
(2014) 11 DEL CK 0092

In the Delhi High Court

Case No : LPA Nos. 956, 189, 210, 211, 213, 214, 215, 216, 400, 401, 434, 564 and 596/2014 and W.P. (C) No. 5214/2013

Amit Kumar

APPELLANT

Vs

Delhi University
 Yusuf Jawed Vs Jamia Milia Islamia

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Companies Act, 1956 — Section 73(2A)
Constitution of India, 1950 — Article 14, 19, 19(1)(g), 21A, 226
Delhi University Act, 1922 — Section 17, 23, 30
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B

Citation : (2014) 11 DEL CK 0092

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Umesh Sharma, R.K. Saini, Abishek Kaul and Tanmaya Mehta, Advocate for the Appellant; Mohinder Jit Singh Rupal, Yamini Phayang, Jaya Goyal and Varun Garg, Advocate for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—All these matters concern the maximum period, also called the span period, prescribed by the University of Delhi and Jamia Millia Islamia University for completing the various courses/programmes being conducted by the said Universities.

2. The counsel for appellants in the following twelve appeals, all relating to University of Delhi, has stated that the judgments impugned in each of the said appeals is identical and he has argued them as one only:-

3. The position which emerges is as under:

(a) Clause 1 of the Ordinance V of the University of Delhi made/issued in exercise of powers under Section 30 of the Delhi University Act, 1922 lists the Degrees, Diplomas and Certificates issued by the University; Clause 2 of the said Ordinance V provides that the respective courses of study for each of the Degrees, Diplomas and Certificates mentioned in Clause 1 of the said Ordinance

shall be as set out in Appendix II to the Ordinances;

(b) Ordinance VII of the University of Delhi, in Clause 1(3) thereof, prescribes duration of the different courses of study offered by the University; the same also prescribes that the other conditions regarding attendance in respect of the courses shall be as laid down in Appendix-II to the Ordinances;

(c) Appendix-II, besides prescribing the courses of study for each of the Degrees, Diplomas and Certificates and the conditions regarding attendance in respect of each course, also prescribes the span period i.e. the maximum period in which the course has to be completed. By way of illustration, we refer to Clause 8 of the provisions relating to Faculty of Law-Bachelor of Laws (LL. B.) Degree Examination (duration prescribed whereof is three years) and which is as under:-

"8. Subject to the provision contained in the Ordinance relating to ex-students as in force from time to time a student must clear all the courses offered in all the Terms within a span period of six years from the date of admission to First Year of the LL.B. Course and that no student shall be admitted as a candidate for any LL.B. Examination after six years from the date of admission to the First Year of the Course.

Notwithstanding anything contained hereinbefore in the above provisions a candidate who had been admitted to the LL.B. Course First, Second and Third year under the old ordinance, in force prior to July, 1976 and has for one reason or the other discontinued his studies or had been detained for shortage in attendance, may be readmitted to second year or third year, as the case may be, provided such a candidate clears all the courses of all the terms by the end of the academic year 1982-83 i.e., within six years from the academic year 1976-77 when the revised Ordinance has come into operation.";

(d) Ordinance X-C of the University of Delhi is as under:-

"Ord. X-C Permissive Provisions

The Academic Council may, in exceptional cases grant exemption from the operation of any of the Ordinances governing admission of students, migration, the courses to be pursued by them, attendance at lectures or sessional or other work or the examination of candidates and authorize what is proper to be done instead in such cases, provided that no such exemption and authority shall be deemed to have been granted unless not less than two-thirds of the members present of the Academic Council voted in favour of the motion for such exemption and authority made by, or with the written authority of the Vice-Chancellor; and

Provided further that this two-thirds majority voting for the exemption should not be less than half the total strength of the Academic Council at the time.";

(e) the Academic Council of the University of Delhi, in exercise of powers under Ordinance X-C supra, in the meeting held on 17th February, 1975 passed the

following Resolution:-

"ACADEMIC COUNCIL RESOLUTION NO. 228 DATED 17.2.1975

228. The Council took up for consideration the cases of students involving late admissions, permission to appear at the examinations beyond the permissible span period, relaxation of requirements of attendance at lectures etc. etc. The Council was of the view that in order to have a consistent approach in such matters and to save the time of the Council spent in examining detailed circumstances of such cases, it would be desirable if all such cases before being brought on the agenda of the Council were initially examined by a Standing Committee of Academic Council and only such cases are brought before the Council for consideration as were recommended by the said Standing Committee.

After discussion, it was decided that a Standing Committee of the Academic Council be constituted to scrutinize all such cases of students in future and subject to procedural requirement of Ordinance X-A wherever this Ordinance required to be invoked only such cases be brought before the Academic Council as would be recommended by the Committee. The Council further authorizes the Vice-Chancellor to constitute the Standing Committee for the purpose and further decided that all the cases which were before the Council under items Nos. 7, 8, 9, 10, 22, 41, 46, 55, 56, 57, 58, 59, 60, 61, 68, 69, 70 of the Agenda be referred to the Standing Committee for scrutiny and consideration in the first instance.";

(f) in accordance with the aforesaid Resolution, a Standing Committee was constituted and students who were unable to complete the course/programme undertaken by them within the span period provided therefor, could seek permission to complete the course by appearing in the examination thereafter also, by making representation to the said Standing Committee and permission used to be granted on case to case basis;

(g) however the Registrar of the University of Delhi on 10th October, 2012 issued the following Notification:-

"Ref: OSD-(CE)/2012/182

Delhi, the 10th October, 2012

NOTIFICATION

It is hereby notified that henceforth applications for grant of "Special Chance" beyond the stipulated span periods shall not be considered by the University. Consequently, the students will have to complete their courses of study within the span periods prescribed for the courses concerned.

The applications already received by the University shall not be processed further for consideration.

REGISTRAR";

(h) various representations were made by the students, teachers as well as some members of the Academic Council of the respondent University of Delhi also, there against;

(i) the Registrar of the University of Delhi on 14th March, 2013 issued another Notification as under:-

"No. Aca.I/Spl.Chance/2013-2014/59

Delhi, the 14th March, 2013

NOTIFICATION

Subject: Grant of Special Chance to students beyond the prescribed Span period.

1. In partial modification of the University Notification No. OSD -(CE)/2012/182 dated 10th Oct., 2012, it is notified that in order to mitigate the hardships of the students, as a purely one time measure, the students may submit their applications for grant of special chance to enable them to appear in their backlog papers of Undergraduate/Post-graduate courses with the specific recommendations of the Principals of their respective Colleges/Heads of Departments, alongwith the required documents, latest by 5th April, 2013 for consideration of the competent authority.

2. It may be noted that applications of only those students shall be processed for consideration of the competent authority in whose cases the subjects/papers have the same or similar course titles and have substantially the same course contents. Further, the cases of old students in which neither the papers with similar titles nor the course contents are found to be the same or similar shall not be processed for consideration.

3. The applications received will be scrutinized by the Examination Branch and the decision of the Examination Branch with regard to short listing of the applications for consideration by the competent authority shall be final.

4. In the case of the students who are granted special chance, their examinations shall be conducted by the University in accordance with the schedule/methods of examinations prescribed by the University in this regard.

5. The students are advised to contact the Examination Branch for further details in this regard.

6. The applications short listed by the Examination Branch shall be processed for consideration of the Standing Committee (Students) and the decision taken by the competent authority on the recommendations of the Standing Committee (Students) shall be final and no further representations/requests will be entertained by the University.

Sd.

REGISTRAR".

4. The counsels for the appellants have argued:

(i) that the Registrar of the University of Delhi had no power to issue Notification dated 10th October, 2012 aforesaid overruling, not only the Resolution No. 228 dated 17th February, 1975 of the Academic Council of the University, but also in contravention of Ordinance X-C of the University of Delhi;

(ii) that Section 17 of the Delhi University Act while listing the Authorities of the University does not even mention the Registrar; on the other hand the Academic Council is an authority of the University;

(iii) that vide Section 23 of the Delhi University Act, the Academic Council is the Academic Body of the University, having control and general regulation and responsible for the maintenance of standards of instruction, education and examination within the University and is the Body empowered to exercise such powers and perform such duties as may be conferred or imposed upon it by the Statutes;

(iv) that the Registrar is merely an officer of the University appointed by the Executive Council of the University in exercise of powers under Statute 11-K, to be the whole time officer of the University on such terms and conditions as may be prescribed by the Ordinances; none of the Ordinances authorize the Registrar to annul a Resolution of the Academic Council; that thus the Notification dated 10th October, 2012 issued by the Registrar of the respondent University of Delhi, taking away the chance which the students had of being allowed by the Academic Council of the respondent University of Delhi to complete a course/programme of study by taking the examination beyond the span period prescribed for that course, is bad and the appellants are entitled to have their requests for a special chance for appearing in the examination beyond the span period considered by the Standing Committee constituted for the said purpose by the Academic Council of the respondent University of Delhi; and

(v) that the notification dated 10th October, 2012 in any case is prospective and cannot affect the appellants.

5. Per contra, the counsel for the respondent University of Delhi has supported the judgments of the learned Single Judge of dismissal of the writ petitions challenging the Notification dated 10th October, 2012 (*supra*), (from which these appeals arise) holding that Ordinance X-C does not empower the University to permit a student to continue in the course/programme in case he fails to complete the said course/programme within the span period prescribed for that course in Appendix-II and that the relaxation granted by the University in the past was not authorized and was beyond the powers of the University. He has further contended:

(a) that Ordinance X-C of the University empowers the Academic Council to grant exemption from the operation of any of the Ordinances governing, (i) admission of student; (ii) migration; (iii) courses to be pursued by them; (iv) attendance at

lectures or sessional or other work; and, (v) the examination of the candidates only, and not from the prescribed span period;

(b) that merely because the span period for different courses is mentioned in Appendix-II referred to in Ordinances V and VII which Ordinances deal with courses of study, the duration of the courses and the attendance for the courses, does not mean that the Academic Council in exercise of powers under Ordinance X-C is entitled to grant exemption from operation of all provisions of the said Ordinances; had the intention been so, Ordinance X-C would have referred to the entire Ordinance V and VII and other Ordinances providing for migration and examination and would not have only mentioned only the said five aspects;

(c) that the appellants had/have no legal right to take examination beyond the span period;

(d) that the appellants cannot claim parity with those who in the past were allowed to take the examination beyond the span period;

(e) that in exercise of powers under Article 226 of the Constitution of India, no illegality can be allowed to be perpetuated;

(f) that the Notifications aforesaid have the concurrence of the Vice Chancellor of the University of Delhi;

(g) that the Academic Council of the respondent University of Delhi comprises of nearly 200 members and any 10 of whom can requisition a meeting of the Academic Council; if the Academic Council felt that the Registrar of the University or the Vice Chancellor was in an error in issuing the Notification dated 10th October, 2012, they could have requisitioned a meeting and superseded the said Notification; the same having not been done also shows that the Academic Council is in concurrence therewith;

(h) that under Statute 11-G(2) of the University, it is the duty of the Vice Chancellor to ensure that the Delhi University Act, the Statutes, the Ordinances and the Regulations are duly observed;

(i) that the Registrar of the respondent University of Delhi in issuing the Notification dated 10th October, 2012 has merely enforced the Statutes and Ordinances of the University;

(j) that the relaxation given by the Registrar vide Notification dated 14th March, 2013 was a one time measure;

(k) that the Notification dated 14th March, 2013 was issued in exercise of powers of the Vice Chancellor under Statute 11-G(4) to, in an emergency, take immediate action;

6. LPA No. 434/2014 impugns the judgment dated 7th May, 2014 of the learned Single Judge of dismissal of WP(C) No. 2865/2014 preferred by the appellants therein. The said writ petition was preferred impugning the refusal of the

University of Delhi to conduct special examination for the students who could not clear all the papers of three year Degree Course [B.A. (Pass) and B.Com. (Pass)] within the span period of six years therefor and though were allowed to appear in a special examination held for them but could not reach the venue of the examination by 1500 hrs i.e. within 30 minutes of commencement of the examination scheduled from 1430 to 1730 hours and were late by 2 to 5 minutes in reaching the venue of the said special examination for reasons beyond their control; axiomatically a direction to the University to hold another special examination was sought. The learned Single Judge dismissed the writ petition holding that the contention of the appellants that they could not reach the venue of the examination in time either due to heavy rain or due to a festival is unacceptable and if such explanations are accepted, then no examination schedule would have any sanctity attached to it and no examination would ever be concluded. It was thus held that no further indulgence could be shown to the appellants who had already availed of double the chances or time period for completing their course and the special examination held was an additional chance over and above the span period.

7. The writ petition from which LPA No. 434/2014 arises having been dismissed in limine, we allowed the respondent Delhi University to file its counter affidavit. The University in its counter affidavit has pleaded that as per the Superintendent of the Examination Centre where the special examination scheduled on 20th August, 2013 from 1430 hrs to 1730 hours was held, the appellants reached the examination centre at 1515 hours which was 45 minutes late beyond the prescribed time of the examination and therefore the appellants were not allowed to sit in the examination. It is further pleaded that the said date was not a gazetted holiday and all the other examinees reached the examination centre at the stipulated time.

8. The counsel for the appellants in LPA No. 434/2014 has argued that 20th August, 2013 was a restricted holiday on account of Raksha Bandhan; that the city had torrential rain on that date, leading to traffic jam and disruption in metro services; that the appellants were late by about 35 minutes only i.e. reached the venue of the examination at 1505/1510 hours; that though they made a representation to the Controller of Examination on the same day but no action was taken thereon till on 8th November, 2013 when the same was rejected. Reliance is placed on the judgment dated 22nd July, 2010 of one of us (Rajiv Sahai Endlaw, J.) in WP(C) No. 4782/2010 titled Saurabh Vs. GNCTD in which a student who had failed to attend the counselling for admission to MBBS course for the reason of being admitted to hospital on that, date on being found to be entitled to admission was granted admission reasoning that his inability to appear for counselling was for the reasons akin to act of God or force majeure or impossibility beyond human control.

9. Per contra the counsel for the respondent Delhi University has drawn attention to the relevant rule printed at the back of the admission card for the said

examination advising the candidates to reach the examination centre at least half an hour before the commencement of the examination and cautioning them that they will not be allowed to enter the examination hall after half an hour of the commencement of the examination. He has also contended that the appellant is not entitled to any relief also for the reason of laches. It is contended that though the cause of action accrued to the appellants on 20th August, 2013 or latest on 8th November, 2013, the writ petition from which this appeal arises was filed only in May, 2014. It is argued that the appellants, after learning of the pendency of the other matters aforesaid have merely taken a chance. It is also informed that though about 20 students had so reached the examination venue late on 20th August, 2013 but only 9 filed the petition and this appeal.

10. The counsel for the appellants in LPA No. 434/2014, after the judgment had been reserved has handed over copies of the judgments of the Division bench of this Court in *Surender Singh and Another Vs. D.S.S.S.B. and Others*, ; *Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another*, and *Bharat Sanchar Nigam Limited Vs. Ghanshyam Dass and Others*, on the aspect of the grant of relief to the appellants only even though 20 students had made the representation on the principle of the appellants only being vigilant of their rights and on estoppel, acquiescence and waiver.

11. The challenge in W.P.(C) No. 5214/2013 is to the absence of any power of relaxation of span period in the respondent Jamia Millia Islamia University. It is argued that such a rigid provision cannot be sustained. It is contended that there may be occasions when the candidate/student is prevented from completing the course within the span period owing to reasons attributable to the University. It is contended that such a rigid law cannot be sustained. It is further contended that once it is held so, the facts of that case which are not in dispute justify the grant of an opportunity to the petitioner therein to complete the course beyond the span period. It is yet further argued that the University itself has in the past acted in contravention of its own Rule and has granted relaxation. It is yet further informed that even in the Indian Institutes of Technology, relaxation of span period is permitted. Reliance is placed on *Naseem Ahmed Vs. Jamia Millia Islamia* 1998 III AD (Delhi) 62 where, inspite of there being no provision therefor in the statute or the Rules, in the facts of that case extension beyond span period was granted because the University in the past had been giving such concession, without however making it a precedent.

12. The counsel for the respondent Jamia Millia Islamia University has relied on *Pradeep Kujur and Others Vs. State of M.P. and Others* where the challenge to the refusal of the University to declare the result upon discovering that the student had taken examination beyond the span period was negatived. Reference is also made to *All India Council for Technical Education Vs. Surinder Kumar Dhawan and Others*, on the proposition that Courts are neither equipped nor have academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters

and that these are matters of educational policy from which the Courts should keep their hands off.

13. The counsel for the petitioner in W.P.(C) No. 5214/2013 in rejoinder contended that the judgment aforesaid of the High Court of Madhya Pradesh does not apply. He has further contended that Ordinances are delegated legislation and not merely executive acts but legislative acts and can be challenged on the ground of arbitrariness. Reliance in this regard is placed on *Man Singh Vs. State of Haryana and Others*, , *A.P. Dairy Development Corporation Federation Vs. B. Narasimha Reddy and Others*, .

14. We have considered the issue at hand.

15. At the outset we may state that the students cannot be said to have any right to complete the course/programme to which they have sought admission, in whatever time they may deem proper, particularly when the rules of the University provide otherwise. The students having taken admission to a University, are governed by the rules and regulations thereof. They even otherwise have no right to claim that there should be no span period for completing an educational course/programme or as to what the said time period should be or whether there should be any provision of relaxation therein or not. No such right was argued by any of the counsels inspite of our specifically posing the said query. On the contrary the Universities are found to be fully empowered to lay down such span period and/or to determine whether any relaxation with respect thereto is to be given or not. The appellants/petitioner in fact have not even challenged the right of the University to so lay down the span period. The validity/vires of the Appendix II to the Ordinances of the University of Delhi or the Ordinance 15(xv) of the Jamia Millia Islamia University, both laying down the span period, is not even challenged.

16. It cannot also be lost sight of that the span period is the outer limit for completing the educational course/programme and is generally found to be double the duration otherwise prescribed for the course/programme. The relaxation/exemption which is being sought is thus found to be inbuilt in the span period. The arguments thus urged, of the rule/regulation of span period being harsh, are of no avail. The counsels, inspite of our asking were unable to cite and we have also not been able to find any principle of law which mandates making a provision for relaxation of a rule. *Man Singh and Andhra Pradesh Dairy Development Corporation Federation* (supra), referred to in this regard on our prodding have no application. In fact the very purpose of making a rule and fixing a time limit is to govern the human conduct and behaviour and once a grace period is inbuilt in the rule, no argument of the same being harsh can be urged. A Division Bench of the Bombay High Court in *Raymond Synthetics Ltd. and others Vs. Union of India and others*, while rejecting a contention that though Section 73(2A) of the Companies Act, 1956 did not provide but nevertheless a discretion to extend the period of payment is inherent therein, reasoned that a provision to grant a grace period of eight days for making

repayment before the liability to pay interest accrued thereunder was inbuilt in Section 73(2A) and the Legislature, at the expiry of the grace period having foisted the liability to pay interest, such liability could not be deferred or postponed and neither the Stock Exchange nor the Government had the authority to extend the time of payment. Similarly, a Full Bench of the Madras High Court in *Gowri Spinning Mills (P.) Ltd. Vs. Assistant Provident Fund Commissioner and Another*, with reference to Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 held that the Parliament as a matter of legislative policy having confined waiver of damages in certain situations only, the Courts could not extend the immunity beyond that laid down by the Parliament. Reference may also be made to *Khar Bhan Ram Vs. General Manager, Punjab National Bank and Others*, where in the face of the maximum period of probation provided in the rules, it was held that any extension of probation beyond that is void.

17. The reliance placed on *Saurabh supra* is misconceived. That was a case of admission to an educational institution, for which a particular date and time was prescribed and in which prescription there was no provision for relaxation. It was in that context that the doctrines of act of God, force majeure and impossibility beyond human control were invoked. That is not the position here. Each of the appellants in the present case, inspite of having not completed their respective education courses/programmes within the duration prescribed therefor, have been already granted extra time to complete the same and what they are now seeking is beyond the said extra time also. The same if allowed would make the rule/regulation providing span period redundant. Once it is not challenged that the University is empowered to provide for the span period, this Court cannot in exercise of powers under Article 226 give a direction in contravention of the said rule. The Supreme Court in *Maharshi Dayanand University Vs. Surjeet Kaur*, reiterated that the Court has no competence to issue a direction contrary to law nor the Court can direct any authority to act in contravention of the statutory provisions; the Court cannot be generous or liberal in issuing directions to authorities to violate their own statutory rules and regulations. The principle was yet again invoked in *State of Bihar and Another Vs. Arvind Kumar and Another*, .

18. A Division Bench of this Court, on a conspectus of a host of earlier judgments, in *Siddharth Kaul and Others Vs. Guru Gobind Singh Indraprastha University* preferred where against was dismissed by a speaking order dated 11th July, 2013) inter alia held that in the absence of rules permitting the same, re-evaluation cannot be directed. Dealing with the argument of discrimination on the ground that some other Universities provided for re-evaluation, it was held that a University is always entitled to set a higher benchmark; it is not without any reason that a handful of Universities of the world qualify to be in the Ivy League. It was further held that the students, after joining the University cannot be permitted to compel the University to lower its standards and that it is the student who opts for the University and not the other way round; if the student feels that he/she is unable to cope with the University standards, it is for him/her

to opt out and he/she cannot be permitted to create circumstances which would lead to the University lowering its standards. It was reasoned that the prospective employers judge the merits of the prospective employees from their qualifications and in which University forms a relevant criterion and students of Universities which maintain high standards command better emoluments than those of other Universities. It was yet further observed that the students cannot be permitted to decide the academic policies or seek change thereof to enable them to get over their own deficiencies.

19. The Supreme Court in *Thapar Institute of Engineering and Technology and Another Vs. Gagandeep Sharma and Another*, , also concerned with rule of promotion in an educational institution, set aside the judgment of the Division Bench of the High Court allowing the students to take advantage of the unamended as well as the amended Regulations when the Regulations did not provide so and restored the judgment of the Single Judge of the High Court holding that, to prescribe the academic standards falls exclusively in the domain of special bodies of the University and refusing to interfere with the Regulations of the University which were intended to improve the academic standards.

20. However having said that, we have also wondered whether in fact there should be a span period. The educational courses/programmes with which we are concerned are long term courses/programmes spanning over several years. In such a long time, uncertainties of life can have a play. The question which arises is, whether the expiry of such a span period should be allowed to come in the way of desire for education or completing education. Though in a sense entire life is an educational experience but what is recognized, to enable a human being to achieve higher pursuits or atleast get on to a platform to achieve the same, are the educational qualifications. The Supreme Court in *Prof. Yashpal and Another Vs. State of Chhattisgarh and Others*, observed that an academic Degree is of great significance and value and goes a long way in shaping the future of the holder thereof. The very Preamble to our Constitution secures to all the citizens of this country "fraternity assuring the dignity of the individual..... ". Education is an important element of such dignity of the individual. Article 19 of the Constitution makes the right to practice any profession, a Fundamental Right and there can be no right to practice profession without education. Infact, the 86th Amendment (of the year 2002) to the Constitution added Article 21A, makes it obligatory for the State to provide free and compulsory education between the age of 6 and 14 years. The same spirit is to be found in Part IV dealing with Directive Principles of State Policy which are also pro-education. Without education, no citizen can also be expected to perform any of the Fundamental Duties enshrined in Article 51A of the Constitution. The native endowments of men are by no means equal. Education provides for intellectual, moral and physical developments for good character formation, mobility of social status and an opportunity to scale equality. Education is a powerful lever to uplift the poor (refer *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, .

21. The Courts also have leaned in favour of a citizen educating himself/herself by declaring illegal the age limits prescribed for joining an educational programme or profession or vocation. Recently, vide order dated 11th November, 2014 in Transferred Case (Civil) No. 47/2014 titled H.D. Sailor Vs. Bar Council of Gujarat and other connected cases, the Supreme Court upheld the judgments of the High Courts of Madras, Punjab & Haryana and Rajasthan quashing the rules preventing the persons who had crossed the age limit of 45 years from enrolling with the Bar Council on the ground of the same being violative of Article 19(1)(g) of the Constitution and in accordance with the earlier judgment of the Supreme Court in Indian Council of Legal Aid and Advice, etc. etc. Vs. Bar Council of India and another, .

22. Unfortunately neither of the counsels assisted us on the aspect on a larger canvas. In our endeavour to find as to what is the practice prevalent in other countries especially in the Ivy League Universities, though we found a span period prescribed for foreign students (perhaps to prevent a foreigner from continuing to stay in the country indefinitely in the garb of education) but could not find any such provision for the natives. What emerged was, a practice of acquiring subject-wise credits instead of course-wise credit as is prevalent here and perhaps for which reason the need for such span period is not felt with; credit in a particular subject/paper being in itself the educational qualification for such paper/subject. Certainly the educationists manning the respective Universities would be in a better position to judge the same.

23. Education, culture and society, in recent years are evolving rapidly. The ethos, practices and customs of the past are no good today. The pace of life and opportunities have also multiplied manifold. Normally a person should not be tied down for such long duration of three to five years prescribed for completing an educational programme and should have the freedom, if in the interregnum has another opportunity, to avail of the same and the same should not deprive him of completing the course/programme at a subsequent stage in life. The Supreme Court in Maharshi Mahesh Yogi Vedic Vishwavidyalaya Vs. State of M.P. and Others, quoted with approval Owens and Shaw in their book "Development Reconsidered" as authoring that the most important element of a literacy programme is not the programme itself but the incentive to become and remain literate. It was reiterated that no section of the citizens can be ignored or left behind in the matter of education because it would hamper the progress of the country as a whole and that it is duty of the State to do all it could, to educate every section of citizens who need a helping hand in marching ahead along with others. In short, education was given the status of national wealth. Similarly, in Institute of Institute of Chartered Financial Analysts of India and Others Vs. Council of the Institute of Chartered Accountants of India and Others, , while dealing with a condition imposed by the Institute of Chartered Accountants of India on its members from acquiring a qualification as a Chartered Financial Analyst, it was held that the right to acquire a qualification being an inherent and human right, cannot be curtailed unless there exists any statutory interdict

therefor. The Supreme Court found it strange that the Institute of Chartered Accountants should stop its members from enhancing their knowledge, training and ability by acquiring the qualification as Chartered Financial Analyst and held such conduct of, instead of appreciating such aspirations of Chartered Accountants who seek to widen their know-how and horizons, labeling the same as professional misconduct, as unreasonable.

24. We find that the rules and regulations, of the two universities, with which we are concerned, prescribing the span period, to have been formulated decades back. We do not know whether the Universities/educationists have relooked at the same in today's context and life. If not, we feel there is certainly an occasion therefor. More so with the world shrinking and the international barriers disappearing; our educational system has to gear up to cater to the current needs rather than continuing to being run on patterns which were good decades back and which may not be good today. Recently, a Division Bench of this Court in Govt. of NCT of Delhi and Others Vs. Sachin Gupta also observed that with the march of times the imparting of education at the Graduate level is changing all over the world and the Directorate of Education should keep in mind that it has to march in tune with the rest in the onward march in time. A Division Bench of the High Court of Gujarat also as far back as in Gujarat State Co-operative Union Vs. Commissioner of Income Tax, observed that the changing times and the ever widening horizons of knowledge may bring changes in the methodology of teaching, a shift for the better and that advancement of knowledge brings within its fold suitable methods of its dissemination and it may become necessary to have a different outlook; it is not necessary to nail down the concept of education to a particular formula or to flow it only through a defined channel - its progress lies in the acceptance of new ideas. We have also looked up the rules and regulations of certain newer universities but find the same to be modelled on the old universities only. We are again not aware whether the said newer universities while formulating their policies merely aped the older universities or there was a conscious decision that the decades-old policies are apt in the modern context also.

25. On the other hand, we are also mindful of the extreme paucity of educational institutions in the country. In the absence of any span period, students may indefinitely block seats, other facilities and amenities in the educational institutions to the prejudice of those becoming eligible for admission in succeeding years. Allowing an educational course/programme to be completed at any time, without any limitation, may also pose a problem where say the course content has changed. Also, there is generally continuity in the syllabus/curriculum in successive semesters/years of an educational course/programme and a long break may interfere therewith, impacting the course/programme.

26. We do not consider ourselves competent or qualified to take a decision on the aspects which we have highlighted above and we also do not have available all the materials/factors which may be relevant for taking such a decision. All the

stakeholders are also not before us. We therefore refrain from judging on the aforesaid two rival aspects. The Supreme Court as far back as in *Dr. Jagdish Saran and Others Vs. Union of India (UOI)*, even though having prima facie found a rule relating to education to be inappropriate, stopped short of invalidating the same reasoning that the Court must act on sure ground, especially when matters of policy, socio-educational investigation and expert evaluation of variables are involved and held that to doubt is not enough to demolish.

27. We however nevertheless choose to record our own meanderings on the subject. The Supreme Court in *Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others*, held that where an issue involving public interest has not engaged the attention of those concerned with policy or where the failure to take prompt decision on a pending issue is likely to be detrimental to public interests, Courts will be failing in their duty if do not draw attention of the concerned authorities to the issue involved, though not making a policy, but acting as catalyst for change. Proceeding on the premise that a right to complete the education is certainly at a higher pedestal than the need for the Universities/ educational institutions to provide for the maximum duration for completing an educational course/programme, we are of the view that ways and means to allow an educational course/programme to be completed, without at the same time jeopardizing the quality of educational qualification and affecting the rights of those becoming eligible for admission in succeeding years, can be devised. For instance, to ensure that the person so desirous of completing the educational course/programme has not rusted and/or to ensure continuity, as a precondition, he/she can be subjected to an eligibility test. Thus, the appellants/petitioners before us who have been unable to complete their respective educational courses/programmes within the span period provided therefor, can be asked to appear in a test/examination in the subjects which they have already passed/cleared, to demonstrate that the continuity if any required, exists. To get over the issue of such candidates/students blocking seats, facilities and amenities of the Universities, such facilities can be made available to only those who have the requisite attendance in all years/semesters but have been unable to pass the examinations. Yet another thought which comes to us is that instead of a span period of time, the number of attempts to pass the examination in a subject can be prescribed. Another possibility can be, to allow such students/candidates to continue the educational course/programme as permitted in an Open School/ University and to issue a Degree/Certificate to them, different from a Degree/ Certificate issued to others who have completed the course/programme within the duration prescribed therefor and to let the employers/others dealing with them to judge their skill/acumen. We again clarify these are our random thoughts, not intended to bind, inasmuch as we do not have the entire perspective before us. The purport of our recording our thoughts is only that if it is found by the educationist and the universities that time should not be allowed to come in the way of completing the paper/formal education, then ways can be

devised to ensure that the same fulfils the purpose rather than helping in acquiring a degree/certificate not more valuable than the piece of paper on which it is embossed.

28. In this light, the only order which we can make in these proceedings is to direct the Universities to consider the matter, including in the light of our aforesaid observations, within a time bound period. Needless to state that if the outcome is to do away with the span period or to provide relaxation therein, the appellants/petitioner would be the beneficiaries thereof, notwithstanding having so become time barred prior thereto. Else, as we have already observed, appellants/petitioner have no right.

29. As far as the University of Delhi is concerned, what we find strange is that the same Ordinance X-C (*supra*), for nearly 35 years, was construed/interpreted by the University itself as empowering the Academic Council to relax/grant exemption in exceptional cases vis-a-vis span period. No material has been placed before us as to what caused the change in interpretation. The ordinary rule is, for an interpretation/practice long in vogue, being not disturbed, as consistency, trust, logical and valid and fair regularity are essential elements of public law. Even the Courts are loath to depart from an established practice unless it lacks the sanction of law or is grossly erroneous.

30. We are also disturbed by the fact that though the decision to grant such exemption/relaxation qua span period was of the Academic Council of the University, which we are told comprises of 200 members and who we are sure must be having rich knowledge of academics and education, the decision to do away the same is of one man only i.e. the Vice Chancellor. Certainly when 200 minds, we expect, after discussion, concluded and resolved that Ordinance X-C applies to span period also, the change thereof by one mind does not inspire confidence. When it is doubtful whether the power to take an important decision lies with an individual or with a group, the collective wisdom is generally preferred to individual wisdom. We are of the view that it is for the Academic Council of University of Delhi to, besides taking a call as directed above, also consider this aspect. We hope when all the members of the Academic Council pool their resources/ideas and deliberate, a right answer will be reached. Reference in this regard may be made to Lily Kurian Vs. Sr. Lewina and Others, where a blanket unguided, uncanalised power given to the Vice-Chancellor of the University to veto the disciplinary action of the managing body of a minority educational institution was held to be violative of the right of administration guaranteed under Article 30(1) of the Constitution. We are also of the view that it would be inappropriate for this Court to interpret Ordinance X-C before the Academic Council which is better equipped has had an occasion to consider the same inasmuch as the same is more a matter of policy than interpretation. A provision of a statute, rule, regulation giving an opportunity to seek exemption from application thereof cannot be said to be vesting a right for it to be said that the appellants have a right to be considered. A person who does not fulfill the

qualifications cannot claim, as of right the grant of exemption. The Supreme Court in *State of Rajasthan and Another Vs. J.K. Udaipur Udyog Ltd. and Another*, held that the recipient of a concession has no legally enforceable right against the grantor to grant a concession except to enjoy the benefits of a concession during the period of its grant. It was held that this right to enjoy is a defeasible one in the sense that it may be taken away in exercise of the very power under which the exemption was granted. The defence of the members of the Academic Council being deemed to have ratified or concurred with the decision of the Vice Chancellor by not raising the said issue in the meetings, cannot be accepted. The failure or pre-occupation if any of the members of the Academic Council in not taking up the matter, cannot be a substitute for a discussion on the subject.

31. As far as LPA No. 434/2014 is concerned, the appellants therein having admittedly reached the examination hall beyond time, and after which the rule did not permit them to take the examination, we cannot show any indulgence, as held by the learned Single Judge also. If the same were to be permitted it would be an endless exercise. This Court in *Aditya Singh Vs. Indian Institute of Tourism and Travel Management and Another*, in the context of attendance held that if the Courts are to interfere when the deficit is 2.6%, why not when deficit is 5% or may be 10% and that if the Courts start doing so there would be no end making the rule of attendance farcical. The Supreme Court in *Bhanu Pratap Vs. State of Haryana and Others*, held rounding off or giving grace marks so as to bring up a candidate to minimum requirement being impermissible. It was further held that somewhere, a line has to be drawn and that line has to be strictly observed like a Lakshman Rekha and no variation of the same is possible unless provided in the rule itself. The appellants ought to have been careful considering that they were aware that it was their last chance which too was given by way of grace.

32. As far as the argument of the counsel for the appellants, of the Universities themselves having in the past allowed persons to appear in the examination beyond span period, is concerned, the same cannot be a ground. If the rules of the University do not allow so, merely because the University itself in the past has acted contrary to the rules would be no ground to grant relief, effectively directing the University to again act contrary to the rules. The principles of negative equality being not envisaged in Article 14 of the Constitution of India (see *Union of India (UOI) and Others Vs. M.K. Sarkar*, and the Court in exercise of jurisdiction under Article 226 being not entitled to direct something to be done in contravention of laws, rules and regulations, negate the said argument.

33. Though the counsel for the appellants in the 12 appeals (*supra*) also argued on the aspect of prospectivity but without any particulars, basis or the dates. However even if it were to be held that at the time when in all the appellants joined the university, the interpretation of Ordinance X-C as in vogue prior to the notification dated 10th October, 2012 was in force, the same in our view would not vest any right in the appellants to avail of the same interpretation. The principle, as applicable to repeal/amendment of Statues, Rules and Regulations,

does not apply to interpretation thereof. A change in interpretation of a Statue, Rule, Regulations binds all cases even though instituted prior to such change. Reference in this regard can be made to Sarwan Kumar and Another Vs. Madan Lal Aggarwal, . Moreover it has also been held in State of H.P. and Others Vs. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh, that a student cannot insist on the University/Educational Institution not changing its rules and regulations relating to promotion as in force on the date of his admission. Also, each of the said appellants on the date of admission were fully in the know/are deemed to be in the know, of the maximum period in which they were required to complete their respective courses/programmes and merely because exemptions were being granted therefrom does not vest the students with any right to claim such exemptions.

34. The counsel for the petitioner in WP (C) No. 5214/2013 also argued on the facts. It was argued that the failure of the petitioner therein to complete the said course within the span period is attributable to the University. The petitioner therein took admission to the four years" course in B. Tech. (Civil) in the respondent Jamia Millia Islamia University in the year 2002 and was promoted to the second year in the year 2003. However, he successively failed the examination of the second year, as many as three times and cleared the same finally in the year 2007 when he was promoted to the third year and was thereafter promoted to the fourth year in the year 2009, which was the last year of the seven years" span period provided for the said course. Though the counsel for the petitioner argued that even if, we were to hold the Rule/Regulation of the said University of not providing for any exemption from applicability of span period to be valid the matter be remitted to the learned Single Judge for decision on facts but we are unable to appreciate, as to on what basis, it is claimed that the University is at fault. It is claimed that the University, contrary to its Rule, did not allow the petitioner, an opportunity to improve on his original marks of the years 2003 and 2004 in the subjects which he had passed. However, neither any Rule is cited in this regard nor did the counsel during the hearing draw attention thereto. We are unable to find any. Even otherwise, it was for the petitioner to challenge such action of the University in the relevant year and grievance with respect thereto cannot be made belatedly, as is being done. We therefore do not find any factual controversy to be adjudicated to remit the matter to the learned Single Judge.

35. We accordingly dispose of these appeals/writ petition:-

(I) by directing the respondent University of Delhi to, within three months here from, have the aspects of, (a) need to continue with the span period; (b) whether Ordinance X-C applies to span period also, in the meeting of its Academic Council; and to pass a Resolution on both aspects giving reasons therefor;

(II) by directing the respondent Jamia Millia Islamia University to have the matter relating to the need for having the span period and if so, the need to

provide for exemption in exceptional cases therefrom, considered in its appropriate body and to pass a reasoned order thereon, within three months from today;

(III) by directing the Secretary, Ministry of Human Resource Development, New Delhi to, in consultation with the educationist, in an appropriate fora, debate and arrive at a consensus and to lay down Policy Guideline to be followed by the Universities in the matter of the need for having a span period for completing the courses/programmes being offered by the Universities.

A copy of this judgment be forwarded forthwith to the Secretary, Ministry of Human Resource Development, New Delhi.

Needless to state that all the aforesaid three, while arriving at a decision as directed, to consider the matter from all perspectives, including those discussed herein.

No costs.