

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 06.11.2012

CWP No.1640 of 2008

Kartar SinghPetitioner

Vs.

Union of India & othersRespondents

**CORAM: - HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: - Mr. Satbir Gill, Advocate, for the petitioner.

Ms. Ranjana Shahi, Advocate for respondent No.1.

Mr. N.R. Dahiya, Advocate, for respondent No.2.

Mr. Raghubir Tejpal, Advocate, for respondent No.3.

Mrs. Palika Monga, DAG, Haryana, and
Mr. Kshitij Sharma, AAG, Haryana, for respondent
Nos.4,5,6,7 and 8.

Mr. Ashwani K. Mata, Senior Advocate, with
M/s Deepak Kanwar, Sudhir Kumar and
Razeev Prasad Dubey, Advocates, for respondent No.10.

Mr. S.K. Monga, Advocate, for respondent No.13.

Ms. Anu Chatrath, Advocate, for respondent No.14.

Mr. Ravi Kamal Gupta, Advocate, for the applicants.

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

HEMANT GUPTA, J.

We are called upon to examine in this bunch of petitions, the inter-relation; contradictions, if any, and the role of the authorities under the three Central Statutes i.e. University Grants Commission Act, 1956; Indira Gandhi National Open University Act, 1985 and All India Council for Technical Education Act, 1987, particularly in respect of technical/professional courses through the Distance Education Mode by (i) Vinayaka Mission's Research Foundation, Salem, Tamil Nadu; (ii) IASE Gandhi Vidya Mandir, Sardar Shahr, Rajasthan; (iii) JRN Vidyapeeth, Udaipur, Rajasthan; and (iv) Allahabad Agriculture Research Institute, Allahabad, U.P.

2. Number of writ petitions and appeals have been listed for hearing before this Bench, however, for facility of reference, the facts are primarily taken from CWP No.1640 of 2008 i.e. a public interest petition, in which the main prayer is for directing the respondents to stop the illegal educational Institutes imparting degrees in professional courses through the medium of distance education and to take action against the Centres established beyond the territorial jurisdiction of such Institutes. Though some of the facts are taken from CWP No.2858 of 2008 claiming the similar relief, but in respect of the Institutions located in the State of Punjab and LPA No.593 of 2010, wherein challenge is to an order dated 13.01.2010 passed by the learned Single Judge of this Court in CWP No.1405 of 2009 holding that the degree in Engineering obtained through the medium of distance education mode is a valid degree for the purpose of public appointments.

3. The issues are common in all these cases in respect of Degrees granted through the medium of Study Centres by the Deemed to be Universities without any approval from the regulatory bodies and beyond the territorial limits of such Universities. Therefore, the aforesaid writ petitions and appeals as well as other connected cases, as mentioned in the schedule attached at the foot of this order, are being disposed of by this common order. We consider it appropriate to extract relevant provisions of the Statute, Rules, Regulations and guidelines issued by the statutory authorities as well as the stand of the Deemed to be Universities in the first instance.

I. University Grants Commission – Statute, Regulations, Guidelines and the stand before this Court

4. The University Grants Commission Act, 1956 (for short ‘the UGC Act’) was enacted to make the provision for the co-ordination and determination of the standards in Universities and for that purpose, to establish a University Grants Commission (for short ‘the Commission’). Such Act has been enacted in furtherance of Entry 66 of Schedule I of List VII of the Constitution (*see judgment in Prof. Yash Pal & another Vs. State of Chattisgarh & others (2005) 5 SCC 420*).

Section 2 (f) of the UGC Act defines ‘University’, whereas Section 3 thereof empowers the Central Government on the advice of the Commission i.e. University Grants Commission to declare by notification that any institution for higher education, other than a University, shall be

deemed to be a University for the purposes of the Act. The relevant Sections i.e. 2(f) and 3 read as under:

“2. In this Act, unless the context otherwise requires –

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(f) ‘University’ means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act.”

3. The Central Government may, on the advice of the Commission, declare by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of Section 2.”

5. Section 12 of the UGC Act enjoins a general duty of the Commission to take in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act. The Commission is to allocate and disburse funds and also to perform such other functions that may be prescribed in terms of Clause (j) of Section 12 of the UGC Act.

6. Section 12A was inserted in UGC Act vide Central Act No.59 of 1984, in respect of affiliation and recognition of colleges to the privileges of a University. Section 22 of the UGC Act provides that the right to confer or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under Section 3 of the said Act. Section 23 prohibits the use of expression 'University' unless such University established or incorporated by or under a Central Act, a Provincial Act or a State Act only meaning thereby that a deemed to be University is not entitled to use word 'University' with its name. Sections 22 and 23 of the UGC Act read as under:

“22. (1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, “degree” means any such degree as may, with the previous approval of the Central Government be specified in this behalf by the Commission by notification in the official Gazette.

23. No Institution, whether a corporate body or not, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word “University” associated with its name in any manner whatsoever.

Provided that nothing in this section shall, for a period of two years from the commencement of this Act, apply to an institution which, immediately before such commencement, had the word “University” associated with its name.”

7. In terms of the provisions of the UGC Act, the Commission has framed Regulations for Grant of First Degree through Non-formal/Distance Education on 25.11.1985. Such Regulations are called as “University Grants Commission (The Minimum Standards of Instructions for the Grant of the First Degree through Non-Formal/Distance Education in the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985” (for short ‘the Non-Formal Education Regulations’). Such Regulations are applicable to every University established or incorporated by the Central Act, the Provincial Act or the State Act and every institution deemed to be University under Section 3 of the said Act. The relevant Regulations read as under:

“2. Admission/Students:

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(2) No student shall be eligible for the award of the first degree unless he has successfully completed a three year course; this degree may be called the B.A./B.Sc./B.Com. (General Honours/Special) degree as the case may be.”

3. Programme of study:

(1) Each lesson shall constitute approximately one week’s reading and there shall be at least 25 lessons in each main subject of study. The lessons shall be despatched to the student at regular intervals.

(2) The University shall set up study centres (outside) the headquarters in areas where there is a reasonable concentration of students. Each study centre shall have adequate library facilities (text books, reference materials and lessons and supporting materials). They shall also have qualified part-time instruction/counseling staff to advise and assist the students in the studies and remove individual difficulties.

(3) A contact programme of 8-10 days shall be organized in different places where there is a reasonably good number of students, to include lectures and discussions in support of the studies. Classes may be arranged on Sundays and other holidays at the headquarters.

6. Information:

Every University providing instruction through non-formal/distance education shall furnish to the University Grants Commission information relating to the observance of these Regulations in the form prescribed for the purpose. The information shall be supplied to the University Grants Commission within 60 days of the close of the academic year.

8. In supersession of the above said Regulations, the Commission has framed the UGC (Minimum Standards of Instruction for the Grant of the First Degree through Non-Formal Education) Regulations, 2004. Such Regulations are applicable to every University established or incorporated by the Central Act, the Provincial Act or the State Act and every institution deemed to be University under Section 3 of the said Act. Such Regulations contemplates *inter-alia* the following:

“2. Admission:

2.1 No student shall be eligible for admission to a First Degree programme in any of the faculties through non-formal education unless he/she has successfully passed the examination conducted by a Board/University at the +2 level of schooling (either through formal schooling for 12 years, or through the open school system), or its equivalent.

2.2 In case there is no previous academic record, he/she shall be eligible for admission if he/she has passed an entrance test conducted by the University, provided that she/he is not below the age of 18 years on July 1 of the year of admission.

2.3 Student enrolment shall be in accordance with the norms prescribed by the UGC, the Distance Education Council (DEC) and other statutory bodies concerned regarding the curriculum, syllabi, the learning material, the Study Centers, the laboratory work, library and such other facilities.”

9. The Commission has also framed University Grants Commission (The Minimum Standards of Instructions for the Grant of the First Degree through Formal Education in the Faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985 notified on 25.11.1985. Such Rules came into force on 04.06.1986 and were applicable to every University established or incorporated by or under a Central Act, a Provincial Act, or a State/Union Territory Act and all institutions recognized under clause (f) of Section 2 of the University Grants Commission Act, 1956 and every institution deemed to be University under Section 3 of the said Act. It also contemplated that no student shall be eligible for admission to the First Degree Course in these faculties unless he has successfully completed 12 years schooling through an examination conducted by a Board/University and that no student shall be eligible for the award of the first degree unless he has successfully completed a three year course. This degree may be called the B.A./B.Sc./B.Com. (General/ Honours/ Special) degree as the case may be. It contemplated that every University enrolling students for the 1st Degree Course shall ensure that the number of actual teaching days does not fall below 180 in an academic year. Such Regulations have since been substituted by the UGC (Minimum Standards of Instruction for the Grant of the First Degree through Formal Education) Regulations, 2003 (for short 'Formal Education Regulations'). The substituted regulations are substantially same as the Regulations framed earlier. Some of the relevant

extract from such Formal Education Regulations notified in the year 2003 read as under:

“2. Admission:

- 2.1 No student shall be eligible for admission to a first degree programme in any of the faculties unless he/she has successfully passed the examination conducted by a Board/University at the +2 level of schooling (either through formal schooling for 12 years, or through open school system) or its equivalent.
- 2.2 The admission shall be made on merit on the basis of criteria notified by the university, keeping in view the guidelines/norms in this regard issued by the UGC and other statutory bodies concerned and taking into account the reservation policy issued by the government concerned from time to time.
- 2.3 Student enrollment shall be in accordance with the academic and physical facilities available keeping in mind the norms regarding the student-teacher ratio, the teaching non-teaching staff ratio, laboratory, library and such other facilities. The in-take capacity shall be determined at least six months in advance by the university/institution through its academic bodies in accordance with the guidelines/norms in this regard issued by the UGC and other statutory bodies concerned so that the same could be suitably incorporated in the admission brochure for the information of all concerned.

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3. Teacher:

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- 3.4 The workload of a teacher shall take into account activities such as teaching, research and extension, preparation of lessons, evaluation of assignments and term papers, supervision of fieldwork as also guidance of project work done by the students. The time spent on extension work, if it forms as integral part of the prescribed course, shall count towards the teaching load. The total workload and the distribution of hours of workload for the various

components shall be in accordance with the guidelines issued by the UGC and the other statutory bodies concerned in this regard from time to time.

4. Working days:

4.1 Every university enrolling students for the first degree programme shall ensure that the number of actual teaching days on which classes such as lectures, tutorials, seminars, and practicals are held or conducted is not less than 180 in an academic year, excluding holidays, vacations, time set apart for completing admissions and time required for conduct of examinations.

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5. Syllabus:

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5.4 Depending upon its nature and level, a course may be assigned a certain number of credits. The credits assigned to the various courses shall also be indicated in the respective syllabuses. The system of credits shall be in accordance with the guidelines of the UGC and other statutory bodies concerned.

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6. Examination and Evaluation:

6.1 The university shall adopt the guidelines issued by the UGC and other statutory bodies concerned from time to time in respect of conduct of examinations.

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7. Physical Facilities:

7.1 Every university shall lay down the norms in respect of classrooms, laboratories, library, sports and health facilities, hostel accommodation, canteen/cafeteria and such other facilities. All the institutions admitted to its privileges shall adhere to the same. While prescribing the norms for such facilities as a condition for affiliation, the university shall keep in view the guidelines/norms issued by the UGC and other statutory bodies concerned.

7.5 The norms laid down by the concerned statutory body shall be followed in the case of laboratories in the professional courses.

8. Award of Degrees:

8.1 No student shall be eligible for the award of the first degree unless he/she has successfully completed a programme, of not less than three years duration and secured the minimum number of credits prescribed by the university for the award of the degree.

8.2 The degree to be awarded may be called the bachelor's degree in the respective discipline in accordance with nomenclature specified by the UGC under Section 22 (3) of the UGC Act.

9. Information

Every university shall furnish to the UGC information relating to the observance of the provisions of these Regulations in the form prescribed for the purpose. The information shall be supplied to the UGC within 60 days of the close of the academic year.”

10. The University Grants Commission has also framed UGC (Affiliation of Colleges by Universities) Regulations, 2009 in respect of colleges seeking affiliation and already affiliated to the Universities in India established or incorporated by or under a Central Act, a Provincial Act or a State Act. Such Regulations are not applicable to deemed to be Universities under Section 3 of the UGC Act, as such institutions are not empowered to affiliate any other college. The relevant Regulations read as under:

“1. Short Title, Application and Commencement:

1.2 They shall apply to all colleges seeking affiliation and already affiliated to the Universities in India established or incorporated by or under a Central Act, a Provincial Act or a State Act.

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2. Definitions: In these Regulations:

2.1 “affiliation” together with its grammatical variations, includes, in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of a university;

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2.6 “Statutory/Regulatory body” means a body so constituted by a Central/State Government Act for setting and maintaining standards in the relevant areas of higher education, such as All India Council for Technical Education (AICTE), Medical Council of India (MCI), Dental Council of India (DCI), National Council for Teacher Education (NCTE), Bar Council of India (BCI), etc.;

3. Eligibility Criteria for Temporary Affiliation:

3.1 The proposed college seeking affiliation, at the time of inspection by the university, shall satisfy the following requirements, or the requirements in respect of any of them prescribed by the Statutory/Regulatory body concerned, whichever is higher;

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3.1.2 administrative, academic and other buildings with sufficient accommodation to meet the immediate academic and other space requirements as specified by the University concerned for each of the higher education course/programme with adequate scope for future expansion in conformity with those prescribed by the UGC/Statutory/Regulatory body concerned, taking care that all buildings constructed in the college are disabled friendly;

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3.2.2 shall satisfy the University that adequate financial provision is available for running the college for at

least three years without any aid from any external source. In particular, it shall produce evidence of creating and maintaining a Corpus Fund permanently in the name of the college by way of irrevocable Government Securities of RS.15 lakh per programme, if the college proposes to conduct programme only in Arts, Science and Commerce, Rs.35 lakh per programme or as prescribed by the relevant Statutory/Regulatory body,

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3.4 The Registered Society/Trust proposing the college shall execute a bond:

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3.4.3 to follow the Rules, Regulations and Guidelines of the Statutory/Regulatory bodies issued from time to time;

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5. Eligibility Criteria for Permanent Affiliation:

5.1 The college shall have completed at least five years of satisfactory performance after getting temporary affiliation and attained the academic and administrative standards as prescribed by the University/ UGC/ Statutory/ Regulatory Body concerned from time to time.

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8. Withdrawal of affiliation:

8.1 The privileges conferred on a college by affiliation may be withdrawn in part or in full, suspended or modified, if the college, on due enquiry, is found to have failed to comply with any of the provisions of the Act, the Statutes, the Ordinances, the Rules and Regulations or any other Statutes, the Ordinances, the Rules and Regulations or any other direction or instruction of the UGC / University/Statutory/Regulatory body concerned, or failed to observe any of the conditions of affiliation, or has conducted itself in a manner prejudicial to the academic and administrative standards and interests of the University.”

Such Regulations deal with temporary and permanent affiliation and also for withdrawal of affiliation.

11. The Commission has been issuing guidelines from time to time for declaring an institution as deemed to be University under Section 3 of the UGC Act. In the present case, except J.R.N. Vidyapeeth, which was granted deemed to be University status on 12.01.1987, all other institutions have been granted status of deemed to be Universities in the year 2000 or thereafter. Mr. Dahiya, learned counsel for the Commission, has produced the guidelines issued from time to time. The first of such guidelines produced are titled "Revised Guidelines 1992". Such guidelines contemplate that keeping in view the general concept of an institution to be deemed to be a University; the Institution should generally aim at strengthening its activities in its field of specialization rather than make efforts towards growing into multi-faculty university of the general type. For the purposes of recognition as 'deemed to be university', an institution should generally be engaged in programmes of teaching and research in chosen fields of specialization which are innovative and of very high academic standards. The institutions which are imparting routine type of instructions to fulltime students or offering training programmes for in service personnel would generally not qualify for deemed university status.

12. In the year 2000, another set of guidelines was issued by the Commission for declaring an institution as deemed to be university. Such guidelines contemplated the following:

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4(b) Ordinarily, institutions affiliated to universities and which are offering only conventional degree programmes leading to B.A./B.Com/B.SC. or M.A./M.Com/M.Sc. will not be considered

for grant of deemed to be university status. However, such institution which is also offering innovative programmes, and which has adequate resources might be considered for recognition as a university. Supplementary assistance for innovation may be considered by the UGC only in such exceptional cases.

- 4(c) Institutions which are imparting routine type of Instruction to full-time students or offering training programmes for in-service personnel, unless of high quality, would generally, not qualify for recognition.

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- 4(e) In case the institution is offering a degree/diploma, in professional subject(s), the academic programme(s) should be recognized by the concerned statutory authority e.g. AICTE, MCI, DCI, CCH, INC, etc. before it applies for a deemed to be university status under Section 3 of the UGC Act. This shall, however, not apply to de-novo institutions in the emerging areas with the promise of excellence, not yet fulfilling the prescribed guidelines of the UGC whose case will be considered for a provisional status for a deemed to be university.

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13. Admission shall be made on an All-India basis to the identical courses in all the deemed to be universities through a common entrance test conducted either by the University Grants Commission or by an institution/Agency identified and approved by the UGC. This shall apply also to those institutions which have already been given the deemed to be university status.

14. Admission to the various professional courses, such as, Medical Dental, Nursing, Engineering, Pharmacy, Management and Legal Education etc. shall be made on the basis of regulations framed by the UGC in consultation with the respective statutory Councils. The fee structure will also be the same as laid in the respective regulations.

15. It would be permissible for the deemed to be university to open centres in its own area or in places other than its headquarters. For this purpose, the following parameters will be followed:

(i) The Centre(s) shall be set up with the prior approval of the UGC and that of the State Government where the Centre(s) is/are proposed to be opened.

(ii) Proposal for starting various academic courses shall have the approval of the UGC.

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(vi) It would be permissible for the Deemed University to open academic Centre(s) not only anywhere in India, but also in any of the foreign countries. The academic centre(s) in the foreign countries shall be opened only after the due permission from the Government of India/UGC and also that of the Government of the host country.

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13. UGC issued another set of guidelines on 16.03.2004 for Establishing New Departments within the Campus, Setting Up of Off-Campus Center(s) / Institution (s) / Off-Shore Campus and Starting Distance Education Programmes by the Deemed to be Universities. The relevant clauses are as under:

“Definitions –

- (a) “Institution” means an institution set up by the same management to impart studies in a specialized branch of study and registered under the same society or trust under which the existing deemed university is registered.
- (b) “Off-campus centre” means a centre of the university located outside its main campus (within or outside the State where the deemed university is located) operated and maintained as its constituent unit by the resources of the university, having the centre’s own compliment of facilities, faculty and staff.
- (c) “Off-shore Campus” means a campus of the university located outside the country, established and maintained as its constituent unit by the resources of the university having its own compliment of facilities, faculty and staff.
- (d) “Study centre” means a centre established and maintained or recognized by the university for the purpose of advising, counseling or for rendering any other assistance required by the students used in the context of distance education.

Prerequisites:

1. The Deemed to be Universities shall be normally authorized only to operate within their own campus to conduct the authorized courses falling within the area of their specialization. If the new department is to deal with a subject which is not the field of specialization or in an allied field, the deemed University may be allowed to start such department only if that field is covered under the objectives for which the deemed University was established, as per its MoA. In case a deemed University desires to start a new department in a field not covered under its MoA, it will have to amend its MoA before opening its department. As such the Deemed to be Universities shall not operate beyond their approved geographical boundaries. However, in deserving cases, the Deemed Universities can start new Departments within the university campus or start off-campus centre(s)/ institutions / off-shore campus on selective basis for the benefit of the student community by spreading quality education with prior specific permission of the University Grants Commission in each and every individual case. A deemed to be university intending to set-up new Departments within their campus, new off-campus centre(s)/ institution outside the main campus/off-shore campus or starting distance education programme shall be eligible to apply for seeking permission for this purpose only if it has:-

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- 1.5 Not entered into any franchise agreement with any organization for establishing and running the off-campus centre/off-shore campus.

Procedure to be followed:

2. All deemed to be universities intending to set-up new departments within their campus, off-campus centre(s) or an institution outside the main campus of the deemed university may apply as follows:
 - 2.1 The deemed university intending to open a new department in its campus or an off-campus center/ institution shall approach the University Grants Commission (UGC) at least six months prior to opening such centre on a proforma prescribed for this purpose (Annexure-I). The deemed university desirous of starting the new off-campus center / institution or introducing a new course/ programme in a professional subject, shall

comply with all the requirements as required by statutory professional Councils and obtain their prior approval before approaching the UGC.

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3. Infrastructure requirements and other standards:

- 3.1 The new off-campus center / institution / off-shore campus shall have adequate buildings and other infrastructure facilities as per the norms and standards prescribed by the UGC and other concerned statutory bodies. Such facilities shall be proportional to the size and activities of the centre.
- 3.2 The new off-campus centre / institution / off-shore campus shall be totally administered by the parent deemed university in terms of admission, monitoring, instruction, evaluation, and conferring of degrees etc.
- 3.3 The off-campus centre/institution/off-shore campus shall conform to the relevant regulations/norms of the UGC and other statutory bodies concerned regarding minimum standards of instruction, qualifications of teachers, merit-based admission of students on an all India basis and the fee structure etc. and shall have adequate number of qualified teachers.

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4. Distance Education:

The Deemed to be University could offer the distance education programmes only with the specific approval of the Distance Education Council (DEC) and the University Grants Commission (UGC). As such, any study centre(s) can be opened only with a specific approval of Distance Education Council and UGC.

5. Ex-Post-Facto Approval:

The Deemed Universities shall obtain the ex-post-facto approval of the GOI/UGC/DEC, whichever, applicable within a period of six months in the following cases:

- I. Continuation of all the Departments opened in the campus of the Deemed Universities and off-campus study centre(s)/ institutions / off-shore campus started without the prior approval of the UGC.

II. Distance education programme(s)/ study centre(s) started without the specific approval of the DEC/UGC.”

14. In a Proforma for submission of Information by the Universities for Opening of New Departments / Off Campus Centres / Institutions / Off-shore Campus/ Study Centres under Distance Education Programme, in a table for Study Centres under distance education programme, one of the columns is; whether course curriculum is as per UGC/ AICTE/ DEC specifications.

15. In Para 9 of the affidavit dated 12.10.2006 filed by the Commission, it has been stated that deemed to be University status was granted to the respondent No. 10 without any off campus centre and that deemed to be university was not permitted to open any study centre or any off-campus centre or to affiliate any institute.

16. On 12.05.2008, the UGC addressed a communication (Annexure R-8/79) to the Vice-Chancellors of 18 Deemed to be Universities in respect of proposal to start distance education including the four institutions in question. The said communication reads as under:

“With reference to your proposal for ex-post facto approval to the courses run under distance mode by the deemed university, I am directed to inform you that the Government of India, MHRD convened a meeting on 19th February, 2008, which was chaired by Secretary, Department of Higher Education. It was decided that the approval granted by Distance Education Council (including ex-post facto) must be reviewed and the approval should be granted to the courses and not the Institute. Distance Education Council has also been requested to give approval strictly as per the provisions contained in the MOU signed between UGC, AICTE and DEC. The relevant clause of the MOU is reproduced as under:

“Based on the recommendations of Joint Committee, the letter of approval, may be issued by the Joint Committee. The letter should explicitly state: This has the approval of UGC, AICTE and DEC.

The letter should be jointly signed by Secretary, UGC, Member Secretary, AICTE and Director, DEC.”

In view of the above mechanism and instructions issued by MHRD, you are advised to approach the Joint Committee through Distance Education Council, IGNOU, Malda Garhi, New Delhi.”

17. On 21.05.2010, the Commission notified UGC (Institutions Deemed to be Universities) Regulations, 2010. Such Regulations consolidated the guidelines issued from time to time in respect of the factors to be taken into consideration before granting the status of the deemed to be university. Such Regulations apply to every institution seeking declaration as an institution deemed to be University under the UGC Act as also, albeit prospectively, to an institution which has been declared as an institution deemed to be university under Section 3 of the UGC Act. Under the aforesaid Regulations, a ‘Campus’ means Campus of the institution deemed to be university at its headquarters, wherein its major facilities, faculty, staff, students and its Academic Departments are located in a city/town/village in India. While ‘off-Campus centre’ means an approved (by the Central Government) Centre of the institution deemed to be University beyond its Campus in the country, an ‘off-shore Campus’ means an approved (by the Central Government) centre of the institution deemed to be university beyond its Campus and outside India. The “Statutory body” means a body constituted under any law for the time being in force for determining or maintaining standards of quality in the relevant areas of higher education and bodies known as All India Council for Technical Education (AICTE), Medical Council of India (MCI), Dental Council of India (DCI), National Council for Teacher Education (NCTE), Bar Council of India (BCI), Indian Nursing Council (INC), etc. shall be the statutory bodies for the purposes of these regulations (2.12).

18. The eligibility criteria for an institution to be declared as an Institution deemed to be University in terms of the aforesaid regulations, inter alia, is that it has been in existence for at least 15 years except in case of institutions seeking declaration as an institution deemed to be university under the '*de novo*' category (4.1); has all the characteristics of a university as demonstrated by the diversity of its programmes of study, proven contribution to innovations in teaching and verifiable high quality of research output (4.2); shall undertake not to offer any programme in the distance mode (4.14); shall not be an institution imparting education leading to conventional degrees only. For example, it shall not be limited to impart programmes in engineering or management or medicine or pharmacy or dental sciences, etc., which can continue to be offered with the existing status of a college (4.5); and shall not be an institution mainly engaged in offering training programmes for in-service personnel, or conducting only skill-oriented or production-related degree or diploma programmes (4.6).

19. An application to seek status of a deemed to be University is required to be examined by the Central Government in the following manner:

“8.08 The report of the Expert Committee shall be examined by the Commission along with the views of the State/UT Government, if any, and the Statutory/Regulatory body concerned and thereafter, the Commission shall submit its advice to the Ministry of Human Resource Development for the Ministry's consideration. The report of the Statutory body to the Commission shall indicate not merely the fulfillment of minimum requirements for the institution's performance as a college, but shall include its assessment of the achievements of the institution in high standards of education and research as well as its capability to promote innovation and excellence commensurate with the status as a university in contrast to a conventional professional college.”

20. In respect of Maintenance of Standards, it contemplates as under:

“11.0 Maintenance of Standards

11.1 An institution deemed to be university shall maintain standards, higher than the minimum, of instruction, academic and physical infrastructure, qualifications of teachers, etc. as prescribed for college level institutions by the Commission or by the Statutory/Regulatory body concerned, such as All India Council for Technical Education (AICTE), Medical Council of India (MCI), Dental Council of India (DCI), National Council for Teachers Education (NCTE), Bar Council of India (BCI), Indian Nursing Council (INC), etc. and shall obtain their approval for running various programmes of study, wherever applicable. This shall be periodically monitored by the duly constituted Committee(s) of the Commission.”

21. The Regulations also contemplate that an institution deemed to be university shall normally operate within its own main Campus, as is declared by the Central Government in the notification and conduct approved programmes of study falling within the area of its specialization (12.01); if an institution wishes to start a new Department dealing with a subject which is not in the field of its specialization or in an allied field, it may do so only if that field is covered under the objectives for which the institution deemed to be university was established, and with the prior approval of the Commission (12.02), an institution deemed to be university may be allowed to operate beyond its approved geographical boundaries and start off-Campus(es) / off-shore Campus(es) under the conditions prescribed in that para (12.03) and; an off-Campus Centre shall be established by an institution deemed to be university with the prior approval of the Central Government, on the recommendation of the Commission. The Central Government shall also consider the views of the State / UT

Government concerned where the off-Campus Centre is proposed to be established (12.05). Still further, Para 18.0 of the said Regulations contemplated that no institution deemed to be university, so declared by the Central Government subsequent to these Regulations, shall be allowed to conduct courses in the Distance mode. Also, such institutions declared as such, prior to these Regulations, shall not be allowed to conduct courses in the Distance mode from any of its Off-Campus Centre / Off-shore Campus approved subsequent to these Regulations.

22. This Court on 21.05.2009 sought the following information from the respondents:

“1. Whether the constitution of the Joint Committee in terms of memorandum dated 10.05.2007 has any role or relevance after the declaration of law by the Supreme Court in (i) Annamalai University Rep. by Registrar Vs. Secretary to Government, Infn. & tourism Deptt. & others – JT 2009 (4) SC 43 (ii) Bharathidasan University and another Vs. All India Council for Technical Education and others – (2001) 8 SCC 676 holding that UGC Act will prevail over the IGNOU and Regulations framed under the Act have no relation to the Universities Deemed or otherwise?

2. Whether the UGC has taken any other formal decision to the effect that no university deemed or otherwise will start technical/professional courses without its prior approval and if so a copy of the decision be placed on the record?

3. Whether the UGC has permitted the four Deemed Universities referred to in the earlier part of this order to start campus or study centres offering technical/professional courses and award degrees to those who are enrolled for the same?

4. Whether the UGC or any other authority has specified any departure for setting up of centres mentioned above?

5. Whether the UGC has recognized the degrees awarded by the deemed universities named earlier in so far as the same recognizes the degrees technical/professional courses awarded by the deemed Universities mentioned above?

6. Whether the deemed University can offer a course in Distance Education with or without permission of the UGC in particular whether any such permission to start and offer a course in distance education especially for technical/professional field has been granted to the four universities mentioned earlier?

7. Whether the governments of Punjab and Haryana have recognized or proposes to recognize the degrees in technical courses awarded by the deemed Universities in the country? In case, the degrees are not treated as recognized qualification for employment and promotion purposes whether the Governments have taken any steps to withdraw the benefits already granted to those who have taken the benefits on the basis of such degrees?"

23. In pursuance of such order, an affidavit dated 24.07.2009 has been filed by the Commission, wherein reference is made to the Supreme Court judgment reported as Annamalai University represented by the Registrar Vs. Secretary to Government, Information & Tourism Department & others (since reported in JT 2009 (4) SC 43. Referring to the judgment in Bharatidasan University and another Vs. All India Council for Technical Education and others (since reported in 2001 (8) SCC 676), it is submitted that although Universities no longer need approval of the All India Council for Technical Education for starting technical courses, however, still they are required to maintain the minimum standards laid down by the All India Council for Technical Education as UGC has not yet laid down the minimum standards in respect of imparting of technical education.

24. In respect of the first question, it is averred that the Joint Committee is not a statutory body and the same has come into existence by virtue of Memorandum of Understanding in order to avoid duplication of efforts in streamlining of activities. It is further stated that even if approval is granted by the Joint Committee, it is still in terms of the minutes of

meeting dated 19.02.2008. The relevant minutes as reproduced in the affidavit are as under:

“Secretary Department of Higher Education initiated the discussion by impressing upon the need to ensuring the maintenance of standards in the Open and Distance Education Systems in the country and simultaneously its promotion and facilitation. The functioning of the Joint Co-ordination Committee of the UGC, AICTE and DEC was discussed and reviewed. After discussions and deliberations following decisions were taken:

a.- d xxxx

- e. In addition to existing agreement of AICTE for conduct of MCA and MBA programmes by distance mode, AICTE must also consider to agree to allow conduct of B.Tech. programmes through distance mode for Diploma holders in Engineering / Technology with work experience. Similarly, distance education programmes for ITI Certificate holder, with some work experience, leading to award of Diploma could be allowed and encouraged for their vertical academic mobility.
- f. The approvals should be granted to the courses and not to the institute.
- g. The approval, including the cases of granting of ex-post facto approvals conveyed by the DEC to Allahabad Agricultural Institute, Allahabad, Annamalai University, TN, IASE Sardarshahar, Raj. JRN Rajasthan Vidyapeeth, Udaipur, Vinayaka Mission, Salem, must be reviewed within the next month.”

25. It is further stated that the Commission has not delegated any of its powers in favour of the Joint Committee and even if any action is suggested by the Joint Committee, the matter is still required to be placed before the Chairman, UGC and subsequently before the Commission for information. Thus, it is submitted that the Joint Committee has limited relevance only for the purpose of avoiding duplication of efforts in streamlining of activities.

26. In respect of question No.2, the reference was made to letter of the Commission dated 15.07.2006, wherein the deemed to be universities are said to be empowered to start degree courses such as B.A., B.Sc., M.A., M.Com., M.Sc. etc. as specified and notified under Section 22 of the UGC Act without any approval of the Commission provided that such general courses of study are offered by them on a regular basis through class-room teaching at their approved campuses and are not offered through distance mode. In respect of professional courses offered by the deemed to be universities, it is submitted that no prior approval would be required to start new courses as are related or allied to courses already being offered through the conventional class-room mode at their approved campuses, yet the institutes will be required to maintain the minimum norms and standards laid down by the respective professional/statutory councils which shall be open for verification by the UGC and the appropriate councils as the case may be. It was averred to the following effect:

“...In other words, so far as professional/technical courses are concerned, the concerned deemed to be university is permitted to start similar or allied courses without approval of the UGC and other professional/technical courses which are not similar or allied to the courses which are already being offered by the deemed to be university, then in such an eventuality, the deemed to be university is required to seek approval of the UGC before starting such other courses. In any eventuality, whether courses are similar /allied or not, the conduct or starting of any professional course is always subject to permission/approval of other statutory bodies such as Medical Council of India, Dental Council of India, Nursing Council of India, Pharmacy Council of India, Bar Council of India, Central Council of Indian Medicines, National Council for Teacher Education, All India Council for Technical Education etc. as applicable...”

27. In respect of question No.3, it is categorically averred that the Commission has not permitted the four deemed to be universities to start

any off-campus or study centres offering technical/professional courses and award degrees to those who are enrolled for the same. However, in respect of JRN Rajasthan Vidyapeeth, one time ex post facto approval was granted vide letter dated 03.07.2006 for the students admitted in various courses from 01.06.2001 to 31.08.2005 under the distance education mode subject to strict compliance and fulfillment of various conditions mentioned therein. One of the conditions was that the Institute shall ensure that it has permission of relevant statutory bodies or councils wherever necessary. The said letter reads as under:

“The Chairman, UGC constituted a Committee to consider the request of Sri Janardan Rai Nagar Rajasthan Vidyapeeth, Udaipur for ex-post-facto approval of the courses through Distance Education Mode started till the year 2005. The Committee held its meeting in the UGC office on 30th June, 2006 and also interacted with the representatives of Sri Janardan Rai Nagar Rajasthan Vidyapeeth, Udaipur. After examining all the aspects regarding one time ex-post-facto approval to Sri Janardan Rai Nagar, Rajasthan, Vidyapeeth, Udaipur for the students admitted in various courses from 1st June, 2001 to 31st August, 2005 as also keeping in view the future of a large number innocent students, the Committee recommended one time ex-post-facto approval for the students admitted under the distance education mode by Sri Janardan Rai Nagar, Rajasthan, Vidyapeeth, Udaipur from 1st June, 2001 to 31st August, 2005 subject to strict compliance and fulfillment of the following conditions:

1. The one time approval will cover students admitted between 1st June, 2001 and 31st August, 2005 only subject to the condition that Sri Janardan Rai Nagar, Rajasthan, Vidyapeeth, Udaipur, shall ensure that it has permission of relevant Statutory Bodies or Councils wherever necessary.
- 2 to 4. xxx xxx
5. As per Section 22 of the UGC Act, 1956, Deemed University can award the degrees which are specified by the UGC. The Diploma/Certificate can be issued by the individual universities in consultation with their Academic Councils and other bodies subject to the fulfilling of approval/permission from any other Statutory Body/Council, if any.

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9. The Deemed University shall comply with all the conditions stipulated in the instant recommendations within a period of 15 days. Thereafter, the Expert Committee shall visit the premises of the University for on a spot verification of the compliance by the University.
10. Further, if the University violates any of the above conditions or any other condition stipulated or added later on, it will be open to the UGC to recommend to MHRD for withdrawal of the Deemed to be University status of Sri Janardan Rai Nagar, Rajasthan, Vidyapeeth, Udaipur.
11. The committee considered the above matter, keeping in view the undertaking furnished by Sri Janardan Rai Nagar, Rajasthan, Vidyapeeth, Udaipur as well as the advertisement made by them in the newspaper that they have discontinued the new admission in different courses under distance mode. They have further assured to give an undertaking that in future they shall be abide by the Notifications, Regulations, and all other guidelines issued by the UGC from time to time. The undertaking may be furnished to the UGC within a period of two days from the date of issue of letter regarding ex-post-fact approval.”

28. In response to question No.4, it is pointed out that vide letter dated 04.08.2001, all the Institutes were informed to take prior approval of the Commission before entering into any collaboration with any private institution. It is further averred that the Commission has decided that no University would be permitted to go for off-campus private educational franchise leading to the award of the degrees. The relevant extract from the letter dated 04.08.2001 reads as under:

“The Universities can conduct courses through its own department, its constituent colleges and/or through its affiliated institutions. There is, however, no provision for leaving it to private institutions for conducting courses leading to award of its degree. As per recent UGC guidelines, the Universities are permitted to impart education and award its degree through their own campuses located elsewhere in the country or even at their own off shore campuses with the approval of UGC.

Looking into the wide spread menace of franchising the university education through the private institutions, the University Grants Commission has decided that any university, which proposes to enter into collaboration with any private institution, would be required to take prior approval of the UGC. The Commission has also decided that no university should be permitted to go for off-campus private educational franchise leading to the award off its degree.

Accordingly, all the universities are being directed to stop franchising their degree education through private agencies/establishments with immediate effect. However, to safeguard the interest of students, it has been decided to approve award of degree under currently practiced franchise programmes only for those who have already been so far enrolled. No new enrolment of students, henceforth, shall be permitted.”

29. The Commission took serious note of the fact that some of the deemed to be universities are introducing new courses, opening study centres/academic centres, off-campus etc. without taking any approval from it and the fact that these centres are opened even in the absence of proper physical and academic infrastructure and also keeping in view its mandate to maintain the standards of teaching and research in Universities, the Commission framed guidelines for establishing new Departments within the campuses, setting up of off-campus centre(s) / Institutions/ Off shore campus and starting Distance Education Programmes by the deemed to be Universities. Clause (4) of the said guidelines (as reproduced in para 13 above) provides that deemed to be universities could offer distance education programme only with the specific approval of the Distance Education Council and the Commission. All the deemed to be Universities were requested to follow the guidelines for establishing new Departments and for the already established centres on 16.3.2004.

30. In response to question No.5, it is stated that the Commission only specifies the degrees under Section 22 of the Act and that the Commission does not recognize any degree awarded by any University or

deemed to be Universities. In response to question No.6, it has been averred to the following effect:

“13. ...It is respectfully submitted that the UGC has not granted any permission to start and offer any course in Distance Education and specially for technical/professional field to be abovementioned four deemed to be universities except the ex post facto approval granted by UGC to JRN Rajasthan Vidyapeeth vide its letter dated 03.07.2006 for students admitted under the Distance Education mode from 01.06.2001 to 31.08.2005.”

II. The Notifications issued by Government of India (Ministry of Human Resource and Development) and its stand before this Court

31. On 01.03.1995, the Ministry of Human Resources & Development issued a notification contemplating that all qualifications awarded through Distance Education by the Universities established by an Act of Parliament or State Legislature and the Institutions Deemed to be Universities shall stand automatically recognized for the purpose of employment to posts and services under the Central Government, provided it has been approved by Distance Education Council and wherever necessary by All India Council for Technical Education. The said notification No. 44 reads as under:

“On the recommendation of the Board of Assessment for Educational Qualifications, the Government of India has decided that all the qualifications awarded through Distance Education by the Universities established by an Act of Parliament or State Legislature, Institutions Deemed to be Universities under Section 3 of the UGC Act, 1956 and Institutions of National Importance declared under an Act of Parliament stand automatically recognized for the purpose of employment to posts and services under the Central Government, provided it has been approved by Distance Education Council Indira Gandhi National University, K-76, Hauz Khas, New Delhi – 110016 and wherever necessary by All India Council for Technical Education, I.G.Sports Complex, I.P.Estate, New Delhi – 110002”.

32. In a short reply dated 21.10.2008 filed on behalf of the Government of India, it is stated that only such degrees/diplomas/certificates earned through distance mode of education are recognized for the purpose of employment under Central Government, which are approved by statutory authorities of IGNOU (DEC) and AICTE wherever necessary. The degrees earned through Distance mode in technical disciplines covered under AICTE Act can only be considered recognized for the purpose of employment under the Central Government.

33. In an affidavit dated 23.07.2009, it is stated that the Government of India has the constitutional responsibility of determining, maintaining and coordinating the standards in higher education including technical and professional education. The Commission is responsible for the standards in general higher education; AICTE in technical and professional education and DEC, an authority of IGNOU, in education through distance mode. In respect of notification dated 01.03.1995, it is averred that:

“6.It may be clarified here that the degrees earned through distance mode in technical disciplines, which are covered under AICTE Act, can only be considered recognized for the purpose of employment under Central Government, if they are recognized/approved by AICTE. It is further clarified that the recognition of DEC means the recognition by the Council of DEC and recognition by AICTE means recognition by the Council of AICTE.

Further, for the purpose of employment under Central Government, the programmes leading to degree are required to be recognized and not the institutions offering education through distance mode.”

34. In respect of question No.1, it is averred by Commission that the significance of the recognition of AICTE for Technical Programmes conducted by Universities for the purpose of employment does not get

diluted in light of the observation of the Hon'ble Supreme Court in **Bharathidasan University & another Vs. All India Council for Technical Education & others (2001) 8 SCC 261**. The notifications declaring an institution as deemed to be university under Section 3 of the UGC Act are usually subject to the condition that the deemed university concerned has to follow the guidelines/directives of the Commission. It is averred that the UGC regulations shall prevail over provisions under IGNOU Act to the extent they contradict each other. However, it was pointed out that at present no such contradiction is apparent. In response to question No.6, it is averred that deemed universities cannot start distance education without obtaining the requisite prior permission from the commission.

35. In addition thereto, the Ministry of Human Resource has issued the following notification as a direction under Section 20 of the UGC Act and under Section 20 of the All India Council of Technical Education Act, 1987. The said notification dated 07.04.2006 reads as under:

“Now, therefore, in exercise of its powers vested under Section 20(I) of University Grants Commission Act, 1956 and Section 20(I) of All India Council for Technical Education Act, 1987, the Central Government do hereby direct the UGC and the AICTE, to publicize the following clarification for the information of the general public by appropriate means including through their respective institutional website (www.ugc.ac.in & www.aicte.ernet.in):

- The UGC, while making its recommendation to the Central Government, for the grant of the ‘Deemed to be University’ status on any institution, may seek the advice of the AICTE or other relevant statutory Authorities, as the case may be (e.g. the AICTE for technical and management education, the Medical Council of India for medical education, the Dental Council of India for dental education etc.)
- xxx xxx xxx
- It is not a pre-requisite for an institution notified as a ‘Deemed to be University’ to obtain the approval of the AICTE, to start any programme in technical or management education leading to an award, including degrees in disciplines covered under the AICTE Act, 1987.

However, institutions notified as ‘Deemed to be University’ are required to ensure the maintenance of the minimum standards prescribed by the AICTE for various courses that come under the jurisdiction of the said Council. It is expected that the institutions notified as ‘Deemed to be University’ maintain their standards of education higher than the minimum prescribed by the AICTE.

- However, while the AICTE would not issue any directions to the institutions notified as ‘Deemed to be University’ on the basis of inspection report of the Council’s Expert Committee, the Council may bring the findings and recommendations of its Expert Committee to the notice of the University Grants Commission, which after considering the report of the Expert Committee of the AICTE and recommendations, if any, may issue necessary directions for appropriate action.
- xxx xxx xxx
- The power to inspect Universities/institutions notified as ‘Deemed to be University’ to the AICTE as well as to the UGC are to be seen separately in the light of the ‘Preambles’ and ‘Statements of Reasons’ of their respective Acts. The Powers of inspection accorded to the AICTE, is specifically in order to ensure the maintenance of standards in management and technical education, whereas the power of inspection to the UGC, is to ensure overall functioning of Universities/ Institutions notified as ‘Deemed to be University’ including faculties thereof, in order to ensure overall standards like that of University including administrative and academic standards.
- xxx xxx xxx
- The manner of inspections, if any, to be carried out by the UGC and the AICTE would be in accordance with the Rules/Regulations framed by the Commission and the Council under their respective Acts. However, the Rules/Regulations of the AICTE may confine only to the inspection, preparation and submission of the Report in regard to institutions which are ‘Deemed to be University’. The action on the recommendations in the report needs to be dealt separately through the appropriate Regulations of the UGC in accordance with the provisions of the UGC Act, 1956.”

36. On 29.07.2009, the Ministry of Human Resources Development, Department of Higher Education communicated to Vice Chancellor of IGNOU and Chairman of DEC that the distance education council should immediately withdraw permission given to various

Institutions to conduct B.Tech/B.E. programmes through Distance Mode.

The said communication reads as under:

“The matter regarding recognition of B.Tech degrees awarded by UGC recognized Universities through Distance Education Mode was examined in the Ministry. After a detailed examination of the subject matter referred above, the following course of action, has been approved at the highest level in the Ministry:

- (i) DEC should immediately withdraw permission given to various institutions to conduct B.Tech/B.E. Programmes through Distance Mode and no student should be admitted in the current year also.
- (ii) Those who have already been admitted will have to pass both practical and written examination as may be prescribed in the regard, so as to give validity to the B.Tech/B.E. degree acquired by them through distance education.

In view of the above, I would request you kindly to take further necessary step to implement the action mentioned at Para (i) above immediately and also further evolve a broad policy and guidelines to give effect to the action as mentioned at para (ii) above. This being a very important and sensitive issue, an early action in the matter will be highly appreciated.”

37. In response to a Court question, Ms. Ranjana Shahi, learned Central Government Standing Counsel, has put on record the communication from the Director, Department of Higher Education, Ministry of Human Resource Development, Government of India dated 14.08.2012. The operative part of the said communication reads as under:

“2. In this connection, it is stated that to regulate, in an orderly manner, the process of declaration of institutions as deemed to be universities; preventing institutions of dubious quality from being so declared to be universities consistent with the ideals of the concept of a university; the University Grants Commission, in exercise of powers conferred under clauses (f) & (g) of sub-section (1) of Section 226 of the University Grants Commission Act, 1956, the UGC (Institutions deemed to be universities) Regulations, 2010 were notified on 21.05.2010 which come into force with effect from 26.05.2010. As per clause 8.02, an institution deemed to be university shall submit a certificate as also an undertaking along with its application to the effect that the professional programmes already being conducted by it, if any, have the approval of the relevant statutory/regulatory bodies like AICTE, MCI, DCI, NCTE, BCI, INC etc. along with a duly attested copy of the letter of approval

granted to it by such bodies. In addition, each application shall be accompanied by an essentiality certificate from the State Government concerned, wherever necessary.

3. As per clause 11 of the Regulations, an institution deemed to be university shall maintain standards, higher than the minimum, of instruction, academic and physical infrastructure, qualifications of teachers, etc. as prescribed for college level institutions by the Commission or by the Statutory/Regulatory body concerned, such as All India Council for Technical Education (AICTE), Medical Council of India (MCI), Dental Council of India (DCI), National Council for Teachers Education (NCTE), Bar Council of India (BCI), Indian Nursing Council (INC), etc. and shall obtain their approval for running various programmes of study, wherever applicable. This shall be periodically monitored by the duly constituted committee(s) of the Commission.These Regulations superseded all the notifications/orders issued prior to the coming into force these Regulations.”

III. Indira Gandhi National Open University, Distance Education Council - their constitution, purpose, guidelines and the stand before this court

38. The Indira Gandhi National Open University Act, 1985 (for short ‘the IGNOU Act’) received the assent of the President on 02.09.1985. It is an Act to establish and incorporate an Open University at the national level for the introduction and promotion of Open University and distance education system in the educational pattern of the country and for the co-ordination and determination of standards in such systems. Such Act has been enacted in terms of Entry 25 of List III of Schedule VII {see judgment in Annamalai University Rep. by Registrar Vs. Secretary to Government Information & Tourism Department & others (2009) 4 SCC 590}. Section 4 of the IGNOU Act delineates the objects of the University, which shall be to advance and disseminate learning and knowledge by a diversity of means, including the use of any communication technology, to provide

opportunities for higher education to a larger segment of the population and to promote the educational well-being of the community generally, to encourage the Open University and distance education systems in the educational pattern of the country and to coordinate and determine the standards in such systems. In terms of Section 5 of the said Act, the University has the powers to hold examinations and confer degrees, diplomas, certificates or other academic distinctions or recognitions on persons who have pursued a course of study or conducted research in the manner laid down by the Statutes and Ordinances.

39. In terms of Section 16(7) of the IGNOU Act, the Board of Management in its meeting held on 19.07.1991 resolved the insertion of Statute 28 in the second Schedule containing the Statutes of the University. Such decision of the Board, has received the approval of the Visitor i.e. Hon'ble the President on 16.09.1991. Such Statute reads as under:

“28. Distance Education Council

(1) Consistent with the duty of the University to take all such steps as it may deem fit for the promotion of the Open University and distance education systems in the educational pattern of the country and for the coordination and determination of standards of teaching, evaluation & research in such systems; and in pursuance of the objects of the University to encourage greater flexibility, diversity, accessibility, mobility and innovation in education at the University level by making full use of the latest scientific knowledge and new educational technology, and to further cooperation between the existing Universities; it is considered necessary and expedient to establish a Distance Education Council as an authority of the University under Section 16 of the Act.”

40. The powers and functions of the Distance Education Council are for the promotion of the Open University/Distance Education System,

its coordinated development, and the determination of its standards, and in particular which includes, inter-alia, the following:

- (i) To develop a network of open universities/distance education institutions in the country in consultation with the State Governments, Universities, and other concerned agencies;
- (ii) To identify priority areas in which distance education programmes should be organized and to provide such support as may be considered necessary for organizing such programmes;
- (iii) To identify the specific client groups and the types of programmes to be organized for them, and to promote and encourage the organization of such programmes through the network of open universities/distance education institutions;
- (iv) To promote an innovative system of University level education, flexible and open, in regard to methods and pace of learning, combination of courses, eligibility for enrolment, age of entry, conduct of examination and organize various courses and programmes.
- (v) To promote the organization of programmes of human-resource development for the open university/distance education system;
- (vi) To initiate and organize measures for joint development of courses and programmes and research in distance education technology and practices;”

41. The Distance Education Council issued guidelines in the year 2006 for regulating the Establishment and Operation of Open and Distance Learning (ODL) Institutions in India. It was noticed that distance education mode has become purely commercial venture with little or no attention being paid to the quality of education offered to learners. The Distance Education Institutes requiring approval from DEC includes the conventional universities established by an Act of Parliament or State Legislature/Deemed to be universities declared by the Central Government under Section 3 of the University Grants Commission Act, 1956. It also specified that the Institutions shall furnish undertaking for the following:

- “3. The undertakings to be given by the ODL institutions seeking Approval from the DEC.

The ODL institutions shall give and comply with the following undertakings:

- 3.1 That the provisions of the DEC established under the Statute 28 of the Indira Gandhi National Open University Act, 1985 and the standing orders and directions of the Distance Education Council, shall be observed.
- 3.2 That the parent institution which intends to start or which has already started Distance Education Institutions (DEIs) should have a provision in its Act / MoA for running Distance Education programme(s);
- 3.3 That the parent institution shall not establish its Study Centres/Regional Centres outside its jurisdiction as specified in the parent institution Act/ MoA. In case of Deemed to be Universities the offering of distance education programmes will be confined to the state in which the main campus of the parent institution is located, except for programmes that the culturally and linguistically relevant even outside their state. Explicit approval of DEC should be obtained for offering such programmes;
- 3.4 That the parent institution shall have appropriate legislation to monitor the academic standard and quality of Distance Education within the parent institution.”

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It may be noticed that there is no specific power or function of the Distance Education Council to impart technical education through the distance education mode.

42. The Distance Education Council (DEC) in its meeting held on 23.03.2007 resolved that the Council shall consider the Institutions for approval instead of the programmes evaluation of such Institutions. The resolution is:

“Item No.28.5: To consider and approve the Guidelines and Handbook, 2007 for Establishment and Recognition of Open and Distance Learning Institutions.”

As per decision of the 27th DEC meeting held on 11th December, 2006, the Committee constituted by the Chairman, DEC examined in detail the Guidelines for Recognition of ODL Institutions at its meeting held on 9th February, 2007. The Council discussed the recommendations of the Committee and appreciated the decision taken by the Committee for recognition of institution in place of the existing practice of programme evaluation. Representative of the MHRD suggested that the Ministry would like to go into the details of the guidelines and if within 15 days the feed back from the Ministry is not sent to the Council, the Guidelines may be considered as approved. The Council endorsed the suggestion.”

43. The Distance Education Council (DEC) published a hand-book in the year 2007 for recognition of open and distance learning institutions probably in terms of the above said decision. Such hand-book contemplated that it should be mandatory for all institutions to seek prior approval of DEC for all existing and new programmes offered through distance mode. Table 1.1 fixed norms for offering programmes through distance mode based on credit system. It included Bachelors Degree (Technical) with 132-136 numbers of credits with minimum duration of 4 years. It stipulated that:

“In case of professional/specific programmes norms/guidelines of the respective apex bodies are to be followed and approval/recognition sought, whenever necessary;”

Part-II of such Hand Book is the guidelines for applying to Distance Education Council. It contemplates the following:

“For recognition purposes, mainly, processes and infrastructure facilities of the Institution will be considered which inter alia include the following:

- i. The study material may be prepared based on the Model Curriculum prescribed by the UGC/DEC or other Statutory Body as the case may be;

- ii. The study material should be in Self-Learning Format as per DEC Guidelines;
- iii. Core faculty in position as per DEC guidelines;
- iv. In case of Professional/Specific Programmes norms/guidelines of the respective apex body are to be following and approval/recognition sought, wherever necessary;
- v. Institution should follow criteria like eligibility for admission, duration of the programme etc. as per the guidelines of the respective apex bodies;”

44. The decision by the DEC on 23.03.2007 was to recognize an institution for imparting distance education in place of existing practice of programme evaluation of each programme. Such decision was a major policy shift as the approval or evaluation of a programme to impart knowledge by a deemed to be university through the distance education mode, was not required any more from the Distance Education Council and that the recognition of the institution was considered sufficient to run the programmes.

45. Subsequently, the Distance Education Council has issued a communication to J.R.N. Rajasthan Vidyapeeth – respondent No.10 dated 29.08.2007. It is on the basis of such communication, the stand of respondent No.10 is that it has the approval not only from the Commission, but also from DEC and that being a deemed University, approval from AICTE is not necessary. Communication dated 29.08.2007 reads as under:

“This has reference to your application requesting for one time ex-post facto recognition of programmes offered under distance education mode.

In connection with ex-post facto recognition, we would like to convey that all programmes (that were approved by the statutory bodies of your institute) are approved till date. As you have not been offering education through distance mode since 2005, all your programmes (approved by the

statutory bodies of your institute) till 2005 happen to be approved by the DEC.

However, for recognition of your institution for offering programmes through distance mode from next academic year i.e. from June-July, 2008, you are requested to submit fresh application in the prescribed format developed by DEC.”

IV. All India Council for Technical Education Act, Rules, Regulations, Directions and the Contentions:-

46. The All India Council for Technical Education (AICTE) was set up in 1945, by a Government resolution as a National Expert Body to advise the Central and the State Governments for ensuring the co-ordinated development of technical education in accordance with approved standards. The Education Commission of 1964, popularly known as Kothari Commission made the following recommendations for the proper administration of technical education:-

“To ensure the pursuit of the highest standards at the first degree and post-graduate levels, and to provide on adequate machinery with the national and professional concern with the future development at these levels, we have recommended the setting up of a UGC-type organization, industry and concerned Ministries. This body should have a full-time chairman, and funds should be allotted to it on a block basis.”

47. Later, the Council in its meeting held in 1981 sought statutory powers to regulate and maintain standards of technical education in the country since large number of private engineering colleges and polytechnics have come up in complete disregard of the guidelines laid down by the AICTE. The National Working Group was set up in November, 1985 to look into the role of the AICTE. The National Working Group recommended that in order to enable the AICTE to play its role effectively, it shall have to be vested with necessary statutory authority. The National

Policy on Education, 1986 also stipulated that the AICTE should be vested with statutory authority for planning, formulation and the maintenance of norms and standards, accreditation, funding of priority areas, monitoring and evaluation, maintaining parity of certificates and awards and ensuring the co-ordinated and integrated development of technical and management education. With the said objectives, the All India Council for Technical Education Act, 1987 (for short ‘the AICTE Act’) was enacted in terms of Entry 66, List I of the Constitution {See Annamalai University Rep. by Registrar Vs. Secretary to Government Information & Tourism Department & others (2009) 4 SCC 590}.

48. Section 2(a) of the AICTE Act defines ‘Commission’ to mean the University Grants Commission. Section 2(i) defines ‘University’ to mean a University defined under clause (f) of Section 2 of the University Grants Commission Act, 1956 and includes an institution deemed to be a University under Section 3 of that Act. ‘Technical Education’ has been defined in Section 2(g), whereas ‘Technical Institution’ has been defined in Section 2(h) of the AICTE Act. The relevant definitions read as under:

- “2. Definitions – In this Act, unless the context otherwise requires –
- (a) “Commission” means the University Grants Commission established under Section 4 of the University Grants Commission Act, 1956;
 - xxx xxx xxx
 - (g) “Technical education” means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare;
 - (h) “Technical Institution” means an institution, not being a University, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by

notification in the Official Gazette, declare as technical institutions;

(i) “University” means a University defined under clause (f) of Section 2 of the University Grants Commission Act, 1956, and includes an institution deemed to be a University under Section 3 of that Act”.

49. Chapter III of the AICTE Act defines powers and functions of the Council. Such powers and functions use expressions ‘technical institutions’ and ‘Universities’ in clauses either jointly or singularly. Some of the relevant provisions are as under:

“10. Functions of the Council – (1) It shall be the duty of the Council to take all such steps as it may think fit for ensuring co-ordinated and integrated development of technical education and maintenance of standards and for the purpose of performing its functions under this Act, the Council may -

- (a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education;
- (b) co-ordinate the development of technical education in the country at all levels;
- (c) allocate and disburse out of the Fund of the Council such grant on such terms and conditions as it may think fit to –
 - (i) technical institutions, and
 - (ii) Universities imparting technical education in co-ordination with the Commission;

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- (g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability;

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- (k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

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- (m) lay down norms for granting autonomy to technical institutions;

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- (o) provide guidelines for admission of students to technical institutions and Universities imparting technical education;
- (p) inspect or cause to inspect any technical institution;

11. Inspection – (1) For the purposes of ascertaining the financial needs of technical institution or a University or its standards of teaching, examination and research, the Council may cause an inspection of any department or departments of such technical institution or University to be made in such manner as may be prescribed any by such person or persons it may direct.

(2) The Council shall communicate to the technical institution or University the date on which any inspection under sub-section (1) is to be made and the technical institution or University shall be entitled to be associated with the inspection in such manner as may be prescribed.

(3) The Council shall communicate to the technical institution or the University, its views in regard to the results of any such inspection and may, after ascertaining the opinion of that technical institution or University, recommend to that institution or University the action to be taken as a result of such inspection.

(4) All communications to a technical institution or University under this section shall be made to the executive authority thereof and the executive authority of the technical institution or University shall report to the Council the action, if any, which is proposed to be taken for the purposes of implementing any such recommendation as is referred to in sub-section (3).

20. Directions by the Central Government – (1) The Council shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.

(2) The decision of the Central Government as to whether a question is one of policy or not shall be final.”

50. In terms of Section 23 of the AICTE Act, the Council has framed All India Council for Technical Education (Grant of Approval for Starting New Technical Institutions, introduction of courses or programmes and approval of intake capacity of seats for the courses or programmes) Regulations, 1994. The Regulations deal with the question of approval of the Council for establishment of new technical institutions including Universities or University Departments and deemed to be Universities.

Such Regulations were struck down by the Hon'ble Supreme Court in Bharathidasan University's case (supra) being a case of exercise of excessive delegated legislation to the extent of approval being required from the Universities.

51. On 10.12.2010, the All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010 were published in exercise of the powers conferred under Section 23 read with Sections 10 & 11 of the AICTE Act. Regulation 4 requires approvals for Technical Institution/Polytechnic (Technical Institution offering Diplomas).

52. On 11.06.2012, AICTE has notified All India Council for Technical Education (Information for Maintenance of Standards and Conduct of Inspection of Technical Entities of Universities) Regulations, 2012, in supersession of AICTE (Information and Conduct of Inspection of Technical Institutions, Departments of the Universities and Institutions declared as Deemed to be University and Universities and Institutions declared as deemed to be University) Regulations, 2010 notified on 07.04.2010 in exercise of the powers conferred under Section 23 read with Sections 10 & 11 of the AICTE Act. Regulation 3.1 of the said Regulations requires technical institutions and the technical departments of the Universities and institutions declared as Deemed to be University to upload such information, as desired by the Council on the web portal of the Council. Regulation 3.4 empowers the Council to represent its findings in respect of technical entities of the Universities to the Central and/or State government concerned and the University Grants Commission for necessary action as deemed necessary. Regulation 3.5 empowers the Council to cause an inspection of the technical institutions and technical departments of the universities and institutions declared as Deemed to be University, to verify

the information furnished by the technical institution and/or technical departments. Regulation 3.6 empowers the council to publish the names of such technical entities of the Universities, who are not following the norms/standards/policies laid down by the Council, but after giving due opportunity to explain its position. Regulation 3.7 empowers the Council to report its finding along with its recommendation in respect of technical entities of the universities and institutions declared as Deemed to be University to the Central and/or State Government concerned; the University Grants Commission and the relevant accreditation bodies/agencies in India for necessary action at their end.

53. In compliance of the order dated 21.05.2009 passed by this court, as reproduced above, an affidavit dated 06.10.2009 has been filed on behalf of AICTE, wherein it has been stated that IGNOU Act created a University for distance education deriving its power under Entry 25, List-III of Seventh Schedule in view of the judgment of the Hon'ble Supreme Court in Annamalai University's case (supra) and that the IGNOU through its agency DEC has no power of authority to offer distance education through study centre/off campus of the deemed to be University. Hence, any technical degree granted by such study centre is without any authority of law. It is pointed out that role of AICTE has been excluded in terms of the Hon'ble Supreme Court judgment in Bharathidasan University's case (supra) from the Universities established by statute but does not exclude the deemed to be Universities, which is a technical institution covered by AICTE Act. Reliance has been placed upon **Kurmanchal Institution of Degree & Diploma & others Vs. Chancellor, M.J.P. Rohilkhand University & others (2007) 6 SCC 35**, to contend that no University can offer the study centre or degree beyond the territorial jurisdiction of the

University. It is pointed out that AICTE has no statutory penal power to proceed against the defaulting distance education centres and hence being a tooth less body in this regard is unable to do much. However, steps have been taken to curb the menace of mushrooming of unauthorized distance education centres and to inform general public of these unauthorized programmes by unapproved distant mode.

54. In response to question No.1, it is stated that only University created under the Statutes were exempted from the approval of AICTE, whereas deemed to be Universities are required to seek approval of the AICTE and no deemed university can start technical course without the approval of AICTE. No deemed university can offer study centres off the campus for conferring degrees in technical courses being beyond the territorial jurisdiction of the deemed to be university. The deemed to be university is not having more status than a technical institution and are subject to the rules and regulations of the AICTE and that AICTE has not given its approval to start study centres for technical courses and award degrees.

55. Mr. Singla, learned counsel representing AICTE, has produced Minutes of Meeting of Joint Committee of All India Council (AICTE) and Distance Education Council (DEC) held on 28.02.2005 and also subsequent decisions thereon by the AICTE. In the said minutes, the reference is made to two sub Committees constituted by AICTE-DEC to address the issues for distance education programmes in the area of Information Technology and Management Studies. It was resolved as under:

“3. It was decided that the norms & standards already developed for Information Technology and Management Studies in distance mode with any modification required be placed before the Chairman, AICTE for

approval to avoid any further delay. The decision could be later placed before the Executive Committee of AICTE for ratification.

4. Since MBA, MCA programmes of IGNOU fulfill all the requirements prescribed in norms & standards, a general circular be issued by AICTE recognizing these degrees on the lines of a similar circular issued by UGC for all degrees and programmes of IGNOU.”

56. In 50th Executive Committee held on 19.04.2005, the norms and standards of programmes offered in Distance Education Mode in the disciplines of Management Studies and Information Technology, as decided by the Joint Committee, were approved. The minutes of proceedings of such 50th meeting of the Executive Committee were approved in 51st meeting of the Executive Committee held on 30.09.2005.

57. It may be mentioned that on 10.05.2007, a Memorandum of Understanding for a period of three years was signed by Chairman of the Commission; Member Secretary of AICTE and Director, DEC with the object of avoiding duplication of efforts in streamlining of activities in pursuit of excellence in technical and general education. Item No.56.04.08 of the meeting of AICTE is in respect of such Memorandum. Since there was no specific authorization in favour of the Secretary, AICTE, to enter into such MoU, the decision in respect of signing of MoU was ratified in the emergent meeting of the Council held on 13.07.2010. The agenda and the decision of the Council held on 13.07.2010 read as under:

“Item No.2.3	To ratify the decision regarding signing of an MOU amongst AICTE, UGC & DEC for facilitating single window access to the distance education providers; granting post facto approval and to accord consent/approval for constitution of the Committee.
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A Memorandum of Understanding was signed by the Chairmen of University Grants Commission (UGC), All India Council for Technical Education (AICTE) AND Distance Education Council (DEC) of IGNOU on 10th May 2007 (Copies enclosed) aiming to avoid duplication of

efforts in streamlining of activities in pursuit of excellence in technical and general education through distance and mixed mode in the country and for facilitating single window access to the distance education providers. The term of the MOU has expired on 5th May 2010. The MOU was in operation and the representatives of AICTE were nominated on the Tripartite Committee referred to in MOU. The then Member Secretary of AICTE as well as present acting Member Secretary attended the meeting of the Tripartite Committee. The Hon'ble Minister of Human Resource Development (HRD), has desired to constitute a committee of the Chairmen of AICTE, UGC and DEC for dealing with the matters pertaining to approval of the programmes and courses to be imparted through these distance education providers. In a recent meeting of Chairmen UGC, AICTE and DEC chaired by Secretary (Higher Education), the issue of ratification of MOU by AICTE was discussed. As per the records available, there is no indication of competent approval of the said MOU.

The objective of signing the MOU, apparently, was to prove the single window access to the distance education providers seeking approvals of Distance Education Council, UGC and AICTE wherever necessary. The Council is requested to kindly consider and grant post facto approval for signing the MOU enclosed as Annexure 2.3.1. The Council may also kindly take a note of the decision of HRM and accord its consent/approval for constitution of the Committee as desired by the Hon'ble HRM.

The Council is requested to ratify the decision.

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Item No.2.3 To ratify the decision regarding signing of MoU amongst AICTE, UGC and DEC for facilitating single window access to the distance education providers, granting post facto approval and to accord consent/approval for constitution of the Committee.

The Council ratified the decision and granted post facto approval to signing of MoU amongst AICTE, UGC and DEC for avoiding duplication of efforts and streamlining the activities for facilitating single window access to the distance education providers. The Council also granted consent for constitution of a tripartite Committee consisting of the Chairmen of AICTE, UGC and DEC as recommendatory group for dealing with the matters pertaining to distance education mode in harmony.”

58. Though the AICTE has ratified the signing of MoU, but there is no ratification of the decision taken by the Joint Committee or that the Member Secretary is authorized to represent AICTE in the meetings of the Joint Committee.

59. AICTE in response to an application under RTI Act informed a citizen that it has not granted ex post facto approval to Vinayaka Mission's University, Tamil Nadu, IASE, Gandhi Vidya Mandir, Sardar Shahar (Rajasthan) and JRN Rajasthan Vidyapeeth, Udaipur, Rajasthan to conduct B.Tech courses under distance education mode. The said letter dated 26.05.2008 reads as under:

“Point-B AICTE has not granted approval/ex-post-facto approval to Vinayaka Mission's University, Tamil Nadu, IASE, Gandhi Vidya Mandir, Sardar Shahar (Rajasthan) and JRN Rajasthan Vidyapeeth, Udaipur, Rajasthan to conduct B.E./B.Tech. courses under Distance Education Mode.

Point-C As a member of UGC, AICTE and DEC Joint Committee, AICTE has not approved any institution for offering technical education through distance education mode.”

V. *Joint Committee's Constitution, its minutes, scope and consequences*

60. To resolve inter-se issues between the three statutory bodies, i.e. University Grants Commission; All India Council for Technical Education and Distance Education Council (an authority of IGNOU under Statute 28 of the IGNOU Act, a Memorandum of Understanding was arrived at on 10.05.2007. Some of the clauses read as under:

“PREAMBLE

- (a) UGC, AICTE and DEC agree to work in close cooperation, in pursuit of excellence in Technical and General Education through distance and mixed mode in the country.
- (b) To ensure quality of technical and general education offered through distance and mixed mode, UGC and AICTE agree to utilize the expertise and involvement of DEC in such functions as review of the programmes & courses, curricula, norms and standards and approval of new courses and institutions, periodic review of the institution/programmes and coordination of inspection and approval activities.
- (c) The Memorandum of Understanding is aimed to avoid duplication of efforts in streamlining of activities.

xxx xxx xxx

TERMS OF REFERENCE OF MOU

xxx xxx xxx

(3) The UGC, AICTE and DEC Joint Committee shall comprise the following:

a. xxxx

xxx xxx xxx

(8) The recommendations of the Expert Committee will be placed before the Joint Committee for consideration and approval.

xxx xxx xxx

(10) The Joint Committee shall also evolve a mechanism for monitoring the existing institutions conducting courses/programmes in ‘distance and mixed mode’ for ensuring maintenance of norms & standards provided UGC, AICTE and DEC. It will also cause inspections to existing institutions conducting technical and general education to courses/programmes through distant and mixed mode for the purpose of continuation/withdrawal of approval by AICTE in respect of technical institutions and UGC in respect of Universities including Deemed to be Universities.”

61. The Minutes of the various Meetings of the Joint Committee of All India Council for Technical Education (AICTE), Distance Education Council (DEC) and University Grants Commission (UGC) have been

produced by Shri Tejpal, learned counsel representing IGNOU. Some of the relevant extracts from such meetings read as under:

“MINUTES OF THE FIRST MEETING HELD ON 11TH MAY, 2007

xxx xxx xxx

The Chairman, DEC welcomed all the members and thanked the Chairman of UGC and AICTE, who took the initiative for the joint effort in signing the MoU and agreeing to hold the first Joint Committee meeting the very next day, i.e. today 11th May, 2007. The Chairman, DEC appraised the members of the major issues concerning Distance Education Institutions in the country. He stated that a number of distance education programmes are being offered for commercial purposes. There is deterioration of quality, particularly in technical and professional programmes that are being offered through distance mode. The Chairman, DEC expressed his concern over these issues and hoped that this Joint Committee will be able to ensure the quality of all distance education programmes in general and professional and technical programmes in particular.

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Based on the deliberations, the following decisions were taken:

- For any institution/university to offer distance education programmes, it is mandatory for them to offer the same programme in face to face mode.

xxx xxx xxx

- Study Centres should be managed by the institution and no franchising of any kind would be allowed.

xxx xxx xxx

- For professional and technical programmes, the Joint Committee would decide the number of students and also the number of study centres. Admission will be based on merit and the reservation policy. The number of seats would vary from institution to institution depending upon the nature of institutions, its resources and infrastructure available.
- The Joint Committee will design new formats with inputs from all the three apex bodies. The new formats will have to be prepared for:
 - (i) Submitting information by the Institution; and
 - (ii) For approval by the Joint Committee.
- A separate committee will be constituted by the three apex bodies for developing these norms. Three officials have been nominated by the respective bodies, namely, Prof. Madhu Murthy, Advisor, AICTE; Dr. Surinder Singh, Deputy Secretary, UGC and Dr. Nalini Lele, Deputy Director, DEC.
- DEC has to provide the list of institutions with the programmes that they offer to the Joint Committee members at the earliest. Thereafter,

the list will be sent to AICTE and UGC for nomination of their experts based on the programmes the institutions offer.

62. In the first meeting, as per minutes reproduced above, it was decided to constitute a separate Committee for developing new formats with inputs from the three apex bodies. In the second Meeting, the format prepared was approved and while considering Item No.2, it was decided to constitute a sub Committee to examine all the proposals received from various Universities/Institutions and that the Joint Committee will decide on the status of recognition of distance learning programmes of the institutions on the basis of recommendations of the Sub Committee. The minutes also record that the Members of the Joint Committee were of the opinion that all the autonomous private institutions that have applied to AICTE must be asked to submit their proposals in the newly developed proforma approved by the Joint Committee and the committee will examine the merit of giving recognition to these institutions to offer distance education programmes. The relevant extract from the second meeting held on 14th May, 2007 reads as under:

.....All universities Central/State/Deemed should certify that they have applied with the approval of their respective statutory bodies for offering programmes through distance mode.”

63. The Sub Committee, so decided to be constituted, considered the proposal for ex-post facto approval in its meeting held on 01/02.08.2007 not on the basis of any fresh proposal submitted in the new proforma, but on the basis of existing reports even of the year 2004 (in the case of respondent No.10, the report is based on the visit on 15/16.06.2007). The minutes were specific to the effect that all autonomous private institutions that have applied to DEC/AICTE have to submit their proposals in the format earlier approved. Such minutes of the sub-committee denote that in

the case of technical education, the proposals have to be considered by AICTE. The minutes of the meeting of the Sub Committee are as under:

“1. Allahabad Agricultural Institute – Deemed University (AAI-DU)

Visit dates 26th and 27th October, 2004

Recommendations

The visiting committee recommends that the Directors of Distance Education may be considered for approval by the Distance Education council to offer various programmes through the distance mode subject to the following conditions:

1. The university may offer Certificate/Diploma Course for middle level technicians not having graduate or post graduate degree in Agricultural Science.
2. All the academic Counsellors should be given training in delivery of programmes through distance mode and the university should devise training programmes with the help of DEC.
3. The university may be advised in general to ensure that it should not offer such programmes through the distance mode for which expertise is not available in the university.
4. For starting any new programme, the university may be advised to adopt the SIM from other existing SOUs or DEIs to begin with to avoid duplication of efforts.

2. Janardhan Rai Nagar Rajasthan Vidyapeeth University, Udaipur

Visit dates 15th and 16th June, 2007

Recommendations

The visiting committee on examination of the facts makes the following recommendations:

1. The learning materials are available for the programmes on offer by the Directors. However, it should be further improved making it more learner.
2. Audio-Video and use of technology in delivery of programmes need to be strengthened and in the initial phase may be done by the adoption/adaptation of material already available at other universities.

3. The Directorate has a large number of programmes in specialized areas, which is proposed to reduce to 69 (sixty-nine).

4. The Directorate has large number of Study Centres mostly located in private institutions. This should be restricted to a manageable number.

5. The university has also submitted a request to the Committee to consider its proposal for continuation on programmes on grant of post-facto approval.

Keeping in view the above facts, the Committee recommends that the request of the university for post-facto approval may be favourably considered. It also submits that the request of the university for continuation of its programmes may be considered by DEC as per norms being adopted for institutional recognition.

3. *Vinayaka Missions University, Tamil Nadu*

Visit date 4th February, 2007

Recommendations

1. The University may be given recognition to offer programmes through distance mode.

2. The number of programmes may be pruned down.

3. Within one year from the date of recognition given, all course materials should be transformed systematically into SLM format.

4. Further the audio-video programmes, CDs, Portal (that is being developed) should be systematically prepared to match the level of the programmes being offered. This should be undertaken on top priority and completed within one year.

4. *IASE – Deemed University, Gandhi Vidya Mandir, Sardarshahr, Rajasthan*

Visit dates 3rd and 4th September, 2004

Recommendations

The committee recommends that the Directorate of Distance Education may be considered for approval by the Distance Education council to offer various programmes through the distance mode subject to the following conditions:

1. The University may strictly review the functioning of the existing study centres keeping in view the guidelines of DEC for recognition/functioning of Study Centre. The compliance report may be submitted to the DEC within next six months.

2. The University may be advised not to offer such programmes through the distance mode in the Campus viz. BGL, M.Lib., SC., and PG Diploma courses in Fashion & Management.

3. For starting any new programme, the University may be advised to adopt the SIM from other existing SOUs or DEIs to begin with to avoid duplication of efforts.”

64. The above report of the Sub Committee was considered by the Joint Committee in its third Meeting held on 07.08.2007. It was decided that the Universities should be given recognition for the programmes for a period of one year i.e. for the academic year 2007-08. The Committee also accepted the recommendations of the Sub Committee to grant ex post facto approval to the four institutions in question. The relevant minutes read as under:

“xxx xxx xxx

3. Institutions applied for ex-post facto approval

The Joint Committee accepted the recommendations of the Committee appointed by DEC. It accepted the recommendations of granting ex-post facto approval to all the four institutions namely JRN Rajasthan Vidyapeeth, Allahabad Agriculture Institute Deemed University, Vinayaka Missions University, Punjab Technical University and IASE Deemed University up to the current academic year i.e. 2007-08 and the suggestions made by the visiting Expert Committee should be made known to them which should be strictly adhered to. However, they need to apply for formal recognition to DEC for the next academic year.

65. The Joint Committee in its fourth meeting held on October 26, 2007 resolved that DEC should prepare a consolidated list of programmes offered through distance mode, which should be sent to the Commission with the recommendation of the Joint Committee to take necessary action i.e. to get the names of the programmes included in the list maintained by Commission.

66. The fifth meeting of the joint committee was convened on the requisition of AICTE, which was held on April 17, 2008. It was resolved as under:

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The meeting was requisitioned by AICTE to discuss the complaint received against IASE University and Vinayaka Missions University. The members examined the complaint received and agreed upon the seriousness of the complaint. The following decisions were taken:

- Both the institutions should be asked to submit the information in the new format developed and approved by the Joint Committee;
- The Committee noted that these two institutions were given recognition subject to fulfillment of certain conditions within one year. As such, this one year term is getting over and the compliance needs to be examined.
- Visiting Committees should be constituted by the Chairman of the Joint Committee to visit the institutions and review their performance in the context of the guidelines developed by DEC for offering programmes through distance mode in general and in the context of the complaint received more specifically.
- The Committee also resolved that the stipulations given in the Joint MoU regarding the UGC norms and AICTE norms for the respective disciplines be followed while recommending approvals.

67. The sixth meeting was held on July 28, 2008, which noticed the pending visit of the committee to the two Institutions and resolved:

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1. Confirmation of the Minutes of the Fifth Joint Committee Meeting

The convener requested the members present to confirm the minutes of the 5th Joint Committee meeting and the minutes were confirmed. Thereafter, the action taken report was presented by him wherein he stated that the panel of experts is pending from the UGC in order to execute the visit to the two institutions under review, namely IASE Deemed University, Sadarshahr and Vinayaka Missions University, Salem.

2. Recognition of Universities and Institutions offering programmes through distance mode – Review of Procedures

The Director, DEC presented a brief report on the current status of the recognition process drawing the attention of the members to important

issues that need deliberation and discussion. The reference was made to the MHRD's notification dated 5th April, 2006, which states that the Deemed to be Universities can offer programmes without prior approval of the UGC and AICTE, subject to the maintenance of norms and standards laid down by the respective professional Councils. Attention of the members was also drawn to the clause of the MoU, which says that the letter of approval is to be signed by the Secretary, UGC; Member Secretary, AICTE and the Director, DEC. The Director, DEC suggested that once the Joint Committee decided to give approval to a university for offering distance education programmes, the Chairman of the Joint Committee may be authorized to issue the letter in order to expedite the approval process. Members deliberated on these points and the following decisions were taken to streamline the recognition process:

- (i) It was decided that the Chairman, Joint Committee will write to the Chairman, UGC and the Chairman, AICTE communicating that once the decision on approval is taken by the Joint Committee, it should be considered as approval given by the UGC, AICTE and DEC and the same should not be referred to the respective Commission and Councils; otherwise the entire purpose of the Joint Committee will be defeated.
- (ii) Copies of all applications for approval of programmes in technical and professional areas will be sent to the AICTE and AICTE will send its recommendations to the Joint Committee for further processing.
- (iii) Programmes to be offered through distance mode must adhere to the nomenclature of degrees specified by the UGC.
- (iv) UGC and AICTE will send a panel of experts to the Chairman, Joint Committee within ten days from the day of this Joint Committee meeting and the Chairman will constitute the visiting committees as per the MOU. Reports of the Committees will be placed before the Joint Committee for appropriate decision.

68. In the next meeting of the Joint Committee held on September 12, 2008, the Secretary of the Commission assured the Committee that the panel of experts would be sent latest by 15th September, 2008. It was also decided to await the report of AICTE in respect of the proposals received from 87 Distance Education Institutions offering technical and professional

programmes. Such report was assured by the Member Secretary, AICTE to be submitted to DEC in a week's time.

69. In the next meeting of the Joint Committee held on January 13, 2009, the Member Secretary, AICTE informed the Committee that the AICTE has submitted a list of institutions to DEC that do not come under the purview of AICTE. These institutions are Universities/Deemed Universities offering degree and diploma technical education programmes through distance education mode under the streams of Engineering, Pharmaceutical Education, Architecture and Hotel Management which are not approved by the various Boards of AICTE. It was represented that the AICTE will only consider proposals related to private institutions offering technical educational programmes through distance mode in the streams of MBA including PGDM with different specializations & MCA and the Council will intimate DEC after examining the proposals. The member secretary also informed the committee that a number of private institutions whose proposals are under consideration and were approved by the AICTE till the academic year 2005-06 and the extension of approval is pending with them. The AICTE is developing the norms for technical programmes and the same will be communicated to the DEC for incorporation in the recognition process.

70. The minutes so recorded require clarification. AICTE has stated that technical educational programmes through distance mode in the streams of Business Administration and Computer Application alone would be considered. Such programmes were approved by the Joint Committee of AICTE and DEC in the year 2005 itself. It is also recorded that the technical education programmes through distance education mode under the

streams of Engineering, Pharmaceutical Education, Architecture and Hotel Management are not approved by the various Boards of AICTE. In the said meeting, certain courses of other Universities were approved but none pertained to technical education. The AICTE has informed the Joint Committee that they are in the process of developing norms for offering technical/ professional programmes which will be communicated to DEC as and when they are ready.

71. In the Ninth meeting held on 05.08.2009, Mr. T.N.Kapoor was the representative of AICTE. It was decided as follows:

- “1. Confirmation of the minutes of the 8th Joint Committee meeting held on 13th January, 2009

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Prof. T.N.Kapoor requested that the matter of jurisdiction and the duration of the technical/professional programmes may be decided before taking up the agenda.

Regarding jurisdiction it was decided that the UGC guidelines on jurisdiction of universities including Central/ Deemed/ State/ Private Universities will be applicable in case of programmes offered through Distance Education mode also.

For other Private Institutions the jurisdiction will be limited to their campus or otherwise decided by the Joint Committee on case to case basis.

Regarding duration of the Technical programmes it was decided that the AICTE guidelines should be strictly adhered to and the duration of the programmes will also be mentioned in the final approval letters issued to institutions. The uniformity in terms of duration of programmes should be maintained in case of all institutions.

Regarding post-facto approval it was decided that the post facto approval may be accorded to institutions for the programmes offered between 1st March, 1995 upto 10th May, 2007 i.e. the date of constitution of the Joint Committee. On receipt of the satisfactory recommendations off the Expert Committees the DEC

may accord post facto approval to such Institutions which apply to the DEC for post facto approval. The DEC may fix a cut of date for allowing institutions to apply for post facto approval.

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4. To report the Fact finding report on IASE University, Sardarshahr, Rajasthan

It was decided that the DEC will write to IASE University, Sardarshahr, Rajasthan to submit its comments to the show cause notice issued by the Government of India and a decision to visit the IASE University, Sardarshahr, Rajasthan based on its proposal to offer programs through Distance Education mode will be taken up after that based on the decision of the Government of India in the matter. Till such time IASE University should not offer the programmes through Distance Education mode.

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7. Any other item with the permission of Chair

The members were informed of the recent letter issued by MHRD dated 29.07.2009 regarding withdrawal permission given to Institutions to conduct B. Tech/B.E. Programmes through Distance Mode and also stop admissions to such programmes from the current year onwards.

The members expressed that it was a serious matter and should be taken up in the meeting of the Distance Education Council. The members took a unanimous decision that till such time the matter is not resolved the Joint Committee will not accord approval to B.Tech/BE Programmes”

72. Another meeting of the Joint Committee was held on August 17, 2009, termed extended Ninth meeting. In the said meeting the following decisions were taken, though the representative of AICTE has not agreed to the minutes recorded against Item No.4, which are to the effect to write to Ministry of Human Resource Development for reconsideration of directive on the withdrawal of B.Tech/B.E. programmes through distance mode.

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The following points were noted and decisions taken:

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3. The eligibility and duration of programmes will be as per the DEC norms, and for professional and technical programmes (MBA / PGDBM, MCA) as per the norms laid down by the AICTE. On the request of the Member Secretary, AICTE, the letter of AICTE dated 17.08.2009 was tabled. The content of the letter regarding the programmes was in variance with earlier policy of the AICTE where MCA and other computer programmes were also considered. Since the guidelines and the visits were based on the earlier guidelines, this change in the guidelines of AICTE were noted by the members and it was decided that till the decision of Chairman, AICTE regarding MCA programme is conveyed by the AICTE, the Joint Committee will keep recognition of MCA programme in abeyance. No technical programmes (as per the AICTE) will be considered through distance mode for recognition of the Joint Committee.

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5. In case of dual mode universities/institutions only such programmes shall be offered through distance mode which are offered by the University/Institution concerned through regular face to face mode. As regards the Open Universities, they shall offer only such programmes for which full fledged departments exist in the University concerned.
6. All members agreed that the Joint Committee will strictly adhere to the norms pertaining to duration, i.e. 3 years for MBA/MCA programme including PGDBM equivalent to MBA. All Programmes of Management of 1 year duration will be regarded as Diploma Programme in Management and cannot be termed as Post Graduate Diploma. All certificate programmes will be of 6 months duration.

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9. Regarding territorial jurisdiction for offering programmes through distance mode it has been decided that the latest UGC notifications will prevail over all previous notifications and circulars. As per the UGC notifications dated June, 2009, State University can offer (i) programmes only within the State; and (iii) Deemed to be University can offer programmes from Head

quarters. However, Deemed Universities may seek the permission from UGC to open off campus centers in other states, and offer Distance Education Programmes through the approved off campuses only after approval of UGC and DEC, (iii) Central Universities will adhere to jurisdiction as per their Act (iv) The territorial jurisdiction of the Institutions other than Universities shall be their Head quarters, and in no case outside the State concerned. The letter of recognition will clearly state the territorial jurisdiction of the University/Institution.

10. The Distance Education Council prohibits franchising of Study Centres and this should be clearly stated in the recognition letter issued by the DEC. Each University/Institution will give an affidavit to this effect.”

From the perusal of the minutes, it transpires that AICTE has approved the imparting of technical education through the distance education in the field of MBA/ PGDBM and MCA and not in respect of B.Tech and BE programmes and that Deemed to be Universities can offer programmes from Head Quarters but can seek permission from the Commission to open off campus centers in other states and can offer Distance Education Programmes through the approved off campuses only after approval of the Commission and DEC.

**VI J.R.N.Rajasthan Vidyapeeth Deemed University, Udaipur
(Respondent No.-10) – its history, constitution and the stand before
this Court**

73. The Rajasthan Vidyapeeth was founded on 21.08.1937 by Pt. Janardan Rai Nagar, as a night college to prepare the students to appear in the examinations conducted by Hindi Sahitya Samelan. It was established with an objective that youth and adults would earn their bread in the day and would study in the night. Such night study centres became centres for freedom struggle as well. After independence, it was registered under the

Mewar Societies Registration Act 1948 on 07.12.1947 under the name of 'Rajasthan Vishwa Vidyapeeth, Udaipur'. On 21.12.1978, a proposal for recognizing the Rajasthan Vidyapeeth as a 'Deemed University' was submitted. The aims and objectives of Rajasthan Vidyapeeth appended with the aforesaid proposal do not deal with any technical education, but are in respect of adult and continuing education as well as evening institutes for workers engaged in manual occupations and post-graduate schools of social work etc.

74. It was on 09.12.1986, a Memorandum of Association (MoA) was registered in respect of self governing Society registered under the Rajasthan Societies Registration Act, 1958 with its headquarters at Udaipur. Clause 5 of such MoA contains the objectives of Rajasthan Vidyapeeth, Udaipur, but none of them again relates to technical education. It was on 12.01.1987, respondent No.10 was granted the status of deemed to be University by the Ministry of Human Resource Development, Government of India (Department of Education). The relevant declaration reads as under:

"Notification

In exercise of the powers conferred by Section 3 of the University Grants Commission Act, 1956 (3 of 1956), the Central Government, on the advice of the Commission, hereby declare that the Rajasthan Vidyapeeth, Udaipur shall be deemed to be a University for the purposes of the aforesaid Act."

Subsequently, the name of this Institute was changed to "Janardan Rai Nagar Rajasthan Vidyapeeth, Udaipur, Rajasthan" (for short 'JRN Vidyapeeth') by Central Government vide notification dated 19.08.2003.

75. Respondent No.10 sought permission from DEC to launch programmes through distance mode vide communication dated 17.08.2001. The DEC permitted the said respondent on 26.9.2001 to offer distance education in accordance with the guidelines prepared by the Council. The communication dated 26.09.2001 (Annexure R-10/6) reads as under:

“Sub: Permission to start distance mode programmes by Distance Education being Rajasthan Vidyapeeth (Deemed) University

Dear Dr. Pradhan

This has reference to your letter No.PU/Pride/12067/2001 dated 17.08.2001 addressed to the Charm a, DEC seeking permission from Distance Education Council to launch programs through distance mode.

Distance education programmes should be offered in accordance with the guidelines prepared by the council. Kindly ensure that the establishment of your Distance Education Wing and the development and design of courses meet the norms and standards prescribed by the Council.”

76. On 02.04.2004, JRN Vidyapeeth sought ex post facto approval for study centres under distance education by addressing communication to the Commission in response to its communication dated 16th March 2004 and relying upon the communication dated 26.09.2001 addressed to it by DEC for starting distance education programme. The said communication reads as under:

“Sub.: Ex post facto approval for Study Centres under Distance Education

Dear Madam,

This has reference to your letter No.D.O.No.F.6-7/2003 (CPP-I) dated March 16, 2004. As desired by you, I am submitted herewith the following:

1. I am informing you that JRN Rajasthan Vidyapeeth (Deemed) University, Udaipur, is declared deemed to be university under Section 3 of the University Grants Commission, 1956 (3 of 1956) by

Ministry of Human Resource Development vide its letter No.F.9-5/84.U.3 dt. 12.01.87.

2. As per UGC Regulations, 1985 for imparting the distance education programmes by setting-up of Study Centres outside the headquarter, following the guidelines laid down in it, our University started the distance education programmes through Study Centres. The University first approached the Distance Education Council, New Delhi for starting the distance education programme and got permission of the DEC for the same vide DEC letter No.4614 dated 26.09.2001.
3. I am enclosing herewith the detailed proposals of 517 Study Centres in the prescribed proforma given by you. Some of the Study Centres application is under process / pending with the University, the details of these under process / pending Study Centres will be submitted to you soon.

I request your honour to please process the same and also inspect the Study Centres and give us the ex-post facto approval.

I also request your honour to please provide us the new University Grants Commission guidelines for setting-up the Study Centres under distance education mode so that in future, the University will process accordingly.”

77. On 10.05.2004, JRN Vidyapeeth addressed a communication to the DEC for approval of the courses. Such communication reads as under:

“With due respect, we are to inform you that the University was established Directorate of Distance Education in the year 2001 according to the norms and standards of the Distance Education Council vide its letter No.DEC/CCI/2001/4614 dated 26.09.2001.

The University is running several programs in different fields leading to Certificate, Diploma and Degrees. All the programs are designed by experts of related fields and are approved by the Academic Council of the University. The University Grants Commission has also no objection for the Certificate / Diploma courses. The Medical Council of India for paramedical courses and Veterinary Council of India for Veterinary courses has no objection to run these courses.

But recently we know that each program should be approved separately from the Distance Education Council. So, we are sending the first phase of our proposal containing 42 (forty two) programs in detail. We had attached Proforma II or Annexure III per program-wise and all material of 42 programs required by you separately in 42 bags. Proforma – I a or Annexure – I is attached with this letter, Programme fees are attached to each program separately in your respected favour.”

78. The said respondent has placed reliance upon communication dated 28.08.2001 by the Commission to Sikkim Manipal University of Health, Medical and Technological Sciences, Gangtok to the effect that the Universities are permitted to award the degrees through Distance Education at their own centres in different parts of the country. The Commission vide circular dated 09.08.2005 as modified on 23.08.2005 put on web portal that it has not given permission to any deemed to be University to offer Distance Education through its study centres. DEC also issued a circular on 05.01.2006 (Annexure R-10/13) that the programmes of the respondents-deemed to be Universities through the distance mode are not approved by DEC.

79. The stand of respondent No.10 is that such circulars are subject matter of challenge in other High Courts and there are interim orders against such circulars. It is the further stand of the said respondent that it has submitted for ex post facto approval vide letter dated 04.07.2006 and 22.08.2006, which were accepted by the Commission on 03.07.2006. Respondent No.10 has also relied upon the proceedings of the Joint Committee in respect of grant of approval to the courses run through the distance education mode.

80. JRN Vidyapeeth – respondent No.10 has also produced ‘report of the Committee to suggest measures to regulate the standards of education being imparted through distance mode (Annexure R-10/111) under the Chairmanship of Prof. N.R.Madhava Menon appointed vide office memo dated 05.08.2010 by Ministry of Human Resource Development. The terms of Reference of the Committee are as under:

- “* To harmonize the legal position in respect of distance education programmes in various disciplines, as they concern the UGC Act, AICTE Act and IGNOU Act
- * To recommend framework for approval of Distance Education Courses/Institutions within functional jurisdiction of UGC, AICTE and DEC in dealing with the subject matters of distance education
- * To recommend outcome benchmarks for distance education systems which will facilitate equivalence with conventional modes
- * To recommend guidelines for processing of the approval of technical programmes through distance and mixed mode
- * to suggest ways towards enhanced contribution of Distance Education to reach the targeted Gross Enrolment Ratio (GER) of 30% by 2020”

81. The Committee has noticed that in 1947, when India became independent, there were about 100 industrial training institutes (ITIs), 53 polytechnics and 38 engineering colleges preparing students for the award of certificate, diploma and bachelor’s degree programmes. Postgraduate education programmes were started during the early nineteen fifties followed by doctoral programmes. In para 5.4.4, the Committee records that the School of Engineering and Technology of the IGNOU has the responsibility of initiating academic, continuing and extension education

programmes in the areas of engineering and technology and that the School has the following programmes:

- “* Bachelor of Technology in Construction Management, Water Resources Engineering and Mechanical Engineering (Computer Integrated Manufacturing)
- * Bachelor of Technology, Advanced Diploma in Construction Management (ADCM)
- * Advanced Diploma in Water Resources Engineering (ADWRE)
- * Advanced Diploma in Computer Integrated Manufacturing (ADCIM)
- * Diploma in Civil Engineering (Army Personnel) (DCLE)
- * Diploma in Civil Engineering (General Candidates) (DCLE-G)
- * Diploma in Mechanical Engineering (DME)”

82. In respect of the Institutes in question in the present bunch, the Committee observed as under:

“5.4.7 Offer of Technical Programmes by Technical Universities and Deemed Universities

There was sudden increase in the number of technical programmes after the year 2000 as a few Private and deemed Universities such as JRN Rajasthan Vidyapeeth deemed University, Udaipur, IASE Deemed University, Sardarshahr, Rajasthan and Allahabad Agriculture Institute now renamed as Sam Higginbottom Institute of Agriculture, Technology and Sciences, Allahabad – started offering programmes such as Diploma in Engineering, B.Tech and M.Tech programmes. Many more Universities and Institutions have followed the suit. Some of them have even franchised the programme delivery and even established study centres in non AICTE approved Colleges. This subsequently became an issue for ensuring quality in technical / profession programmes. Because of the high demand of technical and managerial expertise and the value of such degrees, the ODL mode has emerged as offering solution but in the process it has dented its credibility so much that employers have started ignoring their degrees / certificates”.

83. In Para 5.5, considering the National Policy on Education, 1986 on Technical and Management Education, the Committee observed that AICTE does not recognize technical education through ODL mode except MBA and MCA and that AICTE has not felt the need to develop benchmarks for offering other technical and management programmes through distance mode.

84. The Committee though observed that the Policy of AICTE to allow only MBA and MCA programmes through ODL mode does not seem to be in consonance with National Policy on Education, 1986. In Chapter VI, the Committee has made the following relevant recommendations:

“6.3 The Committee is convinced that “Higher Education” means only and only “Quality Education”, otherwise it loses its purpose and value. Eyebrows are often raised about the poor quality of education being imparted through ODL system, particularly, in respect of technical and professional programmes, which require development of certain skills through hands on practice. Presently, AICTE permits only MBA and MCA courses, that too, only if the Tripartite Committee (AICTE, UGC and DEC) approves them. The decision not to permit other technical and professional courses through distance mode is mainly due to their concern for quality. The Committee, after having heard all points of views on the matter, is of the opinion that quality is not a matter of concern in ODL system only. It is a matter of equal concern in conventional system as well, whether it is general, technical or professional programmes.

The Committee, therefore feels that barring technical and professional programmes totally through distance mode will be against the accepted policy of Government of India of expanding opportunities for higher education and making it inclusive as an instrument of democratizing education and making it a life long process. The inherent advantages of the flexibility to move from education to work and vice versa and innovativeness of the ODL system, so well suited to the diverse requirements of the citizens of the country, need to be harnessed in full for enhancing the productivity of the human resource.

Besides, Part VI of the National Policy on Education, 1986 dealing with “Technical and Management Education” stipulates in para 6.6 in unequivocal terms that “in view of the present rigid entry requirements to formal courses restricting the access of a large segment of people to technical and managerial (sic. management) education, programmes through a distance-learning process, including use of the mass media, will be offered. Technical and management education programmes, including education in polytechnics, will also be on a flexible modular pattern based on credits, with provision for multi-point entry. A strong guidance and counseling service will be provided.”

6.4 The Committee is very much concerned with the complaints about the quality of self-learning materials used by a few ODL institutions, inadequate infrastructure facilities at headquarters and study-centres, lack of proper student support services and delivery of programmes through franchisee leading to lowering of the overall quality of education and its commercialization. This has shaken the faith of the employer groups and also common people in the ODL system. The Committee is also aware of the limitations of the UGS or DEC or AICTE or NCTE, in terms of necessary manpower and effective legal framework to reign in the foul players.

The Committee is, therefore, of the view that an effective regulatory system must be put in place before letting technical education through ODL mode is allowed extensively in all types of institutions. Before allowing technical and professional programmes through the ODL system, the DEC, in conformity with the AICTE norms and standards, will have to develop programme specific benchmarks, inter alia, for theory, tutorial/counseling and practical, infrastructure and manpower requirement. Once such system is in position, the DEC should open the ODL system to technical and professional programmes gradually to the extent it can monitor and supervise effectively, either through inspections or technological interventions, to ensure that the learner acquires necessary skill before the completion of the programme”.

85. The Committee also noticed that IGNOU established the Distance Education Council in the year 1991 to discharge the responsibilities as a Regulator of the ODL system and that the DEC is not a statutory body like the UGC or the AICTE and does not enjoy powers to compel obedience to its regulations. In para 6.7, the Committee concluded

that AICTE Act gives the authority to enforce the quality parameters of technical education in the universities and it has the mandate to maintain the norms and standards in technical education through the ODL system. Para 6.7 reads as under:

“6.7 In 1987 the Government of India, by an Act of Parliament, established the All India Council for Technical Education (AICTE) with a view to ensuring proper planning and coordinated development of the technical education system throughout the country and the regulation and proper maintenance of norms and standards in the technical education system. The AICTE Act does not specifically provide for distance education programmes. The AICTE Act significantly excludes universities from its jurisdiction, but it gives the AICTE the authority to enforce the quality parameters of technical education in these universities. Therefore, it is only reasonable to infer that the AICTE has the mandate to maintain the norms and standards in technical education through the ODL system. Gazette notification No.44, F.No.18-15/93-TD.V/TS.IV dated 1st March 1995 of Ministry of Human Resource Development, Government of India also supports this interpretation while providing that the degrees awarded through Distance Education by the Universities and Institutions of National Importance stand automatically recognized for the purpose of employment under the Central Government, provided it has been approved by DEC and wherever necessary by AICTE. In fact this notification has necessitated the approval of the DEC for offering any ODL programme.”

VII Stand of Vinayaka Mission’s Research Foundation, Salem, Tamilnadu – Respondent No.11; Institute of Advanced Studies in Education (IASE), Sardarshahr - Respondent No.13 and Allahabad Agriculture Research Institute, Allahabad, U.P.- respondent No.9 in CWP No.9643 of 2008.

86. Institute of Advanced Studies in Education (IASE), Sardarshahr - respondent No.13 (for short IASE) was declared as deemed to be University by the Central Government vide notification dated

05.06.2002. The UGC issued the following consequential notification on 17.07.2002:-

“In exercise of the powers conferred by Section – 3 of the University Grants Commission Act, 1956, the Central Government, on the recommendation of the Commission, has declared the Institute of Advanced Studies in Education of Gandhi Vidya Mandir, Sardarshahr, Rajasthan as Deemed to be a University for the purpose of the aforesaid Act with effect from 25th June, 2002.

The grant of Deemed to be a University status to Institute of Advanced Studies in Education of Gandhi Vidya Mandir, Srdarshahr, Rajasthan is subject to the condition that it will adhere to the guidelines/instructions issued by UGC from time to time as applicable to the Deemed Universities”.

87. In an affidavit dated 05.08.2009 filed on behalf of the IGNOU, it has been stated that IASE, Vinayaka Mission’s Research Foundation, Salem, Tamilnadu and Allahabad Agricultural Institute, Allahabad, UP have been granted ex post facto approval to all the programmes as per the decision in the 3rd Joint Committee meeting on 07.08.2007 in pursuance of which communication dated 29.08.2007 has been addressed to the said Institutes. It is also averred in the said affidavit that DEC does not insist upon territorial jurisdiction to be followed by institutions to offer programmes through distance education mode and such Universities/Institutions are governed by their own Acts and Statutes on the same. It is also averred that DEC does not separately accord approvals to study centres of any University as the Study centres are set up by a University to provide counseling support, feedback on performance and avenues for interaction etc. to learners and that DEC does not consider any

requests of any University for opening Off-Campus Centres, as UGC is the Statutory Authority on such matters.

88. In an additional affidavit filed on behalf of respondent No.13 i.e. IASE, the proposal for declaring such Institute as deemed to be University has been produced. In the brief history, it was projected that Gandhi Vidya Mandir was established in 1950 at Sardarshahr, a tehsil of Churu District, Rajasthan. Gandhi Vidya Mandir was said to be one of the few educational institutions, which have taken interest in the education of children from balwadi to post-graduate and to doctoral stage. The said Institute proposed to start the following educational courses apart from the Diplomas in Self Employment Generating courses and Rural Development Courses:

- (i) B.Ed. Course (Specialization in Vocational Education)
- (ii) M.Ed. Course (Specialization in Different Subjects)
- (iii) S.T.C.Course
- (iv) M.Phil (Education) Course
- (v) Physical Instructor Training Course- M.P.Ed. B.P.Ed.
- (vi) Yoga Training Course
- (vii) B.Lib Sc Course
- (viii) M.Lib SC Course
- (ix) Master of Social Worker (M.S.W.)
- (x) Bachelor of Computer Application (B.C.A.)
- (xi) Master of Computer Application (M.C.A.)”

89. On the basis of such projections, the deemed to be University status was granted after the Expert Committee of the UGC examined the proposal and visited the Institute on 30/31.01.2002. It noticed that the present faculty strength of the Institute is 20. The Committee observed as under:

“OBSERVATIONS AND RECOMMENDATIONS

1. Looking to the aims and objectives of Gandhi Vidya Mandir; and its performance and achievements during the last five decades; the Committee feels that GVM has created a good climate towards promoting qualitative improvement in education and rural development in a remote and backward area of Bikaner region (Rajasthan). Not only it has promoted value-based education, but has made valuable contribution even in the field of Adult Education and towards promoting the spirit of self-reliant among the rural youth.

2. GVM has considerably encouraged girls education and Women empowerment in the region, though much remains to be done in the near future in gender sensitization and equity.”

90. It was on 14.09.2004, IASE sought approval of its courses. On 12.07.2005, IASE again addressed a letter to seek ex post facto approval from the Commission. The said letter reads as under:

“In reference to the above cited letter, the duly filled in Prescribed Proforma is being enclosed herewith for your kind consideration. It is humbly submitted that, subsequent to your D.O. No.F.6-7/2003(CPP-1) dated 16th March, 2004, we had applied earlier also in September, 2004 (copy enclosed) for the ex-post facto approval, though, we have not heard anything from you so far in this regard.

We are again submitting some important information about our programmes:

1. At the time of conferment of Deemed University status, Gandhi Vidya Mandir, the sponsoring Institute, was running PH.D. (Education), M.Ed., B.Ed., S.T.C. and BAMS (Degree in Ayurved) programmes.
2. M.Phil (Education) programme was started in 2003-2004. We sent two letters to the Commission bearing Nos.IASE/DU/GVM/ SRDR/410/2002 dated 16th Aug. 2002 and IASE/DU/GVM/SRDR/467/2002 dated 16th Sept. 2002 for the permission.
3. We also sought permission from the Commission to start additional courses in Management, medicine, Engineering, Paramedical Science, Home Science, Law, Library Science and Computer Science vide letter IASE/62 dated

29th Jan. 2003. The UGC replied vide letter No.F.1-52/97 (CPP-II) dated 29th July, 2003 stating that out of the degrees mentioned, BMLT and BRIT were not specified by the UGC. We were, however, directed “to offer only those degrees which have already been specified by the UGC”. We started some of the said programmes, without initiating any step to run those courses which were not specified by the UGC.

4. IASE also applied to AICTE for reorganization of its degrees viz. B.E. (Electrical, Mechanical, Electronics & Communications Engg. and Computer Science Engg.) and MBA. AICTE issued LOI for the session 2005-06 to 2007-08. AICTE’s expert Committee has inspected our infra-structure. The Institute has rectified the deficiencies pointed out by AICTE and again submitted for reconsideration of the courses.”

91. Mr. S.K.Monga, learned counsel appearing on behalf of the IASE has pointed out that the communication dated 16.11.2005 declining of approval by the Commission has been stayed by the Rajasthan High Court in CWP No.7267 of 2005 and that the decision of the Commission to review of ex-post facto approvals dated 12.05.2008 is subject matter of CWP No.5372 of 2008 before the Rajasthan High Court and the operation of the said order has been stayed. It is stated that the Institute started B.Tech. programme in the year 2003, but such courses were stayed in 2005, but is continuing with Masters of Business Administration & Education courses. It is also pointed out that there is stay of withdrawal of deemed to be University status in respect of which show cause notice was served on 17.04.2009. It is, thus, contended that the adverse communications of the Commission are subject matter of challenge before the Rajasthan High Court wherein the operation of such communications have been stayed. Therefore, on the basis of such communications, no inference can be raised against the said respondent that the technical education through distance

mode is not permissible. The reliance of the Institutions/Deemed to be Universities is on identical worded letter of 28.09.2007, whereby the DEC has conveyed its approval in respect of the courses run by such Institutions in view of the approval by the statutory bodies of such institutes.

Arguments Raised

92. On the basis of such factual aspects, the learned counsel for the parties has addressed arguments at length. Mr. Chopra, learned Senior Advocate appearing on behalf of the appellant in LPA No.593 of 2010, argued that the learned Single Judge has erred in law while allowing the writ petition while relying upon Bharathidasan University's case (supra). It is contended that the said judgment arose in the context of approval by the Council to a course run by University incorporated by the State Act. It is contended that though a deemed to be University such as the four institutions, subject matter of the present bunch, are entitled to privileges of a University in the matter of award of degrees but such institutions cannot undertake any new course except the disciplines which were taken into consideration at the time of conferring such status by the Central Government. It cannot start or establish any study centre beyond its campus as per the Regulations framed by the Commission. It is contended that deemed to be University is a University for specific purposes and are granted such status in respect of specific discipline or faculty keeping in view the pioneer work done in a specific area and that too within the territorial limits as given in the Memorandum of Association. It is contended that Bharathidasan University's case (supra) is not a case of imparting technical education by distance education mode under the aegis of IGNOU / DEC. The guidelines and regulations of the UGC in respect of

non-formal education were also not under consideration. He has relied upon **State of Tamil Nadu Vs. Adhiyaman Educational & Research Institute & others (1995) 4 SCC 104**; **Prof. Yash Pal & another Vs. State of Chattisgarh& others (2005) 5 SCC 420**; **Rai University Vs. State of Chhattisgarh & others (2005) 7 SCC 330**; **Kurmanchal Institute of Degree and Diploma & others Vs. Chancellor, MJP Rohilkhand University & others (2007) 6 SCC 35**; **Annamalai University Rep. by Registrar Vs. Secretary to Government Information & Tourism Department & others (2009) 4 SCC 590**; and **All India Council for Technical Education Vs. Surinder Kumar Dhawan & others (2009) 11 SCC 726** in support of his contentions that technical education cannot be imparted against the guidelines and regulations framed by UGC which has sought the approval of AICTE.

93. On the basis of the aforesaid judgments, it is contended that AICTE, as an institution consisting of professional and technical experts in the field of education, is to consider the grant approval of new course or programme and also to lay down the norms and standards for any course in technical education including curricula, instructions, assessment and examinations. It is contended that AICTE is the statutory authority created for proper planning and co-ordinated development of the technical education. After the judgment of Hon'ble Supreme Court in **Bharathidasan University's** case (supra), a deemed to be University may not require approval from AICTE, but a deemed to be University can impart non-formal education only in terms of the Regulations framed in the year 1985 by the Commission and/or in terms of guidelines issued in the year 2000. A deemed to be University is prohibited to affiliate any college, but could establish a centre only with the prior approval of the Commission and that

of the State Government where the centre is proposed to be opened. The proposal for starting academic courses is required to be approved by the UGC (*Reference made to clause 15 of the 1992 Guidelines*). The deemed to be the Universities cannot have free run in the matter of imparting education in all subjects without the approval or consultation of the Commission but in the matter of technical education, the Commission while considering the approval of the courses to be started by a deemed to be University require consultation with AICTE. Thus, it is contended that in the year 2001, respondent No.10 has started distance education courses without any approval from the Commission in terms of the guidelines framed in the year 2000, as mentioned above. Such guidelines were applicable in respect of all courses, but in respect of technical education, it was obligatory for the Commission to consult AICTE in terms of Clause 14 of the 2000 guidelines.

94. Mr. Randhir Singh, learned counsel representing the petitioner in Kartar Singh's case has challenged the communication dated 29.08.2007 issued by the DEC as wholly illegal, unwarranted and beyond the scope of authority conferred on DEC. It is contended that on the basis of such communication, the deemed to be University cannot grant Decrees through the distance education courses in technical subjects without any consultation or approval of the technical courses or the method of teaching or curriculum from AICTE. It is contended that in pursuance of Circular dated 16.03.2004, the Commission has granted one-time approval to respondent No.10 for students admitted between 01.06.2001 to 31.08.2005 with the condition that it has permission of relevant statutory bodies or the Council wherever necessary. But without even seeking permission from AICTE, the institute is relying upon the communication dated 29.08.2007,

which grants recognition in respect of all programmes on the premise of being approved by the statutory bodies of the Institutes. The permission required was by the statutory bodies or the councils meaning thereby, such as Dental Council of India, Medical Council of India or for that matter AICTE and not the bodies of the institutes. The bodies of such institutes are not the statutory bodies and the approval by such authorities cannot be treated to be permission as required and contemplated by the commission from the statutory bodies and councils. Such communication is in violation of the approval granted by the Commission.

95. Learned counsel has referred to the Minutes of the Committee recommending approval which led to communication dated 29.08.2007 to contend that the consideration or the approval by DEC was not in terms of the communication of the Commission and/ or by the AICTE, the relevant statutory body in the present case. It is contended that even after Bharathidasan University's case (supra), the approval from AICTE may not be required, but a deemed to be University continues to be governed by the Regulations and the guidelines of the Commission and if the Commission has directed a particular mode to be adopted by the Institutes, then the Institute could impart education only in terms of such provisions. It is pointed out that in the year 1985, the Commission has framed Regulations for non-formal as well as for formal education. At that time the technical education was not controlled by a Statute, but by an organization set up by in an executive power of the Central Government. The Commission was primarily dealing with conventional education such as in the fields of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences for which it has framed Regulations. In respect of formal education, the Regulations contemplated 180 actual teaching days on which classes such

as lectures, tutorials, seminars, and practical are to be conducted in an academic year, whereas in a non-formal education, at least 25 lessons, each lesson of one week's reading was required to be completed in each main subject of study. Such Regulations were framed soon after IGNOU Act was enacted in September, 1985. The IGNOU Act was established as an Open University to impart education through distance education mode. As an Open University, the IGNOU is subject to regulatory measures as is framed or adopted by the Commission. The distance education mode came to be formalized only in September, 1991. It is contended that the IGNOU is a University which is governed by the Commission constituted under UGC Act being established under Central Statute.

96. It is argued that the rights and privileges of the deemed to be University are materially different from a University though both are treated to be Universities competent to award degrees in terms of Section 22 of the UGC Act. A deemed to be University is not authorized to affiliate colleges, a right reserved for the Universities. It cannot use the word University in its name. A University created under the Central or State Act is controlled and regulated by the provisions of the Act establishing such University and is answerable to the legislature or parliament as the case may be. The deemed to be University, on the other hand, is an Institute which is granted status of a University. As an Institute, it is governed by all the statutes including AICTE. It is only after such status is conferred; such deemed to be University becomes amenable to the jurisdiction of the Commission. A University is competent to start any programme of education subject to the approvals by the statutory bodies wherever required, whereas deemed to be University is bound to its Memorandum of Association (MoA) and the territorial limits as mentioned in such MoA. Such limits are on the basis of

guidelines issued by UGC in the years 1992 and 2000 and subsequently formalized by UGC (Institutions Deemed to be Universities) Regulations, 2010. It is pointed out that the technical education was not part of the MoA of the Institutes in question nor such Institutes were engaged in imparting technical education at the time of the status of deemed to be Universities was conferred on them. Since such deemed to be Universities were not in the field of technical education at the time of conferment of status of deemed to be Universities, no other course could be started except with the prior approval of the Commission.

97. The courses through distance education mode were started by the deemed to be Universities in the year 2001 or later. The Commission realized the magnitude of the problems created by such courses and issued a Circular on 16.03.2004 directing such deemed to be Universities to seek ex post facto approval to the courses. Except respondent No.10, no other Institute has been granted ex post facto approval by the Commission. Even in respect of respondent No.10, the approval was subject to the permission of relevant statutory bodies or the councils, but DEC in identical worded communication dated 29.08.2007 to all the four Institutes in question, conveyed approval in a clandestine and misleading manner on the ground that programmes are approved by the statutory body of the Institute in question. The approval is always required from the 3rd party and not by the Institute itself, which has started the programmes. The Institutes themselves could not approve their own curriculum. Therefore, the communications dated 29.08.2007 to the four Institutes in question is wholly illegal, unwarranted and against the purpose of imparting technical education. It is contended that the Institutes in question are nothing but teaching shops, distributing degrees for consideration, churning out graduates without any

familiarity with the subjects of degree granted. It is, thus contended that such Institutes have churned out engineers, who have not studied the subjects of engineering or other subjects of technical nature and that too without any practical experience. It is contended that such degree-holders have been employed by the State Government on the strength of the degrees granted by the deemed to be Universities. The safety of the bridges, buildings and roads are, thus, not in safe hands, if such degree-holders are granted employment under the State.

98. It is contended that study centres, as per the Non-formal Regulations of the Commission, contemplated theoretical study as it provided that each study centre should have adequate library facilities i.e. text books, reference materials and lessons and supporting materials. In the Guidelines for granting status of deemed to be University issued in the year 2000, the same specifically contemplate that in case the institution is offering a degree/diploma, in professional subject(s), the academic programme(s) should be recognized by the concerned statutory authority e.g. AICTE, MCI, DCI, CCH, INC, etc. before it applies for a deemed to be university status under Section 3 of the UGC Act (*Clause 4(e) as reproduced in para 12 above*). Still further, Clause 14 of such guidelines contemplates that admission to the various professional courses, such as, Medical Dental, Nursing, Engineering, Pharmacy, Management and Legal Education etc. shall be made on the basis of regulations framed by the Commission in consultation with the respective statutory Councils. Clause 15 contemplates that the deemed to be university can open centres in its own area or in places other than its headquarters with the prior approval of the Commission and that of the State Government of the State where the centre is or are proposed to be opened. It is pointed out that none of the

centre has been established by deemed to be Universities in the State of Punjab & Haryana as well as in Chandigarh with the prior approval of the Commission and of the State Government.

99. Mr. Raghubir Tejpal, learned counsel representing IGNOU argued that IGNOU is not subservient to the Commission in view of Section 5(2) of the Act, which gives overriding effect to the IGNOU Act. To a pointed question, Mr. Tejpal was candid enough to state that technical education such as medicine and engineering courses are not part of the curriculum of IGNOU or DEC. Learned counsel referred to Memorandum of Understanding dated 11.05.2007, the notification of Government of India dated 07.04.2006 and the communication dated 29.07.2008 to assert that the approval of AICTE is not required by a deemed to be University. It is submitted that notification dated 01.03.2005 is in exercise of the executive power of the Union recognizing educational qualifications for the purposes of employment under the State. Learned Counsel made reference to the guidelines issued in the year 2006 for regulating the Establishment and Operation of Open and Distance Learning (ODL) Institutions in India. It is provided in the guidelines that a parent institute which intend to start or has already started distance education, should have provision in its Memorandum of Association for running distance education programme and the parent institution shall not establish its Study Centres/Regional Centres outside its jurisdiction as specified in the MoA. In case of Deemed to be Universities the offering of distance education programmes will be confined to the state in which the main campus of the parent institution is located, except for programmes that the culturally and linguistically relevant even outside their state. In a hand-book issued in the year 2007, Part II Clause (iv) contemplated that in case of Professional/Specific

Programmes norms/guidelines of the respective apex body are to be followed.

100. On 16.08.2012, Dr. Bharat Bhushan, Director, DEC and Dr. Nalini Lele, Director, IGNOU appeared before the Court and explained the scope of the role of DEC and the open and distance learning. It was pointed out that in terms of the guidelines issued on 09.02.2007, the DEC in its meeting held on 23.03.2007 changed the process of recognition. It was decided to recognize institutions in place of existing practice of programme evaluation. The Minutes of such meeting have been reproduced in Para 43 of the present judgment. It is pointed out that on the basis of such decision, the requirement of the deemed to be University to submit proposals in respect of each programme came to be dispensed with and the recognition of the institutions were considered sufficient to enable the said Institute to start programmes through the distance education mode.

101. Ms. Ranjana Shahi has produced the communication dated 14.08.2012, as reproduced above in para 36, in support of the stand of the Government of India.

102. Mr. Dahiya, learned counsel representing the Commission points out that DEC is not an Authority created by the Statute, but an Authority created in terms of Section 16(7) of the IGNOU Act. It is pointed out that Section 24 of the IGNOU Act specifies the subjects for which the Statutes can be framed and the first Statute is those set out in the second Schedule. The Board of Management, an authority under Section 16 of the Act, is empowered to make new additional Statutes or to amend/repeal the Statutes already framed. In terms of Section 38 of the Act, the Central Government can order and to make such provisions, which are not in

consistent with the provisions of the Act, if it finds necessary or expedient for removing the difficulty, but such power could be exercised only within three years from the commencement of the Act. It is, thus, contended that the Central Government has no power for making regulations or issuing directions after the expiry of three years. It is pointed out that in terms of the powers conferred under Section 25 of the Act; Statute 28 has been introduced in the year 1991 so as to establish DEC. The powers and functions of the DEC, as enumerated in sub-clause 4 of Statute 28 of the second Schedule does not deal with the standards of the technical education. There is no statute which confers any jurisdiction to the DEC to recognize any institution to impart technical education through distance education mode.

103. Mr. Dahiya has further argued that each deemed to be University intending to start off-campus course is required to obtain permission from the Commission and also from the State Government. The respondent No.10 applied for deemed to be University status in the year 1978 in view of its pioneer work in the field of adult and continuing education. The deemed to be status was granted on 12.01.1987. It was in the year 2001, the respondent No.10 sought permission from DEC to start courses through distance education, but the documents on record does not show, that any course in technical education was also proposed. The Commission offered ex post facto approval on 03.07.2006 to Respondent No 10 but subject to permission from the statutory bodies, but neither the said respondent nor any other respondent sought approval from the AICTE – the relevant statutory body in respect of Technical Education.

104. Mr. I.D.Singla, learned counsel representing AICTE has pointed out that in the joint meeting of AICTE and DEC held on 28.02.2005, the degrees in Master of Business Administration and Master of Computer Applications alone were approved to be offered through mode of distance education. The Memorandum of Understanding signed on 11.05.2007 was for a period of three years. Such understanding came to be ratified more than three years later on 13.07.2010. The AICTE has not granted any approval to any course through the medium of Distance Education by deemed to be universities except the courses in Masters of Business Administration and in Computer Applications..

105. Mr. Ashwani K. Mata, learned Senior Advocate, appearing on behalf of respondent No.10, raised a preliminary objection that public interest litigations are not maintainable as they pertain to service matter. Reference is made to the Maintainability of Public Interest Litigation Rules, 2010 framed by this Court, as published on 08.07.2010. It is contended that the petitions in public interest litigation filed before this Court do not satisfy the maintainability test laid down in the aforesaid Rules, as the subject in respect of which public interest litigation can be entertained in terms of such Rules are matters relating to bonded labour; neglected children; petitions from riot victims; petitions complaining of harassment of torture of persons belonging to Scheduled Castes, Schedules Tribes and Other Backward Classes by the others or by the police; petitions pertaining to environmental pollution; disturbance of ecological balance, forest and wild life and the petitions complaining violation of human rights, alone can be permitted to raised by way of public Interest Litigation. The issues raised in the writ petitions does not pertain to the aforesaid matters, therefore, public interest litigation is not maintainable. Mr. Mata relied upon **Duryodhan**

Sahu (Dr.) v. Jitendra Kumar (1998) 7 SCC 273; **Ashok Kumar Pandey v. State of W.B (2004) SCC 349** and **Dattaraj Nathuji Thaware v. State of Maharashtra (2005) 1 SCC 590** in support of such argument.

106. Learned Senior Counsel also referred to National Education Policy, 1986 to contend that open and distance learning is required for educating large population of our country, as such persons do not have access to education through the formal mode. The Open University established under the IGNOU Act and the DEC created by such University empowers the citizens of this country with knowledge and education to uplift their social education status and to bring at par the disadvantageous section of the society with at par with the students, who have the privilege of obtaining formal education.

107. Learned counsel also referred to the National Policy on Education, 1992, wherein clause 3.11 provides that life-long education is a cherished goal of the educational process. This presupposes universal literacy, opportunities will be provided to the youth, housewives, agricultural and industrial workers and professionals to continue the education of their choice, at the pace suited to them. The future thrust will be in the direction of open and distance learning. It is contended that it is in view of the said policy, respondent No.10 has ventured into distance education to empower the section of the society as delineated in the policy. Reliance was placed upon Clause 6.6 and 6.8 of Part VI pertaining to “Technical and Management Education”. The said clauses read as under:

“6.6 In view of the present rigid entry requirements to formal courses restricting the access of a large segment of people to technical and managerial education, programmes through a distance-learning process, including use of the mass media will be offered. Technical and

management education programmes, including education in polytechnics, will also be on a flexible modular pattern based on credits, with provision for multi-point entry. A strong guidance and counseling service will be provided.

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6.8 Appropriate formal and non-formal programme of technical education will be devised for the benefit of women, the economically and socially weaker sections and the physically handicapped.”

108. It is argued that technical education comes within the purview of distance education. It is argued that respondent No.10 sought approval from the DEC in respect of technical courses vide communication dated 17.08.2001, which was granted on 26.09.2001 as per the communication extracted in para 74 above. It may be noticed that the communication dated 17.08.2001 has not been produced by respondent No.10 or by IGNOU/DEC, as such communication is said to be not available on the records of either respondent No.10 or DEC.

109. Reference is made to Circular dated 03.02.2004 (Annexure R-10/8) issued by DEC in terms of clause 4(a) of Statute 28 that it is mandatory for all Centres/ Institutions/ Directorates offering programmes through distance mode to apply to the DEC and obtain prior approval before starting a new Centre/ Institution/ Directorate of programme. It is in pursuance of such circular, respondent No.10 is said to have submitted an application for approval of 42 programmes/ courses with the assertion that all the programmes are designed by the experts of related fields and are approved by the academic council of the University. The said respondent claimed that Commission has conveyed it's no objection for the certificate/ diploma courses by the Medical Council of India for paramedical courses and Veterinary Council of India for Veterinary courses.

110. It is pointed out that in pursuance of communication dated 16.03.2004 of the Commission, the University sought approval of the courses run by it through the distance education mode and was granted approval by the Commission on 03.07.2006. It is contended that approval from AICTE was not required by a deemed to be University. Learned counsel also referred to a communication dated 11.05.2005 (Annexure R-10/30) addressed to a student of Allahabad by AICTE that technically and legally speaking, the Universities are not required to have AICTE approval for starting any technical programme. Reference is also made to communication dated 01.05.2007 on behalf of the Commission addressed to respondent No.10 and Allahabad Agriculture Institute, Allahabad that for request for ex post facto approval, the DEC be directly contacted till 31.05.2007. It is pointed out that Expert Committee was constituted by DEC, who has given report in respect of respondent No.10 and other Institutes, as reproduced above. Therefore, it is on the basis of such report, the Institute has been granted approval by the DEC. Respondent No.10 has addressed a communication to Commission on 05.12.2007 (Annexure R-10/8) that in view of the approval dated 29.08.2007 by DEC, the University would like to offer distance education programmes in the year 2007-08 as well.

111. Mr. Mata also relies upon Annexure R-13, a communication dated 03.09.2007 from the Director, DEC that such respondent has been granted provisional recognition for offering programmes (approved by the statutory bodies of your university) through distance mode for a period of one year w.e.f. the date of issue of this letter. For the next academic year i.e. June-July, 2008, respondent No.10 was requested to submit fresh application. It was also communicated that DEC has decided not to insist

on territorial jurisdiction to be followed by institutions in offering programmes through distance mode and on that matter universities should be governed by their own Acts and Statutes. It is, thus, contended that respondent No.10 has started the courses in distance education mode after approval from the DEC; applied for ex post fact approval in terms of Circular of Commission, which was granted not only by the Commission, but also by DEC. Therefore, respondent No.10 has not violated any provision of the Statute, Regulations or Instructions.

112. In terms of the order dated 28.08.2012, Mr. Mata has filed additional documents including communication dated 21.12.1978 (Annexure R-10/93), whereby it sought the status of deemed to be University. It is argued that Government of India has communicated on 07.10.1986 in principle acceptance of the recommendation of the Commission in respect of 5 institutions of Respondent No. 10 out of which Mainkyalal Verma Shramjeevi College, Udaipur, is an institution said to be engaged in technical education.

113. The proposal for recognizing the Rajasthan Vidyapeeth as a 'Deemed University' was submitted on the ground that the institution has been working for people's education on the Gandhian lines and it imparts education up to the highest stage with special emphasis on adult and continuing education. The aims and objectives of Rajasthan Vidyapeeth appended with the aforesaid proposal do not deal with any technical education, but are in respect of adult and continuing education as well as evening institutes for workers engaged in manual occupations and post-graduate schools of social work etc. The proposed programmes were as under:

- “1. Programmes of mass-education (including adult and continuing education);
2. Worker’s education programme;
3. Promotion of Rajasthan Culture, language and history;
4. Special Provision for the study of Adivasis
5. Preparing students and teachers to work in the village;
6. Promotion of Research and extension services;
7. Additional short-term courses;
8. Development of Curriculum and text books;
9. Strengthening of the institution of Jantanriya Shilanyas for effective organizational administration;”

114. The respondent No 10 has projected to the Commission and/or the Central Government to the following effect:

“4(a) Shramjeevi College for Workers:

Rajasthan Vidyapeeth made its humble beginning by starting an Evening Institute for workers who are engaged in various manual occupations during the day and who did not have any opportunity to join any formal institution in the day. Seeing the growing demand of Shramjeevi’s (working people), Vidyapeeth then established Shramjeevi College, known as Manikyalal Verma Shramjeevi College in 1956, at Udaipur and Vijay Singh Pathik Shramjeevi College at Ajmer in 1968 both these institutions named after the great freedom fighters of Mewar.”

115. The report of the Expert Committee, which has inspected the Institute on 18/19.09.1989 before the grant of status of deemed to be university has also been produced as part of additional documents forming part of the Annexure R-10/93. The observations of the said Committee read as under:

“23. Rajasthan Vidyapeeth signifies the society which is running various educational and other institutions at several places and is not itself an institution of higher learning. It now aims to become a people’s university so that it may serve the under privileged section of society in rural and tribal areas in a better way through various programmes of extension including adult education and continuing education. It has proposed inclusion of 5 institutions located in Udaipur as part of the

deemed university, of which only 3 are colleges imparting instructions at degree and post-degree level and are affiliated to Udaipur University. These 3 institutions are however functioning independently and have appreciable coordination in their activities. So is the case with the other 2 institutions not affiliated to any university namely Sahitya Sansthan and Institute of Social and Adult Education as well as Janta College. The Vidyapeeth has no campus of its own and all the 5 institutions are situated at different places in Udaipur.

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27. The Committee in view of the emphasis being given to extension and to the integration of extension programmes with university system feels that the Commission should also consider bringing such institutions in the country under Section 3 of its Act which are doing pioneering work in the field of extension and community service and propose to make them an integral part of higher education with well defined programmes of work.

28. Though as indicated above, the Vidyapeeth has not done anything outstanding in the field of teaching and research, it has certainly made a mark in the field of extension and adult education. Although quite a few universities have taken up extension and adult education programmes during the last few years, they are still trying to have their roots so far as the new activity is concerned. Extension and adult, education programmes have, however, found firm roots in the Vidyapeeth, Rajasthan Vidyapeeth has, therefore, a case worth considering for the status of deemed university in view of its contribution to extension programmes and community service....”

116. At the time of grant of deemed to be University status, the objectives of the Respondent No 10 in its first Memorandum of Association are as under:

5. The Vidyapeeth shall have the following objectives:-

(1) Promote education for the masses upto higher stage through its adult and continuing education programmes; provide educational facilities specifically to under privileged working people to enable them to improve their functional efficiency as also their social and economic upliftment, and development literature for Adult and continuing

education programmes in consonance with the Linguistics, Cultural and Development needs of the region;

(2) promote the study of Rajasthani Culture, Language and History, and make special provision for the study of the Cultural, Educational, social, Economic, and Developmental needs of the Tribals of the region;

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117. The MoA was amended subsequently. In the amended Regulations, the Institute of Management Studies was sought to be established in terms of clause 3.6, which reads as under:

“3.6 With a view to enhance the avenues for the graduates of all disciplines, the Institute of Management Studies – a constituent unit of Vidyapeeth conducts the Master’s Degree programmes in Business Administration.”

118. In a subsequent amendment of the MoA of the deemed University dated 27.02.2004, the following are the constituent colleges and Institutions:

4. Authorities of the Janardan Rai Nagar Rajasthan Vidyapeeth

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4.2 Constituent College and Institutions means an Institution for conducting Teaching, Research or providing facilities for Adult Education and Extension maintained and managed or established by the Janardan Rai Nagar Rajasthan Vidyapeeth.

Constituent Colleges and Institutions:

1. xxxxx
2. Manikyalal Verma Shramjeevi (P.G) College, Udaipur
 - a. Faculty of Arts
 - b. Faculty of Commerce
 - c. B.B.M.
 - d. Maharana Kumbha Kala Keadra (Institute of Music and Art)
- 3 to 6 xxx xxx
7. Institute of Management Studies Pratap Nagar, Udaipur
8. Faculty of Medicine, Dabok, Udaipur
 - a. Homeopathic Medical College and Hospital,
 - b. Institute of Paramedical Sciences, Dabok and Udaipur,

c. Physiotherapy Medical College, Dabok, Udaipur.

119. It is thus contended that respondent No.10 has disclosed that it is running a technical institute and that the deemed to be university status was granted in view of the activities of the said respondent in the education field. After the status of deemed to be university is granted to Respondent No. 10, the AICTE has no role in the affairs of the University in view of the judgment of the Hon'ble Supreme Court in Bharathidasan University's case (supra).

120. Reference is made to two Division Bench judgments of this Court in *Sandeep Vs. State of Haryana* (CWP No.212 of 2004 decided on 23.04.2004) and *Suman Lata Vs. State of Haryana* (CWP No.20630 of 2006 decided on 22.02.2007), wherein a Degree granted by a Deemed to be University through distance education mode was found to be a valid degree for the purposes of employment and also to a Division Bench Judgment of Madras High Court reported as (2006) 3 LW 499 *Sathyabhama Institute of Science and Technology Vs. Union of India and others.* Another judgment was brought to our notice by Mr. Deepak Kanwar, Advocate for Respondent No 10, after the arguments were concluded, is that of Orissa High Court in W.P. (C) No.12566 of 2005 titled "*Balragi Charan Nayak & others Vs. State of Orissa & others*" decided on 24.09.2012, wherein a writ of mandamus was claimed to constitute a Committee to inquire into the validity of the establishment and continuance of study centres established by respondent No.5. It has been held that prior approval for a 'Deemed University' to start any new department or course or programme in technical education is not required, but the Universities are to conform the

standards and norms laid down by AICTE following the guidelines/regulations and clarification issued by the Central Government.

121. The arguments raised by other learned counsel for the parties are on the similar lines.

122. We have learned counsel for the parties at length and with their assistance gone through the voluminous record and the case law cited at Bar. Our findings on the issues raised are as under.

Questions arising for consideration and the findings thereon:

I) ***Whether the Public Interest Litigation is not maintainable for the reason that it raises a service dispute?***

123. We do not find any merit in the argument that the writ petitions in public interest litigation in service matter domain are not maintainable. The issue whether the degrees granted by deemed to be Universities in technical education through the distance education mode arises in numerous other cases including in Letters Patent Appeals and the writ Petitions regarding validity of the degrees granted by such deemed to be Universities. Since most of the documents have been produced in the present public interest writ petition, therefore, the said case has been taken as a lead case, but the fact remains that the question raised in the public interest litigation is not restricted to such writ petition, but arises in many other cases.

124. Apart from such fact, the issue raised in the public interest litigation is not a service matter. The degrees granted or the courses conducted by such deemed to be Universities is not a question of service matter. Though the degrees granted may make a candidate eligible for

appointment under the State or its instrumentalities, but that will not bring the present writ petition as a public interest litigation in the service matter, as the question to be examined is the legality of the courses run by such Institutes and not the eligibility of a candidate on the basis such degrees in the matter of employment.

125. The challenge in the public interest litigation is the malady of grant of degrees by the shops under the guise of study centres established by deemed to be Universities without any semblance of educational activities. The grievance is that such unethical conduct of the deemed to be Universities is of duping the candidates, who get tempted to the advertisements and the publicity carried out by these Universities in remote parts of the States and that such Institutes are churning out so called graduates without undergoing the course as per the curriculum approved by the Commission and/or AICTE. Since the candidates aspiring to obtain degrees are numerous, therefore, the petitioner has invoked the writ jurisdiction to advance a public cause to avoid the exploitation and duping of innocent candidates under the guise of employment opportunities under the State or its instrumentalities. Thus, such petitioner has a right to invoke the jurisdiction of this Court.

126. We find that the judgments cited by Mr. Mata are not of any help to the argument raised. In **P. Seshadri Vs. S. Mangati Gopal Reddy (2011) 5 SCC 484**, the Hon'ble Supreme Court observed that the Court is to examine; whether the petition has been filed by a busybody having little or no interest in the proceedings. The credentials, the motive and the objective of the petitioner have to be apparently and patently above board. The respondents- deemed to be Universities have not brought any fact on record

to show that the motive and the objective of the petitioner in invoking writ jurisdiction of this Court lacks objectivity and is a tool of exploitation of the private respondents.

127. In **Centre for Public Interest Litigation Vs. Union of India (2012) 3 SCC 1** (for short '2G Spectrum case'), the Hon'ble Supreme Court observed that it is the duty of the Court to exercise its jurisdiction in larger public interest and rejected the plea of the State that the scope of judicial review should not be exceeded beyond the recognized parameters. This Court in exercise of judicial review under Article 226 is examining the action of the deemed to be Universities in granting degrees through the distance education mode in technical subjects and to some extent inaction of the statutory authorities in failing to regulate the grant of such degrees. Therefore, it is the duty of this Court, as observed in 2G Spectrum case, to exercise its jurisdiction to prevent the youth of these states falling prey in the hands of such deemed to be universities in larger public interest.

128. The Hon'ble Supreme Court has held that the Court is obliged to ensure that it resolves the causes of litigation in the country referring to maxim *boni judicis est causas litium dirimere* i.e take steps that the litigation does not flood the courts. In **Kazia Mohammed Muzzammil v. State of Karnataka, (2010) 8 SCC 155**, the court observed:

“58. We reiterate this principle with respect and approval and hope that all the authorities concerned should take care that timely actions are taken in comity to the rules governing the service and every attempt is made to avoid prejudicial results against the employee/probationer. It is expected of the courts to pass orders which would help in minimising the litigation arising from such similar cases. Timely action by the authority concerned would ensure implementation of rule of fair play on the one hand and serve greater ends of justice on the other. It would also boost the element of greater understanding and improving the employer-employee

relationship in all branches of the State and its instrumentalities. The courts, while pronouncing judgments, should also take into consideration the issuance of direction which would remove the very cause of litigation. *Boni judicis est causas litium dirimere.*”

129. Recently in **Priya Gupta Vs. State of Chhattisgarh (2012) 7 SCC 433**, the court reiterated the principal that courts should take steps for avoiding litigation. It observed:

44. The consistent effort of this Court to direct corrective measures and adherence to law is not only being thwarted by motivated action on the part of the authorities concerned, but there has also been a manifold increase in arbitrary admissions. Repeated defaults have resulted in generating more and more litigation with the passage of time. This Court, thus, now views this matter with greater emphasis on directions that should be made to curb incidents of disobedience.

45. The maxim *boni judicis est causas litium dirimere* places an obligation upon the Court to ensure that it resolves the causes of litigation in the country. Thus, the need of the hour is that binding dicta be prescribed and statutory regulations be enforced, so that all concerned are mandatorily required to implement the time schedule in its true spirit and substance. It is difficult and not even advisable to keep some windows open to meet a particular situation of exception, as it may pose impediments to the smooth implementation of laws and defeat the very object of the scheme. These schedules have been prescribed upon serious consideration by all concerned. They are to be applied *stricto sensu* and cannot be moulded to suit the convenience of some economic or other interest of any institution, especially, in a manner that is bound to result in compromise of the abovestated principles.

130. Therefore, we do not find any merit in the objection raised that the Writ Petitions filed in public interest are not maintainable.

II) Some of the earlier judgments touching the issues raised in the present petition

131. Some of the earlier judgments of the Hon’ble Supreme Court dealing with the UGC Act and/or AICTE Act and/or the IGNOU Act are referred to in the first instance before we examine the arguments raised by

learned counsel for the parties in these cases. We may notice that in none of the judgments all the three Statutes have been considered.

132. In Adhiyman Education & Research Institute case (supra), the Hon'ble Supreme Court was seized of the question as to whether the approval of the State Government is required to establish an Institute imparting technical education. The court held that the AICTE is to provide guidelines for admission of students and has power to withhold or discontinue grants and to de-recognize the institutions where norms and standards laid down by it and directions given by it from time to time are not followed. AICTE has the duty and responsibility that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country. It was held, while considering the provisions of AICTE Act, to the following effect:

“22. The aforesaid provisions of the Act including its preamble make it abundantly clear that the Council has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system. The council is further to evolve suitable performance appraisal system incorporating such norms and mechanisms in enforcing their accountability. It is also required to provide guidelines for admission of students and has power to withhold or discontinue grants and to de-recognize the institutions where norms and standards laid down by it and directions given by it from time to time are not followed. This duty and responsibility cast on the Council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country. For this purpose, the norms and standards to be prescribed for the technical education have to be such as would on the one hand ensure development of technical educational system in all parts of the country uniformly; that there will be a coordination in the technical education and the education imparted in

various parts of the country and will be capable of being integrated in one system; that there will be sufficient number of technically educated individuals and that their growth would be in a planned manner; and that all institutions in the country are in a position to properly maintain the norms and standards that may be prescribed by the Council....”

133. The Hon’ble Supreme Court in Bharathidasan University’s case (supra) examined the regulations framed by the All India Council for Technical Education and held that the approval of the AICTE is not required by a University and the Regulation framed by AICTE requiring approval from AICTE by a University were struck down. In the aforesaid case, the court was considering the requirement of approval from AICTE by a University established by a State Act.

134. In Annamalai University’s case (supra), the University Grants Commission (The Minimum Standards of Instruction for the Grant of the First Degree through Non-Formal/Distance Education in the Faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985 vis-à-vis the provisions of IGNOU Act came up for consideration. Learned Solicitor General had raised an argument that the UGC Act deals with formal education whereas the IGNOU and particularly DEC had the requisite jurisdiction to lay down syllabus as also duration of non-formal education. The Hon’ble Supreme Court held that the alternative system envisaged under the IGNOU Act is not a substitute of the formal education. The UGC Act was enacted for effectuating coordination and determination of standards in universities.

135. In Prof. Yashpal’s case (supra), the provisions of Chhattisgarh Nijikshetra Vishwavidhyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 came up for consideration before the Hon’ble Supreme Court. The challenge in the petition was on the ground that the State Government was

establishing Universities in an indiscriminate and mechanical manner without availability of any infrastructure, teaching facilities or the financial resources. The Court observed like this:

“8. Several Legal issues have also been raised in the writ petitions and the principle being that the manner in which these private universities are functioning would result in creating a complete chaos in the system of higher education in the country and the expert bodies created by the Central Government like the University Grants Commission, the Medical Council of India, the All India Council for Technical Education, etc. for coordination and determination of standards in their own respective fields would not be able to perform their statutory duty and would make their functioning not only difficult but almost impossible.”

136. The Court also observed that it is the responsibility of the Parliament to ensure that proper standards are maintained in institutions for higher education and research throughout the country and also uniformity in the standards. It observed as under:

“33. The consistent and settled view of this Court, therefore, is that in spite of incorporation of Universities as a legislative head being in the State List, the whole gamut of the University which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State legislature on account of a specific Entry on co-ordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which the Parliament alone is competent. It is the responsibility of the Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained.”

The Court concluded as under:

“63. There is hardly any merit in the submission raised. The impugned Act which enables only a proposal of a sponsoring body to be notified as a University is not likely to attract private capital and a University so notified cannot provide education of any kind much less of good quality to a large body of students. What is necessary is actual establishment of institutions having all the infrastructural facilities and qualified teachers

to teach there. Only such colleges or institutions which impart quality education allure the best students. Until such institutions are established which provide high level of teaching and other facilities like well equipped libraries and laboratories and a good academic atmosphere, good students would not be attracted. In the current scenario, students are prepared to go to any corner of the country for getting good education. What is necessary is a large number of good colleges and institutions and not Universities without any teaching facility but having the authority to confer degrees. If good institutions are established for providing higher education, they can be conferred the status of a deemed University by the Central Government in accordance with Section 3 of UGC Act or they can be affiliated to the already existing Universities. The impugned Act has neither achieved nor is capable of achieving the object sought to be projected by the learned counsel as it enables a proposal alone being notified as a University.”

137. In Rai University's case (supra), the question before the Hon'ble Supreme Court was in respect of study centres established by private Universities all over the country in pursuance of an Act of the State of Chhattisgarh, which was struck down by the Hon'ble Supreme Court in Prof. Yashpal's case (supra). It was argued that a large number of students who were studying in various centres outside the State of Chhattisgarh should get facility of affiliation to a State University in Chhattisgarh. It was held that no statute can be enacted which may permit affiliation of any institution or college to a State University in Chhattisgarh, if such institution or college is situated outside the State of Chhattisgarh. However, such institutes were given liberty to seek affiliation in the light of communication dated 23.03.2005 i.e. to seek affiliation of a University of the State, where the study centres are located.

138. In Kurmanchal Institute of Degree & Diploma case (supra), the grant of degree and diploma through a study centre by a University established under the State Act, came up for consideration before the Hon'ble Supreme Court. It was held that each University in the country,

which is recognized under the UGC Act, must have their own territorial jurisdiction save and except for the Central Universities or as specified in the legislative or parliamentary Act. It was held that study centres cannot be permitted to be established beyond the territorial jurisdiction of the University.

139. In **Mahesh Kumar & others Vs. Directorate of Education & others** 140 (2007) DLT 509, the writ petitioners were students pursuing the diploma course in Pharmacy in the institution run by IASE. It was contended that recognition for diploma in Pharmacy is not required before the commencement of the course. The stand of the Pharmacy Council was that it is the responsibility of the institution to obtain approval of the Pharmacy Council of India under Section 12 of the Pharmacy Act before the first batch of the students pass out from the institution.

140. In a petition filed on behalf of the students, the Delhi High Court considering the provisions of the UGC Act, delineated the distinction between the University and the deemed to be University. The Court held to the following effect:

“32. Thus, Section 3 provides that once a institution is declared as a ‘deemed university’ all the provisions of the UGC Act, 1956 shall apply to such institutions. Does it imply that despite all the provision of the UGC Act, 1956 being applicable there is no difference between the ‘Universities’ and ‘Deemed Universities’. If the University Grants Commission considers that the Universities and Deemed Universities are different despite Section 3 of the UGC Act, 1956 and has issued notification in this regard, the petitioners are not entitled to contend that the respondent No. 1, a deemed University is entitled to affiliate other institutions. The petitioners cannot seek any relief contrary to any notification of the UGC without challenging the same and making University Grants Commission as the party to the present writ petition.

33. Under Section 3 of the UGC Act, a deemed University status will be given to those institution that for historical reasons or for any other circumstances are not Universities and yet are doing work of high standard in specialized academic field compared to a University and granting of a University status would enable them to further contribute to the course of higher education which would normally enrich the institution and University system. The University Grants Commission is empowered to take such steps as it may think fit for the promotion and co-ordination and improvement of the university education and for advancing higher education. The UGC may under the Act regulate the powers which are to be exercised by a deemed university which in turn will help in advancing higher education in India. By communication dated 10th May 2005, it was specifically clarified that the 'Deemed University' cannot affiliate other institution. It had come to notice that respondent No. 1 has appointed 900 study centres which generally have two to three rooms with no infrastructure and faculty and the UGC has not permitted respondent No. 1 to have off-campus centers. According to UGC norms, respondent No. 1, deemed university can only give degrees for classes conducted it its own premises. A fortiori the 'Deemed University' cannot conduct examination of other institutions. According to UGC norms, respondent No. 1, deemed university can only give degrees for classes conducted it its own premises. Section 3 of the UGC Act, therefore, does not endow upon a Deemed University an unfettered power to exercise all the powers exercised by a University. In any case the notifications issued by the UGC stipulating that the deemed university can only give degrees for classes conducted in its own premises and cannot affiliate other institutions and if UGC has not permitted respondent No.1 to have off campus centers, then on the petitions of the students of one of the institution, who has already been declined any relief, the relief against the notifications of the UGC cannot be granted to any one.

34. Even if a 'Deemed University' contrary to the notification and norms of the UGC, hypothetically can affiliate other institutions, even then to be an examination authority under the Pharmacy Act, such a 'Deemed University' has to be approved by the Pharmacy Council of India under Section 12 of the Pharmacy Act. The respondent No. 3 had filed various writ petitions seeking similar reliefs including that the respondent No. 1 is competent to be an examination authority which writ petitions were either dismissed or withdrawn by the respondent No. 3. The respondent No. 1 has not been approved under Section 12 of the

Pharmacy Act and no petition has been filed by the respondent No. 1 that it is entitled to be approved by the respondent No. 2.”

141. In Surinder Kumar Dhawan's case (supra), YMCA Institute of Engineering, Faridabad was granted approval for five years Engineering Degree Programme in the year 1997. Earlier the said Institute was granted approval for four years Advance Diploma Course. The Institute wanted to commence one year bridge course to enable the students to appear for the Degree course. The request for the said bridge course was accepted by the State Government, but the AICTE rejected the same. The students of the Institute invoked the writ jurisdiction of this Court. The learned Single Judge allowed the writ petition holding that there cannot be discrimination between Post Diploma holders and Advance Diploma holders, with reference to their entry qualification for diploma course i.e. passing either 10+1 or 10+2 examination. The AICTE challenged the said decision before the Hon'ble Supreme Court, wherein it was held to the following effect:

“14. There is considerable force in the submission of the appellant. Having regard to clauses (i) and (k) of Section 10 of the All India Council for Technical Education Act, 1987 ('Act' for short), it is the function of the AICTE to consider and grant approval for introduction of any new course or programme in consultation with the agencies concerned, and to lay down the norms and standards for any course including curricula, instructions, assessment and examinations.

15. The decision whether a bridge course should be permitted as a programme for enabling diploma holders to secure engineering degree, and if permitted, what should be the norms and standards in regard to entry qualification, content of course instructions and manner of assessing the performance by examinations, are all decisions in academic matters of technical nature. AICTE consists of professional and technical experts in the field of education qualified and equipped to decide on those issues. In fact, a statutory duty is cast on them to decide these matters.”

III) *Whether a Deemed to be University, has the same status as that of a University incorporated by Central Act, or a State Act?*

142. A deemed to be University is not at par with the University established by a Central or State statute. One of the functions of the Commission under the UGC Act is to inquire into the financial needs of Universities in terms of Section 12 (b) of the UGC Act which contemplates disbursement of funds for the maintenance and development to the Universities established or incorporated by or under a Central Act. Section 12 (c) of the UGC Act contemplates the disbursement of the grants to such Universities. Section 12(cc) of the UGC Act, inserted vide Act No.33 of 1972, empowered the Commission to allocate and disburse grants to institutions deemed to be Universities. Insertion of separate clause (cc) is indicative of the fact that legislature dealt with the Universities incorporated by a Statute and by a Notification of the Central Government differently.

143. The process of incorporation; the legislative intent in creating a University by a Statute and another under a Statute; the factors required to be taken in to consideration before such status is granted and the fact a deemed to be University is not permitted to affiliate any college as against the power to affiliate colleges by the Universities incorporated under the Central or the State Statute is quite evident to notice that a University created by a Central or State Statute and another by a notification under the UGC Act are quite distinct in colour and shade though both are competent to grant degrees in terms of Section 22 of the UGC Act. A University established by a Central or State Act has in built control and regulatory mechanism under the Act and is answerable to State Legislature or Parliament as the case may be. On the other hand, a deemed to be University is an Institution before grant of such Status by a delegated

legislative process. If an Institute is to start a course in technical education, it could do so only after the approval of the regulatory bodies such as AICTE. But after grant of deemed to be University status, a recognition of the standing of the said Institute in a particular field of specialization, such University does not require approval from AICTE in that subject. Such approval is part of the process to grant deemed to be University Status. But after such status is granted, a deemed to be University can start new course or programme only with the prior permission of the Commission, which in turn looks for approval from AICTE.

144. Section 23 of the UGC Act prohibits all institutions which also include a deemed to be University to use the expression 'University' except a University established or incorporated by a Central or State Statute. Since the deemed to be University status is granted in terms of specialized field of study in a particular subject and such status does not empower such institution to affiliate any college or to use expression 'University' clearly indicates that a deemed to be University is not at par with a University incorporated by a Statute Central or State. A deemed to be University is entitled to certain privileges particularly that it has right to grant degrees in terms of Section 22 of the Act, but such grant of degrees is restricted in respect of subjects, which such Institution was engaged in at the time of grant of status of such deemed to be University. It is specialized expertise in a particular subject or field of study, the deemed to be University Status is considered and granted whereas, a University is incorporated by a Central or State Statute keeping in view the larger public interest; focused study of particular discipline or to achieve state objective of imparting education in subjects including subjects of medicine, engineering, pharmacy or law etc. Such intention is clarified when the guidelines issued in the year 2000

contemplates that the proposal for starting various academic courses by a deemed to be University shall have to be approved by UGC and that a deemed to be University can open Centre in its own area or at place other than headquarter, but with prior approval of the Commission and the State Government.

145. Therefore, the deemed to be University continues to be governed by the guidelines, circulars and Regulations framed by the Commission but does not acquire an equivalent Status of University as incorporated under a Statute. A deemed to be University is not at par with a University incorporated by a Central or State Statute, though both are competent to award degrees. To return such finding, we draw support from the judgment of Delhi High Court in Mahesh Kumar's case (Supra).

IV) *Prerequisites for the grant of Deemed to be University Status and for starting New Courses/ programmes*

146. Respondent No.10 – JRN Vidyapeeth is the only deemed to be University, which was granted such status in the year 1987. No rules, instructions or guidelines applicable to an Institution seeking status of the Deemed to be Universities, in the year 1987 or earlier have been produced. The first guideline, which has been produced before this Court in respect of grant of status of deemed to be University, is the Revised Guidelines 1992. Such guidelines contemplate that the deemed to be University status is to be granted to an institution, which is strengthening its activities in the field of specialization rather than making efforts towards growing multi-faculty University of general type. The field of specialization is expected to be

innovative and of high-academic standards and institutions imparting routine type of instructions would not qualify for deemed to be University status. In the year 2000, another set of guidelines was issued, the reference to which has been made in Para 12 of this order. Clause 4 of such guidelines reiterates the basic conditions for the grant of deemed to be University status as in the guidelines issued in the year 1992 and also the conditions on the basis of which new course can be started.

147. Mr. Mata, learned Senior Counsel representing respondent No.10 has argued that such Guidelines are applicable to the Institutions seeking status of deemed to be University after issuance of such guidelines but such guidelines are not in respect of an existing deemed to be University, as any guidelines can be only prospective in nature.

148. No doubt, the argument of Mr. Mata that the guidelines will be prospective in nature is correct in law, but the guidelines not only relate to the essential conditions before an institution is declared to be deemed to be University, but also the courses which can be run by a deemed to be University. Such guidelines would be applicable even to the existing deemed to be university. In Clause 4(e) of such guidelines, it is specifically stated that in case the institution is offering a degree/diploma, in professional subjects, the academic programmes should be recognized by the concerned statutory authority before it applies for a deemed to be university status under Section 3 of the UGC Act. The concerned authority in respect of professional courses is AICTE, MCI, DCI, CCH, INC etc. Clause 14 of such guidelines contemplates that admission to the various professional courses, such as, Medical, Dental, Nursing, Engineering, Pharmacy, Management and Legal Education etc. shall be made on the

basis of regulations framed by the UGC in consultation with ‘the respective statutory Councils’. Clause 15 permits the deemed to be university to open centres in its own area or in places other than its headquarters, but with prior approval of Commission and State Government of the State where centres are proposed to be opened. Clause 15 (ii) contemplates that proposal for starting various academic courses require approval of the Commission.

149. Clause 2(1) of such guidelines specifically contemplates that a deemed University desirous of starting the new off-campus center / institution or introducing a new course/ programme in a professional subject, shall comply with all the requirements as are required by statutory professional Councils and obtain their prior approval before approaching the Commission. It clearly establishes that a deemed to be University has to obtain prior approval of the professional Councils and also that starting of any new off campus centre, institution or introducing a new course/ programme in a professional subject requires prior approval of the Commission. In fact, respondent No.10 applied for approval to the Commission in response to the subsequent guidelines issued on 16.3.2004.

150. Therefore, in terms of the guidelines issued by the Commission in the year 2000 and later in the year 2004, the new course/programme could not be started by a Deemed to be University without prior approval of the Commission. However in case of professional courses, the prior approval of the concerned professional councils such as Medical Council of India in the case of Medicine, Dental Council of India in the case of Dentistry and in the case of an Engineering Course from the AICTE is necessary in terms of the guidelines circulated by the Commission.

V) *The extent of territorial jurisdiction of the Deemed to be Universities and the restrictions, if any, in the matter of Subjects in which the Degrees can be granted by such Universities?*

151. The UGC Act is a parent Act enacted for coordination and determination of standards in Universities, therefore, a deemed to be University, which is granted such status by the Central Government on the advice of the Commission will be governed by the directions and guidelines issued by the Commission from time to time. A deemed to be University cannot ignore the directives of the Commission as an apex body constituted by the Parliament for the coordination and determination of standards in Higher Education. It is with the said object, the Commission has framed Regulations in respect of Formal as well as Non-formal education. Regulation 2.1 of the Formal Education Regulations, as reproduced above, is absolute that no student shall be eligible for admission to a First Degree programme 'in any of the faculties' unless he/she has successfully passed the examination conducted by a Board/University at the +2 level of schooling and that every University shall ensure that number of actual teaching days on which classes are held or conducted is not less than 180 in an academic year. The expression 'any of the faculties' in Regulation 2.1 is indicative of the application of Regulations to any discipline or subjects otherwise than governed by a separate Statute. The Non-formal Education Regulations are similarly worded, but instead of class-room study of 180 days in an academic year, the Regulations provide for 25 lessons in each main subject of study, each lesson consisting of one week's reading. Therefore, the Formal and Non-Formal Education Regulations are applicable across board in all faculties in all Universities including the

deemed to be Universities. Regulation 7.5 of the Formal Education Regulation provides that norms laid down by the concerned statutory bodies shall be followed in case of laboratories in professional courses.

152. The Non-Formal Education Regulations permit a University to set up study centres outside its headquarter, where there is reasonable concentration of students. Regulation 6 of the Non-Formal Education Regulations contemplate that every University providing instruction through non-formal/distance education shall furnish to the University Grants Commission information relating to the observance of these Regulations in the form prescribed for the purpose. Apparently, none of the deemed to be Universities has furnished any information to the Commission in terms of Regulation 6 of the Non-Formal Education Regulations, 1985 & 2004.

153. In Kurmanchal Institute of Degree & Diploma & others case (supra), the Hon'ble Supreme Court has held that the study centres cannot be permitted to be established beyond the territorial jurisdiction of the University. It was held to the following effect:

“19. The submission of the learned counsel that for the purpose of running a distance education course, extra-territorial activities must be carried out may not be entirely correct. It is one thing to say that the University takes recourse to the correspondence courses for conferring degrees or diplomas but it would be another thing to say that study centres would be permitted to operate which requires close supervision of the University. In a study centre, teachers are appointed, practical classes are held and all other amenities which are required to be provided for running a full-fledged institution or college are provided. Such an establishment, in our opinion, although named as a study centre, and despite the fact that the course of study and other study materials are supplied by the University cannot be permitted to be established beyond the territorial jurisdiction of the University. Nainital is outside the

territorial jurisdiction of the University. In fact it is not situated in the State of U.P. and, thus, beyond the provisions of the Act.

20. The submission of the learned counsel that the UGC Regulations 1985 provides for study centre of this nature cannot be countenanced. The UGC Regulations being a subordinate legislation must be read with the principal Act. The subordinate legislation will be ultra vires if it contravenes the provisions of the principal Act. [See Vasu Dev Singh &Ors. v. Union of India &Ors. (2006) 12 SCC 753] A statutory authority, it is well known, must act within the four-corners of the statute. A fortiori it has to operate within the boundaries of the territories within which it is to operate under the statute. Such territorial jurisdiction of the University must be maintained as otherwise a chaos would be created. If distance education of such a nature is to be encouraged, the only course would be to suitably amend the provisions of the Act.”

154. The Supreme Court in Annamalai University's case (supra) has held that the provisions of the UGC Act are binding on all Universities whether conventional or open. The powers of the Commission are very broad. Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-Section (1) of Section 26 are of wide amplitude. They apply equally to Open Universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions.

155. The Hon'ble Supreme Court in the aforesaid case also considered the Non-Formal Education Regulations framed by the Commission and also the provisions of IGNOU Act. In the aforesaid case, the appellant-University has been granting post-graduate degrees to the candidates though they had not completed three year course in terms of Non-Formal Education Regulations. But the degrees obtained after 11.03.1995 to 20.06.2007 were recognized by DEC. The Court considered; as to whether DEC has requisite jurisdiction to grant ex post

facto approval in terms of letter dated 21.07.2008. The Court observed that there is no repugnancy of the provisions of the two Statutes. It was held that distinction between the formal system and an informal system is in the mode and manner in which education is imparted and the UGC Act was enacted for effectuating coordination and determination of standards in universities. The purport and object for which it was enacted must be given full effect. It was held to the following effect:

“40. The UGC Act was enacted by the Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas Open University Act was enacted by the Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the statement of objects and reasons of Open University Act shows that the formal system of education had not been able to provide an effective means to equalize educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

41. Was the alternative system envisaged under the Open University Act was in substitution of the formal system is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and informal system is in the mode and manner in which education is imparted. UGC Act was enacted for effectuating co-ordination and determination of standards in Universities. The purport and object for which it was enacted must be given full effect.

42. The provisions of the UGC Act are binding on all Universities whether conventional or open. Its powers are very broad. Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-Section (1) of Section 26 are of wide amplitude. They apply equally to Open Universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the co-ordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed

hereinbefore that the functions of the UGC are all pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12A and clauses (a) and (c) of sub-section (2) thereof.”

156. The Hon’ble Supreme Court also held that IGNOU is guided by the Regulations framed by the Commission and observed that:

“44. It has not been denied or disputed before us that in the matter of laying down qualification of the teachers, running of the University and the matters provided for under the UGC Act are applicable and binding on all concerned. Regulations framed, as noticed hereinbefore, clearly aimed at the Open Universities. When the Regulations are part of the statute, it is difficult to comprehend as to how the same which operate in a different field would be ultra vires the Parliamentary Act. IGNOU has not made any regulation; it has not made any ordinance. It is guided by the Regulations framed by the UGC. The validity of the provisions of the Regulations has not been questioned either by IGNOU or by the appellant - University. From a letter dated 5.5.2004 issued by Mr. H.P. Dikshit, who was not only the Vice-Chancellor but also the Chairman of the DEC of IGNOU it is evident that the appellant - University has violated the mandatory provisions of the Regulations.

45. The amplitude of the provisions of the UGC Act vis-a-vis the Universities constituted under the State Universities Act which would include within its purview a University made by the Parliament also is now no longer a res integra.”

157. It also held that UGC Act will prevail over IGNOU Act when the court observed to the following effect:

“50. The UGC Act, thus, having been enacted by the Parliament in terms of Entry 66 of List I of the Seventh Schedule to the Constitution of India would prevail over the Open University Act.

51. With respect, it is difficult to accept the submissions of learned Solicitor General that two Acts operate in different fields, namely, conventional university and Open University. The UGC Act, indisputably, governs Open Universities also. In fact, it has been accepted by IGNOU itself. It has also been accepted by the appellant - University.

59. The provisions of UGC Act are not in conflict with the provisions of Open University Act. It is beyond any cavil of doubt that UGC Act shall prevail over Open University Act. It has, however, been argued that Open University Act is a later Act. But we have noticed hereinbefore that the nodal ministry knew of the provisions of both the acts. Regulations were framed almost at the same time after passing of the Open University Act. Regulations were framed at a later point of time. Indisputably, the regulations embrace within its fold the matters covered under Open University Act also.”

158. In the aforesaid case, it was also held that furnishing of information to the Commission and lack of action by it will not mean that the illegality has been cured. The grant of relaxation cannot be presumed by necessary implication only because UGC did not perform its duties. The Court held that DEC could not have validated an invalid act, when it granted ex post facto approval of the programmes offered through distance mode. It was held to the following effect:

58. The only point which survives for our consideration is as to whether the purported post facto approval granted to the appellant University of programmes offered through distance modes is valid. DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. It having accepted in its letter dated 5-5-2004 that the appellant University had no jurisdiction to confer such degrees, in our opinion, could not have validated an invalid act. The degrees become invalidated in terms of the provisions of the UGC Act. When mandatory requirements have been violated in terms of the provisions of one Act, an authority under another Act could not have validated the same and that too with a retrospective effect.

159. Thus the Non-Formal Education Regulations framed by the Commission are applicable to deemed to be Universities even in respect of professional courses. The institutions conferred with deemed to be University status have not specifically brought anything on record to show that they have sought approval from the Commission in respect of any of

the courses dealing with technical education. The courses in technical education were started in the year 2001 or later. In 2004, the Commission has issued exhaustive guidelines in respect of establishing new Departments within its Campus setting up of off campus centres and starting distance education programmes of deemed to be Universities, but none of the Universities except respondent No.10 followed any of the guidelines so issued by the Commission. Respondent No.10 sought ex post facto approval from the Commission in terms of clause 5 of the Guidelines though not within six months. The one time ex post facto approval in respect of the students admitted in various courses from 01.06.2001 to 31.08.2005 was granted by the Commission vide letter dated 03.07.2006 to respondent No.10 subject to the condition that it has '*permission of relevant statutory bodies or Councils wherever necessary*'. The relevant statutory bodies or councils in respect of professional education is the Medical Council of India, Dental Council of India and in respect of Degrees of Engineering, the AICTE, but instead of obtaining any permission from such statutory bodies as per the direction of the Commission, respondent No.10 felt satisfied with the approval by the DEC dated 29.08.2007, when it conveyed that all programmes that were approved by the statutory bodies of the deemed to be University are approved till date. The statutory bodies as mentioned in the letter dated 03.07.2006 of the Commission, are the statutory bodies created and established under the Central or State Act and not a governing or academic body of the deemed to be University. The permission to establish a professional course is of a third person and not by an institution starting the said course itself. The DEC worded its approval in a mischievous and misleading manner so as to mislead the students and the general public of having granted the approval to the professional course

imparted through distance education mode though DEC was not competent to grant such approval. DEC, an authority created by the Board of Management of IGNOU, was to facilitate the imparting of conventional education through the distance education mode. None of the functions assigned to DEC pertain to professional degrees either specifically or impliedly. The professional education could not have been entrusted to DEC, as the conduct of the professional courses through the distance education mode is beyond the scope of IGNOU. Such fact has been recognized by Prof. Menon Committee as well.

160. It may be noticed that in supersession of guidelines issued in 1992, 2000 & 2004 in respect of working of deemed to be Universities, the Commission has promulgated 2010 Regulations. Though such Regulations are applicable prospectively to every institution seeking declaration as a deemed to be University, but such Regulations for starting off campus centre, off-shore campus and the permission of the statutory bodies' etc. can be taken into consideration to understand the meaning of the earlier guidelines issued. The "statutory body" in the 2010 Regulations means the body constituted for the time being in force for determining or maintaining standards of quality in the relevant areas of higher education and bodies known as All India Council for Technical Education (AICTE), Medical Council of India (MCI), Dental Council of India (DCI), National Council for Teacher Education (NCTE), Bar Council of India (BCI), Indian Nursing Council (INC), etc. Therefore, a deemed to be University is bound to follow the Non-formal Education Regulations framed by the Commission in the year 1985 substituted in the year 2004 and also the guidelines issued by the Commission from time to time i.e. in the year 1992, 2000, 2004 & later the Regulation promulgated in the year 2010.

161. In Rai University's case (supra), the Supreme Court observed that a University incorporated by a State statute cannot have its area of operation beyond the legislative limits of the State. Entry 66 deals with co-ordination and determination of standards in institutions of higher education. The UGC Act has been enacted in exercise of such entry. The deemed to be University status is granted by the Central Government on the recommendation of the Commission recognizing specialized activities undertaken by an institution. The guidelines issued in the year 2000 contemplate the centres can be opened at places other than its premises but with the approval of the State Government and the Commission. Therefore, an institution which is granted deemed to be University status is not a synonymous with University, but has to be within the limits in respect of the subject which was its field of specialization at the time of grant of status. In the present case, none of the institutions – deemed to be Universities were engaged in the technical education nor have sought approval either from the Commission or the State Government to open centres in the States of Punjab, Haryana & Chandigarh, as none of such institutions have its headquarter within the jurisdiction of this Court. Clause 15 would be applicable not only to the institutions to be granted such status, but also in respect of such deemed to be Universities, which were in existence. It may be stated that the respondent No.10 vide communication dated 17.08.2001 addressed to DEC sought to start course in the Distance Education Mode. All other the institutions in question have opened centres later. Neither Respondent No.10 nor any other Institute has sought any approval either from the Commission or the State Government though such guidelines were in existence.

162. The UGC Act had not made any distinction between conventional, technical or professional education at the time of its enactment. Even at the time of enactment of such statute, certain professional courses were being regulated by independent Statutes such as Indian Nursing Council Act, 1947; Dentist Act, 1948; Pharmacy Act, 1948 and the Medical Council Act, 1956. Few other Central Statutes in respect of specific professional courses came into existence after the UGC Act was enacted such as Advocates Act, 1961; Indian Medical Council Act, 1970; Council of Architects Act, 1972; Homeopathic Central Council Act, 1973 and the National Council for Teacher Education Act, 1993.

163. It was on 04.08.2001 alarmed by the advertisements published by certain private institutions under the guise of study centres, the Commission had written a letter to all the Universities excluding Agricultural, Technical and Medical Universities that any University which proposes to enter into collaboration to establish a study centre would be required to take prior approval of the Commission. All the Universities were directed to stop franchising their degree education through private agencies/ establishments with immediate effect but it was circulated with a view to safeguard the interest of students, that it has been decided to approve award of degree under currently practiced franchise programmes only for those who have already been so far enrolled, but no new enrolment of students shall be permitted. In spite of such communication, respondent No.10 has written a letter on 17.08.2001 to DEC and not to the Commission to seek approval in respect of the study centres set up by such University outside its headquarter. Though the said letter has not been produced on record, but the communication of DEC dated 26.09.2001 does not give any indication in respect of States or the area in which such respondent wanted

to establish study centres or the nature of courses, which the respondent No 10 was permitted to establish.

164. Thus, we find that a deemed to be University can start study centre outside the headquarters in areas where there is reasonable concentration of students but such study centre cannot be established beyond the territorial limits represented at the time of grant of such status in the MoA except with the permission of the Commission and the State Government, where such study centre is to be located (*see Clause 15 para 12*).

165. None of the four Institutes, the deemed to be Universities were engaged in imparting education in the field of technical education more specifically in the field of engineering; therefore, without the permission of the Commission, they could not start imparting education in the technical subjects. The stand of the Respondent No 10 that it was running a technical Institute at the time of grant of status of deemed to be University is nothing but a farce. The reliance is on the communication dated 21.12.1978, when it applied for the grant of such status. In the said communication, the respondent No.10 has projected that Shramjeevi College for Workers is an Evening Institute for workers, who are engaged in various manual occupations during the day and who did not have any opportunity to join any formal institution in the day (*see para 113*). The said representation even does not relate to imparting of knowledge in any technical subject, but is said to be an Evening College meant for the workers, who work during the day and study in the evening. The report of the Expert Committee again does not refer to any technical education being imparted by respondent No.10 before the grant of deemed to be University status. Therefore,

respondent No.10 was not running any technical institute at the time it sought deemed to be University status nor has sought any amendment in the MoA so as to include imparting of technical education as part of its curriculum. Therefore, the grant of degrees in those subjects, beyond the specialization for which respondent No.10 was granted deemed to be University status, is without the approval of the Commission and thus illegal.

166. In view of the above, we find that though a deemed to be University is competent to grant degrees and also entitled to grants and financial aid from the Commission but such Universities cannot start any course other than what was historically run by them at the time of the grant of such status without approval of the Commission.

VI) ***The impact of the judgment of the Supreme Court in Bharathidasan University's case (supra) and that of Division Bench Judgments of this court as well as of Orissa High Court and of Madras High Court***

167. The strong reliance of Mr. Mata is on the judgment of Hon'ble Supreme Court in Bharathidasan University's case (supra) so as to contend that AICTE has no role in granting approval of the professional courses in respect of which a deemed to be University imparts education. A first reading of such judgment does appear to support the argument raised, but on a deeper analysis, we find that the said judgment is not applicable to a deemed to be University.

168. In the said case, the AICTE sought intervention of Andhra Pradesh High Court to forbear the University from running/conducting any courses and programmes in technical courses such as Information Technology and Management, Bioengineering and Technology,

Petrochemical Engineering and Technology, Pharmaceutical Engineering and Technology etc. The learned Single Judge allowed the writ petition on 05.10.1998. The said order was affirmed in appeal on 21.10.1998. However, in the said proceedings, the Commission was not a party nor the Regulations framed by the Commission in respect of Formal or Non Formal Education were brought to the notice of the Courts. In an appeal against the said judgments, the Hon'ble Supreme Court examined the provisions of AICTE Act and the Regulations framed thereunder and observed that the University includes an institution deemed to be University and that Section 10(1)(k) of such Act empowers the Council to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. But such provision is not applicable to the Universities, as the Act maintains the distinct identity and existence of technical institutions and Universities. Therefore, it was held that though a technical institution would require an approval of Council, but the same is not required by the Universities and the Regulations framed by AICTE, which deals with the approval of the technical courses by the University are void, when it held to the following effect:

“15.The power to grant approval for starting new technical institutions and for introduction of few courses of programmes in consultation with the agencies concerned is covered by Section 10(k) which would not cover a ‘university’ but only a ‘technical institution’. If Section 10(k) does not cover a ‘university’, but only a ‘technical institution’, a regulation cannot be framed in such a manner so as to apply the regulation framed in respect of ‘technical institution’ to apply to universities when the Act maintains a complete dichotomy between a ‘university’ and a ‘technical institution’. Thus, we have to focus our attention mainly to the Act in question on the language adopted in that enactment. In that view of the matter, it is, therefore, not even necessary to examine the scope of other enactments or whether the Act prevails

over the University Act or effect of competing entries falling under Entries 63 to 65 of List I vis-à-vis Entry 25 of List III of the Seventh Schedule of the Constitution.”

169. In the aforesaid case, neither AICTE nor the University brought to the notice of the Court that the Commission has framed Formal Education Regulations way-back in the year 1985 and that Regulation 2.3 of such Regulations contemplates that the in-take capacity shall be determined at least six months in advance by the University/institution through its academic bodies in accordance with the guidelines/norms in this regard issued by the Commission and other statutory bodies concerned, so that the same could be suitably incorporated in the admission brochure for the information of all concerned. As per Regulation 3.4, the workload and the distribution of hours of workload shall be in accordance with the guidelines issued by the Commission and the other statutory bodies concerned from time to time. Even the system of credit has to be in accordance with the guidelines of the Commission and other statutory bodies concerned as per Regulation 5.4. Regulation 6.1 of such Regulations contemplates that the University shall adopt the guidelines issued by the Commission and other statutory bodies such as AICTE from time to time in respect of conduct of examination. In terms of Regulation 7.1 of the said Regulations, the physical facilities which are required to be maintained by all Universities contemplate that the University shall keep in view the guidelines/norms issued by the Commission and other statutory bodies concerned. Regulation 7.5 contemplates that the norms laid down by the concerned statutory body shall be followed in the case of laboratories in the professional courses. Therefore, the Regulations framed by Commission are applicable to deemed to be Universities and in terms of such Regulations, the activities of such Universities in respect of admission, the

work load of teacher, syllabus, examination and physical facilities, are required to be complied with. Therefore, though a deemed to be University is not to seek prior approval of AICTE to confer a degree in technical courses, but in terms of the Regulations of the Commission, the norms fixed by AICTE has to be followed and approval is required as per the directive of the Commission.

170. It has been held in Bharathidasan University's case (supra), that the right of inspection conferred upon AICTE vis-à-vis Universities is limited to the purpose of ensuring the proper maintenance of norms and standards in the technical education system so as to conform to the standards laid down by it, with no further or direct control over such universities or scope for any direct action except bringing it to the notice of the Commission or other authorities only, of any lapses in carrying out any directions of ACITE in this regard. A deemed to be University has to furnish compliance in terms of Regulation 9 of Formal Education Regulations to the commission. Such compliance includes the norms for the conduct of examinations by the Commission and the statutory bodies; norms in respect of class rooms, laboratories, library, sports and health facilities etc. Therefore, a deemed to be University cannot ignore the guidelines in respect of technical education framed by AICTE in terms of the regulations framed by the Commission.

171. The said judgment is also not applicable also for the reason that such case was not of technical education being imparted through distance education mode. The distance education mode is a non-formal education governed by Non-Formal Education Regulations, 1985 framed by the Commission, since substituted by 2004 Regulations. Regulation 6

enjoins obligation upon every University including a deemed to be University to furnish to the Commission information relating to observance of Non-Formal Regulations within 60 days of the end of the academic year. There is nothing on record or even pleaded that deemed to be Universities have complied with such Regulations in respect of the distance education mode adopted by the said institutions. It was only in pursuance of the communication dated 16.03.2004, the deemed to be University has sought ex post facto approval from the Commission in respect of degrees conferred by it through the distance education mode.

172. The Commission has granted ex post facto approval vide communication dated 03.07.2006 to respondent No 10 alone for the students admitted in various courses from 01.06.2001 to 31.08.2005 subject to the condition that Sri Janardan Rai Nagar, Rajasthan, Vidyapeeth, Udaipur, shall ensure that *it has permission of relevant Statutory Bodies or Councils wherever necessary.*” Instead of having any approval from the concerned statutory body i.e AICTE, the respondent No.10 was satisfied with the communication dated 28.09.2007 issued by the DEC that the courses run by the deemed to be Universities in the present case are approved, as the same have been approved by the statutory bodies of the institutions, when DEC stated that “*we would like to convey that all programmes (that were approved by the statutory bodies of your institute) are approved till date. As you have not been offering education through distance mode since 2005, all your programmes (approved by the statutory bodies of your institute) till 2005 happen to be approved by the DEC*”.

173. Thus the degrees granted between 01.06.2001 to 31.08.2005 cannot be treated to be valid degrees under Section 22 of the UGC Act in

the absence of approval from the statutory bodies required by the Commission.

174. Even though, we find that the communication of the Commission to grant ex post facto approval to the students admitted between 01.06.2001 to 31.08.2005 was subject to the approval of the statutory bodies, but even the said communication is intended to cover up the illegalities committed by the deemed to be Universities probably to mitigate the hardship undergone by the candidates, who applied for admission to such Institutes. The deemed to be University has violated the provisions of UGC Act and the Regulations framed by the Commission at every stage. It started so called study centres in violation of the Non-formal Education Regulations framed by the Commission i.e. without obtaining approval of the Commission and the State Government and even against the law declared by the Hon'ble Supreme Court in Annamalai University's case and Kurmanchal Institute of Degree & Diploma & others case (supra), declaring that the study centres cannot be opened beyond the territorial limits of each of the University. Even the DEC could not permit a deemed to be University to impart technical education through distance education mode without consultation of AICTE and in terms of the Regulations framed by the Commission. The minutes of the Joint Committee does not suggest any approval of the courses by AICTE either directly or even impliedly. DEC, an authority created under an Act, cannot have a wider jurisdiction so as to negate the mandate of law conferred on the Commission under the UGC Act. The UGC Act is a paramount statute applicable to all Universities established under the Central or the State Act. IGNOU, an Open University, established as a Central University is subject to the provisions of the UGC Act. Though in terms of the Central

Statute, the role of IGNOU and or that of DEC are focused towards the non-formal education in open distance learning mode, but the IGNOU/ DEC could not have taken up the imparting of technical education through the distance education mode.

175. In Prof. Yashpal's case (supra), the Hon'ble Supreme Court quoted the Statement of Objects and Reasons of the enactment of UGC Act to observe that the Commission will also have the power to recommend to any University the measures necessary for the reform and improvement of university education and to advise the university concerned upon the action to be taken for the purpose of implementing such recommendation. The Commission will act as an expert body to advise the Central Government on problems connected with the coordination of facilities and maintenance of standards in universities. It was also held that a degree conferred by the University is a proof of the fact that a person has studied a course of particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. It observed as under:

38. A degree conferred by a university is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. In the case of a doctorate degree, it certifies that the holder of the degree has attained a high level of knowledge and study in the subject concerned by doing some original research work. A university degree confers a kind of status upon a person like a graduate or a postgraduate. Those who have done research work and have obtained a PhD, DLitt or DSc degree become entitled to write the word "Doctor" before their names and command certain amount of respect in society as educated and knowledgeable persons. That apart, the principal advantage of holding a university degree is in the matter of employment, where a minimum qualification like a

graduate, postgraduate or a professional degree from a recognised institute is prescribed. Even for those who do not want to take up a job and want to remain in a private profession like a doctor or lawyer, registration with the Medical Council or the Bar Council is necessary for which purpose a degree in medicine or law, as the case may be, from an institution recognised by the said bodies is essential. An academic degree is, therefore, of great significance and value for the holder thereof and goes a long way in shaping his future. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies.

39. Mere conferment of degree is not enough. What is necessary is that the degree should be recognised. It is for this purpose that the right to confer degree has been given under Section 22 of the UGC Act only to a university established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a university under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this section provides that “degree” means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette. The value and importance of such degrees which are recognised by the Government was pointed out by a Constitution Bench in *S. Azeez Basha v. Union of India*, AIR 1968 SC 662.

46. Entry 66 which deals with coordination and determination of standard in institutions for higher education or research and scientific and technical institutions is in the Union List and Parliament alone has the legislative competence to legislate on the said topic. The University Grants Commission Act has been made with reference to Entry 66 (see *Prem Chand Jain v. R.K. Chhabra*, (1984)2 SCC 302 and *Osmania University Teachers' Assn. v. State of A.P.*, (1987)4 SCC 671. The Act has been enacted to ensure that there is coordination and determination of standards in universities, which are institutions of higher learning, by a body created by the Central Government. It is the duty and responsibility of the University Grants Commission, which is established by Section 4 of the UGC Act, to determine and coordinate the standard of teaching curriculum and also level of examination in various universities in the country. In order to achieve the aforesaid objectives, the role of UGC comes at the threshold. The course of study, its nature and volume, has to be ascertained and determined before the

commencement of academic session. Proper standard of teaching cannot be achieved unless there are adequate infrastructural facilities in the campus like classrooms, libraries, laboratories, well-equipped teaching staff of requisite calibre and a proper student-teacher ratio. For this purpose, the Central Government has made a number of rules in exercise of powers conferred by Section 25 of the UGC Act and the Commission has also made regulations in exercise of power conferred by Section 26 of the UGC Act and to mention a few, the UGC Inspection of Universities Rules, 1960, the UGC Regulations, 1985 Regarding the Minimum Standards of Instructions for the Grant of the First Degree, UGC Regulations, 1991 Regarding Minimum Qualifications for Appointment of Teachers in Universities and Colleges, etc. UGC with the approval of the Central Government and exercising power under Section 22(3) of the UGC Act has issued a schedule of degrees which may be awarded by the universities. The impugned Act which enables a proposal on paper only to be notified as a university and thereby conferring the power upon such university under Section 22 of the UGC Act to confer degrees has the effect of completely stultifying the functioning of the University Grants Commission insofar as these universities are concerned. Such incorporation of a university makes it impossible for UGC to perform its duties and responsibilities of ensuring coordination and determination of standards. In the absence of any campus and other infrastructural facilities, UGC cannot take any measures whatsoever to ensure a proper syllabus, level of teaching, standard of examination and evaluation of academic achievement of the students or even to ensure that the students have undergone the course of study for the prescribed period before the degree is awarded to them.

176. In Surinder Kumar Dhawan's case (supra), the direction of the High Court to permit the students to undergo bridge course, who have completed 10+1 and 4 years diploma course, was found to be unjustified. It was held that the norms standards for engineering degree course should not be diluted by permitting a lesser entry qualification of 10+1. The persons not possessing the entry level qualification prescribed for admission to engineering degree course cannot be permitted to secure the engineering degree by a roundabout backdoor route by undergoing, a four year

post/advance diploma course and one year bridge course. The educational issues, they cannot be interfered, merely because the court though otherwise. It was observed as under:

“16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realising the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.

17. The role of statutory expert bodies on education and the role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, the courts will step in.....”

177. In **Sunaina Verma Vs. Guru Nanak Dev University, Amritsar & others 2008 (5) SLR 398** and **Kulwinder Pal Vs. Guru Nanak Dev University, Amritsar & others 2008 (1) SLR 87**, the Division Benches of this Court have considered the grant of degree through distance education mode beyond the territorial limits of the deemed to be Universities. It was held that the University is at Manipal and the centre wherein the petitioner has studied, is at Amritsar, therefore, the territorial jurisdiction highlighted in the judgment of the Hon’ble Supreme Court in **Kurmanchal Institute of Degree & Diploma** case (supra) cannot be ignored. Consequently, the writ petitions were dismissed.

178. Reliance of Mr. Mata on the Division Bench judgments of this Court in **Sandeep’s case** (supra) and in **Suman’s case** (supra) is not tenable

for the reason that in the aforesaid cases, the Candidature of the writ petitioners for appointment to the post of Art & Craft teacher was rejected for the reason that they did not have Diploma in Arts and Craft of the Haryana Industrial Training Department or any equivalent qualification. The said order of rejection of the candidature was set aside for the reason that once the candidate has obtained Diploma from a deemed to be University, then such qualification is an equivalent qualification. Since the Diploma was granted by a deemed to be University, the Court held that the writ petitioners are eligible for employment as Art & Craft Teachers. The circulars, guidelines and regulations framed by the Commission were not brought to the notice of the Court. Therefore, we find that the said judgment does not lay down any binding precedent in the facts of the cases in hand. For the same reasons, we have our reservation to follow the judgment of Orissa High Court in Balragi Charan Nayak's case (supra).

179. In Sathyabhama Institute of Science and Technology's case (supra), a Division Bench of Madras High Court examined the provisions of UGC Act and AICTE Act in respect of the degrees granted by a deemed to be University. It was held therein that the power to take action against the Universities in the event of failure to maintain the prescribed standards is given only to the Commission under Section 14 of the UGC Act. Once the status of a University is conferred on the deemed to be Universities, then their continued existence would depend on the Commission and not the AICTE. In the aforesaid case, it was held to the following effect:

“35.Therefore, the role of the AICTE vis-à-vis the Universities has been spelt out specifically. The decision in the above case applies undoubtedly to deemed to be Universities. The AICTE is not a silent spectator nor a passive player. It will act in co-ordination with the UGC,

as we will see in our answer to the next question, in order to achieve the objects for which it was set up.

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40. According to the Central Government, in view of the judgment in Bharathidasan's case, while the deemed to be universities may start departments or courses without prior approval of AICTE, they need to maintain the standards prescribed by the AICTE. It is clear that the power to take action against the Universities in the event of their failure to maintain prescribed standards is given only to the UGC under Section 14 of the UGC Act. Once the status of a University is conferred on the deemed to be universities as such, then their continued existence would depend on the UGC and not the AICTE.

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43. Even if it is assumed without conceding that AICTE acted with the best of intentions in issuing the inspection notice dated 17.10.2005, or in enacting the 2005 Regulations or in issuing the Public Notice which resulted in absolute mayhem, that cannot excuse the AICTE's approach. The notices and the Regulations are contrary to Section 11 of the AICTE Act and the Rules of Inspection 1992. That the AICTE has the power to inspect is not denied, but the AICTE must bear in mind the manner in which it exercises the power. Both UGC and AICTE have a common object i.e. maintaining standards of excellence in education, but the UGC has primacy over AICTE, since even if the AICTE discovers the shortcomings of a deemed to be University, it has no further or direct control, nor is there any scope for AICTE initiating any direct action against the said deemed to be university, it can only bring these defects to the notice of UGC for further action. The AICTE which has the duty to ensure that the Universities adhere to the standards and norms of excellence shall function cohesively with UGC, there should be mutual understanding between UGC and AICTE, always keeping in mind that neither shall act in a manner that reduces the importance of the other in their common object.

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47. Section 10 of the AICTE Act deals with the functions of the AICTE insofar as universities, including deemed to be universities are concerned. Section 11 provides for the manner in which the inspection is to be done. When that is so and when the deemed to be universities admittedly have the obligation and duty to conform to the AICTE's standards and norms for the purpose of ensuring co-ordinated and integrated development and

educational development and maintenance of standards, the challenge to Section 10(g) and (o) as well as Section 11 of the AICTE Act stands rejected. The language of Section 11 of the AICTE Act and Section 13 of the UGC Act are identical. So both the bodies have been given the power to inspect the institutions in accordance with the respective provisions. The AICTE has the power to inspect, but only in accordance with Section 11 of the AICTE Act. It cannot charge like a bull in a China shop, for that will only wreak havoc. The AICTE also cannot take action directly on the erring Universities; all that it can do is to report to the UGC. This does not mean that the object of the AICTE Act will be rendered nugatory. The AICTE has to perform its role of promoting and co-ordinating University education for determination and maintenance of standards of teaching, examination and research in Universities, but it will do so in consonance with the provisions of the AICTE Act. It will assist, aid and advise the UGC in seeing that the quality of education is not diluted. So, the apprehension that the AICTE will be reduced to a silent spectator is unfounded.”

180. On the basis of the above findings, the Court held that Sections 2, 10(g) and (o) and Section 11 of the AICTE Act are valid, but struck down the Public Notice issued by AICTE in February, 2006. The provisions of AICTE Regulations, 2005 were set aside being inconsistent with Sections 10 and 11 of the AICTE Act as well as to the UGC Act.

181. There is no dispute with the proposition laid down in the aforesaid judgment, but the fact remains that the guidelines, circulars and the regulations framed by the Commission were not brought to the notice of the Court, which in turn make it obligatory for a deemed to be University to take approval from the Statutory Bodies which in the case of engineering course is AICTE. Though, the approval of AICTE is not required by a deemed to be University, but in terms of the instructions, circulars and regulations framed by the Commission, a deemed to be University has to seek approval from AICTE. Such approval is a condition precedent for the grant of approval to the courses by the Commission.

VII The consequences of the Memorandum of Understanding dated 10.5.2007

182. We find that the entire process of signing of MoU and the conduct of meetings have not solved the object that is to avoid duplication of work by these authorities. In Kurmanchal Institute of Degree & Diploma case (supra), it was held that IGNOU and or DEC are subject to the efforts of the Commission in coordinating and streamlining the higher education. But instead of the fact that the steering should be in the hands of the Commission, the same was handed over to the DEC, which is an authority created by the Board of Management under an Act, which itself is a subordinate to the Commission. The purpose of the MoU was to avoid the duplication of work in respect of matters covered by the three separate statutes with limited life of three years. But the minutes of the Joint Committee, as reproduced in the earlier part of the judgment, do not lead to an inference that such objective was achieved even remotely. Prior to the signing of MoU, the AICTE has approved the degree through the distance education mode in MBA and MCA in the joint meeting of AICTE and DEC on 28.02.2005. In none of the meetings of the Joint Committee after the MoU was executed, any further course through the distance education mode was approved. In the first meeting held on 11.05.2007, the DEC had to provide list of institutions with the programmes offered through distance education mode and such list was to be sent to AICTE and UGC for nomination of their experts.

183. In the second meeting of Joint Committee held on 14.05.2007, it was decided that all Universities Central/State/Deemed should certify that they have applied for the approval of their respective statutory bodies for

offering programmes through distance mode. The Joint Committee considered the proposal for approval of the Institutes in its meeting held on 01/02.08.2007 on the basis of the report of the sub-committee. The sub-committee has taken into consideration the visit of Allahabad Agricultural Institute on 26/27.10.2004; IASE, Sardarshahr, Rajasthan on 03/04.09.2004 and that of Vinayaka Missions University, Tamil Nadu on 04.02.2007 i.e. much prior to the decision to consider the approval of the courses decided in the meeting of the Joint Committee on 11.05.2007. The report of the sub-committee was approved granting ex post facto approval to all the four institutions up to the academic year 2007-08, even when, such institutes have not complied with earlier decisions of the Joint Committee. There is nothing on record that the Institutes in question have applied for approval in the revised format. Still further, a perusal of the report of the Sub Committee, the basis of grant of ex post facto approval for the academic year 2007-08, shows that the courses of technical nature were not the subject matter of consideration of the Sub Committee. In none of the meetings, the Commission or AICTE approved the courses in the area of technical education for imparting knowledge by deemed to be Universities.

184. In terms of the directions of the Commission, it was necessary for the deemed to be Universities to seek approval from AICTE. In view of the above, we hold that the deemed to be Universities have started courses in technical education in violation of the guidelines, instructions, circulars and regulations framed by the Commission not only when they started such courses but also in establishing study centres outside their territorial limits and in subjects for which they were not granted deemed to be university status. Therefore, degrees awarded by such Deemed to be Universities is an

illegal act and such illegality cannot be removed or cured by the actions of either the Commission or DEC.

VIII Whether the directions issued by the Central Government vide notification dated 07.04.2006 interprets the provisions of the UGC Act and AICTE Act and, thus, encroaches upon the jurisdiction of the Court or such directions are in the matter of policy falling within the scope of Section 20 of the UGC Act and Section 20 of the AICTE Act?

185. The Central Government has issued directions on 7.4.2006 purportedly in exercise of the powers vested under Section 20 of the UGC Act and under Section 20 of the AICTE Act. However, such directions are not in the matter of policy, but relates to the interpretation of the provisions of two Acts. The Central Government cannot interpret the provisions of two Statutes under the garb of policy directions. In **State of U.P. Vs. Neeraj Awasthi** (2006) 1 SCC 667, it has been held that the power of the State Government to issue directions on questions of policy cannot be used to interfere in the day-to-day functioning of the Board. Such policy decision must be in relation to the activities of the Board under the Act and not *dehors* the same.

186. In **A. Manoharan Vs. Union of India** (2008) 3 SCC 641, the question arose in respect of powers of the Central Government to issue directions under Section 111 of the Major Port Trusts Act, 1963. It was held that the power of the Central Government to issue directions cannot be stretched to amend the Regulations. The power must be exercised by the Central Government only in regard to the administration of the Trust. Such a power to issue direction must be construed strictly.

187. In Sathyabhama Institute of Science and Technology's case (supra), such policy instructions have been commented upon by the Division Bench of the Madras High Court, when it was observed as under:

“30. Section 20(1) of the AICTE Act refers to the directions given by the Central Government on questions of policy, which will guide the AICTE and which according to the said Act are final. Similarly, in the UGC Act also, Section 20(1) requires the Commission to be guided by the directions on questions of policy. The Central Government purported to issue this statement as its clarification on questions of policy. But, a reading of the said notification indicates that it is actually the Central Government's understanding of how the two bodies, viz. the Commission and the Council work with each other.”

188. The directions said to be in the nature of policy that AICTE would not issue any direction to the institutions notified as deemed to be University has to be read down to mean that AICTE would not issue any direction to the deemed to be University directly, but as a process of grant of approval in terms of the circulars and guidelines issued by the Commission, the report or the recommendation of the AICTE is necessary and cannot be wished away. The Commission shall not approve any course or programme without the approval from AICTE, which the Commission itself solicits in terms of the guidelines framed.

189. In view of the above, the directions issued by the Central Government interpreting the provisions of the Act, cannot be treated to be as final. Such directions are subject to the decision of the Court. Any direction contrary to the ratio laid down by the Courts, is ineffective and not binding on the statutory authorities.

190. In view of the above, we hold that the approval granted by the Distance Education Council dated 29.8.2007 to the Institutes in question is

illegal and unwarranted and beyond the scope of authority vested in it. As a necessary consequence, the degrees granted by such deemed to be Universities are illegal and the candidates cannot be deemed to be qualified in the purported subjects in the absence of approval from the Commission. Consequently, the letters patent appeals against the judgments of the Learned Single Judge holding that the candidates are qualified are allowed, the orders passed by the Learned Single Judge are set aside and the writ petitions dismissed. Though the Court is sympathetic with the cause of students but the larger public interest demands that the students, who have not got formal education, should not be considered eligible for appointment under the State.

191. We shall now take up the cases of some of the other Institutes said to be imparting technical education through distance education mode.

Associate Member of the Institution of Engineers (AMIE)

192. The common question in CWP No.13808 of 2009; CWP No.14485 of 2009; CWP No.16369 of 2009 CWP No.2181 of 2011; CWP No.11051 of 2011 and CWP No.14226 of 2011 is as to whether, an Associate Member of the Institution of Engineers (AMIE) can be treated to be possessing a Degree in engineering, making the holder of such member eligible for promotion and/or direct recruitment to public employment, where the qualification prescribed is Degree in Engineering.

193. The facts are taken from CWP No.13808 of 2009 for facility of reference. The petitioner herein while working as Junior Engineer (JE) has acquired Degree in B.Tech (Civil) through lateral entry having done Diploma in Civil Engineering earlier. The petitioner alleges that the

respondents in the writ petition are Associates Members of Institute of Engineers (AMIE), but they are being treated at par with the degree holder in the seniority list, which is not tenable. The challenge is based on the ground that the notification dated 1st March 1995, issued by Ministry of Human Resource Development, Government of India provides that the qualifications awarded through Distance Education by the Universities stand automatically recognized for the purpose of the employment under Central Government. It is thus sought to be submitted that the certificates being granted by Respondent No 8, is not approved by AICTE or DEC, therefore, the said certificates cannot be treated equivalent to a Degree for the purpose of employment.

194. In reply, filed on behalf of respondent No.8 – Institution of Engineers, it is averred that the Certificate for passing Sections ‘A’ & ‘B’ examinations is considered as equivalent to a Degree in Engineering of recognized Indian Universities by the Ministry of Human Resource Development as well as Department of Education, Government of India. The holders of such Certificates are eligible for consideration of promotion in their respective services as per the Rules & Regulations of the employer. Reference is made to communication dated 16.08.1978 and Notification dated 16.01.2006 issued by the Ministry of Education & Social Welfare (Department of Education) and the Ministry of Human Resource Development (Department of Secondary & Higher Education) respectively. It is also pointed out that the Distance Education Council constituted under the Indira Gandhi National Open University Act, 1985 vide communication dated 07.08.2007 has confirmed that the Institution of Engineers does not come under the purview of Distance Education Council, as it is not offering courses through distance mode. It is also stated that the guidelines formed

by the University Grants Commission and Distance Education Council are not applicable to non-formal education mode imparted by respondent No.8.

195. In additional affidavit, it has been stated that the Institution of Engineers (India) was registered on 13.09.1920 under the Indian Companies Act, 1913 and the Institution started its Non-Formal Engineering education in the year 1928. The Institution of Engineers (India) was thereafter incorporated as a statutory body by a Royal Charter dated 13.08.1935 issued by the George the Fifth, of Great Britain, Ireland and then the Emperor of India. The said Institution was established to promote the general advancement of engineering and engineering science and to facilitate the exchange of information and ideas on those subjects amongst the Members of and persons attached to the Institution. Clause 11 of the Royal Charter provides that there shall be five classes of members of the Institution termed respectively Honorary Life Members, Honorary Members, Members, Associate Members and Companions.

196. Mr. Bains, learned counsel representing respondent No.8, has pointed out that Institution of Engineers is a statutory body incorporated by a Royal Charter and that the institution admits members, who are required to pay yearly or life membership and that a member such as an Associate Member of Institute of Engineers i.e. AMIE on qualifying Section 'A' & 'B' examinations conducted by the Institution makes a person eligible for certain privileges. The equivalent treatment of such qualification to the Degree in Engineering is one of them. Therefore, since the Institution of Engineers has a unique identity under a Royal Charter, the examinations conducted by the Institute do not require any approval from All India Council for Technical Education or from Distance Education Council, it

being an independent statutory entity. The Central Government and the State Government have recognized such qualification as equivalent to degrees granted by the Universities; therefore, an Associate Member of Institute of Engineers has been rightly treated as equivalent to a degree-holder.

197. In CWP No.2181 of 2011, the petitioner has sought a direction in public interest against all those employees/officers employed on the basis of Certificate/Degrees of AMIE, whereas in CWP No.14226 and 11051 of 2011, challenge is to Punjab Service of Engineers (Civil Wing), Department of Public Works (B&R Branch) Group-A Service Rules, 2005, wherein the qualification of Section 'A' & 'B' examinations of Institution of Engineers has been excluded to be eligible for appointment.

198. In a reply filed on behalf of respondent Nos.1 & 2, it is pleaded that in the absence of equivalence accepted by the State, AMIE qualification cannot be accepted as a degree in Engineering for the purpose of direct recruitment. Reference is made to a Single Bench judgment rendered in CWP No.18830 of 2009 titled 'Jagtar Singh Vs. State of Punjab & others' decided on 08.12.2009, wherein it was held that the Government of India has notified that 15 courses of Section 'A' & 'B' conducted by the Institution of Engineers (India) as equivalent to Degree but such equivalence cannot be made basis to seek equivalence in the State. Letters Patent Appeal No.1378 of 2009 against the said judgment has been dismissed on 25.3.2010 and it has been held that AMIE can be obtained only by diploma holders while in service, therefore, the same is considered equivalent to a degree for the purposes of promotion, but is not a qualification for direct recruitment. It was held to the following effect:

“6. We find some force in the argument advanced by the learned counsel for the respondents that AMIE is not shown as one of the essential qualifications for the direct recruits because AMIE can be obtained only by diploma holders while in service and AMIE is prescribed as one of the qualifications for the promotees keeping in view the fact that Junior Engineers, who possess AMIE while in service, shall have better promotion chances to the higher post. However, matter remains, if AMIE is not considered as essential qualification either in the notification or publication, this Court cannot issue any mandamus directing the respondents to accept the candidature of the appellant simply because he has AMIE degree. It is for the authorities to prescribe essential qualifications for a particular post.”

199. We have heard learned counsel for the parties and find that the Institution of Engineers is a body incorporated by a Royal Charter, which has the force of a Statute. The relevant clauses from the Royal Charter, read as under:

“2. The objects and purposes for which the Institution of Engineers (India) (hereinafter called ‘the Institution’) is hereby constituted are to promote the general advancement of engineering and engineering science and their application in India and to facilitate the exchange of information and ideas on those subjects amongst the Members of an persons attached to the Institution and otherwise and for that purpose –

- (a) To promote and advance the science, practice and business of Engineering in all its branches (hereinafter referred to as “Engineering”) in India.
- (b) To establish, subsidize, promote, form and maintain local Associations of members belonging to the Institution and other engaged or interested in Engineering so as to assure to each individual member as far as may be possible equal opportunity to enjoy the rights and privileges of the Institution.
- (c) To diffuse among its members information on all matters affecting Engineering and to encourage, assist and extend knowledge and information connected therewith by establishment and promotion of lectures, discussions or correspondence; by the holding of conferences; by the

publication of papers, periodicals of journals, books, circulars and maps or other literary undertaking; by encouraging research work; or by the formation of a library or libraries and collection of models, designs, drawings, and other articles of interest in connection with Engineering or otherwise howsoever.

(d) To promote the study of Engineering with a view to disseminate the information obtained for facilitating the scientific and economic development of Engineering in India.

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11. Unless and until the Bye-laws of the Institution shall otherwise provide there shall be five classes of members of the Institution termed respectively Honorary Life Members, Honorary Members, Members, Associate Members and Companions, of whom the Members and Associate Members shall be known as Corporate Members and the Honorary Life Members, Honorary Members and Companions shall be known as Non-corporate Members.

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12. Unless and until the Bye-laws of the Institution shall otherwise provide the Institution may attach to itself students, associates and subscribers, which expressions shall have the meanings respectively assigned to them by the Articles of Association and Bye-laws of the existing Association or Institution known as the Institution of Engineers (India). The students, associates and subscribers attached to the said existing Association or Institution shall be deemed to be attached similarly to the Institution.

13. The qualifications, method and terms of admission, privileges and obligations, including liability to expulsion or suspension of Members of each of the said five classes respectively shall be such as the Bye-laws for the time being of the Institution shall direct.

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22. And We do hereby, for Us, Our Heirs and Successors Grant and Declare that these Our Letters Patent, or the enrolment or exemplification thereof, shall be in all things good, firm, valid and effectual, according to the true intent and meaning of the same, and shall be taken, construed and adjudged in all Our Courts or elsewhere in the most favourable and beneficial sense and for the best advantage of the said Institution, any

mis-recital, non-recital, omission, defect, imperfection, matter or thing whatsoever notwithstanding.

200. Bye-law 44 of the Bye-laws of Institute of Engineering framed by Corporate Members in terms of Clause 19 of the Royal Charter describes different classes of members whereas Bye-law 49 prescribes the qualifications required for an associate member. The membership is open to those with minimum five years post qualification experience, the qualification being degree in science from a recognized institution. Such candidate should have engaged as a teacher in a recognized technical institute or engaged in engineering or allied profession and should not have attained the age of twenty six years on the date of his application for election or transfer. The relevant extract from the Bye-laws reads as under:

“44. The Institution shall consist of members in the following orders: Honorary, Corporate and Non-Corporate. The Honorary member shall comprise the classes of Honorary Fellows and Honorary Life Fellows. Corporate Members shall comprise the classes of Fellows, Members, Associate members and Non-Corporate Members shall comprise the classes of Associates, Affiliate Members, Member Technologists, Associate Member Technologists, Senior Technician Members, Technician Members, Institutional Members and Donor Members. The names and addresses of all members shall be entered on the Roll of the Institution.

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49. Every candidate for election as an Associate Member or for transfer to the class of Associate Members shall satisfy the Council that he possesses the following qualifications:

(i) Age: He shall have attained the age of twenty-six years on the date of his application for election or transfer.

(ii) Occupation: He shall have been engaged in a position of responsibility in the design and execution or operation of engineering works. For the purpose of this Bye-Law, employment as a teacher of engineering or in a likewise capacity in an engineering college or institute which has regular courses of study leading to an educational qualification

recognized by the Council or employment in an engineering research may be accepted by the Council in place of employment in the design and execution or operation of engineering works.

At the discretion of the Council, occupation may also include teaching an engineering subject in an institute/college which does not confer/award degree in engineering.

(iii) Examination: He shall have passed Sections A and B of the Institution Examinations prescribed by the Council or possesses an educational qualification recognized by the Council as exempting therefrom.

(iv) Training: He shall have received engineering training in a regular course of study in an engineering college or institute leading to an educational qualification recognized by the Council as exempting from Sections A and B of the Institution Examinations, or as a pupil or apprentice or assistant in an engineering office or works as would provide him with engineering training to the satisfaction of the Council.

(v) Experience: He shall have had further at least five years professional engineering experience in a position of responsibility. In the case of a candidate who has passed Sections A and B of the Institution Examinations the Council may, at its discretion, take into account periods of responsible employment prior to his passing Section B. The Council may, at its discretion, arrange for candidates for election as Associate Members to be examined by a written or an oral test or both in order that they may be satisfied that such candidates have acquired during their practical training and professional engineering experience adequate engineering knowledge.”

201. The Regulations framed by the Corporate Members of Institution of Engineers provides for annual subscription payable by the various classes of members. For Indian Associate Member, the yearly subscription is Rs.300/-, whereas One Time Membership fee is Rs.1900/- as per Table IV.

202. In terms of such Charter, Bye-Laws and Regulations, the Institution of Engineers conduct examinations for in-service diploma holders, as such institution has been established to promote the general

advancement of engineering and engineering sciences. The All India Council for Technical Education Act, 1987, does not act to repeal, abrogate or vary the earlier statute, the statute incorporating Institution of Engineers. Therefore, the certificates granted by such Institution have been rightly declared to be equivalent by the Central and the State Governments to the degree course. The AMIE has been declared equivalent to degree course for the purposes of promotion and not for the purposes of direct recruitment. Such classification cannot be said to be illegal or unwarranted in any manner. It is for the State to consider the equivalence of Section 'A' & 'B' examinations conducted by the Institution of Engineers. Therefore, we do not find that there is any justification in seeking equivalence to the degree for the purposes of direct recruitment or that the said examination and the membership cannot be rated as equivalent to the degree course for the purpose of promotion.

203. In view of the above provisions of the statute, we respectfully endorse the view taken by the Division Bench in **Jagtar Singh's** case (supra) that qualification of AMIE is relevant for the purposes of promotion and not for direct recruitment, as an Associate Member becomes eligible for Membership only if he is engaged in engineering profession.

204. The writ petitions, as mentioned above, are disposed of accordingly.

The Institute of Mechanical Engineers (India), Mumbai

205. In CWP No.12909 of 2009, the issue is in respect of Certificate of Membership obtained from the Institute of Mechanical Engineers (India), Mumbai (respondent No.4), as a degree for promotion to the post of Sub Divisional Engineer in terms of the Punjab Water Supply

and Sanitation (Engineering Wing), Group 'A' Service Rules, 2007. In CWP No. 9200 of 2012, the petitioners claim promotion on the basis of similar membership from the same Institute.

206. The petitioner in CWP No.12909 of 2009 is a degree-holder from Panjab University, whereas respondent No.5 is said to have obtained a Certificate of Membership from respondent No.4 i.e. the Institute of Mechanical Engineers (India), Mumbai alleging the same without attending any regular classes, undertaking practicals and without taking any study leave from the Department. It is the contention of the petitioner that the certificate issued by the said respondent is not a degree in terms of Section 22 of the UGC Act, as respondent No.4 is not authorized to confer any right of degrees.

207. A Division Bench of this Court in CWP No.12502 of 2004 titled **"Tejinder Singh Vs. Punjab State Electricity Board & others"** decided on 02.04.2007, has considered the question of recognition of AMIE degree granted by the Institute of Mechanical Engineers (India), Mumbai. It was found that the degree from the Institute of Mechanical Engineers (India), Mumbai is recognized by the Government of India vide letter dated 06.10.1981, which was accepted by the Government of Punjab. In view of such finding, the writ petition was allowed, as the petitioner has obtained degree prior to its de-recognition in the year 2003.

208. A perusal of the Certificate relied upon by the petitioner in Tejinder Singh's case (supra) as also the present case (Annexure A-2) shows that the Institute of Mechanical Engineers (India), Mumbai is a Society registered under the Societies Registration Act, 1860. It appears that such Institute is taking advantage of its similarity in name with the

Institution of Engineers established under Royal Charter, as discussed above. The Institute of Mechanical Engineers (India), Mumbai is a registered Society and is thus a Technical Institution and is required to obtain approval from AICTE in respect of its courses in technical subjects. The membership of such Institute cannot be treated as equivalent to a degree, as the candidate qualified from such Institute cannot be said to be at par with the members of Institution of Engineers established under the Statute.

209. The distinction between Institute of Mechanical Engineers (India), Mumbai and that of an Associate Members of Institution of Engineers, was not brought to the notice of the Court in Tejinder Singh's case (supra). The scope of Institution of Engineers established under the Royal Charter has been examined above.

210. Learned counsel for the respondent has referred to a notification dated 24.11.2006, wherein the request of Institute of Mechanical Engineers (India), Mumbai for recognition of its Diploma/ Degree courses was examined by the Government of India only after the removal of all the deficiencies pointed out by AICTE. The notification is to the effect that AICTE has re-examined both the courses and submitted its recommendation with revision of syllabus for both the courses. The Government of India decided that IME (India), Mumbai will run the courses based on new syllabus approved by AICTE w.e.f. 16.10.2006. As per another communication produced in Court on 18.10.2012, the Government of India has communicated to respondent No.4 to the following effect:

“Please refer to this Ministry’s notification No.23-2/2001-TS.III dated 24.11.2006 regarding Section A & B of Association Membership course, equivalent to Degree in Mechanical Engineering and Part I & II of Technician Engineers(T), equivalent to Diploma in Mechanical

Engineering from a State Polytechnic. It has been decided that a review of the curriculum, mode of delivery of the program, its duration, etc. would be carried out by the concerned Regulator and until such a review is complete, the Institutions with permanent recognition will not make fresh admissions. Alternatively, the institution has the option of realigning its curriculum with the National Vocation Education Qualification Framework (NVEQF) and proceed further.

This issue with the approval of competent authority.”

211. In terms of such communication, till the review is completed by the Regulator, which in the case of Respondent No 4 would be AICTE, the Institutions with permanent recognition have been prohibited from making admission. There is no document produced or alleged that Respondent No 4 has permanent recognition from any Council or Board in respect of its courses. Therefore, the degrees or the membership granted by respondent No.4 cannot be treated as equivalent to Degree in Engineering.

212. Even in terms of the notification dated 26.11.2006, the students such as respondent No.5 registered prior to 10.06.2002 have been allowed to complete the course with pre-revised syllabus till the next scheduled examination to be held in December, 2006 and those, who do not complete their courses by that time will have to follow the revised syllabus. Since respondent No.5 is not said to have completed course in terms of notification dated 24.11.2006, he cannot claimed to be a degree-holder entitled to be promoted. We may state that such notification can be treated as a qualification recognized by Government of India for the purpose of employment. Thus, we find that respondent No.5 is not qualified to claim that such certificate is equivalent to a degree.

213. In view of the above, CWP No.12909 of 2009 is allowed and CWP No.9200 of 2012 claiming the qualification from Institution of

Mechanical Engineers (India), Mumbai as equivalent to degree is dismissed.

Institute of Surveyors

214. CWP No.9643 of 2008 is a petition in public interest for directing the respondents not to make public appointments/grant promotion and other financial benefits on the basis of technical degree/certificates in the field of civil engineering obtained through the distance education/study centre of respondent No.11 – Institution of Surveyors.

215. The arguments raised by the learned counsel for the petitioners are common with the other cases, however, on behalf of respondent No.11 – Institute of Surveyors, it is averred that the Institution of Surveyors was formed as a Society under the Societies Registration Act, 1950 to be begin with two courses i.e. (i) Land Surveying; and (ii) Building and Quantity Surveying. Respondent No.11 – Institute of Surveyor, in course of time, developed other courses such as (i) Land Surveying (ii) Hydrographic Surveying (iii) Building and Quantity Surveying; & (iv) Valuation Surveying. It is pointed out that Ministry of Education & Social Welfare vide letter dated 09.01.1975 and the Ministry of Human Resources Development vide notification dated 11.07.1988 have recognized the four courses for recruitment to superior posts and services. It is also pointed out that in terms of letter of the Ministry of Human Resource Development dated 02.04.2008, no separate approval of AICTE is required. Such letter reads as under:

“Subject: Recognition of Final/Director Final Examination of the Institute of Surveyors in Building and Quantity Surveying – reg.

Sir,

With reference to your letter dated 20.03.2008, seeking clarification regarding recognition of the Final/Direct Final Examination of the Institution of Surveyors in Building and Quantity Surveying.

In this regard, this is to clarify that as per Notification No.F.18-20/83/T.12/T.7/T.13 dated 11.07.1988, Government of India has recognized the Pass in Final/Director Final Examination of the Institute of Surveyors in (i) Building and Quantity Surveying and & (ii) Valuation Surveying as two separate courses (equivalent to Degree in Engineering) for the purpose of employment to superior posts and services under the Central Government in the appropriate field. No separate approval of All India Council for Technical Education/UGC is required for this purpose.”

Before this Court, the stand of the Government of India in its short reply is as under:

“1. That the Government of India has the Constitutional responsibility of determining, maintaining and coordinating the standards in higher education including technical and professional education. This responsibility is discharged through the Statutory Bodies like University Grants Commission (UGC), All India Council for Technical Education (AICTE), Indira Gandhi National Open University – Distance Education Council (IGNOU - DEC) in their respective fields and as per the provision under their respective Act. UGC is responsible for the standards in general higher education, AICTE is technical and professional education and DEC, an authority of IGNOU, in education through distance mode.

2. That employers have the prerogative of prescribing the qualifications and recognizing the degrees/diplomas/certificates for appointment to various posts as well as for promotion to various positions in their organizations. Central Government, as an employer had issued Gazette Notification No.44 dated 01.03.1995, which is annexed as Annexure R-1, inter alia clarifying that only such degrees/diplomas and certificates earned through distance mode of education are recognized for the purpose of employment under Central Government, which are approved by the Distance Education Council (a statutory authority of IGNOU) and AICTE, wherever necessary. It may be clarified here that the degrees earned through distance mode in technical disciplines, which are covered under AICTE Act, can only be considered recognized for the purpose of employment under Central Government, if they are recognized/approved by AICTE. It is further clarified that the

recognition of DEC means the recognition by the Council of DEC and recognition by AICTE means recognition by the Council of AICTE.”

216. Even the AICTE has also averred in its written statement dated 24.10.2008 that no Technical Institute can impart technical education without its approval and Institute of Surveyors is not a recognized Institution.

217. We do not find any merit in the stand of respondent No.11 that such Institute does not require any approval from AICTE. The education of Surveyor is a technical education within the meaning of Section 2 (g) of the All India Council for Technical Education Act, 1987 and such technical education after the commencement of the Act could be imparted only by an Institution after obtaining approval from the AICTE. The said respondent has not even sought approval from the AICTE.

218. We find that the recognition by Government of India vide letter and notification dated 09.01.1975 and 11.07.1988 respectively is for the purposes of recognizing the qualification for the purposes of employment, but such recognition does not mean that respondent No.11 is competent to impart technical education. Imparting of technical education by an Institution after the commencement of AICTE Act is not permissible. Therefore, the present petition is disposed of with liberty to respondent No.11 to seek approval from the AICTE in accordance with law.

Multi Purpose Health Worker(Female and Male)

219. LPA Nos.773, 775, 776, 810 & 811 of 2011 are directed against an order passed by the learned Single Judge on 28.01.2011, wherein the writ petitions were allowed by the learned Single Judge relying upon the earlier

judgment of this Court rendered in CWP No.12161 of 2006 titled “Manoj Kumar & others Vs. State of Haryana & others” decided on 01.11.2006.

220. The Multipurpose Health Workers are appointed in the State in terms of Haryana Health Department Multi Purpose Health Supervisor and Multipurpose Health Workers Group-C Service Rules, 1984. The essential qualification for the appointment to the post of Multipurpose Health Worker (Female or Male) is Multipurpose Health Workers Training Course from an Institution approved by the Government.

221. The claim in the writ petitions is that the writ petitioners are eligible for appointment to such posts having diploma from JRN Vidyapeeth, a deemed to be University, in the subject/field of Multipurpose Health Worker. The learned Single Judge has allowed the writ petitions filed relying upon Division Bench judgment of this Court in CWP No.12161 of 2006 titled “Manoj Kumar & others Vs. State of Haryana & others” decided on 01.11.2006.

222. In Manoj Kumar's case (supra), the candidature of the writ petitioner was not accepted on the ground that he has obtained certificate in respect of Multipurpose Health Workers Training from a University not recognized by the State of Haryana. The argument was raised that he has obtained Diploma from a “deemed to be University” and said fact alone makes him eligible for appointment as Multipurpose Health Worker. After considering the argument raised, this Court held to the following effect:

“On the basis of principle as well as precedent mentioned above, it must be concluded that a diploma certificate issued by a deemed university like Rajasthan Vidya Peeth has to be held as valid because the University Grant Commission vide its notification dated 19.8.2003 has conferred upon Rajasthan Vidya Peeth, Udaipur, the status of deemed University under Section 3 of the 1956 Act. Once it is so, then the respondent-state or any of its agencies cannot

be permitted to de-recognize such degree or diploma, because such an action on their part would be repugnant to the provisions of Article 254 of the Constitution of India. We are further of the view that the argument of the learned State counsel that only those certificate courses are accepted by the respondent-State which are from an institution approved by the Haryana Government cannot be accepted as it would amount to keeping out of eligible candidates merely because they have obtained their qualifications from a University or an institution outside the State of Haryana. However, such a course would not be available to the respondent-state because other institutions located in the country have been conferring the similar type of diploma certificates which are in no way inferior to the one approved by the respondent State. As per their own instructions dated 18.3.1975 all those degrees and diplomas which have been awarded by the recognized universities and by the Boards established by the State Government for high/higher secondary were ipso facto recognized. The instruction further provided that those degrees and diplomas which are recognized by the Government of India are deemed to be recognized by the respondent-State. There is nothing contrary in the instructions issued on 2.11.1999 and therefore, the diploma certificate issued by the Rajasthan Vidyapeeth must be recognized as a requisite qualification fulfilling the requirement of multipurpose health workers training course as postulated by the advertisement dated 7.5.2006.”

223. However, the question; whether such certificate/diploma obtained through distance education mode from a deemed to be University can be treated to be as valid or not for the purposes of employment, was not an issue raised or decided by the Division Bench. In terms of Section 2(g) of the AICTE Act, the ‘technical education’ may not take into its ambit the Diploma in the subject of Multipurpose Health, but it appears that such course would fall within scope of the Indian Nursing Council Act, 1947 (for short the Nursing Act). Section 10 of the Nursing Act makes it mandatory for an authority granting qualification in general nursing, midwifery, auxiliary nursing-midwifery, health visiting or public health nursing to apply to the Council to have such qualification recognized for the purpose of the Act. Section 11 of the said Act prohibits that no person shall be entitled to be enrolled in state register as a nurse, midwife, auxiliary nurse-midwife, health

visitor, or public health nurse unless he or she holds a recognized qualification.

The relevant Sections of the said Act read as under:

“10. Recognition of qualifications.—(1) For the purposes of this Act, the qualifications included in Part I of the Schedule shall be recognised qualifications, and the qualifications included in Part II of the Schedule shall be recognised higher qualifications.

(2) Any authority within the States which, being recognised by the State Government in consultation with the State Council, if any, for the purpose of granting any qualification, grants a qualification in general nursing, midwifery, auxiliary nursing midwifery, health visiting or public health nursing, not included in the Schedule may apply to the Council to have such qualification recognised, and the Council may declare that such qualification, or such qualification only when granted after a specified date, shall be a recognised qualification for the purposes of this Act.

(3) The Council may enter into negotiations with any authority in any territory of India to which this Act does not extend or foreign country which by the law of such territory or country is entrusted with the maintenance of a register of nurses, midwives or health visitors, for the settling of a scheme of reciprocity for the recognition of qualifications, and in pursuance of any such scheme the Council may declare that a qualification granted by any authority in any such territory or country, or such qualification only when granted after a specified date, shall be a recognised qualification for the purposes of this Act :

Provided that no declaration shall be made under this sub-section in respect of any qualification unless by the law and practice of the foreign country in which the qualification is granted persons domiciled or originating in India and holding qualifications recognised under this Act are permitted to enter and practise the nursing profession in that country :

Provided further that—

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(4) The provisions of sub-sections (2) and (3) and of Sections 14 and 15 shall apply *mutatis mutandis* to the declaration by the Council of a qualification granted in respect of post-certificate nursing training as a recognised higher qualification.

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11. Effect of recognition – Notwithstanding anything contained in any other law – (a) any recognized qualification shall be a sufficient qualification for enrolment in any State register;

(b) no person, shall after the date of the commencement of this Act, be entitled to be enrolled in any State register as a nurse, midwife, health visitor, or public health nurse unless he or she holds a recognized qualification;

(c) any person holding a recognized higher qualification shall be entitled to have the qualification entered as a supplementary qualification in any State register in which he or she is enrolled and after the said date no person shall be entitled to have entered as a supplementary qualification in any register any qualification which is not a recognized qualification.

224. Ms. Palika Monga has produced background leading to the creation of the post of a Multipurpose Health Worker. Such concept was introduced in the year 1974 on the recommendation of *Kartar Singh Committee* in the year 1973. The Committee felt appropriate to enhance the expertise of workers to all programs (through proper training) and simultaneously reduce the area of their functioning in order to implement the primary health care projects in India. The Auxiliary Nurse Midwife was recommended to be re-designated as Multipurpose Worker (Female) and a basic health worker, malaria surveillance worker, vaccinator, health education assistant (Trachoma) and family planning health assistant were re-designated as a Multipurpose Health Worker (Male) in the year 1974. The Ministry of Health and Family Welfare has spelt out the responsibilities with respect to Multipurpose Health Worker (Male) which includes visit to each family once a month; carry out activities related to detection and control of epidemic outbreaks, environmental sanitation, safe drinking water, communication and counseling, life style diseases and logistics and supply management at sub-centre and first aid in emergencies like accidents, injuries, burns etc., treatment of common/minor illnesses. The measures taken by the Multi Purpose Health Worker are both preventive and curative. The curriculum of a Multi Purpose Health Worker as recommended by the Ministry of Health and Family Welfare as also by Indian Nursing Council are attached as Annexures 6 and 7 with the note.

225. In view of the above, we find that the judgment of this court in Manoj Kumar's case (supra) is not applicable to the facts of the present set of

cases as issue of imparting training in multipurpose health through distance mode was not a subject matter of adjudication in that case even remotely. Such issue has been debated at length before this Court not only in respect of technical education, but also in respect of other professional councils working under the aegis of the Commission. The certificate/diploma in Multipurpose Health is a subject, which is either required to be approved by the Indian Nursing Council or the State Nursing Council, or by the All India Technical Council but there is nothing on record, which can lead to inference of any approval in respect of courses undergone by the writ petitioners. In the absence of any approval either from the Commission or the AICTE or the Nursing Councils either state or centre, the writ petitioners cannot claim to be qualified for the purpose of appointment under the State. As observed earlier, a deemed to be University cannot start any course or programme without the approval of the Commission. Since, the course is not approved by the Commission or by any other statutory authority, the qualification/ diploma granted by a deemed to be University will not make such candidate as eligible for appointment.

226. Consequently, the letters patent appeals against the order dated 28.01.2011 passed by the learned Single Judge are allowed and the order is set aside and the writ petitions dismissed but with a direction that firstly the State Government shall consider the approval of the qualification obtained by the petitioners as one of the qualifications of Multipurpose Health to be included in the Schedule I of the Nursing Act in consultation with Indian Nursing Council or State Nursing Council within a period of six months' from the date of receipt of copy of this order. If the answer is in the affirmative, then the State Government shall consider the claim of the writ petitioners for appointment in accordance with law. But if the State Government or the State

Nursing Council or the Nursing Council of India finds that such qualification is not required to be approved by them, the AICTE will examine the same in consultation with the Commission.

**(HEMANT GUPTA)
JUDGE**

**(RAJIV NARAIN RAINA)
JUDGE**

November 06, 2012
vimal/ds

Sr.No.	Case Number
1.	LPA No.582 of 2010 Haryana Vidyut Parsaran Nigam Ltd. & another Vs. Vipin Kumar & another
2.	LPA No.593 of 2010 Rajesh Kakkar & others Vs. Vikas Kumar & others
3.	LPA No.1051 of 2010 Haryana State Pollution Control Board & others Vs. Vikash Kumar & another
4.	LPA No.1114 of 2010 Mohinder Singh Vs. Ramesh Chander & others
5.	LPA No.1467 of 2010 Ved Parkash & others Vs. Gurlal Singh & others
6.	LPA No.1604 of 2010 Dakshin Haryana Bijli Vitran Nigam Ltd. & others Vs. Mani Ram Mor & others
7.	LPA No.1605 of 2010 Uttar Haryana Bijli Vitran Nigam Ltd. & others Vs. Kuldeep & others
8.	LPA No.1606 of 2010 Uttar Haryana Bijli Vitran Nigam Ltd. & others Vs. Ramesh Chand & others
9.	LPA No.1607 of 2010 Haryana Vidyut Parsaran Nigam Limited & others Vs. Rohtas Kavar & others
10.	LPA No.1608 of 2010 Uttar Haryana Bijli Vitran Nigam Ltd. & others Vs. Yogesh Kumar & another
11.	LPA No.1609 of 2010 Dakshin Haryana Bijli Vitran Nigam Ltd. & others Vs. Raj Singh & others

12.	LPA No.1610 of 2010 Dakshin Haryana Bijli Vitran Nigam Ltd. & others Vs. Gurlal Singh & others
13.	LPA No.1611 of 2010 Dakshin Haryana Bijli Vitran Nigam Ltd. & others Vs. Rohtash Kumar & others
14.	LPA No.1612 of 2010 Uttar Haryana Bijli Vitran Nigam Ltd. & others Vs. Kuldeep Singh & others
15.	LPA No.1613 of 2010 Dakshin Haryana Bijli Vitran Nigam Ltd. & others Vs. Ravinder Kumar Aggarwal & another
16.	LPA No.1614 of 2010 Uttar Haryana Bijli Vitran Nigam Ltd. & others Vs. Rajesh Kumar & others
17.	LPA No.1785 of 2010 Jagminder Goel & others Vs. Housing Board, Haryana & others
18.	LPA No.649 of 2011 Dakshin Haryana Bijli Vitran Nigam Ltd. & others Vs. Mohinder Pal & others
19.	LPA No.773 of 2011 State of Haryana Vs. Suresh Kumar & others
20.	LPA No.775 of 2011 State of Haryana & others Vs. Sominder & others
21.	LPA No.776 of 2011 State of Haryana & others Vs. Sanjay Kumar & others
22.	LPA No.810 of 2011 State of Haryana & others Vs. Ved Parkash & others
23.	LPA No.811 of 2011 State of Haryana & others Vs. Dharambir & others
24.	LPA No.993 of 2011 Dakshin Haryana Bijli Vitran Nigam & another Vs. Ravinder

	Kumar & others
25.	LPA No.998 of 2011 Haryana Vidyut Parsaran Nigam Ltd. Vs. Sanjay Kumar
26.	LPA No.999 of 2011 Uttar Haryana Bijli Vitran Nigam Ltd. & another Vs. Rohtash & others
27.	LPA No.1078 of 2011 Haryana Vidyut Parsaran Nigam Ltd. Vs. Dilbag Singh & others
28.	LPA No.1100 of 2011 Dakshin Haryana Bijli Vitran Nigam Ltd. & another Vs. Gurcharan Singh & others
29.	LPA No.1101 of 2011 Dakshin Haryana Bijli Vitran Nigam Ltd. & another Vs. Salvinder Singh & others
30.	LPA No.1102 of 2011 Haryana Vidyut Parsaran Nigam Ltd. Vs. Ajay & others
31.	LPA No.1105 of 2011 Uttar Haryana Bijli Vitran Nigam Ltd. & another Vs. Rajiv Gill & others
32.	LPA No.1109 of 2011 Haryana Power Generation Corporation Ltd. & another Vs. Prem Chand & another
33.	LPA No.1164 of 2011 Dakshin Haryana Bijli Vitran Nigam Ltd. & another Vs. Sajjan Kumar & others
34.	LPA No.1170 of 2011 Housing Board Haryana Vs. Vinod Kumar & others
35.	LPA No.1171 of 2011 Dakshin Haryana Bijli Vitran Nigam Ltd. & another Vs. Parsh Ram & others
36.	LPA No.1173 of 2011 Uttar Haryana Bijli Vitran Nigam Ltd. & another Vs. Jai Ram

	& others
37.	LPA No.1225 of 2011 Haryana Power Generation Corporation Ltd. & another Vs. Ashok Kumar & others
38.	LPA No.1292 of 2011 Dakshin Haryana Bijli Vitran Nigam Ltd. & another Vs. Vijay Kumar & others
39.	LPA No.1337 of 2011 Dakshin Haryana Bijli Vitran Nigam Ltd. & another Vs. Ram Krishan & others
40.	LPA No.1341 of 2011 Dakshin Haryana Bijli Vitran Nigam Ltd. & another Vs. Ram Parkash & others
41.	LPA No.1342 of 2011 Dakshin Haryana Bijli Vitran Nigam Ltd. & another Vs. Ram Saran & others
42.	LPA No.1372 of 2011 Gurdeep Singh & others Vs. Haryana Staff Selection Commission
43.	LPA No.1627 of 2011 State of Haryana & others Vs. Suresh Chander Nehra
44.	LPA No.1861 of 2011 Rohtash & others Vs. State of Haryana & others
45.	LPA No.1862 of 2011 Ravi Kumar & others Vs. State of Haryana & others
46.	LPA No.1863 of 2011 Hukam Chand & others Vs. Haryana Staff Selection Commission & others
47.	LPA No.1864 of 2011 Satish Kumar Vs. Haryana Staff Selection Commission
48.	LPA No.1911 of 2011 Pardeep Kumar & others Vs. The State of Punjab & others

49.	LPA No.471 of 2012 Punjab State Power Corporation Ltd. Vs. Swarn Singh & others
50.	LPA No.1034 of 2012 Rajesh Kakkar & others Vs. Vinod Kumar & others
51.	LPA No.1173 of 2012 Haryana State Agriculture Marketing Board Vs. Vinod Kumar & another
52.	LPA No.1425 of 2012 Harish Kumar Mittal Vs. Maharishi Dayanand University, Rohtak & another
53.	CWP No.14089 of 2007 Sanjeev Kumar & others Vs. The Punjab State Electricity Board & another
54.	CWP No.15954 of 2007 Kulwant Singh Makkar & others Vs. The State of Punjab & others
55.	CWP No.17108 of 2007 Mohinder Singh & others Vs. The Managing Director, Haryana Vidyut Prsaran Nigam Ltd. & others
56.	CWP No.17165 of 2007 Jasvir Singh Vs. The State of Punjab & others
57.	CWP No.17890 of 2007 Mohit Batra Vs. The State of Punjab & others
58.	CWP No.2578 of 2008 Amrit Paul Vs. Punjab State Electricity Board & others
59.	CWP No.2858 of 2008 Sunil Kumar Soni Vs. The State of Punjab & others
60.	CWP No.5179 of 2008 Parvinder Kumar Vs. Punjab State Electricity Board & another
61.	CWP No.9643 of 2008 Shashi Bhushan Vs. Union of India & others

62.	CWP No.16561 of 2008 Harbhajan Singh & another Vs. The State of Punjab & others
63.	CWP No.17577 of 2008 Ramesh Mittal Vs. The State of Haryana & others
64.	CWP No.1691 of 2009 Sukhwant Singh & others Vs. The State of Punjab
65.	CWP No.1755 of 2009 Om Parkash Vs. The State of Punjab & another
66.	CWP No.2206 of 2009 Chanan Ram & another Vs. State of Haryana & another
67.	CWP No.2122 of 2009 Er. Rajpal Singh Vs. State of Punjab & another
68.	CWP No.4311 of 2009 Jasbir Singh Vs. Punjab State Electricity Board & another
69.	CWP No.4335 of 2009 Subhash Chander Vs. State of Haryana & others
70.	CWP No.4355 of 2009 Raj Kapoor Vs. State of Haryana & others
71.	CWP No.7593 of 2009 Manmohan Vs. State of Haryana & others
72.	CWP No.8512 of 2009 Ajay Kumar Vs. Haryana Staff Selection Commission
73.	CWP No.11892 of 2009 Naresh Kumar & others Vs. State of Punjab & another
74.	CWP No.12909 of 2009 Jagmohan Singh Vs. The State of Punjab & others
75.	CWP No.13808 of 2009 Kashmir Singh Vs. State of Punjab & others
76.	CWP No.14485 of 2009 Chander Prakash Vs. State of Punjab & another

77.	CWP No.14716 of 2009 Rajinder Kumar Vs. The State of Punjab & others
78.	CWP No.16369 of 2009 Avtar Singh Vs. State of Punjab & others
79.	CWP No.18114 of 2009 Rajinder Kumar & others Vs. State of Punjab & others
80.	CWP No.352 of 2010 Satbir Singh Vs. Haryana Urban Development Authority
81.	CWP No.360 of 2010 Ram Kishan Vs. Haryana Urban Development Authority
82.	CWP No.1240 of 2010 Raj Tribuhwan Rai & another Vs. State of Punjab & another
83.	CWP No.1697 of 2010 Gurdev Singh Kang & others Vs. The Punjab Mandi Board
84.	CWP No.3542 of 2010 Harpal Singh Vs. State of Punjab & others
85.	CWP No.4087 of 2010 Balwant Rai & others Vs. State of Punjab & others
86.	CWP No.4883 of 2010 Ajmer Singh Vs. State of Haryana & another
87.	CWP No.5021 of 2010 Surjit Singh & others Vs. Punjab State Electricity Board & another
88.	CWP No.11492 of 2010 Charanjit Singh Vs. State of Punjab & others
89.	CWP No.17265 of 2010 Ajay Kumar & another Vs. The State of Punjab & others
90.	CWP No.17307 of 2010 Amandeep Singh & others Vs. The State of Punjab & others
91.	CWP No.17342 of 2010

	Jeevan Kumar & others Vs. The State of Punjab & another
92.	CWP No.17351 of 2010 Ravinder Singh & others Vs. The State of Punjab & others
93.	CWP No.17751 of 2010 Karamjit Singh & others Vs. The State of Punjab & others
94.	CWP No.18479 of 2010 Ravinder Kumar & others Vs. The State of Punjab & others
95.	CWP No.18551 of 2010 Dinesh Bansal Vs.The State of Punjab & others
96.	CWP No.18582 of 2010 Gurpreet Singh & others Vs. State of Punjab & others
97.	CWP No.18857 of 2010 Jagdev Singh & others Vs. The State of Punjab & others
98.	CWP No.18888 of 2010 Paramjeet Singh & others Vs. The State of Punjab & others
99.	CWP No.19878 of 2010 Varinder Singh Vs. The State of Punjab & others
100.	CWP No.20201 of 2010 Kashmir Singh & others Vs. The State of Haryana & others
101.	CWP No.22299 of 2010 Sukhwinder Singh Vs. State of Punjab & others
102.	CWP No.22420 of 2010 Surinder Pal Singh & others Vs. The State of Punjab & others
103.	CWP No.22829 of 2010 SomDev Bodh & others Vs. National Fertilizers Limited & others
104.	CWP No.1808 of 2011 Birender Kumar Kardam & others Vs. The State of Haryana & others
105.	CWP No.2181 of 2011

	Akshya Bansal Vs. State of Punjab & others
106.	CWP No.9344 of 2011 Surinder Mohan Vs. State of Punjab & another
107.	CWP No.11051 of 2011 AMIE (India)/BE Engineers Association & another Vs. The State of Punjab & others
108.	CWP No.11581 of 2011 Davinder Singh & others Vs. Punjab State Power Corporation Limited
109.	CWP No.11597 of 2011 Ashok Kumar & another Vs. Haryana Urban Development Authority & others
110.	CWP No.12673 of 2011 Satnam Ram Mehmi Vs. State of Punjab & others
111.	CWP No.13510 of 2011 Bimal Dev Vs. Punjab State Power Corporation Limited & another
112.	CWP No.14226 of 2011 Mohinder Kumar Garg & others Vs. The State of Punjab & others
113.	CWP No.174 of 2012 Inder Pal Singh Vs. The State of Punjab & others
114.	CWP No.9200 of 2012 Rajnish Kumar & another Vs. State of Punjab & others
115.	COCP No.1698 of 2010 Amrit Paul Vs. Sh. K.D.Chaudhary & others
116.	COCP No.869 of 2011 Davinder Singh & others Vs. Sh. K.D.Chaudhary & others