

# Disha Panchal vs Union Of India The Secretary on 13 June, 2018

**Equivalent citations: AIR 2018 SUPREME COURT 2824, 2018 (3) KCCR SN 266 (SC) 2018 (8) ADJ 83 NOC, 2018 (8) ADJ 83 NOC, AIRONLINE 2018 SC 79**

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**Bench: Deepak Gupta, Uday Umesh Lalit**

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.551 OF 2018

Disha Panchal and Others

...Petitioners

Versus

Union of India The Secretary and Others

... Respondents

With

WRIT PETITION (CIVIL) NO.554 OF 2018

Rishi Dutt

...Petitioner

Versus

Union of India and Others

... Respondents

With

WRIT PETITION (CIVIL) NO.621 OF 2018

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Yash Singhania

...Petitioner

Versus

Union of India and Others

... Respondents

With

WRIT PETITION (CIVIL) NO.600 OF 2018

Akshat Aggarwal & Ors.

...Petitioners

Versus

Union of India and Others

... Respondents

JUDGMENT

Uday Umesh Lalit, J.

1. These petitions highlight improper conduct of Common Law Admission Test (CLAT) 2018 by Respondent Nos.2 and 3, which is a single window online entrance test for admission to 19 prestigious National Law Universities in the country. The petitioners had appeared for said CLAT and had faced various difficulties, which according to them, were occasioned as a result of mismanagement by respondent Nos.2 and 3. Some of the difficulties that were experienced by the petitioners and other candidates were:

- A. Questions of the examination did not appear on the screen at the start, and were intermittently disappearing and re-appearing.
- B. The options to move to the next question, etc. stopped working intermittently.
- C. Blank screens or frozen screens and software crashes.
- D. Invigilators were incompetent and unhelpful – in being unable to help resolve glitches and in terms of their rudeness, when apprised of the existence of glitches.
- E. Computers were dysfunctional and rebooting them did not help.

Resultantly, the effective time available to the candidates was far lesser than the allotted time, which in turn caused great prejudice to the candidates.

2. In addition to the petitions filed in this Court, some candidates also approached various High Courts, where the petitions are still pending. By order dated 24.05.2018 this Court had said, “as the entire issue in reference to CLAT Examination – 2018 is the subject matter in the present proceedings, it is appropriate that no High Court shall proceed with the hearing of pending proceedings on the subject matter till further orders.”

3. On 25.05.2018 following order was passed by this Court:

“In deference to the observations made by the Court during the course of hearing yesterday, Respondent Nos.2 and 3 have graciously agreed to constitute a Grievance Redressal Committee consisting of a retired Judge of the Kerala High Court, Mr. Justice M.R. Hariharan Nair, Dr. Santhosh Kumar G., Professor and Head, Department of Computer Science, Cochin University of Science and Technology. The Committee will be chaired by Mr. Justice M.R. Hariharan Nair who will examine every singular representation/complaint received online till now and any further representation/complaint received till 7.00 p.m. of Sunday, 27 th May, 2018 and after due analysis, appropriate decision on case to case basis will be taken by the Committee.

In the first phase, the representations/complaints already received and of all the writ petitioners before this Court as well as different High Courts may be scrutinized and appropriate report/ recommendation/ decision thereon be recorded by the appropriate authority before 29th May, 2018 to be produced before the Court on 30th May, 2018.

In the second phase, new/fresh representation/complaints received online upto 7.00 p.m. of Sunday, 27 th May, 2018 be taken up for consideration and, if possible, the scrutiny thereof be completed on the same lines as indicated above up to 29th May, 2018 and status report in that behalf be filed before the Court on 30th May, 2018. Learned counsel for Respondent Nos.2 and 3 submits that as soon as fresh/new representations/complaints are received online, attempt will be made to acknowledge the same contemporaneously as far as possible.

We appreciate the fair stand taken by learned counsel for Respondent Nos.2 and 3 to offer dispensation of this nature within such a short time.

Learned counsel for Respondent Nos.2 and 3 submit that a dedicated email account will be created for this purpose of which publicity will be given on the official website of CLAT and will be notified on the official website very shortly within two hours from now.

We make it clear that this order will also enure to the benefit of the writ petitioners who have filed writ petition in different High Courts.

Interim stay regarding proceedings pending before different High Courts will continue to operate till the next date of hearing. List the matters on 30th May, 2018.”

4. The Grievance Redressal Committee so constituted, has since then filed a comprehensive report enclosing certain annexures. Copies of the report as well as annexures were directed to be given to the learned counsel appearing for the parties to enable them to assist this Court. Paragraphs 4, 12 and 14 of the Report are as under:-

“4. The number of candidate writ petitioners as on 30-05-2018:

25 (Sl. Nos. 1-25 of Annexure – I of the first Report dated 29-05-

2018) Number of complaints received up to the hearing of the case; i.e., 11.30 hrs on 25-05-2018 - 2676 Number of complaints received between 11.30 am and 7 p.m. on 25- 05-2018 - 115 Number of complaints received in the new e- mail id between 5.50 p.m. on 25-05-18 to 7.00 p.m. on 27-05-2018 - 5677.

12. The team of service providers representing the Sify provided the Committee with display of the Audit Report and all Supporting data available at the central server of the company. The names of these officers are in Annexure -II (already submitted along with the Report dated 29-05-2018). In certain cases the Committee felt that the explanation of the Service Provider regarding alleged lapses was essential. The details so obtained are in Annexure -III (already submitted along with the Report dated 29-05-2018).

14. On a perusal of the various complaints raised by the candidates, the Committee felt that they broadly fall under one or more of the following categories:

1. Frequent login failures.
2. Change of machines / mouse and disruptions.
3. Questions not visible in full or in part.
4. Registered answers disappeared.
5. Heat and unfavourable environment.
6. Commotion and distraction.
7. Time extension not effective as there was no re log in.

8. Undue time extension was given to some.

9. Deliberate cheating by closure of browser.

10. Power failure and absence of UPS needing multiple log ins and distraction of concentration.

11. Pre-examination preparation sessions were ineffective; very often machines had to be changed and distracted.

12. Invigilators unhelpful.”

5. The matter was dealt with by the Committee in the light of the audit report and the data made available relating to 4690 candidates. The Committee then considered the matter under the heading “Details of appraisal” and made certain suggestions as under:

“A. Scrutiny of the data relating to 4690 candidates shows that some of the candidates got only lesser time than what is due to them for appearance in the examination. These are categorized as follows:

1. candidate who got deficiency of less than one minute: 70

2. candidate who got deficiency of less than two minute: 140

3. candidate who got deficiency of more than one minute: 94 Thus the total number of candidates who got time marginally deficient is 210 and including those who lost more than two minutes, it is 304.

Similarly, the data analysis shows that – i. 2276 of them had a single log in session right from commencement of the examination till its culmination. ii. 1899 of the applicants needed multiple log in sessions with no response in the first session. This comes under three sub categories viz.

(1) Due extension of time was not given in 892 cases involving multiple sessions, out of which 623 candidates got effective time of 2 hours for completing the examination.

(2) Time extension given and availed: 558

(3) Time extension given and not availed: 449

iii. Multiple logins with response in first session: 515 14A\*1.Clause 7 and 19 of Annexure XI, read with clause l and m

(iii) of Annexure xii cast a duty on Sify Technologies to ensure that UPS and Generator facilities were provided so as to ensure facility of uninterrupted activity for the candidate. The lapse in the matter appears to be the main cause which led to need for frequent re logins on the part of the

candidate.

\* This para, also marked as para 14 in the report has been renumbered by us as para 14A

15. The CLAT of 2018 was fraught with various imperfections. The major defects found are categorized as follows:

i. The majority of complaints relate to failure of initial log in. Multiple log in appears to have affected the performance of the system. Software and hardware efficiency will depend upon server capacity and efficacy. Under Cl.8, page 8, of Ann.XII, the Service Provider was duty bound to provide trouble-free software. Common defect of initial log in failure must have arisen from the hardware, software or network deficiencies. ii. Conduct of a test of this magnitude without providing efficient software and computers to the candidates has resulted in avoidable interruptions in answering questions. iii. Infrastructural defects like want of/failure of the air conditioning systems which stood in the way of the best performance of students in many centres in the examination conducted at the peak of summer.

iv. Power failure which affected many centres has resulted in loss of time and disturbance to the concentration of mind required for a smooth performance in a competitive test. v. Failure of invigilators to facilitate re-login which is essential for availing the benefit of extended time granted to compensate for lost time arising from power failure, system hanging, etc. vi. Failure to grant extended time even in cases where the first log in attempt failed or in the subsequent attempt/s the time obtained is lower than what is prescribed, though such reduction was only marginal.

vii. To redress the genuine grievances projected, two courses appear to be open. They are:

1. The cancellation of the entire test and re-conduct thereof. The Committee does not suggest the same considering the magnitude of the requirements and the need to ensure smooth education of the successful candidates during the current academic year.

2. A method to compensate the students with some marks considering the lost time for those who underwent the need to re login more than once; loss of opportunity to get extended time or to avail the same even after being found eligible. This committee, as it stands, now, has no capacity to suggest a compensatory formula. Either it has to be expanded including a statistician of competence or in the alternative, consider a formula or other compensatory solution suggested at the Bar, if any.

3. When the list is redrawn after providing compensation as above, it has to be ensured that the rank of candidates in the existing list are not affected. That is to say,

in case one more candidates with the same mark acquires eligibility for the reason that another person with the same mark has got into the eligibility list as per the existing rank, (say 51), such candidates may be added with Rank Nos. 51A, 51B, etc. and for accommodating the number of such additional entrants an equal number of supernumerary seats may be created on an ad hoc basis. This will ensure that no heart burn is caused to candidates who have already ensured their berth in the rank list.

4. No relief is suggested on the ground of errors in framing of questions or in the matter of fixing the answer key.

This is so because a Committee of four vice chancellors has already reviewed the questions and answers thread bare and found, in its meeting held on 13.05.2018 that inaccuracy exists only in the case of Qn. No. 83(393) and proceeded to cancel that Question and accordingly directed evaluation of the paper treating the total marks only as 199 instead of 200 as originally planned. With regard to Qn.No.153 (463) which originally carried a wrong answer key, it was decided by that VC Committee to correct the answer key and to upload the corrected key in CLAT-2018 web site. The result declared is in accordance with the above changes. The controversy over inaccuracy of questions and key may end there.”

6. The audit report placed along with the Report sets out all relevant details as to that how the candidates had navigated from one question to the other and the exact Log in and Log out time. The audit report also gives details about actual time made available to each candidate including extension of time, wherever it was granted/availed. According to the Committee, 2276 candidates had single log in session right from the commencement of the examination while 1899 candidates required multiple log in sessions, the details of which are given in the extract hereinabove. The Committee also touched upon the issue as to how the students could be compensated. The facts indicate that out of 54464 candidates who took the examination at 250 centres, 4690 candidates had raised grievances within the time stipulated by this Court. The data relating to such 4690 candidates has been catalogued by the Committee.

7. We have heard Mr. Sanjay R. Hegde, learned Senior Advocate for the Petitioners, Mr. Maninder Singh, Additional Solicitor General for Union of India, Mr. V. Giri, learned Senior Advocate for Respondents 2 and 3 and all other learned advocates who appeared for various Intervenors and petitioners in connected matters. Two questions arise for our consideration:

(a) Whether the entire test needs to be cancelled and a fresh test is required to be ordered;

(b) If the entire test is not to be cancelled, what methodology can be adopted to compensate the students who had lost time and were put to prejudice.

8. The basic grievance raised by the candidates pertains to loss of time as a result of deficiency on part of the examination conducting body in not ensuring adequate facilities and not affording them

single log in session without any interruption. The idea so projected is pointing towards loss of time and inconvenience and not suggesting that the purity of examination process was in any way compromised so as to annul the entire process. Any outright cancellation would visit tremendous inconvenience and hardship upon rest of the candidates. If the interest of those candidates who suffered loss of time could otherwise be compensated, there is no reason that the entire admission test be cancelled or annulled. We, therefore, invited learned counsel to address the Court on what could be the possible solution to take care of the interest of those 4690 candidates. Mr. V. Giri, learned Senior Advocate placed before us the following Chart in relation to four petitioners by way of illustration.

Sl..No. in GRC Report	Roll No.	Name of the Candidate	Total Exam Duration  in Seconds	Notional Time Loss in seconds	Time Aailed in Seconds
(i)	(ii)	(iii)	(iv)	(v)	(Vi)= (iv) - (v)
19	10022585	Animesh Shukla	7200	553	6647
37	10053562	Saksham Sehgal	7200	364	6836
46	10018796	Hansika Pandey	7200	68	7132
57	10008630	Kartik Singh	7200	109	7091



9. In the Chart, all the details including time availed, time lost, number of questions attempted, number of questions correctly answered, number of questions wrongly answered and the answering efficiency of the candidates are tabulated. For instance, Animesh Shukla had lost 553 seconds i.e. roughly over nine minutes. Out of 200 questions, he had correctly answered 125 questions while his answers in respect of 47 questions were found to be wrong. The score that he secured was 113.25. Considering the number of questions attempted, the answering efficiency was found to be 38.65 seconds per question. The next columns give the notional figure as to how many questions he would have answered if there was no time loss and how many questions he would have rightly answered. These notional figures give us statistically correct and appropriate formula to compensate for the loss of time. The figures given in the chart against this candidate show that applying the normalization formula, the candidate would be entitled to be placed at a score of 122.25 as against 113.35.

10. Since all the details regarding log in and log out times are available in respect of each of those 4690 candidates, it is possible to arrive at revised score applying such normalization formula in respect of said 4690 candidates. We repeatedly asked the learned advocates for the petitioners and intervenors whether they could suggest any alternate mechanism or point out any infirmity or fault in normalization formula so placed by Mr. V. Giri, learned Senior Advocate but no counsel could suggest any alternative or point out any infirmity. According to us, the normalization formula so suggested, in the circumstances, would be the best possible way to compensate and take care of the interest of those 4690 candidates. At the same time, it would also ensure that no prejudice is caused to rest of the candidates. The normalization formula proceeds on the basis of answering efficiency or capacity of a candidate to answer questions in given time and then applies his rate of success as a parameter. Normally, a candidate would first answer those questions, whose answers he is well aware of and leave out rest to be answered in the end. His success rate in the former part would certainly be greater, as compared to the latter. Since he would be given benefit at the same success rate, there would be no prejudice. It is true that repeated interruptions would cause mental stress and upset him. But that aspect as a factor is difficult to be translated in a quantifiable parameter. Given the circumstances, the normalization formula appears to be the correct and appropriate methodology. We, therefore, accept the formula so suggested and reject the contention of outright cancellation of the entire test.

11. Mr. V. Giri, learned Senior Advocate also submitted that by 15th June, 2018 the entire exercise of adopting and applying the normalization formula and arriving at a revised score in respect of 4690 candidates could be undertaken and completed. We record said submission and proceed on that premise. We have also been given to understand that the first round of counseling has already begun.

12. Having considered the entirety of the matter, we give following directions:

A). The exercise of applying normalization formula as suggested by Mr. V. Giri, learned Senior Advocate and revising the scores of 4690 candidates shall be

completed by 15.06.2018. Respondent Nos.2 and 3 namely the National University of Advance Legal Studies, Kochi and Core Committee-Common Law Admission Test 2018 through its Convenor –Vice Chancellor, National University of Advance Legal Studies, Kochi shall undertake the entire exercise and complete it by 15.06.2018.

B). Upon completion of said exercise, the revised scores of 4690 candidates will be published by respondents 2 and 3 on the official website on 16.06.2018.

C). Based on such revised scores the merit list will be rearranged in terms of Para 3 of the suggestion given by the Committee. In other words, the revised position of the concerned candidate will be indicated by rank Nos.51A-51B as illustrated by the Committee. D). The first round of counseling which began on 10.06.2018 shall go on without any impediment and if any candidate is allocated a seat, such allocation will not in any way stand adversely altered as a result of revised position granted to any of the candidates from the body of 4690 candidates.

E). If any candidate from the body of 4690 candidates is otherwise entitled, that is to say even without the benefit of revised score, to be allocated any seat, it goes without saying that such allocation will not in any way stand adversely affected.

F). In the second round of counseling the rank/merit list so prepared in terms of these directions shall be the governing list and the seats in second and subsequent rounds of counseling will be allocated on the basis of the list so revised in pursuance of these directions.

G). If a candidate, as a result of revised rank list being operative in second and subsequent round of counseling wants to secure admission in any other college of his or her choice going by his or her revised ranking, he/she shall be allowed to do so without incurring any disadvantage. In such cases, the fees if deposited in the first college shall be given due credit against the admission in the second college which the candidate may opt for as a result of revised ranking.

13. We have dealt with the matter only from the stand point of how best to compensate the candidates who lost valuable time while undergoing test. We must record that we are not at all satisfied with the way the examination was conducted. The body which was given the task of conducting the examination was duty bound to ensure facilities of uninterrupted UPS and generator facility. The record indicates complete inadequacy on that point. We therefore direct Union of India in the Ministry of Human Resources and Development to appoint a Committee to look into the matter and take appropriate remedial measures including penal action, if any, against the body which was entrusted with the task. The committee so constituted shall also look into the aspect of having completely satisfactory arrangements in future so that no such instances are repeated or reoccur in coming years. We must also observe that the idea of entrusting the task of monitoring the conduct of entire examination to different Law Universities every year also needs to be re-visited. The agreement with the examination conducting body, which was placed on record indicates that as against the amount made over to such examination conducting body, the fees charged from the candidates are far in excess. The committee shall bestow consideration to all these aspects after having inputs from such sources as it may deem appropriate including Bar Council of India and

make a detailed report to this Court within three months from today.

14. Since we have dealt with the matter and passed comprehensive directions, we request the High Courts to dispose of the pending matters raising challenge in respect of CLAT 2018, in the light of our directions.

15. All the petitions are thus disposed of. We record our sincere appreciation for the efforts put in by the members of the Grievance Redressal Committee and for the assistance rendered by all the learned counsel.

.....J. (Uday Umesh Lalit) .....J (Deepak Gupta) New Delhi June 13, 2018