

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 2<sup>ND</sup> DAY OF NOVEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

**WRIT PETITION NO.11287 OF 2020(EDN-RES)**

BETWEEN:

MR. AAKASH DEEP SINGH,  
AGED ABOUT 21 YEARS,  
S/O DR SUKHRAJ SINGH,  
R/AT 106-B, GH-5, SECTOR 5,  
MDC PANCHKULA,  
HARYANA-134114.

... PETITIONER

(BY SRI. PRATEEK RATH, ADVOCATE)

AND:

1. NATIONAL LAW SCHOOL OF INDIA UNIVERSITY,  
GNANA BHARATHI MAIN ROAD,  
OPP. NAAC TEACHERS COLONY,  
NAAGARABHAavi,  
BENGALURU-560072.  
REPRESENTED BY ITS VICE CHANCELLOR.

2. VICE CHANCELLOR,  
NATIONAL LAW SCHOOL OF INDIA UNIVERISTY,  
GNANA BHARATHI MAIN ROAD,  
OPP. NAAC TEACHERS COLONY,  
NAAGARAPHAavi,  
BENGALURU-560072.

... RESPONDENTS

(BY SRI. ADITYA NARAYAN, ADVOCATE FOR R1 & R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED DECISION OF THE EXAMINATION DEPARTMENT OF R-1 COMMUNICATED VIDE ELECTRONIC MAIL DATED 31.07.2020 ANNEXURE-A BY VIRTUE OF WHICH THE PETITIONER HAS NOT BEEN PROMOTED TO THE NEXT ACADEMIC YEAR 2020-21, AND IS DIRECTED TO TAKE RE-ADMISSION TO III YEAR DURING THE CURRENT ACADEMIC YEAR 2020-21.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY THROUGH VIDEO CONFERENCE, THE COURT MADE THE FOLLOWING:-

**ORDER**

Regardless of the bulky pleadings of the case, the grievance of the petitioner a law student, is against his detention in the third year of the Course for the Academic Year 2020-21 on the ground that he has arrears of papers and that he cannot be given the benefit of "Special Repeat Examination" under the Academic and Examination Regulations, 2009, the AER 2020 having been promulgated.

2. After service of notice, the first respondent – University (NLSIU) and the second respondent, its Vice Chancellor have entered appearance through their learned advocate; they resist the writ petition by filing a Statement of Objections dated 20.10.2020; the counsel for the respondents makes submission in justification of the impugned action.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is of a considered opinion that indulgence is warranted in the matter as under and for the following reasons:

a) The respondent – University having been constituted by the National Law School of India University Act, 1986 (Karnataka Act 22 of 1986), has been globally recognized as the premier institution for imparting legal education to the students from the country and abroad; petitioner is admitted to the Undergraduate Law Course in the Academic Year 2016; he has a poor academic record having failed as many as eighteen courses during the three years, is arguably true; but, it is for such “poor performers” that AER 2009 which provide for Special Repeat Examination, have been promulgated.

b) Clause 10 of Regulation V of AER 2009 reads as under:

*“Special Repeat Examinations: A Special Repeat Examination shall be held under the following circumstances:*

*a) If a student is not promoted to the next year because of failure in only one subject in the year previous to the class in which the student is admitted;*

*Explanation: If a student cannot get promoted to the 3<sup>rd</sup> year because of a singly course in the 1<sup>st</sup> year, a special repeat examination shall be held in the course.*

*b) If a student cannot graduate from the 5<sup>th</sup> year because of failure in only one subject in the 4<sup>th</sup> year or 5<sup>th</sup> year.”*

Going by literal interpretation, a student having the failure in more than one subject, ordinarily cannot seek refuse under the shadow of this Regulation, is true; however, the conduct of the University shows that the restriction as to number of subjects, has been treated only as directory and admittedly, a few students who had multiple failures have been permitted to take up Special Repeat Examinations; that being the position, there is no reason to discriminate the petitioner by trying to place a strict construction on the subject Regulation, when it admits a purposive one.

c) The respondent-University vide Notification dated 04.09.2017 (Annexure-R) has held out at large as under:

*“With reference to the Provisional Promotion List notified to the student, the students who have failed in four or five courses are required to submit an application indicating the course/s, preferably carried over courses in order to be eligible for promotion as per the Rules (excepting the course/s in which they would like to take the Special Repeat Examination to the Examination Department on or before 5<sup>th</sup> September, 2017”*

more or less a similar Notification was also issued on 10.09.2020 (Annexure-S) which has the following text:

*“The students who have failed in more than three courses and less than five courses are required to send an email to exam department indicating the course (those who have failed in 4 courses) and two courses (those who have failed in 5 courses) [excepting the course/s in which they have*

*attendance shortage and non-fulfillment of other requirements] in which they would like to take the Special Repeat Examination to the Examination Department on or before 11<sup>th</sup> September, 2020.”*

these two Notifications not only show that the University treated the subject Regulation as being only directory but also stretched its meaning to benefit the “poor performers” who otherwise would not fit into the furrow of its text; after all, in a country like ours, if poverty is not a sin, being poor in intelligence too cannot be; denial of opportunity that was made available to others similarly circumstanced, would be discriminatory & arbitrary; it offends sense of justice and causes to the aggrieved a heart-burn.

d) It is not the case of the respondent-University that its act of permitting other similarly circumstanced students, of taking Special Repeat Examination was done in violation of the provisions of AER 2009; there is not even a whisper about this in its Statement of Objections; case of the petitioner is also supported by the doctrine of promissory estoppel and fairness in public action; it is relevant to recall what Chief Justice Felix Frankfurter of the US Supreme Court had observed decades ago in

**VITARELLI VS. CEATON, (1959) 359 US 535:**

*“ An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.”*

It hardly needs to be reminded that this valuable norm of administrative law has become an integral part of our legal system vide **R.D.Shetty Case, (1979) 3 SCR 1014.**

e) The above observation of the US Supreme Court which our Apex Court has adopted also answers the preliminary objection of delay & laches advanced by the respondent University even when the writ petition is filed within about two months or so, of detention; during the eventful period the COVID-19 pandemic was rampant every where and the judiciary was treating the issue of delay & laches more leniently, also cannot be lost sight of; after all, there is no statutorily fixed limitation period for availing the writ remedy, and there cannot be one.

f) The AER 2020 being at place now, petitioner cannot bank upon AER 2009, is a contention not worth the words through which it is put forth; the right that has

accrued to a student under AER 2009 cannot be silenced in the absence of a specific intent in the subsequent Regulations, to the contrary; counsel for the petitioner is more than justified in banking upon the Notification No. 2/2020 dated 31.07.2020 (Annexure-D) issued by the second respondent – Vice Chancellor specifically addressing the students, para 3 of which reads as under:

*“3. Academic Year 2020-21 is a transition year from AER 2009 to AER 2020 and hence a few accommodations have been made for this year to ensure that students are:*

*not prejudiced by the retrospective application of new Regulations;*  
*given the best opportunity to progress in their academic programme;*  
*given a clear forward guidance on the future application of the Regulations.”*

g) The above apart, no provision in the 1986 Act has been shown which empowers the respondent-University to frame delegated legislations of the kind, with retrospective effect; apparently, the text of the new Regulations shows that they have prospective effect, consistent with the conventional presumption; the contention that these new Regulations have been promulgated after notifying to the students at their formative stage, is a poor solace, bereft of legal content & efficacy.

In the above circumstances, this writ petition succeeds; a Writ of Certiorari issues quashing the impugned orders/communications at Annexures - A, B & C to the extent they relate to the petitioner; a Writ of Mandamus issues to the respondents to conduct "Special Repeat Examination" for the subjects in which the petitioner has failed, within a reasonable period; a direction issues to the respondents to promot the petitioner to the fourth year Undergraduate Programme for the Academic Year 2020-21, by condoning the shortage of attendance if any and subject to result of "Special Repeat Examinations"; the respondents shall also permit the petitioner to submit the Project Assignments and undergo VIVA VOCE, as well.

The above relief having been granted to the petitioner in the special circumstances of the case, is not intended to be a precedent.

Costs made easy.

**Sd/-  
JUDGE**

Bsv