

Delhi High Court

Vinayak Dalmia vs University Of Delhi & Ors. on 20 May, 2011

Author: Kailash Gambhir

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) No. 3403/2011

% Judgment delivered on: 20th May, 2011

Vinayak Dalmia ..... Petitioner.

Through: Mr. S.K.Dubey, Adv.

versus

University of Delhi & Ors. .... Respondents

Through: Mr. MJS Rupal, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may  
be allowed to see the judgment? N.A
2. To be referred to Reporter or not? N.A
3. Whether the judgment should be reported  
in the Digest? N.A

KAILASH GAMBHIR, J. Oral

\* W.P.(C) No. 3403/2011 By this petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to direct the respondents to re-schedule the date of LLB Entrance Examination of Delhi University from 12.6.2011 to some other convenient date.

Brief facts as set out in the present petition are that the petitioner who is an Indian citizen and a graduate and M.Phil from Cambridge University wishes to take the LLB Entrance Test scheduled for 12.6.2011 and also wishes to appear for the preliminary examination of Civil Services, 2011, scheduled for the same date i.e. 12.6.2011.

It has been stated that on 19.2.2011 the UPSC had issued an advertisement inviting applications of eligible candidates and fixed the date of its preliminary examination as 12.6. 20011. The petitioner submitted his application on 21.2.2011 to appear in the said examination but he is wanting to pursue academic professional course of Law also. It is further submitted that the petitioner had made a representation dated 19.4.2011 to the Vice Chancellor, University of Delhi, requesting him to change the date of entrance test for LLB entrance exam as otherwise a large number of students would have their hands tied down and they will be forced to make a choice to appear in one of the exams, but the

same was however rejected.

Mr. Dubey, counsel for the petitioner has  
vehemently submitted that the right to education  
is a fundamental right of the petitioner, of which he cannot

be deprived of. Counsel thus further states that the fixing of dates for the exams is in the realm of the administration and the administrative convenience of the respondents cannot come in the way of the petitioner to deprive him from appearing in the civil service exams. In support of his arguments, Mr. Dubey has placed reliance on the judgment of the Apex court in Avinash Mehrotra Vs. Union of India & Ors. (2009) 6 SCC 398 with special emphasis on the following paras:

"23. The Kothari Commission on Education set up by the Government of India in 1966 strongly recommended free and compulsory education for children up to 14 years. The Commission observed that there is no other way for the poor to climb their way out of this predicament.

24. Education occupies a sacred place within our Constitution and culture. Article 21A of the Constitution, adopted in 2002, codified this Court's holding in Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh and Ors. : [1993]1SCR594 , in which we established a right to education. Parliament did not merely affirm that right; the Amending Act placed the right to education within the Constitution's set of Fundamental Rights, the most cherished principles of our society. As the Court observed in Unni Krishnan (supra), para 8: The immortal Poet Valluvar whose Tirukkural will surpass all ages and transcend all religious said of education:

Learning is excellence of wealth that none destroy; To man nought else affords reality of joy.

25. Education today remains liberation - a tool for the betterment of our civil institutions, the protection of our civil liberties, and the path to an informed and questioning citizenry.

26. Then as now, we recognize education's "transcendental importance" in the lives of individuals and in the very survival of our Constitution and Republic. In the years since the inclusion of Article 21A, we have clarified that the right to education attaches to the individual as an inalienable human right. We have traced the broad scope of this right in R.D. Upadhyay v. State of A.P. and Ors. : AIR2006SC1946 , holding that the State must provide education to all children in all places, even in prisons, to the children of prisoners. We have also affirmed the inviolability of the right to education. In Election Commission of India v. St. Mary's School and Ors. : AIR2008SC655 , we refused to allow the State to take teachers from the classroom to work in polling places. While the democratic State has a mandate to conduct elections, the mundane demands of instruction superseded the State's need to staff polling places. Indeed, the democratic State may never reach its greatest potential without a citizenry sufficiently educated to understand civil rights and social duties, Bandhua Mukti Morcha v. Union of India and Ors. : [1997]2SCR379 . These conclusions all follow from our opinion in Unni Krishnan. Education remains essential to the life of the individual,

as much as health and dignity, and the State must provide it, comprehensively and completely, in order to satisfy its highest duty to citizens.

27. Unlike other fundamental rights, the right to education places a burden not only on the State, but also on the parent or guardian of every child, and on the child herself. Article 21A, which reads as follows, places one obligation primarily on the State: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

28. By contrast, Article 51A(k), which reads as follows, places burden squarely on the parents:

Fundamental duties - it shall be the duty of every citizen of India who is the parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

29. The Constitution directs both burdens to achieve one end: the compulsory education of children, free from the fetters of cost, parental obstruction, or State inaction. The two articles also balance the relative burdens on parents and the State. Parents sacrifice for the education of their children, by sending them to school for hours of the day, but only with a commensurate sacrifice of the State's resources. The right to education, then, is more than a human or fundamental right. It is a reciprocal agreement between the State and the family, and it places an affirmative burden on all participants in our civil society.

30. This Court has routinely held that another fundamental right to life encompasses more than a breath and a heartbeat. In reflecting on the meaning of "personal liberty" in Articles 19 and 21, we have held that "that 'personal liberty' is used in the article as a compendious term to include within itself all the varieties of rights which go to makeup the 'personal liberties' of man." *Kharak Singh v. State of U.P. and Ors.* : 1963CriLJ329 . Similarly, we must hold that educating a child requires more than a teacher and a blackboard, or a classroom and a book. The right to education requires that a child study in a quality school, and a quality school certainly should pose no threat to a child's safety. We reached a similar conclusion, on the comprehensive guarantees implicit in the right to education, only recently in our opinion in *Ashoka Kumar Thakur v. Union of India and Ors.* : (2008)6SCC1"

On the other hand,

Mr. Rupal , learned counsel

appearing for the respondent submits that

it is for a student

to decide whether he intends to pursue an academic professional course or opt for employment. He further states that if the petitioner considers himself to be meritorious enough to appear in the civil service exams, then he would be only blocking the seat of LLB Course.

I have heard learned counsel for the parties.

It is a matter of fact that there are hundreds of important entrance examinations which take place during these days and the students have various choices before them to opt for the specialized courses or even to opt for employment through competitive exams. This court may also take judicious notice that usually these exams are fixed on Sundays and public holidays as a matter of convenience. However, there is no centralized agency which fixes these exams for all the academic professional courses and even for the appointments or monitors that various exams are not scheduled on the same date . It is a matter of common knowledge that the students of different streams come to take the LLB entrance examination and it is possible that when opting to pursue such other professional or academic courses, they may get deprived and loose the opportunity to appear in many other competitive exams because of clash of dates such as the civil services examinations. There is no dispute with the legal position canvassed by counsel for the petitioner that every citizen has a right to education and cannot be deprived of it but that cannot be construed so as to indulge the courts in declaring one exam important than the other and it is thus dangerous if the courts start interfering to upset the schedule fixed by the University and other public authorities for various competitive examinations. It is thus for the petitioner to prioritize and choose whether he intends to pursue the academic professional course or to appear in the civil service exams.

I, therefore, do not find any merit in the present writ petition and the same is accordingly dismissed.

May 20, 2011  
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KAILASH GAMBHIR, J