



2024:DHC:6220-DB



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

+ LPA 776/2024 & C.M. APPL. Nos. 45901-04/2024

SAUMYA DAS & ORS

.....Appellants

Through: Mr. Satyajit Sarna, Mr. Sudev,
Mr. Debarchan, Advocates.

versus

INDIRA GANDHI NATIONAL
OPEN UNIVERSITY & ORS

.....Respondents

Through: Mr. Aly Mirza with Trilochan
Prakash Ravi, Advs for
IGNOU.
Mr. Umesh K Burnwal, SPC
with Mr. Kunal Mallik, Adv
for UOI.

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Date of Decision: 12th August, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed under Clause X of the Letters Patent Act, 1866 assailing the judgement dated 1st July, 2024 passed by the learned Single Judge of this Court dismissing the writ petitions filed by the appellants on the ground of delay and laches on the appellants' part in approaching the Court.

2. Mr. Satyajit Sarna, learned counsel for the appellants submits that the appellants had enrolled in various courses offered by the respondent no.1, between the years 2015 and 2017 and they were assured of an eight

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(8) year period to complete their courses which included a 2-year re-admission period. He further submits that the respondent no.1/IGNOU, through a series of notifications, retrospectively and arbitrarily discontinued the re-admission facility; also withdrew the credit transfer policy and then re-introduced credit transfer policy changes which were detrimental to the appellants. He submits that the notifications dated 10th June, 2018, 6th October, 2020, and 16th August, 2022 have collectively resulted in the appellants being debarred from completing their courses and being forced to start all over once again, losing up to six (6) years of work. He submits that the appellants have filed the underlying writ petition seeking the quashing of the aforesaid notifications, which was dismissed by the learned Single Judge solely on the ground of delay and laches on the appellants' part in approaching the Court, though the learned Single Judge on merits has otherwise held the issues in favour of the appellants.

3. Learned counsel for appellants also submits that the learned Single Judge did not consider that the credit transfer policy was introduced *vide* notification dated 16th August, 2022 and was intrinsically intertwined with the notification dated 6th October, 2020 and as such the cause of action for filing the underlying writ petition having arisen in the month August, 2022, the petition filed in the year 2023 was within limitation and could not have been dismissed purely on that account. He states that it is trite that a case should be decided on merits and not mere technicalities. He also states that the respondent no.1/IGNOU was created through a Parliamentary Act for a laudable purpose. In that, students who were otherwise unable to have access to higher education for varying reasons like financial hardship, economic viability or remoteness of their location could be facilitated access to higher education. He states that though the learned Single Judge



agreed and appreciated these facts, yet on a hyper technical ground of limitation, dismissed the underlying writ petitions. He prays that the appeal be allowed.

4. We have heard learned counsel for the appellants and perused the impugned order and other records of the case.

5. So far as the issue on merit is concerned, the decision taken by the respondent no.1/IGNOU *vide* notifications dated 10th June, 2018, 6th October, 2020, and 16th August, 2022 are akin to policy decisions which the Court would ordinarily not interfere. The challenge laid by the appellants against the impugned order is in a narrow compass in regard to the dismissal of the underlying writ petition on the point of limitation.

6. We have perused the impugned judgment and find that the learned Single Judge has taken note of the fact that the curtailment of the period of six years was brought into force *vide* the notification dated 6th October, 2020, whereas the revised credit transfer policy was brought into force *vide* the notification dated 16th August, 2022. The notification dated 16th August 2022 stipulated that since the Foundation Courses of old BDP have no parallel course in CBCS based programmes, no credit would be granted for those courses and simultaneously restricted re-registration for left over courses to 22 credits in a given semester or 44 credits in a given year, as the case may be. The students were not allowed to opt for more than the credits mentioned above under any circumstances. The appellants had sought to interlink both the aforesaid notifications to justify the delay and laches in approaching this Court by way of the underlying writ petitions. The learned Single Judge had clearly distinguished the purport of both the notifications, which according to us too, are distinct. It would be appropriate to extract the relevant paragraphs of the impugned judgment to clarify the position.



The relevant paragraphs are as under:

“42. The petitioners’ submission that no delay could be attributed to them as the real prejudice, which provoked them to move this Court, was the issuance of the Notification dated 16 August 2022, notifying that credits earned against the Foundation Course under the BDP would not be counted towards the credit requirement under the CBCS consequent on taking fresh admission, has merely to be urged to be rejected. The Notification dated 6 October 2020 and the Notification dated 16 August 2022 envisaged two different dispensations, completely unconnected to each other. The petitioners may claim to be aggrieved by both; their grievance, with respect to each, however, is distinct and different from their grievance with respect to the other. The Notification dated 6 October 2020 withdraws the facility of readmission available under Clause 6.7 of the Prospectus, and applies the decision to old students as well. The Notification dated 16 August 2022 has, however, nothing to do with the facility of re-admission envisaged by Clause 6.7 of the Prospectus. It deals, rather, with the facility of fresh admission, in the event of the student being unable to clear the required credits or complete all papers within the “extended” period of 8 years, after having exhausted the benefit of Clause 6.7. It concerns itself with the issue of whether the credits earned by the student during the initial period of 8 years can be reckoned towards the credit requirement which the student has to fulfil after obtaining fresh admission.

43. There is, therefore, nothing in common between the facility of re-admission envisaged by Clause 6.7 of the Prospectus and the decision to withdraw the said facility, by the impugned Notification dated 6 October 2020, and the facility of fresh admission, envisaged by Clause 6.4 of the Prospectus, and the decision not to permit carry over of the credits earned by the student in the Foundation Course under the BDP, on the student obtaining fresh admission, which is governed by the CBCS and the new syllabus.

44. The grievance relating to the Notification dated 6 October 2020 is, therefore, an independent grievance, which the petitioners ought to have challenged when the Notification was issued. They were well aware of the fact that, by the said Notification, the right of 2 years’ readmission, under Clause 6.7 of the Prospectus, had been taken away. They ought, therefore, to have challenged the said decision immediately thereupon, or at least shortly thereafter.

45. Not only did they not do so, they failed to challenge the decision even when they had completed the period of 6 years and were, therefore, under Clause 6.7 of the Prospectus – as it applied prior to the Notification dated 6 October 2020 – entitled to take readmission. Even at



that stage, had they come to this Court, or approached any other competent forum, ventilating their right to take re-admission and challenging the Notification dated 6 October 2020, the Court could have examined the matter on merits. Were the challenge found to be sustainable, the Court could have permitted the petitioners to obtain re-admission, after striking down the Notification dated 6 October 2020.

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50. It is, now, too late in the day for this Court to put the clock back and grant relief to the petitioners. The stage at which they could have availed the benefit of Clause 6.7, and could have moved the Court for that purpose, is over. It is not as if the petitioners were presented with a fait accompli, in which they could not have approached this Court immediately upon the impugned Notification dated 6 October 2020 coming to be passed. They had the opportunity to approach this Court not only on the said Notification being issued, but again when the period of 6 years, from the date of enrolment in their respective programs, was over and they could ventilate their right to seek readmission by seeking quashing of the Notification dated 6 October 2020.

51. For reasons completely unknown, but which have, therefore, to be merely attributed to negligence and indifference, the petitioners did not choose to approach this Court at that point of time. They remained fence-sitters.”

7. The aforesaid reasoning indicates that the learned Single Judge had applied his mind to the facts of the case and saw the clear distinction between the purpose for which the notifications dated 6th October, 2020 and 16th August, 2022 were issued by the respondent no.1/IGNOU. We too agree with the aforesaid reasoning of the learned Single Judge. The appellants ought to have been more vigilant in approaching the Court immediately on issuance of notification dated 6th October, 2020. In fact, from the records it appears that the appellants had waited till the period of six years, from the date of enrollment in their respective programmes was over, even after the notification was issued and still did not approach the High Court challenging the said notification. Thus, this delay would act as issue estoppel against the appellants.



8. The learned counsel for appellants relies upon the judgment of the Supreme Court in *Sudama Devi (Smt.) vs. Commissioner & Ors., (1983) 2 SCC 1* to submit that the Supreme Court held that there is no hard and fast rule of ninety days by way of period of limitation for filing a writ petition and that section 5 of the Limitation Act would not apply to maintainability of the petition.

9. We have perused the said judgment and are of the considered opinion that the same does not apply to the facts of the case. This is for the reason that in the present case, admittedly, the notification which was primarily challenged by the appellants was issued on 6th October, 2020 whereas, the underlying writ petition was filed on 16th December, 2023. As observed above, the supervening circumstances which occurred in between the issuance of the said notifications and filing of the writ petitions would disentitle the appellants from seeking discretionary relief of judicial review under Article 226 of the Constitution of India. In that view of the matter, the ratio laid down in *Sudama Devi* (supra) would not enure to the benefit of the appellants.

10. Even otherwise, it is trite that the Courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decision in academic matters involving standards and quality of technical education. Moreover, it is well settled that the Courts should be extremely reluctant to substitute its own view as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day to day working of educational institutions and the departments controlling them. (See- *All India Council for Technical Education vs. Surinder Kumar*



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Dhawan and Others, (2009) 11 SCC 726). Thus on this score too, the appeal fails.

11. For the aforesaid reasons and concurring with the reasoning of learned Single Judge on the issue of limitation, we find no merit in the present appeal and the same is dismissed alongwith pending applications, however, without any order as to costs.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

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