

\$~6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 26th February, 2021

+ W.P.(C) 3049/2020 & CM APPLs. 10616, 29168/2020

VIPIN

..... Petitioner

Through: Mr. Abir Phukan, Mr. Surya
Prakash and Mr. Ashkrit
Tiwari, Advocates.

versus

UNIVERSITY OF DELHI AND ORS

..... Respondents

Through: Mr. Mohinder JS Rupal,
Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

%

The proceedings in the matter have been conducted through video conferencing.

1. The petitioner is pursuing an LL.M. course from University of Delhi [“the University”]. He has filed this writ petition seeking permission to appear in the Intellectual and Industrial Property Laws – I (LM-1018) paper in December 2020.

2. At the outset, it is recorded that learned counsel for the parties have no objection to the petition being heard by this bench, although I was a member of the Division Bench which heard the petitioner’s appeal against an interim order passed in this petition.

3. The petitioner enrolled for the LL.M. course in 2014. The duration of the course was three years (6 terms). Under the University's rules and regulations, all the papers for the LL.M. course had to be cleared within six years (known as the "span period"). The petitioner was thus required to clear all the examinations by December, 2019.

4. The petitioner has passed all the examinations within the said period, except for one paper from the first term, viz. Intellectual and Industrial Property Laws – I (LM-1018). He was unable to appear in this paper in the regular examination of December, 2014 or subsequently in December, 2015. He did appear in the said paper in December 2016, December 2017 and December 2018, but was unsuccessful in the said paper.

5. The petitioner, therefore, applied to take the paper in the last attempt available to him in December, 2019. For this purpose, a date-sheet for the LL.M. Examination dated 31.10.2019 was issued by the University, in which the date of the Intellectual and Industrial Property Law - I Examination was declared as 28.12.2019. A perusal of this date-sheet (which has been filed by the University with its counter-affidavit as Annexure R-1) shows that it was entitled "*Revised & Final Date-sheet for LL.M/ LL.M (Comparative Laws) 2/3 Year Courses*".

6. However, by a further notification dated 27.11.2019, the University declared another "*Revised & Final Date-sheet for LL.M/ LL.M (Comparative Laws) 2/3 Year Courses*". In this revised date-sheet, the date of the Intellectual and Industrial Property Law - I Paper

was advanced to 16.12.2019. It is undisputed that the revised date-sheet was not communicated to the candidates by any personal means of communication but only uploaded on the website of the University.

7. In these circumstances, the petitioner did not appear for the examination in December, 2019. As far as the examination of December, 2020 is concerned, the petitioner was not eligible to appear for the same in view of the fact that the maximum span period of six years from the date of his admission had lapsed.

8. The petitioner approached this Court by way of the present writ petition seeking a further opportunity to sit for the examination in the aforesaid circumstances. He also sought interim relief in the writ petition, which was originally declined, by orders dated 12.11.2020 and 26.11.2020.

9. Against the aforesaid orders, the petitioner approached the Division Bench in LPA No. 372/2020, which was disposed of by a judgment dated 09.12.2020 (to which I was a party). The Division Bench observed as follows:-

*“3. It appears that the examination of the aforesaid paper was initially fixed on 28th December, 2019 and the appellant was to appear in the said examination, being his last remaining attempt to complete the said course. It appears from the facts of the case that respondent University pre-poned the date of the examination to 16th December, 2019. However, **the intimation about the said pre-ponement was not given to the appellant either by e-mail, SMS or through any other mode.** This is the bottleneck in the whole matter as, because of the pre-ponement of the date of examination of the aforesaid*

paper (Intellectual and Industrial Property Law-I), the appellant could not take the said examination, which would have been his last attempt to complete the L.L.M. Course. This last attempt was missed by the appellant because of the pre-ponement of the date of examination by the respondent University for which neither any e-mail, nor any SMS, nor any personal communication, was sent to him.

4. We, therefore, allow this appellant to appear in the examination of the paper, Intellectual and Industrial Property Law-I, which is now scheduled to be held by the respondent University on 23rd December, 2020. However, this permission to appear in the said examination would be subject to the outcome of W.P.(C) 3059/2020 pending before the learned Single Judge and without prejudice to the rights and contentions of the parties.”

10. The petitioner has since taken the examination pursuant to the order of the Division Bench and the result is awaited.

11. Having heard Mr. Abir Phukan, learned counsel for the petitioner and Mr. Mohinder J. S. Rupal, learned counsel for the University, I am of the view that the petitioner is entitled to the relief sought in this petition. The only reason which prevented the petitioner from availing of his last opportunity to take the examination was the University's action in advancing the date of the examination, that too without any personal communication to the candidates who had registered to appear in the examination. It is, in these circumstances, unreasonable to deny a candidate the opportunity to complete his degree and obtain the qualification, only on the basis that the span

period has lapsed. As stated above, the consequence of a strict enforcement of the span period against the petitioner would be that he loses the opportunity to complete the LL.M. course for want of having cleared one paper.

12. Mr. Rupal submits that the imposition of a span period during which a candidate must clear all the papers in a particular course, has been upheld by this Court. He states that Special Leave Petitions against the judgments of this Court have also been dismissed. However, I do not consider it necessary to enter into this question in the facts of this case. Mr. Rupal accepts that the judgments do not deal with the peculiar situation faced in this case, where the candidate sought to undertake his last attempt during the span period, but was unable to do so due to the advancement of the examination by the University. In this situation, it would be unduly harsh to deprive the student of an opportunity to complete the degree.

13. The University's counter-affidavit also raises the contention that the petitioner ought to have checked the University's website for any updates. I do not consider it appropriate to put the onus entirely upon the petitioner to keep track of any revised date-sheet that may be published by the University on its website. Further, as mentioned hereinabove, the date-sheet upon which the petitioner relied was also described by the University as a "*revised and final*" date-sheet, leaving no occasion whatsoever to place such a burden upon the petitioner.

14. In the facts and circumstances of the present case, therefore, the petitioner has been able to justify the relief sought. At Mr. Rupal's

request, it is made clear that this judgment does not foreclose the issue as to whether the same reasoning would be applicable to a different factual situation.

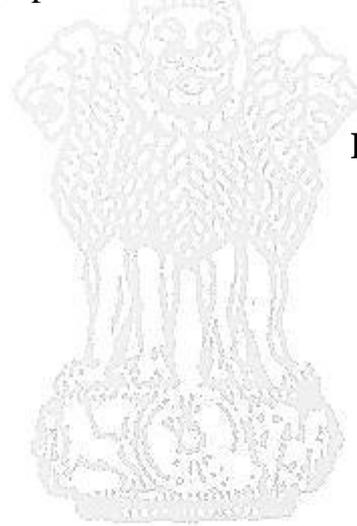
15. Since the petitioner has already appeared in the examination in December 2020, pursuant to the judgment of the Division Bench dated 09.12.2020, his entitlement to the degree will depend upon the result thereof.

16. For the reasons aforesaid, the petition is allowed. The pending applications also stand disposed of. There will be no order as to costs.

PRATEEK JALAN, J

FEBRUARY 26, 2021

'vp'



भारतमेव जयते