

(1992) 11 DEL CK 0010

In the Delhi High Court

Case No : Writ Petition No. 4108 of 1991

Major Y.K. Bammi

APPELLANT

Vs

Jawaharlal Nehru University and another

RESPONDENT

Date of Decision : 30-11-1992

Acts Referred:

Citation : AIR 1993 Delhi 239 : (1993) 50 DLT 588 : (1993) 2 ILR Delhi 22

Hon'ble Judges : Mahinder Narain, J;Jaspal Singh, J

Bench : Division Bench

Advocate : D.K. Kapur and B.D. Sharma, for the Appellant; S.C. Dhanda Sr. Advocate, Ms. Nandita and Chandra, for the Respondent

Judgement

Mahinder Narain, J.—This writ petition has been filed by Major General Y. M. Bammi. He has asserted in the petition that he is the father of one Ms. Deep Shikha Bammi, who was a student of the Jawaharlal Nehru Univeristy.

2. The said Ms, Deep Shikha Bammi has enrolled herself for a 10 semester five-year M. A. course in the Jawaharlal Nehru University for obtaining M. A. degree in Japanese language. It is asserted in the petition that the 10th semester of the said course commenced in January, 1991, and was due to be completed in April/May, 1991.

3. It is further asserted that MOMBUSHO Scholarship for M. Phil in Japanese language at OCHANOMIZU University, Tokyo (Japan) was offered by the Government of Japan to the Ministry of Human Resource and Development, Government of India, New Delhi, routed through the Jawaharlal Nehru University (School of Language). The minimum qualification for the said Scholarship was M.A., and the students in the final 10th semester were also permitted to apply. Number of such students had applied for the said scholarship.

4. It is also asserted that the aforesaid Japanese University required the students to join by 5th April, 1991, which was the last date given by the University, failing which the student was not permitted to join the said University.

5. The petitioner contended that in view of the extraordinary performance of his daughter "a special semester was organized and petitioner's daughter appeared in the said semester in all papers in the end of March, 1991."

6. It was asserted that the semester organized in the regular manner, and Deep Shikha Bammi was invigilated by 5 professors of the respondent University's school of languages, namely, Ms. M. Rawat, Mr. Tomar, Mr. Motwani, Ms. A. Khanna and Ms. Neera.

7. As will be noted hereafter the respondent Jawaharlal Nehru University contested the averments made in the above paragraphs regarding the said special semesters and the examination.

8. It was asserted by the petitioner that on 20-3-1991, an application was made by the said student Deep Shikha Bammi to the Chairperson of the Japanese Centre of the Jawaharlal Nehru University that she be examined for the 10th semester earlier than as was programmed by the University. This request, according to the petitioner, was accepted by the Chairperson of the Japanese Centre.

9. Accordingly the examination was conducted by the aforesaid five professors of the Japanese language. It was asserted that after undertaking the said examination by the five professors of the Japanese Centre on 7-4-1991. Deep Shikha Bammi proceeded to Japan to avail of the benefit of the aforesaid scholarship. The petitioner asserts that no information till 1-1-1992 of the said examination was available.

10. It is not disputed by the parties before us that the 10th semester of the M. A. course, had it been undergone by Deep Shikha Bammi, would have ended on 30-4-1991.

11. It is contended by the petitioner that inasmuch as Deep Shikha Bammi had left Delhi on 2-4-1991 (as is clear from annexure "J"), she was short of a few days of instructions till 25-3-1991 or 2-4-1991. In any case, it is contended by the counsel for the petitioner before us that Deep Shikha Bammi having left on 2-4-1991, taking into account that she took [he examination on 25-3-1991, and 10th semester was to end on 30-4-1991, the number of days on which the petitioner did not take instructions from the school of language, would be about 30 days, and if Saturdays and Sundays, which are not teaching days in the Jawaharlal Nehru University, are excluded, then the number of days when the petitioner did not take instructions would come to only about 22 days.

12. The respondent Jawaharlal Nehru University contends that what was done by the five professors of the School of Language, taking of the examination before the end of semester was something which could not be done at all, in view of the Jawaharlal Nehru University Act, its statutes, and its ordinances.

13. Counsel for the Jawaharlal Nehru University contends that the professors of the School of Languages actually had no power to hold an examination, as was

done without obtaining requisite authorisations from the authorities concerned, and as such the examination held in March, 1991 for the benefit of the school student Deep Shikha Bammi, was no examination at all.

14. Counsel for the Jawaharlal Nehru University contends that what the five professors of the University did, was in violation of statutes and ordinances, and this violation came to the notice of the University authorities because of an anonymous letter regarding the examination which was held. Counsel for the Jawaharlal Nehru University further contends that what these five professors had done, was to hold the examination on or about 25-3-1991. They withheld communication of assessment with respect thereto to the authorities concerned, and sent the assessment of Deep Shikha Bammi's examination (which was held around March, 1991) along with the end of the 10th semester examination of Japanese Language course to the authorities of the University, as if Deep Shikha Bammi had taken the end semester examination with other students of the Japanese language.

15. This position of Deep Shikha Bammi having taken the examination earlier will not have come to the notice of the University authorities, but for an anonymous letter. The respondent University addressed communications to the professors-concerned, as it took a serious view of the breach of the statutes and the ordinances.

16. At this stage, we think, it will be desirable for the ends of clarity to clarify the meaning of "statute" and "ordinance" of the University. For this purpose, we can do no better than to refer to the Third Edition of Halsbury's, Volume 13, page 707, as para 1441 thereof deals with Universities. According to the Halsbury's Laws of England : --

The word "university is not a word of art and, although the institutions to which it refers are readily identifiable, precise definition is difficult. The essential features of a university seems to be that it was incorporated as such by the sovereign power.

Other attributes of a university appear to be the admission of students from all parts of the world, a plurality of masters, the teaching of one at least of the higher faculties, namely theology, law or philosophy, which in some definitions are regarded as identical, and medicine, provision for residence, and the right to confer degrees, but possession of these attributes will not make an institution a university in the absence of any express intention of the sovereign power to make it one.

Incorporation was anciently affected by papal bull or charter later by royal charter or Act of Parliament.

17. Part of the aforesaid observations are based upon the judgment of the Chancery Provision (Vaisey, J.) in the matter of St. David's College, Lampeter v. Ministry of Education, (1951) 1 All ER 559.

18. It appears that Vaisey, J. referred to Halsbury, Hailsham Fdn., Vol. 12, p. 100 thereof, and adopted the same in part. It would be useful to reproduce what is stated in Halsbury's Laws of England, Second Edition, Vol. 12, page 100 in para 225, which reads as under: --

225. A university is nowhere legally defined. The term is usually understood to mean a body incorporated for the purposes of learning, with various endowments and privileges. Such bodies were anciently founded by papal bull or charter, later by royal charter or Act of Parliament. They may contain colleges, which are independent corporations similarly founded.

The constitution, functions, and privileges of universities are governed by the terms of their instruments of foundation, or by Acts of Parliament, In so far as there can be said to be any general law relating to universities or their colleges, it belongs, strictly speaking, either to the law of corporations or to that of charitable trusts. But the statutes and instruments of foundation relating to individual universities do in fact result in producing characteristics capable to some extent of classification.

A university usually consists of a chancellor, a body of graduates, and students. Its government is usually provided for by the creation of a council or senate, which acts as the executive, and has an initiative in such legislation as the university is empowered to carry out, sometimes subject to the King in Council, sometimes with the further assent of Parliament.

It is one of the privileges of a university to confer degrees on those of its students who satisfy the necessary conditions. The older universities have enjoyed special privileges of jurisdiction over their members. Their libraries have certain rights under the Copyright Acts, and Oxford and Cambridge have rights as regards their presses. The Universities of Oxford and Cambridge each elect two representatives to Parliament, the Universities of Wales and London one each, and the other universities in England two representatives jointly. A university which teaches in addition to conferring degrees will possess endowments for professors and teachers, whose lectures are to be open to the students, and for scholarships and prizes.

University colleges, like universities, are corporate bodies, constituted and managed according to the terms of their charters, their founder statutes, or their other instruments of foundation.

The colleges within the Universities of Oxford and Cambridge are governed by statutes which were made by commissioners appointed in 1923 for that purpose. These relate not merely to the internal organisation and government of the colleges, but to their contributions to various university purposes.

19. The Words and Phrases, published by West Publishing Company, relying upon certain observations of Law of Text, and American Judgments, defined the word "Universities".

Universities

Bodies politic and corporate have "been known to exist as far back at least as the time of Cicero, and Gaius traces them even to the laws of Solon of Athens, who lived some 500 years before. Pothier's Pandects of Justin bk. 3, p. 109, Paris Ed. 1823. These associated bodies or communities of individuals with certain rights and privileges belonging to them by law in their aggregative capacity were styled by the Romans collegium, and sometimes universitas, as collegium and sometimes universitas as collegian tibicinum, collegian artifices collegian, architectum or society, corporation or community of flute players, goldsmiths, architects, etc. Id. bk. 20, p. 110. The term as used by one of the Roman consuls to describe the nature of such a corporation or associated body of individuals under the laws of the republic is perhaps as appropriate as any general language which can be used to describe a corporation aggregate at the present day, without referring to the specific object for which any particular corporation is organized. I have thus translated from the Latin Digest. But those who are permitted to form themselves into a body under the name of a "corporation", "society", or other community, have within their peculiar jurisdiction, as in the similar case of the republic, property in common and a common chest or treasury, and an agent or head of the corporation or society, by whom, as in the republic, whatever is necessary to be done for the benefit of the community may be transacted, Dig. lib 3, tit 4a. And from time immemorial, as at the present day, this privilege of being a corporation or artificial body of individuals, with power of holding their property, rights, and immunities in common as a legally organized body and of transmitting the same in such body by an artificial succession different from the natural succession of the property of individuals has been considered a franchise which could not be lawfully assumed by any associated body without a special authority for that purpose from the government or sovereign power."

20. The same Words & Phrases referring to a case reported in *Academy of Fine Arts v. Philadelphia County*, 22 Pa. (10 Harris) 496, 498, states that, "A 'university' is, in common parlance and in legal excitement, as the word imports, 'a place where all kinds of literature are universally taught.'"

21. The same book referring to a case reported as *West v. Board of Trustees of Miami University and Miami Normal School*, 181 NE 144, 41 Ohio App 367, states that, "University" is defined as whole body of teachers and scholars, engaged at particular place in giving and receiving instructions in higher branches of learning, and as such persons, associated together as society or corporate body with definite organization and acknowledged powers and privileges, especially of conferring degrees, and forming institution for promotion of education in higher and more important branches of learning."

22. The same volume at page 268 states that, "College" should be construed to include a building or group of buildings in which scholars are housed, fed, instructed, and governed under college discipline, while qualifying for their

university degree, whether the university included a number of colleges or a single college..... As first used, "college" indicated a place of residence for students, and occasionally a "Universities" or "stadium generate."

23. The same book quoting Newman recites, "the university, to enforce discipline, developed itself into colleges, and so the term "college" was taken to mean a place of residence for the university student, who would there find himself under the guidance and instructions of superiors and tutors, bound to attend to his personal interest, moral and intellectual."

24. American Jurisprudence 2d says that, "Properly speaking, a "university" is an aggregation or union of colleges. It is an institution in which the education imparted is universal, embracing many branches, such as the arts, sciences, and all manner of higher learning, and which possesses the power to confer degrees indicating proficiency in the branches taught. The word "colleges" has been said to be employed in the United States to indicate an institution of learning, having corporate powers, and possessing the right to confer degrees, and which, with reference to its educational work, consists of the trustees, teachers, and scholars, all of whom make up the membership of the college and represent its active work.

25. Corpus Jurisdiction, Vol. 11, page 972 defines "college". Thus, while the word has other meanings, in its most common use "college" designates an institution of learning (usually incorporated) which offers instruction in the liberal arts and humanities and in scientific branches, but not in the technical arts or those studies preparatory to admission to the professions. At page 974 it is stated, "as distinguished from a college, a university is an institution of higher learning, consisting of an assemblage of colleges united under one corporate organization and government, affording instruction in the arts and sciences and the learned professions, and conferring degrees," (This is the meaning which has been reproduced from the Black's Law Dictionary).

26. From the aforesaid, it is dear that University is a corporation aggregate -- Aggregation of corporations. The corporations of which university is an aggregate, usually being colleges or schools. Each college may have been incorporated under a charter of incorporation by a private person as a trust, or otherwise. A college may have been established by a charter issued by a sovereign, whether King or by an Act of sovereign Parliament railway servant.

27. Same is the case with the university. A university may be incorporated by a charter, by a private individual to start with, or it may have been established by means of a charter by a King, or by a sovereign Parliament. In India, we have the examples of University of Bombay, University of Calcutta and University of Madras, being established by royal charter, or by an Act of Parliament.

28. The aforesaid parts of the different reference books having been extracted above, are to point out the difference between the Jawaharlal Nehru University and the concept of the University, as found in the English and the American

Jurisprudence. The Jawaharlal Nehru University was constituted in terms of S. 3 of the Jawaharlal Nehru University Act, 1966. That section reads as under: --

3.(1) There shall be constituted in the Union territory of Delhi a University by the name of "Jawaharlal Nehru University".

(2) The first Chancellor and the first Vice-Chancellor of the University and the first members of the Court, the Executive Council and the Academic Council and all persons who may hereafter become such officers or members so long as they continue to hold such office or membership are hereby constituted a body corporate by the name of "Jawaharlal Nehru University".

(3) The University shall have perpetual succession and a common seal, and shall sue and be sued by the said name.

29. From S. 3 of the Jawaharlal Nehru University Act, it should be clear that whereas universities in England and in America are "corporate aggregates", that is to say universities are comprised of aggregates of incorporated bodies, the Jawaharlal Nehru University is altogether of natural persons, postulated by S, 3(2) of the Jawaharlal Nehru University Act, namely, the Vice Chancellor, members of the Court, members of the Executive Council and of the Academic Council, all of whom, because of the aforesaid provisions, are natural persons. It is these natural persons who are statutorily considered to be the Jawaharlal Nehru University.

30. Universities being corporations aggregate, whether having genesis in a Royal Charter, or they take their birth from an Act of Parliament, they have to have, like Corporations, the objects for which they are incorporated and their Articles & Memorandum of Association, like other Corporations.

31. The objects of the universities are stated in the Act of Parliament or the Royal Charter by which they are incorporated. The Articles & Memorandum of Association are reflected in the statutes and the resolutions of the bodies of the University are the ordinances,

32. When Universities are incorporated by statutes, it has become the practice, which is being followed in the case of Indian legislation that the Act by which the university is created, contains objects with which the university is incorporated in its various sections. Some of the sections of the Act also state the designation of some of the officers of the university, and their powers. The Act contains, as a schedule, "statutes" of university. The power is conferred by the Act and/or the statute in the schedule, on various officers and bodies of the university. The manner in which power is exercisable is also provided in the "statute & ordinance". Just like the Articles & Memorandum of Association of a Corporation contains the objects, and the manner of exercise of powers; and manner of passing resolutions, the authorities of the university are given powers to pass resolutions, and act according to resolutions.

33. Mr. Kapur for the petitioner has drawn our attention to ordinance 6-2 of the

Jawaharlal Nehru University which reads as under:--

6.2 The Monsoon and Winter semesters shall commence from and end on a date to be fixed by the Academic Council.

Provided that each semester will ordinarily have 90 working days excluding the examination days.

34. According to Mr. Kapur, the said ordinance requires attendance of students ordinarily on 90 days. It is necessary to construe the word "ordinarily" in ordinance 6.2.

35. The word "ordinarily" has been construed by the Supreme Court in its judgment in *Kailash Chandra Vs. Union of India (UOI)*, , in which case provisions of Railway Establishment Code, Rule 2046(2)(a) which is equivalent to F.R. 56(b) (1) came up for consideration in connection with the age of retirement of a railway servant. The word ordinarily was found in Rule 2046(2)(a). For the purposes of decision in that case, the Supreme Court construed the word "ordinarily" to mean "not invariably" In our view, the said construction of the word "ordinarily" in *Kailash Chandra Vs. Union of India (UOI)*, , "as not ordinarily" does not exclude other meanings which can be ascribed to the word "ordinarily" in English language. The word "ordinarily" is used in English language to indicate "in ordinary", "normal", "usual practice", "usually", and "normally".

36. In our view inasmuch as ordinance 6.2 of the Jawaharlal Nehru University postulates attendance of/duration of 90 days for a semester, then we must construe the word "ordinary" to mean "normally", "in the ordinary course".

37. It would not be right to construe the word "ordinarily" in such a way as to give rigidity in the matter of construction, and to give it a meaning as "invariably". Such an interpretation would go contrary to what is stated in *Kailash Chandra Vs. Union of India (UOI)*, .

38. In this view of the matter, we are of the view that "ordinarily" with reference to duration of the semester postulated by ordinance 6.2 of the Jawaharlal Nehru University would normally be 90 days, but it does not mean that it must invariably be so. It will depend upon a particular calendar year; it will depend when semester starts, and according to the calendar year when it ends. In any case, the provision of ordinance 6.2 of the Jawaharlal Nehru University must necessarily be construed in accordance with the provisions of ordinance 12 of the Jawaharlal Nehru University, which talks in terms of relaxation of the provisions of the ordinances in the matter of its applicability, subject to the conditions mentioned in ordinance 12 Being satisfied. Reading the said provisions of the ordinances together, in our view, in ordinance 6.2, the word "ordinarily" must mean "normally", "usually", "in the ordinary course" etc.

39. It is also contended by Mr. Kapur on behalf of the petitioner, that in the facts and circumstances of the case, it is apparent that the Chairperson of the faculty of languages gave permission to Ms. Deep Shikha Bammi to take an examination

before 90 days of the semester were over. The petitioner acted upon the representation of the Chairperson of the faculty, that she could take the examination in the Japanese course as if examination was end of the semester examination, and believing this representation to be true, the student having taken that examination then an estoppel by conduct arises in favor of the student, Ms. Deep Shikha Bammi, that having taken the examination on the day so that the Chairperson of the faculty, the examination taken in 1991, has to be treated as the end semester examination, and the University is liable to declare result of that examination. The petitioner has stated these grounds in ground (d) and ground (e) of the petition. The said grounds read as under:--

(d) Because the respondents have no right to declare the Special Semester Examination held in March, 1991, as null and void, as threatened by them especially when the daughter of the petitioner had acted on the actions of the respondents.

(e) Because the petitioner's daughter is not at all concerned with the internal procedures of the respondents and she cannot be made to suffer because of any such actions of the respondents.

40. It is also contended by Mr. Kapur, learned counsel for the petitioner, that section 18 of the Jawaharlal Nehru University Act provides for Schools of Studies, Special Centres and Laboratories mentioned in the Ordinances.

41. It is pointed out by Mr. Kapur that the Board of the School is headed by the Dean of the School, and that Board of each school has got a Chairperson. The relevant Chairperson of the relevant Board, that is to say Japanese language Course, was Mr. Motwani. It was Mr. Motwani who had given permission to Ms. Deep Shikha Bammi in March, 1991, to take examinations as if it were end semester examination. And, inasmuch as the Chairperson of the School of Language had authorised holding of the examination in March, 1991, as an end semester examination, estoppel arises in favor of Ms. Deep Shikha Bammi.

42. Mr. Kapur further urges that in the facts and circumstances of the case, the student Ms. Deep Shikha Bammi cannot be found to be at fault for having acted on the representation of the Chairperson of the school and in any case, he urges there is no assertion that there is collusion between the student and the Chairperson of the school.

43. Mr. Kapur refers to and relies upon paras 31 and 32 of *Kanishka Aggarwal Vs. University of Delhi and others*, , according to which the plea of estoppel is available to a student, like Ms. Deep Shikha Bammi. The said paragraph reads as under:--

"31. Although Mr. Rao wanted us to place very heavy onus on the petitioner and although, according to him, the conduct on the part of the University must be shown to have been clear, unambiguous and pronounced (the same being, according to him, central to the plea) to satisfy the requirement of estoppel and

although he also wanted us to believe that the representation must be express and unerringly leading to the act of the petitioner, the legal position now appears to be as follows:

(i) The onus placed on the party raising the plea of estoppel is very light, (ii). There need be no express representation; (iii) Form of representation is not material. The effect. A mere raising of an expectation would suffice (iv) Acquiescence or standing by would be sufficient (per Lord Kingdon in Ramsden (1866) LR 1 HL 129, (supra)); (v) A very minimum of conduct is normally required.

32. We feel that the judgment of the Supreme Court in Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, nowhere comes into quarrel with what has been mentioned by us in the preceding paragraph. Anyhow, what distinguishes it is the fact that in that case, there was no representation at all.

44. Mr. Kapur in support of his contentions urges that the discretion which was exercisable in accordance with the statutes/ ordinances of the University ought to have been exercised in granting of exemption to the petitioner Deep Shikha Bammi, inasmuch as the same has not been exercised, this Court has power under Art. 226 of the Constitution to order that discretion be exercised by the authority concerned. Mr. Kapur refers to what is stated in Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, wherein the Supreme Court has said that the power of the High Court under Art. 226 includes the power to give directions to compel performance in a proper and lawful manner of the discretion conferred upon the government or public authority, and even the Court may pass order or give directions which should have been passed or given, if discretion had been exercised properly and lawfully.

45. A. Sudha Vs. University of Mysore and Another, in support of his contention, that inasmuch as the Chairperson of the Japanese Language of School had represented to the petitioner that she could take the examination before the semester was over, and before the sessions were completed, and Deep Shikha being a student to whom such a representation was made, the respondents should be bound by these representations. In A. Sudha Vs. University of Mysore and Another, a representation had been made to the student that she was eligible to take the medical course. This was despite the fact that she had fulfilled one of the two eligibility criteria only. The criteria filled by her that she was a B.Sc. student, she had not filled the eligibility criteria that the student should obtain a particular percentage of marks in the P.U.C. examination, 1987. Since the representation had been made, as the appellant had already been admitted to the medical course, the Court directed that she should continue that course despite upholding of the two eligibility conditions.

46. In reply, Mr. Dhanda raised the following contentions:

That Deep Shikha Bammi is not entitled to the relief sought in the petition,

namely, declaration of her result with reference to 10th special semester examination, held in March, 1991.

47. It was not disputed by the respondent that Deep Shikha Bammi had initially registered for a course for M.A. in Japanese language course of 10 semesters.

48. It was also not disputed by the respondent that out of 10 semesters, Deep Shikha Bammi had completed 9 semesters by December, 1990.

49. It was not disputed by the respondent University that the 10th semester for M.A. Japanese language course, for which Deep Shikha Bammi had been registered, had commenced in January, 1991, and that semester was to be over in April-May, 1991.

50. It is contended on behalf of the respondent University that the language course is governed by the Academic Ordinance No. 14; that the said Ordinance makes the provisions of eligibility of admission, admission procedure, duration of the course, evaluation etc.

51. The respondent University relied upon clauses 6.1, 6.2, 8.8, 8.10 and 9.7 of the said Ordinance. These clauses read as under:

6.1 The curricular work leading to the award of Master's Degree shall be spread over a minimum of 10 semesters five Monsoon Semesters and five Winter Semesters. Provided that curricular work leading to the award of Master's Degree in the case of students admitted under Clause 2.2 shall be spread over a minimum of 8 semesters -- 4 Monsoon semesters and 4 Winter semesters and for those admitted under clause 2.3 it shall be spread over a minimum of 4 semesters -- 2 Monsoon and 2 Winter Semesters.

6.2 The Monsoon and the Winter semesters shall commence from and end on a date to be fixed by the Academic Council. Provided that each semester will ordinarily have 90 working days excluding the examination days.

8.2 For courses having a semester examination, sessional work shall carry the same weight as the semester examination.

8.8 Examination shall be conducted under the direction of the Dean of the School. Provided that in case of Institutions of the University situated outside Delhi Campus, the Board may delegate the power to another Authority,

8.10 Examiners or Board of Examiners shall be appointed for each course by the Board of the School, on the recommendation of the Centre concerned.

9.7(1) The end semester examinations shall be conducted by the Centres under the Overall guidance of the Dean of the School within the dales specified by the University. The Head of the Centre shall report the award list in respect of all courses to the Dean's Office.

52. The respondent University elaborated that the winter semester was to commence from 6-1-1991 and go on uptill 12-5-1991. These dates were fixed on

4-5-1972, and were followed every year thereafter.

53. It was refuted by the respondent University that a special semester as contended in the writ petition was held for Deep Shikha Bammi.

54. It was asserted by the respondent University that there was nothing on record to show that permission to hold special semester for Deep Shikha Bammi was either sought or given by the University. It was asserted that there is no provision in the Academic Ordinances to hold any special semester.

55. It was contended that if at all any semester could be held, the authority to grant such special semester lay in the Academic Council which is the Apex Academic Authority in the University, and the Academic Council did not grant holding of a special semester for Deep Shikha Bammi.

56. It was contended by the respondent University that as Deep Shikha Bammi left the 10th semester prematurely in her eagerness to join scholarship offered by the Japanese government, she had failed to satisfy the requirements envisaged by the relevant Ordinances. It was contended that in terms of the relevant Ordinances, a student is required to undergo learning for a minimum 90 working days excluding examination days in the semester. As Deep Shikha Bammi failed to satisfy this condition, she was not eligible to appear in the end semester examination.

57. It was also asserted that the course was not completed when Deep Shikha Bammi was examined. It was Therefore apparent that she could not be examined regarding the full course of the studies. Besides this, it was contended that the examination conducted for Deep Shikha Bammi alone was not in accordance with clause 8.8 of Ordinance No. 14.

58. It was asserted that as Deep Shikha Bammi left for Japan on 5-4-1991, she did not take the examination on the dates specified, as per time table announced by the Centre for the East Asian Language of the School.

59. It was contended by the respondent University that the examination of Deep Shikha Bammi which was held contrary to the provisions of clause 8.8 of Ordinance No. 14, was communicated by the Chairperson of the Centre along with the examination results of rest of the students, "thus carrying the impression to the Evaluation Branch of the University that there was no departure or deviation whatsoever and Ms. Deep Shikha Bammi went through the end semester examination along with other students of the class".

60. It was asserted that when the illegality came to light, the Vice-Chancellor as Chairman of the Academic Council conveyed his displeasure and unhappiness over the lapse of some of the faculty members of the Centre for East Asian Languages through the Dean of the School vide annexure R-IV, and the Academic Council recommended that Deep Shikha Bammi cannot be awarded M.A. degree of the University as she failed to satisfy the requirement of the Ordinance that she has to get herself registered for one semester, or repeating the course

pertaining to 10th semester. This was so stated in Annexure R-V.

61. The respondent University stated that on 5-12-1991 the Academic Council decided to permit Deep Shikha Bammi to register for one more semester within the maximum prescribed duration of the programmes as laid down in the M.A. Ordinance to enable her to complete the 10th semester course with a view to fulfill the recruitments for award of Master's degree in Japanese. This was the resolution of the Academic Council, and was filed as annexure R-VI.

62. During the course of arguments, it was asserted by Mr. Dhanda that the scholarship was available, and commenced either from April, 1991 or from October of that year, and as such there was no reason for Deep Shikha Bammi not to complete the semester as she could have availed of the scholarship offer in the month of October after finishing her 10th semester in due course. For this purpose, Mr. Dhanda relies on a telegram sent by the Section Officer, Department of Education. However, the offer requiring Deep Shikha Bammi to avail of the scholarship was made by the Under Secretary, Ministry of Human Resource Development (Department of Education), and in our view, it was this which has to be taken as the final word, as to the terms of the offer actually made to Deep Shikha Bammi, not the telegram relied upon by Mr. Dhanda, which is dated 28-1-1991.

63. As far as the contention of the respondent University that Deep Shikha Bammi could have gone in October, we find that the letter of offer of Scholarship of the Japanese Government of 1991-92, issued by the Ministry of Human Resource Development on 13-3-1991, indicates that Deep Shikha Bammi was required to reach Japan during April, 1991. We are, Therefore, unable to accept the contention of Mr. Dhanda that Deep Shikha Bammi could have reached Japan in October, 1991.

64. It appears to us that it is after receipt of the offer dated 13-3-1991 that Deep Shikha Bammi made requests for her being examined to the Chairperson of the Centre of Japanese language studies on 20-3-1991, requesting, "since I have to be in Japan in the first week of April, I request you to grant me permission to take the end semester exams during the same period."

65. At one stage of the arguments, Mr. S.C. Dhanda had given us the impression that the Ordinances of the University are something rigid, practically sacrosanct and inviolate. However, we find that clause 6.2 of Ordinance No. 14 reproduced here above, uses the word "ordinarily" in connection with the Winter semester, which as stated, was to commence on 6-1-1991, and end on 12-5-1991. The use of the word "ordinarily" itself gives flexibility to the respondent University instead of rigidity, advocated by Mr. S.C. Dhanda.

66. Besides this, clause 12 of Ordinance No. 14 permits relaxation of any of the provisions at the discretion of the Academic Council for the reasons to be recorded. The said clause reads as under:--

12. Notwithstanding what is contained in the Ordinance, the Academic Council may, in exceptional circumstances and on the recommendations of the Committee for Advanced Studies and Research concerned or an appropriate Committee and Board of the School as well as on the merits of each individual case, consider relaxation of any of the provisions at its discretion and for reasons to be recorded.

67. In view of the terms of the said Ordinance, it is not possible to accept the contention of Mr. S.C. Dhanda that the Ordinances of the respondent University are fixed, rigid or sacrosanct, or inflexible.

68. There was another development in this case. This Court was moved through C.M. 6834 of 1991 by the petitioner, in which the petitioner sought declaration of result of Deep Shikha Bammi, which result had been withheld. It was also prayed that the result declared be communicated to the University in Japan by 15-1-1992. This Court heard both the counsel for the parties and on 13-1-1992 ordered as follows:--

.....The question regarding cancellation of the examination of the student Ms. Deep Shikha Bammi was placed before the Academic Council and the Academic Council vide resolution dated 5-12-1991 agreed with the recommendation of the Board that the examination be cancelled. However, it appears to us that the Academic Council did not consider whether relaxation under Clause 12 of Ordinance 14 ought to be granted in the special circumstances of the case.

We direct the University to call a meeting of the Academic Council within a week from today and place all the facts before the Academic Council along with our order for consideration of relaxation under Clause 12 of Ordinance 14. We hope and trust that the Academic Council will consider the question of relaxation in the present case particularly when the student Miss Deep Shikha Bammi does not seem to be at blame and the confusion has taken place mainly because of lack of communication between the teaching staff and the Administration of the University. A copy of this order be given Dusty to the respondents.

List on 24th January, 1992.

Sd/-

Sunanda Bhandare, J.

Sd/-

13-1-1992. Y. K. Sabharwal, J. 69. The Court on being moved, extended time for communication of the decision of the Academic Council regarding relaxation. On 3-3-1992, an affidavit was filed that the Academic Council vide its order dated 13-1-1992 had for reasons recorded in writing, decided that relaxation in terms of clause 12 of the Academic Ordinances could not be allowed.

70. The matter came up before this Court on 9-3-1992. This Court issued Rule D.B.

71. Yet another application was moved being C.M. No. 1620 of 1992 in which it was prayed that Deep Shikha Bammi be permitted to appear in the examination again in the regular 10th semester at the end of the year 1992. Vide its order dated 13-3-1992, Deep Shikha Bammi was allowed to attend classes and to appear in the examination of the 10th Semester, to be held sometime early in May, 1992. It was also directed that the matter be placed before the Academic Council of the University at its meeting on 24-4-1992, for its consideration regarding relaxation of eligibility of Deep Shikha Bammi to take the I examination. As a matter of fact, Deep Shikha Bammi appeared for the examination in 1992. Result of this examination also has not been declared.

72. It is clear from the provisions of clause 12 of Ordinance No. 14 that the Academic Council has power to relax the terms of Ordinance in cases mentioned in the said clause. Orders to this effect were passed by the Division Bench, comprised of Sunanda Bhandare and Y. K. Sabharwal, JJ. We also are of the view that the power of relaxation exists in the Academic Council. In the facts and circumstances of the case, namely, that the actual offer of the scholarship made on 13-3-1991 required the student Deep Shikha Bammi to reach Japan in the month of April, 1991, prompted her to make a request to the Chairperson of the Centre to hold the end semester examination so that she could avail of the benefit of the Japanese scholarship offered by the Ministry of Human Resource Development/the Ochanomizu University, Tokyo (Japan). The Chairperson and some of the Professors of the Centre did hold that examination. The student Deep Shikha Bammi did take that examination. As stated by this Court (Sunanda Bhandare and Y. K. Sabharwal, JJ.) in its order dated 13-1-1992, the student was not to be blamed in taking the examination.

73. If the holding of the examination was contrary to the Ordinances, then the teachers of the respondent University, especially of the Centre concerned, ought to have been aware that such an examination could not be held by them. Yet they did hold that examination. Possibly they held that examination on the assumption that the circumstances were special enough, and the Academic Council in due course would have granted the relaxation. In any case, the student could not have known what the examiner intended to do, that is to say the student could not have known that the examiners did not intend to take relaxation orders in terms of clause 12 of Ordinance 14, and have wanted to convey the impression to the University authorities that the examination and the result of the examination of Deep Shikha Bammi was a regular examination, which was taken by her along with other students. If they did so, those persons may have been at fault. The respondent University contends that they were. That is the matter for the respondent University to take action upon. That matter is not before us. We are only called upon to determine whether the results of the examination of Deep Shikha Bammi held in 1991, or taken by her in 1992 ought to be declared.

74. Mr. Dhanda has laid stress upon the requirements of the Ordinances. Mr.

Dhanda has stressed that it is important that all the formalities required to be completed by the students, be completed by them before they can be finally examined for the purpose of conferment of the University degree, that is to say they must complete the course by attending each semester, they must do the sessional examinations, and there must be assessment of class performance of the students, which depends upon inter-action between the teacher and the taught, that student must take the sessional examination and also the end of the semester examination. In arguing that all these factors have to be taken into account by those who are teaching students, and it would be proper that their views on the subject of class assessment of the student, how the student fares at the sessional examination or at the end of the semester examination, should weigh with the authorities of the University, not only the teachers of the Universities and various schools, but also the authorities of the University ought to show equal concern for maintenance of whatever standards the University sets for itself.

75. The University must also keep in mind that there may be students of varying ability who take the course, and there may be some who would be better performers academically than others, and if so, there is no reason why the better performers or the higher achievers should be held back to the self imposed controls which have the effect of limiting the abilities or achievements of the more gifted the higher achieving students amongst those who are undergoing a particular course. If rigidity advocated by Mr. Dhanda were to be adhered to, then it would mean that the University would not be welcoming within its fold any student who is a higher achiever, better performer. It is possible that a rare student can achieve better standard than what the authorities consider to be standards achievable by the students who are generally admitted to its various courses. Such a student should not be confined.

76. The student in the instant case Deep Shikha Bammi has already taken the end semester examination twice, once in the year 1991 upon her own request, and her teachers agreed to take her examination before the other students were examined at the end of the semester, and another time when this Court directed that she take the examination. In our view, it could be a waste of human resources, especially waste of effort of one particular individual student, who has proved herself to be meritorious enough to merit the grant of scholarship at a University other than her own for higher studies.

77. The observation of the Supreme Court in *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, apply to this case.

78. In our view, the student in this case Deep Shikha Bammi should not suffer for the sins of the teachers in not adopting the procedure necessary for the purpose of obtaining relaxation of Ordinances within the framework of the Ordinances from the authorities concerned. The Supreme Court expressed similar sentiments in *Ashok Chand Singhvi Vs. University of Jodhpur and Others*, , and this Court in the case of *Kanishka Aggarwal Vs. University of Delhi and others*, ,

also has expressed the same view. She has not committed any fraud. She was an innocent party all along. She sat for the examination even for the second time and that was at the instance of the Court. Why should she thus be made to suffer?

79. In view of the facts and circumstances of the instant case, we are of the view that the University ought to declare the result of the examination taken by Deep Shikha Bammi. We are further of the view that the examination result which ought to be declared would be of both the examinations of the year 1991 and the year 1992, in as much as the result in either of the examinations would determine and control the future prospects of Deep Shikha Bammi.

80. Accordingly the writ petition succeeds, and we direct that the result of the examinations taken by Deep Shikha Bammi be declared within one week from the date of this order.

81. The writ petition is disposed of. We, however, make no order as to costs.

82. Petition allowed.