

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.2454 of 2020**

1. Xenia Dhar
2. Palak Sharma
3. Gaurav Mitra
4. Vishal Raj Singh
5. Aditya Raj Petitioners.

-Versus-

1. The National Law School of India University, through its Registrar, Nagarbhavi, P.S. Mallathahalli, Bangalore-560072.
2. The Union of India through the Secretary, Ministry of Education, Shashtri Bhawan, Baroda House, New Delhi-110001.
3. The Bar Council of India, through the Chairman, 21, Rouse Avenue, Institutional Area, Near Bal Bhawan, New Delhi-110002.
4. The Consortium of National Law Universities, Nagarbhavi, P.S. Mallathahalli, Bangalore-560072.
..... Respondents.

CORAM : HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioners : M/s Shubham Gautam &
Baibhaw Gahlaut, Advocates
For Respondent no.1: Mr. Sajan Poovayya, Sr. Advocate &
Mr. Indrajit Sinha, Advocate
For Respondent no.2: Ms Shreesha Sinha, A.C. to ASGI
For Respondent no.4: Mr. Manoj Tandon, Advocate

Order No.03

Date: 11.09.2020

1. This case is taken up through video conferencing.
2. The present writ petition has been preferred for quashing the notice dated 03.09.2020 (Annexure-3 to the writ petition) issued by the National Law School of India University, Bengaluru, declaring that a separate examination for admission to its Five Years B.A, LL.B. (Hons.) degree programme will be held on 12.09.2020.
3. The factual background of the case as stated in the writ petition is that the in the year 1987 the first National Law University namely, the National Law School of India University was established in Bengaluru, Karnataka (hereinafter referred as 'NLSIU, Bengaluru')- respondent no.1 in furtherance of second-generation reforms of legal education. Thereafter, a number of National Law Universities have been established in different States with the primary objective of providing highest standards of legal education and to make Indian legal education comparable with the most reputed international institutions of legal education. Till date 23 NLUs have been established in various states of India. A PIL being CWP No. 68 of 2006 was filed in the

Supreme Court of India in the year 2006 seeking test for admission to all the NLUs and thereafter in the year 2008 seven National Law Universities signed a Memorandum of Understanding to hold Common Law Admission Test (CLAT). The first CLAT examination was conducted in the year 2008. Subsequently in 2015, a revised Memorandum of Understanding was signed by NLUs to include other seven National Law Universities within the ambit of the CLAT. In the meanwhile, a PIL was filed seeking establishment of a permanent secretariat with a permanent body to look into the conduct of CLAT and the Supreme Court of India directed the Ministry of Human Resource Development, Government of India to ensure that CLAT is conducted in a just and fair manner. Thereafter, on 17.10.2018 a permanent CLAT Secretariat was established at Bengaluru and it was decided that CLAT would be conducted by the Executive Committee of CLAT consortium. Thereafter, on 26.03.2019 the CLAT consortium was registered at Bengaluru under the Karnataka Co-operative Societies Act wherein 16 NLUs signed as founding members and consequently the CLAT Consortium became a legal entity. Subsequently, all the remaining NLUs except National Law University, Delhi joined CLAT consortium which has three permanent members namely National Law School of India University (NLSIU), Bengaluru; National Academy of Legal Studies and Research, Hyderabad; National Law Institute University, Bhopal and the Vice Chancellor of NLISU, Bengaluru is the Ex-officio Secretary of the CLAT consortium. In January, 2020, CLAT consortium opened registration for CLAT Examination 2020 fixing 31.03.2020 as initial deadline for registration which was subsequently extended to 10.07.2020. The petitioners submitted the registration forms within the prescribed period. However, due to the outbreak of Corona virus (Covid-19) Pandemic, the CLAT 2020 was not conducted on the scheduled date and was shifted from time to time and presently the said examination is scheduled to be held on 28.09.2020. In the meantime, on 03.09.2020 the NLSIU, Bengaluru came up with a notice informing inter alia that the NLSIU Bengaluru would be conducting a separate examination on 12.09.2020 for admission to its five years B.A. LL.B. (Hons) degree programme. Hence, the present writ petition.

4. Mr. Shubham Gautam, the learned counsel appearing on behalf of the petitioners submits that the act of NLSIU Bengaluru in declaring a

separate examination for admission to its Five Years B.A. LL.B. (Hons) degree programme for the session 2020-21 is illegal and arbitrary, as the same has been issued in violation of Clause 15.7 of the Bye Laws of the Consortium of National Law Universities. It is submitted that the Vice Chancellor of the NALSAR, Hyderabad has expressed his dismay that while NLSIU, Bengaluru chooses to continue in the consortium, yet conducts its own admission test which is not permissible under the Bye Laws of the consortium. It is also submitted that by the arbitrary action of the NLSIU Bengaluru, the right of the petitioners to have an examination in just and fair manner has been violated. Moreover, the action of NLSIU, Bengaluru is violative of the principle of promissory estoppel, since it has withdrawn from CLAT, 2020 after submission of the registration forms by the students intending to appear for CLAT. The declaration of new date of examination by NLSIU, Bengaluru, about 10 days before the declared date of examination is illegal, arbitrary and whimsical. It is also submitted that the action of the NLSIU, Bengaluru is against the direction of the Hon'ble Supreme Court to get the examination conducted in fair and just manner.

5. Mr. Manoj Tandon, the learned counsel appearing on behalf of the respondent no. 4, submits that this court is empowered to exercise its writ jurisdiction, keeping in view the mandate of Article 226(2) of the Constitution of India.
6. The learned counsel appearing on behalf of the Union of India- Respondent No.2 informs the court that a writ petition being W.P.(C) No.1030 of 2020 raising similar issue has been filed in the Supreme Court and another writ petition is also pending in the High Court of Madhya Pradesh.
7. Mr. Sajan Poovayya, the learned Senior Counsel, appearing on behalf of NLSIU Bengaluru submits that since the writ petitions with similar grievance have been filed in the Supreme Court as well as in the High Court of Madhya Pradesh, it would not be appropriate for this Court to entertain the present matter in view of the principle of forum non-convenience. The learned Senior Counsel, while justifying the impugned notice dated 03.09.2020, submits that since the examination of CLAT 2020 has repeatedly been postponed due to the outbreak of Coronavirus (Covid-19) pandemic, NLSIU Bengaluru has been put to a uniquely disadvantageous position as it follows a "trimester system"

and if the admission is not completed before the end of September 2020, it will inevitably result in a Zero year with no admission. It is also submitted that under the said circumstance the NLSIU Bengaluru has been compelled to conduct a separate admission process for the said examination for the academic year 2020-21. It is further submitted that before issuing notice dated 03.09.2020, the matter was considered at length in the Faculty Meeting of the University and only when it was found that CLAT 2020 has been postponed from 7th to 28th September 2020, the faculty unanimously decided to conduct a common entrance online test at the earliest and with the lowest possible application fee. It is also submitted that NLSIU Bengaluru is committed to ensure that NLAT 2020 must be conducted in an accessible and student friendly manner at various centres across India managed by M/s Testpan Pvt. Ltd., a national centre based testing company providing equipment and space for those students who are unable to meet NLAT 2020 test requirements. It is further submitted that more than 30,000 students have already registered for NLAT 2020 and only handful of students are raising grievances which would indicate that the decision of the respondent no.1 is in interest of the students at large.

8. Heard the learned counsel for the parties and perused the materials available on record. The petitioners are residing within the territory of the State of Jharkhand from where they have registered themselves for CLAT 2020 to be conducted by the CLAT consortium. They feel aggrieved with the notice dated 03.09.2020 inviting applications for admission to the five-year integrated B.A. LL.B. (Hons) programme dated 03.09.2020 whereby it was resolved by NLSIU, Bengaluru that separate examination process for B.A, LL.B. would be conducted for the academic session 2020-21.
9. The examination of National Law Aptitude Test (NLAT) 2020 is scheduled to be held tomorrow i.e. on 12.09.2020 and the students from all over the country will appear in the said examination and thus the primary question before this court is as to whether in the present facts and situation, would it be appropriate for this court, keeping in view the future prospects of thousands of students, to pass any direction which may have ramifications all over the country.

10. In the case of ***Narendra Kumar Maheshwari v. Union of India & Others, reported in 1990 Supp SCC 440***, the Hon'ble Supreme Court has held as under:

"113. Before we conclude, we must note that good deal of argument was adduced that these applications in different High Courts in civil suits were not genuine and properly motivated, but were mala fide. Even though these might not have been to feed fat an innocent object, it was apparent that it was to feed fat a grudge in respect of a competitive project by a competitor. Anyway, in the view we have taken, it is not necessary to decide the bona fides or mala fides of the applicants. Shri Nariman, when he moved the application initially, had suggested that we should lay down certain norms as to how the courts in different parts of the country should grant injunction or entertain applications affecting an all-India issue or having ramifications all over the country. Except that before the courts grant any injunction, they should have regard to the principles of comity of courts in a federal structure and have regard to self-restraint and circumspection, we do not at this stage lay down any more definite norms. We may also perhaps add that it may be impossible to lay down hard and fast rules of general application because of the diverse situations which give rise to problems of this nature. Each case has its own special facts and complications and it will be a disadvantage, rather than an advantage, to attempt and apply any stereotyped formula to all cases. Perhaps in this sphere, the High Courts themselves might be able to introduce a certain amount of discipline having regard to the principles of comity of courts administering the same general laws applicable all over the country in respect of granting interim orders which will have repercussion or effect beyond the jurisdiction of the particular courts. Such an exercise will be useful contribution in evolving good conventions in the federal judicial system."

11. In the case of ***Chhavi Mehrotra Vs. Director General, Health Services, reported in 1995 Supp (3) SCC 434***, the Hon'ble Supreme Court has held as under: -

"1. ----- It is a clear case where the High Court ought not to have exercised jurisdiction under Article 226 where the matter was clearly seized of by this Court in a petition under Article 32. The petitioner was eonomine a party to the proceedings before this Court. It is an unhappy situation that the learned Judge of the High Court permitted himself to issue certain directions which, if implemented, would detract from the plenitude of the orders of this Court. The learned Single Judge's perception of justice of the matter might have been different and the abstinence that the observance of judicial propriety, counsels might be unsatisfactory; but judicial discipline would require that in a hierarchical system it is imperative that such conflicting exercise of jurisdiction should strictly be avoided. We restrain ourselves from saying anything more."

12. In a recent judgement, the Hon'ble Supreme Court in the case of ***Union of India & Ors. Vs. R. Thiyagarajan, reported in 2020 SCC Online SC 349***, has held as under: -

"18. We also are of the view that the High Court exceeded its jurisdiction in matters like this. The High Court exercise its jurisdiction only over State(s) of which it is the High Court. It has no jurisdiction for the rest of the country. Matters like the present may be pending in various parts of the country. In the present case, matter had been decided by the Delhi High Court but some other High Court may or may not have taken different view. The High Court of Madras could not have passed such order. It has virtually usurped the jurisdiction of other High Courts in the country. It is true that sometimes this Court has ordered that all similarly situated employees may be granted similar relief but the High Court does not have the benefit of exercising the power under Article 142 of the Constitution. In any event, this Court exercises jurisdiction over the entire country whereas the jurisdiction of the High Court is limited to the territorial jurisdiction of the State(s) of which it is the High Court. The High Court may be justified in passing such an order when it only affects the employees of the State falling within its jurisdiction but, in our opinion, it could not have passed such an order in the case of employees where pan India repercussions would be involved."

13. It may thus be construed that there cannot be a straitjacket formula to deal with the cases affecting an all-India issue or having ramifications all over the country. The High Courts themselves should introduce a certain amount of discipline having regard to the principles of comity of courts administering the same general laws applicable all over the country in respect of granting interim orders which will have repercussion or effect beyond the jurisdiction of the particular courts. Such an exercise will be useful contribution in evolving good conventions in the federal judicial system. It is not justified for a High Court to pass any order which has pan India repercussions. The reason behind it is that when the same issue is raised in different High Courts, there might be a possibility of different views coming up which would create an impossible situation for the implementing agency to comply all the orders.
14. The learned counsel for the petitioners has tried to convince this Court that in view of Article 226(2) of the Constitution of India, the power conferred to the High Courts by virtue of clause (1) to issue directions, orders or writs to any government, authority or person, may also be exercised by any High Court in relation to the territories within which the cause of action, wholly or in part arises, notwithstanding that the seat of such government or authority or the residence of such person

is not within those territories. Since the petitioners have filled up the forms from the State of Jharkhand and are residing within its territory, this court has the territorial jurisdiction to hear the matter and to pass appropriate direction on the respondents.

15. In the case of ***Kusum Ingots & Alloys Ltd. Vs. Union of India & Another, reported in (2004) 6 SCC 254***, the Hon'ble Supreme Court has held that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. The Court, in appropriate cases, may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum convenience.
16. In the present case, most of the grounds taken by the petitioners in challenging the impugned notice dated 03.09.2020 issued by NLSIU, Bengaluru to conduct NLAT, 2020 are substantially based on the terms and conditions of the byelaws agreed amongst all the participating NLUs forming the CLAT Consortium, the secretariat of which is located at Bengaluru itself. The petitioners-students have also based their contentions on the alleged violation of different terms and conditions of the byelaws by NLSIU Bengaluru which is also located in the State of Karnataka. In my view, it primarily seems to be an *inter se* dispute between CLAT consortium and NLSIU Bengaluru and this court has no territorial jurisdiction to adjudicate the same.
17. Moreover, it has been brought to the notice of this Court that a writ petition has also been filed before the Hon'ble Supreme Court by a former Vice-Chancellor of NLSIU, Bengaluru, challenging the decision of NLSIU, Bengaluru to conduct a separate Law Entrance Examination i.e. NLAT, 2020, which is still pending.
18. Otherwise also, on the query of this court put to the learned counsel for petitioners, particularly on the point as to what prejudice has been caused to the petitioners by the action of the respondent no.1 in conducting NLAT, 2020, it has been submitted that one of the technical requirements to appear in the said examination by maintaining the minimum bandwidth speed of 1 MBPS is arbitrary and unreasonable. In response to that, it has been submitted by the learned Senior Counsel for the respondent no.1 that NLSIU, Bengaluru has now reduced required internet bandwidth to 512 kbps which can easily be

accessed by any of the candidates. The learned counsel for the petitioners has also contended that no test centre has been provided in the State of Jharkhand, however, the said contention has been refuted by Mr. Poovayya, submitting that a centre has already been provided in Dhanbad. The learned counsel for the petitioners has also contended that the pattern of the examination has been changed by the respondent no.1, which may cause prejudice to the interest of the petitioners. Refuting the said contention, Mr. Poovayya has submitted that the pattern of the examination has not been changed, rather the number of questions has been reduced and the purpose behind it is not to test the students strictly on the aptitude of the law but on general aptitude. The learned counsel for the petitioners has further argued that on one hand the students has been given option to appear at test centres across India and on the other hand, it has been provided in the notification that the respondent no.1 will not be responsible for technical faults, internet connection etc., which is, in fact, an arbitrary and unreasonable decision.

19. The learned counsel for the petitioners has put reliance on para 15 of the judgment of the Hon'ble Supreme Court, rendered in the case of ***Disha Panchal & Others Vs. Union of India, through the Secretary & Others, reported in (2018) 17 SCC 278***. It was alleged in the said case that the petitioners faced difficulties in appearing CLAT examination due to mismanagement of the authorities conducting the examination. Their Lordships found substance in the claim of the petitioners and held as under: -

"15. We have dealt with the matter only from the standpoint of how best to compensate the candidates who lost valuable time while undergoing test. We must record that we are not at all satisfied with the way the examination was conducted. The body which was given the task of conducting the examination was duty-bound to ensure facilities of uninterrupted UPS and generator facility. The record indicates complete inadequacy on that point. We therefore direct the Union of India in the Ministry of Human Resources and Development to appoint a committee to look into the matter and take appropriate remedial measures including penal action, if any, against the body which was entrusted with the task. The committee so constituted shall also look into the aspect of having completely satisfactory arrangements in future so that no such instances are repeated or reoccur in coming years. We must also observe that the idea of entrusting the task of monitoring the conduct of entire examination to different Law Universities every year also needs to be revisited. The agreement with the examination conducting body, which was placed on record indicates that as against the amount made over to such examination conducting body, the fees charged from the

candidates is far in excess. The committee shall bestow consideration to all these aspects after having inputs from such sources as it may deem appropriate including the Bar Council of India and make a detailed report to this Court within three months from today."

20. The facts and circumstance of the present case is entirely different. In the present case, the examination is yet to be conducted. This Court is of the view that such a hypothetical argument cannot be taken into consideration at this stage.
21. In view of the aforesaid factual and legal position, I am of the considered view that since the present matter has pan India ramifications and petitioners have failed to make out a strong ground so as to invoke the extraordinary writ jurisdiction of this Court which is otherwise plenary in nature, it would not be appropriate for this Court to interfere with the notice dated 03.09.2020 issued by NLSIU, Bengaluru.
22. The writ petition is, accordingly, dismissed

Sanjay/AFR

(Rajesh Shankar, J.)