

IN THE SUPREME COURT OF INDIA

[Order XXI Rule 3(1)(a)]

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2020

(WITH PRAYER FOR INTERIM RELIEF)

BETWEEN

Position of parties

In High
Court

In this
Court

1. Xenia Dhar

Petitioner
No. 1

Petitioner
No. 1

AND

- | | | | |
|----|---|---------------------|---------------------|
| 1. | The National Law School Of India University, through its Registrar, Nagarbhavi, P.S. Mallathahalli, Bangalore - 560072 | Respondent
No. 1 | Respondent
No.1 |
| 2. | The Union of India through the Secretary, Ministry of Education, Shastri Bhawan, Baroda House, New Delhi - 110001 | Respondent
No.2 | Respondent
No.2 |
| 3. | The Bar Council of India, through the Chairman, 21, Rouse Avenue, Institutional Area, Near Bal Bhawan, New Delhi - 110002 | Respondent
No. 3 | Respondent
No. 3 |
| 4. | The Consortium of National Law Universities, Nagarbhavi, P.S. Mallathalli, Bangalore - 560072 | Respondent
No. 4 | Respondent
No. 4 |

To,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
SUPREME COURT OF INDIA

THE HUMBLE PRAYER OF THE
PETITIONER ABOVEMENTIONED

MOST RESPECTFULLY SHOWETH :

1. The Petitioner has been constrained to file the present Special Leave Petition being aggrieved by the impugned Judgement and Final Order dated 11.09.2020 passed by the High Court of Jharkhand at Ranchi in Writ Petition (Civil) No. 2454 of 2020 whereby the Hon'ble High Court erroneously dismissed the Writ Petition filed by the Petitioners seeking quashing of notice dated 03.09.2020 issued by the National Law School of India University, Bengaluru, declaring that a separate examination for admission to its Five Years B.A. LL.B (hons.) degree programme will be held on 12.09.2020.

- 1A. That a letters patent appeal is currently pending before the Hon'ble High Court of Jharkhand at Ranchi against the impugned Final Judgement and Order.

1. **QUESTIONS OF LAW:-**

The following questions of law arise for consideration by this Hon'ble Court –

- i. Whether the Hon'ble High Court whilst dismissing the Writ Petition failed to consider that under Article 226 (2) of the Constitution of India, the power conferred to the High Courts by virtue of clause (1) to issue directions, order, or writs to any government, authority or person, may also be exercised by any High Court in relation to the territories within which the cause of action, wholly or in part arises, notwithstanding that the seat of such government or authority or the residence of such person is not within those territories?

- ii. Whether the Hon'ble High Court whilst dismissing the Writ Petition failed to consider that since the petitioners have filled up their forms in the State of Jharkhand and are residing within its territory, the Hon'ble High Court of Jharkhand had territorial jurisdiction to hear the matter on merits and to pass appropriate direction?
- iii. Whether the Hon'ble High Court whilst dismissing the Writ Petition failed to consider that the technical requirement for appearing in the NLAT examination is arbitrary and unreasonable considering, unlike CLAT, there are lesser NLAT test centers which could be accessed by NLAT aspirants who do not have access to smartphones, or computers?
- iv. Whether the Hon'ble High Court whilst dismissing the Writ Petition failed to consider that conducting such an exam on a large scale in such a short span of time may lead to deficiencies and mismanagement more so in light of the judgment of this Hon'ble Court in Disha

Panchal & Ors. v. Union of India & Ors. reported in
(2018) 17 SCC 278?

3. **DECLARATION IN TERMS OF RULE 3(2):**

That the Petitioner states that no other or similar Petition seeking Special Leave to Appeal has been filed by them against the impugned final judgment and order of the Hon'ble High Court.

4. **DECLARATION IN TERMS OF RULE 5:**

That the Annexures P 1 to P 13 produced alongwith the present Special Leave Petition are true copies of their respective originals and they form part of the pleadings and the records of the case in the Court/Tribunal below against whose Order leave to appeal is sought for in the present Special Leave Petition.

5. GROUNDS

The Petitioner is seeking Special Leave to Appeal against the impugned Judgment and Final Order dated 11.09.2020 on the following amongst other Grounds which are taken without prejudice to one another–

A. BECAUSE the Hon'ble High Court failed to consider the matter on merits while erroneously dismissing the Writ Petition filed by the Petitioners;

B. BECAUSE the Hon'ble High Court ought to have appreciated that the Petitioners having filled up their forms in the State of Jharkhand and are residing within its territory, the Hon'ble High Court of Jharkhand had territorial jurisdiction to hear the matter on merits and to pass appropriate directions;

C. BECAUSE the Hon'ble High Court failed to appreciate the nature of direction sought by the Petitioner could have been issued by the Hon'ble High Court by virtue

of the power conferred to it under Article 226 of the Constitutions of India;

D. BECAUSE the Hon'ble High Court failed to consider that there is no rational behind the introduction of a new mode and method of examination at such short notice, as aspirants with lesser access to technology will be severely and prejudicially affected;

E. BECAUSE the Hon'ble High Court failed to appreciate that submissions of the Petitioner that the technical specifications required for writing the exams have caused extreme prejudiced to the aspirants who do not have access to smartphones or computers, as unlike CLAT which had 5 test centres in Jharkhand, NLAT had only 2 test centers in Jharkhand. It may be pertinent to note that at the time of filing of the Writ Petition, NLAT did not have a single test centre in Jharkhand. The constant change in the rules and regulations is egregious and poorly managed causing confusion and anxiety amongst the students;

F. BECAUSE the Hon'ble High Court ought to have appreciated that conducting such an exam on a large scale in such a short span of time may lead to deficiencies and mismanagement more so in light of the judgment of this Hon'ble Court in Disha Panchal & Ors. v. Union of India & Ors. reported in (2018) 17 SCC 278;

G. BECAUSE the Hon'ble High Court failed to consider that NLSIU did not apply its mind while addressing the concerns of a 'Zero Year' internally and has instead devised an arbitrary mode of conducting entrance examination which raises more concerns as to the question of transparency and fairness as they are self-proctoring the examination;

H. BECAUSE the Hon'ble High Court failed to consider that the conduct of test for fear of 'Zero year' is disproportional and arbitrary, as NLSIU could have

reduced its course syllabus by 30% to make up for the loss of time due to COVID – 19 this year. Alternatively, there could have been reduction in subjects, instead of such drastic disproportional measures. Further, the concerns of a ‘Zero Year’ cannot be resolved through a completely arbitrary and capricious home proctored entrance examination which is not only exclusionary by design but also completely *mala fide* in nature;

- I. BECAUSE the Hon’ble High Court failed to consider that the Notification for Admissions gives NLSIU unilateral right to alter, modify, or cancel any component or stage of the selection process without prior notice, which further adds to the uncertainty of the examination and is clearly arbitrary and open to abuse;
- J. BECAUSE the Hon’ble High Court failed to consider that NLSIU has tried to usurp the powers and functions of the CLAT consortium in an arbitrary

manner by providing that the decision of the NLSIU on any student's eligibility, candidature, shortlisting, and selection shall be final and not subject to any appeals or challenges by or on behalf of any students.

K. BECAUSE the Hon'ble High Court ought to have appreciated that non conduct of examination in the months of July and August are solely attributable to the Pandemic as there are serious concerns about the health of the students. Further, due to the lockdowns in West Bengal and Bihar, the exam was postponed to late September;

L. BECAUSE the Hon'ble High Court failed to consider that the unilateral withdrawal by NLSIU from CLAT violates the rights of the Petitioners to have an examination in a just and fair manner, and after having submitted the registration forms for CLAT by the students, the said act is violative of principle of promissory estoppel;

M. BECAUSE the Hon'ble High Court failed to consider that the declaration of a new examination date and a new pattern of examination by NLSIU mere 10 days prior to the date of examination is illegal, arbitrary, and unreasonable;

N. BECAUSE the Hon'ble High Court failed to consider that the impugned notification is violative of the Bye – Laws of the Consortium, which severely affects the position held by NLSIU in the CLAT consortium. The said act of NLSIU is in violation of the legitimate and reasonable expectations of the candidates and stakeholders of legal education;

O. BECAUSE the Hon'ble High Court failed to consider that all the NLUs forming a part of the consortium are facing similar problems due to the pandemic, and have decided to take appropriate measures, in consultation with each other. NLSIU, going out own its own unilaterally has severely jeopardized its standing

within the consortium and does not merit any special consideration;

P. BECAUSE the Hon'ble High Court ought to have allowed the Petitioner's plea in the interest of justice.

Q. BECAUSE the Hon'ble High Court failed to consider that NLSIU is also in violation of the various directions of this Hon'ble Court and the undertakings taken before this Hon'ble pursuant to which a single examination, being CLAT, is now being conducted by the Consortium;

6. GROUND'S FOR INTERIM RELIEF:

- i. That NLSIU still being a part of the consortium could not have opted to conduct a separate examination called NLAT which is *ex facie* contrary to the Memorandum of Understanding entered into between the Universities and the Bye – Laws of the Consortium. It is highly arbitrary for

NLSIU to proceed for a home – proctored online admission test;

- ii. That the non – conduct of the examination in the months of July – August 2020 are solely attributable to the COVID – 19 Pandemic due to serious health concerns of the students, further it would have been practically impossible for candidates from rural places to attend such examinations which are usually conducted in the cities;
- i. That the Petitioners have a very good *prima facie* case on merits and the balance of convenience is in its favour. Irreparable harm and injury will be caused to the Petitioners in case the relief sought for is not granted.

7. **MAIN PRAYER:**

It is, therefore, respectfully prayed that Your Lordships may be pleased to:

- a) Grant Special Leave to appeal against the Impugned Judgment and Final Order dated 11.09.2020 passed by the High Court of Jharkhand at Ranchi in Writ Petition (Civil) No. 2454 of 2020;
- b) Pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the present case.

8. **PRAYER FOR INTERIM RELIEF:**

It is, therefore, respectfully prayed that Your Lordships may be pleased to pass the following Order pending the hearing and final disposal of the present Special Leave Petition:

- a) Grant *ex party* stay of admissions to the National Law School of India University on the basis of NLAT 2020 result until final disposal of the present Special Leave Petition;

- b) Pass ad-interim ex-parte relief in terms of prayer a) above;
- c) Pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OR KINDNESS THE PETITIONER
SHALL AS IN DUTY BOUND SHALL EVER PRAY

FILED BY:

(KUSH CHATURVEDI)

Advocate for the Petitioner

New Delhi
Filed on: 12.09.2020