

(2020) 10 DEL CK 0024

In the Delhi High Court

Case No : Civil Writ Petition No. 3435 Of 2020, Civil Miscellaneous Application No. 12184, 16617 Of 2020

Sandesh Jha & Ors

APPELLANT

Vs

University Of Delhi & Ors

RESPONDENT

Date of Decision : 07-10-2020

Acts Referred:

Citation : (2020) 10 DEL CK 0024

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Rajesh Tandon, Harpreet Singh Hora, Satyam Singh, Mohinder J. S. Rupal, Hardik Rupal

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been held through video conferencing.
2. The Petitioners in the present case are studying in their fifth semester of the LLB course, in the Faculty of Law, University of Delhi (hereinafter as 'DU'). They have challenged the impugned notification dated 22nd August, 2017 and a notice dated 9th October, 2017, by which the method of conducting supplementary examinations has been changed for the final year students. It is the grievance of the Petitioners that they had taken admission in the Faculty of Law, DU in 2017, and the notifications which were issued on 22nd August, 2017 and 9th October, 2017 cannot be applied retrospectively.
3. Mr. Rajesh Tandon, Id. Senior counsel appearing for the Petitioners submits that the settled position is that the notification ought not to have been given effect to, and the rules for conduct of supplementary examinations cannot be changed after the students have already taken admission. He relies upon the judgment of this Court in W.P.(C) 1944/2018, titled Vikas Bhaskar vs University Of Delhi And Anr. and submits that Paragraph 26 of the said judgment clearly

holds that the amendment ordinance cannot be applied retrospectively. Thus, it is his submission that though the students are in their fifth semesters, they shall be governed by the position which was prevalent prior to the impugned notifications, as was applicable since 2014.

4. Mr. Mohinder J. S. Rupal, Id. counsel for the DU, on the other hand submits that this very notification was challenged before the Id. Single Judge of this Court in *Vikas Bhaskar (Supra)*. He submits that in the said case it has been clarified that the notification would apply with effect from the academic year 2017-18. He further submits that students in this case may have been admitted in July 2017, however the admission process continues till end of August, 2017 and they have been aware of the method of conduct of supplementary examinations since the last three years. Thus, their challenge to the notification is belated as the said notification has taken effect and has been applied in the last two years as well.

5. Mr. Satyam Singh, Id. counsel appearing for Petitioner no. 2, submits that in the reply given by the DU in response to a query raised under the RTI Act, the judgment of *Vikas Bhaskar (Supra)* cited above, or any other justification, was not given by the DU. He further submits that the retrospective applicability of the notification is not permissible as the students have a legitimate expectation.

6. This court has heard the parties. The issues raised are no longer *res integra*. The primary grievance of the Petitioners is that the method of conduct of the supplementary examinations has been changed by the DU in August 2017 while they had taken admission in July 2017. It is urged that the method prevalent since 2014 ought to be applied to them as they were already admitted by the time the impugned notifications were issued. The previous method of conducting supplementary examinations and the method of conduct of the supplementary examinations currently prevalent is set out below:

"3. Supplementary Examination: The Faculty of Law recommended that the existing Rule relating to supplementary examinations be replaced with the Supplementary Rule as quoted in *Aditya N. Prasad, W.P. (C) No. 7365 of 2011*.

Existing Rule as per notification No. CNCL10932014 dated 14th November, 2014

Revised

After the completion of six Terms, a student of LL.B may take supplementary examination in any paper of I or II Term along with the V Term Supplementary examination and in any paper of II or IV Term along with the VI Term supplementary examination held for the purpose:

Provided that all the thirty papers required for getting the LL.B Degree have to be cleared within the span period of six years.

A supplementary examination for students of LL.B V and VI Terms would be held at the end of the VI Term examinations to give one more opportunity to such students who could not clear any one or more papers of V and VI terms.

In case a student of V and VI Term had not cleared any paper of I, II, III and IV Terms he/she would clear the same by taking the respective examinations at the regular examination held at the end of each Term: Provided that such students of V and VI Terms who could not clear any paper or papers of the V and VI Terms even after taking the supplementary examination, he/she would clear the same at the regular examinations of V and VI Terms held at the end of each Term.

7. The question as to the retrospective application of these notifications has been dealt with, in detail, in the case of *Vikas Bhaskar (Supra)* by a Id. Single Judge of this Court. The court has, while considering writ petitions filed by students who had taken admissions in 2014, held that the impugned notifications would apply from the academic year 2017-18. In the last paragraph of the said judgment, the Court observes that students who have taken admission 'after the academic year 2016-17', had adequate notice and ample opportunity to plan their academic and examination schedules as per the changed rules regarding supplementary examinations. The relevant portion of the said judgment is set out below:

"26. In my considered opinion, none of the aforementioned decisions of this Court are applicable to the instant case, since all of them dealt with situations where there were no statutory provisions in force regarding supplementary examinations. It is in these circumstances that this Court has consistently held that it cannot interfere in matters of academic policy, and direct the concerned university to conduct supplementary examinations, which are only concessions granted by the said university to its students. Needless to say, I find myself in respectful agreement with the aforesaid decisions, since it is not for courts to venture into and interfere with academic policy, which is best left to the concerned experts. However, in the present case, even though I do not find any reason to tinker with the amended ordinance notified vide notification dated 22.08.2017, in my opinion the issue arising in the present case is a little different. The core issue that emerges in the circumstances of the instant case is whether the amended ordinance, which in itself does not state that it is applicable to students that had taken admission prior to the academic years 2017-18, can be so applied to disadvantage such students, who had already planned their academic and examination schedules for two years as per the unamended ordinance. In my considered opinion, even though the Impugned Notice does not take away the right to give supplementary examinations and merely stipulates that they have to be taken along with the regular examinations held at the end of the 5th and 6th semesters respectively or with the regular examinations in the next academic year, its effect is to virtually make the amended ordinance retrospective in nature.

27. It is a settled legal position that a law or amendment thereto cannot operate retrospectively so as to divest a person of his/her vested legal rights. In the present case, I find that the University of Delhi has failed to consider the effect of

the Impugned Notice on the students who had already planned their examination schedules for two years as per the notification dated 14.11.2014 and there was no justification whatsoever for taking away the rights of the students to take their supplementary examinations as per the unamended ordinance, and that too at such a belated stage. In my considered view, none of the decisions relied upon by Mr. Rupal deal with a situation wherein an amendment to an ordinance was being retrospectively applied to the detriment of students, who had already completed two-thirds of their entire course and planned their examinations schedules in accordance with the laws applicable to them for that duration. Therefore, the reliance on the aforementioned cases by the learned counsel for the University of Delhi is wholly misplaced.

28. Thus, I find that the Impugned Notice dated 09.10.2017, insofar as it applies retrospectively to students who took admission prior to the academic year 2017-18, is wholly arbitrary and is, therefore, quashed to that extent. In my opinion, the students who had taken admission before the academic year 2017-18 deserve at least one opportunity to take their supplementary examinations as per the unamended ordinance. Accordingly, the University of Delhi is directed to grant one opportunity to all the students of the LLB Course, who had taken admission prior to the academic year 2017-18, to take their supplementary examinations as per the unamended rules/ordinance contained in notification dated 14.11.2014.

29. It is clarified that this Court has not interfered with the applicability of the Impugned Notice to students who had taken admission after the academic year 2016-17, since such students had adequate notice and ample opportunity to plan their academic and examination schedules as per the changed rules regarding supplementary examinations."

8. Admittedly, the present students have been studying in the faculty of Law since July, 2017, and have entered their fifth/ sixth semester. They have been well aware of the notifications and the rules for the conduct of the supplementary examinations which have been in effect for the last three years. The challenge has been raised only recently after they have entered the fifth semester. The time as to when the supplementary examinations is to be conducted is also clear from the perusal of the impugned notification dated 22th August, 2017 read with the impugned notice 9th October, 2017.

9. These very notifications have been considered by the Id. Single Judge of this Court, who has clearly held that the notifications would be applicable from the academic year 2017-18. The said judgment is squarely applicable to the facts of this case.

10. Insofar as the question of legitimate expectation is concerned, the students, since 2017, have already been informed as to the manner and method as well as the frequency of the conduct of the supplementary examinations. They have chosen to challenge the same now i.e., after three years, when they are in the

final year i.e., fifth/sixth semester. Such a belated challenge cannot be entertained by this Court especially in view of the fact that the judgment in Vikas Bhaskar (Supra) clearly lays down that the impugned notifications would be applicable w.e.f. the academic year beginning 2017.

11. With these observations the present petition and all pending applications are, according, disposed of with no orders as to costs.