HIGH COURT OF DELHI

JUSTICE C. HARI SHANKAR

Date of Decision: 19 February 2024

W.P.(C) 16398/2023

VANSHIKA ..... Petitioner

versus

UNIVERSITY OF DELHI & ANR. ..... Respondents

Legislation:

National Education Policy - Undergraduate Curriculum Framework (NEP-UGCF) 2022 Guidelines.

Subject:

Writ petition seeking issuance of a writ of mandamus directing the University of Delhi to declare the petitioner's second semester result, allow her to attend her third semester examination, and continue with her B.A. (Hons.) course without losing any academic year.

Headnotes:

Educational Law – Examination Eligibility – Semester Examinations – Court addressed the issue of whether the petitioner, a student of Delhi University, was entitled to continue her B.A. (Hons.) course and appear for her third semester examination, despite not attempting the first semester examination due to non-payment of fees. The Court examined the applicability of university regulations and guidelines on the petitioner’s eligibility and entitlement. [Para 23, 90-93]

Eligibility and Entitlement to Appear in Examinations – distinguished – held – the Court differentiated between a student's eligibility for an examination based on academic qualifications and their entitlement to appear in it based on administrative formalities like fee payment. The Court found that non-payment of fees affected the petitioner's entitlement but not her eligibility to continue with the course. [Para 74-78]

Applicability of University Regulations – examined – the Court scrutinized the relevance and applicability of Clause 4 of the NEP-UGCF 2022 Guidelines and Notifications dated 7 September 2011 and 3 January 2012 issued by the University, finding them either inapplicable or unworkable in the petitioner's context. [Para 89-94]

Equitable Considerations in Educational Matters – emphasized – the Court underscored the importance of equitable considerations in educational matters, particularly where a student's academic progress is at stake. It held that the petitioner could not be compelled to restart her course due to administrative lapses after she had already progressed to the third semester. [Para 96-99]

Decision – Entitlement to Continue Course and Appear in Examinations – The Court allowed the writ petition, directing Delhi University to declare the petitioner's second semester results and permit her to continue with her B.A. (Hons.) course. The petitioner was allowed to appear for her third semester examination, along with the first semester examination, upon fulfilling necessary formalities including fee payment. [Para 100-102]

Referred Cases:

- Shree Krishnan v. Kurukshetra University (1976) 1 SCC 311
- Sanatan Gauda vs. Berhampur University(1990) 3 SCC 23
- Ashok Chand Singhvi v. University of Jodhpur (1989) 1 SCC 399
- Sudha v. University of Mysore (1987) 4 SCC 537
- Rajendra Prasad Mathur v. Karnataka University 1986 (Supp) SCC 740
- Bidisa Chakraborty v. IGNOU 2014 (8) SLR 463
- Pankaj v. U.O.I. (2005) ILR 2 Delhi 341
- Guru Gobind Singh Indraprastha University v. Ram Narayan Tiwari 2018 SCC OnLine Del 12786
- Sahil Singh Ravish v. University of Delhi 2017 SCC OnLine Del 12552
- A.P. Christians Medical Education Society v. Government of Andhra Pradesh (1986) 2 SCC 667
- Rajendra Prasad Mathur v. Karnataka University 1986 Supp. SCC 740
- Maharishi Dayanand University v. Surjit Kaur (2010) 11 SCC 159
- Sangeeta Srivastava v. Prof. U.N. Singh AIR 1980 Del 27
- U.O.I. v. Lt. Gen. Rajendra Singh Kadyan(2000) 6 SCC 698
- Valsala Kumari Devi M. v. Director, Higher Secondary Education (2007) 8 SCC 533
- Baker v. Leo LJ Ch 631: 8 HL Ca. 495

- U.O.I. v. Deo Narain (2008) 10 SCC 84
- U.O.I. v. C.N. Ponnappan (1996) 1 SCC 524
- R.M.D. Chamarbaugwala v. U.O.I. AIR 1957 SC 628

Representing Advocates:

Mr. Prafulla for the petitioner
Mr. Mohinder J.S. Rupal and Mr. Hardik Rupal for the respondents

J U D G M E N T
% 19.02.2024

The petitioner's case

1. The petitioner enrolled on 21 October 2022 as a student to the B.A. (Hons.), a four year course in the Kalindi College for Women, Delhi University (DU).

2. It is asserted, in the present writ petition, that the petitioner filled in the application form for undertaking her first semester examination in February 2023 and deposited requisite fees. However, as there was a failure in the transaction for payment of fees, no admit card was issued to the petitioner so as to enable her to undertake the first semester examination.

3. It is sought to be contended that, despite having not undertaken the first semester examination, the petitioner was assured, by the relevant authorities, that she could undertake the first semester examination along with her third semester examination without any complications.

4. Based on this assurance, the petitioner attended the second semester classes in the Kalindi College.

5. On 11 June 2023, the petitioner deposited the fees of her second semester examination, consequent to which an admit card was issued to her by the DU enabling her to attempt the second semester examinations, on 10 October 2023. Accordingly, the petitioner undertook the second semester examination from 18 July 2023 onwards.

6. The University did not release the result of the second semester examinations of the petitioner. The petitioner, nonetheless, attended the classes of the third semester of the BA (Hons) English course, which commenced from 16 August 2023.

7. Fees for the second year of her B.A. (Hons.) English course (consisting of the third and fourth semesters) were also deposited by the petitioner.

8. The petitioner was not permitted to fill in the examination form to undertake her third semester examination.

9. Numerous attempts to interact with the University authorities in this regard met with no favourable response.

10. It is in these circumstances that the petitioner has instituted the present writ petition before this Court, seeking issuance of a writ of mandamus directing the respondent

(i) to declare her second semester result,

(ii) to allow the petitioner to attend her third semester examination and

(iii) to allow the petitioner to continue with the second year of her B.A. (Hons.) course, without losing any academic year or the progress made thus far.

11. Counter affidavits have been filed by the University as well as by the college, and a rejoinder has also been filed by the petitioner to the counter affidavit of the college, though no rejoinder has been filed to the counter affidavit of the University.

Stand of the College in its counter-affidavit

12. The counter affidavit filed by the college points out that, as per Clause 4[1] of the NEP-UGCF 2002 Guidelines dated 6 March 2023, applicable to the DU, a student who had not submitted the examination form for any particular semester could not be promoted to the next semester. Accordingly, the

[1] 4. A student who appears in an odd-semester examination or who was eligible to appear in the oddsemester examinations but remains absent in any or all of the papers of the said semester, shall move on to the next semester irrespective of his/her result in the said examinations provided examination form for both the odd and even semester examination is duly submitted and requisite fee paid by the candidate.

petitioner could not have attended any classes in the second semester. Without thus attending any second semester class, avers the counter affidavit of the college, the petitioner deposited, online, the examination form for her second semester examinations, scheduled to be held in May/June 2023. She also appeared in the said examination. It was later that the DU realised that the petitioner had actually not been promoted to the second semester, whereupon her results were withheld.

13. It is further averred, in the counter affidavit of the college, that the petitioner had again taken admission in the first semester of her B.A. (Hons.) English course in the 2023-24 academic year and that she had attended the classes of the first semester and deposited the examination form, in which she appeared in January 2023 onwards, during the pendency of the present writ petition. Mr. Prafulla, learned Counsel for the petitioner confirms, however, that the petitioner had only been issued an admit card on 17 December 2023 for attempting some of the backlog papers of her first semester.

14. In these circumstances, the counter affidavit of the college asserts that the petitioner is not entitled to any relief in the writ petition.

Petitioner's rejoinder to counter-affidavit of the College

15. In her rejoinder to the counter affidavit of the college, the petitioner submits that the NEP-UGCF 2002 Guidelines were promulgated on 6 March 2023 whereas the petitioner's grievance is of February 2023. The guidelines, therefore, were not applicable to the petitioner.

16. Apropos the submission of the college that the petitioner had not attended her second semester classes, the rejoinder denies the assertions and submits, *per contra*, that the petitioner not only attended her second semester classes, but that her name figured on the attendance list for all subjects.

17. In this context, it is pointed out that the petitioner also submitted her assignment during the said period, for which she was awarded corresponding marks. The admit card issued to her was also duly verified and stamped by the College principal and it was only thereafter that the petitioner attended the

second semester examination. In such circumstances, the rejoinder submits, relying on the judgment of the Supreme Court, in ***Shree Krishnan v. Kurukshetra University***[2], that, having been permitted to take the second semester examination, rightly or wrongly, her admission could no longer be cancelled, and she had to be permitted to continue in the Delhi University and complete her remaining semesters.

Rival Contentions

Submissions of Mr. Prafulla

18. Mr. Prafulla, learned counsel for the petitioner submits, relying on the judgment of the Supreme Court in ***Sanatan Gauda vs. Berhampur University*** [3] **,** ***Shri Krishnan***, ***Ashok Chand Singhvi v. University of Jodhpur***[4], ***A Sudha v. University of Mysore***[5]***, Rajendra Prasad Mathur v. Karnataka University***[6]**,** that, as the petitioner was not at fault in not having been able to attempt her first semester examinations, and had, nonetheless, been permitted to attend her second semester and third semester classes, as also to attempt her second semester end examinations, the clock could not now be put back, and she was required to be allowed to attempt her third semester examinations and continue in the normal course.

19. In this context, Mr. Prafulla also submits that the University had itself reflected the petitioner's name in the roll number list of students of BA (Hons) English, enlisted with Kalindi College, in the second as well as in the third semesters and it was on that basis that the petitioner attended classes in both the semesters. She was, therefore, duly promoted from the first semester to the second semester, and from the second semester to the third semester.

20. Mr. Prafulla has also relied on paras 5 and 9 of the order passed by this court in the present proceedings on 19 December 2023, which reads as follows:

"5. The prayer for interim relief is strongly opposed by learned counsel appearing on behalf of respondent no.1-University. He, on advance instructions, submits that the petitioner initially did not clear the first

[2] **(1976) 1 SCC 311**
[3] **(1990) 3 SCC 23**
[4] **(1989) 1 SCC 399**
[5] **(1987) 4 SCC 537**
[6] **1986 (Supp) SCC 740**

semester examination. He further submits that neither there is any formal admission of the petitioner in the third semester nor she has attended any of the classes of the said semester. He, therefore, submits that the petitioner cannot be allowed to appear in the third semester examination. He further submits that the petitioner has thereafter taken re-admission in the first semester. According to his instructions, unless the petitioner clears the first semester examination, in accordance with the extant regulations, there is no question of allowing the petitioner to directly write the third semester examination. However, learned counsel for the petitioner submits that the petitioner has been granted admission in the third semester as well.

9. *After filing of the counter affidavit, if this court finds that the statement made by learned counsel for respondent no.1-Univeristy is incorrect, the appropriate directions will be issued to ensure that the petitioner does not lose any Academic Year.* However, at this stage, no case is made out to allow the petitioner to directly appear in the third semester examination without undergoing the regular study."
(Emphasis supplied)

21. According to Mr. Prafulla, the assurance contained in para 9 of the order dated 19 December 2023 is by itself sufficient to allow the present writ petition, as the contention, of the DU, that the petitioner had not attended any classes in the third semester, is incorrect on facts. Mr. Rupal's submissions in reply

22. Mr. Rupal, in response, relies on Notifications dated 7 September 2011 and 3 January 2012 issued by the DU (which are more or less identical, to the extent relevant), which read thus:

Notification dated 7 September 2011

7th September, 2011 NOTIFICATION

With reference to the Notification No. C-II/Ord./2010 dated 14th July, 2010, notifying amended Ordinance IX (Promotion rules under the semester scheme for the Under-graduate & Post-graduate Courses). It is clarified that the students who appear in the 1st semester examination but are detained from appearing in the 2nd semester examination due to shortage of attendance, shall not be promoted to the third semester and they shall have to be readmitted to the 2nd semester of the respective courses by the colleges concerned.

It is clarified further that if a student is not eligible for appearing in the 1st semester examination for any reason, he/she will not be eligible for admission to the 2nd semester and will have to be readmitted to the 1st semester of the course concerned."

(Emphasis supplied) Notification

dated 3 January 2012

"With reference to Notification No. Acad.-1/Semester/2011/124 dated 7th September, 2011. It is further clarified that the students who are detained from appearing in any semester examination of any Under-graduate/Post-graduate course, due to shortage of attendance or for any other reason, will not be eligible for promotion to the next semester and will have to be re-admitted in the next academic session to the same semester of the course in which they were detained."

Mr. Rupal submits that, by failing to pay the fees for her first semester examination, the petitioner had rendered herself ineligible to appear therein. She, therefore, was *ipso facto* disentitled from attending classes in the second semester, and, if she had attended any such classes, could not seek to derive any advantage therefrom. She had necessarily to reattend and reattempt the first semester examination. He relies, on the decisions of Division Benches of this court in ***Bidisa Chakraborty v. IGNOU***[7]***, Pankaj v. U.O.I.***[8]***, Guru Gobind Singh Indraprastha University v. Ram Narayan Tiwari***[9]***,*** and ***Sahil Singh Ravish v. University of Delhi***[10]***.***

Analysis

The legal position

23. It is worthwhile, first, to assess the legal position, as it emerges from the judgments cited at the bar.

24. For this purpose, one may proceed, chronologically, through the judgments of the Supreme Court, cited by Mr. Prafulla, and, thereafter, through the judgments of the Division Benches of this court, cited by Mr. Rupal.

[7] **2014 (8) SLR 463**
[8] **(2005) ILR 2 Delhi 341**

Shri Krishnan

25. The appellant Shri Krishnan ("Krishnan", hereinafter) joined the LLB Part I classes in 1971. In April 1972, he appeared in the Annual LLB Part I Examination, but failed in Legal Theory, Comparative Law and Constitutional Law. He was, however, subsequently promoted to LLB II, which he joined in 1972. He was to undertake the LLB Part II examination in April 1973. The University initially refused to allow him to undertake the examination, without according any reason. Subsequently, however, he was allowed to appear at the Part II examination on 19 May 1973.

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[9] **2018 SCC OnLine Del 12786**

26. On 26 June 1973, Krishnan was informed that, as he had not attended the minimum required number of classes in LLB Part I, his candidature stood cancelled. As a result, he was refused admission to LLB Part III.

27. Krishnan moved the High Court of Punjab and Haryana challenging the order cancelling his candidature. The High Court rejected his writ petition *in limine*. Krishnan appealed to the Supreme Court.

28. Before the Supreme Court, the University contended that fulfilment of the stipulated minimum percentage of attendance was mandatory to entitle a student to appear in the examination. As Krishnan had fallen short of that mandatory minimum percentage of attendance, the decision not to allow him to undertake the examination was in order.

29. The Supreme Court reproduced clause 2 of Ordinance 10 governing the University, which read thus :

"2. The following certificates, signed by the Principal of the College/Head of the Department concerned, shall be required from each applicant:—

(a) that the candidate has satisfied him by the production of thecertificate of a competent authority that he has passed the examinations which qualified him for admission to the examination; and

(b) that he has attended a regular course of study for the

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[10] **2017 SCC OnLine Del 12552**

prescribed number of academic years.

Certificate (b) will be provisional and can be withdrawn at any time before the examination if the applicant fails to attend the prescribed course of lectures before the end of his term."

30. Thus, noted, the Supreme Court Ordinance 10 permitted withdrawal of the provisional certificate issued to the student *only before the examination and not thereafter* irrespective of whether the student was permitted to undertake the examination rightly or wrongly. The following passage, from para 6 of the report, elucidates this legal position:

"The last part of this statute clearly shows that the university could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the university to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear…"

31. It was also noted that the admission forms were forwarded by the Head of the Department in the December of the year preceding the year in which the examination was held and that, therefore, the University authorities had with them four to five months to scrutinize the forms and satisfy themselves that they was in order. If the authorities were negligent or remiss in this regard, no fraud could be attributed to the candidate. The Supreme Court relied on the principle that, if a person on whom fraud was stated to be committed was in a position to discover the truth by due diligence, there was no fraud.

32. It was, therefore, held that if the University acquiesced of the infirmity in the admission form and allowed the student to appear in the examination then by "*force of the University Statute*, the University had no power to withdraw the candidature of the appellant". It was specifically noted that the case was not one in which, on an undertaking given by a candidate that he would fulfil a particular condition, he was granted provisional admission which was liable to be withdrawn at any time on the condition not being fulfilled. In that event, the candidate himself would have contracted out of the statute which was for his benefit, and the statute would not, then, stand in the way of the University cancelling the candidature of the student, if he failed to fulfil the said condition.

33. While ***Shri Krishnan*** does hold that once the student was allowed to undertake the examination, the University could not withdraw his candidature or refuse to declare his result, there is substance in Mr. Rupal's submission that the decision was rendered in the background of the specific covenant contained in Ordinance 10 of the Ordinances applicable to the University.

Sanatan Gauda

34. In this case, the factual situation which obtained was different from that which obtains in the present case, essentially because the Supreme Court found that the stand of the University, that the candidate was not qualified to undertake the examination, was not correct. Nonetheless, both the learned Judges, who authored separate concurring judgments, also held that, where the candidate had not suppressed any fact while submitting his application for permission to undertake the examination, and had also provided, with the application form, his marksheet, the University which issued the admit card for appearing in the examination after scrutinizing all the documents could not, subsequently, refuse permission to the candidate to undertake the examination on the ground that he did not possess the requisite qualification.

35. Para 15 of the judgment of Sawant J. and para 3 of the concurring opinion of L.M. Sharma, J, which expostulate this legal position, may be reproduced thus :-

"15. This is apart from the fact that I find that in the present case the appellant while securing his admission in the Law College had admittedly submitted his marks-sheet along with the application for admission. The Law College had admitted him. He had pursued his studies for two years. The University had also granted him the admission card for the Pre-Law and Intermediate Law examinations. He was permitted to appear in the said examinations. He was also admitted to the final year of the course. It is only at the stage of the declaration of his results of the Pre-Law and Inter-Law examinations that the University raised the objection to his so-called ineligibility to be admitted to the Law Course. The University is, therefore, clearly estopped from refusing to declare the results of the appellant's examination or from preventing him from pursuing his final year
course."

"3. Mr P.N. Misra, the learned counsel for the respondent, contended that the University had informed the colleges about the necessary condition for admission to the Law Course which, it appears, was not respected by the College. When the applications by the candidates for sitting at the

examination were forwarded by the College, the University asked the Principal to send the marks of the candidates for the purpose of verification, but the Principal did not comply. The letters Annexures 'F' and 'G' to the counter-affidavit have been relied upon for the purpose. The learned counsel pointed out that instead, the Principal sent a letter Annexure 'I' stating that the marks-list would be sent in a few days for "your kind reference and verification" which was never sent. The Principal wrongly assured the University authorities that he had verified the position and that all the candidates were eligible. In these circumstances, the argument is, that the appellant cannot take advantage of the fact that the University allowed him to appear at the examination. I am afraid, the stand of the respondent cannot be accepted as correct. From the letters of the University it is clear that it was not depending upon the opinion of the Principal and had decided to verify the situation for itself. In that situation it cannot punish the student for the negligence of the Principal or the University authorities. It is important to appreciate that the appellant cannot be accused of making any false statement or suppressing any relevant fact before anybody. He had produced his marks-sheet before the College authority with his application for admission, and cannot be accused of any fraud or misrepresentation. The interpretation of the rule on the basis of which the University asserts that the appellant was not eligible for admission is challenged by the appellant and is not accepted by the College and my learned Brother accepts the construction suggested by him as correct. In such a situation even assuming the construction of the rule as attempted by the University as correct, the Principal cannot be condemned for recommending the candidature of the appellant for the examination in question. It was the bounden duty of the University to have scrutinised the matter thoroughly before permitting the appellant to appear at the examination and not having done so it cannot refuse to publish his
results."

A. Sudha

36. The issue involved in this case was stated, in para 2 of the report, as "the eligibility of the appellant for admission in the first year MBBS Course of the Mysore University".

37. The appellant A Sudha ("Sudha", hereinafter) passed the B.Sc. examination of the Mysore University with Botany, Chemistry and Biology, securing an aggregate of 54.7% marks. She also passed the Pre-University Certificate (hereinafter "PUC") in 1979 with Physics, Chemistry and Biology as optional subjects and obtained an aggregate of 43.1% marks. Before taking admission to the MBBS Couse, she addressed a letter to the Principal of the Institute to which she desired to take admission. The Principal, in response, confirmed that she was eligible for admission to the MBBS Course. Sudha contended that it was on the basis of the assurance contained in the said letter that she joined the MBBS Course.

38. Seven months after she joined the course, however, she was informed by the second respondent- who was the Principal of the Institute- that her admission to the MBBS course had not been approved by the University as, though she had secured 54% in B.Sc., she had secured only 43% in the PUC, despite the minimum eligibility in each being 50%.

39. Sudha challenged the decision before the High Court of Karnataka. The writ petition was rejected by a learned Single Judge of the High Court, holding that, in order to secure admission to the MBBS Course, a candidate was required to have obtained 50% marks in the aggregate in PUC, which Sudha had admittedly not obtained. She, was, therefore, not eligible for admission to the MBBS Course. The writ appeal preferred thereagainst was also dismissed by the Division Bench, resulting in Sudha approaching the Supreme Court.

40. The Supreme Court, at the outset, endorsed the decision of the High Court to the extent it held Sudha to have been ineligible for admission to the MBBS Course. Thereafter, however, it proceeded to consider whether she ought to have been allowed to continue her studies in the MBBS Course, and that it is with this part of the judgment that we are particularly concerned.

41. The University relied on the earlier decision of the Supreme Court in ***A.P. Christians Medical Education Society v. Government of Andhra Pradesh***[9]. The Supreme Court dealt with the said decision thus :

> "13. ...In support of that contention, much reliance has been placed by the learned Counsel on a decision of this Court in ***A.P. Christians Medical Educational Society v. Government of Andhra Pradesh*** . What happened in that case was that the appellant *Society without being affiliated to the University and despite strong protests and warnings of the University admitted students to the Medical College in the First Year MBBS course in total disregard to the provisions of the A.P. Education Act, the Osmania University Act and the regulations of the Osmania University*. Some students, who were admitted to the Medical College, filed a writ petition before this Court. While dismissing the writ petition of the students, this Court observed as follows:
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> *"Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interest of the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University*

[9] **(1986) 2 SCC 667**

to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws."

14. It was further observed by this Court as follows: (SCC p. 678, para 10)

"*We regret that the students who have been admitted into the college have not only lost the money which they must have spent to gain admission into the college, but have also lost one or two years of precious time virtually jeopardising their future careers. But that is a situation which they have brought upon themselves as they sought and obtained admission in the college despite the warnings issued by the University from time to time*. ."

15. It *appears from the observations extracted above that the students were themselves to blame, for they had clear knowledge that the College was not affiliated to the University and in spite of the warning of the University they sought for the admission in the College in the First Year MBBS course and were admitted. In that context this Court made the above observations."*
(Emphasis supplied)

42. The Supreme Court preferred, instead, to rely on its own later decision in ***Rajendra Prasad Mathur v. Karnataka University[12],*** on which Mr. Prafulla has also placed reliance. In that case, passing of the two year pre-University examination, held by the Pre-University Education Board, Bangalore, or an examination held by any other Board or University recognized as equivalent to it, was essential for admission to the B.E. Degree course of the Karnataka University. The examination which was passed by the appellants before the Supreme Court was admittedly not recognized as equivalent to the PreUniversity Examination held by the Pre-University Education Board, Bangalore. They were, therefore, not eligible for admission to the B.E. Degree Course.

43. The matter travelled to the Supreme Court, which upheld the view of the High Court that the students were not eligible for admission to the B.E Degree Course. That said, however, as the Supreme Court observed, "the question still remains whether we should allow the appellants to continue their studies in the respective Engineering Colleges in which they were admitted". This issue was addressed by the Supreme Court and decided in favour of the students on the following reasoning:

"8. … *Now it is true that the appellants were not eligible for admission to the engineering degree course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful*

admission must lie more upon the engineering colleges which granted admission than upon the appellants. It is quite possible that the appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the first year B.Sc. examination of the Rajasthan and Udaipur Universities was recognised as equivalent to the Pre-University examination of the Pre-University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year B.Sc. examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan they were eligible for admission. The fault lies with the engineering colleges which admitted the appellants because the Principals of these engineering colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these engineering colleges. We would, therefore, notwithstanding the view taken by us in this judgment, allow the appellants to continue their studies in the respective engineering colleges in which they were granted admission."

44. In ***A Sudha***, therefore, Supreme Court observed that in ***Rajendra Prasad Mathur***, the view taken was that as the students were innocent and were admitted to the Colleges despite their not being eligible, in some cases for capitation fee, they should not be penalized and were required to be allowed to continue their studies in the respective Engineering Colleges.

45. The Supreme Court held that the facts before it were similar to those in ***Rajendra Prasad Mathur***. Specific reliance was placed, by the Supreme Court, on the letter dated 26 February 1986 of the Principal of the Institute, informing Sudha that she was eligible for

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[12] **1986 Supp. SCC 740**

admission to the MBBS Course. The fault, therefore, was found to lie at the end of the Principal in failing to notice that Sudha was in fact not eligible for admission.

46. Following ***Rajendra Prasad Mathur***, therefore, the Supreme Court allowed Sudha to continue to prosecute her MBBS Course and directed that her first year result be declared forthwith.

Ashok Chand Singhvi

47. The appellant, ***Ashok Chand Singhvi*** (hereinafter, "Singhvi") was a diploma holder. He applied for admission to the B.E. Degree Course in the Faculty of Engineering of Jodhpur University. The application was submitted after the last date for doing so.

48. Certain objections were raised by the Officer-in-charge, Admissions, to the eligibility of Singhvi for admission to the B.E. Course. The Dean of the University considered the objections and recommended Singhvi's case for admission to the Vice Chancellor. The Vice Chancellor also considered the facts and accepted the Dean's recommendations. It was, thereafter, that Singhvi was admitted to the B.E. Course.

49. About a month thereafter, Singhvi was informed that his admission had been put in abeyance till further orders. He assailed the said decision before the High Court but was unsuccessful. He, therefore, appealed to the Supreme Court.

50. An initial objection to the eligibility of Singhvi for admission to the B.E. Course, on the ground that he had not obtained 60% marks in his Diploma which was a minimum eligibility requirement, was found to be erroneous on facts. The Supreme Court found that Singhvi had obtained 61.5% marks.

51. The Supreme Court, thereafter, addressed the issue of whether Singhvi could have been admitted after the last date, by which time all seats had been filled. On this aspect, the Supreme Court found some force in the contention of the learned counsel for the University that the appellant could not have been admitted and his admission was illegal. Thereafter, on the aspect of whether for that reason, the appellant's admission could be cancelled, the Supreme Court held as under:

"14. It is urged by Mr Mehrotra, learned counsel appearing on behalf of the respondents, that the appellant could not be admitted and his admission was illegal. *There may be some force in the contention of the learned Counsel, but when all facts were before the University and nothing was suppressed by the appellant, would it be proper to penalise the appellant for no fault of his? The admission of the appellant* was *not made through inadvertence or mistake, but after considering even all objections to the same, as raised by the said Officer-in-Charge, Admissions, in his note. The appellant was communicated with the*

decision of the Dean as approved by the ViceChancellor admitting him to the Second Year BE course. The appellant deposited the requisite fees and started attending classes when he was told that his admission was directed to be put in abeyance until further orders without disclosing to him any reason whatsoever.

15. *It is curious that although the admission to the BE degree course of the University is governed by statutes of the University and admission rules, the said resolution of the Syndicate dated 13-12-1970 has also been kept alive. Neither the Dean nor the Vice-Chancellor was aware of the true position, namely, as to whether the said resolution had become infructuous in view of the statutes and the admission rules. A teacher candidate is likely to be misled by the said resolution. It is the duty of the* University *to see that its statutes, rules and resolutions are clear and unambiguous and do not mislead bona fide candidates. The University should have revoked the said resolution in order to obviate any ambiguity in the matter of admission or included the same in the statutes as part of the admission rules.*

16. *When the appellant made* the *application beyond the last date, his application should not have been entertained. But the application was entertained, presumably on the basis of the said resolution of the Syndicate. The appellant also brought to the notice of the Dean the said resolution and also the implementation of the same by admitting seven teacher candidates.*

17. *It is submitted on behalf of the University that it was through mistake that the appellant was admitted. We are unable to accept the contention*. It has been already noticed that both the Dean and the Vice-Chancellor considered the objections raised by the Officer-inCharge, Admissions, and thereafter direction for admitting the appellant was made. *When after considering all facts and circumstances and also the objections by the office to the admission of a candidate, the Vice-Chancellor directs the admission of such a candidate such admission could not be said* to *have been made through mistake. Assuming that the appellant was admitted through mistake, the appellant not being at fault, it is difficult to sustain the order withholding the admission of the appellant*. In this connection, we may refer to a decision of this Court in ***Rajendra Prasad Mathur***. In that case, the appellants were admitted to certain private engineering colleges for the BE degree course, although they were not eligible for admission. In that case, this Court dismissed the appeals preferred by the students whose admissions were subsequently cancelled and the order of cancellation was upheld by the High Court. At the same time, this Court took the view that the fault lay with the engineering colleges which admitted the appellants and that there was no reason why the appellants should suffer for the sins of the management of these engineering colleges. Accordingly, this Court allowed the appellants to continue their studies in the respective engineering colleges in which they were granted admission. The same principle which weighed with this Court in that case should also be applied in the instant case. The appellant was not at fault and we do not see why he should suffer for the mistake committed by the ViceChancellor and the Dean of the Faculty of Engineering."

52. The above judgments, which were cited by Mr. Prafulla, therefore, clearly indicate that, even in cases where the candidate was ineligible for admission to a course, where there had been no concealment on the part of the candidate, and she was allowed to be admitted to the course by the authorities without any objection, the Supreme Court has rejected the plea of the authorities that they could subsequently cancel the candidature of the appellant or deny her permission to appear in the examination. Where the appellant had undertaken the examination, the Supreme Court directed that the results be declared and that the student be permitted to complete her course.

53. Mr. Rupal did not place reliance on any decision of the Supreme Court, but cited four judgments of this Court which have considered one or the other decision cited by Mr. Prafulla. I may advert to the said decisions chronologically.

Pankaj v. UOI

54. The decision in ***Pankaj*** arose out of a judgment of the learned Central Administrative Tribunal in an Original Application (OA) filed by the petitioner Pankaj. The learned Tribunal dismissed the OA.

55. Pankaj belonged to the Jat community. He applied for admission to a post of Lower Divisional Clerk (LDC) in the Airforce. The post was reserved for an OBC candidate. Pankaj produced a certificate issued by the Deputy Commissioner, South West District, Delhi, stating that he belonged to the Jat community, which was recognized as a backward class by the GNCTD *vide* Notification dated 20 January 1995. He was, therefore, appointed as an LDC *vide* letter of appointment dated 12 December 2003. The appointment was, however, provisional and subject to verification of the OBC certificate given by Pankaj.

56. A year later, on 15 December 2004, the appointment of Pankaj as LDC was terminated, stating that, on verification, it was revealed that the Jat community was not included in the Central List of OBCs.

57. This Court observed, at the outset, that it was an admitted position that the Jat community was not an OBC included in the Central List of OBCs

issued by the Central Government and that Pankaj was not, therefore, eligible for appointment to the post of LDC, which was reserved for OBCs.

58. Pankaj, thereafter, pleaded equitable estoppel and relied on the decision in ***Sanatan Gauda***. On this the Division Bench held thus in para 11 and 12 of the report, on which Mr. Rupal places reliance:

"11. *We also do not find merit in the contention that on the basis of principle of estoppel, the respondent could not have terminated the service of the petitioner vide letter dated 15th December, 2004* In support of his contention the petitioner had relied upon the judgment of the Supreme Court in the case of ***Sanatan Gauda.*** *The said judgment in our opinion is not applicable to the facts of the present case. In the said case, a student of a Law College had pursued his studies for two years and thereafter he was not being permitted and allowed to give his examination for Final year. In these circumstances, the Supreme Court applied the principle of estoppel and held that the petitioner therein was entitled to succeed. It may also be mentioned here that the Supreme Court has examined various rules and satisfied itself that the petitioner therein fulfillled the minimum qualification prescribed for admission to the law course.*

12. It is a settled law that there cannot be an estoppel against law. A wrong appointment without proper verification cannot give any right to the petitioner who is a non-OBC to occupy a post reserved for an OBC category. An error or mistake of the nature, subject matter of the present petition, cannot be overlooked by applying principle of estoppel*. Appointment of a non-OBC candidate to a post reserved for OBCs is not an irregularity but illegality which vitiates the appointment. The appointment itself as contrary to law and illegal. Principle of estoppel is therefore not applicable.* It may also be relevant to state here that the appointment letter dated 12th December, 2003 gives right to the respondent to terminate the appointment of the petitioner by giving one month' notice. Therefore, the petitioner was aware that his appointment may be terminated."

Bidisa Chakraborty

59. This was a case in which the appellant Bidisa Chakraborty (hereinafter "Bidisa") undertook the paper in subject MS-8 "Quantitative Analysis for Managerial Applications" of the Distance Learning Programme in Management Studies of the Indira Gandhi National Open University (IGNOU) after the expiry of the maximum span period available with her for completing her course. For this reason, though Bidisa undertook the examination, IGNOU did not declare her result.

60. Bidisa approached this Court under Article 226 of the Constitution of India. She contended that, prior to her appearing in the examination, she had checked her admission status on the IGNOU website which showed her admission to be valid till June 2012. It was also contended that prior to appearing in the examination, Bidisa had met the Assistant Regional Director of the IGNOU and that she had been assured, even in the said meeting, that her registration was valid till June 2012 and that she could appear in the MS-8 paper in June 2012. It was on this basis, she filled up the application form and was issued an admit card and underwent the examination.

61. The writ petition was dismissed by a learned Single Judge of this Court holding that the admit card was issued on the basis of self certification by the candidate on a provisional basis and that complete scrutiny of the eligibility of the candidate was undertaken only prior to declaration of results. The learned Single Judge held that the oral assurance extended to Bidisa could not operate as an estoppel against the IGNOU and in her favour. Inasmuch as Bidisa had admittedly undertaken the MS-8 examination after the span period of eight years within which she could complete her course, had expired, the learned Single Judge held that the IGNOU was justified in not declaring her result.

62. Bidisa appealed to the Division Bench. Relying on the judgment of the Supreme Court in ***Maharishi Dayanand University v. Surjit Kaur***[13], the Division Bench invoked the principle that there was no estoppel against the statute and that the parties could not be directed to do something which was prohibited by the Statute governing the University. It was held that the conduct of the IGNOU in allowing Bidisa to pursue her course, even though she had no statutory or vested right to do so, could not confer any right on her. Equally, no right vested in Bidisa merely because she was mistakenly allowed to appear in the examination.

63. The decisions in ***Rajendra Prasad Mathur*** and ***A. Sudha*** on which Bidisa placed reliance were distinguished and held to have been passed on their own peculiar facts, which were different from the facts obtained in Bidisa's case.

Sahil Singh Ravish

64. This was a case in which a student was short of the requisite attendance, as per the rules, which entitled him to appear in the examination in question and was nonetheless allowed to appear in the examination. The Division Bench of this Court held that the applicable Rule specifically required the student to attend 70% of the lectures in each of the courses, which the appellant had admittedly not attended. Inasmuch as the Rule clearly disentitled the appellant to undertake the examination, this Court, in the following passage from para 7 of the report, refused to grant relief to the appellant on the basis of the decision in ***Shri Krishnan***:

> "7. ... As to whether Admit Card was issued under duress or not, in the opinion of the Court, is irrelevant because, in no circumstance, should such an admit card have been, in fact, issued. *The proposition canvassed by the appellant based upon the judgment in* ***Shri Krishnan,*** *in the Court's opinion, cannot have any application having regard to the mandatory nature of Rule 8. To permit another interpretation would not only mean* undermining *the norm but would also be prejudicial to those who comply with the Rules, which, at least, under Article 226 of the Constitution, cannot be countenanced. For these reasons, no relief can be granted."*

Guru Gobind Singh Indraprastha University v. Ram Narayan Tiwari

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[13] (2010) 11 SCC 159

65. The respondent, Ram Narayan Tiwari (hereinafter "Tiwari") in this case was admitted to the B. Tech course in the Guru Gobind Singh Indraprastha University (GGSIPU) without having obtained the requisite qualifying marks in his XII class examination despite having attempted the examination twice. The admission was provisional in nature. On the ground that he had failed to secure the qualifying marks for admission despite having attempted his XII class examination twice, Tiwari's admission was cancelled by the GGSIPU.

66. Tiwari approached this Court under Article 226 of the Constitution of India. A learned Single Judge of this Court, even while observing that Tiwari was admittedly not eligible for admission to the B. Tech course, and that, therefore, the cancellation of his admission did not suffer from any infirmity, nonetheless held that GGSIPU was estopped from cancelling his admission, following the decisions in ***Sanatan Gauda*** and ***Rajendra Prasad Mathur***, apart from the decision of this Court in ***Sangeeta Srivastava v. Prof. U.N. Singh***[14].

67. The Division Bench relied on the judgment of the Supreme Court in ***Maharishi Dayanand University*** and held that, having failed twice to score the qualifying marks for admission to the B. Tech course, Tiwari could not plead any equity in the manner of his entitlement for such admission. This Court held that "the stipulated eligibility criterion for a B. Tech course cannot possibly be diluted to a point of absurdity". In the opinion of this Court, there could be no equitable estoppel in so far as this basic criterion was concerned.

68. Moreover, this Court felt that it was obvious to Tiwari that he was not entitled to secure admission to the B. Tech course, which is why, he underwent the XII class examination twice. Despite undertaking the XII class examination twice, Tiwari could not secure the minimum qualifying percentage as would render him eligible for admission to the B. Tech course.

69. ***Sanatan Gauda*** was distinguished on the ground that the appellant, in that case, was found to be eligible for admission to the course in question. The decision in ***Sangeeta Srivastava*** was distinguished by observing that, in that case, the University had told the College to cancel the admission of the appellant but the college continued to treat her as a regularly admitted student for eight months. In the case before it, however, the college had informed the GGSIPU of the ineligibility of Tiwari to join B. Tech course, whereafter the GGSIPU cancelled its admission.

70. Significantly, para 27 of the report observed as under:

> "27. In any event, there is not a single decision that has been brought to the notice of this Court where for the B. Tech course, a candidate who does not secure even 40% marks in the Mathematics paper is allowed to not only get admitted to the B. Tech Course but allowed to continue and complete. This is simply unacceptable from even the basic standard of University education."

Notifications dated 7 September 2011 and 3 January 2012 issued by the DU

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[14] AIR 1980 Del 27

71. Before proceeding to examine the effect of the decisions cited at the Bar to the facts before me, I deem it appropriate to deal with the Notifications dated 7 September 2011 and 3 January 2012 issued by the DU, reproduced in para 22 *supra*, on which Mr. Rupal relies.

72. Neither Notification, in my considered opinion, applies.

Notification dated 7 September 2011

73. The Notification dated 7 September 2011 clarifies that a student, *who is not eligible* to appear in the first Semester examination, will not be eligible for admission to the second Semester, and would have to be re-admitted to the first Semester.

74. It cannot be anybody's case that the petitioner was not *eligible* to appear in the first Semester examination. There is a difference between eligibility and entitlement. Eligibility pertains to the qualifications for the post, or the course of study. If, for example, a post is advertised, every person who fulfils the stipulated eligibility requirements is *eligible* for the post, even if he does not apply for it. Similarly, every student, who desires to advance to the next grade, or seek admission to a particular course, and who satisfies the stipulated qualifications and, in the case of advancement to a higher grade other requirements such as attendance and the like, is *ipso facto* eligible for advancement, or admission, as the case may be.

75. Reference may be made to the judgments of the Supreme Court in ***U.O.I. v. Lt. Gen. Rajendra Singh Kadyan***[10] and ***Valsala Kumari Devi M. v. Director, Higher Secondary Education***[11][12], which define "eligible" as "fit to be chosen". Lord Chelmsford, speaking for the House of Lords in ***Baker v. Leo***[17], stated that, "applied to the selection of persons, the word has two meanings, i.e. "legally qualified" or "fit to be chosen". In ***U.O.I. v. Deo Narain*** [13] , the Supreme Court, albeit in the context of service law, distinguished between "eligibility" and "seniority" thus:

> "33.In our judgment, the ratio laid down by this Court in ***U.O.I. v. C.N. Ponnappan***[19] clearly lays down the principle formulated in the Government of India's Letter dated 20-5-1980 as also in a subsequent communication dated 23-5-1997 issued by the Ministry of Finance, Department of Revenue. Even otherwise, in our considered opinion, the two concepts viz. (i) eligibility, and (ii) seniority are quite distinct, different and independent of each other. *A person may be eligible, fit or qualified to be considered for promotion.* It does not, however, necessarily mean that he must be treated as having requisite "seniority" for entry in the zone of consideration. Even if he fulfils the first

[10] **(2000) 6 SCC 698**
[11] **(2007) 8 SCC 533**
[12] **LJ Ch 631: 8 HL Ca. 495**
[13] **(2008) 10 SCC 84** [19] **(1996) 1 SCC 524**

requirement, but does not come within the zone of consideration in the light of his position and placement in "seniority", and the second condition is not fulfilled, he cannot claim consideration *merely on the basis of his eligibility or qualification.* It is only at the time when "seniority" cases of other employees similarly placed are considered that his case must also be considered. CAT, in our view, therefore, was not right in applying ***Ponnappan*** and in granting relief to the applicants. There is no doubt in our mind that it says to the contrary."
(Emphasis supplied)

76. It is nobody's case that the petitioner had not attended the requisite number of classes in the first semester, or was not eligible to do so. Neither does the DU contend that the petitioner had failed to satisfy any other requirement as would render her *ineligible* to take the first Semester examination. If she was unable to take the examination, it was not *because she was ineligible*, but because she had not paid the fees. Payment of fees has nothing to do with *eligibility*, though it may affect the *entitlement* of the petitioner to take the examination. Taking a leaf out of ***Rajendra Singh Kadyan***, seniority, in service jurisprudence, may affect *entitlement* to promotion, but does not affect *eligibility*.

77. In fact, the reliance, by Mr. Rupal, on the Notification dated 7 September 2011 is contradictory, in terms, to his reliance on Clause 4 of the NEP-UCGF 2022 Guidelines. Clause 4 of the NEP-UCGF 2022 Guidelines applies, expressly, to "a student who appears in an odd-semester examinations or *who was eligible to appear in the odd semester examinations but remains absent in any or all the papers of the said semester*". Thus, even by relying on Clause 4 of the NEPUCGF 2022 Guidelines, Mr. Rupal implicitly acknowledges the fact that the petitioner was eligible to appear in the first Semester examination.

78. Thus, as the petitioner was eligible to appear in her first Semester examination, but could not do so as she had not paid the fees, the Notification dated 7 September 2011 does not apply.

Notification dated 3 January 2012

79. Still less does the second Notification on which Mr. Rupal relies, issued on 3 January 2012, apply to the facts on hand. It clearly applies only to students who are detained from appearing in any semester examination.

The petitioner was never detained from appearing in the first Semester examination. Ergo, the Notification has no application.

80. I now proceed to analyze the takeaways from the judgments cited at the Bar, before applying them to the case at hand.

The takeaways

81. One thing becomes immediately apparent from a reading of the decisions on which learned counsel for both sides has placed reliance. Qualitatively, none of the said decisions involved a factual conspectus which may be said to be similar to the case at hand. They are all decisions in which the students or candidates in question were mostly ineligible either to join the course which they had been pursuing or to undertake the examination which they undertook.

82. As against that, in the present case, there is no question of eligibility arising for consideration. It is not as though the petitioner had failed her first semester examination. She did not undertake the examination. According to the petitioner, this was because that though she was under the impression that she had paid the requisite fees, the transaction failed as a result of which she was not given the admit card for the examination. Additionally, the petitioner contends – and Mr. Prafulla asserts in Court – that the "relevant authorities" had assured her that she could take her first semester examination along with her third semester examination, which is why she proceeded to attend the second semester classes.

83. If one peruses the decision on which the learned counsel placed reliance, the trajectory is interesting. In ***Shri Krishnan***, the appellant's candidature was cancelled for want of requisite attendance. The Supreme Court upheld the challenge to the cancellation, though the admission of the candidate was provisional, by relying on clause 2(b) of Ordinance 10, which permitted withdrawal of the provisional certificate on the ground of failure to attend the prescribed course of lectures only before the examination. Besides, the Supreme Court held that the University had ample time with it to confirm the eligibility of the appellant to undertake the examination, before the admit card was issued. In ***Sanatan Gauda***, the Supreme Court in fact found the candidate to be eligible for admission. The additional consideration which

weighed with the Supreme Court in passing its decision was that the candidate had submitted his marksheet at the time of application for admission to the Law College and that it was only belatedly that the College found that the candidate was not eligible for admission.

84. ***A. Sudha***, however, was a much more extreme case, in that the appellant was clearly ineligible for admission to the MBBS Course as she had not secured the requisite qualifying marks in her PUC examination. The finding of the High Court to that effect was upheld by the Supreme Court. On the aspect of whether the appellants' candidature could be cancelled, however, the Supreme Court chose to echo the view expressed in ***Rajendra Prasad Mathur*** that, where an ineligible candidate, who has disclosed all the facts, is admitted to a Course, she must be permitted to continue her studies and cannot be thrown out midway. An additional circumstance which applied in ***A. Sudha*** was that the Principal had also reassured Sudha prior to her obtaining admission to the MBBS Course that she was eligible.

85. ***Ashok Chand Singhvi*** was a case in which no taint of ineligibility attached to the candidate and the only objection to his admission was that he had been admitted after the cut-off date and after the seats had been filled. The Supreme Court found that the admission was made on the basis of a resolution of the Syndicate of the University and could not, therefore, be said to have been granted by mistake. In these circumstances, the Supreme Court held that the admission of the candidate could not be cancelled thereafter.

86. None of the Division Benches' decisions of this Court on which Mr. Rupal places reliance, considers all these decisions of the Supreme Court. The cumulative effect of the judgments of the Supreme Court has, therefore, necessarily to be accorded precedence over the view adopted by the Division Benches of this Court. The cumulative effect would be that, where an admission is granted, even to an ineligible candidate, or where an ineligible candidate is permitted to undertake an examination, the candidate cannot, thereafter, be prevented from continuing to attend the course; nor can the result of the examination undertaken by the candidate be withheld.

87. Even if one were, individually, to examine the decisions cited by Mr Rupal, they do not rule contrary to the aforenoted legal position. ***Pankaj*** was a service matter in which a General Category candidate had been appointed

against a post reserved for an OBC. It was, therefore, a clear case of ineligibility, and of an appointment obtained contrary to the law, which is why the Division Bench distinguished ***Sanatan Gauda. Bidisa Chakraborty*** was a case in which the appellant had undertaken an examination after the span period of the course was over. ***Sahil Singh Ravish*** was a case of shortage of attendance, which, again, resulted in *ex facie* ineligibility to undertake the examination. ***Ram Narayan Tiwari*** was a case of an admission to the course without possessing the requisite qualifying marks in Class XII. The student was, therefore, *ab initio* ineligible even to undertake the course. Here, too, ***Sanatan Gauda*** was distinguished on the ground that it pertained to an eligible candidate.

88. As I have already held, there can be no dispute regarding the *eligibility* of the petitioner to undertake the first Semester examination of her BA (Hons) English course. These decisions do not, therefore, help the DU.

Clause 4 of the NEP-UCGF Guidelines, 2022

89. Mr. Rupal places reliance on Clause 4 of the NEP-UGCF Guidelines, 2022 which governed the University. Mr. Prafulla disputes the applicability of the said Clause to his client, as the Guidelines were issued on 6 March 2023, whereas she had joined the Kalindi College on 21 October 2022 and was, in fact, even issued an Identity Card on 23 January 2023.

90. There is substance in Mr. Prafulla's submission. Clause 4 was never part of the conditions by which the petitioner was governed when she joined the B.A. (Hons.) course, nor even when the first Semester examinations were held. The only instructions which were applicable at that time were, as per Mr. Rupal's own submission, the Notifications dated 7 September 2011 and 3 January 2012, neither of which apply to the petitioner. Mr. Rupal has, therefore, not been able to cite a single Rule, Regulation, Statute, or even administrative instruction, as would disentitle the petitioner from joining the second semester and pursuing her studies, despite her not having attempted the first semester examination as she failed to pay the requisite fees.

91. Moreover, Clause 4 of the NEP-UGCF Guidelines, 2022, if carefully read, is unworkable. It entitles a student, who does not appear in the odd semester examination, or who fails in it, to move to the next semester (which

would naturally be even) provided she submits the examination form and pays the examination fees *for both the odd and even semester examinations*. This is impossible of compliance, as the examination form would be filled, and the examination fees paid, for the even semester, *after the student joins the even semester classes.* By requiring the student to fill the examination form, and pay the examination fees, for the even semester, *as a condition for her to be eligible to move on to the even semester*, the Clause has incorporated a condition which is impossible of compliance. Clause 4 is, thereby, rendered unworkable.

92. I queried of Mr. Rupal, too, on this aspect, but he, too, acknowledged that there appeared to be an anomaly, which he was unable to explain away.

93. A clause which is unworkable is unworkable as a whole. It cannot be enforced only in part, to the extent to which it appears to be workable, especially where the unworkable and workable parts of the clause are part of one composite scheme. In the classic decision in ***R.M.D. Chamarbaugwala v. U.O.I.***[20], it was held, relying on Crawford on Statutory Construction, that, where the valid and invalid parts of a statute form a part of a composite scheme, the invalidity of a part would invalidate the whole statute.

94. Clause 4 of the NEP-UCGF-2022 Guidelines is, therefore, unenforceable at law.

95. I cannot, therefore, agree with Mr. Rupal that, in view of Clause 4 of the NEP-UCGF-2022 Guidelines, the petitioner could not have moved on to the second semester.

Factual considerations and equity

96. As things stand, the petitioner has not only attended the second semester classes of her B.A. (Hons.) course; she has also applied for and attempted the second semester examinations and proceeded to attend the third semester classes as well. The DU cannot disclaim itself of all responsibility in this regard. I cannot countenance an argument from the DU that they allowed the petitioner to attend the second semester classes, apply for the second semester examinations, obtain an admit card, and undertake the examinations, all the while remaining oblivious to her progress.

97. In any event, in the absence of any statutory or administrative covenant prohibiting her from entering the second semester in these circumstances, she cannot be asked, towards the end of her third semester, to re-attend the first semester classes and start from scratch, effectively reducing, to a nullity, three semesters of study undertaken by her, merely because she did not pay the fees and could, not, therefore, attempt her first semester papers.

Clause 4 of the NEP-UCGF-2022 Guidelines, if applied

98. There is no case, against the petitioner, of her having been remiss either in her attendance or in her performance as a student, in the first, second or third semesters. Clause 4 of the NEP-UCGF-2022 Guidelines, though anomalous, envisages a student who has absented, or even failed, in the first semester examination being permitted to advance to the second semester. This is subject only to the student paying the admission fees, and applying, for appearing in the first and second semester examinations. Such a student would, therefore, be entitled to attempt the first semester examination papers at a later

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[20] **AIR 1957 SC 628**

stage. The next occasion for doing so would only arise when the student attempts her third semester examinations. In other words, Clause 4 of the NEP-UCGF-2022 Guidelines does envisage a first semester student absenting, or failing, in the first semester examinations and still being able to undertake the first semester papers with the third semester papers, which is what the petitioner says she was informed by the authorities in the DU – though she does not name them. The assurance appears, therefore, to have been in tune with Clause 4 of the NEP-UCGF-2002 Guidelines.

99. The only requirement which remained unfulfilled, as stipulated in Clause 4 of the NEP-UCGF-2022 Guidelines, is that the petitioner had not paid her first semester examination fees. Otherwise, she fulfilled all requirements, as she had filled in the first semester examination application form and had actually applied, paid for, and undertaken the second semester examinations. Merely for the reason that the petitioner had not paid the fees for her first semester examination, no Court, which is not a stranger to equity and justice, can

uphold the decision to set the petitioner back over a year and a half and make her start her B.A. (Hons.) course all over again, from scratch.

Conclusion

100. Viewed any which way, therefore, the petitioner is entitled to succeed in this petition.

101. Resultantly, the petition succeeds and is allowed. The DU is directed to declare, forthwith, the second semester examination result of the petitioner. The petitioner would also be allowed to continue with her B.A. (Hons.) English course in the Kalindi College, and attempt her third semester examination, along with her first semester examination, subject, of course, to fulfilment of all requisite formalities, including payment of fees for both semesters. The DU is directed to issue her the necessary admit card(s) so as to enable her to do so.

102. There shall be no orders as to costs.