

\$~15 and 16 WWW.LIVELAW.IN
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5664/2021**

SOMAYA GUPTA & ORS. Petitioners
Through: Mr. Siddharth Seem, Advocate.

versus

FACULTY OF LAW,
UNIVERSITY OF DELHI & ORS. Respondents
Through: Ms. Seema Dolo, Advocate for R-1
and R-4/Delhi University.
Mr. Preetpal Singh & Mr. Saurabh
Sharma, Advocates for R-2/BCI.
Mr. Apoorv Kurup and Ms. Nidhi
Mittal, Advocates for R-3/UGC.

+ **W.P.(C) 5668/2021**

SHIVANGI BHARDWAJ & ANR. Petitioners
Through: Mr. Prateek Sharma and Mr.
Harpreet Singh Hora, Advocates.

versus

UNIVERSITY OF DELHI & ANR. Respondents
Through: Mr. Mohinder Rupal and Ms. V.
Bhawani, Advocates for Delhi
University.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

% **ORDER**
01.06.2021

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

CM. APPL. 17660/2021 (for exemption) in W.P.(C) 5664/2021

CM. APPL. 17712/2021 (for exemption) in W.P.(C) 5668/2021

Exemptions allowed, subject to all just exceptions.

These applications stand disposed of.

W.P.(C) 5664/2021 & CM APPL. 17659/2021 (for interim relief)

W.P.(C) 5668/2021 & CM APPL. 17711/2021 (for stay)

1. Issue notice. Ms. Seema Dolo and Mr. Mohinder Rupal, learned counsels, accept notice on behalf of University of Delhi in W.P.(C) 5664/2021 and 5668/2021 respectively. Mr. Preetpal Singh, learned counsel, accepts notice on behalf of Bar Council of India [“BCI”] in W.P.(C) 5664/2021. Ms. Nidhi Mittal, learned counsel, accepts notice on behalf of University Grants Commission [“UGC”] in W.P.(C) 5664/2021.
2. The petitioners are students in the final year of the LL.B. course in the Faculty of Law, Delhi University [“the University”]. They have filed this petition under Article 226 of the Constitution in respect of an open book examination proposed to be held by the University in respect of their fourth semester papers, which were postponed from May, 2020 in view of the Covid-19 pandemic. Although the petitioners are similarly placed, inasmuch as they are all sixth semester students in the LL.B. programme, the grievances which have been articulated by their learned counsel, noted below, are slightly different.
3. The common case of the petitioners is broadly that the UGC, by a notification dated 29.04.2020, permitted the evaluation of the intermediate semester students i.e. students who were not in the final year, by a combination of marks obtained in the internal evaluation and past performance. The University adopted this course for most of its

courses. However, the BCI, by a series of notifications, commencing from 09.06.2020 and terminating with a notification dated 01.11.2020, directed all law colleges to hold examinations for the intermediate semesters also. Learned counsel for the petitioners point out that the notification of the BCI dated 01.11.2020, insofar as it relates to intermediate semester examinations, was set aside by the Karnataka High Court by a judgment dated 08.02.2021 in W.P.(C) 14839/2020 [*Ritvik Balanagraj B. vs. Bar Council of India & Ors.*] and connected matters.

4. In these circumstances, Mr. Siddharth Seem, learned counsel for the petitioners in W.P.(C) 5664/2021, urges that instead of an open book examination, the University ought to be directed to evaluate the students for their fourth semester, only on the basis of internal evaluation and past performance. Although he candidly admits that the UGC notification dated 29.04.2020 does not contain any prohibition on holding of examinations in respect of intermediate semesters, he submits that the approach of the University is inconsistent with the interests of students in the wake of Covid-19 pandemic. Mr. Seem particularly emphasises that several students have suffered illness, loss in their families, financial hardships in the family, and have been burdened with responsibilities far beyond those which fall upon them in normal times. He, therefore, submits that an evaluation, at least as far as the fourth semester is concerned, on the basis of internal assessments and past performance would suffice, and would also aid in expeditious completion of the evaluation process. Mr. Seem has drawn my attention to paragraphs 22 to 26 of the aforesaid judgment of the Karnataka High Court in this regard. His final submission is that by a notification of the University dated

04.06.2020, students in intermediate semesters in all other programmes were promoted on the basis of internal evaluation and previous performance, and were not subjected to any examination. It is the contention of learned counsel that the differentiation was subsequently adopted only in respect of students of the Law Faculty, presumably on account of the BCI notifications.

5. Mr. Prateek Sharma, learned counsel for the petitioners in W.P.(C)5668/2021, points out during the course of hearing that, by a notice issued yesterday (31.05.2021), the University has announced that, as far as the petitioners' batch of students is concerned, the examinations for the sixth semester will commence from 14.06.2021 and the pending examinations of the fourth semester (which the petitioners would ordinarily have taken in the academic session 2019-20), will be tentatively scheduled around 15.07.2021. A copy of the notice has been shared on screen by Mr. Sharma, from which it appears that the University is proceeding on the basis of the notifications issued by the BCI, including the notification dated 01.11.2020, in setting the schedule for these examinations. The notice, in fact, specifically refers to the aforesaid notification of the BCI.

6. Mr. Sharma supports the case laid out by Mr. Seem but also contends that the examination for the sixth semester ought to be held only after the fourth semester results are made available. He submits that the procedure of holding the sixth semester examinations first would be detrimental to the students in the position of the petitioners as, in the event a student requires or desires to repeat any of the fourth semester papers, that opportunity will be available to him/her only after one year,

when the fourth semester examinations are next held in the regular course. Per contra, the supplementary examinations for the sixth semester are, according to Mr. Sharma, held soon after the conclusion of the regular sixth semester examination, to enable the students to repeat the examinations and conclude their course expeditiously.

7. Mr. Preetpal Singh, learned counsel for the BCI, brings it to the notice of the Court that the BCI has set up a committee headed by a former Chief Justice of the Allahabad High Court and comprising the heads of law faculties in various universities, to deliberate upon the nature of the evaluation. The committee is expected to submit its report within the next one week, following which it will be considered by the counsels.

8. Mr. Rupal and Ms. Dolo, learned counsels for the University, have drawn my attention to the notification dated 31.05.2021 to submit that the fourth semester examinations, with which the present petitioners are concerned, are scheduled to be held only around 15.07.2021. They submit that the University will, in the meantime, further consider the necessity of holding the aforesaid examinations, particularly in the light of the submissions recorded above regarding the alternative modes of assessment available to the University under the UGC notification dated 29.04.2020, and the aforesaid judgment of the Karnataka High Court whereby the BCI notification dated 01.11.2020 was quashed, insofar as it related to intermediate semester examinations. The University is at liberty to consider the matter, as submitted by learned counsel on its behalf. The decision taken by the University be placed on record in its counter-affidavit.

9. The University will also elaborate in its affidavit, as to the arrangements which it is making to ensure that the Covid-19 affected students, students who are unable to clear the examinations and those who seek to improve their marks, are given a second opportunity to take the aforesaid fourth semester examinations within a reasonable time frame. The University will also place on record the arrangements made for evaluation of intermediate semester candidates in other courses.

10. As mentioned above, these petitions concern only the intermediate (fourth) semester examinations, which remain pending for the petitioners and their batch of students. As the said examinations are not going to be held prior to the next date of hearing, there is no occasion to pass any interim order relating thereto at this stage.

11. Mr. Sharma however points out that, in W.P.(C) 5668/2021, the interim relief sought is for stay of a notification dated 28.05.2021, whereby the University had scheduled the petitioners' sixth semester examinations prior to their fourth semester examinations. Although it is unclear whether the notification dated 28.05.2021 survives the issuance of the further notification dated 31.05.2021, Mr. Sharma presses for an interim order to the effect that the sixth semester examinations must be held only after the fourth semester examinations.

12. As noticed above, this contention is founded not upon the timing of the examinations themselves, but upon the timing of the supplementary examinations, which would be available to the petitioners, if required. However, the aforesaid contention does not require a stay to be granted against the sixth semester examinations, proposed to be held in June, 2021. The arrangements which would enable the petitioners to clear any

remaining papers of their fourth semester examination, within a reasonable time frame, can be examined independently in the course of this petition. It is not in the interests of the students as a whole to postpone the sixth semester examinations – and consequently extend the duration of their academic programme - only on the basis of the apprehension that a repeat examination of the fourth semester may not be available until next year. If the petitioners make out a case for such an order, the rights of the parties in this regard can be adjusted at the appropriate stage, by directing that the University holds the supplementary examination for the fourth semester within a reasonable time. Mr. Sharma's request for an interim order is, therefore, declined.

13. The respondents are directed to file their counter affidavits within three weeks, positively. Rejoinders thereto, if any, may be filed within one week thereafter.

14. List on 05.07.2021.

PRATEEK JALAN, J

JUNE 1, 2021

'vp'