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

\+ **LPA 713/2019 & C.M. APPL.48802-48804/2019**

Reserved on: 15.11.2019
Date of decision: 19.11.2019

IN THE MATTER OF:

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY..... Appellant
Through : Ms. Maninder Acharya, ASG with Ms. Ekta Sikri, Mr. Saket Sikri, Mr. Ajaypal Singh, Mr. Vikalp Mudgal, Mr. Jasbir Bidhuri, Mr. Viplav Acharya and Mr. Arun Sanwal, Advocates.

versus

NAINCY SAGAR & ANR ..... Respondents
Through : Mr. Sandeep Sethi, Sr. Advocate with Mr. Raj Kamal and Mr. Aseem Atwal, Advocates, for respondent No.1.

AND

\+ **LPA 717/2019 & C.M. APPL.49163-49165/2019**

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY
..... Appellant
Through : Ms. Maninder Acharya, ASG with Ms. Ekta Sikri, Mr. Saket Sikri, Mr. Ajaypal Singh, Mr. Vikalp Mudgal, Mr. Jasbir Bidhuri, Mr. Viplav Acharya and Mr. Arun Sanwal, Advocates.

versus

PRATEEK SOLANKI & ANR ..... Respondents
Through : Mr. Sandeep Sethi, Sr. Advocate with Mr. Raj Kamal and Mr. Aseem Atwal, Advocates,

for respondent No.1.
Mr. Annirudh Sharma, Mr. Avinash Kapoor and Mr. Rahul Kumar, Advocates, for respondent No.2.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE ASHA MENON

HIMA KOHLI, J.

1. The appellant, Guru Gobind Singh Indraprastha University (in short 'GGSIPU') has filed the present appeal being aggrieved by the common judgment dated 31.10.2019, passed by the learned Single Judge, allowing two writ petitions, one filed by Naincy Sagar [W.P. (C) 10909/2019] and the other by Prateek Solanki [W.P. (C) 8697/2019], both enrolled in the B.A. LL.B/B.B.A.LL.B five years integrated course offered by the respondent No.2/Vivekananda Institute of Professional Studies (in short 'VIPS'), with a common prayer that they be promoted to the next semester, i.e. the 9th semester, based on the credits obtained by them during the academic year 2018-19 and thereafter, be permitted to appear for the 8th semester end term examinations in the next even semester, i.e. the 10th semester, as supplementary papers.

2. By the impugned judgment, the learned Single Judge has allowed both the writ petitions with the following directions:-

> *"Conclusion: -*
>
> *21. Thus, for the foregoing reasons, the captioned petitions are disposed of with the following directions: -*

i. The respondents will promote the petitioners to the 9th semester and in this behalf make suitable adjustments in the form of extra classes, if found necessary.

ii. The respondents will inform the petitioners as to how they can take extra classes for the 8th semester and when they can sit for the exam qua the said semester.

iii. The petitioners will file undertaking in the form of an affidavit with the Principal, VIPS to the effect that they will attend the stipulated classes."

3. Before proceeding to deal with the arguments advanced by both sides, it is necessary to recapitulate the necessary facts that have led both the respondents/students approach the court for relief. The respondents/students are pursuing a five year integrated LL.B course in the respondent No.2/VIPS. They had joined the said course in the academic year 2015-16. Each academic year comprises of two semesters. In each semester, the students are required to take examinations in six papers. Every paper has a credit rating of five. After clearing the first three academic years of the subject course, in other words, passing the 1st, 2nd, 3rd, 4th, 5th and 6th semesters, they were promoted to the fourth academic year that commenced in July, 2018 and comprises of the 7th and 8th semesters. The respondents cleared the 7th semester but they were detained in the 8th semester that commenced on 07.1.2019 and concluded on 31.5.2019. The reason for their detention in terms of a notice dated 22.4.2019, issued by the respondent No.2/VIPS was failure on their part to achieve the minimum attendance. Pertinently, the notice dated 22.4.2019, mentions the names of 20 other students, who were detained alongwith the respondents herein due to

shortage of attendance. The fallout of the said decision taken by the appellant/GGSIPU is that the respondents/students will not be promoted to the 9th semester and it would be deemed that they have taken an academic break for the said year with permission to sit for the examination of the 8th semester with the next batch for the academic year and then go on to complete the five year integrated course of B.A. LL.B/B.B.A. LL.B. in a period of six years.

4. Now a glance at the reason for issuance of the detention order. Records reveal that Naincy's attendance had fallen short because she suffered a fracture in her right arm due to an accident that took place on 8.2.2019, due to which she had to undergo a surgery. When the 8th semester end term examination was to take place on 29.4.2019, Naincy was not permitted to sit for the said examination and she was informed by the respondent No.2/VIPS that she shall be re-admitted in the regular batch of the academic year with the next batch and will be permitted to repeat the 8th semester of the fourth academic year, 2019-20. The results of the 8th semester end term examination were declared by the appellant/GGSIPU on 30.7.2019. Prior thereto, classes for the 9th semester of the fifth year had already commenced on 15.7.2019. However, Naincy approached the Court for relief only in October, 2019.

5. Coming next to the other student, Prateek, the reason for detaining him in the 8th semester in the fourth academic year was the same i.e., shortage of attendance. The impugned judgment notices the fact that Prateek had participated in various moot court competitions and music competitions between February, 2016 to October, 2018, as would be

apparent from the certificates of appreciation filed with the writ petition. During the 8th semester, he had interned for one month between mid January to mid February 2019 with an advocate, who had issued him a certificate. But there is no explanation offered for not attending the classes for the remaining four months of the 8th semester. Unlike Naincy, Prateek had filed the writ petition in August, 2019.

6. Shorn of other peripheral pleas taken by the respondents/students in the writ petition to assail their detention order, the main thrust of the arguments addressed by their counsel before the learned Single Judge pivoted around the interpretation of Clause 9 and Clause 11.3(v)(i) of Ordinance 11 and the contention that since there was an ambiguity in the said Clauses, the benefit must go in favour of the students. The plea taken by the respondents/students that shortage of attendance alone cannot be a disqualification for promotion to the next academic year found favour with the learned Single Judge who has held that though the respondents/students are short of attendance, but having obtained at least 50% of the total credits in the fourth academic year, as required, they deserve to be promoted with a condition that they will have to pass the papers that they did not take in a given semester. For arriving at the said conclusion, the learned Single Judge has sought to interpret Clause 9.2 harmoniously with Clause 11.3(v) of Ordinance 11 and on doing so, the view taken is that in the event a student is detained due to shortage of attendance, he will have to repeat the examination of the semester in which he has been detained. But if he scores at least 50% of the total credits in the academic year in question, the

appellant/GGSIPU will have to promote him to the next academic year, without insisting on an academic break.

7. It is the aforesaid interpretation of the relevant Clauses of Ordinance 11 that has made the appellant/GGSIPU file the present appeals. Ms. Maninder Acharya, learned ASG appearing for the appellant/GGSIPU argued that the interpretation given in the impugned judgment to Clauses 9 and 11.3(v) of Ordinance 11 has resulted in giving a complete go-bye to Clause 9; that the learned Single Judge failed to appreciate that a student who is short of attendance in a particular semester, as contemplated in Clause 9.2, cannot be extended the benefit of Clause 11.3.(v)(i) solely on the ground that he has obtained the requisite credit score. Learned ASG submitted that for being promoted to the next academic year, a student must fulfill the twin requirements of having a minimum attendance of 75% and a credit score of at least 50%, which the respondents/students in the instant case, did not fulfill. It was canvassed on behalf of the appellant/GGSIPU that the impugned judgment has completely disregarded the fact that classroom teaching is an essential and integral part of the learning process and shortage of attendance as prescribed in Clause 9, was sufficient reason to detain the respondents/students, even if they had secured the minimum 50% credit score in the fourth academic year.

8. It was also put forth on behalf of the appellant/GGSIPU that the attendance rules have been framed by the University in consonance with Rule 12 of the Bar Council of India Rules of Legal Education, 2008 (in short, 'BCI Rules') which stipulates that no student of any degree program would be allowed to take the end semester test in a subject, if the said

student has not attended a minimum of 70% of the classes held in the subject concerned as also the moot court room exercise, tutorials and practical training conducted in the subject, taken together. The Competent Authority can however reduce the minimum required 70% attendance to 65% in special circumstances. To buttress the aforesaid arguments, reliance has been placed by the appellant/GGSIPU on the following judgments:-

(i) Commissioner of Income Tax vs. Hindustan Bulk Carriers reported as **(2003) 3 SCC 57**

(ii) Vipin Sharma vs. Guru Gobind Singh Indraprastha University reported as **2009 SCC OnLine Delhi 2037.**

(iii) Sukriti Upadhyay vs. University of Delhi reported as **2010 SCC OnLine Delhi 3502.**

(iv) University of Delhi vs. Vandana Kandari & Anr. reported as **2011 SCC OnLine Del 111**

(v) Chaudhary Ali Zia Kabir vs. GGSIP University & Ors. reported as **2011 SCC OnLine DEL 1356**

(vi) Siddharth Kaul & Ors. vs. Guru Gobind Singh Indraprastha University reported as **2011 SCC OnLine Delhi 5157.**

9. Lastly, learned ASG submitted that the impugned judgment has opened a pandora box for the reason that the appellant/GGSIPU has been served advance copies of fresh petitions being filed by students similarly situated as the respondents/students herein, who were detained due to shortage of attendance. She pointed out that without prejudice to its right to prefer an appeal against the impugned judgment, the University has requested the respondent No.2/VIPS to conduct extra classes for the respondents/students herein to prepare them for the 9th semester term end

examination to be held from 28.11.2019, which is being done on a daily basis and if similar directions are to be issued in the fresh petitions, it will be extremely burdensome for the teaching faculty that is having to cope with these extra classes, besides taking their regular classes. She states that the enormity of such a direction can be gauged by the fact that the Rules interpreted in the impugned judgment, apply across board to all the courses offered by institutions affiliated to the University and it will open a floodgate of litigation.

10. *Per contra,* Mr. Sandeep Sethi, learned Senior Advocate appearing for the respondents/students has supported the impugned judgment and the interpretation given by the learned Single Judge to Clauses 9 and 11.3(v) of Ordinance 11. He opened his argument by submitting that the respondents/students have reconciled to the decision of the appellant/GGSIPU to detain them in the 8th semester, due to shortage of attendance. However, the challenge in the writ petition was to the action of the appellant/GGSIPU in preventing the respondents/students from being promoted to the next academic year, i.e. the 9th semester when they have fulfilled the requirement of obtaining 50% credit score in the fourth academic year. In other words, the submission made on behalf of the respondents/students is that shortage of attendance cannot be a ground to refuse them promotion to the next academic year. It was also argued by the learned counsel for the respondents/students that the language used in Clause 11.3(v)(ii) of Ordinance 11 makes it evident that only those students will fail to get promoted to the next academic year, who do not have the requisite percentage of credits coupled with the minimum required

attendance and in the instant case, it is not in dispute that both the respondents/students had obtained the minimum 50% of the total credits in the academic year in question and therefore, they deserve to be promoted to the next academic year. To substantiate his submission that where there is an ambiguity in the wording of a statute, the rule of *contra proferentem* ought to be invoked, the decision in Industrial Promotion & Investment Corporation of Orissa Ltd. vs. New India Insurance Co. Ltd. reported as **(2016) 15 SCC 315**, was cited by learned counsel as a case in point.

11. We have given our thoughtful consideration to the arguments advanced by learned counsel for the parties and carefully examined the impugned judgment in the light of the relevant rules and the case law cited.

12. Though no challenge was laid by the respondents/students to any provision of Ordinance 11, the entire dispute in the instant case hinges on the interpretation of Clause 9.1 and Clause 11.3(v) of Ordinance 11. For ease of reference, we may extract below, the relevant part of Clause 9:-

> *"**9. Attendance***
>
> *9.1* ***A student shall be required to have a minimum attendance of 75% in the aggregate of all the courses taken together in a semester,*** *provided that the Dean of the School in case of University Schools and Principal / Director in case of University maintained/affiliated institutes may condone attendance shortage up to 5% for individual student for reasons to be recorded.* ***However, under no condition, a student who has an aggregate attendance of less than 70% in a semester shall be allowed to appear in the semester term end examination.*** *Additional (not decreasing the provisions above) attendance requirement may be specified by Syllabi and Scheme of Teaching and Examination.*

For programmes regulated by a statutory regulatory body, if the statutory regulatory body provides for any specific guideline for attendance, the same shall be applicable as approved by the Board of Studies of the concerned school.

9.2 ***Student who has been <u>detained</u> due to shortage of attendance shall not be allowed to be promoted to the next academic year or semester and he/she will be required to take readmission and repeat all courses of the said semester with the next batch of students.*** *The University Enrolment number of such student shall however remain unchanged and he or she shall be required to complete the programme in a maximum permissible period as mentioned in clause 4.3.*

Dean of the School / Director / Principal shall announce the names of all such students who are not eligible to appear in the semester term end examination, at least 5 calendar days before the start of the examination and simultaneously intimate the same to the Controller of Examinations.

9.3 In case any ***<u>detained</u>*** *student appears in the semester/supplementary examination, his / her result shall be treated as null and void.*

xxx xxx xxx"

(emphasis added)

13. Clause 9 quoted above, deals with the aspect of attendance. Clause 9.1 requires that a student must have a minimum attendance of 75% in the aggregate of all the courses taken together in a semester. The minimum required attendance of 75% can be reduced by 5%, at the discretion of the competent authority, for reasons to be recorded. The said Clause makes it amply clear that no student, who has less than 70% aggregate attendance, shall be allowed to appear in the semester term end examination. It also states that in respect of programmes that are regulated by a statutory regulatory body, which in the present case, is the Bar Council of India, if

such a body provides for any specific guideline for attendance, the same shall be applicable, as may be approved by the Board of Studies of the concerned school.

14. The Bar Council of India being the regulatory body, has notified Rules of Legal Education, 2008 (in short, 'BCI Rules') for maintaining standard of legal education and for recognition of degrees in law for enrolment as an advocate. Rule 12 of the BCI Rules which is relevant for the purpose of deciding the present appeals, is extracted below:-

> *"**12. End Semester Test***
>
> ***No student of any of the degree program shall be allowed to take the end semester test in a subject if the student concerned has not attended minimum of 70% of the classes held in the subject concerned as also the moot court room exercises, tutorials and practical training conducted in the subject taken together.***
>
> *Provided that if a student for any exceptional reasons fail to attend 70% of the classes held in any subject, the Dean of the University or the Principal of the Centre of Legal Education , as the case may be, may allow the student to take the test if the student concerned attended at least 65% of the classes held in the subject concerned and attended 70% of classes in all the subjects taken together. The similar power shall rest with the Vice Chancellor or Director of a National Law University, or his authorized representative in the absence of the Dean of Law.*
>
> *Provided further that a list of such students allowed to take the test with reasons recorded be forwarded to the Bar Council of India."* (emphasis added)

15. On examining the stipulations contained in Clause 9.1 of Ordinance 11, it is clear that the said Clause is premised on Rule 12, the only distinction being that instead of prescribing a minimum aggregate attendance of 70% of classes held in the subject concerned, the said Clause prescribes 75% attendance of all the courses taken together. The margin of condoning upto 5% attendance is available in Clause 9.1 of Ordinance 11 as also Rule 12 of the BCI Rules.

16. Coming next to Clause 11.3(v), reproduced below, is the relevant part of the said Clause:-

> ***11. Criteria for Passing Courses, Marks, Promotion and Divisions***
>
> *xxx* *xxx* *xxx*
>
> ***11.3 (v) Promotion Policy to the Next Academic Year***
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> *(i)* ***A student will be promoted to the next academic year only if such student has obtained at least 50% (rounding to full digits) of the total credits of the existing academic year from which the promotion to next academic year is being sought.***
>
> *(ii)* ***All such students who fail to get promoted to next academic year for the reason of deficiency in required credits, as stated above or due to being detained in a particular academic year, will automatically be declared to have taken academic break to repeat such examinations of the year in which the student has failed or has been detained, so as to obtain sufficient credits to be promoted to the next academic year.*** *Such a student shall not be required to repeat any course that student has already completed successfully.*
>
> *On acquisition of sufficient credits for promotion, such students who have taken at least one academic break, shall be automatically readmitted in the regular batch of that academic year of the concerned programme. The Syllabi and Scheme of*

Teaching and Examination applicable to such students on readmission (from the year of readmission) shall be Scheme as offered to the students of the regular batch. If the total credits of all courses offered to the student is less than the minimum credits of the regular batch students then the minimum credits for the award of the degree of such students shall be as proposed by the Controller of Examinations and approved by the Vice-Chancellor otherwise it shall be equal to the minimum credits of the regular batch in which the student has studied the final year of the programme.

Academic break shall be applicable only to students

1. Who are detained due to shortage of attendance.

2. Who do not attain the required credits for promotion.

3. Those who want to drop the acquired credits of an academic year and repeat the full academic year *(feat is, appear in all academic components), such students shall be required to apply through School of Study / Institute / College for readmission.* ***This break shall be deemed as an academic break.***

Only two academic breaks are permissible for a student for the completion of the academic programme, a student will not be allowed to take more than two academic breaks, for any reason whatsoever. A student who has exhausted two academic breaks and a further occasion arises for him / her to take academic break, in such cases the admission of such student would automatically stand cancelled. If due to this clause, a situation arises were the student shall not be able to complete the requirements for the award of the degree in stipulated time as per clause 4.3, the admission of such students shall automatically stand cancelled. If such students, whose admission have been cancelled as per this clause, and the student appears for examinations, the result of such students shall be declared null and void.

In programmes of studies governed by a statutory body, if the regulations/rules of the statutory body specify any

promotion policy the same shall be applicable, after approval for implementation by the concerned Board of Studies. The Board of Studies governing the concerned programme of study may impose additional requirements for promotion to the next academic year by incorporating the same in the Syllabi and Scheme of Teaching and Examination for the concerned programme." (emphasis added)

17. Clause 11 above not only spells out the criteria for passing the courses and securing marks, it refers to the promotion policy and the grading system. Clause 11.3(v) is relevant for our purpose as it deals with the promotion policy to the next academic year. While Clause 11.3(v)(i) makes it amply clear that only upon a student obtaining at least 50% of the total credits of the existing academic year would he be promoted to the next academic year, Clause 11.3(v)(ii) sets out two circumstances under which a student can be treated as having taken an academic break, which are as follows:-

(a) When a student fails to get promoted to the next academic year on account of deficiency in the required credits, as mentioned in Clause 11.3(v)(i)

OR

(b) When a student has been detained in a particular academic year.

18. The aforesaid sub-rule further clarifies that once a student is declared to have taken an academic break, he will be permitted to repeat such examinations of the existing academic year in which he has **'failed'** or has been **'detained'** for being promoted to the next academic year. A maximum of two academic breaks are available to a student to complete the academic

programme and on exhaustion of two academic breaks, his admission will stand cancelled in terms of Clause 4.3 of Ordinance 11. Para 3 of Clause 11.3(v) (ii) reiterates the aforesaid position and mentions the following three circumstances in which an academic break shall be applicable to students:-

(a) When students are detained due to shortage of attendance

(b) When students do not attain the required credits for promotion

(c) When students wish to drop the acquired credits of an academic year and repeat the full academic year.

19. On interpreting Clause 11.3(v)(i) above, the understanding of the learned Single Judge is that a student can be detained on account of shortage of attendance and if he is so detained, he shall have to repeat the examination of the semester in question for which he has been detained. However, if the student has obtained the minimum of 50% of the total credits in the academic year in question, then notwithstanding the fact that there is a shortage of attendance in either of the two semesters of that year, the University has no option but to promote him to the next academic year and afford him an opportunity to complete the course within the prescribed period for completion of the academic programme. For arriving at the aforesaid conclusion, the learned Single Judge has sought to read Clause 9.2 together with Clause 11.3 (v) of Ordinance 11 and construe them harmoniously. A view has been taken in the impugned judgment that if such a construction is not placed on Clause 11.3(v)(i), then the entire Clause would be rendered redundant.

20. We are in respectful disagreement with the aforesaid interpretation given to Clause 9 and Clause 11.3(v)(i) and (ii) in the impugned judgment for the reason that once Clause 9 prescribes that a student must have a minimum attendance of 75% in the aggregate of all the courses taken together in a semester with a margin of 5% afforded to him in exceptional circumstances, which would bring down the minimum attendance to 70% in a semester and the said Clause goes on to declare that under no condition would a student, who has less than 70% aggregate attendance in a semester, be permitted to appear in the semester term end examination, there can be no manner of doubt that the aforesaid condition must be satisfied by a student for seeking promotion to the next academic year. The said condition is over and above the condition prescribed in Clause 11.3 (v)(i) and (ii) and both the conditions must be met.

21. As noted above, Clause 9.1 of Ordinance 11 is founded on the guidelines laid down in Rule 12 of the BCI Rules, which prescribes minimum required attendance as 70% with a margin of 5% permitted in exceptional circumstances, at the discretion of the competent authority. In the present case, the attendance of both the respondents/students is abysmally low. The 8th semester of the fourth academic year had commenced on 07.01.2019 and ended on 31.05.2019. 218 classes were conducted in the said semester for the courses taken by Naincy. We have been informed that Naincy has attended only 15 classes out of 218 classes. If we exclude the period during which she could not attend the classes on account of the injury suffered by her, between 07.01.2019 to 08.02.2019, then the number of classes conducted would stand proportionately reduced

to 93 but we find that she had attended only 11 classes. Worked out on a percentage basis, Naincy has attended 6.88% classes in the aggregate of all the classes taken by her in the 8th semester and upon exclusion of one month during which period she was grounded, her attendance was 11.82%. As for the other respondent, Prateek, out of 207 classes conducted for the courses opted for by him in the 8th semester, he had attended only two classes, which boils down to 0.97% attendance.

22. In the face of such a poor attendance, can it be urged that shortage of attendance should be given a complete go-bye and the respondents/students should be promoted to the next academic year solely on the basis of 50% credits scored by them in the existing academic year? To our mind, the answer would be a firm 'No'. Clause 11.3(v)(ii) does not contemplate that a student cannot be detained in a particular year if he does not secure the minimum attendance. The word **'or'** used in Clause 11.3(v)(ii) assumes great significance in this context and runs contrary to the view expressed in the impugned judgment that denial of promotion can only happen if twin conditions are fulfilled, i.e., there is detention on account of short attendance and the short attendance has led to the student securing less than 50% of the total credits. The concept of an academic break explained in Clause 11.3(v)(ii) itself contemplates the three situations in which such a break can be applied to students, namely in a case where they are detained due to deficiency in attendance or when they have failed to attain the required credits for promotion or when they want to drop the acquired credits of an academic year.

23. Clause 11.3 (v) (ii) goes on to clarify that a student, who does not get promoted to the next academic year, would be declared to have taken an academic break for repeating the examinations of the relevant year in which he has **"failed"** or been **"detained"** to enable him to obtain sufficient credits to be promoted to the next academic year. Thus, the word '**or**' has been used twice in Clause 11.3(v)(ii) and on both occasions, a clear distinction has been drawn between disqualifying a student from being promoted to the next academic year which is either on the ground that there is a deficiency in the required credits as stipulated in Clause 11.3(v)(i) **or** on account of his detention in a particular year. The words **'detention'/'detained'** have to be understood in the context of Clauses 9.2 and 9.3 where they have been mentioned. Clause 9.2 stipulates that a student, who has been '**detained**' due to shortage of attendance, shall not be allowed to be promoted to the next academic year or semester and Clause 9.3 states that in the event any '**detained student**' appears in a semester/supplementary examination, his result shall be treated as null and void.

24. It is settled law that while interpreting a statute, the assumption is that it is a designed to be workable. A construction that results in defeating the plain and clear intent of the legislature ought to be rejected by the courts even though there may be some inexactitude in the language used. [Refer: CIT v. S. Teja Singh **AIR 1959 SC 352**; Salmon v. Duncombe **(1886) 11 AC 627** & Curtis v. Stovin (1889) 22 QBD 513)]. Principles of interpretation require that a statute must be read as a whole and one provision of the Act ought to be construed with reference to the other provisions of the very same Act so as to make the whole statute, a consistent

enactment. The court is also duty bound to examine the intention of the legislature while interpreting a statute not merely by directing its attention to a particular clause, but by construing the entire statute as it stands. That would require the court to compare a particular clause with other parts of the law and keep in mind the backdrop in which the said clauses that are required to be interpreted, have been introduced. Such a construction would ensure avoidance of any inconsistency or repugnancy either within a Section or *vis-à-vis* two different Sections or in respect of the provisions of the very same statute [Refer: Sultana Begum v. Prem Chand Jain **1997 (1) SCC 373**]. In this context, in the case of CIT v. Hindustan Bulk Carriers (supra), the Supreme Court observed thus:

> *"20. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.*
>
> *21.* ***The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a "useless number" or "dead letter" is not a harmonized construction. To harmonise is not to destroy****."* (emphasis added)

25. In our view, on harmonising Clauses 9 and 11.3(v) of Ordinance 11 in the backdrop of the legislative intent, the indisputable position that emerges is that the word "**or**" has been used in Clause 11.3 (v) (ii) in a disjunctive manner. It provides for two set of circumstances as the minimum threshold required to be crossed by a student who seeks promotion to the next academic year which is that a student should have attended minimum of

70% classes in the aggregate of the courses taken together in a semester and he should have obtained at least 50% of the total credits in the academic year in question. Both the said prerequisites are mandatory and not optional. If the aforesaid provisions engrafted in Ordinance 11 are read in a meaningful manner, they would convey that obtaining of the requisite minimum percentage of attendance is just as imperative as obtaining at least 50% of the total credits for promotion to the next academic year. Any other construction will be in violation of the object of the provision and render the word "**or**" worthless. We are unable to persuade ourselves to agree with the submission made by the learned counsel for the respondents/students that it is a fit case where the doctrine of *contra proferentem* ought to be applied for the reason that we do not find any ambiguity in the Clauses forming a part of Ordinance 11 which require any clarification or reconciliation by invoking the said doctrine.

26. In the light of the stipulation contained in Clauses 9 and 11.3(v) of Ordinance 11, there is no manner of doubt that for qualifying to be promoted to the next academic year, the student should have not only secured a minimum attendance of 70% in the aggregate of all the courses taken together in a semester, he should also have scored at least 50% of the total credits in the existing academic year. In the absence of any one of the aforesaid two prerequisites, a student cannot qualify for being promoted to the next academic year. The consequences of not being promoted are that such a student would be declared to have automatically taken an academic break and he shall then have to repeat the examinations of the semester

concerned of the academic year in which he had either failed or been detained, for being promoted to the next academic year.

27. The importance attached to attendance in classes in a professional course like BA LLB/BBA LLB cannot be overstated. There are a line of decisions of the Supreme Court and the High Courts, where it has been opined that fixation of qualifying standards including minimum percentage of attendance is a matter which is best left to expert academic bodies and courts should be slow to interfere in such policy matters unless the decision taken is patently and palpably arbitrary, illegal or in violation of the Constitution of India. Once an academic body has decided on a minimum percentage of lectures that a student must attend at every stage or in the aggregate, then courts must shows deference to the said decision as the presumption is that being an expert in the field, the body has applied its mind before prescribing an eligibility criteria. {Refer: Ashutosh Bharti v. Ritnand Balved Education Foundation reported as **MANU/DE/0024/2005**, Siddharth Kaul and Ors. v. Guru Gobind Singh Indraprastha University [**W.P.(C) 7610/2011, decided on 02.12.2011],** University Grants Commission and Anr. v. Neha Anil Bobde (Gadekar) reported as **2013 (10) SCC 519** and Prateek Singhal v. National Testing Agency & Anr. reported as **2019 SCC OnLine 10873**}

28. As noted above, no specific challenge has been laid by the respondents/students to the legality or validity of Clause 9.1 that prescribes a minimum attendance of 70% in the aggregate of all the courses taken together in a semester. All the same, it needs to be emphasized that an

integrated LL.B course being a professional course, students must ensure regular attendance in classes and those who do not satisfy the minimum required percentage of attendance, will be held ineligible for promotion to the next academic year. We can do no better than advert to several authoritative decisions of the Supreme Court and of the High Court on this aspect including Baldev Raj Sharma v. Bar Council of India & Ors. **1989 Supp.(2) SCC 91**; Bar Council of India & Anr. V. Aparna Basu Mallick & Ors. **1994 (2) SCC 102**; S.N. Singh v. Union of India **106 (2003) DLJ 329**; Kiran Kumari v. University of Delhi and Ors. **[W.P.(C) 9143/2007];** Sukriti Upadhyaya (supra) and Chaudhary Ali Zia Kabir (supra). In Kiran Kumari (supra), a Division Bench headed by Hon'ble the Chief Justice T.S. Thakur, as his Lordship then was, had expressed the following view:

> *"13. In the light of the above, we find it difficult to appreciate as to how the requirements of 66% in each subject or as a condition of eligibility for appearance in the examination or the requirement of 66% attendance in the aggregate for purposes of granting the benefit of condonation in the shortfall can be said to be either illegal or arbitrary.* ***The decisions delivered by the Supreme Court and by this Court to which we have referred above have in our view authoritatively held that the LLB course was a professional course in which the candidates have to ensure regular attendance of lectures and those who do not attend the stipulated percentage of lectures would not even be eligible for enrolment as members of the Bar. Such being the importance given to the attendance of lectures, there is no question of the requirement stipulated by the Rules being either irrational, unconstitutional or illegal in any manner. The quality of training which a candidate gets during the time he undergoes the course is directly proportional to the number of lectures that he attends. The failure of a candidate to attend the requisite number of lectures as stipulated by the relevant***

rules can legitimately disentitle him to claim eligibility for appearing in the examination.

14. That brings us to the contention vehemently urged by Mr. Mittal that insistence upon 66% lectures in the aggregate as a condition precedent for the exercise of the power of condonation was irrational, for it amounts to empowering the competent authority on the one hand and denuding him of that power on the other. We do not think so. ***What is the minimum percentage of lectures which a candidate must attend in each subject or on the aggregate is a matter on which the academic bodies like the University and the Bar Council of India are entitled to take a decision. If in the opinion of the Bar Council and the University, a candidate cannot be said to have taken proper instructions or meaningfully undergone the course, unless he attends a minimum of 66% lectures in the aggregate, this Court cannot but respect that opinion. In matters relating to academics and standards of education, the Court would show deference to the opinion of the academicians unless a case of patent perversity is made out by the petitioners.*** *The present is not, however, one such case where the requirement of the rule can be said to be so perverse or irrational as to call for the intervention of this Court. As a matter of fact, the minimum percentage of lectures having been fixed at 66%, still gives to the students freedom to miss or abstain from 34% of the such lectures. That is a fairly large percentage of lectures which a student may miss for a variety of reasons including sickness or such other reasons beyond his control. No student can however claim that apart from 34% lectures which he is entitled to miss even without a cause, the shortage to make up 66% should be condoned if he shows good cause for the same."* (emphasis added)

29. Drawing strength from the observations made in the captioned case and in Vandana Kandari (supra), we are of the opinion that in the instant case, even if the minimum percentage of the lectures required to be attended by the respondents/students is taken as 70%, it gives them a latitude to skip

or abstain from attending 30% of the lectures, which is a fairly large percentage. This figure of 30% could be for a variety of reasons ranging from sickness, a tragedy in the family, unforeseen circumstances or any other reasons beyond the control of a student. In the instant case, even if we exclude the period between 11.1.2019 to 08.2.2019 during which Naincy was indisposed due to health reasons, on a percentage basis, she has attended only 11.82% classes in the remainder of the 8th semester (15 classes out of 93 classes). The position is worse in the case of Prateek, who it transpires, has attended 0.97% classes in the 8th semester (2 classes out of 207 classes), spanning over five months (January, 2019 to May, 2019).

30. We are therefore of the considered view that attendance of a minimum percentage of classes prescribed in professional courses like B.A. LL.B/B.B.A. LL.B is non-negotiable. There is no substitute for class room teaching. Conducting classes in the institutions, is a dynamic system which keeps evolving over time. It can be said with certainty that reading books prescribed in the syllabus/curriculum alone can never be enough for imparting and imbibing knowledge, which is always a two way street. Interactive sessions of the students with their teachers during the classes has a deep and lasting effect on their intellectual growth. The cut and thrust of open house debates and discussions, questions and answers posed by the students to the teachers conducting classes and tutorials is a precursor to the experience needed by a law student when he ultimately prepares a brief and appears in Court to advance arguments. The intellect of a student evolves in this process and helps in honing his skills and attaining a higher standard of excellence, which is the underlying object of acquiring a professional degree

like law. It is this discourse with their teachers and peers that is engrained forever in the heart of every student as the most cherished and enduring memory of student life. Understanding the doctrines and principles of law and going through the case law prescribed in the curriculum by referring to law books and journals in a routine manner, has its own importance but that goes hand- in-hand with the knowledge that is acquired by a student on attending classes.

31. Thus, for the respondents/students to state that on obtaining a minimum of 50% credit score as prescribed in an academic year, they are entitled to be promoted to the next academic year notwithstanding the fact that they did not cross the threshold of the minimum attendance prescribed, is found to be untenable and liable to be rejected outright. A degree in law cannot be treated as an empty formality. A law degree encompasses all that a University stands for and is a reflection of the nature of knowledge that it has imparted to its students. The process is not about simply cramming and disgorging during the examinations. It is about assimilating, absorbing and soaking up for being imprinted permanently in the mind of a student. In this context, the condensed classes that the respondents/students are presently rushing through, in compliance of the directions issued in the impugned judgment, that are going on from 8.30AM to 4.00PM on a daily basis, till the 9th semester end term examination are conducted at the end of this month, can hardly be equated with the daily piecemeal knowledge transmitted by teachers spread over an entire academic session and assimilated slowly by the students. What is being done now, is nothing but an empty formality which is impermissible. The Court may empathize with

the respondents/students who would have to take an academic break but empathy cannot translate into a positive order in their favour when the legal position is loaded against them.

32. In view of the aforesaid discussion, both the appeals are allowed and the impugned judgment is quashed and set aside, without any orders as to costs.

HIMA KOHLI, J,

ASHA MENON, J

NOVEMBER 19th, 2019
NA/rkb/ajk/ap