any State/Union Territory, in exercise of jurisdiction under the 2005 Act, has taken a decision that it is not possible to conduct the final year/terminal semester examination by September 30, 2020, liberty was granted to such State/Union Territory to make an application to the University Grants Commission for extending the deadline of September 30, 2020 for that State/Union Territory which shall be considered by the University Grants Commission and the rescheduled date be communicated to such State/Union Territory at the earliest.

A plain reading of the said aforesaid judgment reveals categorically that the proposition laid down therein, read as a whole, clearly strike out deadline of September 30, 2020 for holding the examinations. Although liberty was given to the respective States to make application to the University Grants Commission for extending the deadline of September 30, 2020, the scope of consideration of the University Grants Commission was limited by the said judgment to fixing the rescheduled date, which would then be communicated to the respective State. However, the Supreme Court judgment does not give any further authority of adjudication or discretion, in the matter of not allowing such extension of deadline, to the University Grants Commission.

That apart, even irrespective of any application being made by the State under the 2005 Act, the deadline of September 30, 2020 could not be held to retain its finality subsequent to the judgment of the Supreme Court.

Moreover, the plain language of clause 2 of the University Grants Commission's guidelines make it clear that in case a student of the terminal semester is unable to appear in the examination conducted by the university for whatsoever reason, the special examination clause applies. The expression "conducted" *ipso facto* indicates that the examination

has to have been already held, for the student to have been unable to appear therein, and cannot conceive of a future examination. Since the previous cut-off date (September 30, 2020) was fixed with regard to the examination, it had to be interpreted to be meant for the regular examination. The “special” examination contemplated within the ambit of clause 2 of the regulations-in-question takes place only after the regular examinations was over. As such, even if the cut-off date of September 30, 2020 remained, it is at least arguable that the special examination could be held beyond such limit by the very nature of their definition in the University Grant Commission’s guidelines themselves.

Furthermore, the University Grants Commission’s guidelines referred to herein make it abundantly clear that the university has the option and prerogative to grant an opportunity to the candidate-in-question to appear in a special examination. Since, in the present case, the university has taken a clear stand of being agreeable to hold such examination for the petitioner, the UGC has no authority or discretion to come in the way.

Accordingly, W.P.A. 6017 of 2020 is allowed, thereby setting aside the decision of the university for the petitioner to have to take supplementary examination, as reflected from the e-mail of the

university to the petitioner dated June 12, 2020 (annexed P/6 at page 58 of the writ petition), and allowing the petitioner to take the special examination arranged by the respondent No.1/University for the petitioner, for which a date shall be intimated to the petitioner by the respondent no.1/university at the earliest, preferably within three weeks from this date. The petitioner shall be entitled to sit for such examination subject to clearance of the dues to the university from the petitioner, after giving due credit to the scholarship rebate which the petitioner is entitled to. It is further made clear that it will be open to the respondent no.1/university to consider adjustment of the amounts already paid by the petitioner, in lieu of caution money and other expenses, with the dues payable by the petitioner to the university prior to taking such examination.

CAN 1 of 2020 (Old No. 4205 of 202) is thus disposed of.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)