

(2018) 05 DEL CK 0119

In the Delhi High Court

Case No : W.P.(C) 1944 of 2018 & C.M.No.8050, 3131, 3137, of 2018

VIKAS BHASKAR

APPELLANT

Vs

UNIVERSITY OF DELHI AND ANR.

RESPONDENT

Date of Decision : 11-05-2018

Acts Referred:

Citation : (2018) 05 DEL CK 0119

Hon'ble Judges : REKHA PALLI

Bench : Single Bench

Advocate : Narvinder Thakran, .Mohinder J.S.Rupal, Prang Newmai, .Preet Pal Singh, Brajesh Singh

Final Decision : Allowed

Judgement

1.The Petitioners, who are third-year students studying in the 6th semester of the LLB course of Faculty of Law, University of Delhi, have filed the present batch of writ petitions inter alia seeking a direction to the University of Delhi to withdraw its notice dated 09.10.2017 (hereinafter referred to

as the ""Impugned Notice"") insofar as it applies retrospectively to students who had taken admission prior to the academic year 2017-2018. The

Petitioners have also sought a direction to the University of Delhi to permit them to take the supplementary examinations in respect of the subject-

papers of 1st to 4th semesters, as the case may be, in the months of June/July 2018.

2.Since the present petitions raise common issues, for the sake of brevity, only the facts of W.P.(C) No. 3137/2018 are being referred to hereinbelow.

3.Pursuant to the University of Delhi's notification dated 01.04.2015, the Petitioners had taken admission in Faculty of Law, University of Delhi for the

LLB Course commencing in the academic year 2015-16 and concluding in 2017-18. At the time when the Petitioners had taken admission in the said

course, the syllabus and scheme of examination for the same had been laid down vide notification dated 14.11.2014 bearing no. CNC-II/093/2014,

which contained a specific clause pertaining to supplementary examination. For the sake of ready reference, the said clause is reproduced

hereinbelow: â??Supplementary Examination After the completion of six terms, a student of LLB may take supplementary examination in any paper

of I or III term alongwith the V term supplementary examination and in any paper of II or IV term alongwith the VI term supplementary examination

held for the purpose: Provided that all the thirty papers required for getting the LLB degree have to be cleared within the span period of six years.â??

4.The scheme for the said supplementary examination, as noted above, was duly mentioned in the prospectus issued for the year 201516 and, in fact, it

is the Petitioners' contention that the same continued to be reflected on Faculty of Law's website till as late as March, 2018. While the Petitioners

were in the 5th semester, the University of Delhi put up the Impugned Notice dated 09.10.2017 on the notice board of Faculty of Law, stating inter

alia as follows: â??In case a student of V and VI term has not cleared any paper or papers of I, II, III and IV terms, he/she would clear the same by

taking the respective examinations of V and VI terms held at the end of each term.â??

5.The Impugned Notice was followed by another notice dated 22.11.2017, informing the students that some of them had not filled the exam forms for

the remaining papers of 5th and 6th semester and, therefore, were being granted an opportunity to fill the same latest by 27.11.2017. In these

circumstances, the Petitioners and some student associations made representations to the University of Delhi requesting it to make necessary

amendments or clarifications to the Impugned Notice, but to no effect. Hence, aggrieved by the University of Delhi's inaction, the Petitioners have

filed the present writ petitions, primarily challenging the Impugned Notice insofar as it applies retrospectively to the students who had taken admission

prior to the academic year 2017-18.

6.Mr. Vikram Hegde, learned counsel, in support of the writ petitions, at the outset contends that the Impugned Notice, does not explicitly state that it

is retrospectively applicable. Therefore, he submits, the Impugned Notice must be presumed to be prospectively applicable, since any legislation,

including delegated legislation and amendments thereto, must be presumed to be prospective in nature unless expressly stated to be retrospective.

7.Mr. Hegde, further contends that the University of Delhi, vide the Impugned Notice, has entirely changed the structure and scheme of the LLB

course to the Petitioners' detriment, at a belated stage and in an arbitrary manner. By placing reliance on the admissions prospectus for the academic

year 2014-15 as also the notification dated 14.11.2014, which was the statutory rule pertaining to supplementary examinations in force at the time the

Petitioners took admission, Mr. Hegde contends that when the Petitioners had taken admission in the LLB Course, they had a legitimate expectation

that they would be allowed to write their supplementary examinations at the end of their 3rd year. However, he submits, when the Petitioners had

entered the final year of the LLB Course, the Impugned Notice was issued without consulting the Petitioners or giving them an opportunity of being

heard and, therefore, the said notice is bad in law.

8.Taking his abovementioned plea further, Mr. Hegde contends that the Petitioners had, for two years of the duration of their course, planned their

examination schedule according to the statutory rules existing at the time. Therefore, he contends, the University of Delhi is estopped from making the

Impugned Notice retrospectively applicable to the Petitioners, and compelling them to suddenly take their supplementary examinations for the 1st, 2nd,

3rd and 4th semesters along with their regular examinations for the 5th and 6th semesters, and that too without any reasonable time to prepare for the

same.

9.On the other hand, Mr. Mohinder J.S. Rupal, learned counsel for the University of Delhi, while opposing the writ petition, submits that the Impugned

Notice is based on and merely reiterates what has already been stated in the recommendations to Appendix-II to Ordinance V(2) and Clause 8(a) of

Ordinance VII(2). These recommendations, he submits, were made by a statutory body of the Faculty of Law, comprising of Supreme Court and

High Court Judges, academic counsels and executive counsels, in its meeting held on 05.11.2016. Thereafter, he submits, these recommendations

were tabled before and approved by the Academic Council and Executive Council

of the University of Delhi in their meetings held in June and July

2017 respectively, whereafter a formal notification dated 22.08.2017 was issued and uploaded on the University of Delhi's website. This notification,

he contends, was also uploaded on the Faculty of Law's website on 05.09.2017.

10.As per the formally adopted recommendations, Mr. Rupal submits, the notification dated 14.11.2014 stands amended and the University of Delhi

has reverted back to the statutory provisions pertaining to supplementary examinations that were in vogue prior to the issuance of the notification

dated 14.11.2014. It is Mr. Rupal's contention that in order to ensure that the students of Faculty of Law, including the Petitioners, were adequately

informed of the amendments to the rules pertaining to supplementary examinations, the University of Delhi displayed the Impugned Notice on the

Faculty of Law's notice board on 09.10.2017. It may be noted that a perusal of the Impugned Notice reveals that the same essentially reproduces the

amended statutory provisions pertaining to supplementary examinations.

11. Mr. Rupal contends that the Impugned Notice, being based on an Executive Council Resolution, whereby the recommendations of a statutory body

comprising of senior judges and academicians were adopted, is binding on all the students, including the Petitioners. He further contends that, since the

Impugned Notice is based on notification dated 22.08.2017, which in turn has been in the public domain since August, 2017, the amended rules must

be deemed to be in the knowledge of the Petitioners, who had the responsibility of ensuring that they completed the formalities for and took their

supplementary examinations as per the said amended rules in the University's ordinance.

12.Finally, Mr. Rupal submits that the Impugned Notice, essentially being a reiteration of an Executive Council Resolution, came into force on the date

on which the said resolution was notified, i.e., 22.08.2017. Therefore, he contends, the Impugned Notice and amended rules pertaining to

supplementary examinations mentioned therein are applicable only from 22.08.2017 and are in no way retrospective in nature. He submits that merely

because the Impugned Notice and the amended rules mentioned therein are also applicable to students who had taken admission in the academic

years prior to 2017-18, they cannot be said to be retrospective in nature.

13.Having heard the learned counsels for the parties and having considered their

rival contentions, I find that the limited question before the Court is whether, in the facts of the present case, the University of Delhi can apply the Impugned Notice to students who had taken admission prior to the academic year 2017-18, when they had a legitimate expectation that their supplementary examinations would, as per the notification dated 14.11.2014, be held at the end of their 6th semester regular examinations.

14. In determining the aforementioned issue, I find that the most relevant fact is that when the Petitioners had taken admission in the Faculty of Law, University of Delhi, the admissions brochure or prospectus reflected that the statutory rules pertaining to supplementary examinations prevailing at that time were those enforced vide notification dated 14.11.2014. At that time, each Petitioner only needed to pass a minimum of 5 out of 10 subjects to be promoted from the first year to the second year, and only needed to pass a minimum of 15 out of 20 subjects to be promoted from the second year to the third year. In other words, as per the law prevailing when the Petitioners had taken admission in Faculty of Law, they were only allowed to have a maximum of 5 supplementary papers at the end of every academic year to be promoted to the next year of their LLB Course. Furthermore, as per the notification dated 14.11.2014, the Petitioners were allowed to take all their supplementary examinations cumulatively at the end of the 6th semester regular examinations.

15. It has been urged that the Petitioners planned their examination schedules as per the law governing them at the time they were granted admission, which law continued to remain in force for almost another two years. However, two years after the Petitioners had taken admission, i.e. when they were in their third and final year of the LLB Course, the University of Delhi issued the Impugned Notice amending the law governing supplementary examinations. As per the Impugned Notice, the Petitioners must now take the supplementary examinations for the 1st and 3rd semesters along with the regular examinations for the 5th semester, and take the supplementary examinations for the 2nd and 4th semesters along with the regular examinations for the 6th semester.

16. A perusal of the record shows that the Executive Council Resolution, on which the Impugned Notice is wholly based, was first brought into the public domain on 22.08.2017 when it was uploaded on the University of Delhi's

website, by which time the Petitioners had already entered into the third and final year of their LLB Course. What I find a little disturbing is that, vide the Impugned Notice, the Petitioners were belatedly informed that they must now prepare for and take 6-10 examinations in total (including 5 regular subject examinations in addition to 1-5 supplementary examinations, as the case may be), in the same amount of time that is ordinarily given for taking and preparing for only 5 regular subject examinations. I cannot also ignore the fact that if the Petitioners were informed in the first year itself that they would have to prepare for and take so many examinations in such a limited amount of time, they would have either ensured that they took their regular examinations in a timely manner to prevent such a backlog or, in the event they had failed in such examinations, they would have retaken the same by spacing them out between the second and third year to prevent the accumulation of such an unbearable backlog.

17.The curriculum of any given degree course does not merely include the syllabus of the subjects of study offered in that course, but also includes the examination pattern and examination schedules for the duration of the said course. While there can be no doubt about the power of the University of Delhi to make changes to the curriculum of its LLB Course, it cannot make any such changes unilaterally, and that too without any justifiable reason.

During the course of final arguments, it had been put to the learned counsel for the University of Delhi as to why the statutory rules pertaining to supplementary examinations were being changed so belatedly and being retrospectively applied to the Petitioners, who had for two years planned their examination schedule according to the unamended provisions. However, no reasonable explanation was offered as to why the Petitioners, who have already completed two-thirds of the entire duration of their LLB course, are being disadvantaged in such a manner.

18.In support of his contention, that the Petitioners do not have an enforceable right to give supplementary examinations, since the same are only concessions extended by the University of Delhi to help those who had either missed or failed in their regular examinations, Mr. Rupal has relied on the following decisions of this Court:

a.Decision dated 30.09.2013 in the case of Shakti Garg and Ors. v. Delhi University and Ors.[W.P.(C) No.5501/2013];

b. Decision dated 14.10.2015 in the case of Aatisha v. University of Delhi and Ors. [W.P.(C) No.6550/2015]; and

c. Decision dated 24.10.2011 in the case of Aditya N. Prasad v. University of Delhi and Ors. [W.P. (C) No. 7365/2011].

19. Therefore, at this stage, it may be appropriate to deal with the aforesaid decisions relied upon by Mr. Rupal. In the case of Shakti Garg (supra), a

Division Bench of this Court had, while dealing with an appeal against an order of the Single Judge dismissing the appellant's plea to direct the

University of Delhi to hold supplementary examinations, held as follows:- ""5. We cannot interfere with the academic sessions of the University,

particularly regarding the calendar of the examination of the University and when the Appellants do not belong to the annual mode and when there is

no procedure to conduct the supplementary examinations for students who are studying in semester mode, we cannot direct the University to conduct

supplementary examinations. Taking into consideration these facts, the learned Single Judge has already dismissed the writ petition which does not

warrant interference by this Division Bench. However, in view of the peculiar facts and circumstances stated by the learned counsel appearing for

the Appellants that more than 600 students are affected who are already admitted in different Post Graduate courses and their future is at stake and

also that Principals of 12 colleges had already recommended and made a request to the University to conduct the supplementary examination for this

batch of students, the University is at liberty to consider such representations and take appropriate decision.

20. It transpires that the appellants in Shakti Garg (supra) were students of a semester course, for which there was no prevalent provision for

conducting supplementary examinations. However, the same were being conducted by the University as a concession to help students who had

missed or failed in their regular examination. It is in these circumstances, when the University had stopped conducting supplementary examinations

altogether, that the appellants had first invoked the jurisdiction of this Court and sought a direction to the University to conduct supplementary

examinations. The learned Single Judge, having considering the fact that there was no statutory provision compelling the University to conduct

supplementary examinations, dismissed the appellants' writ petition on that ground alone. Hence, the appellants had preferred an appeal before a

Division Bench of this Court, which vide its order dated 30.09.2013 refused to interfere in matters of academic policy and direct the University to

conduct supplementary examinations. Therefore, it is in the aforementioned circumstances that the Division Bench found no ground to interfere with

the decision of the learned Single Judge and dismissed the appeal.

21. In my considered view, the decision of this Court in the case of Shakti Garg (supra) is not applicable to the facts of the present case. Unlike the

facts of that case, in the instant case, there was a statutory provision in the form of notification dated 14.11.2014, pursuant where to the University of

Delhi was conducting supplementary examinations.

22. In the case of Aatisha (supra), the petitioner therein had impugned the University of Delhi's guidelines debarring final year students of the BA

(Hons.) degree from taking their supplementary examinations in their final year itself, on the ground that disallowing final year students from taking

their supplementary examinations in the same academic year itself arbitrarily wastes an additional year for them. In that case, the petitioner was a

final year student who had been informed before entering the final year of her B.A. (Hons.) degree course that the supplementary examinations for

her final year subjects would not be conducted in the same academic year. Moreover, the University did not have any enforceable statutory provisions

at the time compelling it to conduct supplementary examinations for Semester Courses. Therefore, it is in these circumstances that a Single Judge of

this Court had held as follows: ""16. Yet another Single Judge of this Court in Sh. Prem Kumar Prasad Vs. JamiÂa Â Â Hamdard (Deemed

University) MANU/DE/2120/2008 dealing with a petition seeking mandamus to the University to hold the Supplementary Examination observed that

the rules and regulations which had been framed by the University were within the knowledge of the student when he had taken admission to the

Course / Programme and that no student has any legal or enforceable right to claim that Supplementary Examination or any other examination be

conducted on a particular date or time as per the convenience of the candidate. It was further reasoned that Supplementary Examinations are

intended and are organized by the University for the purposes of enabling students who have failed in any examination a further opportunity to pass

the same and that a vigilant, conscious and diligent student would ensure that

occasion to take such Supplementary Examination will not occur. It was yet further reasoned that conduct of examinations entails costs and administrative organization and there could be no judicial interference therewith.

20.I may in this regard also notice that though Ordinance VIII under the University Statute provides that the annual examination for all degrees,

diplomas and certificates of the University shall be held once a year, in the spring, unless otherwise provided for in any other Ordinance or Appendix

thereto or at such other time during the year, as may be fixed by the Academic Council in each case, but the Proviso thereto provides that a

Supplementary Examination, in addition to the annual examination, shall be held in the final year of the undergraduate courses. However, vide

Amendment dated 14th June, 2010, the following was added to Ordinance VIII: 1(b). Examinations for the courses covered under the semester

scheme shall be held at the end of each semester in accordance with the academic calendar prescribed by the Academic Council from time to time.

Unless otherwise provided specifically in any other Ordinance, there will be no Supplementary Examination for any of the semester examinations. It

is clearly borne out from the above that the provision for holding of Supplementary Examinations for the final year of the undergraduate courses was

made when examinations were conducted annually and while providing for the Semester scheme, the Supplementary Examination for any of the

Semester examinations have been done away with. 21.The reason given by the respondents University for doing away with the Supplementary

Examinations is also not which can be said to be unreasonable or arbitrary. The process of holding the examination is indeed a tedious one, requiring a

lot of care and caution and more so, now in this age of transparency when judicial review is sought of the process as well as result of nearly all

examinations. 22.I am therefore unable to hold that there was no reason for the respondents University to, while introducing the Six-Monthly Semester

and thus Six-Monthly Examinations, doing away with the Supplementary Examinations, which was in vogue in the era of Annual Examination. Only a

hope can be expressed that if the respondents University at any point of time feels that it has equipped itself to hold a Supplementary Examination of

the Semester Examination also, it would certainly re-introduce the same.

23.In my considered view, the decision of this Court in the case of Aatisha

(supra) is also not applicable to the facts of the instant case. Unlike the facts of that case, in the present case there was a statutory provision (notification dated 14.11.2014) compelling the University of Delhi to conduct supplementary examinations, which provision was in force for nearly two full years before it was amended. Moreover, in that case, the University's cessation of the practice of conducting supplementary examinations did not affect any existing backlog of compartment papers from the previous academic years. However, as has been noted above, in the present case the amendment has the effect of disturbing the Petitioners' academic and examination schedule, by compelling them to clear their backlog of supplementary papers much before they had reasonably planned to. Moreover, in that case, this Court had specifically held that the reason for doing away with the practice of conducting supplementary examinations was not at all arbitrary, whereas in the present case no such reasonable justification has been provided by the learned counsel for the University of Delhi for making the impugned changes without giving adequate notice to the students who had taken admission prior to the academic year 2017-18 in accordance with notification 14.11.2014.

24. In the case of Aditya Prasad (supra), the petitioner therein had sought a writ of mandamus directing the University of Delhi to hold supplementary examinations in respect of the papers failed or missed by students in their first and second years. In that case, while final year students were allowed to give supplementary examinations at the end of the academic year, there was no such allowance granted to the first and second year students. It is in these circumstances that a Division Bench of this Court, while dismissing the writ petition, had held as follows:"10. It is clear from the above that as per the previous promotion rules when chance was given to the students to appear in the supplementary examination, the promotion norms were also more tough. Students were required to pass eight papers for promotion to second year and eighteen papers for promotion to third year. These promotion norms have been relaxed and made much easier by reducing the number of papers from eight and eighteen to five and fifteen respectively. That too has been done on the demand made by the students who were finding the earlier promotion rules more difficult to cope with. At their instance, matter was referred to Expert Committee and on the recommendation

of the Expert Committee, the present rules came into force. It is the students who pleaded for relaxation in promotion norms in place of appearing in the supplementary examination. After achieving to get relaxed norms of promotion, the students, like the petitioner, cannot turn around and demand the restoration of supplementary examination for them as well. Such a situation would amount to having the cake and eat it too.¹¹ Moreover, even legally speaking, the matters of promotion are academic matters which are to be left to the academic institutions and courts are not to tinker with the same unless it is found that they are in violation of some statutory or constitutional provisions. No such case is made out. In *State of Tamil Nadu & Ors. v. K. Shyam Sunder and Ors.*, 2011 (8) SCALE 474, the Supreme Court held as under: “Undoubtedly, the Court lacks expertise especially in disputes relating to policies of pure academic educational matters. Therefore, generally it should abide by the opinion of the Expert Body. The Constitution Bench of this Court in *The University of Mysore and Anr. v. C.D. Govinda Rao and Anr.* [AIR 1965 SC 491] held that “normally the courts should be slow to interfere with the opinions expressed by the experts”. It would normally be wise and safe for the courts to leave such decisions to experts who are more familiar with the problems they face than the courts generally can be. This view has consistently been reiterated by this Court in *Km. Neelima Misra v. Dr. Harinder Kaur Paintal & Ors.* [JT 1990 (2) SC 103 : AIR 1990 SC 1402]; *The Secretary & Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity & Ors.* [JT 2010 (2) SC 566 : AIR 2010 SC 1285]; *Dr. Basavaiah v. Dr. H.L. Ramesh and Ors.* [JT 2010 (7) 558 : (2010) 8 SCC 372]; and *State of H.P. and Ors. v. H.P. Nizi Vyavsayik Prishikshan Kendra Sangh* [JT 2011 (5) SC 153 : 2011 (6) SCC 597].”

25. As is evident from the facts of the case in *Aditya Prasad (supra)*, even that case dealt with a situation wherein there were no statutory provision or prevalent practice of conducting supplementary examinations for first and second year students of the LLB Course. Therefore, the Court had, in the absence of any such statutory provisions to the effect, refrained from interfering in matters of academic policy and directing the University to hold supplementary examinations for first and second year students as well. In my considered view, for the reasons already mentioned hereinabove, the

decision in the case of Aditya Prasad (supra) is also not applicable to the facts of the present case.

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.

30. The writ petition is allowed in the aforementioned terms with no order as to costs.