
(2009) 07 DEL CK 0170

In the Delhi High Court

Case No : Writ Petition (C.) No. 8380 of 2009

Vipin Sharma

APPELLANT

Vs

Guru Gobind Singh Indraprastha University and Another

RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19(1), 21, 22(5)
Delhi University (Academic Bulletin 2008, Law Department, No. 15) Rules — Rule 11(1)
Guru Gobind Singh Indraprastha University Act, 1998 — Section 10, 6

Citation : (2009) 07 DEL CK 0170

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Anil Sapra and S. Uday Kumar Sagar, for the Appellant; Sanjiv Goel and Vinod Wadhwa, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner is a final year student of the B.A.LL.B (Hons.) course at the University School of Law and Legal Studies of the Guru Gobind Singh Indraprastha University. The petitioner had not taken the Indirect Taxes paper of his 9th semester. As per the Rules and Regulations governing the conduct of examinations of the respondent University the petitioner is eligible to take the 'Indirect Taxes' paper only along with the examinations to be conducted for odd semester papers in December, 2009. In the present writ petition the petitioner has sought a direction to the Respondent University to conduct a special supplementary examination of the 9th semester paper of 'Indirect Taxes' by exercising the discretionary power of the Vice Chancellor or in the alternative a direction to the Respondent University to amend/alter/modify Rule 11(1)(b) of Ordinance-11 of the Respondent University which stipulates the holding of examination only once a year for a subject of the particular semester.

2. The petitioner has averred that while he was on his way to take the third exam of the ninth semester i.e. the optional examination of Indirect Taxes on

10th December, 2008 he allegedly suffered from severe abdomen and unspecified chest pain, which according to the petitioner, literally paralyzed him to travel any further and he had to be taken to the Ram Manohar Lohia Hospital at around 1 PM and he was discharged on the same day. As a result the petitioner was unable to take the said examination. It has been averred that the father of the petitioner, on the advice of the respondent University, made a representation dated 29th December, 2008 to the Vice Chancellor of the respondent University explaining the facts and circumstances which prevented the Petitioner from appearing in the paper of "Indirect Taxes" and requesting him to allow the petitioner to appear in paper of Indirect Taxes" at anytime on or before the Xth Semester so that the petitioner could pursue higher studies in any of the colleges from which he had received admission offers.

3. The petitioner has contended that though the respondent University has taken no action on the representation dated 29th December, 2008 he was given to understand by the respondent University that the respondent University as per Ordinance 11, Rule 11(b)(i) holds examination only once a year for a subject of the particular semester i.e. in case a student fails or fails to appear in the examination of one semester, then the only option left with him is to take the examination whenever the examinations of that semester are conducted. The said rule is stated to be applicable to all Law students irrespective of their year of study. The petitioner has contended that there is little rationale behind holding the exam after a year and that there is a certain lack of nexus with the purpose it seeks to fulfill. The petitioner has contended that the delay of one year in re-appearing for the supplementary examination would not only affect his obtainment of LL.B degree but would also harm his future career prospects for no fault of his, particularly in the light of the fact that the petitioner has been offered admission at some of the prestigious higher learning institutions in United Kingdom. The petitioner has contended that the above said rule of the Respondent University relating to holding of the repeat/supplementary examination only after one year is completely unconstitutional being unfair, discriminatory, arbitrary, oppressive, unduly harsh and in violation of principles of natural justice and Article 14 and 16 of the Constitution. It is also contended that the said rule violates the petitioner's Fundamental Right to Education guaranteed under Article 21 of the Constitution as the rule delays the process of completion of education by one year.

4. The petitioner has further contended that in almost all other Universities there is a provision for repeat/supplementary examination immediately after the regular semester examinations, especially for final year students with the object that a valuable year of a student is saved. To substantiate his contention the petitioner has produced the rules of University of Delhi (Academic Bulletin 2008, Law Department, Rule No. 15), National Law School of Indian University, Bangalore (Academic and Examination Regulations, Rule V), National Law School University, Delhi (Examination Rules; End Semester/Repeat and Improvement Examination) and Jamia Milia Islamia University (Ordinance Academic, Part I,

Ordinance No. 15, The University Examinations, Bachelor of Laws, Section 6(b) (ii)). The petitioner has also contended that all the Universities in India including the Respondent University comply with the rules and regulations of UGC as well as that of other regulatory bodies such as Bar Council of India, AICTE, Medical Council of India, Dental Council of India etc. who have set out standard for promotion and regulation for higher education in their respective areas and that nowhere do such rules prescribe that repeat/supplementary exam could be held only after an year. The petitioner has further contended that the respondent University itself provides for repeat/supplementary examination immediately after the regular semester examination of other professional courses including its MBBS course and therefore, the Rules of the respondent University for not holding repeat/supplementary examination immediately after the regular semester examination for LL.B course is unfair, unreasonable, arbitrary, discriminatory and a gross abuse of process.

5. The petitioner has averred that the respondent University itself has made exceptions and has allowed many students in the past including various foreign nationals from Iran to appear in the repeat/supplementary examination in the immediate next semester. The petitioner has also produced the mark sheet of one Karan Gulati, a student of the LL.B 2004 batch who had missed seven of his law papers but was allowed to write all the seven papers that he had missed in the very next semester. In the circumstances it is contended that not allowing the petitioner to appear for Indirect Taxes examination in the very next semester i.e. the 10th semester is highly discriminatory and is in violation of the fundamental rights of the petitioner under Article 14 and Article 16 of the Constitution of India. The petitioner has also filed an additional affidavit dated 26th June, 2009 in which he has averred that in response to an RTI application dated 21st April, 2005 filed by him seeking information on how many students have been allowed by the respondent University to take supplementary/repeat examination in the immediate/next semester, as against the present rule of holding exams in alternate semester, the respondent University has clearly admitted to it conducting supplementary/repeat examinations for students upon their request.

6. The petitioner has contended that he has been declared successful in all the subjects and papers that he has taken and he is a student of the last semester and therefore, if he is not permitted to appear in the Indirect Taxes paper of the 9th Semester his career would be ruined as he would have to wait for one year to appear in the said paper which would be held in the month of December 2009.

7. The respondent University has contested the petition contending inter alia that the writ petition suffers from delay and laches. It is contended that though the petitioner had failed to appear in the examination conducted on 19th December, 2008 and was aware of the Rules and Regulations contained in Ordinance-11 of the University, the present petition was filed only on 22nd April, 2009. It is also contended that the petitioner being well aware of the Rules and Regulations of

the respondent University relating to examinations participated in the admission process and pursued his course up to 10th semester and therefore, he is now stopped from raising any objection against the Rules of the respondent University at this stage.

8. The respondent University has averred that the law courses conducted by them follow the semester system of studies and the examinations are normally held in the months of May/June and November/December. It is averred that the conduct of examinations is governed by Ordinance-11 issued by the University and that Clause 11(1)(b) of the said Ordinance stipulates that a student who fails in a subject shall be allowed to re-appear in a semester end examination of the course in a subsequent semester(s) when the course is offered. It is therefore, averred that the petitioner would be eligible to take the examination of Indirect Taxes of the 9th semester, in which he had failed to appear, only in the examination to be conducted in December 2009. It is also averred that the petitioner has been promoted to the 10th semester, which semester would come to an end only in May/June 2009 and therefore, if the petitioner takes his Indirect Taxes paper in December 2009 he would be missing six months and not 1 year as contended by the petitioner.

9. The respondent University has also averred that the representations received from the petitioner as well as from other students were placed before a 4 member committee constituted by the Vice Chancellor comprising of Professor Yogesh Singh, Controller of Examination; Professor Anup Singh Beniwal, Dean, University School of Humanities & Social Studies & University School of Education; Professor Suman Gupta, Dean, University, School of Law & Legal Studies and Professor Avinash Sharma, Former Dean, University School of Basic & Applied Science. The committee in its meeting dated 17th April, 2009, after considering the criteria for candidates for final year who could not appear in any examinations of odd semester due to unavoidable circumstances, had decided that the request of the students cannot be granted. The minutes of the meeting dated 17th April, 2009 has been filed by the respondent University. The decision dated 17th April, 2009 is as under:

The committee discussed this important issue in depth and also considered the consequences of any decision which may help few students but compromise with the quality of education system. The committee recommended that such cases should not be considered in the academic interest of the University.

10. The respondent has also averred that in view of the large number of students of about 90 programmes, it is unable to conduct examination as per the request of the petitioner. It is further averred that the request of the petitioner is not feasible and if it is acceded to the sanctity of the whole examination system will evaporate and it will disrupt the entire system.

11. The petitioner also contended that under Clause-16 of Ordinance-11 of the respondent University, the Vice Chancellor has the authority to decide as to

whether supplementary examinations ought to be conducted for students who have failed to appear in one or more papers in the 9th semester especially those who do not appear for some reasons as the cases of such students is not covered under clause 11 (b) (i). It was also noted that a similar provision also existed in Section 10 of the Guru Govind Singh Indraprastha University Act. This Court had also directed the Vice Chancellor to consider the case of the petitioner sympathetically and to reach a decision expeditiously. The relevant portion of the order dated 25th May, 2009 is extracted below:

Counsel for the petitioner has drawn my attention to Clause-16 of the Ordinance, which gives authority to the Vice Chancellor to take a decision. It is stated by the counsel that a similar provision also exists in Section 10 of the Guru Gobind Singh Indraprastha University Act. Vice Chancellor may re-examine the matter in the light of the said provisions and pass an appropriate order. Holding of supplementary examination for students, who have failed to appear in one or more paper in the 9th semester may cause some inconvenience to the university but the inconvenience and difficulty faced by the students, who will loose one year cannot be ignored and requires sympathetic consideration. Learned Vice Chancellor is required to take appropriate decision expeditiously preferably within a period of four weeks.

12. Pursuant to the above said order, the Vice Chancellor reconsidered the case of the petitioner and on 24th June, 2009 passed an order stipulating that it would not be possible to accede to the request of the petitioner to conduct special supplementary examination of the 'Indirect Taxes' paper for him. The said order has been brought on record through an additional affidavit dated 29th June, 2009. In his reply affidavit the petitioner has assailed the order of the Vice Chancellor on the grounds inter alia that the Vice Chancellor had reconsidered the case of the petitioner with a closed mind and he had proceeded on the basis that he could not allow holding of supplementary examination, as the same is not covered under his discretionary power and in order to allow supplementary examination the University Ordinance had to be amended. The petitioner has further averred that despite this Court having directed the Vice Chancellor to consider the case of the petitioner sympathetically, the Vice Chancellor has turned a blind eye to the difficulties faced by him. It is contended that the decision of the Vice Chancellor ought to have been guided from the interest of the petitioner and to his career and the difficulty faced by him, which was not at all considered by the Vice Chancellor.

13. The petitioner has also contended that even though this Court vide order dated 25th May, 2009 had only directed the Vice Chancellor to consider the petitioner's case, the Vice Chancellor has gone on to consider the case for all the students of the Respondent University. It is contended that the case of the petitioner should have been treated separately and independently. The petitioner has further averred that that the Vice Chancellor has not considered the case of the petitioner at all as there is no mention at all in the order about the merits of

the petitioner's case. The petitioner has also alleged that the Vice Chancellor is adopting double standards as on one hand he has refused to conduct supplementary examination for the petitioner urging grounds of academic excellence and habit of discipline, while on the other hand, he vide order dated 16th January, 2009 had allowed awarding of grace marks, despite there being no provision for the same in the University Ordinance, thereby permitting to give degrees to those students who could not qualify the pass marks and have in fact failed in one or more papers.

14. Mr. Anil Sapra, learned Counsel for the petitioner has also very vociferously contended that Clause 11 of Ordinance 11 regarding conduct and evaluation of examination for programmes leading to all bachelors/masters degrees and undergraduate/post graduates diplomas following semester system is not applicable in the case of the petitioner as Clause 11(b)(i) talks only about a student, who obtains less than 50% marks, being allowed to reappear in a semester end examination of the course in subsequent semesters. According to him the petitioner was prevented from appearing in the examination of indirect taxes (Code No. 507J) on account of his medical condition and he had not failed and, therefore, the case of the petitioner is not covered under the sub Clause (b)(i) of clause 11. According to the learned Counsel since the matter pertaining to the petitioner is not covered by the ordinance, the Vice Chancellor had the jurisdiction to take a decision and the decision of the Vice Chancellor could be final under Clause 16 of Ordinance 11. It has also been contended that the decision of the Vice Chancellor ought to be independent and not necessarily in consonance with the opinion/advice of the committee consisting of some or all the deans of the University.

15. The learned Counsel has relied on an order of a Single Judge dated 17th October, 2008 titled S.M.Hamoodur Rehman Faridi v. Jamia Millia Islamia University and Anr.; Khudiram Das Vs. The State of West Bengal and Others, ; K. Shekar Vs. V. Indiramma and Others, ; Union of India (UOI) Vs. Association for Democratic Reforms and Another, and Principal, King George's Medical College, Lucknow Vs. Dr. Vishan Kumar Agarwal and Another, in support of his pleas and contentions.

16. I have heard the learned Counsel for the petitioner and the respondent University and have also perused the petition, reply, additional affidavits and the reply affidavits. Admittedly the conduct of examinations by the Respondent University is governed by Ordinance-11 of the Respondent University. The clauses relevant for the issue at hand are Clauses 11 and 16 of the said ordinance which are reproduced below:

11. CRITERIA FOR PASSING COURSES, MARKS AND DIVISIONS

(a) (i) Obtaining a minimum of 50% marks in aggregate in each course including the semester-end examination and the teacher's continuous evaluation shall be essential for passing the course and earning its assigned credits. A candidate,

who secures less than 50% of marks in a course, shall be deemed to have failed in that course.

(ii) A student may apply, within two weeks from the date of the declaration of the result, for re-checking of the examination script(s) of a specific course(s) on the payment of prescribed fees. Rechecking shall mean verifying whether all the questions and their parts have been duly marked as per the question paper, and the totalling of marks. In the event of a discrepancy being found, the same shall be rectified through appropriate changes in both the result as well as marks-sheet of the concerned semester-end examination.

(b) (i) A student obtaining less than 50% of maximum marks (including semester end examination and Teacher's Continuous Evaluation) assigned to a course and failing in the course shall be allowed to re-appear in a semester end examination of the course in a subsequent semester(s) when the course is offered, subject to maximum permissible period of (n+4) semesters as mentioned in clause 4(c). The re-appearing students who secured less than 50% marks in the teacher's continuous evaluation have the option to repeat and improve the two class tests performance with the next batch of students, in such cases the improved internal marks, if received from the school/institution concerned at least 7 days before the commencement of semester end-term examination shall be considered, otherwise the previous internal marks already obtained by the student shall be taken into account without any modification. No extra fee shall be charged from the students in this regard.

(ii) A student who has to reappear in a semester end-term examination in terms of Clause (b)(i) above shall be examined as per the syllabus which will be in operation during the subsequent semester(s). However, in case the student(s) claimed that there are major modifications in the syllabus which is in operation as compared to the syllabus which was applicable at the time of his/her joining the concerned programme and the Dean of the School/Chairman/Co-ordinator of the Programme Committee so certifies, the examination may be held in accordance with the old syllabus, provided such request shall be received to Controller of Examination at least 3 weeks prior to commencement of semester end-term examination. Students who are eligible to reappear in an examination shall have to apply to the Controller of Examinations through the School/Institution concerned to be allowed to reappear in an examination and pay the fees prescribed by the University.

(iii) If a student has poor performance in a number of courses in a particular semester, he may, at his option, take an academic break for one year, and reregister for either both the semesters of that academic year in the next academic year. Such a student may have the option of repeating any or all of the courses in the semester(s) and retain the credits already earned by him in other course(s). For calculating the CPI, and determining the passing/failure in a course, and eligibility for award of a degree, the marks obtained in the repeat course(s) will be taken into consideration.

(c) A candidate who has earned the minimum number of credits prescribed in the concerned Scheme of Teaching & Examination and Syllabi, shall be declared to have passed the programme, and shall be eligible for the award of the relevant degree or diploma. The Scheme of Teaching & Examination and Syllabi shall clearly specify the minimum credits to be earned to qualify for a degree or diploma. The credits included in the Scheme of Teaching & Examination and Syllabi of a programme shall generally be 5-10% more than such minimum specified credits.

Further, the successful candidates will be placed in Divisions as below:

1. Second Division: A candidate obtaining a Cumulative Performance Index (CPI) at the end of the programme of 50 and above but below 60, shall be placed in Second Division.

2. First Division: A candidate obtaining a CPI at the end of the programme of and above but below 75 shall be placed in the First Division

3. First Division with Distinction: A candidate obtaining a CPI at the end of the programme of 75 and above shall be placed in First Division with Distinction, provided, the candidate has passed all the courses for which he has earned credits, in the first attempt. Further, a candidate obtaining a CPI of 90 and above shall be deemed to have passed the programme with exemplary performance provided he/she has passed all the courses for which he has earned the credits, in the first attempt. Such candidates will be awarded a special University Certificate to this effect.

4. For the above, Cumulative Performance Index (CPI) shall be calculated as in Clause 14 and shall be based only on marks obtained in courses for which credits have been earned.

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16. Notwithstanding anything stated in this Ordinance, for any unforeseen issues arising, and not covered by this Ordinance, or in the event of differences of interpretation, the Vice-Chancellor may take a decision, after obtaining if necessary the opinion/advice of a Committee consisting of any or all the Deans of the Schools. The decision of the Vice-Chancellor shall be final.

17. Clause 11(b)(1) provides for conduct of supplementary examinations for students who have failed to obtain 50% marks. The petitioner has assailed the said clause as being arbitrary. It is settled law that the High Court in exercise of jurisdiction under Article 226 of the Constitution of India should ordinarily be reluctant to interfere with the matters relating to the internal working of educational institutions since the decisions taken by the academic bodies are in the nature of policy decisions. The decisions can be interfered with only in case they are unreasonable or arbitrary. It should also be kept in mind that the

regulations are made on the basis of experience of actual day to day working of the educational institution and consequently the Court should not exercise the power to interfere with the internal working of an educational institution imparting education unless the decisions are ex facie unreasonable, arbitrary or in denial of the principles of natural justice. In *Ashutosh Bharti and Others Vs. The Ritnand Balved Education Foundation (Regd) and Others* a Division Bench of this Court while dealing with the cases of the students who had shortage of attendance and who had challenged the decision of the academic body to consider the condonation of shortage of attendance of only 5% and not beyond 5% had held that if any step is taken by an academic body towards better educational method and standard, the Court should not come in the way but the Court should rather commend and encourage it. It was held that though those who fail to maintain standards round the year may lose a very valuable year of their young career, just as they lose if they fail in the examination but matters of academic judgment are not for the Courts to entertain. Better standards are required for learning and it can be got from experiences and different modalities. In the circumstances, it was observed that educational institutions are the best judge to impose appropriate restrictions and conditions. Merely because the conditions which are imposed should be found inconvenient to some students it cannot be challenged as being arbitrary.

18. The power of the Court to review the university rules prescribing minimum attendance of post graduates was considered by a Single Judge in *Azra Seema Iyengar Vs. J.P.S. Oberoi and Another*, . In this case the petitioner was a student of MA (Previous) in the Department of Sociology for a two year course. The petitioner had irregular attendance in tutorials and seminars. Out of total 46 seminars the student had attended only 24 as against the minimum requirement of 34. Though a medical certificate was produced by her but even considering the period when she was not medically fit, she was still short of attendance and an order was passed detaining her, which action of the Department was challenged by her. The plea of the petitioner that requirement of eligibility with reference to the attendance at tutorials, seminars etc. for post graduate students being unreasonable on the ground that students at that level were sufficiently matured to look after their own interest and could complete their requisite course of study even on their own, without the assistance of the university or attendance at the tutorials or participation in the seminars, was repelled and rejected. It was held as to what should be the attendance requirement and whether the attendance for seminars and tutorials is necessary or not is more of a policy decision and this facet of the system of education is to be considered by educationists and not by the Court and it will be beyond the scope of judicial review. The said student, however, had been allowed to appear in the examination under the directions made by the Court and in the circumstances it was contended that the university authorities should take a sympathetic view especially since the petitioner was able to secure requisite marks at the examination. The Court had held that it would not be appropriate for the Court to make any direction to the university

even if the suggestion of the student was reasonable as it was for the university authority to consider the matter.

19. The Supreme Court in *Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission and Others*, had set aside the order of Patna High Court directing re-evaluation of the answer book of a candidate although there was no provision for re- evaluation of the answer book. It was held that in absence of any provision for re-evaluation of answer books in the relevant rules, no candidate has got any right whatsoever to claim or ask for re-evaluation of his marks. While setting aside the judgment of the High Court, the Apex Court had held that in absence of a specific provision conferring a right upon an examinee to have his answer books re-evaluated no such direction could be issued by a Court.

20. When an academic year should commence and when it should end was held to be eminently a matter for the education authorities and not for the Court in *State of U.P. and Others Vs. D.K. Singh and Others*, by the Supreme Court. It was held that Court should not dislocate the time schedule of the University for the convenience of a few students. In this case some of the students were unable to apply for admission to the post graduate courses which commenced in March, 1986. It was claimed by the students who had not been able to get admission that it would be wastage of time for them to wait for six months till January, 1987 for admission to the next post graduate course. Representation were made to the authorities and on their failure to accept the representations, a writ petition was filed in the High Court seeking a direction to the authorities to commence the post graduate course in July, 1986 instead of January, 1987 and admit them so that there may be continuity and no disruption in their medical studies. The High Court had allowed the writ petition holding that it was unreasonable on the part of the authorities to compel the students to wait for six months for no fault of theirs. The High Court had also expressed the view that the authorities were unnecessarily rigid in their view that the post graduate course should commence in January only. The order of the High Court was set aside by the Supreme Court holding that the Court was not justified in interfering in a matter of such an academic nature. It was further held that the question whether a course of study should commence in January or July of a year in a post graduate medical institution is dependent on number of factors like the availability of seats, availability of beds in the hospital, the availability of teachers, laboratories and equipment and a host of other factors with which the Courts are not familiar and ordinarily it should, therefore, be a matter best left to the university to decide.

21. In the light of the law laid down in abovementioned decisions I find it difficult to accept the contention of the petitioner that Clause 11(b)(i) of Ordinance-11 of the Respondent University is arbitrary as it stipulates holding of semester examination only once a year for a subject of the particular semester. It could be that the petitioner is inconvenienced by the said rule of the respondent

University. It could also be that on account of the said rule the petitioner stands to lose out on his chances of pursuing his higher education abroad this very academic year. But these are not grounds that would compel this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution to strike down academic policy of the respondent University.

22. The next contention that has been put forth by the learned Counsel for the petitioner is that Clause 11(b)(i) applies only to a student who has failed to secure 50% marks and as the petitioner has absented himself from the "Indirect Taxes" paper he cannot be considered as failed and therefore Clause 11(b)(i) has no application to the petitioner's case. Further, relying on *Union of India (UOI) Vs. Association for Democratic Reforms and Another*, it was contended that as there is no provision regarding the conduct of supplementary examination for students, like the petitioner, who were prevented from appearing in the examinations due to medical or other unforeseen circumstances, this Court has the power to make appropriate directions till such time as the University amends its Ordinance.

23. The plea of the learned Counsel for the petitioner that the case of the petitioner is not covered under Ordinance 11 Clause 11(b)(i) is based on a restrictive interpretation of the relevant clause. The sub Clause (b)(i) contemplates that any student obtaining less than 50% marks and failing in the course can reappear in a semester end examination of the course in a subsequent semester(s) when the course is offered. This cannot be restricted to only those students who have appeared and failed to secure less than 50% marks. If any student fails to appear in the examination, for any reason whatsoever, such a student shall also be covered under the sub clause. Such a student would be deemed to have secured less than 50% marks as securing no marks for whatsoever reason is also equivalent to securing less than 50% marks as contemplated under the said clause. Consequently, the plea of the learned Counsel that the case of the petitioner is not covered under Clause 11(b)(i) cannot be accepted and the plea is not in consonance with the purposive interpretation of the said clause. Consequently, the reliance of the petitioner on *Union of India v. Association for Democratic Reforms and Anr.* (supra) where it was observed that when act or rules are silent on a particular subject and the authority implementing the same have constitutional or statutory power to implement it, then the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till the constitutional law is legislated, is of no consequence.

24. The restrictive meaning propounded by the learned Counsel for the petitioner will create many anomalous circumstances. If such a construction is adopted, then a student who is unwell but gathers enough courage to turn up at the examination hall but is however prevented from answering any questions on account of his illness and consequently gets less than 50% marks would be covered under Clause 11(b)(i) whereas a student who on account of medical

problem who could not gather enough courage to come to examination at all will not be covered by Clause 11(b)(i). A student who is hale and hearty and suddenly develops some medical complication during the examination will also be not entitled to contend that his case is not covered under clause 11 (b) (i). In the circumstances, the contention of the learned Counsel that the case of the petitioner is not covered under sub clause (b) (i) of clause 11 is not acceptable and is rejected.

25. The petitioner has also impugned the order dated 24th June, 2009 of the Vice Chancellor of the Respondent University, issued pursuant to the order of this Court dated 25th May, 2009 whereby the Vice Chancellor was directed to reconsider the case of the petitioner sympathetically. The order of the Vice Chancellor dated 24th June, 2009 is reproduced below:

The undersigned has gone through the order passed by the Hon'ble High Court on 25th May, 2009 directing the Vice Chancellor to take appropriate decision on the request of the above named petitioner for holding of supplementary examination for students who have failed to appear in one or more papers in the ninth semester.

2. that the entire facts of the case have been pursued by me and in the light of powers conferred upon the undersigned by virtue of clause 16 of the Ordinance as well as u/s 10 of the Guru Gobind Singh Indraprastha University Act, I have considered the case sympathetically, but after going through the entire factual matrix of the case and the fact that allowing one student to reappear in one paper will mean allowing such requests from many other students who fail in one or two papers of the ninth semester. I have also examined the record of the earlier cases which have been cited by the petitioner i.e. the cases of Shri Hemant Bellani (2004), Ms. Vandana Sharma (2006), Sh. Sunny Chabra (2006) and Shri Karan Gulati (2007). All these cases were dealt by the predecessor of the undersigned in peculiar facts of the case and they cannot be cited as a binding precedent, as basically all these cases are contrary to the rules. Exception once made has been relied upon by the present petitioner and if the same mistake is repeated by the V.C again, then it implies nullifying the University Ordinance and Statute, which are normally to be amended by the legislature after due deliberations at different levels.

3) that I have also considered whether as a general rule we could allow supplementary examination to help the students who fail in one or two papers of the ninth semester, but after going through the entire record and the University statute, permitting supplementary examination is not possible as same is not within my exclusive jurisdiction. For that purpose the University Ordinance and statute are to be amended.

4) that I have also considered the facts and I am of the view that the Universities are the institutions for academic excellence and they are to be inculcate the habit of discipline and academic excellence in the students. If the students are allowed

to bypass the rules by citing one or the other exception in their favour then throughout their future career, they will develop this habit of bypassing the rules by resorting to some or the other excuse.

5) that I have also examined the matter on humanitarian consideration, but humanitarian consideration is a word which is capable of being misused in every case by the students. Moreover, in case of L.L.B students for the current academic year, I find that there are about 10 to 20 students who may be similarly placed as Shri Vipin Sharma. Similar cases are there in other departments which amounts to 50 to 60 cases. All have one or the other excuse for either not appearing in a paper or if they fail in one paper, they may also take a plea that they should wait for another six months to appear in the said paper and the University should take supplementary exam. Compulsions of the students and the fact that they may not be able to pursue any other higher education for six months, cannot be made a sole ground to deviate from the established rule where examinations in the system are conducted twice in a year. i.e in December for the first, third, fifth, seventh and ninth semester and in the month of April/May for the second, fourth, sixth, eighth and tenth semesters. The University is imparting education in many other fields/disciplines, similar demand may be raised by the students of those faculties/schools and the Controller of Examination would be hard pressed to conduct supplementary examinations in about 900 papers of various courses offered by this University. In the given infrastructure to conduct such special supplementary examinations will also have tremendous impact on the declaration of the scheduled results.

6) thus, I am of the considered view that holding of a supplementary examination for one individual or group of individuals, who either fail in one paper in their final examination in one semester, or could not appear due to sickness or any other such ground, will be impracticable and will open a Pandora's box and the University with given infrastructure will not be able to cope up with the pressure of conducting such supplementary exams.

7. that L.L.B is a professional course and the prime object of getting an L.L.B degree is to become an advocate and a responsible citizen. If due to the fact that a person is not able to clear one paper in the ninth semester than after passing the tenth semester the person can go to the Court and learn the Court procedure as a trainee, so that after his qualifying L.L.B degree after six months, he may be better equipped as a lawyer and the time will not be wasted. Moreover, if any, foreign or Indian university rules permit, a person may join L.L.M course awaiting L.L.B final results. Moreover, a person may take admission on L.L.M course in foreign universities which are making admissions twice in a calendar year, unlike the present University and other Indian universities. Hence, after examining the whole issue, it is not possible to accede to the request of the petitioner to reconsider his case.

26. The cases relied on by the petitioner for impugning the above reproduced order of the Vice Chancellor are apparently distinguishable. In S.M. Hamoodur

Rehman Faridi (Supra) the petitioner in that case had secured 128 marks out of 200 whereas the topper had secured 133 marks and despite having such high ranking in the competitive examination, he was denied admission as he did not meet the age requirement of completing 17 years as on 1st October, 2008 and he had fallen short of about two months. Under the ordinance of the University, Vice Chancellor was empowered to grant relaxation in age upto one year. Despite the power of the Vice Chancellor, the stand taken by the Vice Chancellor was that as a matter of policy and principle, it was decided that no relaxation shall be granted in the age limit. A Single Judge of this Court had held that a uniform decision not to grant the age relaxation tantamount to failure to perform the corresponding duty of the Vice Chancellor who is vested with discretionary power. It was held that policy and principle could not be evolved by the Vice Chancellor which could go contrary to the ordinance which permitted age relaxation upto one year.

27. The case of the present petitioner is apparently and completely different. Had the decision of the Vice Chancellor been that as a policy no supplementary examination of odd semester will be conducted with even semester or even semester with the odd semester ever, such a hypothetical order might have been in negation of the power conferred under the ordinance on the Vice Chancellor and failure on his part to exercise his discretion could be termed unreasonable. However, in the present case the Vice Chancellor has declined to conduct the supplementary examination for cogent reasons. It has been noticed by the Vice Chancellor that if the supplementary examination is conducted for the petitioner, that will entitle other 10 to 20 students also who are in similar situation as the petitioner to appear in the supplementary examination. The Vice Chancellor has to consider the case of a student in relations to and in the back ground of other students also. If there a number of courses the authorities have to consider the cases of all the students in such courses. Any exception to the rule has to be applied equally to all the students. Merely because the petitioner may have difficulty in getting admission in some foreign universities cannot be a ground to treat the petitioner as a special class and carve out an exception only for him even if earlier such exceptions had been carved out for other students. The Supreme Court in *State of Kerala Vs. Kumari T.P. Roshana and Another*, , had held that litigative persistence cannot be a ground for grant of relief. In this case the relief granted by Supreme Court to one candidate was extended to other similarly situated candidates though they had not filed any litigation seeking similar relief. The reasoning of the Vice Chancellor in the facts and circumstances cannot be faulted nor can be termed unreasonable. The plea of the petitioner that the case of other students has also been considered by the Vice Chancellor though only the case of the petitioner had to be considered, in the facts and circumstances is not sustainable.

28. In *S.M. Hamoodur Rehman Faridi's case* (supra) the University Ordinance had specifically granted the Vice Chancellor the discretion to relax the age for admission up to 1 year, whereas in the present case, clause 16 of the University

Ordinance is just a general provision granting powers to the Vice Chancellor to meet with unforeseen circumstances. In any case the parameters for granting age relaxation are different from the logistics required for conducting a supplementary examination which will be dependent on various factors peculiar to different universities. If some universities are conducting supplementary examination for odd semesters along with the even semesters or final examination, on this ground the respondent cannot be directed to conduct the supplementary examination for the odd semesters with the final examination or with the examination of even semesters.

29. In *Khudiram (Supra)* the Supreme Court had dealt with the judicial review of an administrative action which required subjective satisfaction. It was held that there is nothing like unfettered discretion immune from judicial reviewability. Relying on the words of Lord Halsbury in *Sharp v. Wakefield* it was held:

...when it is said that something is to be done within the discretion of the authorities... that something is to be done according to the rules of reason and justice, not according to private opinion.. according to law and not humour. It is to be, not arbitrary, vague, fanciful, but legal and regular.

The Supreme Court in this matter was dealing with a writ of habeas corpus under Article 32 of the Constitution challenging the validity of detention of the petitioner under an order of detention passed under the provisions of maintenance of internal Security Act. The detention of the petitioner had been challenged on various grounds including that the incidents which were alleged against the petitioner were objectively not sufficient to justify the detention and, therefore, the order of detention was bad. It was contended in this case that the subjective satisfaction imposed unreasonable restrictions on the fundamental right of the petitioner under Article 19(1) as no opportunity was given to the petitioner to make an effective representation because the material which was relied on in the order of detention was in contravention of Article 22(5) of the Constitution. In these circumstances, it was held that there is nothing like unfettered discretion immune from judicial reviewability. It was held that absolute discretion is a ruthless master and it is more destructive of freedom than any of man's other inventions especially in a case where personal liberty is involved.

30. In *K. Shekhar (Supra)* the Supreme Court had held that the case of educational institutions, however, highly reputed are not immune from judicial scrutiny. It was further held that to preserve the high reputation there is a greater need to avoid even the semblance of arbitrariness or extraneous considerations colouring the institutions actions. In this matter the appellant had been given a temporary tenure appointment in a temporary post of a lecturer in a centre set up by VIMHANS by Indian Council for Medical Research for a limited period. The respondent who had challenged the appointment was neither qualified to apply nor had she applied for the said post at that time. The appointment was later on modified by a corrigendum declaring the temporary

post to be a permanent one which enabled the petitioner to revert back to VIMHANS on completion of his tenure appointment. Later on applications were again invited by VIMHANS and the appellant was appointed as an Assistant Professor which was challenged by the writ petitioner. In this context it was held that although ordinarily the Courts have been reluctant to interfere with the functioning of educational institutions, but they are not immune from judicial interference, however, highly reputed they may be. Apparently the ratio of the case is distinguishable and the petitioner is not entitled for any relief on the basis of the same or for setting aside of the decision of the Vice Chancellor dated 24th June, 2009.

31. The petitioner has laid emphasis on certain observations made in above mentioned decisions. However it must be remembered that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. In *Ambica Quarry Works Vs. State of Gujarat and Others*, , the Supreme Court observed:

The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.

Similarly in *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, (vide para 59), the Supreme had observed:

It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

The Supreme Court in *Bharat Petroleum Corporation Ltd. and Anr. v. N.R. Vairamani and Anr.* AIR 2004 SC 778 had also held that a decision cannot be relied on without considering the factual situation. In the same judgment the Supreme Court also observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, , the Supreme Court had held as under:

There is always a peril in treating the words of judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases.

In *Rafiq v. State* 1980 SCC (Cri) 946 it was observed as under:

The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases.

32. In *Principal, King George's Medical College, Lucknow (Supra)* requirement of the ordinance was relaxed in case of two candidates for admission to MD course of studies, however, in the case of the petitioner in the said case it was held to be mandatory. The case relied on by the petitioner is distinguishable as the case of the petitioner is not regarding grant of relaxation for admission to the courses but exercise of discretion to conduct a supplementary examination. The parameters and logistics for relaxation of requirements for admission cannot be equated with the exercise of discretion to conduct a supplementary examination which is based on various factors. Merely because in previous years the supplementary examination for the odd semesters was conducted, it is not necessary that the Vice Chancellor is duty bound to conduct the supplementary examination for the odd semester in 2009 also. The decision of the Vice Chancellor cannot be termed discriminatory or arbitrary, as he has considered the ramification of conducting a supplementary examination in case of petitioner which will entail conducting supplementary examinations of other candidates also who has not been able to appear in the various papers of 9th semester. The Vice Chancellor has categorically noticed that there are about 10 to 20 students who are similarly placed as the petitioner and there are cases in other departments also which are about 50 to 60 cases.

33. This is not the contention of the respondent that the decision of the respondent is not open to judicial review. It appears that the contention is that the decision is not to be interfered with unless it is unreasonable and arbitrary. In order to ascertain whether a decision is unreasonable or arbitrary it has to be kept in mind that the regulations and rules are made on the basis of experience of actual day to day working of the educational institutions. Merely because a particular decision is not conducive or helpful to a particular student, the same cannot be termed unreasonable or arbitrary and the Court also should not exercise the power to interfere with the internal working of an educational institution imparting education in such circumstances. If conducting a supplementary examination of one student can lead to holding of supplementary examination for other students in other semesters and in other courses, considering various factors and the logistics and the time schedule which has to

be maintained by the University, if the request of a candidate is declined, it cannot be termed *ex facie* unreasonable or arbitrary.

34. The logistics for conducting the examination cannot be equated with relaxation being granted for age of admission or admitting a student not having certain qualifications to a course. Though it has not been spelt out clearly by the Vice Chancellor as to what steps would be required to conduct the supplementary examination, however, it cannot be inferred that the Vice Chancellor was not aware of it and has not taken into consideration this aspect as it has been categorically stipulated in the impugned order that conducting a special supplementary examination will have tremendous impact on the declaration of the scheduled results. The academicians are not like judges and it cannot be anticipated or expected from them to write detailed orders dealing with each and every point in detail as the Judges do. In any case while exercising the power of judicial review this Court is also not exercising appellate jurisdiction and ascertaining the validity of an order on the basis of finer technical rules of law.

35. The plea of the learned Counsel for the petitioner that in case the supplementary examinations were conducted till 2007 the supplementary examination can be conducted in 2009 and should be conducted is without any rationale. Even though the impugned order does not spell out in detail as to what were the conditions under which examination were conducted in the previous years from 2004 up to 2007, cogent reasons have been given as to why special supplementary examinations cannot be conducted in 2009 by alluding to the various logistics involved in conducting the supplementary examination. In the totality of facts and circumstances which are apparent from the order, the observation of the Vice Chancellor that previous supplementary examinations for 2004-2007 for some of the candidates were contrary to Ordinance of the University also cannot be faulted. In any case in the present facts and circumstances as has been spelt out by the Vice Chancellor for not conducting the supplementary examinations, it will be inappropriate for this Court to exercise its jurisdiction under Article 226 of the Constitution of India and direct him to conduct the supplementary examination.

36. The contention of the petitioner that the decision of the university to award grace marks vide order 16th January, 2009 thereby allowing students who had failed in one or more papers to complete the course, is not for academic excellence and therefore, the committee could not reject the plea for supplementary examination on the ground of academic excellence, is not sustainable. If granting grace mark for some reason is not for sustaining academic excellence does not mean that the decision of the committee not to conduct supplementary examination will also be not for sustaining academic excellence. The plea of the petitioner is illogical and cannot be accepted in the facts and circumstances.

37. Therefore in the facts and circumstances and for the foregoing reasons, the decision of the Vice Chancellor not to hold special supplementary examination for

the petitioner for the paper Indirect Taxes, cannot be faulted and the University cannot be directed to hold special supplementary examination for the petitioner for the ninth semester in subject `Indirect Taxes" nor the respondents can be directed to amend their Ordinance for conducting special supplementary examination for the petitioner. The writ petition is therefore, dismissed. Parties are however, left to bear their own costs.