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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

WRIT PETITION(CIVIL)NO. 1030 OF 2020

RAKESH KUMAR AGARWALLA & ANR. ...PETITIONER(S)

VERSUS

NATIONAL LAW SCHOOL OF INDIA UNIVERSITY, BENGALURU & ORS. ...RESPONDENT(S)

With
Special Leave Petition (C)No.11059 of 2020.

J U D G M E N T

ASHOK BHUSHAN,J.

This writ petition filed in Public Interest under Article 32 of the Constitution of India questions admission notification dated 03.09.2020 issued by National Law School of India University, Bengaluru for conducting separate admission entrance examination, the National Law Aptitude Test(NLAT) scheduled for

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MEENAKSHI KOHLI
Date: 2020.09.21
10:45:23 IST
Reason:

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12.09.2020. The petitioner seeks a direction to National Law School of India University (hereinafter referred to as "NLSIU") to admit students only through Common Law Admission Test, 2020(CLAT) examination scheduled to take place on 28.09.2020. The writ petition is filed by two petitioners. First petitioner is the father of a student aspiring to gain admission into five years LL.B. programme of National Law University and the petitioner No.2 is the former Vice-Chancellor of National Law School of India University, Bengaluru.

2. We may notice certain **background facts** for considering the issues which have been raised in the writ petition. NLSIU, a premier Law University of the country, was established pursuant to a joint initiative of the Supreme Court of India, the Bar Council of India and the Karnataka Bar Council. Bar Council of India, set up a society, namely, National Law School of India Society as a registered society under the Karnataka Societies Registration Act, 1960. On request made to

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Government of Karnataka for establishing the School as University by a Statute, the State Government established National School of India University, Bengaluru by National Law School of India Act, 1986 (hereinafter referred to as 'the Act, 1986'). We shall notice the relevant provisions of the Act, 1986 a little later. The NLSIU was meant to be a premier School of Legal Education with five years undergraduate Law Course. Following the footsteps of NLSIU, National Academy of Legal Studies and Research (NALSAR) was established in Hyderabad in 1998 and the National University of Juridical Sciences, Kolkata (NUJS) was established in Kolkata in 1999 and National Law Institute University, Bhopal (NLIU) was established by Act No.41 of 1997 by Madhya Pradesh Legislature. Over the course of time States enacted similar Statutes to create institutions for legal education which came to be known as National Law Universities across the country. All the National Law Universities have prescribed criteria for admission as well as syllabus

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structure. In the initial years all National Law Universities were conducting their own admission tests for admitting students in five years Law course. A writ petition being Writ Petition(C)No.68 of 2006 **Varun Bhagat vs. Union of India** came to be filed in this Court under Article 32 of the Constitution, impleading Union of India through the Secretary, Ministry of Law, Justice and Company Affairs, Ministry of Human Resource Development through its Secretary, Bar Council of India, NLSIU, Bengalore and five other National Law Universities. The writ petitioner prayed for a direction to the respondent to lay down the mechanism of centralised admission process to the various National Law Universities to facilitate the interests of the students. This Court issued notice in the writ petition. Learned Additional Solicitor General of India made a statement before this Court that Ministry of Human Resource Development in consultation with the various Law Universities and other concerned stakeholders, shall take steps to examine and evolve a

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scheme/policy in accordance with which a combined entrance examination could be conducted for premier National Law Universities. The Government of India convened various meetings with Directors/Vice-Chancellors and other educational functionaries. In the Writ Petition No.68 of 2006 counter-affidavit was filed on behalf of Department of Higher Education, Ministry of Human Resource Development where detailed steps taken by the Ministry of Human Resource Development were enumerated including details of various meetings which were held with Vice-Chancellors of Law Universities in the year 2006 between September, 2006 to December, 2006. In paragraph 10 of the counter-affidavit following was stated:

> "10....It is expected that all the required informational notes shall be received during the course of February,2007 and further steps shall be timely taken in order to ensure that the process of holding a Combined Admission Test for the academic session 2008-2009 is put in place as expeditiously as possible."

3. The National Law Universities entered into a Memorandum of Understanding dated 27.11.2007 where the

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National Law Universities decided to hold a common admission test, namely, Common Law Admission Test (CLAT). Every University shall conduct the examination starting with the oldest University. When the Writ Petition No.68 of 2006 came for hearing on 25.07.2008, this Court noticed that prayers sought in the writ petition have already been accomplished, this Court passed following order:

> "The prayers sought for in the writ petition have already been accomplished, so the writ petition is disposed of."

4. The Common Law Admission Test (CLAT) started to be held with effect from the year 2008 for admission in five years law course of National Law Universities, which was a great relief to the students' community aspiring for joining a professional course in Law. The CLAT was conducted at different centres throughout the country. The number of National Law Universities kept on growing one by one and currently there are 23 National Law Universities in the country.

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5. Writ petition being Writ Petition (C)No.600 of 2015 came to be filed by one **Shamnad Basheer** praying that an independent professional body conducting CLAT on annual basis be constituted. This Court passed various orders in the aforesaid writ petition. On 28.11.2018 this Court passed the following order in the aforesaid writ petition:

> "Application for intervention is dismissed as withdrawn.
>
> Shri Atmaram N.S. Nadkarni, learned Additional Solicitor General appearing on behalf of the Union of India, Ministry of Human Resource & Development states that the Government has prepared a report and shall further convene a meeting of all the parties to these petitions, NTA and the Bar Council of India; seek their views and make appropriate recommendations for the holding of the examination within four weeks.
>
> List thereafter."

6. A meeting was held on 10.12.2018 by Secretary, Department of Higher Education, Government of India in compliance of the aforesaid order, the Bar Council of India who was a participant in the meeting stated that BCI as a statutory body has no objection in

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constitution of a Consortium of NLSIU for conducting the examination but as a key stakeholder, they would be part of monitoring body for conducting and monitoring the examination. In the meeting major point which emerged and noted was “the way forward would be to have a better, robust, transparent and accountable institutional structure for conduct of the examination through a Consortium of NLSIU being the stakeholder in the conduct of the examination (and as agreed by the petitioner, BCI and NLIA) was asked to take exams in transparent and robust manner”. The Consortium of National Law Universities was incorporated as a registered society under the Karnataka Registration of Societies Act, 1960 on 26.03.2019. The Vice-Chancellor of the NLSIU was to be the ex-officio Secretary-Treasurer of the Consortium. The Memorandum of Understanding of Consortium of National Law Universities noticed the directions issued by this Court in **Varun Bhagat vs. UOI** and deliberations made by the University Grants Commission, Ministry of

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Human Resource Development and Government of India. The main aims and objectives of the Consortium in clause 3 of the Memorandum were inter alia:

> "(i)To provide the highest standards of legal education to make Indian legal education comparable with the most reputed international institutions of legal education.
>
> (iii) To provide better co-ordination amongst the NLUs and other legal institutions to achieve highest standard of legal education in the country. Further the Consortium recognizes the autonomy of its member institutions and therefore its decisions will need adoption by the member institutions for implementation in such institutions.
>
> (v)To administration, control and monitor the conducting of all India common entrance examination for law in CLAT, for and on behalf of all the participating NLUs, and facilitate admission of students into various NLUs in the country.
>
> (xi) To make the benefits of legal education of one or more NLUs available to the rest of NLUs.
>
> (xix) To evolve uniform policies in terms of admission, course semester system, uniform grading system and the like in tune with global standards."

7. Clause 5 provided for governing body of the Society. The first governing body of the Society was

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constituted with 16 academicians/Vice Chancellors in which first name was of the petitioner No.2, Prof. R. Venkata Rao being Vice-Chancellor of NLSIU. Bye-Laws of Consortium of National Law Universities were also framed. Member of institution is defined in clause 1.1.13 to the following effect:

> "1.1.13. "Member institution" means by NLU formally admitted to the membership of the Society in accordance with the Bye-Laws and having paid the Subscription Fee and signing the master list of the Member institutions maintained by the Society."

8. Clause XV dealt with membership. Bye-Laws provide that each member of the institution ensure the admission on merit assessed through CLAT. Para 15.3.3 is as follows:

> "In order that appropriate intellectual rigor may be maintained, a Member institution shall ensure that admission to every academic course or programme of study in each Member institution shall be based on merit assessed through a transparent and reasonable evaluation namely CLAT operated by the Society, prior to admitting any student. Provided that nothing in this provision shall be deemed to prevent a Member institution from making special provisions for the employment or admission of women, persons with disabilities or for persons

WWW.LAWTREND.IN

> belonging to any socially and educationally backward classes of citizens and, in particular, for the Scheduled Castes and the Scheduled Tribes."

9. The Consortium successfully conducted the CLAT for admission in academic year 2019-20. In academic year 2020-21 Consortium notified the schedule for admission in which 10.05.2020 was fixed for CLAT 2020 test. Due to pandemic caused by the COVID-19 virus nationwide lockdown was imposed on 23.03.2020 by the Government of India. Due to the lockdown, CLAT was required to be postponed for public health and safety reasons. The examination scheduled for 10.05.2020 was postponed. The Executive Committee of the Consortium on 29.06.2020 resolved to shift away from physical test to centre-based online test.

10. Date 22.08.2020 was fixed for conduct of the test. However, due to big jump/increase in COVID-19 cases and lockdown till 30.08.2020 the examination which was scheduled to be held on 22.08.2020 was postponed to 07.09.2020. The Executive Committee of the Consortium

WWW.LAWTREND.IN

received a communication from Professor Nirmal Kanti Chakrabarti, Vice Chancellor, NJUS, Kolkota that the West Bengal had decided to impose a complete lockdown on 07.09.2020. The Consortium met on 28.08.2020 and postponed the examination to 28.09.2020.

11. Now, we may notice the events which took place at the end of NLSIU. The five years degree course offered by NLSIU consists of five academic years each academic year is divided into three semesters, each term called the Trimester having a minimum of 70 working days. The academic term ordinarily starts from 1st July to 30th September, second starts from November to February and third starts from March and ends in June. After postponing of CLAT from 22.08.2020 to 07.09.2020, Faculty meeting of NLSIU was held on 06.08.2020 to consider the contingency plan to prevent zero year.

12. Faculty meeting discussed various possible solutions. It was also noted that as a last option a separate admission procedure should be developed. A

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meeting of the Executive Council of NLSIU was held on l2.08.2020. In its meeting it was resolved that if there is any further delay in CLAT examination, the Vice Chancellor is empowered to take all necessary steps to ensure that the admission process of 2020-21 is completed in September, 2020. Again in adjourned meeting of the Executive Council on 18.08.2020, the Executive Council reaffirmed resolution to empower the Vice-Chancellor and the University to conduct the independent admission process in the event CLAT is delayed further. Another Faculty meeting was held on 31.08.2020 where it was noted that CLAT 2020 was postponed from 07.09.2020 to 28.09.2020. On 03.09.2020 NLSIU, Bengaluru issued notice for admission to the five years B.A.LL.B(Hons.) programme 2020-21 proposing to conduct NLAT test 2020 on 12.09.2020, the candidates were to attempt the examination by using a computer device at their respective locations. Paragraph 4.4.2. of the notice stated:

> “4.4.2 Candidates who have submitted a valid application form will be required to appear for

WWW.LAWTREND.IN

> the NLAT. The Test shall be an online entrance examination to be held on 12 September, 2020. Candidates will attempt this examination using a computer device at their respective locations. Candidates will have to ensure that they can appear for the examination on the appropriate date and time using a computer device as per the detailed specifications that will be provided, including video and audio inputs. **NLSIU** shall not be responsible for any connectivity issues, or failure of internet connection during the examination. **NLSIU** reserves the right to cancel any candidate's examination based on misconduct or examination malpractice."

13. A press release of NLSIU for admission 2020-21 was issued on 04.09.2020 in the above regard. NLSIU, Vice Chancellor, respondent No.2 gave an interview with "Bar and Bench" regarding separate admission test, namely, NLAT by NLSIU. This writ petition was filed in this Court on 08.09.2020 praying for following relief:

> "i) ISSUE A WRIT OF CERTIORARI or any other appropriate writ, order or direction to quash the impugned undated Admissions Notification released on 03.09.2020, at Annexure P-14 of the present Writ Petition, issued by the Respondent No.1;
>
> ii) ISSUE A WRIT OF CERTIORARI or any other appropriate writ, order or direction to quash the impugned Notification for Technical/System Requirements for the NLAT 2020;

WWW.LAWTREND.IN

> iii) ISSUE A WRIT OF MANDAMUS or any other appropriate writ, order or direction to direct Respondent No.1 to admit students only through CLAT;"

14. This Court on 11.09.2020 by issuing notice directed that the examination for admission in pursuance to notification dated 04.09.2020 may take place but neither the result shall be declared nor any admission be made consequent thereto. Counter-affidavits have been filed by respondent Nos.1, 2 and 3 to the writ petition to which a common rejoinder-affidavit has been filed on behalf of the petitioner. A sur-rejoinder-affidavit has also been filed by the respondent No.1.

15. We may also notice very briefly facts in SLP(C) No.11059 of 2020. SLP has been filed against the judgment dated 11.09.2020 of the High Court of Jharkhand at Ranchi in Writ Petition (C) No.2454 of 2020. The writ petition was filed by five students in the High Court of Jharkhand praying for quashing the notification dated 03.09.2020 issued by the NLSIU for

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declaring a separate examination for admission to its 5 years LL.B(Hons.) course. The petitioners' case in the writ petition before the High Court was that the petitioners have registered for CLAT examination 2020 to be conducted by the CLAT Consortium. They challenged the notice dated 03.09.2020 issued by NLSIU and prayed for quashing the notice. The writ petition was dismissed by the High Court. Challenging the judgment of the High Court dated 11.09.2020 SLP has been filed. The SLP petitioners have also filed IA No.91083/2020 in writ petition NO.1030 of 2020 to intervene in the writ petition. Applicants in their application have pleaded that they applied for undergraduate examination through CLAT 2020 and prepared regularly for the couple of years for CLAT examination. The notice dated 03.09.2020 by NLSIU came as surprise to the applicants, aggrieved by the said notice they filed writ petition in the High Court.

WWW.LAWTREND.IN

16. We have heard Shri Nidesh Gupta, learned senior counsel and Shri Gopal Sankaranarayan, learned senior counsel, for the petitioners. Shri Arvind Datar, learned senior counsel for respondent No.1, Shri Sajan Poovayya, learned senior counsel for respondent No.2 and Shri P.S. Narasimha for respondent NO.3. Shri Nikhil Nayyar, learned senior counsel, has appeared for petitioner in SLP as well as in IA No.91083 of 2020.

17. Shri Nidhesh Gupta, learned senior counsel for the petitioner submits that the notification dated 03.09.2020 issued by respondent No.1 notifying separate admission test 'NLAT' is in breach of statutory provisions of Act, 1986. The admission notice dated 03.09.2020 issued by respondent No.1 relies on the meeting of the Executive Council of the University dated 12.08.2020 and 18.08.2020 as well as Faculty meeting dated 06.08.2020. It is submitted that under the Act, 1986 it is the Academic Council of NLSIU which has been empowered under the Act, 1986 with regard to admission of the students. The Executive Council has no

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power. Shri Gupta submits that Section 13 empowers the Executive Council to frame Regulations to provide for administration and management of affairs of the School. Second proviso of which Section stipulates that except with the prior concurrence of the Academic Council, Executive Council shall not make any regulation affecting mode of enrolment or admission of students. He submits that respondent No.1 before issuing the notice dated 03.09.2020 has not conducted any meeting of Academic Council nor there is any resolution or concurrence of Academic Council with regard to the mode of admission as notified on 03.09.2020. Shri Gupta refers to provisions of Act, 1986 especially Schedule to the Act in which powers and functions of the Executive Council as well as powers and duties of Academic Council have been enumerated. He submits that powers and duties of the Academic Council as enumerated in Act, 1986 specifically contains power to appoint Committees for admission to the School whereas in the duties and the functions of the Academic Council, there

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is no power which indicates that it is the Executive Council which shall take decision regarding mode and manner of the admission of the students. He submits that the notification dated 03.09.2020 not being backed by any recommendation of the Academic Council could not have been issued by the respondent No.1. Admission notice being not in accordance with statutory provisions of Act, 1986 is liable to be set aside on this ground alone. Referring to the Minutes of meetings of the Executive Council dated 29.08.1987 to 30.08.1987 as relied by respondent No.1 in its counter-affidavit, Shri Gupta submits that it was Academic Council which met on 12.12.1987 and finalized procedure for admission as has been brought on record in the counter-affidavit of respondent No.1 himself. Thus, with regard to procedure for admission of the students, it is Academic Council which has to take a decision. Shri Gupta further submits that NLSIU being a member of Consortium it was obliged to admit the students in NLSIU on the basis of the CLAT examination 2020. The decision to

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conduct a combined test for all Universities including respondent No.1 was a decision which was arrived on the direction issued by this Court in **Varun Bhagat vs. UOI** and after due deliberations made by University Grants Commission, Ministry of Human Resource Development and Bar Council of India. Referring to Bye-Laws of the Consortium, Shri Gupta submits that respondent No.1 was obliged to follow the Bye-Laws it having agreed to abide by the rules of the Consortium. Respondent No.1 being still continuing as member of Consortium had no authority or jurisdiction to proceed to conduct a separate test NLAT for admission for the year 2020-21. Shri Gupta submits that the reason given by respondent No.1 to proceed to take separate test for admission for the year 2020-21 that it was done to avoid zero year, is also not correct. It is submitted that there were ways and means to complete the teaching in all three Trimesters which is being observed by respondent No.1. Shri Gupta submits that the CLAT examination 2020 being scheduled for September 28, 2020

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is in September 2020 itself, there was no occasion for respondent No.1 to rush for a separate admission. Shri Gupta further submits that in CLAT 2020, there have been more than 78,000 registrations where in NLAT there have been only about 26,000. He submits that it is inconceivable that such a large number of students who aspire from respondent No.1 would not appear. Shri Gupta further submits that the test conducted by respondent No.1 on 12.09.2020, i.e., home proctored test cannot ensure transparency, fairness and integrity. Shri Gupta referred to the counter-affidavit filed by respondent No.2 dated 25.08.2020 in Writ Petition No.4848 of 2020 filed before Delhi High Court where writ petitioner prayed that CLAT may be conducted as home based examination. Counter-affidavit was filed on behalf of Consortium through its Secretary, the respondent No.2 stating that a home based online test for around 78,000 students could not be possible the test will be completely compromised. He submits that even after taking that stand in affidavit, respondent

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No.2 proceeded to hold the NLAT 2020 as a home proctored examination. He submits that examination held on 12.09.2020, which was of 45 minutes with 40 marks was the examination conducted with lack of transparency and fairness. Large scale irregularities, malpractices were noticed in examination on 12.09.2020. Respondent No.2 has held a retest on 14.09.2020. Respondent No.1 itself has admitted that there have been malpractices and complaints were lodged for criminal investigation. Shri Gupta further submits that respondent No.2 never brought into the notice of Consortium that it is proposing to hold separate test, the decisions in the meetings of Executive Council dated 12.08.2020 and 18.08.2020 were never shared by respondent No.2 with the Consortium. Suddenly, respondent No.1 issued notice dated 03.09.2020 which has taken the Consortium by surprise. Shri Gupta further submits that separate test conducted by respondent No.1 is not in the students' interest, 78,000 students have registered for CLAT 2020 and more than 2/3rd students give preference for

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respondent 1. The short notice of examination to conduct home based examination deprived a large number of marginal section of the society especially those who could not afford to have means to join in the examination from their home due to lack of technical support. The technical requirement, which was prescribed by admission notice, was not easy to fulfill by a poor student, which deprived large number of marginal students to participate. Shri Gupta submits that CLAT examination is scheduled on 28.09.2020 and respondent No.1 on the basis of CLAT examination can very well complete its admission and start its course by mid of October and there was no such insurmountable difficulty as claimed by respondent No.1 for hurriedly conducting the separate test. Shri Gupta submits that admission notice may be set aside and the admission in the Respondent No.1 may also be taken on the basis of CLAT examination 2020, which is scheduled to be held on 28.09.2020.

WWW.LAWTREND.IN

18. Shri Gopal Sankaranarayan, learned senior counsel, appearing for petitioner No.1 submits that unilateral withdrawal from CLAT 2020 by respondent No.1 was not possible. The students have been preparing for CLAT 2020 in a particular method, suddenly they are told by respondent No.1 that now they have to appear in NLAT which is in different format. In the meeting dated 28.08.2020 of Executive Council of CLAT, there was no indication by respondent No.2 that in case the CLAT is postponed he will hold a separate entrance test for admission in respondent No.1. The notification dated 03.09.2020 suddenly comes surprising all. On 12.09.2020 respondent No.1 has conducted three exams and a retest on 14.09.2020. The excuse of zero year is a bogey. The zero year cannot be declared by respondent No.1.

19. Shri Arvind Datar, learned senior counsel for respondent No.1, refuting the submission of learned counsel for the petitioner contends that writ petitioners have no locus to file this writ petition, no details have been given with regard to ward of

WWW.LAWTREND.IN

petitioner No.1 who claims to be aspirant to CLAT 2020. Petitioner No.2 who is a former Vice-Chancellor of the respondent No.1 and at present Chairperson of Private Law College has no locus to challenge the admission notification dated 03.09.2020. He submits that at best it could have been Consortium which can be said to be aggrieved which has not come to the Court. It is due to inordinate delay in conducting CLAT 2020 that the respondent No.1 had no option except to proceed to hold a separate test to save academic year 2020 from being declared as a zero year. It is submitted that NLSIU maintains trimester system divided into three academic terms each with a minimum of 70 working days. It is submitted that unless first trimester starts from 18.09.2020, respondent No.1 could not complete its all the three trimesters. It is submitted that respondent No.1 has made bonafide efforts to convince Consortium to conduct the CLAT 2020 in a timely manner. It is submitted that Faculty of NLSIU at their meeting on 06.08.2020 resolved that NLSIU need to take all

WWW.LAWTREND.IN

necessary steps to avoid zero year. The Executive Council in its meetings on 12.08.2020 and 18.08.2020 resolved unanimously that if there is a further delay in CLAT, the Vice-Chancellor is empowered to take all necessary steps to ensure that the Admissions Process for 2020-21 is completed in September, 2020. NLSIU, being left with no other alternative, had to act with alacrity to complete the admissions process and commence classes by 18.09.2020 and avoid a ‘zero year’.

20. Shri Datar submits that under Section 10, the Executive Council is the chief executive body of the School, which has right of administration, management and control of the School. He submits that right of administration and management encompasses right to admit students, hence, the Executive Council has right to take decision regarding admission of the students. He has referred to first Executive Council meeting dated 29.08.1987/30.08.1987 wherein the mode of admission was decided by the Executive Council as by a common entrance test. The determination of the method

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of admission to NLSIU vests under the statute with Executive Council. Referring to second proviso to Section 13 of Act, 1986 Shri Datar submits that no regulation has yet been framed regarding admission, second proviso has no application. At present there are no regulations in place regarding admission in NLSIU hence it was not necessary to obtain prior concurrence of Academic Council for admission in NLSIU. Further Vice Chancellor has emergency powers under Clause 18(5) of Schedule to the Act, 1986, with regard to compliance with the Bye-Laws of Consortium. Shri Datar submits that Bye-Laws cannot detract or inhibit plenary statutory power conferred on the Executive Council by Act, 1986. The process for admission initiated by notice 03.09.2020 has been held in a transparent manner. Application fee for the test is limited for just Rs.150/-(for General Category candidates) and Rs.125/-(for SC/ST candidates) so that it was easily accessible to all students. The examination is online home proctored examination hence students do not go out

WWW.LAWTREND.IN

for additional test centres. With a view to check malpractice, NLAT has taken extensive precautions in the form of human and AI proctoring, as also pre-exam, during-exam and post-exam checks, to prevent malpractice. Extensive technological and other measures are implemented to ensure that any candidate attempting any form of malpractice is caught and disqualified from the process, either during the examination itself or during the post-examination audit and scrutiny. While the examination is ongoing human proctors and super-proctors also received live data on the candidates and are empowered to warn candidates and even disqualify them, if they notice any form of malpractice. NLSIU has appointed a leading audit firm to carry out an independent forensic audit and assessment of the various data relating to the examination and submit a report. It is submitted that students during the examination were given different batch of question papers to rule out any kind of malpractice. The various reports made in electronic media are not credible and

WWW.LAWTREND.IN

cannot be a ground for proving allegation that in examination held on 12.09.2020 and 14.09.2020 any malpractices were adopted. Insofar as the allegation that the paper was leaked on 14.09.2020, it is submitted that allegation is of downloading of the papers in the last 15 minutes of the examination, which has not in any way affected integrity of examination. Shri Datar submits that the allegation made by the petitioner cannot be gone into and determined regarding conduct of the examination dated 12.09.2020, in proceedings under Article 32 of the Constitution. There is no violation of Article 14 of the Constitution of India, all students were invited to register themselves in NLAT only on the fee of Rs.150/-. About 26,000 students appeared in the examination. Shri Datar has very fairly submitted that respondent No.1 is still member of the Consortium and separate examination conducted is only for the year 2020-21 and from the next year NLSIU shall conduct admission on the basis of CLAT examination to be held by the Consortium. He

WWW.LAWTREND.IN

further submits that decision for postponement of the CLAT examination on 28.08.2020 was not unanimous and protest was raised by respondent No.2 and he did not sign the proceedings. He further submits that difficulty of respondent No.1 of it having trimesters was pointed by the respondent No.2 in the meeting of the Executive Council of the Consortium. The conduct of the respondent No.2 was bonafide and all actions were taken by respondent No.1 in the interest of the respondent No.1.

21. Shri Datar submits that due to postponement of examination by Consortium of CLAT 2020 beyond 07.09.2020 the purpose of successfully conducting trimesters by respondent No.1 was frustrated.

22. Shri Sajan Poovayya, learned senior counsel appearing for respondent No.2 submits that respondent No.2 was bound by the resolution taken by Executive Council on 12.08.2020 and 18.08.2020. In the Faculty meeting dated 06.08.2020 decision was taken to choose the best option. He submits that it was a General Body

WWW.LAWTREND.IN

of the Consortium which could have taken decision to adjourn the CLAT examination. The decision dated 28.08.2020 to postpone the examination from 07.09.2020 to 28.09.2020 was taken by Executive Committee of the Consortium which had no authority. There is no power delegated to Executive Committee to take a decision. Till 05.08.2020 the respondent No.2 has not done anything for separate examination. On 31.08.2020 the entire Faculty again met and decided for home-based computer test.

23. Shri P.S. Narasimha, learned senior counsel, appearing for respondent No.3, Consortium has referred to developments leading to formation of Consortium, he has also referred to the orders of this Court in writ petition **in Varun Bhagat vs. Union of India and Shamnad Basheer vs. Union of India (supra)**. He submits that due to judicial interventions and considerable time and effort from all the stakeholders, the different Universities have come together to form the Consortium, whose primary objective is to conduct the Common Law

WWW.LAWTREND.IN

Admission Test for the benefit of admissions of all its members. The Consortium and all the members of the Society ought not to be relegated to the status of a private society or club. He submits that although Universities joining the Consortium have done so voluntarily but the fact remains that statutorily set up Universities bear statutory duties, who have come together to form Consortium to achieve a statutory purpose. With the formation of the Consortium, statutory obligations of the respective Universities to regulate their admission procedure stands jointly crystallized and vested in the Consortium. In effect, the Consortium today undertakes a statutory function in furtherance of a laudable public purpose. The Bye-Laws of the Consortium is to be harmoniously read with the statutory prescriptions of the respective Universities under the State legislations. The institutional integrity of the Consortium which has been achieved after long process must be preserved and facilitated the purpose for which it is established. He submits

WWW.LAWTREND.IN

that it must rigorously demonstrate transparency and uphold the trust reposed on it by its beneficiaries. He submits that the Consortium was kept in dark about the decision of the respondent Nos.1 and 2 to hold a separate entrance examination until the issuance of notification dated 03.09.2020. In the Consortium meeting dated 10.08.2020 respondent No.2 did not inform about the Faculty meeting dated 06.08.2020. Further, respondent No.2 failed to disclose the decisions arrived at the Executive Council meetings dated 12.08.2020 and 18.02.2020 to the Consortium in its meeting dated 28.08.2020.

24. The Consortium while conducting the CLAT essentially undertakes a statutory public duty and must not betray the trust reposed in it by the aspirants. The abrupt decision of respondent No.1 to hold its own examination, without taking Consortium into confidence, undermines the credibility of the Consortium.

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25. Shri Nayyar appearing for the SLP petitioners as well as in I.A.No.91083 of 2020 submits that applicants are the students who have registered themselves for CLAT 2020 and they have challenged the notice dated 03.09.2020 in the Jharkhand High Court which writ petition has been dismissed resulting in filing of SLP(C)No.11059 of 2020. The applicants have also filed I.A.No.91083 of 2020 in the Writ Petition No.1030 of 2020 and have supported the cause of the writ petition. Shri Nayyar further submits that the above applicants have also appeared in the examination held on 12.09.2020. He submits that all India tests are being conducted which has its own benefits. Shri Nayyar submits that when the decision was taken by the Consortium on 18.05.2020 to postpone the examination fixed for 21.06.2020 it was mentioned that 21 days notice will be given to the students for fixing a date. Shri Nayyar has also submitted that the test which was conducted on 12.09.2020 was neither transparent nor fair. Mock test was held only one day before. Shri

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Nayyar submits that there is negative marking of .25 in not answering a question which was not a condition in the CLAT. He submits that one of the reasons for respondent to proceed to hold separate test is alleged loss of 17 crores which cannot be a relevant reason.

26. Shri Gopal Sankaranarayan, learned counsel appearing for the petitioner also contended that the Academic Council consists of Judges of the Supreme Court, which meetings were neither called nor convened by the respondent No.1. He reiterates that it is the Academic Council which was body competent to take decision regarding admission and procedure of admission. He has referred to Clauses 13 and 14 of the Schedule to Act, 1986.

27. Learned counsel for the parties have also referred to several judgments of this Court which shall be referred to while considering the submissions of the parties.

WWW.LAWTREND.IN

28. We have considered the submissions of the parties and have perused the records.

29. From submissions of the learned counsel for the parties and pleadings, following questions arise for consideration:-

(1) Whether the petitioners have locus to file the writ petition?

(2) Whether the admission notification dated 03.09.2020 by respondent No.1 could have been issued only after recommendations to that effect by the Academic Council, which is the statutory authority under the Act, 1986 for admission of the students to the five year integrated B.A.LL.B. (Hons.) Programme 2020-2021?

(3) Whether the respondent No.1 being founder member of Consortium of National Law Universities, a registered society, is bound by its Bye-Laws and was obliged to admit the

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students for integrated B.A.LL.B. (Hons.) Programme through CLAT 2020?

(4) Whether online home proctored examination as proposed by notification dated 03.09.2020, lacks transparency, was against the very concept of fair examination and violative of the rights of the students under Article 14 of the Constitution?

(5) Whether NLAT held on 12.09.2020 with retest on 14.09.2020 was marred by malpractices and deserves to be set aside?

QUESTION NO.1

WHETHER THE PETITIONERS HAVE LOCUS TO FILE THE WRIT PETITION?

30. Shri Arvind P. Datar, learned senior counsel appearing for the respondent No.1 has questioned the maintainability of the writ petition at the instance of petitioner Nos. 1 and 2. He submits that petitioner No.1 claimed to be father of an aspiring law student, however, no materials of which have been placed on

WWW.LAWTREND.IN

record to depict the said fact. The petitioner No.2 is the Chairperson of a private Law College, which college is not the member of Consortium, hence, respondent No.2 is not aggrieved in any manner.

31. The objection raised by learned senior counsel for the respondent has been refuted by the learned counsel for the petitioners. It is submitted that the writ petition, which has been filed in a public interest is fully maintainable at the instance of the petitioners. It is submitted that petitioner No.1 being parent of an aspiring law student can very well maintain the writ petition to secure the future of his ward. The petitioner No.2 has been the Ex-Vice Chancellor of respondent No.1 and was founder member of the Consortium, which was registered as society under Karnataka Societies Registration Act, 1960. It is submitted that petitioner No.2, who has been at the helm of affairs and has been associated with legal education has every right to espouse the cause of education and students.

WWW.LAWTREND.IN

32. It is true that although petitioner No.1 claimed to be parent of an aspiring law student but no details have been given in the writ petition or in the common rejoinder affidavit as to whether the ward of petitioner No.1 is applicant to CLAT, 2020. The petitioner No.1 in the writ petition has pleaded that he is parent of a CLAT 2020 aspirant, who also seeks to represent various such similarly placed students across the nation, who are aggrieved. In paragraph 5 of the writ petition, following has been pleaded:-

> "5. It is quite important to note that the petitioner No.2 herein is a notable legal scholar whose involvement in the development of legal education in India and more particularly the respondent No.1 University is paramount. The petitioner No.2 has previously served as the Vice Chancellor of the respondent No.1 University and has also closely contributed to the development of CLAT. The petitioner No.2 with his vast experience in the academic sector, pertinently in the legal academia and even more pertinently with the respondent No.1 University, is aggrieved by the arbitrary conduct of the respondent No.1 University……."

WWW.LAWTREND.IN

33. Even though with regard to petitioner No.1, details of his ward has not been given except that petitioner No.1 is a parent of CLAT 2020 student but in view of the credentials of petitioner No.2 as noted above, we are of the view that the writ petition is fully maintainable at his instance. The affidavit in support of the writ petition has been sworn by petitioner No.2. A common rejoinder affidavit has also been sworn by petitioner No.2. The Memorandum of Association of Consortium of National Law Universities, which is a registered society under Karnataka Societies Registration Act, 1960 registered on 26.03.2019 contains a list of Initial Members Subscribers of the Consortium in which name of petitioner No.2 was mentioned as Member Subscriber No.1. Petitioner No.2 being Vice-Chancellor of respondent No.1 became the ex-officio Secretary Treasurer of the Society, his details are also mentioned in paragraph 7 of the Memorandum. A person, who has worked as Vice-chancellor of respondent No.1 and was also member of Consortium, which is

WWW.LAWTREND.IN

entrusted to conduct CLAT, he is fully competent to espouse the cause of education by means of the writ petition. We, thus, reject the objection of the respondent that petitioners have no locus to file the writ petition. It is also relevant to notice that alongwith the writ petition a Special Leave Petition (C) No.11059 of 2020 has been listed, which has been filed by five petitioners, who were candidates for CLAT 2020-2021. The admission notice dated 03.09.2020 was challenged by them by means of a Writ Petition (C) No.2454 of 2020 in High Court of Jharkhand at Ranchi, which writ petition was dismissed. Challenging which judgment, they have filed the aforesaid special leave petition.

34. The above five petitioners have also filed an application I.A. No. 91083 of 2020 in Writ Petition (C) No.1030 of 2020 to intervene in the matter, they being affected and aggrieved persons by the notice dated 03.09.2020. Those students, who are aggrieved by the admission notification dated 03.09.2020 are also before

WWW.LAWTREND.IN

this Court, who have been represented by Shri Nikhil Nayyar, learned senior counsel.

35. We, thus, are of the view that issues raised have to be decided on merits rejecting the objection of respondent No.1 regarding locus.

QUESTION NO.2

WHETHER THE ADMISSION NOTIFICATION DATED 03.09.2020 BY RESPONDENT NO.1 COULD HAVE BEEN ISSUED ONLY AFTER RECOMMENDATIONS TO THAT EFFECT BY THE ACADEMIC COUNCIL, WHICH IS THE STATUTORY AUTHORITY UNDER THE ACT, 1986 FOR ADMISSION OF THE STUDENTS TO THE FIVE YEAR INTEGRATED B.A.LL.B. (HONS.) PROGRAMME 2020-2021?

36. As noted above, submission of Shri Nidesh Gupta, learned senior counsel for the petitioners is that it is the Academic Council of respondent No.1, which is the statutory authority under Act, 1986 to take decision regarding admission of the students in integrated B.A.LL.B. (Hons.) Programme. Shri Arvind Datar, learned senior counsel appearing for the respondent No.1 has relied on Minutes of the Executive Council dated 12.08.2020 and 18.08.2020 and contends that the Executive Council of the respondent No.1 is

WWW.LAWTREND.IN

fully authorised and entitled to take a decision regarding admission of the students and the actions taken by the Vice-Chancellor in pursuance of the aforesaid decision of the Executive Council are fully valid and are in accordance with the provisions of the Act, 1986.

37. Before we enter into the respective submissions of the learned counsel for the parties regarding above question, we may notice the provisions of the statute in the above regard.

38. National Law School of India Act, 1986 was enacted to establish and incorporate National Law School of India University at Bengalore (now Bengaluru). Under Section 8, authorities of the schools have been enumerated, which includes the Executive Council as well as the Academic Council. Section 10 deals with the Executive Council, which is to the following effect:-

> **“10. The Executive Council.-**
>
> (1) The Executive Council shall be the chief executive body of the School.

WWW.LAWTREND.IN

(2) The administration, management and control of the School and the income thereof shall be vested with the Executive Council which shall control and administer the property and funds of the School."

39. Section 11 of the Act deals with Academic Council in following manner:-

"**11. The Academic Council.-** The Academic Council shall be the academic body of the School, and shall, subject to the provisions of this Act and the regulations, have power of control and general regulation of, and be responsible for, the maintenance of standards of instruction, education and examination of the School, and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by this Act or the regulations. It shall have the right to advise the Executive Council on all academic matters."

40. The Executive Council is empowered to frame Regulations to provide for the administration and management of the affairs of the school under Section 13 of the Act. Section 13 of the Act, which is relevant for the present case is as follows:-

"**13. Regulations.**-

(1) Subject to the provisions of this Act, the Executive Council shall have, in addition to all the other powers vested in it, the power

WWW.LAWTREND.IN

to frame regulations to provide for the administration and management of the affairs of the School:

Provided that the Executive Council shall not make any regulation affecting the status, powers or constitution of any authority of the School until such authority has been given an opportunity of expressing an opinion in writing on the proposed changes, and any opinion so expressed shall be considered by the Executive Council;

Provided further that except with the prior concurrence of the Academic Council, the Executive Council shall not make, amend or repeal any regulation affecting any or all of the following matters, namely:-

(a) the constitution, powers and duties of the Academic Council;

(b) the authorities responsible for organising teaching in connection with the School courses and related academic programmes;

(c) the withdrawal of degrees, diplomas, certificates and other academic distinctions;

(d) the establishment and abolition of faculties, departments, halls and institutions;

(e) the institution of fellowships, scholarships, studentships, exhibitions, medals and prizes;

WWW.LAWTREND.IN

(f) conditions and modes of appointment of examiners or conduct or standard of examinations or any other course of study;

(g) mode of enrolment or admission of students;

(h) examinations to be recognised as equivalent to school examinations.

(2) The Academic Council shall have the power to propose regulations on all the matters specified in (a) to (h) above and matters incidental and related thereto in this regard.

(3) Where the Executive Council has rejected the draft of a regulation proposed by the Academic Council, the Academic Council may appeal to the Chancellor and the Chancellor, may, by order, direct that the proposed regulation may be laid before the next meeting of the General Council for its approval and that pending such approval of the General Council it shall have effect from such date as may be specified in that order:

Provided that if the regulation is not approved by the General Council at such meeting, it shall cease to have effect.

(4) All regulations made by the Executive Council shall be submitted, as soon as may be, for approval, to the Chancellor and to the General Council at its next meeting, and the General Council shall have power by a resolution passed by a majority of not less than two thirds of the members present, to cancel any regulation made by the Executive

WWW.LAWTREND.IN

> Council and such regulations shall from the date of such resolution cease to have effect."

41. Section 18 deals with authorities and officers of the school, their composition, powers and functions, subject to the provisions of the Act have been specified in the Schedule or as may be provided by the Regulations. Section 18 is to the following effect:-

> **"18. Authorities and officers of the School etc.-**
>
> The authorities of the School and their composition, powers, functions and other matters relating to them, the officers of the School and their appointment, powers, functions and other matters relating to them and all other matters relating to the finances, powers, teaching, administration and management of the affairs of the School shall, subject to the provisions of this Act be as specified in the Schedule or as may be provided by the regulations."

42. The Schedule provides for Membership of the Executive Council, Term of the Executive Council and powers and functions of the Executive Council, Clause 9 of the Schedule, which provides for powers and

WWW.LAWTREND.IN

functions of the Executive Council is to the following effect:-

> **"9. Powers and functions of the Executive Council.-**
> Without prejudice to clause 5, the Executive Council shall have the following powers and functions, namely:-
>
> (1) to appoint, from time to time, the Vice Chancellor, the Registrar, the Librarian, Professors, Associate Professors, Assistant Professors and other members of the teaching staff, as may be necessary, on the recommendations of the selection committee constituted by regulations for the purpose:
>
> Provided that no action shall be taken by the Executive Council, except in cases covered by the second proviso, in regard to the number, qualifications and emoluments of teachers, otherwise than after consideration of the recommendations of the Academic Council:
>
> Provided further that it shall not be necessary to constitute any selection committee for making appointments,-
>
> (a) to any supernumerary post; or
>
> (b) to the post of professor of a person of high academic distinction, eminence and professional attainment invited by the Executive Council to accept the post;
>
> (2) to create administrative, ministerial and other necessary posts, to determine the

WWW.LAWTREND.IN

number and emoluments of such posts, to specify minimum qualification for appointment to such posts and to appoint persons to such posts on such terms and conditions of service as may be prescribed by the regulations made in this behalf, or to delegate the powers of appointments to such authority or authorities or officer or officers as the Executive Council may, from time to time, by resolution, either generally or specifically, direct;

(3) to grant in accordance with the regulations leave of absence other than casual leave to any officer of the School and to make necessary arrangements for the discharge of the functions of such officer during his absence;

(4) to manage and regulate the finances, accounts, investments, property, business and all other administrative affairs of the School and for that purpose to appoint such agents, as it may think fit;

(5) to invest any money belonging to the School, including any unapplied income, in such stock, funds, shares or securities, as it may from time to time, think fit or in the purchase of immovable property in India, with the like power of varying such investments from time to time;

(6) to transfer or accept transfers of any movable or immovable property on behalf of the School;

(7) to enter into, vary, carry out and cancel contracts on behalf of the School and for that purpose to appoint such officers as it may think fit;

WWW.LAWTREND.IN

(8) to provide the buildings, premises, furniture and apparatus and other means needed for carrying on the work of the School;

(9) to entertain, adjudicate upon, and if it thinks fit, to redress any grievances of the officers of the School, the teachers, the students and the School employees, who may, for any reason, feel aggrieved, otherwise than by an act of a court;

(10) to appoint examiners and moderators, and if necessary to remove them and to fix their fees, emoluments and travelling and other allowances, after consulting the Academic Council;

(11) to select a common seal for the School and to provide for the custody of the seal; and

(12) to exercise such other powers and to perform such other duties as may be conferred or imposed on it by or under this Act."

43. Clause 13 deals with membership of the Academic Council and Clause 14 provides for powers and duties of the Academic Council. Clause 14 is as follows:-

"14. Powers and duties of the Academic Council.-

Subject to the provisions of this Act and the regulations the Academic Council shall, in addition to all other powers vested in it, have the following powers, namely:-

WWW.LAWTREND.IN

(1) to report on any matter referred or delegated to it by the General Council or the Executive Council;

(2) to make recommendations to the Executive Council with regard to the creation, abolition or classification of teaching posts in the School and the emoluments and the duties attached thereto;

(3) to formulate and modify or revise schemes for the organisation of the faculties, and to assign to such faculties their respective subjects and also to report to the Executive Council as to the expediency of the abolition or sub-division of any faculty or the combination of one faculty with another;

(4) to make arrangements through regulations for the instruction and examination of persons other than those enrolled in the School;

(5) to promote research within the School and to require, from time to time, reports on such research;

(6) to consider proposals submitted by the faculties;

(7) to appoint committees for admission to the School;

(8) to recognise diplomas and degrees of other universities and institutions and to determine their equivalence in relation to the diplomas and degrees of the School;

(9) to fix, subject to any conditions accepted by the General Council, the time, mode and conditions of competition for fellowships,

WWW.LAWTREND.IN

scholarships and other prizes, and to award the same;

(10) to make recommendations to the Executive Council in regard to the appointment of examiners and if necessary their removal and the fixation of their fees, emoluments and travelling and other expenses;

(11) to make arrangements for the conduct of examinations and to fix dates for holding them;

(12) to declare the result of the various examinations, or to appoint committees or officers to do so, and to make recommendations regarding the conferment or grant of degrees, honours, diplomas, licences, titles and marks of honour;

(13) to awards stipends, scholarships, medals and prizes and to make other awards in accordance with the regulations and such other conditions as may be attached to the awards;

(14) to publish lists of prescribed or recommended text-books and to publish syllabus of the prescribed courses of study;

(15) to prepare such forms and registers as are, from time to time, prescribed by regulations; and

(16) to perform, in relation to academic matters, all such duties and to do all such acts as may be necessary for the proper carrying out of the provisions of this Act and the regulations.“

WWW.LAWTREND.IN

44. We having noticed the statutory provisions under the Act, 1986, now, proceed to consider the respective submissions of the learned counsel for the parties. As noted above, the question, which is up for consideration is as to whether with regard to admission of students, recommendation of the Academic Council is statutory requirement or not.

45. Shri Datar submits that as per Section 10, the Executive Council is the Chief Executive Body of the school and the administration, management and control of the school is vested with the Executive Council, hence, with regard to admission of students, power is vested with the Executive Council. He submits that admission of students is one of the **facets** of administration. He has relied on judgment of this Court in **T.M.A. Pai Foundation and Ors. Vs. State of Karnataka and Ors., (2002) 8 SCC 481** where in paragraph 50 of the judgment, this court held that right to establish and administer broadly comprised right to admit students. Paragraph 50 is as follows:-

WWW.LAWTREND.IN

> “50. The right to establish and administer broadly comprises of the following rights:-
>
> (a) to admit students:
>
> (b) to set up a reasonable fee structure:
>
> (c) to constitute a governing body;
>
> (d) to appoint staff (teaching and non-teaching); and
>
> (e) to take action if there is dereliction of duty on the part of any employees.

46. There can be no dispute that Executive Council is the Chief Executive Body of the school and the administration, management and control of the school is vested in the Executive Council and in the administration, right to admit the students is included but the Statute has to be further looked into to find out as to whether there are any other statutory provisions to regulate the admission of students or there is any other authority of the school, which is vested with the power to take decision regarding admission of the students.

WWW.LAWTREND.IN

47. To buttress his submission, Shri Gupta has placed reliance on second proviso of Section 13 of the Act as noted above. Section 13(1) empowers the Executive Council to frame Regulations to provide for the administration and management of the affairs of the school. However, the power of Executive Council to frame regulations is conditioned by second proviso, which is to the following effect:-

> "Provided further that except with the prior concurrence of the Academic Council, the Executive Council shall not make, amend or repeal any regulation affecting any or all of the following matters, namely:-
>
> XXXXXXXXXXXXXXXx
>
> (g) mode of enrolment or admission of students;
>
> XXXXXXXXXXXXXXX"

48. Shri Datar submits that there can be no quarrel with the statutory requirement as contained in second proviso to Section 13, he, however, submits that the second proviso of Section 13 is not applicable in the present case, since no regulations have been framed regarding enrolment or admission of students. When no

WWW.LAWTREND.IN

regulations have been framed and Executive Council has not proposed any regulation or amendment therein, the embargo under second proviso is not attracted. Shri Datar further submits that the power under Section 13 to frame regulations is a separate and independent power. When the power is given to the Executive Council under Section 10, he submits that even if no regulations were framed by Executive Council under Section 13, it can very well exercise its general power conferred by Section 10 of the Act. Shri Datar has placed reliance on judgment of this Court in **PTC India Limited Vs. Central Electricity Regulatory Commission, (2010) 4 SCC 603.** The Constitution Bench of this Court in the above case had occasion to consider various provisions of Electricity Act, 2003. Section 79 of the Act enumerated the functions of Central Commission whereas Section 178 empowers the Central Commission to make regulations. This Court held that the functions of Central Commission enumerated in Section 79 are separate and distinct from functions of Central

WWW.LAWTREND.IN

Commission under Section 178, following was laid down in paragraphs 53 and 55:-

> "**53.** Applying the abovementioned tests to the scheme of the 2003 Act, we find that under the Act, the Central Commission is a decision-making as well as regulation-making authority, simultaneously. Section 79 delineates the functions of the Central Commission broadly into two categories - mandatory functions and advisory functions. Tariff regulation, licensing (including inter-State trading licensing), adjudication upon disputes involving generating companies or transmission licensees fall under the head "mandatory functions" whereas advising the Central Government on formulation of National Electricity Policy and tariff policy would fall under the head "advisory functions". In this sense, the Central Commission is the decision-making authority. Such decision-making under Section 79(1) is not dependent upon making of regulations under Section 178 by the Central Commission. Therefore, functions of the Central Commission enumerated in Section 79 are separate and distinct from functions of the Central Commission under Section 178. The former are administrative/adjudicatory function whereas the latter are legislative.
>
> **55.** To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a precondition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178.……"

WWW.LAWTREND.IN

49. We may notice another judgment of this Court in **V.T. Khanzode and Ors. Vs. Reserve Bank of India and Anr., (1982) 2 SCC 7.** Section 58(1) of the Reserve Bank of India Act, 1934 provided that the Central Board may, with the previous sanction of the Central Government, make regulations consistent with this Act to provide for all matter for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act. No regulations were framed under Section 58(1). Argument was raised that conditions of service cannot be framed by administrative circulars but must be framed by the regulations made under Section 58 of the Act. Repelling the said argument, this Court laid down following in paragraph 18:-

> "**18.** In support of this submission, reliance is placed by the learned Counsel on the statement of law contained in paragraphs 1326 and 1333 (pages 775 and 779) of Halsbury's Laws of England, 4th Edn. In paragraph 1326 it is stated that:
>
> Corporations may be either statutory or non-statutory and a fundamental distinction exists

WWW.LAWTREND.IN

> between the powers and liabilities of the two classes. Statutory corporations have such rights and can do such acts only as are authorised directly or indirectly by the statutes creating them; non-statutory corporations, speaking generally, can do everything that an ordinary individual can do unless restricted directly or indirectly by statute.

Paragraph 1333 says that :

> The powers of a corporation created by statute are limited and circumscribed by the statutes which regulate it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its incorporation, or may be fairly regarded as incidental to, or consequential upon, these things which the legislature has authorised. What the statute does not expressly or impliedly authorise is to be taken to be prohibited.

There is no doubt that a statutory corporation can do only such acts as are authorised by the statute creating it and that, the powers of such a corporation cannot extend beyond what the statute provides expressly or by necessary implication. If an act is neither expressly or impliedly authorised by the statute which creates the corporation, it must be taken to be prohibited. This cannot, however, produce the result for which Shri Nariman contends. His contention is not that the Central Board has no

WWW.LAWTREND.IN

> power to frame staff regulations but that it must do so under Section 58(1) only. On that argument, it is material to note that Section 58(1) is in the nature of an enabling provision under which the Central Board "may" make regulations in order to provide for all matters for which it is necessary or convenient to make provision for the purpose of giving effect to the provisions of the Act. This provision does not justify the argument that staff regulations must be framed under it or not at all. The substance of the matter is that the Central Board has the power to frame regulations relating to the conditions of service of the Bank's staff. If it has that power, it may exercise it either in accordance with Section 58(1) or by acting appropriately in the exercise of its general power of administration and superintendence."

50. We find substance in the submission of Shri Datar that power under Section 13 empowering the Executive Council to frame regulations and power under Section 10 to administer, manage and control the school are two separate powers and even though the regulations have not been framed under Section 13 regarding admission of the students, the Executive Council can very well exercise its power under Section 10 to administer, manage and control the affairs of the school. However, the provisions contained in Section 13 throw

WWW.LAWTREND.IN

considerable light on the statutory scheme. The second proviso providing for prior concurrence of the Academic Council on enumerated subjects including “mode of enrolment and admission of students” has been provided for since under the Scheme of the Statute it is the Academic Council which has been empowered to take decisions regarding mode of enrolment or admission of students, which we shall notice hereinafter. The above restriction in regulations making power of the Executive Council has been engrafted with purpose and object. The subjects which are mentioned under second proviso where prior concurrence of the Academic Council is required are all matters which are in domain of the Academic Council, thus, even though strictly second proviso of Section 13(1) is not attracted when no regulations have been framed by the Executive Council but the object and purpose for conditioning the exercise of regulation making power of the Executive Council cannot be lost sight. Sub-section(3) of section 13 also contains a special provision which

WWW.LAWTREND.IN

provides that where the Executive Council rejects the draft of a regulation proposed by the Academic Council, the Academic Council may appeal to the Chancellor and the Chancellor, may, by order, direct that the proposed regulation may be laid before the next meeting of the General Council for its approval and pending such approval of the General Council it shall have effect from such date as may be specified in that order. Thus, Academic Council regulations which even though rejected by the Executive Council can be allowed to operate by Chancellor and required to place before General Council for approval and after approval it shall be operated. The above provision indicates that in certain matters the recommendations of the Academic Council has been given prominence and as per sub-section(2) of Section 13, the Academic Council shall have the power to propose regulations on all the matters specified in (a) to (h) as enumerated in the second proviso of sub-section(1) of Section 13. Thus,

WWW.LAWTREND.IN

Academic Council can propose regulations on mode of enrolment and admission of students also.

51. Now, we proceed to examine the other provisions of Statute to find out as to whether apart from provisions of Section 13 whether there are any other statutory provisions empowering the Academic Council to take decisions regarding admission of students. As noted above, Section 18 of the Act provides that composition, powers and functions of the authorities of the school subject to the provisions of the Act shall be as specified in the Schedule. Clause 14 of the Schedule provides “subject to the provisions of this Act and the regulations, the Academic Council shall, in addition to all other powers vested in it, have the following powers namely:-

“XXXXXXXXXXXXXXXXX

(7) to appoint committees for admission to the School;

XXXXXXXXXXXXXXXXX

WWW.LAWTREND.IN

> (11) to make arrangements for the conduct of examinations and to fix dates for holding them;
>
> XXXXXXXXXXXXXXXXX
>
> (16) to perform, in relation to academic matters, all such duties and to do all such acts as may be necessary for the proper carrying out of the provisions of this Act and the regulations.“

52. The above provisions in the Schedule specifically empower the Academic Council to appoint the committees for admission to the school. Admissions to the school, thus, were contemplated to be under the control of Academic Council and the appointment of committees was with the purpose to monitor and conduct the admission of the school. When the Act was enacted in 1986, no procedure was in place regarding admission and the Statute empowered the Executive Council to appoint committees for admission to the school. By virtue of Clause 14(16) with regard to appointment of committees for admission to the school, the Academic Council was to perform “all such duties and to do all such acts as may be necessary for the proper carrying out of the

WWW.LAWTREND.IN

provisions of the Act". Thus, the above statutory provision gave all incidental power to the Academic Council in relation to the admission.

53. Now, we contrast with the power given to the Academic Council with regard to admission to the school with that of the powers and functions of the Executive Council as given in Clause 9. The powers given to the Executive Council under Clause 9 can be divided in three parts (i) sub-clauses (1), (2), (3) & (9) relates to appointment and service conditions; (ii) sub-clauses (4), (5), (6), (7) & (8) relating to finance and properties and (iii) other contains clauses (10), (11) and (12). Clause (11) empowers the Executive Council to select a common seal for the school and sub-Clause (12) is a general power providing that Executive Council to exercise such other powers and to perform such other duties as may be imposed.

54. We are left with only Clause i.e. sub-Clause (10) which is to the following effect:-

WWW.LAWTREND.IN

> "to appoint examiners and moderators, and if necessary to remove them and fix their fees, emoluments and travelling and other allowances after consulting the Academic Council."

55. Shri Arvind Datar while referring to power of the Academic Council given in clause 14 sub-clause (11), which empower the Academic Council to make arrangements for the conduct of examinations and to fix dates for holding them, submitted that the said power relate to conduct of examination of various courses, which are run by the school. Sub-clause(10) of Clause 9 of Schedule has to be, thus, also read to mean that appointment of examiners and moderators is with regard to courses run by the school. It is relevant to notice that even the power to appoint examiners and moderators is with the condition, i.e., "after consulting the Academic Council". When appointment of examiners by the Executive Council is by consultation of the Academic Council, how can in the mode and manner of the admission of the students, the Academic Council can be ignored. The Statutory Scheme of the Act as delineated above, thus, indicates that there is no specific power

WWW.LAWTREND.IN

given to the Executive Council with regard to admission of students except the general power of the Executive Council as contained in Section 10 whereas the statutory provision of Clause 14 of the Schedule specifically empowers the Academic Council to appoint committees for admission to the school. Thus, the Statute contemplated admission to the school under the aegis of Academic Council. Sub-clause (7) of Clause 14 read with sub-clause (16) of clause 14 of Schedule clothes the Academic Council with all powers including mode and manner of admission of the students. Section 11 of the Act also needs to be referred to. Section 11 of the Act provides that Academic Council shall be the academic body of the school and shall have power of control and general regulation of, and be responsible for the maintenance of standards of instruction, education and examination of the school. Section 11 used the three expressions namely “power of control”, “general regulation of” and “be responsible”. The expressions used in the Section 11 are “maintenance of

WWW.LAWTREND.IN

standards of instructions, education and examination of the school. It is now settled law that the standards of education include admission to the course. The Constitution Bench of this Court in **Dr. Preeti Srivastava and Anr. Vs. State of M.P. and Ors., (1999) 7 SCC 120** held that norms of admissions can have direct impact on the standards of education. In paragraph 36, following was laid down:-

> "36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education……"

56. When the Academic Council has been given power of control, general regulations and is responsible for maintenance of standards of instruction, education and examination of the school, its one of the functions, undoubtedly is to regulate the admission of students. Reading of Section 11 with Section 18 and clause 14 of the Schedule clearly provides for role of Academic Council in the admission of students.

WWW.LAWTREND.IN

57. At this stage, we may also refer to the meeting of the Executive Council dated 29.08.1987 and 30.08.1987 relied by Shri Arvind Datar, learned senior counsel for the respondent No.1. The proceedings have been brought on the record alongwith the counter affidavit of respondent No.1. Item No. 16 of the meeting dealt with selection of students. It is relevant to extract the item no. 16 of the proceedings which is to the following effect:-

> **"Item No.16 Selection of Students**
>
> The draft proposal of the Academic Council to have the selection of the students done through an all India admission test and interview was approved. The procedure for admission test and the selection may be decided by the Academic Council and implemented by the Director. However, the Executive Council disapproved the recommendation of the Academic Council to pay one way second class train fare to the students called for the interview.
>
> The Council noted the sample objective type question paper prescribed by the two experts on the request of Professor Upendra Baxi. However the matter of finalising the test was left to the Academic Council and the Director. The Council noted the format of admission test provided by M/s/ R.C. Mishra and C.B. Dwivedi of Banaras Hindu University as the instance of Professor Upendra Baxi. The

WWW.LAWTREND.IN

> Council also noted the recommendations of Dr. Baxi to pay an honorarium of Rs.1,000.00 and to the two professors for the work in this regard. The Council approved the payment accordingly of Rs.2,000.00 (Rs.1,000.00 to each) and authorised the Director to write thanking the professors for their contribution.
>
> For expenses involved in organising the test and interview, the Council approved a budget allotment of an amount not exceeding Rs.25,000.00. The Council further decided that the admission to the Ist Year LL.B. class be limited to 80 students and for LL.M. Class the admisison be limited to 10 students. The application fee for admission test and interview may be fixed at Rs.125.00 for LL.B. though it may be reduced to Rs.50/- in the case of SC/ST candidates."

58. The above resolution of the Executive Council indicates that it was a draft proposal of the Academic Council regarding admission test, which was approved by the Executive Council. The next following sentence in the resolution is relevant "**the procedure for admission test and the selection may be decided by the Academic Council and implemented by the Director**". The respondent No. 1 himself has brought on the record the proceedings of the meeting of the Academic Council dated 12.12.1987 as Annexure R-1/2 where the mode of

WWW.LAWTREND.IN

selection of the students to the LL.B. Programme was provided for. Thus, the above proceedings of Executive Council and Academic Council itself make it clear that the Executive Council was of the opinion that it is the Academic Council who is statutory authority regarding mode and manner of the admission of the students in LL.B. course. The above proceedings of the Executive Council dated 29.08.1987 and Academic Council dated 12.12.1987 fully support the submission of the learned counsel for the petitioners that it is the Academic Council who is empowered under the statute to take a resolution regarding admission of the students in the LL.B. Course.

59. The authorities of the University exercise powers and functions as entrusted to them in the Statute. This Court in **Marathwada University Vs. Seshrao Balwant Rao Chavan, (1989) 3 SCC 132** while considering the provisions of Marathwada University Act, 1974, the power of Vice-Chancellor and those of the Executive Council held that when a Statute prescribes a

WWW.LAWTREND.IN

particular body to exercise a power, it must be exercised only by that body. In paragraph 20, following was laid down by this Court:-

> "**20.** Counsel for the appellant argued that the express power of the Vice-Chancellor to regulate the work and conduct of officers of the University implies as well, the power to take disciplinary action against officers. We are unable to agree with this contention. Firstly, the power to regulate the work and conduct of officers cannot include the power to take disciplinary action for their removal. Secondly, the Act confers power to appoint officers on the Executive Council and it generally includes the power to remove. This power is located under Section 24(1) (xxix) of the Act. It is, therefore, futile to contend that the Vice Chancellor can exercise that power which is conferred on the Executive Council. It is a settled principle that when the Act prescribes a particular body to exercise a power it must be exercised only by that body. It cannot be exercised by others unless it is delegated……."

60. We, however, make it clear that Executive Council in its resolution dated 12.08.2020/18.08.2020 in exercise of general power of administration could have very well taken any resolution regarding completion of admission process but for implementing the decision of 12.08.2020/18.08.2020 of the Executive Council

WWW.LAWTREND.IN

recommendation of Academic Council was required to be obtained regarding mode and manner of conducting separate admission tests by respondent No.1. The recommendation of Academic Council was necessary to be obtained for holding a separate entry test namely NLAT especially when respondent No.1 was proposing to hold the above test instead of admitting the students by CLAT from which common law admission test, admission in LL.B. course was being done for last more than a decade. When the respondent No.1 wanted to conduct NLAT as online home proctored test of 45 minutes containing 40 questions which mode and manner was different from earlier prescriptions, the recommendations of Academic Council were must. The proceedings of the Executive Council meeting, which has been relied by respondent No.1 dated 12.08.2020, the decision of the Executive Council was to the following effect:-

> “It was resolved unanimously that if there is a further delay in CLAT, the Vice-Chancellor is empowered to take all necessary steps to ensure that the admission Process for 2020-21 is

WWW.LAWTREND.IN

> completed in September, 2020. NLSIU is authorized to run its own admission process and conduct an independent admission test if necessary if there is further postponement of the CLAT exam."

61. On 18.08.2020 the Executive Council unanimously reaffirmed its resolution taken on 12.08.2020 to empower the Vice-Chancellor and the University to conduct an independent admission process in the event that CLAT 2020 is delayed further. The resolution was empowering the Vice-Chancellor **to take all necessary steps.** All necessary steps have to be understood as steps which are required to be taken as per the statute. When the Act, 1986 empower the Academic Council to take decision regarding admission of the students in LL.B. Course and with regard to mode and manner of conducting the admission test, it was obligatory for the Vice-Chancellor to have obtained the recommendations of the Academic Council. The Vice-Chancellor himself is the Chairman of the Academic Council and there was no difficulty and with regard to meetings of the Academic Council Clause 15 sub-clause

WWW.LAWTREND.IN

(6) provides that if urgent action by the Academic Council becomes necessary, the Chairman of the Academic Council is empowered to permit the business to be transacted by circulation of papers to the members of the Academic Council.

62. We, thus, are of the considered opinion that respondent No. 1 was required by the Statute to obtain recommendation of Academic Council before proceeding to hold NLAT by issuing admission notification dated 03.09.2020. We, thus, in view of the forgoing discussions, hold that admission notification dated 03.09.2020 issued by respondent No.1 could not have been issued without obtaining the recommendation to this effect by the Academic Council. Admission notification dated 03.09.2020 having been issued without recommendation of Academic Council is not in accordance with the provisions of Act, 1986 and is unsustainable.

WWW.LAWTREND.IN

QUESTION NO.3

Whether the respondent No.1 being founder member of Consortium of National Law Universities, a registered society, is bound by its Bye-Laws and was obliged to admit the students for integrated B.A.LL.B. (Hons.) Programme through CLAT 2020?

63. We have noted above the sequence of events leading into the creation of a Consortium of National Law Universities. A Memorandum of understanding was signed by seven, then existing National Law Universities on 23.11.2007 to hold the Combined Admission Test to be organised by NLU on rotation basis on the basis of seniority. In November, 2014, in a meeting of Vice-Chancellors of National Law Universities, the decision was taken to constitute a Consortium of National Law Universities. The Consortium got registered as Society in Karnataka Societies Registration Act, 1960 on 26.03.2019. The Consortium in its various meetings took decisions to streamline conduct of Common Law Admission Test (CLAT) and for coordination and cooperation among NLUs. One of the aims and objectives of the Society as

WWW.LAWTREND.IN

incorporated in Memorandum is to the following effect: -

> "V. To administer, control and monitor the conducting of all India common entrance examination for law i.e. CLAT, for and on behalf of all the participating NLUs, and facilitate admission of students into various NLUs in the country."

64. The aims and objectives further disclosed that the Consortium aims to make the benefit of legal education of one or more NLUs to the rest of the NLUs.

65. Clause 3 deals with the governance of the society. Clause 3.3 provides that the society shall exercise powers and perform functions as enumerated therein. Clause 3.3.5 provides that the society shall organise Common Admission Test for UG, PG, Doctoral, Post-Doctoral courses for the National Law Universities across the country. Clause 3.3.6 provides that society shall provide a platform for admission to all National Law Universities in India through CLAT for UG and PG Law courses if such National Law Universities become the members of the society.

WWW.LAWTREND.IN

66. The President and Vice-President under the bye-laws are to be elected at the annual meeting of the governing body. As per Bye-Laws clause 12.1, Vice-Chancellor of National Law School of India University, Bangalore shall be ex-officio Secretary Treasurer of the society. Bye-law 15 deals with “Membership” whereas bye-law 15.3 contains heading “Requirement of Membership”. Bye-Laws 15.3.1 and 15.3.3 which are relevant are as follows: -

> “15.3.1. The obligation of membership is to ensure that the Member institution reflects the core values and standards set by the Consortium according appropriate respect for the autonomy of its Member institution.
>
> …… …… …… ……
>
> 15.3.3. In order that appropriate intellectual rigor may be maintained, a Member institution shall ensure that admission to every academic course or programme of study in each Member institution shall be based on merit assessed through a transparent and reasonable evaluation namely CLAT operated by the Society, prior to admitting any student. Provided that nothing in this provision shall be deemed to prevent a Member institution from making special provisions for the employment or admission of women, persons with disabilities or for persons belonging to any socially and educationally

WWW.LAWTREND.IN

> backward classes of citizens and, in particular, for the Scheduled Castes and the Scheduled Tribes."

67. A perusal of Memorandum of Association and Bye-Laws indicates that laudable objects for which National Law Universities came together stood cemented by consortium being registered as a society. As on date, there are 23 National Law Universities which are part of the Consortium. We have noticed above that the respondent No.1 was the first National Law University which came into existence by Act, 1986 of Karnataka Legislature. Other States followed the suit creating National Law Universities. Different National Law Universities established in different parts of the Country have contributed immensely to the cause of legal education.

68. National Law School of India University, Bangaluru from the beginning shouldered the leading role in conduct of CLAT. Different National Law Universities have been established by different statues and have

WWW.LAWTREND.IN

statutory functions and obligations to achieve a common purpose and to give a boost to legal education in the country. They have themselves imposed obligations on them to be a part of the Consortium for a common cause. CLAT being an All India Examination for different National Law Universities has achieved its own importance and prominence in legal education. The steps taken by National Law Universities to form a Consortium and to cooperate with each other in conduct of CLAT is towards discharge of their public duty entrusted under the different statutes. The duty to uphold its integrity lies on the shoulder of each and every member.

69. Thousands of the students who aspire to have a career in law look forward to the CLAT as a prestigious test and CLAT has proved its usefulness and utility in this country. Students look forward to the Consortium for providing correct and fair assessment of the merits of the students. The bye-laws under which members are required to admit the students in their law

WWW.LAWTREND.IN

universities on the basis of the CLAT for UG and PG law courses are binding on the members. Bye-Laws although are non-statutory but they have been framed with the aim and object to be followed by its members.

70. Even though obligations on members of Consortium under the Bye-Laws are not statutory obligations but those obligations are binding on the members. All members occupying significant and important status have to conduct in fair and reasonable manner to fulfill the aspirations of thousands of students who look on these National Law Universities as institutions of higher learning, personality and career builders. Further the statutes under which National Law Universities have been established cast public duties on these NLUs to function in a fair, reasonable and transparent manner. These institutions of higher learning are looked by society and students with respect and great Trust. All NLUs have to conduct themselves in a manner which

WWW.LAWTREND.IN

fulfills the cause of education and maintain the trust reposed on them.

71. Shri Datar submits that Bye-Laws are in the nature of contract between the society and its members. Shri Datar also referred to the judgment of this Court in ***Hyderabad Karnataka Education Society versus Registrar of Societies and others, (2000) 1 SCC 566.*** This Court in the above case had occasion to consider Karnataka Societies Registration Act, 1960, under which the Consortium has been registered. The submission was made before this Court that Bye-Laws of the society bind both the parties with which submission this Court expresses its concurrence. In paragraph 28, following was observed:-

> “28. Before leaving the discussion on this point, we may mention that learned senior counsel for the appellant, Shri Sanyal, placed reliance on some of the decisions of this Court in T.P. Dover v. Lodge Victoria No. 363, S.C. Belgaum [1964] 1 SCR 1, The Co-operative Central Bank Ltd. and Ors. v. The Additional Industrial Tribunal, Andhra Pradesh and Ors. , Kulchhinder Singh and Ors. v. Hardayal Singh Brar and Ors. and Takraj Vasandi Alias K.L. Basandhi v. Union of India and Ors. on the full

WWW.LAWTREND.IN

> Bench judgment of the Andhra Pradesh High Court in the case of Sri Kanaseema Co-operative Central Bank Ltd. v. N. Seetharama Raju AIR (1990) (77) A.P. 171, and contended that bye-laws of a society are a contract between the parties and bind both the parties. That may be so, however, the question remains whether an illegal bye-law or an illegal contract for that matter can bind any of the contracting parties....”

72. The Court in the above case was concerned with legality of Rule 7A, in the present case; we are not concerned with the challenge to any rule of the Consortium.

73. Shri Datar has contended that by accepting the membership of Consortium, the autonomy of its members is maintained. He has referred to Bye-Law 15.3.1 which we have already extracted above. Bye-Law 15.3.1 itself contemplates that the obligation of membership is to ensure that the member institution reflects core values and standards set by the Consortium according appropriate respect for the autonomy of its member institution. The autonomy of member institutions does

WWW.LAWTREND.IN

not in any manner come in the way of holding the Common Law Admission Test(CLAT). Every institution maintains its autonomy as per the statute governing, the obligation to maintain core value of the Consortium in no manner affect the autonomy of the member university. The core values of the Consortium aim to enhance the prestige and content of legal education. Legal education has a pivotal role in the development of the society and regulating the inter se relations between the members of the society.

74. This Court had an occasion to consider the challenge to National Eligibility cum Entrance Test(NEET) for admission in Medical course in Transferred Case(Civil) No.98 of 2012, Christian Medical College Vellore Association versus Union of India and others. A Pertinent observation has been made by this Court in paragraph 55 in the following words: -

> “55...Building the nation is the main aspect of education, which could not be ignored and overlooked. They have to cater to national interest first, then their interest, more so, when such conditions can be prescribed for

WWW.LAWTREND.IN

> recognition, particularly in the matter of professional education."

75. This Court in the above case has held that holding of National Eligibility cum Entrance Test is a National Interest. What was observed by this Court with regard to NEET is equally applicable to the CLAT. To conduct a Common Law Admission Test for all the Law Universities is both in the national interest as well as in the interest of the education. We have already noticed that it was on a writ petition by a student "Varun Bhagat", the idea of a Common Law Entrance Test emerged after discussion with Government of India, Law Universities, etc. and other stakeholders. It was with a lot of discussion, deliberation that the Common Law Admission Test could come into existence. We have come a long way with the Common Law Admission Test which has to be further strengthened and streamlined.

76. This Court time and again has emphasised the importance and usefulness of Common Admission Test for group of institutions imparting same or similar

WWW.LAWTREND.IN

education. This Court held that such Common Test fulfils twin objects of transparency and merit. The Constitution Bench of this Court in **P.A. Inamdar and others vs. State of Maharashtra and others, (2005) 6 SCC 537,** in paragraphs 136 and 138 laid down following:

> "136……There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting Common Entrance Test (CET, for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfillment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralized counseling or, in other words, single window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of list of successful candidates prepared

WWW.LAWTREND.IN

> at the CET without altering the order of merit inter se of the students so chosen.
>
> 138. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralized and single window procedure. Such a procedure, to a large extent, can secure grant of merit based admissions on a transparent basis. Till regulations are framed, the admission committees can oversee admissions so as to ensure that merit is not the casualty."

77. Shri Arvind Datar, learned counsel appearing for the respondent No.1 has fairly submitted that the respondent No.1 is still a member of Consortium and has not gone out of Consortium and NLAT conducted by it is only for the present Academic Year to avoid this Academic year as a 'Zero Year'. He submits that insofar as next academic year the respondent No.1 shall admit students on the basis of result of CLAT. Shri Datar has referred to the unique system of trimester which is operating in the respondent No.1 University. Shri Datar has further submitted that unless the Under-Graduate

WWW.LAWTREND.IN

law course was not started by 18.09.2020, respondent No.1 would not have been able to complete its trimester.

78. In the counter affidavit filed by the respondent No.1, details of the Trimester is given and proceeding of Academic Council dated 12.12.1987 has been brought on record as Annexure-R-1/2 in which Academic Council has taken the decision on academic terms in following manner: -

> “(b) Academic Terms:
>
> Each Academic year be divided into 3 Academic terms each with a minimum of 70 working days. This academic term be called a Trimester. Thus the 5-year B.A.LL.B(Hons.) Programme will have 15 Trimesters. It is suggested that the Academic year may begin from 1st July and the Academic terms may adopt the following pattern: -
>
> i) FIRST TRIMESTER -- July 1st to September 30
>
> ii) SECOND TRIMESTER -- October 1 to January 15.
>
> iii) THIRD TRIMESTER -- January 30 to April 30.”

WWW.LAWTREND.IN

79. As per Academic Council's above decision, each Academic year is divided into three Academic terms called Trimester with a minimum 70 working days.

80. Shri Sajan Poovayya, learned counsel appearing for the respondent No.2, has explained that for completing three trimesters, 285 working days are required. He submits that 210 days is for teaching in all the three semesters , 36 days shall be three Sundays in each three months term, 24 days for Government holidays, etc. in three months and 15 days for evaluation and assessment, totalling to 285 days.

81. It is true that respondent No.1 University follows a unique system of Trimester, each semester has 70 teaching days per three months term. The first Trimester as per resolution of academic council was to begin on 01.07.2020 and was to end till 30th September,2020. This period of three months is not available for respondent No.1 to start the first semester. The entire country is struggling with

WWW.LAWTREND.IN

Pandemic Covid-19 from March 2020. Loss in the academic year is for all Universities in the Country. The Academic Calendar of each University stood disrupted by Covid-19. None of the Universities have declared the year as a ‘zero year’.

82. The University Grants Commission being aware of the consequences of Covid-19 Pandemic has issued guidelines on the examination in the Academic Calendar. In the guidelines dated 29.04.2020 with regard to Academic Calendar for the Session 2020-21, following has been provided:-

> **“4. Academic Calendar for the Session 2020-21**
>
> Several School Boards are yet to complete their Class XII Examinations, as of now. Examinations for the Even Semester in the universities are also getting delayed due to national lockdown. Naturally, all these things will delay the admission process in the university system for the next academic session. In order to tackle this situation, the universities may require some amendments in their academic calendar for the academic session 2020-21.”

WWW.LAWTREND.IN

83. As provided by UGC guidelines which guidelines have been continued by subsequent guidelines dated 06.07.2020, the UGC expected the Universities to carry on some amendments in their academic calendar for the session 2020-21. The Universities are not powerless to modify their Academic Calendar looking to the pandemic. The Academic year 2020-21 is not a normal academic year in which Universities are expected to carry on their teaching and other activities in normal mode and manner. The respondent No.1 University could have very well found out ways and means to start the academic Under-Graduate Law course even if it starts in mid of October 2020 after conduct of the CLAT on 28.09.2020.

84. The counter affidavit filed by the respondent No.3, has suggested various alternatives to be adopted by the Universities to modify their academic year in paragraph 51 and 52. It is suffice to observe that it is for the respondent No.1 to take appropriate decision in the above regard.

WWW.LAWTREND.IN

85. We may also notice one more submission of Mr. Datar at this stage. Shri Datar submits that holding of separate exam has become a sheer necessity and not with the intention to violate the Consortium Bye-Laws. He reiterated his submissions that to avoid the academic year 2020-21 to be declared as ‘zero year’, the respondent No.1 proceeded with a separate exam.

86. We are not persuaded to accept the submission that “Doctrine of Necessity” was applicable in the fact situation of the ongoing pandemic. As noted above, UGC in its guidelines dated 29.04.2020 has already asked all the Universities to modify their academic calendar for the academic year 2020-21. The UGC being the body to maintain standard of education in the entire country and having contemplated for suitable amending the academic year, “Doctrine of Necessity” does not arise. We thus conclude that being members of the Consortium respondent No.1 ought not to have proceeded with holding a separate test namely “NLAT” nor the academic

WWW.LAWTREND.IN

year 2020-21 be required to be declared as “zero-year” even if the course starts in the mid of October, 2020.

QUESTION NO.4

WHETHER ONLINE HOME PROCTORED EXAMINATION AS PROPOSED BY NOTIFICATION DATED 03.09.2020, LACKS TRANSPARENCY, WAS AGAINST THE VERY CONCEPT OF FAIR EXAMINATION AND VIOLATIVE OF THE RIGHTS OF THE STUDENTS UNDER ARTICLE 14 OF THE CONSTITUTION?

87. With regard to admission notice dated 03.09.2020, respondent No.1 University issued Press Release NLSIU admission 2020 on 04.09.2020. Clause 4.4.2 of notice dated 03.09.2020 provided that the test shall be an online entrance examination to be held on 12.09.2020, the candidates will attempt the examination using a Computer device at their respective locations. Paragraph 4.4.2 is as follows: -

> “4.4.2. Candidates who have submitted a valid application form will be required to appear for the NLAT. The Test shall be an online entrance examination to be held on 12.09.2020. Candidates will attempt this examination using a computer device at their respective locations. Candidates will have to ensure that they can appear for the examination on the appropriate date and time using a computer device as per the detailed

WWW.LAWTREND.IN

specifications that will be provided, including video and audio inputs. NLSIU shall not be responsible for any connectivity issues, or failure of internet connection during the examinations. NLSIU reserves the right to cancel any candidate's examination based on misconduct or examination malpractice."

88. The notification for technological/system requirement for NLAT 2020 was issued by the University which provided following among other requirements:-

"1. **Supported Devices:** Desktop computers and laptop computers only (the use of tablets and other mobile devices, including phones shall not be supported nor permitted in the NLAT 2020.

2. **Operating System:** Window 7 or above (Windows 10 recommended) (Examination system will not run on any other operating systems, such as Mac OS, Linux, etc.)

3. **Minimum Configuration:** Processor: Core 2 Duo and above; Processor speed: 1.5 GHz and above; RAM: Minimum 1 GB.

4. **Browser:** Google Chrome(84.0.4147.135 or later) only. Click here to download the latest version of Google Chrome.

5. The user account must have administrator privileges to install required applications.

6. Pop-up blockers on the web browser must be disabled.

WWW.LAWTREND.IN

> 7. Java Script must be enabled.
>
> 8. Antivirus must be disabled.
>
> 9. **Minimum Internet Bandwidth:** 1 Mbps minimum; the remote proctoring software streams exam data, including audio and video, directly to the cloud as you take the NLAT 2020. In order to allow the continuous transfer of exam data, the specified minimum connection speed must be maintained at all times...”

89. In pursuance of notice dated 03.09.2020, 24,603 Candidates have applied and only 23,225 have appeared in the test. For CLAT 2020, above 69,000 students have registered for Under-Graduate law course.

90. The first leg of challenge which has been raised by the petitioner is to home proctored test as notified by respondent No.1, it is submitted that home proctored test does not fulfill the requirement of fair and transparent test which was expected for a premier law University. The petitioners in this reference relies on the affidavit of respondent No.2, Prof.(Dr.) Sudhir Krishnaswamy which he filed in Writ Petition(Civil) No.4848 of 2020, V.Govinda Ramanan versus Consortium of

WWW.LAWTREND.IN

National Law Universities and Anr. filed in Delhi High Court. The respondent No.2 as Secretary of the Consortium filed the counter affidavit on behalf of Consortium of National Law University in Delhi University sworn on 25.08.2020. The writ petitioner in the said writ petition claimed that he should be permitted to appear in examination from his home. The counter affidavit pleaded that conducting computer based online centre based test is legal. Opposing the home based online test, respondent No.2 made following statement in paragraph 17 and 18 of the affidavit: -

> "17. It is submitted that a home based online test for around 78,000 students would not be possible as the test will be completely compromised and may even be manipulated by the participants or coaching centres.
>
> 18. Respondent No.1 has over several meetings discussed and assessed the feasibility of conducting CLAT-2020 through various modes including the mode suggested by the Petitioner herein. After due consideration, Respondent No.1 has determined that an online test at home with technological measures cannot ensure transparency, fairness and the integrity of a high stakes examination process such as CLAT."

WWW.LAWTREND.IN

91. The respondent No.2 had categorically taken the stand on behalf of the CLAT that online test at home with technological measures cannot ensure transparency and the test will be completely compromised and may even be manipulated by participants and coaching centres. There was no reason for change of mind by respondent No.2 within a week. Affidavit was sworn on 25.08.2020 by respondent No.2 and on 03.09.2020 after a week, notification was issued for conducting NLAT permitting participants to join online examination sitting at their home. When something was not to be permitted, when home based online test could not have been permitted for CLAT-2020, the same test can also not be permitted for NLAT-2020.

92. We thus find substance in the submissions of the petitioner that permitting of home based online test could not have ensured transparency, fairness and integrity of the examination especially when the test was to be conducted for entrance into a premier Law University of the country.

WWW.LAWTREND.IN

93. We may notice another submission of the petitioners in this regard. Petitioners' case is that due to a short period of notice to apply and due to technological requirement, a large number of students especially belonging to marginalised sections of the society were unable to apply within the time allowed by NLAT. The requirement of fulfilling technological support as envisaged by NLAT as noticed above could not have easily been procured by a large number of students.

94. In the proceeding of the faculty meeting dated 06.08.2020 brought on record by the respondent No.1 along with his counter affidavit as Annexure-R-1/10, it has been mentioned that "NSLIU is the first preference for more than 60 percent of CLAT applicants". About 69,000 students have registered for CLAT-2020. 60 percent of 69,000 comes to 41,400. The registration into NLAT being only 24,603 out of which only 23,225 could appear makes it clear that a large number of

WWW.LAWTREND.IN

students who could have wanted to apply for admission in respondent No.1 University could not even apply due to shortage of time and technical requirement insisted by respondent No.1 University. The above figures fully support the submissions of the petitioner that a large section of the students especially belonging to marginalised sections of the society were denied the opportunity to appear in the examination.

95. We thus conclude that home based online examination as proposed by the respondent No.1 University for NLAT-2020-21 could not be held to be a test which was able to maintain transparency and integrity of the examination. The short notice and technological requirements insisted by the University deprived a large number of students to participate in the test violating their rights under Article 14 of the Constitution of India.

QUESTION NO.5

WWW.LAWTREND.IN

WHETHER NLAT HELD ON 12.09.2020 WITH RE-TEST ON 14.09.2020 WAS MARRED BY MALPRACTICES AND DESERVES TO BE SET ASIDE.

96. Petitioners have submitted that examination held on 12.09.2020 as well as re-test held on 14.09.2020 was marred by several malpractices which proved that the apprehensions of the petitioner were true.

97. Shri Gupta highlights the various shortcomings in proctoring protocol. Shri Gupta has also referred to the Press Release dated 14.09.2020 by the respondent No.1 where Press Release stated “thereafter, it appears that some candidates have copied the questions and circulated this on some messaging apps and emails after logging in.” Shri Gupta submits that even after noticing the aforesaid fact the Press Release further states that “while this is a malpractice under NLAT proctoring guidelines, it does not affect the integrity of the exams as questions were already available to all candidates after logging in.”

WWW.LAWTREND.IN

98. Shri Gupta submits that if the candidates are able to send questions through messaging apps and emails obviously they could receive the answers as well. Further, Shri Gupta has referred to the Press Release dated 15.09.2020 by the respondent No.1 where University has stated that “some case of examination malpractices deserves criminal investigation and University has already lodged criminal complaints against some actors”.

99. Shri Arvind Datar has strongly refuted the above submission and has referred to the sur-Rejoinder affidavit filed by respondent No.1 where details of technological measures taken by NLSIU for NLAT 2020 has been explained.

100. It is submitted that extensive technological and other measures are implemented to ensure that any candidate attempting any form of malpractices is caught and disqualified from the process either during the

WWW.LAWTREND.IN

exam itself or after the post examination during audit and scrutiny.

101. Shri Datar submits that NLAT 2020 has made use of a combination of Artificial Intelligence and human Proctoring. It is further submitted that in order to give full effect to human and Artificial Intelligence proctoring measures available post examination, respondent No.1 appointed a leading audit firm to carry out an independent forensic audit and assessment of data relating to the examination and submit the report. He submits that care and precautions were taken by University for conduct of free and fair test and on the basis of some media reports and few materials brought on record, it cannot be concluded that the examination is marred by malpractices especially in proceeding under Article 32 of the Constitution.

102. After having considered the above submission of the learned counsel for the parties, we are of the view that for the present case, it is not necessary for this

WWW.LAWTREND.IN

court to enter into various materials referred to by the petitioners and the reports and to decide as to whether malpractices were actually adopted in the examination or not. Respondent No.1 being premier University, we have no doubt that it must have taken all necessary precautions to avoid any malpractices and cheating in the examination.

103. As noted above, the University has also filed a complaint of Cyber Crime which may be inquired in accordance with law. We need not express any opinion in this proceeding under Article 32 with regard to the aspect of malpractices in the test conducted on 12.09.2020 and 14.09.2020 which is essentially a matter of scrutiny of facts and evidence.

104. In view of the foregoing discussion, we are of the considered opinion that Admission notification dated 03.09.2020 issued by respondent No.1 was not in accordance with law and deserves to be set aside.

WWW.LAWTREND.IN

105. The CLAT examination is already fixed for 28.09.2020 which needs to be conducted on the said date without fail after following all necessary protocols for safety and health of the students and after following the Standard Operating Procedures issued by Ministry of Health and Family Welfare (MoHFW) and Ministry of Human Resource Development(MHRD).

106. We further notice that after the issuance of notification dated 03.09.2020 by the respondent No.1, the meeting of the governing body of Consortium of National Law Universities was held on 05.09.2019 where decision was reiterated to hold CLAT 2020 on 28.09.2020. The governing body further resolved to divest functions of respondent No.2 as Secretary and Treasurer of the Consortium with the immediate effect and in the interim period appointed Professor Faizan Mustafa, senior most member of the Consortium and past President to discharge all the administrative and secretarial functions of the Consortium. The governing

WWW.LAWTREND.IN

body also resolved to shift the Secretariat of the Consortium to the NALSAR University, Hyderabad.

107. We have found that separate admission notice dated 03.09.2020 issued by the respondent No.1 being unsustainable. We are of the view that Status quo ante as on 05.09.2020 should be restored as early as possible i.e. by restoring the respondent No.2 as Secretary of the Consortium as well as restoring the Secretariat of the Consortium to NLSIU, Bengaluru. The governing body may take the decision keeping in mind that CLAT examination scheduled on 28.09.2020 be smoothly held. The respondent Nos.1 and 2 are also to cooperate with the holding of CLAT scheduled to be held on 28.09.2020.

108. In result of the foregoing discussion, we allow the writ petition in the following manner: -

(I) The notice for admission to the five year integrated B.A.LL.B(Hons.) programme 2020-21 dated 03.09.2020 Annexure -P 14 as well as Press Release

WWW.LAWTREND.IN

on NLSIU admission 2020-21 dated 04.09.2020 Annexure-P 15 are quashed.

(II) The respondent No.3 is directed to conduct the CLAT-2020 examination on 28.09.2020 taking all precautions and care for health of the students after following the Standard Operating Procedures (SOPs) of the Ministry of Health and Family Welfare (MoHFW) and Ministry of Human Resource Development(MHRD).

(III) The respondent No.3 shall also ensure that the entire process of declaration of the result be completed as early as possible to enable the respondent No.1 and other National Law Universities to start their course by the mid of October-2020.

(IV) The respondent No.1 shall also complete the admission of B.A.LL.B(Hons.) programme 2020-21 on the basis of the result of CLAT-2020.

(V) The respondent No.3 may take decision at an early date restoring the status of respondent No.2 as the Secretary-Treasurer of the Consortium as

WWW.LAWTREND.IN

well as restoring the Secretariat of the Consortium as to NLSIU, keeping in mind that scheduled exam of CLAT-2020 on 28.09.2020 is not hampered in any manner.

109. In view of our above order passed in the Writ Petition (Civil) No.1030 of 2020, no orders are required in SLP(C) No.11059 of 2020. SLP is disposed of.

.....J.
(ASHOK BHUSHAN)

.....J.
(R. SUBHASH REDDY)

.....J.
(M.R. SHAH)

SEPTEMBER 21, 2020
NEW DELHI