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

+ **W.P. (C) 9878/2018 & CM APPL. 38484/2018**

**GHALIB ZEYAD** ..... Petitioner

Through: Mr. Akhil Sibal, Sr. Adv. with  
Mr. Vedanta Varma,  
Ms. Mannat Sandhu and  
Mr. Akhil Kumar Gola, Advs.

versus

**JAWAHARLAL NEHRU UNIVERSITY & ORS..** Respondents

Through: Ms. Monika Arora, SC for JNU  
with Mr. Harsh Ahuja, Mr.  
Kushal Kumar and Mr. Praveen  
Singh, Advs.  
Mr. Ravinder Agarwal, Adv.  
for UGC

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

### **J U D G M E N T**

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**05.08.2019**

1. The petitioner is a student, who aspires to pursue the M.Phil. programme with the Jawaharlal Nehru University (Respondent No.1 herein and referred to, hereinafter, as “JNU”). He is visually impaired, suffering from 100% blindness in his right eye and 50% blindness in his left eye.

### **Facts**

2. One may commence the recital of the relevant facts, in the present case, with the clearing, by the petitioner, of the first year of his

Bachelor of Arts (B.A.) Examination, from the Maulana Mazharul Haque Arabic & Persian University (hereinafter referred to as “MMHAPU”) with 52.4% marks. Thereafter, there was a hiatus in the petitioner’s studies, owing to his physical limitations, and it was only in the monsoon semester of 2014 that the petitioner could migrate, from the MMHAPU to the B.A. (Hons.) (Persian) programme conducted as part of the integrated five year M.A. programme, by the JNU. Needless to say, prior thereto, he obtained the requisite migration certificate from the MMHAPU.

3. At this juncture, it is relevant to point out that the five year integrated M.A. programme conducted by the JNU – as is the case that several such five year programmes conducted by institutions, including, *inter alia*, five year programmes relating to law – is essentially an amalgam of a three year B.A. (Hons.) programme followed by a two year M.A. programme. Both the said programmes, together, constitute the “five year integrated M.A. programme”.

4. On successful completion of three years of joining the said integrated five year M.A. programme, a student becomes entitled to be awarded a B.A. (Hons.) degree, and would also be eligible to seek registration in the first year/first semester of the M.A. programme – which would effectively be the fourth year, and seventh semester, of the integrated M.A. programme.

5. The petitioner joined the third semester of the integrated M.A. programme (which would also be the third semester of the B.A. (Hons.) programme) in the JNU, in the monsoon semester, 2014.

6. The petitioner successfully cleared the first six semesters, of the integrated five year M.A. programme, the sixth semester being cleared by him in May, 2016. He, therefore, became entitled to the award of B.A. (Hons.) degree, as well as for registration for the “balance” two-year M.A. programme. Pursuant thereto, in July, 2016, the petitioner registered himself in the first semester of the M.A. programme (in Persian).

7. One may, at this stage, again digress from the recital of facts, to explain in brief, the manner in which points and grades, as well as “Grade Point Averages” (“GPAs”) are awarded to students pursuing programmes such as the integrated M.A. programme of the JNU.

8. The earlier existing system of awarding marks stands substituted, in most educational institutions, with a system of credits and GPAs, i.e., the Semester Grade Point Average (SGPA) and the Cumulative Grade Point Average (CGPA). In order to understand the essential features of this scheme, one may usefully refer to the first semester of the M.A. programme undertaken by the petitioner himself.

9. Each semester requires the student to attempt various courses, and each course is awarded a course number. At the discretion of the institution concerned, one or more of the courses, required to be undertaken by a student during any particular semester, may be treated as a “non-credit” course, which would mean that the credits applicable for the said course would not count towards the total number of credits

achieved by the student, and the grades awarded to the student, for the said course, would not count towards his SGPA, or CGPA. In the case of the petitioner, by way of example, the “Persian World (Contemporary)” course, was, in the first semester of his M.A. programme (i.e. the seventh semester of his integrated M.A. programme), treated as a non-credit course. Though, therefore, the petitioner was awarded credits and grades, for the said course as well, these credits and grades were not factored in, while assessing the total number of credits awarded to the petitioner, or his SGPA, or CGPA. The credits achieved by the petitioner, and his SGPA and CGPA in the said semester were, therefore, computed on the basis of the remaining five courses undertaken by the petitioner.

**10.** Another important feature of the above system of allocation of credits and GPAs is that credits are awarded solely on the basis of the number of courses undertaken, irrespective of the performance of the student therein. In the case of the petitioner, therefore, for example, there being five “credited” courses in the first semester of his M.A. programme, if he undertook all the five papers, he would be entitled, to twenty credits. His SGPA, or CGPA would, however, depend on his performance in the course, for which he would be graded, as grade points are awarded as per the grades awarded for any particular course. Clause 8.4 of Ordinance 15(A) of the Ordinances relating to the award of M.A./M.Sc. degrees, governing the JNU, provides for the grade points to be awarded, against specific grades, and reads thus:

“8.4 . The students shall be graded in each course on a 10 point scale, that is:

Grade	Grade Point
A+	9
A	8
A-	7
B+	6
B	5
B-	4
C+	3
C	2
C -	1
F	0

Note: 1. There shall be no rounding off of SGPA/ CGPA/ FGPA

2. The SGPA/CGPA/FGPA obtained by a student shall be out of a maximum possible 9 points.”

(“FGPA”, it may be noted, refers to “Final Grade Point Average”, for the computation of which the Ordinance provides a detailed formula. To adjudicate, and appreciate the merits of, the controversy in issue, however, it is not necessary to allude to the said formula.)

**11.** The total grade points awarded, on the basis of the grades granted to a student against each of the “credited” courses, is divided by the total number of credits, in order to work out the SGPA/CGPA. The SGPA, it may be mentioned, refers to the GPA for that particular semester, whereas the CGPA refers to the GPA for all semesters undertaken till then.

12. At this juncture, at the cost of some repetition, one may reproduce, *in extenso*, clauses 7 and 8, as well as their various sub-clauses, of Ordinance 15(A), thus:

**“7. Credit requirements:**

7.1 Ordinarily a course shall be given in prescribed number of contact hours a week to be decided by the faculty of the concerned Centre and the credit for these courses shall be as follows:

‘C’ level courses	2 credits
‘B’ level courses	3 credits
‘A’ level courses	4 credits

Provided that the Board may, on the recommendation of the Centre, allot less or more credits to a particular case.

7.2 The actual credits requirement for Master’s Degree shall be prescribed by the Centre concerned.

*Provided that it shall not be less than 64 credits.*

Provided further that Students who are admitted to the Master’s programme besides earning 64 credits shall also be required to clear two extra non-credit course.

Provided that the requirement of clearing of extra non-credit courses may be relaxed by the Board of the School in the case of a student or a group of students.

7.3 (a) Normal load of a student in Social Sciences and Natural Sciences in each of the semesters shall be of 16 credits.

(b) *A student with the permission of the Centre/School concerned may be allowed to carry*

*additional load over and above the normal load prescribed in clause 7.4 (a) above provided that the additional load shall not exceed 50% of the credits/courses a student is normally expected to cover in a semester.*

Provided further that the Centre/School may in exceptional circumstances permit the student a load 50% less than a normal load in a semester.

7.4 A student shall not be permitted to offer a course if he/she has not previously cleared a course(s) prescribed as a pre-requisite for the former.

## **8. Evaluation**

8.1 The system of evaluation for each course shall be laid down by the Board of the School on the recommendation of the centre concerned.

8.2 For courses having a semester examination, sessional work shall carry the same weightage as the semester examination.

8.3 The pattern and schedule of sessional work for each course of a semester shall be prescribed by the Board of the School, on the recommendation of the Centre concerned and shall be made known to the students at the commencement of each semester.

8.4. The students shall be graded in each course on a 10 point scale, that is:

Grade	Grade Point
A+	9
A	8
A	7
B+	6
B	5



B-	4
C+	3
C	2
C-	1
F	0

Note: 1. There shall be no rounding off of SGPA/CGPA/FGPA

2. The SGPA/CGPA/FGPA obtained by a student shall be out of a maximum possible 9 points.

The Final Grade Point Average obtained by a student shall be classified into following divisions:

FGPA	Class/Division
8.5 and above	High First Class
7.5 and above but less than 8.5	Middle First Class
6.5 and above but less than 7.5	Lower First Class
5.5 and above but less than 6.5	High Second Class
4.5 and above but less than 5.5	Middle Second Class
4.0 and above, but less than 4.5	Lower Second Class

*8.5 A Student shall be deemed to have cleared a course only if he/she has participated in the sessional work and has secured an overall grade higher than 'F' in that course (for courses having no end semester examination) or has participated in the sessional work and appeared in the end semester examination (for courses having semester examination) and secured a weighted grade higher than 'F' in that course. A student who fails in a course either by not participating in the sessional work and thereby securing an Overall grade of 'F' (for courses having end semester examination) or consequently being not eligible to appear in the end semester examination or by absenting from appearing in the end semester examination or by failing to secure a weighted grade higher than 'F' (for course having end semester*



*examination), shall be required to repeat that course or clear another similar (core or optional, as the case may be) course in lieu thereof.*

*8.6 A student who secures a grade higher than 'F' in a course may be permitted by the Centre, keeping in view its academic constraints, to improve his/her grade by repeating that course once, subject to proviso of Clause 8.5 of the Ordinance.*

*Provided further that a student who wants to repeat a course to improve his/her performance shall be allowed to do so only if he/she surrenders his/her earlier grade in the course by 16<sup>th</sup> August in case of the Monsoon Semester courses and by first February in case of Winter Semester courses. Having surrendered his/her earlier grade by due date, it will be his/her repeat performance in the course which will be taken into account to compute the SGPA and the CGPA. His/her transcript will however, reflect appropriately both the performances and the fact that he/she repeated the course/courses.*

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8.8 Examinations shall be conducted under the directions of the Dean of the School/Chairperson of Specialised Centres.

8.9 A student can take part in the curricular programme for the Master's Degree of the University to a maximum of six semesters excluding the period of zero semester(s) granted to him/her by the University.

8.10 Examiners or Board of Examiners shall be appointed for each course by the Board of the School, on the recommendation of the Centre concerned.

8.11 An application for admission to the semester examination shall be made in the prescribed form and forwarded to the ,Dean of the School through the Head of

the Centre concerned and shall be accompanied by the following, certificates:

- i) Participation in sessional work;
- ii) Clearance of all dues.”

(Emphasis supplied)

Each of the courses, undertaken by the petitioner during his “balance” two-year M.A. programme, it may be noted, was an ‘A’ level course and, therefore, carried four credits.

**13.** Clause 12 of Ordinance 15(A) contains a power of relaxation vested in the Academic Council of JNU, and reads as under:

“Notwithstanding what is contained in the Ordinance, the Academic Council may, in exceptional circumstances and on the recommendations of the Centre/Department and Board of Studies of the School as well as on the merits of each individual case, consider at its discretion and for reasons to be recorded relaxation of any of the provisions except those prescribing CGPA/FGPA requirements.”

**14.** One may now return to the recital of facts.

**15.** As already noted hereinabove, in first semester of his M.A. course (i.e., seventh semester of the integrated M.A. course), the petitioner had to undertake six courses, of which five were credited, and one was a “non-credit” course. Undertaking all the courses in the said semester would, therefore, contribute to the achieving, by the petitioner, of twenty credits. His SGPA, or CGPA (which, in view of the fact that it was the first semester of his M.A. program, would be equal), would be determined on the basis of the grades awarded to him against each of the said courses.

**16.** The petitioner undertook his first semester examination of the M.A. course in November/December, 2016.

**17.** In January, 2017, the petitioner registered himself for the second semester of his M.A. course, even while the result of the first semester was awaited. In the second semester, the petitioner had four credit courses, with four credits attributed to each, working out to a total of 16 credits.

**18.** In February, 2017, the JNU announced the result of the first semester of the M.A. course undertaken, *inter alia*, by the petitioner. On the basis of the grades awarded to him, in each of the courses in the said semester, the petitioner obtained an SGPA (and CGPA) of 6.4, with 20 credits.

**19.** In April/May, 2017, the petitioner undertook the second semester examination of his M.A. course.

**20.** In July, 2017, the petitioner registered himself for the third semester of the M.A. programme. While so registering, the petitioner also applied for repeating one of the courses of the first semester, in order to improve his result. Each of the courses carried four credits, thereby working out to 20 credits in the third semester, of which sixteen were attributable to the four courses of that semester, and four credits were attributable to the one repeated course of the first semester.

21. In August, 2017, the second semester results, of the M.A. course being undertaken by the petitioner, were declared by the JNU. The petitioner obtained an SGPA of 5.5, with a CGPA, over the first two semesters, of 6.0, with sixteen credits (as there were four courses in the said semester).

22. In November/December, 2017, the petitioner gave the third semester examination of the M.A. course.

23. On 5<sup>th</sup> January, 2018, while the results of the said third semester examination were awaited, the petitioner registered himself for the fourth semester of the M.A. course, which involved four courses. *The petitioner applied, simultaneously, for repeating the four courses of his second semester, in order to improve his performance.*

24. A reading of clause 7.3 of the Ordinance 15(A) (*supra*), reveals that a student was permitted only to carry an additional load, over and above the normal load prescribed for any particular semester, up to a maximum of 50% of the credits/courses to be undertaken for that particular semester.

25. As the petitioner was required to undertake four courses in the fourth semester of the M.A. course, each of which carried four credits, he could, as per Clause 7.3(b), have applied only for repeating two of the papers of his second semester, i.e., up to a maximum of eight credits.

26. The application, of the petitioner, for being permitted to repeat, with the four courses of his fourth semester, *all four courses* of his second semester was, therefore, clearly in violation of Clause 7.3 (b) of Ordinance 15(A).

27. The writ petition pleads that the petitioner was unaware of this stipulation, and applied for repeating all the four courses of his second semester in ignorance of the Ordinance position. The petitioner, however, points out that the JNU, too, overlooked, possibly by way of inadvertence, the mandate of clause 7.3(b), by registering the petitioner for all four repeat courses of his second semester, along with the four courses of his fourth semester.

28. The Registration Form, it is pointed out, was filled up by the Section Officer of the Centre for Persian & Central Asian Studies (CPCAS) of the JNU, as the petitioner was visually impaired, and the petitioner merely appended his signature thereon. This registration form was, subsequently, approved and signed by the Chairman of the CPCAS, who forwarded the form to the Controller of Examination, who also accepted the same.

29. This resulted, therefore, in the petitioner standing registered, in the fourth semester, not only for the four courses of that semester, but also for the four “repeat” courses of his second semester, working out to a total of eight courses, carrying 32 credits.

30. The petitioner, therefore, submits that, if his application was not in accordance with Clause 7.3(b) of Ordinance 15(A) (*supra*), there

was successive overlooking, of the mandate of the said clause, by the respondent as well, firstly, by the Section Officer of the CPCAS, thereafter, by the Chairman of the CPCAS, and finally, by the Controller of Examinations.

**31.** The blame for this lapse, if at all, cannot, therefore, it is sought to be pleaded, be laid entirely at the doors of the petitioner, especially in view of the petitioner's visual impairment.

**32.** The result of the third semester of the M.A. course, being undertaken by the petitioner, was declared by the JNU in February, 2018. The petitioner acquired an SGPA of 7.0 therein, with a CGPA of 6.1. As he had, by then, undertaken 13 courses, he had earned a total of 52 credits.

**33.** It is averred, in the writ petition, that, at this stage, a colleague of the petitioner informed him that his application, for permission to repeat all the four courses undertaken by him in the second semester of his M.A. programme, was in violation of Ordinance 15(A), whereupon the petitioner contacted the Section Officer who had filled in the registration form, who informed him that the registration form, which was improperly filled, would be rejected, and not processed, by the computer system. As such, the petitioner decided to abide by the grades and credits obtained by him in the second semester examination. It is averred that, reassured thus, the petitioner did not appear in the four papers of the second Semester examination, as he was under the impression that his application therefor, being irregular, would not be processed.



**34.** The fourth semester examination of the petitioner's M.A. course was conducted between fourth April, 2018 and 3<sup>rd</sup> May, 2018.

**35.** On 4<sup>th</sup> May, 2018, the petitioner addressed a representation to the Rector of the JNU, requesting that his registration, for repeating the papers of the second semester, be cancelled and the grades and credit points originally awarded to him in the said semester, as per the result announced in August, 2017, be taken into account. This representation was rejected by the Evaluation Branch of the JNU *vide* the impugned communication, dated 6<sup>th</sup> June, 2018, on the ground that such restoration of the previous grades was not permissible in view of Clause 8.6 of Ordinance 15(A) (*supra*).

**36.** The petitioner represented, thereagainst, to the Vice-Chancellor (VC), on 18<sup>th</sup> July, 2018.

**37.** In July, 2018, the result of the fourth semester of the M.A. programme undertaken by the petitioner was announced by the JNU. The petitioner was, unfortunately, awarded 'F' for all the four repeat courses of his second semester, as he had failed to appear therein. He, therefore, obtained an SGPA of 3.37, and a CPGA of 5.35, as the JNU evaluated the petitioner on the basis of thirty two credits in the fourth semester, but granted him 0 (zero) credit points for the four courses of his second semester, treating his original credits earned, as having been surrendered and, as he had not appeared in the repeat courses, his entitlement, for these credits, against the said courses, to be 'Nil'.

**38.** As a result, though the petitioner, in fact, appeared in all the 17 courses of his M.A. programme, he was given only 52 credits instead of 68, treating him as having appeared only in 13 courses. The petitioner was treated as never having appeared for the four courses of the second semester of his M.A. programme, on the reasoning that (i) by applying for permission to repeat the said four courses, along with the four courses of his fourth semester, the petitioner had surrendered the credits, as well as the grades, originally earned by him for the second semester, as per the result announced in August, 2017, and (ii) as he failed to appear for the four courses of the second semester of the M.A. program, along with the four courses of his fourth semester, he was not entitled to any credits or any grade, against the said four courses of his second semester.

**39.** This rendered the petitioner ineligible for being awarded M.A. degree as per Clause 7.2 of the Ordinance 15(A) (*supra*), which requires a minimum of 64 credits for the award of the said degree.

**40.** It is important to note, here, that the handicap of the petitioner, insofar as the award of the M.A. degree was concerned, was only in respect of the total number of credits earned by him, and not with respect to his GPA. Clause 9.2 of Ordinance 15(A) required the petitioner to obtain a CGPA of 4.0, in order to be entitled for the award of his M.A. degree, the prescribed CGPA being 4.0. It is relevant, in this context, to note that, even for admission to the M.Phil. programme conducted by the JNU, general category candidates were

required to score a CGPA of 5.0 in their M.A. programme, which is relaxed to 4.5 in the case of physically handicapped candidates. The petitioner's CGPA was, in fact, above the minimum CGPA even for general category candidates, as he had scored a CGPA of 5.35, even on the basis of the 13 courses undertaken by him in the first, third and fourth semesters of the M.A. programme, i.e., even if one were to exclude the four courses of his second semester. Where the petitioner fell short, of the prescriptions, for the award of M.A. degree, was in the number of credits earned, which would correspond to the number of courses undertaken by him. As the petitioner was treated as never having appeared in the four courses of his second semester, he was denied the 16 credits available against the said four courses. As a result, he scored only 52, instead of 68 credits, which fell short of the minimum of 64 credits, required to be earned by a student in order to entitle him to an M.A. degree (as per Clause 7.2 of Ordinance 15 (A) *supra*).

**41.** The petitioner, in the circumstances, addressed yet another representation, on 2<sup>nd</sup> August, 2018, to the Rector, JNU, which was forwarded by the Chairperson of CPCAS to the Dean of Examination recommending that a sympathetic view be adopted, considering the petitioner's physical limitations and financial condition. The said representation, too, however, was rejected by the Registrar (Evaluation), on 7<sup>th</sup> August, 2018.

**42.** It is in these circumstances that the petitioner has invoked the extraordinary jurisdiction vested in this Court under Article 226 of the

Constitution of India, by means of the present writ petition, praying for quashing and setting aside of the rejection, by the Evaluation Branch of the JNU, of the petitioner's representation on 6<sup>th</sup> June, 2018 (*supra*), as well as the subsequent order, dated 7<sup>th</sup> August, 2018 (*supra*), passed by the Registrar (Evaluation), and for restoration of the grades and GPA originally obtained by the petitioner in the second semester of his M.A. programme, as declared in August, 2017.

43. The petitioner, who has cleared the requisite entrance examination for pursuing his M. Phil. programme with the JNU, has been unable to register for, or obtain admission to, the said course, for want of the requisite M.A. degree issued by the JNU. He, therefore, prays for issuance of directions, to the JNU, to retain a seat, for him, in its M. Phil. programme.

44. Counter affidavits, in response to the writ petition, have been filed by the JNU, as well as University Grants Commission (U.G.C.).

### **Rival stands**

45. I have heard Mr. Akhil Sibal, learned Senior counsel on behalf of the petitioner as well as Ms. Monika Arora, appearing for the JNU.

46. Written submissions have also been filed by both parties.

47. The rival stances, as canvassed by the petitioner and the JNU before me, may be captured thus.

**48.** Arguing on behalf of the petitioner, Mr. Sibal reiterates the contentions advanced in the writ petition, and draws especial attention to clause 7.3(b) of Ordinance 15(A) (*supra*), which specifically states that a student, *with the permission of the Centre/School concerned*, may be allowed to carry additional load over and above the normal load prescribed for the oncoming semester. There was no absolute right, therefore, conferred on a student, to opt for any additional load, such right being necessarily conditioned by grant of permission by the school/centre concerned.

**49.** Mr. Sibal would seek to contend, therefore, that the CPCAS could not merely act as a post-office to transmit the application form of the petitioner, but had necessarily to apply its mind thereto.

**50.** In that view of the matter, Mr. Sibal would submit that very registration of the petitioner, for the four repeat courses of the second semester had to be treated as invalid, and void *ab initio*. If such registration was invalid *ab initio*, it is submitted, the failure, on the part of the petitioner, to sit for the said repeat courses, was inconsequential, and could not result in any evisceration of the original grades obtained by the petitioner in the second semester results, as announced in August, 2017.

**51.** The petitioner has also questioned the validity of the reliance placed by the JNU on Clauses 5.4, 8.5 and 8.6 of the Ordinance 15(A) (*supra*) submitting that these clauses would apply only in the case of a valid registration.

**52.** As a fallback argument, Mr. Sibal also relies on Clause 12 of Ordinance 15(A) (*supra*), which permitted relaxation of the various conditions in the Ordinance, in an exceptional case. The case of the petitioner, Mr. Sibal would seek to convince this Court, had necessarily to be treated as exceptional, especially in view of his physical limitations, despite which he had excelled in his academic pursuits.

**53.** Ms. Monika Arora, arguing *per contra*, would submit that the case of the petitioner would clearly be hit by the Ordinance 15(A) (*supra*), which resulted in the surrender by a candidate, who went in for improvement, of his earlier grades. She also draws attention to the fact that, as per Clause 5.4 of the Ordinance 15(A)(*supra*), the deadline for dropping of any course, by the petitioner, was 17<sup>th</sup> February, 2018. Clause 5.4 of the Ordinance 15(A)(*supra*) may, for ready reference, be reproduced thus:

“5.4 No student shall be allowed to add a course or substitute a course for another course later than three weeks from the date of commencement of the semester. A student wishing to drop a course must do so as early as possible in no case later than six weeks from the date of commencement of the semester.”

**54.** No request for withdrawal of the permission, sought by him, for repeating the four courses of his second semester, having been made by the petitioner within the prescribed six week period stipulated in Clause 5.4 of Ordinance 15(A)(*supra*), and no request having been made, by the petitioner, to the Evaluation Branch of the JNU, for retention of the original second semester grades obtained by him,



within the said period, Ms. Monika Arora would seek to submit that the petitioner has, unfortunately, missed the bus.

**55.** In the circumstances, she would seek to submit that the JNU cannot be faulted in any manner for having treated the petitioner as failed in the four courses of his second semester, not having appeared for the same, and, therefore, having been awarded only 52, instead of 68 credits.

### **Analysis**

**56.** Having heard the learned counsels at length, and having applied myself to the facts and the law, it is obvious, to me, that the petitioner is bound to succeed, for the simple reason that the law cannot permit the punishment of a citizen, for failing to act in a manner proscribed by the law itself.

**57.** The petitioner, and the respondent, are *ad idem*, that, in view of the proscription contained in Clause 7.3 of Ordinance 15(A) *supra*, the petitioner could not have repeated, with the four courses of the fourth semester of his M.A. programme, the four courses earlier attempted by him in his second semester in April/May, 2017 (the results of which were announced in August, 2017). *Per sequitur*, the petitioner could not be treated as having failed, in the said four courses of his second semester, merely because he failed to appear in the said four courses, along with the four courses of his fourth semester. As the petitioner could not, in view of Clause 7.3 of Ordinance 15(A) *supra*, have

possibly re-appeared in the four courses of his second semester, originally undertaken by him in April/May, 2017, his failure to so reappear cannot result in his being visited with an 'F' grade in the said four courses, forfeiting the credits earlier earned by him at the end of his second semester.

**58.** Clause 7.3(b) of Ordinance 15 (A) (*supra*) specifically prohibited the carrying of additional load, by a student, in excess of 50% of the credits/courses normally expected to be covered in a semester. Any application, for carrying additional load in excess of the said stipulation of 50% would, therefore, be void *ab initio*, being in violation of Clause 7.3(b). The mere fact that, by inadvertent oversight or otherwise, the authorities, i.e., the Section Officer and the Chairperson of the CPCAS, and the Convener of the Examination Committee, failed to notice this proscription, and registered the petitioner for repeating all the four courses of his second semester, could not have legalised his application, or entitled him to appear in all the said four courses, in violation of Clause 7.3(b).

**59.** In this context, there is substance in Mr. Sibal's contention that the entitlement, of the petitioner, to re-appear in any of his earlier courses, was, by virtue of Clause 7.3(b), conditional on grant of permission, therefor, by the Centre/school concerned. Even if the petitioner had inadvertently, or erroneously, applied for permission to re-appear in all the four courses earlier undertaken by him, in his second semester, in April/May, 2017, it was the responsibility of the authorities including, *inter alia*, the Chairperson of the CPCAS, to

decide the two courses, which the petitioner could be permitted to re-attempt. In registering the petitioner, for re-attempting all the four courses of his second semester, the authorities in the CPCAS acted in a clearly illegal manner. Two conceivable options were available, to the authorities, when the petitioner applied for permission to re-undertake all the four courses of his second semester. They could either have rejected the application outright, or, possibly, permitted the petitioner to appear in two of the said four courses, which would have resulted in adherence to the 50% limit prescribed by Clause 7.3(b). They, however, did neither; instead, they registered the petitioner for re-appearing in all the four courses of the second semester of the M.A. programme. This was a course of action which was not open to the respondents. The respondents having, therefore, pursued the said course – perhaps by inadvertence or oversight – in violation of the interdiction contained in Clause 7.3(b) of Ordinance 15(A), the petitioner could not be made to suffer for not having followed it up and appeared in all the four courses, which would, in turn, have resulted in his infracting Clause 7.3(b) of Ordinance 15(A) *supra*.

**60.** Though the petitioner would be entitled to succeed even on the above reasoning, the reliance, by Mr. Sibal, on Clause 12 of Ordinance 15(A) is also well taken. The said Clause empowered the Academic Council to, in exceptional circumstances, on the recommendations of the Centre/Department and keeping in mind the merits of each individual case, relax any of the provisions, except those relating to the CGPA/FGPA requirements. It has already been noted, hereinabove, that, even if the four courses of the second

semester of the petitioner were to be excluded from consideration, the petitioner, nevertheless, fulfilled the required CGPA stipulation, to entitle him to be awarded an M.A. degree. The objection of the JNU was, essentially, regarding the number of credits earned by the petitioner. This number stood artificially reduced from sixty eight, to fifty two, because of the exclusion of the four courses undertaken by the petitioner in the second semester of his M.A. programme, in April/May, 2017. The reduction was “artificial”, because the petitioner had, in fact, appeared in, and undertaken, the said four courses, but the said appearance, an undertaking of the courses, by the petitioner, were deemed to have been surrendered, by the JNU, by operation of the proviso to Clause 8.6 of Ordinance 15(A) (*supra*). In my considered opinion, the very invocation of the said proviso, to Clause 8.6, was completely misconceived. By its very nature, the proviso to Clause 8.6 could not have permitted something which stood prohibited by the other Clauses of Ordinance 15(A). Even on its plain reading, the proviso would apply only in a situation in which the desire, of the student, to repeat his earlier course/courses, to improve his performance, *was permissible* under Ordinance 15 (A). If the desire of the student was itself in contravention of the Ordinance, there could, quite obviously, be no question of operating the proviso to Clause 8.6, or of deeming the student to have surrendered his or her earlier grade, thereunder. The surrender, by the petitioner, of the grades, and the credits, obtained by him in the four courses of his second semester, as undertaken in April/May, 2017, could, quite obviously, only be consequential on the petitioner being permitted, by the Ordinance, to repeat the said four courses, in order to improve his performance.

Inasmuch as Clause 7.3(b) of Ordinance 15(A) could not permit the repeating, by the petitioner, of the four courses of his second semester, the proviso to Clause 8.6, equally, could not apply so as to deem the petitioner to have “surrendered” the grades, or the credits, originally obtained by him in the said four courses, as declared in August, 2017.

**61.** In the circumstances, Clauses 5.4 and 8.5 of Ordinance 15(A), on which Ms. Arora places reliance, are also obviously inapplicable.

**62.** Before parting, it may be noted that the accomplishments of the petitioner, as set out in the writ petition, to which the respondents offer no denial, clearly indicate that the petitioner is academically gifted, and has, by dint of perseverance and hard work, overcome his physical limitations. The word “handicapped” has, with the passage of time, revealed itself to have been a malapropism all along, and persons who suffer from unfortunate physical limitations are now, more appropriately, recognised as being merely “challenged”. We see, every day, persons overcoming such challenges, thrown in their way by an unhappy providence, and excelling. The stage of integration of such persons into the mainstream of society, is long past; it only remains, now, for us to recognise that such persons are a part of our society, and one that is essential, and inalienable. Visual impairment, particularly, is, ever so often, conquered, without allowing it to stand in the way of the “impaired” from scaling the heights of her, or his, chosen profession. A notable example of such an achiever is available, with us, even in this very Court.

63. In times such as these, therefore, the attitude, that the JNU has chosen to adopt, while dealing with the case of the petitioner, can only be characterised as woefully anachronistic.

### **Conclusion**

64. For the above reasons, the writ petition succeeds, and is allowed. The impugned rejection, by the Evaluation Branch of the JNU, of the petitioner's representation, on 6<sup>th</sup> June, 2018, as well as the subsequent order, dated 7<sup>th</sup> August, 2018, passed by the Registrar (Evaluation), are quashed and set aside. The original grades, and the GPAs, worked out on the basis thereof, as obtained by the petitioner in the second semester of his M.A. course, undertaken by him in April/May, 2017, the results of which were announced in August, 2017, stand restored. Inasmuch as, by such restoration, the petitioner would be entitled to be awarded the M.A. degree in Persian, the JNU is directed to do so, forthwith and without further delay. The petitioner would also, consequently, be entitled to pursue his M.Phil. programme with the JNU, which is, accordingly, directed to grant the petitioner admission to a seat in the said programme.

65. In view of the fact that the JNU is an academic institution of excellence and repute, I refrain from awarding the costs.

**C. HARI SHANKAR, J**

**AUGUST 05, 2019**

*dsn/r.Bararia*