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

Reserved on: 03.05.2024

% *Pronounced on: 31.05.2024*

\+ **LPA 703/2023**

TRIPURARI KUMAR JHA ..... Appellant

Through: Mr Rajshekar Rao, Senior Advocate *(Amicus Curiae)*, with Mr Harshil Wason and Mr Dushyant Kaul, Appellant, in person.

Versus

FACULTY OF LAW, UNIVERSITY OF DELHI & ANR. ..... Respondents

Through: Mr Mohinder J.S. Rupal and Mr Hardik Rupal, Advocates for R-1/ University of Delhi.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE AMIT BANSAL
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.:

Background

1. The moot question which arises for consideration is whether the appellant, who was detained by respondents No. 1 and 2 (hereafter collectively referred to as the "University") from sitting for the first term LLB examination due to shortage of attendance, should be required to seek

readmission, given the fact that the deficiency in attendance was attributable to the appellant being afflicted with disease.

2. Thus, in a nutshell, the appellant's submission is that since his absence from classes was due to reasons beyond his control, the plea put forth that he should be re-admitted to the first term of the LLB course without having to take the entrance examination afresh, should not equated with those cases where students are detained for failure to meet the prescribed attendance threshold due to other reasons.

3. In other words, the appellant is not seeking to be **promoted** to the second term without being instructed in subjects prescribed for the first term. As alluded to above, the relief sought by the appellant is limited to **not having to take the entrance exam once again**.

4. Interestingly, the Bar Council of India (BCI), in its affidavit dated 14.03.2024, has taken the position that once a student is found eligible and is accorded admission to pursue legal education, their candidature/admission should **not** be cancelled by the concerned university/college if the student, in rare circumstances *albeit* for genuine reasons, fails to meet the attendance requirement. The BCI, in no uncertain terms, has averred that the student should be allowed to complete their course in the timeframe provided by the concerned university/centre for legal education, rather than have the student undergo a fresh admission process. Significantly, it has opined that a student placed in such circumstances **should be re-admitted** against the sanctioned seats allotted/allocated to the concerned university/centre of legal education by the BCI on such terms as may be deemed fit without violating the Rules

of Legal Education, 2008. The assertion made by BCI is prefaced with the recognition that the procedure or rules governing education/evaluation/promotion fall within the domain of the concerned University.

5. The University though, thinks otherwise. The University asserts that if students do not meet the prescribed threshold criteria for attendance **in the first term**, they would have to seek admission afresh, irrespective of the reasons for absence. The University backs this stance by relying on the provisions in the Prospectus, Ordinances and certain judgments, which we will refer to hereafter. Admittedly, while detaining the appellant along with others, consistent with its stand, the University should have delved into the reasons for the absence of each student. In the appellant's case, he failed to meet the threshold attendance criteria of 70% because he had developed psoriasis.

6. Given this backdrop, one needs to sift through the submissions made on behalf of the appellant by Mr Rajshekhar Rao, Senior Advocate, who was appointed as Amicus Curiae, and on behalf of the University by Mr Mohindar JS Rupal.

Prefatory Facts

7. However, before we do that, we must notice certain factual milestones concerning the appellant.

7.1 On 10.12.2022, after clearing the entrance exam, the appellant was shortlisted for the three-year LLB course in Law Centre II, Faculty of Law, appended to the University of Delhi as part of the 2022-2025 batch.

7.2 Classes for the first term commenced on 25.01.2023. Barely nine (09) days into the first term, the appellant was diagnosed with psoriasis. The appellant passed this information to his Class Representative and Professor-in-Charge on 03.02.2023. The appellant filed the application to take the first term exam on 11.03.2023. The appellant recovered from his illness and produced a medical certificate dated 21.04.2023, declaring him fit to resume his studies.

7.3 On 15.05.2023, the University published a detention list comprising students who had been barred from taking the first term exam. It is the appellant's case that the Professor-in-Charge orally informed him that because he had failed to register 70% attendance, not only had he been barred from taking the first term exam, but his admission had also been cancelled. Concededly, no written communication was served on the appellant by the University. Significantly, by the time the detention list was published, the date for applying afresh for the Common University Entrance Test, 2023 [in short, CUET 2023], i.e., 11.04.2023, had passed. Therefore, the appellant could have, if at all, applied for fresh admission only in the Academic Year 2024-2025.

7.4 The appellant claims that although he forwarded his request to be allowed to appear in the examination to several officials in the University, including the Professor-in-Charge through communications of even date, i.e., 15.05.2023, he received no response.

7.5 Apprehending the worst, the appellant instituted a writ action, i.e., WP (C) No.8081/2023, in which several reliefs were sought, including

restraining the University from cancelling his admission; promoting him to the second term and directing the University to permit him to repeat the first term with the 2023-2026 batch.

7.6 The record shows that notice was issued in the writ petition on 01.06.2023 in the first instance. However, *via* the impugned judgment, the writ petition was dismissed.

7.7 Being aggrieved, the appellant filed the instant appeal on 10.10.2023. A coordinate bench admitted the appeal on 12.10.2023.

7.8 As indicated above, the coordinate bench appointed Mr Rao as Amicus Curiae *via* an order dated 16.10.2023.

7.9 The record also discloses that on 06.11.2023, the coordinate bench directed the University to provide the reasons for detaining other students (who, according to the University, were 30 in number) in the first term because the University raised the spectre of other similarly placed students approaching the court for identical relief if the appeal was allowed.

8. We may note that although the University filed an affidavit dated 10.11.2023 giving the names of 58 students (as against a list of 30 students, a number which was indicated to the court on 06.11.2023) who had been detained in the first term for the 2022-25 batch, the reasons for detention were not detailed out.

8.1 Insofar as the appellant was concerned, the University's affidavit dated 10.11.2023 disclosed that he had registered an attendance of 45%. It is important to note that during arguments, *albeit* across the bar, Mr Rupal had

produced a document which facially showed that the appellant had attended only 17% of the classes.

8.2 The record also shows that BCI was arrayed as a party on 03.01.2024. At this hearing, the University was once again directed to furnish reasons for detaining 30 students, the number noted in the order dated 10.11.2023 passed by the coordinate bench, as adverted to above.

8.3 We may note that the University, apart from the counter affidavit, has also filed two affidavits dated 10.11.2023 and 18.03.2024. The University filed the 18.03.2024 affidavit in response to BCI's affidavit dated 14.03.2024, which we have referred to hereinabove. On the other hand, the appellant, apart from making assertions in the appeal, has also filed an affidavit dated 18.01.2024.

8.4. The order sheet dated 10.04.2024 records that in the proceedings held before the bench on that date, Mr Rupal suggested that the University would consider the appellant's plea for readmission if an application was preferred. Unfortunately, even though the appellant preferred an application, it did not come to fruition.

Submissions of Counsel

9. Given this backdrop, we heard arguments on merits and proceeded to reserve judgment in the matter.

9.1 Mr Rao, learned Amicus Curiae, made the following broad submissions:

9.2 The provision for readmission is made in Article 5(b) of Ordinance IV titled "Migration and Readmission". Article 5(b) was incorporated in Ordinance IV on 27.07.2012.

9.3 Contrary to the stand of the University, Article 5(b), which allows the University to re-admit a student who was detained due to a shortage of attendance to the class in which he studied last in the College/Department where he was admitted, is not confined to general courses, such as Bachelor of Arts/Science. This is evident upon a bare perusal of Article 5(b), which applies to a "student of the University", rather than a student admitted to a particular course, such as LLB.

9.4 Although Article 2 of Ordinance V states that "the respective courses of study for each of the Degrees, Diplomas, and Certificates mentioned in the preceding Article shall be those set out in Appendix II to these Ordinances", Appendix II has not been found in the public domain. The original Appendix II has not been produced. What has been produced is the resolution passed by the Standing Committee (SC) on Academic Matters on 01.09.2007. The SC, apart from proposing amendments to the study courses concerning the LLB degree, went on to amend, among other things, the readmission rules through this route, despite Ordinance IV specifically dealing with the aspects concerning readmission.

9.5 Given the apparent conflict between Ordinance IV and Ordinance V, the *generalia specialibus non derogant* doctrine should apply. The special and specific provision made in Ordinance IV for readmission should apply, as against the provisions concerning readmission incorporated in Appendix II

to Ordinance V, through a resolution passed by the SC, which the Academic Council (AC) and Executive Council (EC) deliberated on its meeting held on 27.12.2007.

9.6 Notwithstanding the Amendments made to Appendix II appended to Ordinance V, there cannot be a blanket ban on readmission without enquiring whether the absence was deliberate or intentional or owing to circumstances such as medical reasons or circumstances beyond the student's control. (See observations made in *Abhishek Singh v Union of India* , 2019 SCC OnLine Del 11452).

9.7 The judgment of the Division Bench of this court in *Samadhiya Vivek Kumar v University of Delhi* [WP (C) 41/2012] is distinguishable on two grounds. Firstly, since the time the court rendered the above judgment, BCI has taken a nuanced stand and encouraged the University not to expose students to a fresh admission process when they are short of the prescribed attendance threshold due to illness or reasons beyond their control. Secondly, after the aforesaid judgment was rendered by the court on 10.05.2012, Article 5(b) was inserted in Ordinance IV on 12.07.2012, to deal with the readmission of students detained due to shortfall of attendance. Therefore, the judgement in the *Samadhiya* case was distinguishable. The court rendered the decision when Article 5(b) had not been incorporated in Ordinance IV.

9.8 Although BCI has made a course correction, perhaps due to the observations made by the Court in the *Abhishek Singh* case, the University, for reasons best known to itself, has failed to apply its mind to a situation

that stares it in the face despite being conferred with requisite power under Article 5(b) of Ordinance IV.

10. In rebuttal, Mr Rupal made the following broad submissions:

10.1 The appellant had not laid a challenge to the provisions incorporated in Appendix II attached to Ordinance V, which alluded to readmission.

10.2 Article 5(b) incorporated in Ordinance IV has no applicability to the LLB course. In any event, the appellant was bound by the terms of the Prospectus issued for the subject Academic Year, which precluded the students from being re-admitted to the first term upon being detained because of a shortfall in attendance. [See internal communication dated 18.11.2023, which *inter alia* states that students detained in the first term of the LLB course due to shortage of attendance would have their names struck off from the rolls.]

10.3 The appellant cannot be accorded any special treatment since there were, apart from the appellant, another 57 students who were detained due to shortfall in attendance.

10.4 The appellant was absent for three (03) months. The first term classes commenced from 24.01.2023, and ended on 09.05.2023. The appellant attended classes only for two (02) weeks during this period. Since the appellant was grossly in default, and LLB is a professional course, he cannot be accorded any indulgence. Although the appellant claims that he was advised convalescence by the doctor, no document has been placed on record in support of this plea. The medical certificate dated 21.04.2023

which has been issued by a homeopathic doctor, does not state that the appellant has been advised bed rest.

10.5 Even though the appellant had claimed that psoriasis was contagious, medical literature suggests to the contrary. Psoriasis does not prevent the afflicted person from carrying on their day-to-day activities.

10.6 BCI's affidavit, on which the appellant places reliance, categorically states that insofar as procedure/rules concerning education/evaluation/promotion are concerned, they fall within the University's domain.

10.7 A challenge to the no readmission rule prescribed in Ordinance V was rejected in the *Samadhiya* case. This view was also sustained by another division bench in *Kiran Kumari v Delhi University* [WP (C) 9143/2007].

10.8 After the dismissal of WP (C) 8081/2023, from which the instant appeal arises, the appellant filed a second writ petition i.e., WP (C) 12690/2023, without adverting to the fact that he had filed an earlier writ petition which was dismissed by the court on 06.09.2023.

10.9 In sum, the appellant deserves no indulgence and therefore the appeal ought to be dismissed.

Reasoning and Analysis

A. Prejudice

11. Having considered the record and the submissions advanced by Mr Rao and Mr Rupal, it is evident that the University has adopted an approach best described as one size fits all.

11.1 As indicated at the outset, the issue that arises for consideration is whether the University was right in cancelling the admission of first-term students on the ground of shortfall in attendance without enquiring into the reasons for their absence. What needs emphasis is that the appellant does not seek promotion without having attended the minimum number of classes prescribed by the University.

11.2 Insofar as the appellant is concerned, the shortfall in attendance was due to being afflicted with psoriasis. Though there is no dispute about the fact that the appellant did develop psoriasis, the University, apart from taking the position that it cannot make any exception on that count, has sought to highlight certain facts which, to our minds, are arguments of prejudice, rather than addressing the legal quandary which one is required to grapple with.

12. The facts that Mr Rupal sought to highlight, in order to, in a sense, impugn the conduct of the appellant were the following:

12.1. Firstly, psoriasis was not contagious. Even when the appellant had contracted the disease, he attended certain classes, contrary to the assertion made in the representation dated 15.09.2023, which is that his absence from classes was because he feared that he would pass on the infection to other students in the class.

12.2. Secondly, the appellant had filed a second writ petition after the dismissal of the first (out of which the instant appeal arises) without making an averment concerning the same in the latter writ petition.

12.3. Thirdly, the homeopathic doctor's medical certificate did not advise bed rest.

13. Therefore, the first and foremost aspect we are required to deal with is whether the conduct of a young adult who is attempting to continue with his studies is such that relief ought to be denied to him on these grounds.

13.1. To answer the question whether psoriasis is infectious, we perused the available medical literature. The literature scanned by us does indicate that although psoriasis is perhaps not infectious, it is nevertheless a serious ailment which could impact vital organs such as lungs and the heart, and also lead to death[1].

13.2. We must note that Mr Rao did indicate during his submission that the appellant had asserted in his representation dated 15.09.2023 that psoriasis was infectious, based on advice from faculty members. Whether the appellant genuinely believed this or not is difficult to determine. However, as indicated above, since psoriasis is a skin disease which often takes grotesque forms, it can result in deep embarrassment for the afflicted person. A perusal of photographs that the appellant has placed on record shows that a large part of his body was infected. Thus, it would be unwise for anyone to underplay the seriousness of the disease, or the discomfort that it can cause

[1] Dorland's Illustrated Medical Dictionary, 31st Edition, Saunders Elsevier (pub.), page 1570
Erythrodermic p., exfoliative p*. a severe generalized erythrodermic condition usually developing chronically, such as in a reaction to topical therapy or ultraviolet exposure. Occasionally it occurs as the initial manifestation of psoriasis and has severe characteristics such as massive skin exfoliation associated with serious systemic illness and abnormalities of temperature and cardiovascular regulation that may even be fatal. Called also psoriatic erytbroderma.*
Generalized pustular p. *severe and generalized pustular psoriasis, usually in patients with psoriatic arthritis or erythrodermic psoriasis. Characteristics include high fever, leukocytosis, hypocalcemia, arthralgia, malaise, and other systemic symptoms, sometimes resulting in death. Called also von Zumbusch or Zumbusch p.*

to an afflicted person. Itching is a peculiar feature of the disease, which can lead to extreme discomfort.

13.3. The appellant has described his condition in the following words in the affidavit dated 18.01.2024:

> "*3. Briefly, the Petitioner suffered from psoriasis, a serious skin condition,* ***which caused continuous scratching, peeling of surface skin, secretion of bodily fluids like blood and pus from skin, dark patches in affected regions and sleeplessness, among other things. The disease covered the entire genital area, hindquarters, back, neck, and parts of arms, with the genital area and the hindquarters being the most severely affected areas. In fact, scars in the genital and hindquarters regions are visible for several months thereafter. Photos of parts, which can be comfortably shown, have been annexed*** *with* ***Annexure A1****.*
>
> *4.* ***It is most humbly submitted that the Petitioner's clothes had blood stains and that wearing them was not merely uncomfortable but also painful for the Petitioner. The Petitioner had to resist the continuous temptation of scratching in public. After sweating, the Petitioner's wound would emit a very unpleasant, foul smell. This resulted in the Petitioner keeping his distance from his classmates to avoid being ostracized by them****."*

13.4. The attempt to trivialize the appellant's condition by alluding to the fact that the appellant had approached a homeopathic doctor is suggestive of the University's inherent disbelief in the assertion made by the appellant that he had contracted the disease. One can take judicial notice of the fact that for certain kinds of skin diseases, homoeopathic medicine works and has brought relief to several patients. What is significant is that the University did not conduct any enquiry as to whether the appellant's assertion that he was unable to attend his classes because of being afflicted with psoriasis was correct.

13.5. The other aspect concerning the appellant's conduct, which was brought to the fore, was that he had failed to disclose in the second writ petition filed by him that his earlier writ petition had been dismissed.

13.6. A perusal of the order dated 26.09.2023 passed in the second writ action, i.e., WP (C) No.12690/2023, would show that the appellant had appeared in person, which though by itself would not be the reason for condoning the lapse, would certainly demonstrate his inability to understand the ramifications of such a lapse. Therefore, the learned single judge, while dismissing the writ petition, took note of the fact that the appellant who appeared in person was a student. Thus, the single judge refrained from imposing cost, even while commenting on his conduct.

13.7 According to us, the learned single judge rightly cut some slack for the appellant, and therefore this lapse need not necessarily be the reason for denying him relief if he is otherwise entitled to the same.

B. Power of the University to Re-Admit Students

14. This brings us to the other important aspect, i.e., whether the stand taken by the University that it is not invested with power to grant readmission to a student detained in the first term for reasons beyond his control, such as illness, is correct. To be more precise, the University contends that Ordinance V read with Appendix II prohibits the readmission of students who have been detained in the first term of the LLB course, irrespective of the reason for attendance shortage. The University thus takes the stand that this prohibition is reflected in the Prospectus issued for the subject Academic Year.

14.1 The contention put forth by the University needs examination in the backdrop of relevant parts of Ordinances IV and V (read with Appendix II), to which Mr Rao and Mr Rupal, have drawn our attention.

ORDINANCE IV

*"**READMISSION***

5(a) xxx xxx xxx

(b) A student of the University who was not allowed to appear in the examinations due to shortage of attendance will be re-admitted to the class he studied last in his College/Department, within the prescribed period of registration."

ORDINANCE V

*"**(6) Certificate Courses***

2. The respective courses of study for each of the Degrees, Diplomas and Certificates mentioned in the preceding Article shall be those as set out in Appendix II to these Ordinances."

APPENDIX II

*"**Readmission Rules***

(i) There shall be no readmission in the LL.B. First Term, even if a student has been detained for shortage of attendance in that Term."

[Emphasis is ours]

15. As would be evident from the extracts set forth above, **Ordinance IV** specifically deals with **readmission**, while **Ordinance V** concerns itself with **courses of study**. Appendix II, which goes beyond the scope of Ordinance V, presents an oddity. As to why we say so can be appreciated if one notices the schematic theme which runs through various chapters which contain the Ordinances.

15.1 Ordinance IV is part of Chapter I, which concerns "…Admission to the University".

15.2 **Ordinance I** of **Chapter I** provides **qualifications for admission**. **Ordinance II of Chapter I** concerns the **admission committees** constituted for various disciplines and the broad guidelines for granting admissions.

15.3 Insofar as the discipline of law is concerned, Ordinance II provides for a "**law courses admissions committee**".

15.4. **Ordinance III** provides for the **procedure** for **transfer of candidates** from an **Honours course to a pass course**, and ***vice versa***.

15.5. **Ordinance IV** provides for "**Migration and Readmission"**. Migration is one sub-head of Ordinance IV, while "readmission" is the other sub-head. Under the readmissions sub-head, the following Article appears, which is crucial for determining the extent of power available to the University to grant readmission to students who are not allowed to appear in examinations due to a shortage of attendance. For easy reference, Articles 5 (a), (b) and (c) of Ordinance IV are set forth hereafter:

> *"**READMISSION***
>
> *5(a) A student of the University having failed to pass any examination of the University will be registered as an Ex-student for re-appearing in the said examination subject to the conditions laid down under the Regulations of the University relating to Conditions of Admission to University Examinations.*
>
> *(b) **A student of the University who was not allowed to appear in the examinations due to shortage of attendance will be re-admitted to the class he studied last in his College/Department, within the prescribed period of registration.***
>
> *(c) If a student's name is struck off the rolls of his College, he may be re-admitted to the same class at the discretion of his Principal in the same*

academic year or within the period of registration, if readmission is sought in any subsequent year. No enrolment fee shall be charged in such a case and a remark in the University Register shall be deemed as equivalent to fresh enrolment.

The term "his college" means the College last attended by the Student."

[Emphasis is ours]

15.6 **Ordinance V** falls in Chapter II, bearing the heading "***Of Course of Study***", with a sub-heading "University Degrees, Diplomas and Certificates**". Article 1 of Ordinance V** reads: "***There shall be courses of studies in the University for the following Degrees, Diplomas and Certificates***". Article 1(1) of Ordinance V concerns **pass courses**. Under this head, i.e., sub-clause (a), a series of undergraduate courses are listed. **Likewise, under Article 1(1)(b)**, **post-graduate courses** are set out and amongst others, reference is made to ***Bachelor of Law (LLB)***. Under Article 1(1) (c), reference is made to **post-doctoral courses**. Similarly, under Article (1) (2) of Ordinance V, there is a reference to **Honours courses** at the under-graduate level. Article (1) (3) adverts to **Masters courses**, while Articles 1(4), (5) and (6) concern **M.Phil, Diploma and Certificate** courses.

15.7. **In Article 2** of Ordinance V, on which the University places reliance, the following is mentioned:

"The respective courses of study for each of the degrees, diplomas and certificates mentioned in the preceding Article shall be those as set out in Appendix II to these Ordinances."

[Emphasis is ours]

15.8. Besides this, Ordinance V also contains other Articles, i.e., **Articles 2-A, 3 and 4**. **Article 2-A** alludes to specific courses of study in which

students are required to take the examination in Hindi. **Article 3** states that only those students could be admitted to courses referred to in Article 2-A whose admission has been recommended by the Appropriate course admission committee, i.e., one of the admission committees they refer to in Ordinance 2.

15.9. **Article 4** of Ordinance V empowers the **Dean** of a faculty to admit any person who is not a member of the University to attend one or more courses of the University, lectures or practical's delivered or conducted by teachers of the University in that faculty on payment of fees, as might be prescribed by the Ordinances. The said Article goes on to state that any person so admitted would be disentitled to appear in any examination conducted by the University but may be issued a certificate by the Dean evidencing that he or she attended the course lectures or practical's, as the case may be.

16. A bare perusal of Ordinance V thus demonstrates that it draws up various courses of study offered by the University in which Degrees, Diplomas and Certificates are issued. Facially, it does not deal with provisions for re-admitting students who are not allowed to appear in examinations due to a shortage of attendance.

16.1. The pivotal question that arises for consideration is whether Appendix II can go beyond the periphery drawn up by Article 2 of Ordinance V, which, as indicated above, adverts to respective courses of study for which degrees, diplomas and certificates are issued. Importantly, as pointed out by Mr Rao, Appendix II was not available on the University's website. Mr Rupal has

sought to fill the gap by placing on record the recommendations of the SC on Academic Matters made *via* a resolution passed at the meeting held on 01.09.2007, which apparently was considered by the AC on 12.12.2007 for amending, *inter alia*, Appendix II to Ordinance V.

16. 2 The amendment of 12.12.2007 provides for the following insofar as the LLB course is concerned:

> ***" There shall be no readmission in the LLB first term, even if a student had been detained for shortage of attendance in that Term."***

17. Mr Rupal relies upon the first part of the amendment extracted hereinabove in support of his plea that there can be no readmission in the first term of the LLB course, if a student is detained for shortage of attendance.

17.1. In our view, this argument is flawed for two reasons. First, Appendix II to Ordinance V is amended by the AC in a manner which is beyond the periphery drawn up by Ordinance V, as adverted to hereinabove. Ordinance V concerned itself only with courses of study that the University had to offer to award degrees and diplomas and to issue certificates.

17.2. Secondly, Ordinance IV, which deals explicitly, apart from migration, with readmission, allows for the readmission of students detained due to a shortage of attendance. As noticed above, the provision in this regard is incorporated in Article 5(b) of Ordinance IV.

17.3 Thirdly, [which in our view is even more significant], Article 5(b), which deals with readmission, was incorporated in Ordinance IV on 12.07.2012, much after the AC had amended Appendix II to Ordinance V.

Therefore, one would have to presume in favour of the appellant that when Article 5(b) was incorporated in Ordinance IV, the draftsman was conscious of the provision for readmission contained in Appendix II to Ordinance V. Article 5(b) has, in our opinion, in a sense, impliedly repealed the provision concerning readmission incorporated in Appendix II to Ordinance V, which in any event was incorporated through a resolution of the AC.

18. This brings us the apparent conflict between the Prospectus and what obtains in Article 5(b) of Ordinance IV. The provision in the Prospectus concerning readmission reads as follows:

> "***Readmission Rules***
>
> *(1) There shall be no readmission in the LL.B. First Term under any circumstances including detention for shortage of attendance in that Term."*

18.1. Regarding this aspect, before we proceed further, one needs to look at the broad scope of the constitutional documents concerning the University. The University has been formed by an act of Parliament, i.e., the Delhi University Act, VII of 1922 [in short, "DU ACT"], which came into force on 01.05.1992. After that, several amendments have been made, including the last one, i.e., Act No. 25 of 2008, which received the assent of the President on 13.01.2009.

18.2. The DU Act, among other things, makes provisions for the authorities, albeit in a hierarchical order, which govern the affairs of the University. Section 17 of the DU Act adverts to the following authorities, i.e., the court, the EC; the AC; finance committee; faculties and lastly, such other

authorities as may be declared by the statutes to be authorities of the University.

19. As indicated above, reference to the hierarchical order is made in Section 18. The court is the supreme authority of the University, which has the power to review the Acts of the EC and the AC, save and except when they act in accordance with the powers conferred upon them under the DU Act, Statutes or Ordinances. The court is also conferred with residuary power concerning all matters vested in the University, which are not provided in the DU Act or the statutes. Thus, under the Act, the EC functions as the executive body of the University (See Section 21 of DU Act), while the AC is an academic body of the University which controls, generally regulates and is responsible for maintenance of standards of instruction, education and examination within the University. The AC is also empowered to exercise such other powers and perform such duties as the Statutes confer or impose upon it. The AC also has a right to advise the EC on all academic matters[2]. As to what subjects Statutes may deal with is embedded in Section 28 of the DU Act. The manner in which Statutes are framed is incorporated in Section 29 of the DU Act. Amongst other things, the EC has been empowered to forge new or additional statutes or even amend and repeal the same.

19.1. Section 30 of the DU Act states what Ordinances can provide for, albeit subject to the DU Act and Statutes. Thus, Clause (a) of Section 30 adverts to admission of students to the University, and their enrollment. The residuary area in which an ordinance can operate is provided in Clause (n) of

[2] See Section 23 of the DU Act

Section 30. Section 31 provides that Ordinances of the University (as in force before the commencement of the DU Act) may be amended, repealed or added to at any time by the EC. Proviso ii to the said Section, i.e., Section 31, states no Ordinance shall be made affecting the admission or enrollment of students or prescribing examinations to be recognized as equivalent to the University examinations unless the AC has proposed a draft of such Ordinance. The remaining sub-sections of Section 31, beginning with sub-section (2) and ending with sub-section (6), provide for a layered procedure for framing an ordinance, which alludes to involvement of the Visitor and the court.

19.2 While we need not advert in detail to the said sub-sections, it is essential to highlight that even though the EC has the power to reject or return for reconsideration any draft proposed by the AC concerning an Ordinance, it cannot amend the draft proposal submitted by the AC. When a draft proposal submitted by the AC is rejected, an appeal lies to the Central Government. The Central Government can, by an order, direct that the proposed Ordinance should be laid in the next meeting of the court for its approval and that pending such approval, it shall have effect from such date as may be specified in the order. The caveat attached to this is that if the Ordinance is not approved by the court at such a meeting, it ceases to have effect. All Ordinances framed by the EC as soon as they are made are placed before the Visitor and the court. The court is empowered to consider such Ordinance at its next meeting where it can by a resolution passed by not less than 2/3rd of its members voting cancel any Ordinance made by the EC.

Thereupon, the Ordinance will thus cease to have effect from the date the court passes such resolution. (See Sub-section (4) of Section 31).

19.3. The Visitor has been conferred with the power to direct suspension of operation of any pending ordinance and the opportunity to exercise his power of disallowance. However, the order of suspension made by the Visitor ceases to have effect on the expiration of one month from the date of such order or expiration of 15 days from the date of consideration of the Ordinance by the court, whichever period expires later. (See Sub-section (5) of Section 31).

19.4. The Visitor is also empowered to signify to the EC his disallowance of an Ordinance at any time after the court has considered it. If such a disallowance is intimated by the Visitor to the EC, the Ordinance shall cease to have effect from the date of receipt of such intimation by the EC. (See sub-section (3) of Section 31.)

20. Thus, an overview of the above provisions in the DU Act clearly demonstrates that provisions regarding readmission contained in the Prospectus cannot stand on their own, unless backed by an Ordinance, which has the imprimatur of the AC and the EC. The ordinance IV to which we have made a reference hereinabove, has expressly incorporated Article 5 (b) concerning readmission of students detained in the first term, on account of shortage of attendance. Being a latter amendment, Ordinance IV, which specifically deals with readmissions, would prevail, in our opinion, over amendments made at an earlier point of time in Appendix II to Ordinance V, which deals with courses of study, as it would have gone through the rigour

of various checks and balances put in place under the DU Act and the Ordinances.

21. Thus, in our view, the submission advanced by the University that there is no provision for readmission if a student is detained on account of shortage of attendance in the first term is misconceived. We are also not persuaded by the submission advanced by Mr Rupal that Ordinance IV does not deal with a professional course such as LLB. A perusal of various Ordinances shows that they have a defined periphery and readmission concerning all disciplines of studies including professional courses such as LLB fall in Ordinance IV.

C. **Appraisal of Case Law**

22. This brings us to the argument advanced by Mr Rupal that amendment in Appendix II to Ordinance V was brought about in pursuance of the decision rendered by the division bench in *SN Singh v Union of India* Manu/DE/0449/2003. The petitioner in the said case was a law professor concerned with the falling standards in legal education because students were **promoted** to second and third year, **despite having failed in large number of papers**. Unbridled relaxation concerning attendance requirements by the SC was also brought to the fore. The division bench, *among other things*, noted that insofar as the relaxation of attendance requirements was concerned, the SC had exercised their powers ***without examining the genuineness of the medical certificates of the students.*** In this context, the court also noticed the norm framed by BCI for attendance. Based on facts brought to the notice of the court, **the promotion of students**

who had cleared only **four of fourteen papers** in the **fifth term** was quashed. Furthermore, the court issued a specific direction that no relaxation should be given for clearing five of fifteen papers in the third and fifth terms respectively, as stipulated by the University. Besides this, the court held that attendance rules should be amended by the University so that they are aligned with the Rules framed in that behalf by BCI. Significantly, the court observed that permissible relaxation would be as per the rules framed by the BCI and exercise of the power will be in accordance with the rules so framed.

22.1 A careful perusal of the judgment of the division bench would show that it did not forbid relaxation of the prescribed attendance percentage for **medical reasons or other reasons beyond the student's control**, provided the reasons were genuine, *albeit* in the context **of granting promotion to the students**. The court's anguish was that relaxation had been granted **without enquiring into the genuineness of the reasons proffered by the student**.

22.2 Significantly, the University's response to the judgment was to completely denude itself of the power of **readmission** in cases where students were detained due to a shortfall in attendance, *albeit via* a resolution passed by the AC on 12.12.2007. As noted above, the AC amended Appendix II to Ordinance V, which did not deal with readmission.

22.3. Be that as it may, as noticed above, on 12.07.2012, a provision concerning readmission was incorporated *via* Article 5(b) in Ordinance IV. Furthermore, since then, as noticed right at the beginning of our discussion,

the BCI has taken a nuanced stand regarding the readmission of students detained due to a shortfall in attendance. The BCI has opined that students could be re-admitted and thus allowed to complete their legal education if they failed to meet the attendance requirement for genuine reasons. As a matter of fact, it is BCI's stand that such students could be accommodated against the sanctioned seats allotted by BCI in the succeeding academic year.

23. This brings us to the other judgment cited by Mr Rupal, i.e., the *Samadhiya* case, in support of his submission, that students detained in the first term due to a shortfall in attendance cannot be re-admitted. It must be noted that the division bench rendered the judgment on 10.05.2012. The judgment makes no reference the two Ordinances which are subject matter of discussion in the instant case, i.e., Ordinance IV and V. The writ action challenged Clause 11(i) and 22 of the Promotion and Readmission Rules contained in the Bulletin of Information concerning the LLB course for Academic Year 2011-12.

23.1 The rationale given in the judgment: that student who is unable to meet the attendance criteria in the first term could always take the admission test and seek readmission could not have dealt with the issue which is raised before us, i.e., that the power of readmission has been expressly conferred on the University with the insertion of Article 5(b) in Ordinance IV, as the said amendment took place on 12.07.2012.

23.2 Moreover, a careful perusal of the division bench judgment would show the petitioner in that case sought readmission as he could not attend

classes as the results of qualifying examinations had not been declared on time. On facts, the division bench found that the University had computed the attendance of the petitioner from the date he was admitted to the LLB course. Therefore, according to the court, the delay in declaring the results of the qualifying exams could not have impacted his attendance.

23.3 In our view, as indicated above, the judgment is distinguishable for two reasons. First, the power to grant readmission due to a shortfall in attendance was conferred on the University with the insertion of Article 5(b) in Ordinance V after the judgment in the *Samadhiya case* was pronounced. Second, the BCI's stance has shifted even while acknowledging that the University has sway over aspects concerning admission, promotion, and evaluation. The BCI has opined that a student should not be subjected to a fresh admission process due to a shortfall in attendance if the reasons for absence are genuine.

23.4 Therefore, as the regime obtains today, the University has the power to direct readmission of students detained for the shortfall in attendance. Whether the power should be exercised by the University in a given case would depend, in our opinion, on the genuineness of the reasons put forth by the Student to explain their absence. If such an approach is adopted, it will preserve the object of maintaining high standards in legal education and, at the same time, grant succour to those students who, for genuine reasons, are unable to meet the stipulated attendance criteria.

24. The judgment in *Kiran Kumari's* case, which was also placed before us for consideration, was rendered on 16.05.2008 and, therefore, in our view,

would stand distinguished for the reasons we have indicated hereinabove while discussing the decision in *Samadhiya case*.

25. In support of the submission that provisions made in the Prospectus/Information Bulletin are binding on the students, Mr. Rupal placed reliance on *Arjun and Ors v Delhi University*, and *Devendra Singh Choudhary v Delhi University*. The judgment rendered in *Arjun and Ors*. was a case where students seeking to gain admission had sought establishment of a sports quota for netball for male candidates on the ground that a quota for the said sport was maintained only for female candidates. It is in this context that the division bench concluded that the guidelines contained in the Bulletin of Information for Admission to UG courses were binding on the appellant.

25.1 The judgment in *Devendra Singh Choudhary*'s case was also cited in support of the very same proposition, and was rendered in the backdrop of the following facts: The petitioner sought admission in Ph.d Course (medieval history). The petitioner was declined admission as he had not qualified the NET-JRF examination, which was specified as one of the conditions in Clause 9 of the admission policy published by the concerned University.

25.2. In our opinion, both judgments are distinguishable as they did not deal with the issue which confronts us in this case, i.e., the power of the University to re-admit a student detained in the first term due to a shortfall in attendance. In the instant case, the provision made for readmission in the Prospectus has to be seen in the context of the specific Articles concerning

readmission provided in the Ordinance. As discussed above, the provision in a prospectus cannot over-reach the periphery drawn by the Ordinance. It is, therefore, our view that the provisions incorporated in the Prospectus or information Bulletin would be binding on the students' seeking admission to the University as long as they are aligned with the prescriptions contained in the Ordinances, Statutes and the DU Act.

26. As regards Mr Rupal's contention that the appellant had not laid a challenge to Ordinance V, in our opinion, is an untenable contention for the reason that if the appellant is correct in his stance that the power concerning readmission exists in Ordinance IV and not in Ordinance V, then he need not assail the same. At the risk of repetition, it is reiterated that the provision for readmission incorporated in Appendix II to Ordinance V, on which the University places reliance, was superseded with the insertion of Article 5(b) in Ordinance IV.

27. The other submission of Mr Rupal that if the appellant who was detained in the first term due to shortfall in attendance is re-admitted, it would eat into a seat available for fresh admission is flawed for the reason that, in the instant case, the University had failed to exercise the power conferred upon it by Article 5(b) to Ordinance IV. Since the University was of the view that it did not have the power to re-admit, it did not examine the reasons put forth by the appellant as to why he had failed to meet the stipulated attendance criteria. There are several precedents of the Supreme Court[3] and this court[4], where courts, when faced with a situation concerning

[3] Dolly Chanda v Chairman, JEE, (2005) 9 SCC 779 & Asha v Pt. BD. Sharma, University of Health Sciences (2012) 7 SCC 389

denial of admission to a student, who otherwise was qualified, merely on account of failure to meet the technical requirements of the University's admissions process, have "molded the relief in a manner that the chasm between justice and law is narrowed[5]". In such cases, courts have directed admission in subsequent Academic Years, where it was not possible to admit the student in the subject Academic Year. In this particular case the University cancelled the appellant's admission due to shortfall in attendance under an erroneous assumption that it did not have the power to grant readmission. The fault was not of the appellant but that of the University.

27.1 The following extract from the Supreme Court's judgment in ***S. Krishna Sradha v State of Andhra Pradesh and Ors***. (2020) 17 SCC 465 sets out the aforementioned principle:

> *"**13.3** In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, **the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case** and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota."*

[4] Jasmeen Kaur v Union of India, (2018) SCC OnLine Del 9778, Dr Deepika Veerval v National Board of Examination and Anr, (2020) SCC Online Del 1342

[5] In Dr. Shidore Shital Mhatardeo v National Board of Examination, 2019 SCC Online Del 10444

28. In conclusion, it is our opinion that the power of readmission concerning students who failed to meet the stipulated attendance criteria is vested in the University by Article 5(b) of Ordinance IV.

28.1 Given Article 5(b) was inserted in Ordinance IV on 27.07.2012, much after the AC amended Appendix II to Ordinance V, it stood superseded by Ordinance IV.

28.2. The University's contention that the provision for readmission in Ordinance IV was inapplicable to professional courses is flawed and hence is rejected.

28.3. One of us, i.e., Rajiv Shakdher J, was confronted with a similar situation as a single judge in *Abhishek Singh* wherein a student detained from examinations due to attendance shortfall sought one-time concession to appear in his first term examinations on account of medical grounds. [We may note that in the current appeal, the appellant prays for different relief, i.e., readmission and not leave to write examinations without attending a requisite number of classes]. In the *Abhishek Singh case*, the court did not eventually grant relief to the student but observed the following regarding the University's policy *qua* students with medical ailments:

> ***"25.*** *The irony is [something that the University and the Bar Council of India (in short "BCI") need to work on] that the Regulation 7 (i), (ii) & (iii) of Ordinance VII of the University, on which reliance is placed by Mr. Rupal, which deals with both attendance and promotion, does not factor in circumstances such as the one which have arisen in the present case.*
>
> ***26****. The reason that this aspect is incongruous is that even if the Student is afflicted with an infectious disease (in this case the petitioner probably is) or a serious injury which genuinely degrades the students ability to attend*

classes, there is no leeway available to the administration to allow and, therefore, enable the concerned Student to continue with his/her studies while a student who may have superficially/ostensibly marked his/her attendance but failed to pass even one paper or even failed to appear in any of the papers in the 1st, 3rd and 5th term would be eligible for promotion to the 2nd, 4th and 6th term.

***27**. The insistence on attaining minimum attendance as prescribed in Regulation 7 seems, at least to my mind, out of place in situations such as this.*

***28**. There could be circumstance where a student could be carrying a serious infection such as Human immunodeficiency virus (‘in short “HIV”) and he insists that he would attend the classes, given the regulatory regime put in place, I wonder what would be the answer of the University in such situation. Swine flu, which has reached, at times, endemic proportions in Delhi is another example where confinement is routinely advised. I could give several other examples, however, to my mind, for the moment, these examples should suffice.*

***29**. It is, thus, in my opinion, important for the University as well as the BCI to revisit the attendance and promotion rules and perhaps make a provision and/or clarify that in genuine cases where students who are otherwise punctual and have a good track record would not be detained only for the reason that in a particular period they were not able to attend classes in circumstances such as the one cited above.*

***30**. In today’s world where technology rules the roost, the short-attendance issue can be dealt with by having students connected to classrooms via video-conferencing mode or having the lectures uploaded on Youtube.*

***31**. Requirement of physical presence in classrooms can be overcome during periods of confinement etc., by taking recourse to technology.*

***32.** More importantly, the policy makers need to separate the wheat from the chaff. Students who are indolent as against those who are temporarily disabled and/or distracted, and therefore fail to attain, in a given period, prescribed minimum attendance, need to be treated differently.*

***33.** One size fits all cannot be the approach of the educators. Engagement with students involves keeping track of several indices. Amongst them, their educational record is one of them. Bereft of necessary leeway, and, in a manner of speech, play-in-the joints lends to the decisions rendered by the college administrators a robotic hue. Harsh and at times disproportionate punishment can imbue frustration in an otherwise diligent student.*

> ***34***. *Thus, while one cannot but agree that high standards should be maintained in the field of education, and therefore attendance is important, it has to be borne in mind that even good and brilliant students face difficult circumstances which need to be understood and negotiated with care and compassion. The University has to have the skills of a trapeze artist; a difficult ask but not impossible.*
>
> ***35***. *I must also note that Mr. Singh who, appeared on behalf of the BCI, has indicated to the Court that issues such as the one which has arisen in this case are presently being deliberated upon by the BCI."*

[Emphasis is ours]

28.4 These observations were not disturbed by the division bench in LPA 209/2020. As noted at the outset, even though the BCI has advised institutional empathy [something that Mr Rao put forth vigorously], the University, for some reason, refuses to acknowledge that it is conferred with power to allow students to continue with their education, interrupted due to genuine medical ailments and other difficult circumstances that may be beyond their control.

28.5 The University's error in conflating the fate of students who, for genuine reasons, fail to meet the attendance criteria with those who play truant without explanation, appears to have been repeated in the impugned judgment. The learned Single Judge dismissed the appellant's writ action based on the court's judgment dated 01.09.2023 passed in WP (c) 8028/2023 whereby readmission was denied to another student, without going into reasons for shortfall in attendance.

28.6 The concern for maintaining high legal standards can perhaps be melded with Ordinance IV by reading into Article 5(b) the following: "the power to readmit students detained due to shortfall in attendance is confined

to cases where absence is on account of genuine reasons such as illness and any other reason beyond the student's control".

29. The appeal is allowed. The decision of the single judge is set aside for the foregoing reasons.

30. The University is directed to re-admit the appellant with the batch of 2024-2027 students [which we are told begins in August 2024], **by making suitable adjustment as suggested by BCI.**

(RAJIV SHAKDHER)
JUDGE

(AMIT BANSAL)
JUDGE

MAY 31, 2024