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\$~2, 3, 4 (2021 Cause List) and Item 11 (2020 Cause List)

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

+ **W.P.(C) 5664/2021**

SOMAYA GUPTA & ORS.

..... Petitioners

Through: Mr. Siddharth Seem and Mr.
Divyanshu Rai, Advocates.

versus

FACULTY OF LAW,

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Ms. Seema Dolo, Advocate for R-1
& 4.

Mr. Preet Pal Singh and Mr.
Saurabh Sharma, Advocates for
BCI.

Mr. Apoorv Kurup and Ms. Nidhi
Mittal, Advocates for R-3/UGC.

3.

+ **W.P.(C) 5668/2021**

SHIVANGI BHARDWAJ & ANR.

..... Petitioners

Through: Mr. Prateek Sharma and Mr.
Harpreet Singh Hora, Advocates.

versus

UNIVERSITY OF DELHI & ANR.

..... Respondents

Through: Mr. Mohinder J.S. Rupal and Ms.
V. Bhawani, Advocates for R-1.

4.

+ **W.P.(C) 5745/2021**

ADITYA JOSHI & ORS.

..... Petitioners

Through: Mr. Chirag Madan and Mr. Sai
Krishna, Advocates.

versus

FACULTY OF LAW,

UNIVERISTY OF DELHI & ORS.

..... Respondents

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W.P.(C)5664/2021 and connected matters

(2)

Through: Mr. Mohinder J.S. Rupal and Ms. V. Bhawani, Advocates for R-1.
Mr. Preet Pal Singh and Mr. Saurabh Sharma, Advocates for BCI.
Mr. Apoorv Kurup and Ms. Nidhi Mittal, Advocates for R-3/UGC.

11.

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W.P.(C) 6195/2020

SAHIB KOCCHAR & ORS.

..... Petitioners

Through: Mr. Anant Garg and Mr. Divyanshu Rai, Advocates.

versus

FACULTY OF LAW & ORS.

..... Respondent

Through: Mr. Mohinder JS Rupal and Ms. V. Bhawani, Advocates for DU.
Mr. Apoorv Kurup and Ms. Nidhi Mittal, Advocates for R-3/UGC.
Mr. Preet Pal Singh and Mr. Saurabh Sharma, Advocates for BCI.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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05.07.2021

The proceedings in the matter have been conducted through video conferencing.

W.P.(C) 5664/2021 and CM APPL. 17659/2021 (for interim relief)

W.P.(C) 5668/2021 and CM APPL. 17711/2021 (for ex-parte stay)

W.P.(C) 5745/2021 and CM APPL. 18012/2021 (for stay)

W.P.(C) 6195/2020 and CM APPLs. 9046/2021 & 9909/2021 (for directions)

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1. These four writ petitions have been filed by students in the second year and third (final) year of the LL.B Course in the Faculty of Law, University of Delhi [“the University”]. They have recently completed the examinations of their fourth and sixth semester respectively. However, the University was unable to conduct assessments for the papers they had taken in their second and fourth semesters, due to the COVID-19 pandemic. The University now proposes to conduct those assessments by way of online open-book examinations [“OBES”]. The petitioners have some reservations about this, which they have sought to agitate in these writ petitions. As the issues raised in these petitions are broadly similar, they have been taken up together with the consent of learned counsel for the parties.

2. The contentions of the parties were recorded in an order dated 01.06.2021, at the stage of issuance of notice in W.P.(C) 5664/2021 and W.P.(C) 5668/2021. The Court also noted certain points which the University was required to clarify.

3. The case of the petitioners was broadly that the UGC, by a notification dated 29.04.2020, permitted the evaluation of the intermediate semester students, i.e. students who were not in the final year, by a combination of marks obtained in the internal evaluation and past performance. Although the University adopted this course for most of its courses, it did not do so for the LL.B. course, presumably due to notifications of the Bar Council of India [“BCI”] commencing from 09.06.2020 and terminating with a notification dated 01.11.2020, directing all law colleges to hold examinations for the intermediate semesters also. Learned counsel for the petitioners pointed out that the

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notification of the BCI dated 01.11.2020, insofar as it relates to intermediate semester examinations, was set aside by the Karnataka High Court by a judgment dated 08.02.2021 in W.P.(C) 14839/2020 [*Ritvik Balanagraj B. vs. Bar Council of India & Ors.*] and connected matters. The petitioners sought assessment of their pending papers (postponed from May 2020) by internal assessments and previous performance, keeping in mind the physical illness suffered by many of the students during the pandemic, and the severe mental distress caused by it. Learned counsel pointed out that, following the judgment of the Karnataka High Court, there was no impediment in the University adopting the course suggested by them. A further contention was raised to the effect that the examination for the sixth semester ought to be held only after the fourth semester results are made available as, in the event a student requires or desires to repeat any of the fourth semester papers, that opportunity will be available to him/her only after one year, when the fourth semester examinations are next held in the regular course.

4. It was submitted on behalf of the BCI that it had set up a committee headed by a former Chief Justice of the Allahabad High Court and comprising the heads of law faculties in various universities, to deliberate upon the nature of the evaluation.

5. Keeping these submissions in mind, the University was directed to further consider the necessity of holding the aforesaid examinations, particularly in the light of the submissions recorded above regarding the alternative modes of assessment available to the University under the UGC notification dated 29.04.2020. The University was also *inter alia* directed to apprise the Court as to the arrangements which it was making

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to ensure that the COVID-19 affected students, students who are unable to clear the examinations and those who seek to improve their marks, are given a second opportunity to take the aforesaid fourth semester examinations within a reasonable time frame.

6. After the aforesaid hearing dated 01.06.2021, the Committee appointed by the BCI has given its report, which has been incorporated in a Press Release dated 10.06.2021. The Committee comprised of the following members:-

- "1. Hon'ble Mr. Justice Govind Mathur, Former Chief Justice, Allahabad High Court, Chairperson/Convener of the Committee.*
- 2. Mr. D. P. Dhal, Senior Advocate, Member, Bar Council of India;*
- 3. Mr. Ved Prakash Sharma, Advocate, Member, Bar Council of India;*
- 4. Prof. (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute, Delhi;*
- 5. Prof. (Dr.) Srikrishna Deva Rao, Vice-Chancellor, National Law University Delhi;*
- 6. Prof. (Dr.) Vijayakumar, Vice-Chancellor, National Law Institute University, Bhopal,*
- 7. Prof. (Dr.) Vijender Kumar, Vice-Chancellor, National Law University, Nagpur;*
- 8. Prof. (Dr.) Sudhir Krishnaswamy, Vice-Chancellor, National Law School of India University, Bengaluru;*
- 9. Prof. (Dr.) C. Raj Kumar, Vice-Chancellor, O. P. Jindal Global University, Sonipat;*
- 10. Prof. (Dr.) Sanjeevi Shanthakumar, Director, Gujarat National Law University, Gandhinagar;*
- 11. Prof. (Dr.) Akhilendra Kumar Pandey, B.H.U., Varanasi*
- 12. Dr. (Mrs.) Pankaj Mittal, Secretary General, Association of Indian Universities, New Delhi Special Invitee*
- 13. Dr. Rajani R. Gupte Vice-Chancellor, Symbiosis International University, Pune Special Invitee*



14. Prof. (Dr.) Vandana, Dean, Faculty of Law, Delhi University, Delhi”

7. The recommendations of the Expert Committee are as follows:-

“The Members deliberated at length regarding the mode of evaluation/examination for the promotion from intermediate semester to the next semester and for the award of the Law Degree.

After detailed discussion and deliberations, the Committee unanimously agreed that each University/Centers of Legal Education shall conduct examination for intermediate and final year students, as per their own dispensation, depending upon the availability of resources and the impact of COVID 19 in that region. It was unanimously agreed that an end-term examination is mandatory to be conducted by all Law Schools/Universities. It was further decided that University/Centers of Legal Education are free to determine the mode of examination [Online/Offline/Blended/Online Open Book Exam (OBE Assignment Based Evaluation (ABE)/Research papers].

The Committee also recommended that the Universities/Centers of Legal Education should ensure that sufficient time gap exists between regular and backlog examinations to avoid inconvenience to the students.

The Committee also took note of the earlier resolutions adopted by Bar Council of India on 27.05.2020, 06.09.2020, 05.10.2020 and 01.11.2020 which had stipulated examinations for all semesters, and wherein guidelines regarding the mode of conduct of examination/evaluation had been issued, and unanimously agreed that the University/Centers of Legal Education are free to determine the mode of evaluation/examination for promotion and for award of the Law Degree and for the conduct of examination.”

8. Ms. Seema Dolo, learned counsel for the University and Professor Dr. Vandana, Dean, Faculty of Law, Delhi University, who is also present

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in the video-conference hearing, submit that the aforesaid recommendations of the Committee, which have been accepted by the BCI, makes it mandatory for the University to conduct an end-term examination, although the mode of examination (online open book examination/ assignment based evaluation/ research paper) has been left to the discretion of each University/ Centre of Legal Education.

9. Having regard to all the relevant factors, the University has decided to conduct online open book examinations, in respect of the intermediate semesters (second semester and fourth semester) examinations, which were postponed on account of the pandemic. Although the detailed date-sheet has not yet been announced, it is submitted that the aforesaid examinations are likely to be conducted in July, 2021 itself.

10. However, having regard to the situation created by the pandemic, it is further submitted that the University will make special arrangements to conduct a further examination in the aforesaid papers, most probably in September, 2021. This will enable students who are unable to take the examination in July, 2021 for any reason, or seek to improve their performance, to take the examination at that time rather than await the regular examination, which would be held after only next year.

11. Mr. Siddharth Seem, learned counsel for the petitioner in W.P.(C) 5664/2021 submits, with regard to the report of the BCI's Expert Committee, that the option of an assignment based evaluation has also been permitted. According to him, an assignment based evaluation would be in the interest of the students affected by the COVID-19 pandemic as opposed to an online open book examination. Mr. Seem also submitted that various LL.M. entrance examinations are scheduled in the second

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half of July, 2021, which may make it difficult for the final semester students to take their backlog examinations at the same time.

12. Mr. Chirag Madan, Mr. Divyanshu Rai and Mr. Prateek Sharma, learned counsels for the petitioners in the other three writ petitions, submitted that in view of the position taken by the University, the only further relief sought is that the result of the second semester and fourth semester examinations to be conducted in July, 2021 be declared as expeditiously as possible.

13. Having heard learned counsel for the parties, I am of the view that the Court cannot give a mandatory direction to the University to conduct an assignment based evaluation rather than an online open book examination. The Expert Committee of the BCI has left this issue to the discretion of each University, having regard to the availability of resources and the impact of COVID-19 in the region. The decision of the BCI is not under challenge in these petitions. The fact that the examination is being conducted online by the University obviates the danger to the students' health which a physical examination would have posed. However, the choice of mode of examination is one which the University is authorised to consider, and the University's policy decision in this regard cannot be interfered with by the Court, unless it is shown to be arbitrary or manifestly unreasonable. Mr. Seem also fairly agreed that neither the UGC decision dated 29.04.2020, nor the BCI directive, prohibit the course which the University has chosen to adopt. The Court must, in such circumstances, defer to the University's judgment as between an assignment-based evaluation and an OBE. The judgment of the Supreme Court *inter alia* in *National Board of Examinations v. G.*

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Anand Ramamurthy & Ors. (2006) 5 SCC 515 makes it clear that interference with academic matters under Article 226 of the Constitution is to be sparingly exercised.

14. The submissions made today on behalf of the University to the effect that a special arrangement will be made for a repeated examination in September, 2021 for all candidates who were unable to give the examinations in July, 2021, is a safeguard which can be used by those who are suffering from the effect of the pandemic upon themselves and their families. It will also ensure that the final year students do not suffer an avoidable extension of their course.

15. Professor Dr. Vandana has also assured the Court that, as far as possible and practicable, the date-sheet for the July, 2021 examination will be decided keeping in mind the dates of the LL.M. entrance examinations in which a large number of final year students may wish to participate. In any event, the candidates who are unable to take the University examination in July, 2021 due to clash in examination dates, will also be permitted to take the special examinations to be held in September, 2021.

16. The submission of the petitioners that the results of the examinations be declared early, so that their course is completed and they can carry on with further studies or seek employment is also reasonable. The University will make all endeavours to declare the results as expeditiously as possible.

17. Mr. Prateek Sharma, learned counsel for the petitioner in W.P. (C) 5668/2021 states that in his petition, a legal issue with regard to the powers of the Academic Council of the University has also been raised.

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The said issue is left open for decision in an appropriate case.

18. The writ petitions, alongwith all pending applications, are disposed of with these directions.

PRATEEK JALAN, J

JULY 5, 2021/ 'vp'