

(2020) 06 DEL CK 0139

In the Delhi High Court

Case No : Civil Writ Petition No. 3268 Of 2020

Abhishek And Ors

APPELLANT

Vs

University Of Delhi

RESPONDENT

Date of Decision : 23-06-2020

Acts Referred:

Delhi University Act, 1922 — Section 23

Citation : (2020) 06 DEL CK 0139

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : J.P.Sengh, Ayushi Chugh, Sachin Datta, Mohinder JS Rupal, Hardik Rupal

Final Decision : Disposed Of

Judgement

Jayant Nath, J

This hearing is conducted through Video Conferencing.

1. This Writ Petition is filed by the petitioners seeking the following reliefs:-

"A. Issue a writ, direction or order to Delhi University to withdraw the notification dated 14.05.2020 to conduct the Remove Open Book Examination for the final year students of under graduate (UG) and post graduate (PG), or

B. In the alternative direct the respondent to conduct the exams in examination halls by maintaining the social distancing norms, or

C. In the alternative direct the respondent to promote final year students on the basis of average of marks obtained in previous years and internal assessment in present year."

2. The petitioners are all Final Year Students of Delhi University. It is stated that the petitioners belong to economically weak strata of society. They are staying in some of the slum areas. It is pleaded that they are challenging the Notification

dated 14.05.2020 issued by the respondent/University of Delhi notifying that the examination would be conducted Remotely and Open Book Test for Final Year students of Undergraduate (UG) and Postgraduate (PG) programs which will also include examination for students with School of Open Learning and Non-Collegiate Women Education Board. Exams are to begin on 01.07.2020.

3. It is pleaded that the said Notification violates the Right to Equality of the petitioners. When exams are conducted in the Examination Halls it ensures the same environment and facilities for all the candidates. However, when exams are held from homes, different students would have different atmosphere which would result in prejudice to some of the petitioners. It is pleaded that the atmosphere in every residence is different and issues like background noise, sitting space, dedicated room etc. may not be available for students belonging to the weaker economic sections. Further, in remote exams there is no mechanism to check cheating by well-off students who will get support from tutors, parents, friends and other gadgets like search engines etc.

4. The matter was heard on 22.06.2020. Learned senior counsel for the petitioner had made the following submissions:-

(i) It was pleaded that under section 23 of the Delhi University Act, the consent of the Academic Council was mandatory before the Open Book Exam (hereinafter referred to as "OBE") could have been started. It is pleaded that in para 10 of the Writ Petition and in the grounds a specific plea is taken that under section 23 of the Delhi University Act the Academic Council is responsible for maintenance of the standards of examination and that no meeting of the Academic Council has taken place. It is pleaded that despite this averment in para 10 and the other grounds in the Writ Petition the counter-affidavit is completely silent on the same.

(ii) Reliance is also placed on a communication issued by some of the members of the Academic Council dated 14.5.2020 to support the contention that the Academic Council has not been consulted nor consent taken before change of the method of examination.

(iii) It has been stressed that scope of cheating cannot be ruled out in "OBE". The students with better facilities would be in a position to take the help of tutors and other such persons for completion of the "OBE".

(iv) It has been strongly urged that internet facilities may not be readily available to all the students who have to appear in the examination which would cause grave prejudice to the students who are unable to access internet facilities.

5. Learned senior counsel appearing for Delhi University has refuted the contentions of learned senior counsel for the petitioner. He has pointed out that firstly 95% of students have already filled their applications for undertaking the "OBE" which commences on 1.7.2020. He secondly submits that under clause 17 of the Notification dated 01.06.2020 students who are not able to appear in the "OBE" will be given one more chance to appear by the Conventional Mode of

Examination, as and when situation improves. Fresh dates for filling in the Examination forms shall be notified probably by the beginning of September 2020. Hence, he states that it is optional for the students to appear in the "OBE" so that their Academic Year is not wasted. However, the students who do not wish to appear in the "OBE" are free to appear in September, 2020, which is the tentative date for conducting the conventional mode of examination. Thirdly, he submits that the Academic Council is only an advisory body and need not be consulted, as has been urged by learned senior counsel for the petitioner.

6. Keeping in view the submissions of the parties, certain suggestions were made by the Court and the matter was adjourned for today.

7. Today, learned senior counsel for the respondent, on instructions, has pointed out that the said "OBE" will be for a duration of three hours. One hour will be given to the students for downloading the Question Paper and uploading the Answer Sheet. The exam has to be written in a period of two hours. He submits that students who are appearing in the examination, if for some reason, are not able to download the Question Paper or not able to upload the Answers will be given an opportunity to appear in the Conventional Mode of Examinations which will be around September this year. He further states that in addition to the facility of downloading the Question Papers, the students who give their email IDs will receive their Question Papers on their email IDs also. Further, the Answer Sheets can be given by email by the students or can be uploaded, as per their convenience. He also states that the University is not treating this litigation as an Adversarial Litigation.

8. Learned senior counsel for the respondent has also pointed out that Notification dated 22.06.2020 has been issued whereby names of the Nodal Officers whom a student can contact in case of difficulty have been stated. The names and email IDs of Dr.Ajay K.Arora and of Dr.Narender Kumar have been circulated.

9. I may note some of the salient terms of the Open Book Examination as stated in Notification dated 01.06.2020 which read as under-

"16.To check the use of any unfair means during the examinations, each student shall be required to fill up undertaking through button provided on the portal before uploading of the scanned images of answer scripts. The performa for the undertaking shall be made available to the students on the portal from where question papers are downloaded by students.

17. The University cares for those students who are not able to appear for the OBE remotely and thus will give such students one more chance to appear for the conventional mode of examinations as and when the present situation improves. The conventional mode of examinations in such case if required shall be conducted after the publication of results of OBE. The fresh dates for filling in the examination forms for the left out students of the final semester/term/year shall be notified probably by the beginning of September, 2020.

18. Mock tests shall be available on the portal one week prior from the commencement of the examinations to facilitate the students who are appearing for examinations to become aware about the mode of examinations and use of tools required for downloading question papers and uploading scanned answer sheets after the completion of examinations.

19. The University of Delhi is bound to protect the interests of those students who are residing in areas like Jammu and Kashmir and other such areas all over India which lack the internet and hardware facility required for the OBE and have stuck up at their places due to the Covid-19 pandemic. To facilitate such students the University of Delhi as a major measure, has finalized to engage Common Service Centres (CSC), under the Ministry of Electronics and Information Technology, Government of India.

? The students shall be allowed to use the ICT infrastructure resources available with the CSC for downloading and taking print out of the question papers, scanning and uploading the answer sheets on the portal.

? The students can avail all these facilities free of cost available at CSCs. There are more than two lakh functional CSCs located at almost all Gram panchayats at village level throughout India and all of them shall be available for the students.

? Students can access the details of the CSC available at their nearest locations from the official website of the Ministry of Electronics and Information Technology (MeitY)

? All relevant information regarding the CSC shall be uploaded on the official website of the University well before the commencement of the OBE."

10. My attention has also been drawn by learned senior counsel for the respondent/Delhi University to the fact that a matter raising somewhat similar issues is pending before the Division Bench being W.P.(C)3411/2020 titled as National Federation of the Blind vs. Union of India. It has been pointed out that though the matter pertains to students who are visually impaired, however, observations have been made by the Division Bench regarding the whole scheme, upholding the same. A perusal of the order passed by the Division Bench on 15.6.2020 in the above case shows that the Division Bench has made certain observations which tantamount to upholding the aforesaid scheme. Relevant paragraphs of the said order read as follows:-

"12. With respect to the last of the aforesaid five issues highlighted by the senior counsel for the petitioner, it has been informed that the examination schedule has already been released and now cannot be changed.

13. Mr.S.K.Runga, senior counsel for the petitioner states that there can be a separate question paper for visually impaired students, with examination thereon for the said students being taken in the month of August, instead of w.e.f. 2nd July, 2020.

14. We today, have the limitation of not knowing the grievances if any of individual students. The students for whose benefit this petition has been filed are not before us. Though the senior counsel for the petitioner states that in the existing state of affairs only 4 to 5 percent of such students would be able to give their examination but again the same is his assessment and we do not know how many are in a position to take their examinations; how many have difficulty to access text books and assistive devices and how many have difficulties with respect to scribes; for that matter, how many are in Delhi and how many are in remote corners of the country from where they are facing difficulty, also is not known.

15. We had in the first order indicated that merely because the petition is being considered, none should refrain from continuing with the preparation for the examination in the hope that the examination announced would be cancelled and/or deferred. We reiterate the same today also and at least till now are not inclined to interfere with the examination schedule, neither for the visually impaired students nor for any other students." (emphasis added)

11. There are clearly observations in favour of "OBE" passed by the Division Bench.

12. In my opinion, as already noted, the "OBE" is being conducted to facilitate and help students to enable them to ensure that they do not lose an academic year. In case, some students do find it difficult to give the Common "OBE" on account of any technical problems or other reasons, option of appearing by the conventional mode has also been given to such students. It has also been clarified by the Delhi University, which clarification the University shall remain bound that those students giving "OBE" who are unable to access the Question Paper or are unable to upload their Answer sheets for any reasons would also be given an option of appearing again for the conventional examination to be held around September 2020.

13. In my opinion, in the current facts and circumstances, keeping into account the Pandemic, the scheme as noted appears to be beneficial for the students. Further, it is an optional scheme and students are free if they find it inconvenient to appear in the "OBE" to appear in the Conventional exam as and when the same are conducted which are tentatively stated to be in September 2020. Hence, challenge to the "OBE" appears misplaced.

14. At this stage, learned senior counsel appearing for the petitioner has stressed some issues which will be for the convenience of the students who take the examination. It has been urged that as per the Scheme, Mock Tests would be available to the petitioners particularly one week prior to the commencement of examination to facilitate students. It is pleaded that Mock Tests should be made available immediately. It is also pleaded that those students who do not appear in the Open Book Examination and chose to appear in the Conventional examination likely to be held in September should be permitted to provisionally

appear for entrance test to the post graduate courses subject to clearing the graduation exams when held in or around September. It was also strongly urged that there are certain study materials which the University is yet to give. Reliance is also placed on the clause 8 of the Notification dated 30.5.2020 to plead that as per the said Notification, a college can extend to the students in limited numbers facility who do not have internet or hardware required for the examinations. It is pleaded that the colleges may be directed to implement clause 8 of the said Notification.

15. Learned senior counsel for Delhi University has assured that the respondent would abide by the circular dated 01.06.2020 regarding the Mock Tests. On the study material, it is pleaded that the syllabus of the courses has remained unchanged for several years and the study materials are readily available.

16. Further, on the issue as to whether students who do not appear in the present "OBE" may be allowed to appear in the Entrance Examination to Post Graduate courses is concerned, it is pleaded that appropriate instructions in this regard would have to be taken.

17. I may deal with the suggestions of the learned senior counsel for the petitioner. One suggestion appears to be important. The issue is regarding students who do not appear in the "OBE" as to whether they will be able to appear in the entrance exams for post-graduate courses of Delhi University? The "OBE" is optional to the students in the sense that it would be also open to those who do not appear in the "OBE" to take the examination through Conventional Modes to be held tentatively in September 2020. In my opinion, the purpose of giving this option would be defeated if such students who appear for the exam to be held in September 2020 are not allowed to appear in the entrance test for post-graduate courses. In these circumstances, and in the interest of justice, the respondent University shall permit such students who opt not to appear in the "OBE" to appear in the Entrance Test for post-graduate courses, subject to giving an undertaking that such permission is being granted subject to their clearing the necessary exams when held around September 2020.

18. On the suggestion relating to clause 8 of the Notification dated 30.5.2020 by learned senior counsel for the petitioner reference may be had to the said clause :-

"8. The students may contact in advance with their college through e-mode to avail the ICT based infrastructure facility for examination. Subject to availability of these facilities, the college may decide to extend the same their students in limited number those who need to be taken care in case of non availability of internet and hardware required for examinations. However, norm of social distancing, safety and health issues have to be taken care at priority and no compromise should be allowed while extending facilities. If number increases, the students can avail the facilities available at Common Service Centre (CSC) (as mentioned later) in the nearest location of their residence."

In my opinion, the colleges should endeavour to provide such infrastructure facility for students who are unable to access internet and other hardware required for the "OBE". Accordingly the colleges affiliated to respondent/Delhi University will ensure compliance of clause 8 of Notification dated 30.5.2020.

19. Another concern urged was about conduct of Mock Tests. The respondent/University will ensure that the said option is available expeditiously.

20. Keeping in view the above circumstances, nothing further survives in the petition.

21. Learned senior counsel for the petitioner at this stage states that on the above directions this court may dispose of the Writ Petition but may keep the issue of the validity of the "OBE" on the grounds of non-approval of the Academic Council open.

22. As submitted by learned senior counsel for the petitioner, the issue about the powers of the Academic Council in the present circumstances is not dealt with and is kept open for adjudication in appropriate proceedings.

23. Petition stands disposed of. All pending applications, if any, also stand disposed of.