

Dayalbagh Educational Institute vs.university Grants Commission & Ors

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Court : Delhi

Decided On : Jul-19-2019

Appellant : Dayalbagh Educational Institute

Respondent : University Grants Commission & Ors

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI * + W.P.(C) No.261/2019 and CM No.28966/2019 Judgment reserved on :01.07.2019 Date of decision :

19. 07.2019 DAYALBAGH EDUCATIONAL INSTITUTE.....Petitioner Through: Mr. Sanat Kumar Sr. Advocate Arora, Mr.Vinay with Mr.VinayakBatta, Advocates. Versus UNIVERSITY GRANTS COMMISSION & ORS...

... RESPONDENTS

Through: Mr. Apoorv Kurup, Mr. Vaibhav Gahlaut, Advocates for R-1 Mr.AnilSoni, Standing Counsel for R-2 None for R-3. CORAM: HON'BLE MS. JUSTICE ANU MALHOTRA JUDGMENT ANU MALHOTRA, J.

1. The petitioner Dayalbagh Education Society, a deemed university vide the present petition has sought the quashing of orders dated 5.11.2018 and all actions and procedure adopted by the respondent W.P(C) 261/2019 Page 1 of 82 No.1 vide communications dated 15.11.208 and 16.11.2018 pursuant thereto and also seeks that the respondent No.1, the University Grants Commission be directed to remove the difficulties by virtue of powers conferred under Regulation 21 of the

UGC (Open and Distance Learning) Regulation, 2017 for implementation of condition (i) of Regulation 3 (1) which is part of the Part-II from the date of Notification as per Regulation 1 (4) of the said Regulations.

2. The petitioner is a deemed university and submits that it has been accredited by the NAAC from time to time and that its recognition to run the MBA programme in Open & Distance Learning Mode (hereinafter referred to as 'the ODL mode') has been illegally and arbitrarily withdrawn by the UGC for the session 2018-19, which was granted and uploaded on the UGC website on 17.10.2018 as per procedure and thereafter the UGC started proceedings in violation of the procedure prescribed in the UGC (ODL) Regulation 2017.

3. The petitioner has submitted that as there are no regulations of the AICTE till date providing approval of the MBA professional programmes in the ODL Mode, the same has resulted into freezing of the said MBA professional programme to be offered by the HEIs in the distance mode. The petitioner has submitted that in the AICTE Regulations presently there is no distinction for the mode of delivery and that the AICTE determines and maintains the standards of quality for the relevant area of higher education to offer a particular course generally.

4. As per the averments made in the petition the AICTE arrayed as respondent No.2 to the present petition is in the process of drafting the W.P(C) 261/2019 Page 2 of 82 regulations specifically for the ODL mode also. The petitioner has further submitted that the UGC i.e., the respondent No.1, has not taken any steps in terms of powers vested with it under Regulation 21 of the UGC ODL Regulations 2017 for removal of difficulties which is causing grave prejudice to the petitioner, a deemed university, which was so notified vide Notification No.F9-3/78-U-3 Government of India, Ministry of Education and Culture (Department of Education) dated 16.5.1981 under section 3 of the University Grants Commission Act 1956(3 of 1956) and the said institute of the petitioner i.e., the Dayalbagh Educational Institution, comprises of the DEI Women Training College, DERREI Degree College and DEI Engineering College, Dayalbagh, Agra.

5. The petitioner has further submitted that the erstwhile NAAC accreditation of the petitioner was a CGPA of 3.14 on a four point scale at A Grade, which was valid

upto 24.10.2018 and the current NAAC reaccreditation of the Institute is due and that the petitioner is hopeful of improving the same to 3.26 or higher. The petitioner submits that it was imparting conventional education through the Unimodal way, i.e., (face to face) but that it took steps to enter into the Dual mode and made appropriate changes in its Memorandum of Association and Rules and duly sought the approval of the Government of India and the UGC vide its Minutes dated 13.5.2006.

6. The petitioner submits that it has been offering the MBA programme for the last 27 years in the Regular mode and that the AICTE approval (extension of approval i.e. EOA) provided to the petitioner to conduct its programme has since been extended till date. W.P(C) 261/2019 Page 3 of 82 7. The petitioner submits that there is virtually no difference in the quality of education in both the modes and that the petitioner is imparting distance education from its Head Quarters in a centralized manner in a synchronous mode i.e. the same lectures that are being given in the regular mode are transmitted to the students of distance learning and there is a both ways communication between the teacher and the taught. The petitioner submits that its initial MBA programme was launched as a part of the faculty of Commerce in 1991 and it was then moved to the Faculty of Social Sciences with the department of Economics in 1997 and later on in 2006 it was established as a new department of Management in the Faculty of Social Sciences in the institute of the petitioner and that the petitioner has been offering the MBA programme in the ODL mode since 2011.

8. The petitioner submits that on 10.5.2007 a memorandum of understanding was arrived amongst the UGC, AICTE and the DEC to working close cooperation in pursuit of excellence in technical education and general education through Distance and mixed mode in the country and that para 10 of the said MOU provided for a joint committee to evolve a mechanism for monitoring the existing institutions conducting courses /programmes in distance and mixed mode for ensuring maintenance of norms and standards provided by UGC, AICTE and DEC. Inter alia, the petitioner submits that the said decision inter alia included that for any institute/university to offer distance education programme it is mandatory for them to offer the same programme in the face to face mode. W.P(C) 261/2019

Page 4 of 82 9. It has been submitted on behalf of the petitioner that the recognition of Distance Education was initially granted by the Distance Education Council (DEC), which was a creation of the IGNOU. The DEC granted provisional recognition to the

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/Institute on 31.08.2007 vide F.No.DEC/Univ./State/07/5522 for a period of one year and thereafter continued the provisional recognition on 20.08.2008 vide F. No.DEC/Dayalbagh/UP/08 /illegible. Further, The DEI sought approval of nine Distance Education programmes which included two Under-Graduate Degree programmes i.e. B.Com granted on 09.09.2009 vide No.F. No.DEC/RECOG/2009/3161.

10. It has been submitted on behalf of the petitioner that on the recommendations of Joint (Tri-Partite) Committee comprising nominees from UGC, AICTE and DEC the first approval of the MBA course was issued to the

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in Distance Mode on 25.07.2011 vide F. No.DEC/Dayalbagh/UP/10/6389 dated 25.07.2011 by the DEC for the period of three academic years i.e. 2011-12 to 2013-14 and that the said approval required that the Institution will not offer any other programme, if they are not being offered through the Regular (face to face) mode. It is further submitted that it required Technical, Engineering Programmes to have AICTE recognition and any other professional programme required approval from the concerned Statutory Council. It was submitted by the petitioner that as the Management programme was indisputably a professional programme, even though it was a grey area, if the AICTE was competent to grant approval for Deemed to be Universities, even after repealing of the AICTE Amended Regulations of 1994 and 1997, by the AICTE Regulations of W.P(C) 261/2019 Page 5 of 82 2005 the

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being an Institution in order to abide by all norms and standards of the programme, sought approval from the AICTE, as being directed by the DEC, for the approval of the MBA Programme. The petitioner submits that as the Faculty of

Engineering was already approved by the AICTE, the

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/ Institute was eligible for two options, as per the then Approval Process Hand Book i.e setting up of a new Technical Institute and adding a new course in the existing Technical Institute and that the latter option was chosen by the

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/Institute. The petitioner submits that the AICTE was pleased to grant/extend approvals to the

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to offer MBA from time to time and the petitioner has submitted the true copies of the approval accorded by the DEC dated 25.7.2011 and extension of approval for the Academic years 2011-2012, 2012-13 and 2013-14.

11. It has been submitted by the petitioner that the UGC took over the Distance Education from IGNOU and constituted a Distance Education Bureau and that the said authority also continued the recognition of the

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for the academic year 2014-15 thereby maintaining status quo subject to the condition that the programmes in the ODL mode would be allowed to be offered, if offered during 2013- 14 in accordance with the approval conveyed by the DEC vide No.F No.UGC/DEV/RECOG/Dayalbagh/Vol.II/7462-7465 dated 05.06.2014. It also required the

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to follow the norms prescribed by the concerned regulatory body/ies such as the UGC/AICTE/any other, and to also seek its/their prior approval, wherever required, for any specific programme as mentioned therein above. The UGC continued the recognition accorded to the

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for academic sessions 2014-15 W.P(C) 261/2019 Page 6 of 82 and 2015-16 as earlier. The true copies of the letters No.F.

No.UGC/DEV/RECOG/Dayalbagh/Vol.II/7462-7465 dated 05.06.2014 and F. No.9-1/2016 (DEB-III) and the extension of approvals of the AICTE for the Master of Business Administration Programme vide F.No.Northern/1-2008700091/2014/EOA dated 04.06.2014 and F.No.Northern81-2454977183/2015/EOA dated 07.04.2015 have been annexed by the petitioner with the petition.

12. It has been submitted on behalf of the petitioner that the UGC granted approval to

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Institute under the ODL mode for two academic years 2016-17 and 2017-18 vide F.No.9-2/2016 (DEB-III) dated 26.09.2016, and accordingly the Institute/Petitioner also sought approval of the AICTE regarding the extended approval of the Institute for the MBA Programme and same was accorded on a yearly basis vide No.Northern/I-281251771/2016/EOA dated 05.04.2016 and F.No.Northern/1-3324832321/2017/EOA dated 30.03.2017.

13. It has been submitted on behalf of the petitioner that the UGC (Open and Distance Learning) Regulations 2017 were framed and notified on 23.06.2017 and that as per Regulation 3 (1) (i) requires the Higher Education Institutions are required to have the approval of the statutory body under the UGC Act for offering the programme in Open and Distance Learning Mode.

14. The petitioner further submits that the UGC invited online application up to 31.10.2017 for the programmes to be offered in the Distance Education Mode for the Session 2018-19. Accordingly, the proposal was made and the hard copy (as asked to be submitted to the W.P(C) 261/2019 Page 7 of 82 UGC) was duly submitted on 02.11.2017. The said Regulation in Part-I read to the effect:-

"UNIVERSITY GRANTS COMMISSION NOTIFICATION New Delhi, the 23rd June, 2017 F. No.2-4/2015 (DEB-III).In exercise of the powers conferred by sub-section

(1) of section 26 read with clause (j) of section 12 of the University Grants Commission Act, 1956 (3 of 1956) and in supersession of the University Grants

Commission Regulations, (the minimum standards of instructions for through nonformal/distance education in the faculties of Arts, Humanities, Fine Arts, Music, Social Science, Commerce and Sciences) Regulations, 1985 except as respect of things done or omitted to be done before such supersession, the University Grants Commission makes the following regulations, namely : degree first the grants of PART - I PRELIMINARY¹ Short commencement. title, application and These regulations may be called

(1) the University Grants Commission (Open and Distance Learning) Regulations, 2017. These Regulations lay down the minimum

(2) standards of instruction for the grant of degree at the undergraduate and post-graduate levels, through Open and Distance Learning mode, and shall be in addition to and not in derogation of any other Regulations, W.P(C) 261/2019 Page 8 of 82 Notifications, Guidelines or Instructions issued by the Commission from time to time.

(3) These regulations shall apply to a University referred to under clause (f) of section 2 of the University Grants Commission Act, 1956, an Institution Deemed to be University under section 3 of the said Act, for all degree programmes of learning at the undergraduate and post-graduate level, other than programmes in engineering, medicine, dental, pharmacy, nursing, architecture, physiotherapy and programmes not permitted to be offered in distance mode by any other regulatory body.

(4) These regulations shall come into force from the date of their publication in the Official Gazette.

2. Definitions. In these regulations, unless the context otherwise requires (a) Academic session means duration of twelve months beginning either in January or in the month of July of every year; (b) Act, means the University Grants Commission Act, 1956 (3 of 1956); (c) Centre for Internal Quality Assurance (CIQA) means a Centre as specified in Annexure I established by a Higher Educational Institution offering programmes in Open and Distance Learning mode for ensuring the quality of programmes offered by it through internal quality

monitoring mechanism in accordance with in Annexure II; the guidelines as specified W.P(C) 261/2019 Page 9 of 82 (d) Commission means the University Grants Commission established under the University Grants Commission Act, 1956 (3 of 1956); (e) Credit means the Unit award gained by a learner by study efforts of a minimum of thirty hours required to acquire the prescribed level of learning in respect of that Unit; (f) Degree means a degree specified under sub-section

(3) of section 22 of the Act; (g) Examination Centre means a place where examinations are conducted for the Open and Distance Learning mode learners and is having the requisite infrastructure and adequate manpower for smooth conduct of examinations, and adhering to such minimum standards as specified in Annexure III. informally, any person or (h) Franchising for the purpose of these regulations, means and includes the practice of allowing, formally or institution or organisation, other than the Higher Educational Institution recognised under these regulations for offering Open and Distance Learning programmes, to offer such programmes of study on behalf of or in the name of recognised Higher Educational Institution, and the terms franchise and franchisee shall be construed accordingly; the (i) Higher Education means such education, imparted by means of conducting regular classes or through distance education systems, beyond twelve years of schooling leading to the award of a Degree or Certificate or Diploma or Postgraduate Diploma; W.P(C) 261/2019 Page 10 of 82 Institution means a (j) Higher Educational university covered under clause (f) of section 2 and an institution deemed to be a university covered under section 3 of the University Grants Commission Act, 1956, which is imparting by means of conducting regular classes or through Open and Distance Learning systems, higher education or research therein; (k) Learner Support Centre means a centre established, maintained or recognised by the Higher Educational Institution for advising, counselling, providing interface between the teachers and the learners, and rendering any academic and any other related service and assistance required by the learners; (l) Learner Support Services means and includes such services as are provided by a Higher Educational Institution in order to facilitate the acquisition of teaching-learning experiences by the learner to the level prescribed by or on behalf of the Commission in respect of a programme of study; (m) Open and

Distance Learning mode means a mode of providing flexible learning opportunities by overcoming separation of teacher and learner using a variety of media, including print, electronic, online and occasional interactive face-to-face meetings with the presence of an Higher Educational Institution or Learner Support Services to deliver teaching-learning experiences, including practical or work experiences.

(n) Open University means a University which imparts education through distance education or Open and Distance Learning mode using variety of W.P(C) 261/2019 Page 11 of 82 and Communication Technology Information educational aids i.e. online education in the form of Open Educational Resources (OERs) or Massive Open Online Courses (MOOCs) etc.;

(o) Programme means a course or programme of study leading to the award of a Degree at graduate and postgraduate levels in a higher educational institution including Certificate or Diploma or Post Graduate Diploma;

(p) Professional programmes means a programme other than programmes in engineering, medicine, dental, pharmacy, nursing, architecture, physiotherapy and programmes not permitted to be offered in distance mode by any Statutory Councils or Regulatory Authorities to be conducted by the Higher Educational Institutions under Open and Distance Learning mode or Distance Education mode for the purpose of these regulations, if any, should be considered only if the same are approved by the respective Statutory Councils or Regulatory Authorities.

relating information, (q) Prospectus includes any publication, whether in print or otherwise, issued for providing fair and transparent to a higher educational institution and programmes, to the general public (including to those seeking admission in such Higher Educational Institutions) by the management of such Higher Educational Institutions or any authority or person authorised by such Higher Educational Institutions to do so; W.P(C) 261/2019 Page 12 of 82

(r) Self Learning Material means and includes contents in the form of course material, whether print or non-print, which is inter-alia self-explanatory, self-contained, self-directed at the learner, and amenable to self-evaluation, and enables the learner to acquire the prescribed level of learning in a course of study, but does not include textbooks or guide-books;

(s) Standalone Institutions means those institutions which are not affiliated to any of the Universities under the provisions of the Act.

PART - II RECOGNITION OF HIGHER EDUCATIONAL INSTITUTION FOR OPEN AND DISTANCE LEARNING

PROGRAMMES3 Recognition of Higher Educational Institutions offering programmes in Open and Distance Learning mode

(1) Every Higher Educational Institution offering a programme in Open and Distance Learning mode in pursuance of an approval granted to it for the purpose by the then Distance Education Council or by the Commission or by any other regulatory authority or intending to offer a programme in Open and Distance Learning mode session immediately after the notification of these regulations shall, for grant of recognition, make an application to the Commission in such form and manner as laid down in sub-regulation

(2) on fulfilment of the following conditions, namely : academic from the W.P(C) 261/2019 Page 13 of 82 (i) the Higher Educational Institution has the approval of the statutory bodies under the Act for offering the programme in Open and Distance Learning mode; (ii) the Higher Educational Institution shall adhere to the policy of territorial jurisdiction as specified in Annexure IV; (iii) the Higher Educational Institution other than an Open University, is offering similar programme in the conventional mode of classroom teaching; (iv) a copy of such application is displayed on the website of the Higher Educational Institutions by way of selfdisclosure; (v) that the application is accompanied by evidence of having prepared the self learning materials required for the programmes of study, duly approved by the statutory bodies of the Higher Educational Institutions empowered to decide on academic matters; (vi) the application is accompanied by evidence of availability of Open and Distance Learning resources adequate for effective delivery of all the proposed programme(s) of study and the expected enrolment of students; (vii) the application is accompanied by evidence of the preparedness for establishing Learner Support Centres, providing Learning Support Services, establishing Centre for Internal Quality Assurance, availability of the academic and other staff in the Unit and Learner Support Centres of the Higher Education, availability of qualified Counselors in the Learner Support Centres meeting standards of such W.P(C) 261/2019 Page 14 of 82 competence as specified in Annexure V, and the administrative arrangements for supportive services for effective delivery of Open and Distance Learning; from National Assessment (viii) the Higher Educational Institution has valid accreditation and

Accreditation Council (NAAC) and has completed five years of existence: Provided that this clause shall not be applicable to Open Universities till the time they become eligible for National Assessment and Accreditation Council accreditation and it shall be mandatory for Open Universities to get National Assessment and Accreditation Council accreditation within one year of their becoming eligible for the same: Provided further that an institution Deemed to be a University so declared by the Central Government shall offer the Open and Distance Learning courses or programmes as per the extant Deemed to be a University Regulations and also notified by the University Grants Commission from time to time in the matter. academic session after immediately

(2) A Higher Educational Institution intending to offer a programme in Open and Distance Learning mode for the notification of these regulations and for subsequent years shall, notwithstanding that it has obtained permission from the then Distance Education Council or by the Commission for offering a programme in Open and Distance learning mode for academic session immediately after the notification of these regulations and for subsequent years, shall make an on-line application in the format specified by the Commission, and upload the same on the specified W.P(C) 261/2019 Page 15 of 82 portal along with scanned copy of the documents specified therein, at least six months before the commencement of the academic session of the programme intended to be offered by such Higher Educational Institution.

(3) The Commission shall process the application received under sub-regulation

(2) of regulations 3 in the following manner, namely: (i) any deficiency or defect in the application shall be communicated by the Commission to the Higher Educational Institution preferably within one month from the date of receiving the application and the Higher Educational Institution shall be required to remove or rectify such deficiencies or defects with the necessary documents or information, if any within fifteen days; (ii) where the Higher Educational Institution has made an application for offering programme (s) in Open and Distance Learning mode, notwithstanding that in respect of such programme(s) the Distance Education Council (DEC) or Commission had caused the inspection of the institute in the

past or prior to coming the Commission may cause an inspection, in respect of the Higher Educational such programme(s), of Institutions at through an Expert Committee; and its discretion regulations, force of these into (iii) the Commission shall examine the application with the help of an Expert Committee constituted by the Chairman Commission and the of W.P(C) 261/2019 Page 16 of 82 recommendations of the Committee shall be placed before the Commission for its consideration.

(4) After processing the application in the manner laid down under sub-regulation

(3) of regulation 3, the Commission shall (i) if it is satisfied that such Higher Educational Institution fulfils the conditions laid down and the quality parameters specified under these regulations, pass an order granting recognition to such Higher Educational Institutions for a period of five years in respect of such programmes as it may specify in the order, and subject to such conditions as it may specify: Provided that while passing an order, where the Commission does not grant recognition in respect of one or more programmes, the Commission shall specify the grounds of such refusal in the order: Provided further that before passing an order, the Commission shall provide a reasonable opportunity to the concerned Higher Educational Institution of being heard. (ii) if it is of the opinion that such Higher Educational Institutions does not fulfil the requirements laid down in clause (i) in respect of any of the programme intended to be offered by the Higher Educational Institution, pass an order refusing recognition to such Higher Educational Institution for reasons to be recorded in writing.

(5) Every order granting or refusing recognition to a Higher Educational Institutions for programme(s) in Open and Distance Learning mode under sub- regulation

(4) shall be communicated in writing for W.P(C) 261/2019 Page 17 of 82 to such Higher Educational appropriate action Institutions and to the concerned State Government and the Central Government.

(6) Every Higher Educational Institution, in respect of which recognition for programme(s) has not been granted by the Commission, shall discontinue the programme(s) in Open and Distance Learning mode with immediate effect.

(7) No Higher Educational Institution shall offer a programme in Open and Distance Learning mode for academic session immediately after the notification of these regulations and for subsequent academic session and admit students thereto unless it has been granted recognition for the programme under clause (i) of sub-regulation (4). Explanation for the purpose of these regulations Distance Education Council means the Distance Education Council constituted under section 28 under the Indira Gandhi National Open University Act, 1985 vide notification GSR No.692 dated 22.11.1991 (which has since been repealed vide notification number IG/Admn(G)/DEC/2013/3148 dated 14.08.2013 published in Part III, Gazette of India dated 31.08.2013. 4 Withdrawal of recognition

(1) Where the Commission is, on its own motion or on any representation received from any person, or any information received from any authority or a statutory body, or on the basis of any enquiry or inspection conducted by it, satisfied that a Higher Educational Institution has contravened any of the provisions of these regulations or guidelines and W.P(C) 261/2019 Page 18 of 82 in respect of orders made or issued thereunder, or has submitted or produced any information and documentary evidence which is found to be false at any stage or any condition subject to which recognition under clause (i) of sub-regulation

(4) of regulation 3 has been granted, it may withdraw recognition of such Higher Educational such programme(s) as it may specify, for reasons to be recorded in writing: Provided that no such order against the Higher Educational Institution shall be passed unless a reasonable opportunity of making representation against the proposed order has been given to such Higher Educational Institution: Provided further that the order withdrawing or refusing recognition passed by the Commission shall come into force with immediate effect. of

(2) If a Higher Educational Institution offers any programme in Open and Distance Learning mode after the coming into force of the order withdrawing recognition under sub-regulation

(1) or where a Higher Educational Institution offering a programme in Open and Distance Learning before the commencement of these regulations, fails to obtain recognition under these regulations for offering programmes in Open and Distance

Learning mode for academic session immediately after the notification of Regulations and subsequent academic sessions, the degree obtained pursuant to such programme or after undertaking a programme in Open and Distance Learning mode such Higher Educational Institutions, shall not be treated as a valid qualification. in W.P(C) 261/2019 Page 19 of 82

(3) In the event of any Higher Educational Institution found offering programmes or courses in Open and Distance Learning mode without the approval of the Commission or in violation to any of the provisions of these regulations and guidelines or orders made thereunder, the Commission may (i) issue Show Cause Notice or withdraw the recognition for an academic session or withdraw the recognition, maximum up to next five academic sessions or withdraw the recognition permanently; (ii) if, in spite of above, the Higher Educational Institution is found continuing the violations, a First lodged against Information Report may be the officials or management of the errant Higher Educational Institution to take action as per law. (iii) withhold or debar from receiving University Grants Commission grants; to the State Government (iv) refer the matter concerned or Central Government as the case may be; and (v) take action as per the provisions of the Act or Rules or Regulations as applicable to the Higher Educational Institution.

5. Appeals (1) Any Higher Educational Institution aggrieved by an order made under sub-regulation (4) of regulation 3 or withdrawal of recognition under sub-regulation (1) of regulation 4 may prefer an appeal to the Commission within a period of thirty days. W.P(C) 261/2019 Page 20 of 82 (2) No appeal after the expiry of the period prescribed therefore shall be accepted. (3) Every appeal made under these regulations shall be accompanied by a copy of the order appealed against accompanied by such fees as may be prescribed by the Commission from time to time. (4) The procedure for disposing of an appeal shall be as laid down by the Commission from time to time. (5) The Commission may confirm or reverse the order appealed against. (6) The decision of the Commission shall be final and binding on the Higher Educational Institutions.

15. It has been submitted further by the petitioner that on 03.11.2017, the Hon'ble Supreme Court in Orissa Lift Irrigation Corporation Ltd. Vs Rabi Sankar Patro&Ors.(2018) 1 SCC468 while deciding the issue of some deemed to be Universities for granting ex post facto approval for BE/B.Tech Degrees in the background of 1994 AICTE Regulations, categorized Deemed to be Universities of two categories. The first category, where a Deemed to be University with its statusso conferred for its excellence in a field of a Technological subject was desirous of introducing courses or programmes integrally connected with the area and the Second category of a Deemed to be University, which was conferred such status for its excellence in subjects which are completely unrelated to the field, in which new courses are sought to be introduced and that such Deemed to be Universities of second category must fulfill the requirements of the 1994 AICTE Regulation and thatgeneral W.P(C) 261/2019 Page 21 of 82 directions were issued restraining all Deemed to be Universities to carry on any courses in the distance education mode from the academic session 2018-19 unless and until: a) It was permissible to conduct such courses in the ODL mode and b) Specific permissionswere granted by the statutory/regulatory Authorities in respect of each of those courses 16. It has been submitted further by the petitioner that the UGC amended the UGC (Open and Distance Learning) Regulations 2017 and accordingly Notification F.No.2-4/2015(DEB-III) dated 06.02.2018, was issued and the Regulation 21 was inserted regarding reserving the Right to the UGC for removing difficulty/difficulties in the course of implementation of these Regulations in consultation with the Government of India, Ministry of Human Resource Development.

17. It has been submitted on behalf of the petitioner that thereafter the UGC issued public Notice vide No.F. No.74-8/2017(DEB-IV) dated 21.02.2018 cancelling the process initiated for the recognition of the distance learning proforma of the HEIs under which applications were invited during August-October, 2017 and that thepetitioner submitted the application in October, 2017.

18. It was submitted by the petitioner that in the background of earlier approvals, it applied for extension of approval to the AICTE on it's Website, as per the procedure laid down in their then Approval Hand Book and the AICTE extended

the approval to the

... Petitioner

for the MBA Course vide F. No.Northern/1-3511897508/2018/EOA dated 04.04.2018 for the Session 2018-19. The document indicates that it was an approval for the MBA (F.T. Course i.e., Full time). The W.P(C) 261/2019 Page 22 of 82 petitioner submits that the AICTE does not have any procedure for approval in its Regulations or Approval Hand Book 2018- 19 for the ODL Mode till date and that they have been according approval for a particular Course/Programme determining or maintaining standards of quality in the relevant area of Higher Education, as per the norms and standards as laid down by it for the Regular mode only.

19. Thepetitioner submits that it subsequently filed an application online to the UGC on 01.05.2018 with the hard copy of the same, as per the procedure, on 04.05.2018 for the continuation of recognition of Programmes to be offered under the ODL mode including MBA, and that on 23rd and 24th July 2018, the Expert Committee of the UGC, visited the

... Petitioner

institute to verify the data as filled in the Application form and submitted its report to the UGC, as per the procedure prescribed vide Regulation 3 (3) of the UGC (ODL) Regulations, 2017.

20. The petitioner submits that on 09.08.2018, the UGC published the public notice to the effect that the approval of the ODL programmes to be offered by Deemed to be Universities were under process, and that for the year 2018-19 and onwards for all professional programmesno recognition without prior approval of the respective regulatory authority was valid.

21. It has further been submitted on behalf of the petitioner that in the background of the Orissa Lift Irrigation Corporation Ltd case (Supra), the AICTE communicated to the UGC on 28.08.2018 in relation to their draft Regulations of 2018 and sought their comments and that in the said communication, the AICTE communicated to the W.P(C) 261/2019 Page 23 of 82 UGC that for all other Deemed to be

Universities (that is excluding the Deemed to be Universities notified by UGC as Category 1 Institution as per UGC And Central and State Legislated Universities), the AICTE would be inviting applications online on their web portal and shall process them as per the procedure laid down and duly notified by AICTE.

22. It has been submitted on behalf of the petitioner that the UGC issued a public Notice vide F No.1-6/2018 (DEB-1) dated 01.10.2018 to the effect to extend the last date of admission in the recognized ODL programmes to be offered by HEIs for the academic session 2018-19 up to 20.10.2018. The HEIs were directed to complete the process by 20.10.2018 and that no admission would be made after that date.

23. It has been submitted on behalf of the petitioner that the UGC invited the

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/Institute for an interface meeting on 12.10.2018 at UGC, DEB office, New Delhi asking the petitioner to bring some documents for the perusal of the Expert Committee as per the ODL Regulation and its Amendments.

24. It has been submitted on behalf of the petitioner that on 12.10.2018 during the interface meeting the approval as already obtained by the

... Petitioner

/Institute for the MBA course by AICTE for the Session 2018-19 was duly submitted to the Interface Expert Committee, (apparently the same is a reference to the MBA Full Time Course.) 25. It has been submitted on behalf of the petitioner that on 17.10.2018 the

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s status on the web portal UGC was shown at entry No.74, as being recognized for the MBA programme, as per the W.P(C) 261/2019 Page 24 of 82 procedure and under powers prescribed in Regulation 3 (4) (i) of the UGC (ODL) Regulations, 2017.

26. The petitioner submits that accordingly 154 admissions were done by the

... Petitioner

on 18.10.2018 in the MBA programme for the Session 2018-19. Thereafter on 02.11.2011, the UGC sought the list of students admitted under the ODL mode for the Session 2018-19 from the

... Petitioner

/Institute and the same was duly communicated to the UGC on 16.11.2018.

27. The petitioner submits that on 05.11.2018 vide No.F.No.74- 4/2017(DEB-I) the

... Petitioner

/Institute was informed that the recognition to the MBA course under the ODL Mode as uploaded on UGC website on 17.10.2018 stood withdrawn in the background of communication dated 28.08.2018 received from the AICTE regarding their draft Regulations i.e. Draft-AICTE (Open and Distance Learning for Standalone Institutions) Regulation 2018 and it was advised to obtain the necessary approval from the AICTE for running the MBA programme and further advised/directed to cancel the admissions made in the MBA under the ODL mode.

28. It has been submitted on behalf of the petitioner that on 15.11.2018, the UGC asked the

... Petitioner

to submit the representation under Clause 4 (i) of sub-regulation (3) of Part-II of the University Grants Commission (Open and Distance Learning) Regulations, 2017 and its amendments pointing out the deficiency regarding the prior approval of Regulatory Authority as per sub regulation 2 (p) of Part-I of the UGC (ODL) Regulations, 2017 for the academic Session 2018-19, W.P(C) 261/2019 Page 25 of 82 thereby also referring to its earlier communication 05.11.2018 and the communication of the AICTE to UGC dated 28.08.2018.

29. It has been submitted on behalf of the petitioner that on 16.11.2018, the UGC invited the

... Petitioner

for interaction with the Expert Committee to review/assess the representation if any, on 27.11.2018 at 10:30 PM at UGC, New Delhi specifically mentioning that the

representation be submitted in the prescribed format along with evidence of removal of deficiency.

30. The petitioner submits that the representation as per format was submitted through email on 20.11.2018 and submitted during the interface meeting, which was rescheduled on 26.11.2018. In the said representation, it was communicated to the UGC that the AICTE portal is not enabled for seeking approval in the ODL mode for the MBA programme. The approval for the session including for the session 2018-19 for MBA programme was also stated to have been duly submitted by the petitioner during the interaction as rescheduled on 26.11.2018.

31. The petitioner further submits that the Deemed to be Universities are under the Supervisory and Regulatory Control of the UGC, and that the AICTE by virtue of the All India Council for Technical Education Act 1987 (hereinafter referred as AICTE Act) has power to grant approval only qua Technical Institutions, which excludes the Deemed to be Universities according to the AICTE Act but the AICTE by virtue of its Regulation of 1994 had assumed power to perform another function i.e. approval for a Course/Programme pertaining to Technical Education in Universities and Deemed to be Universities, which power the W.P(C) 261/2019 Page 26 of 82 petitioner submits could have been added only by virtue of Section 10 (v) by the Rules and that thereafter the said Regulations were repealed by the subsequent Regulation of 2005, but again vide Regulations of 2016, the AICTE introduced the definition of Technical Institution which is wider than the definition provided in the AICTE Act, which the petitioner submits is possible only by the amendment of the said Act to bring in the Deemed to be Universities and Universities within their purview.

32. Inter alia, the petitioner submits that in the Orrisa Lift Irrigation Pvt. Ltd. Case (Supra) the Legislative Committee of the AICTE Regulation of 2016 was not under consideration and that the scope of the power of the AICTE to bring in the deemed to be universities under consideration of the AICTE was not under consideration.

33. It was submitted by the petitioner that the petitioner has been deprived from running an MBA programme because of the lack of the AICTE approval for conducting the same and that obtaining approval thereof is not within the province

of the petitioner and thus the principle of law *lex non cogit adim possibilia* that a person is not compelled by law what is wholly impossible in the facts of the case and that the petitioner has no control on the aspect of the grant of approval of the AICTE to the run the MBA programme in the ODL mode.

34. The petitioner has submitted that it has been imparting distance education in the simplest mode i.e. same lectures as being given in the regular mode are transmitted to the students of the distance learning and there is a two way communication between the teachers and the taught W.P(C) 261/2019 Page 27 of 82 and that the mode of delivery does not affect the quality of standard in the education of the MBA programme in the case of the petitioner.

35. Inter alia, the petitioner has submitted that the procedure adopted by the UGC subsequent to the grant of accreditation to the petitioner for offering MBA in the ODL mode on 17.10.2018 is in complete violation of the procedure prescribed in the UGC (ODL) Regulations, 2017 and there are no powers of review in Regulation 3(4) of the UGC (ODL) Regulations 2017 and once the UGC has granted accreditation under Regular 3(4)(i) to an HEI, it cannot withdraw the said recognition and cannot proceed under Regulation 3(4)(i) and cannot ask the HEI to submit a representation as per its format. The petitioner has thus submitted that the procedure adopted by the UGC to review its decision on 5.11.2018 and the subsequent action and procedure vide communications dated 15.11.2018 and 16.11.2018 is illegal and void ab initio.

36. The petitioner has submitted that there are no existing regulations of the AICTE read with their Approval Process Hand book 2018-19 providing for any such approval. The petitioner thus has submitted that the scheme of the UGC requires ODL 2017 mandates an opportunity to be heard before passing any order of withdrawal of recognition or refusal of grant of recognition and that the petitioner institute has inducted 154 candidates in the MBA programme in the session 2018-19 pursuant to the recognition granted under Regulation 3(4)(1) after processing of its application in the manner laid down under sub- regulation 3 of regulation 3 to the satisfaction of the Commission. The petitioner has further submitted that the illegal order and procedure W.P(C) 261/2019 Page 28 of 82 adopted by the UGC

has adversely affected its reputation defeating its aim and objectives and is also causing grave prejudice to the students of the petitioner who would be losing one precious year of their career. The petitioner has further submitted that the petitioner and the other HEIs cannot suffer due to the lack of the far sightedness of the UGC qua implementation of the UGC ODL Regulation, 2017 and also the lack of recognition of the statutory authority AICTE to frame appropriate Regulations for the ODL mode. The petitioner submits that the UGC ought to have appreciated that the petitioner already has approval for running an MBA programme from the AICTE for the session 2018-19 which it has been submitted has been extended even for the present academic year. The petitioner has further submitted that it has a legitimate expectation of approval being accredited by the AICTE for running an MBA programme in the ODL mode. The petitioner has further submitted that the AICTE by way of its regulation notified from time to time and particularly by way of an amended AICTE Regulation 2016 has brought the deemed to be university by introducing a new wider definition of technical institution and that provided by the AICTE Act which cannot be done and that the regulations cannot override the provisions of the Act and thus the rule 2 regulation 43 is illegal and bad in law so far as it relates to the deemed to be universities.

37. The petitioner has further submitted that it is ultimately the UGC which gives approval to the institution for the deemed to be universities for the Masters degree in the Management and that the role of AICTE is recommendatory in nature qua the management course. The W.P(C) 261/2019 Page 29 of 82 petitioner has further submitted that the UGC needs to be aware that there are no existing regulations of the statutory authority for the ODL mode and that it was bound to remove the difficulty in terms of Regulation 21 of the UGC (open and Distance Learning) Regulation, 2017 and had acted illegally to the prejudice of the HEIs like the petitioner who are following all the standards and norms qua the MBA programme in a regular mode.

38. The petitioner further submits that the respondents fall within the ambit of the State within the meaning of Article 12 of the Constitution of India and thus are amenable to the extraordinary writ jurisdiction of the Court, and that the respondents have violated their own regulations and procedures or the powers

vide their communications dated 5.11.2018, 15.11.2018 and 16.11.2018.

39. The Respondent No.1, the University Grants Commission, though its counter affidavit of Ms. Smita Bidani, its Education officer, dated 23.4.2019, submits that the University Grants Commission which has been constituted under the provisions of the University Grants Commission, Act, 1956 which came into force with effect from 05.11.1956, has been entrusted under the said enactment with the duty to take such steps as it may think necessary for the promotion and coordination of higher education in Universities and Institutions and for the determination and maintenance of standards of teaching, examination and research therein and has been vested with the power to recommend to any university or institution, the measures necessary for the improvement of education and to advise them on the action to be taken for the purpose of implementing such recommendations. W.P(C) 261/2019 Page 30 of 82 40. The respondent No.1 further submits that the UGC Act is traced to Entry 66 of List I of Schedule VII of the Constitution and that for performing its functions under the Act, the respondent No.1 is also authorized to perform such other functions as may be prescribed or as may be deemed necessary for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions.

41. The respondent No.1 has laid emphasis on the aspect that the mandate of granting approvals for recognition of Open and Distance Learning programmes is governed by Section 2(p) of the UGC (ODL) Regulations, 2017 which defines the professional programmes as follows:

"Professional programmes" means a programme other than programmes in engineering, medicine, dental, pharmacy, nursing, architecture, physiotherapy and programmes not permitted to be offered in distance mode by any Statutory Councils or Regulatory Authorities to be conducted by the Higher Educational Institutions under Open and Distance Learning mode or Distance Education mode for the purpose of these regulations, if any, should be considered only if the same are approved by the respective Statutory Councils or Regulatory Authorities."

42. The respondent No.1 has further submitted that the UGC as per the UGC (ODL) Regulations, 2017 invited proposals from all the eligible Higher Education

Institutions (HEIs) for grant of recognition of Open and Distance learning program was for the academic year 2018- 19, vide public notice dated 28.3.2018 bearing No.F.No.74-I/2018 W.P(C) 261/2019 Page 31 of 82 (DEB-IV) and that the petitioner herein submitted the online application to the UGC on 1.5.2018 with the hard copy thereof received on 5.5.2018 and that the said application was examined by the Screening Committee on 22.5.2018 and certain recommendations/deficiencies were mentioned by the Committee and the same were communicated to the petitioner herein vide letter dated 6.6.2018 and it was clear from the same that the recognition for courses could not be granted contrary to the UGC (ODL) Regulations, 2017.

43. The said letter 17-2/2018 (DEB-I) dated 6.6.2018 of the UGC to the petitioner pointed out the following deficiencies in the proposal of the petitioner for the ODL programmes for the year 2018-19 beginning 2018 which were to the effect: NAAC accreditation valid till October, 2018, application in respect of extension, details required. Territorial jurisdiction is not as per UGC (Open and Distance Learning) Regulations. Original affidavit not provided. Variation in Faculty details given in Part-A. 44. The petitioner was also vide the said letter requested to arrange the documents, information/compliance report as soon as possible and was also informed that it would be required to bring this information/documents/reports while coming to the UGC for the interface meeting and that vide the said letter it was categorically stated therein to the effect: The institution is directed not to admit any student for ODL, programmes without the prior approval of UGC, as otherwise, University, institution shall be W.P(C) 261/2019 Page 32 of 82 held responsible for all consequences arising out of it. while informing the petitioner that it was directed not to admit any student for ODL, programmes without the prior approval of UGC, as otherwise, the University, institution would be held responsible for all consequences arising out of it.

45. As per the respondent No.1 it also issued a public notice dated 9.8.2018 bearing F No.1-6/2018(DEB-I) wherein it was clearly indicated: (special Education)/ M.Ed "All professional programmes i.e. MBA / MCA / B.Ed / M.Ed/ B.Ed (Special Education)/Hotel Management/ Travel/ Tourism and Management Programmes in ODL mode shall not be accorded recognition without prior

approval of the respective Regulatory Authority valid for the year 2018- 19 & onwards, as per sub regulation 2(p) of regulation, Part-I of UGC (ODL) Regulation, 2017."

, thus specifying to the effect that the ODL programmes specified in the said public notice including the course under consideration i.e., the MBA (ODL) programme would not be accorded recognition without prior approval of the respective regulatory authority valid for the year 2018-19 and onwards in terms of sub regulation 2(p) of the regulation, Part-I of UGC (ODL) Regulation, 2017.

46. The respondent No.1 has further submitted in the light of the UGC (ODL) 2nd amendment regulations 2018, a committee was constituted and a visit was conducted on 23.7.2018 and 24.07.2018 and the recommendations of the visiting committee were placed before the Expert Committee on 24.9.2018. The recommendations of the Expert W.P(C) 261/2019 Page 33 of 82 Committee were also placed before the 535th Commission Meeting which was held on 27.09.2018 pursuant to which, the petitioner was directed to attend an interface meeting and produce certain relevant documents for further consideration which was communicated to the petitioner vide letter dated 10.10.2018 bearing F. No.17-2/2018 (DEB- I), wherein it had been clearly stated that it was mandatory to seek approval of the respective regulatory authorities in case of professional courses. The petitioner is stated to have attended the interface meeting with the respondent No.1 on 12.10.2018. The respondent No.1 has submitted that from the proforma to evaluate the proposal as per 535th Commission meeting held on 27.09.2018 it was clear that the Visiting Expert Committee had recommended the grant of approval subject to the AICTEs approval and that the recommendations made pursuant to the interface meeting clearly noted that all the HEIs including the petitioner herein had to comply with all the provisions of Regulations, 2017 and its amendments.

47. As per the decision of the 535th Commission Meeting held on 27.9.2018, the Commission considered the recommendations of the Expert Committee and observed that the recommendations of the Committee viz-a-vis recommendations of the Visiting Expert Committee and the facts mentioned in the report needed re-confirmation and thus the HEI, i.e., the petitioner was called for the interface

meeting with the same Expert Committee which considered the report of the Visiting Expert Committee and the decision based on the recommendations of the Expert Committee and with the approval of the Chairman, UGC, on the basis of the interface meeting held on W.P(C) 261/2019 Page 34 of 82 12.10.2018 was communicated to the petitioner wherein for the MBA (ODL) course it was detailed as follows:-

"Name of Programme the Sr. No 1 2 3 4 MASTER OF BUSINESS ADMINISTRATION BACHELOR OF BUSINESS ADMINISTRATION MASTER OF COMMERCE BACHELOR OF COMMERCE (HON.) PPR/SLMh as approval of the HEI statutory authorities Recommendations Programme has required faculty as per ODL Regulations Y Y Y Y Y Y Y Y Recommended* Any other relevant observation Not Recommended (with reason) institute An with social Commitment and philanthropy Y Y Y _____ Y _____ and the observations of the Committee were to the effect: Observations of Committee:

1. The Institution has allocated two full time faculty for each Programme as per the requirement of ODL Regulations 2017.
2. The evaluation methodology for each Programme will be as per ODL Regulations 2017. An undertaking of this effect, has been submitted by the Competent Authority of the Institution.
3. The approved programmes can only be offered at the Campus of the Institution No. LSC for the Institution have been approved. 48. It is further submitted that the AICTE vide letter dated 28.8.2018 sent to the UGC stated as follows: "Keeping in view with provision of AICTE Act, which mandates approval of AICTE for affiliated colleges and Deemed-to-be-Universities, through the judgment of Hon'ble Supreme Court in C.A. W.P(C) 261/2019 Page 35 of 82 No.17869- 17870/2017 and also C.A. No.17902- 17905/2017, dated November 3, 2017, the Central Legislated Universities and State Legislated Universities including Open Universities are exempted from seeking approval from AICTE to run programmes in MBA, MCA, diploma/degree in Travel and Tourism in DDL mode. However, Universities shall have to adhere to minimum norms and standards announced by AICTE from time to time and an affidavit stating that the University is observing

norms and standards of AICTE, must be submitted to the UGC. For all such Universities, the AICTE approval shall be considered as deemed to have been accorded for running DDL programmes in the MBA, MCA, Travel and Tourism disciplines... Further the Deemed to be Universities was to be treated as distinct category for the purposes of grant of recognition, The said policy decision of the AICTE was set out as follows: For all other Deemed-to-be Universities [Other than category-I as per UGC]. interested in running DDL programs in MBA, MCA and Travel & Tourism, AICTE shall invite applications and such Deemed-to-be Universities shall submit applications online on the AICTE web portal within notified deadline and shall be processed as per laid down procedure, duly notified by AICTE. AICTE will forward the."

49. It was further submitted on behalf of the respondent No.1 that the policy set out for the AICTE letter dated 28.8.2018 was in consonance with the UGC (ODL) Regulations, 2017.

50. The respondent No.1 has further submitted that the proposal of the petitioner university was under process as on 3.10.2018 for the grant W.P(C) 261/2019 Page 36 of 82 of the ODL course and the in the meanwhile inadvertently the MBA programme was also shown as a recommended programme on the website of the UGC, on 17.10.2018 along with other approved courses. The respondent No.1 has further submitted that immediately on realizing the inadvertent error that the petitioner does not fall in Category- I (as per the AICTE's letter dated 28.08.2018) as notified by UGC, the UGC issued a letter dated 05.11.2018 i.e., the impugned letter, withdrawing the ODL recognition for the MBA course. The respondent No.1 has further submitted that the withdrawal of the ODL recognition of MBA for the year 2018-19 vide letter dated 5.11.2018 is valid as per the UGC (ODL) Regulations, 2017 and the AICTE's letter dated 28.08.2018.

51. The respondent No.1 has further submitted that shockingly the petitioner as per its document admitted 154 students on 18.10.2018 after the recognition was inadvertently granted by the respondent No.1 on 17.10.2018 and the respondent No.1 further submitted that the complete process of admission including advertisement, examination, payment of fee etc. were all completed in a day. The

respondent No.1 further submitted that a detailed response dated 15.11.2018 was sent to the petitioner by it and notified its decision to the petitioner to the effect: a. ODL recognition is granted for three courses BBA, M.Com and B.Com (Hons.), for academic year 2018- 19 &2019-20. b. ODL recognition for MBA is not granted because of (i) Non submission of prior approval of respective statutory authority in terms 2(p) of UGC (ODL) W.P(C) 261/2019 Page 37 of 82 Regulations, 2017 (ii) In the light of letter dated 28.08.2018 issued by AICTE. 52. Vide the said impugned letter dated 5.11.2018, the respondent No.1 specified as follows: S. No.Name of the Programme Deficiencies 1. MASTER OF BUSINESS ADMINISTRATION of 1. Non submission of prior approval respective Regulatory Authorities for the academic session 2018--19 and onwards as per sub regulation 2(p) of Part-I of UGC (ODL) Regulations, 2017. Please refer the enclosure at Annexure-2. attached 2. Please refer UGC letter F. No.74-4/2017 (DEB-I) dated 05 November, 2018, copy enclosed at Annexure-3 and that 6. For the programmes found deficient in 4(B) above, the Higher Educational Institution shall submit representation along with documentary evidence, if any, within 30 days from the date of this order as per the provision at clause 4(i) of sub regulation (3) of Part-II of the University Grants Commission (Open and Distance Learning) Regulations, 2017 and its amendments., and thus provided the petitioner thirty days time to make a representation along with the documentary evidence to clear the deficiencies indicated for the rejection of recognition for the MBA W.P(C) 261/2019 Page 38 of 82 (ODL) programme and invited the

... Petitioner

herein for a further interface meeting which was scheduled for the date 26.11.2018.

53. The respondent No.1 further submitted that the petitioner again failed to comply with the provisions of the UGC (ODL) Regulations, 2017 and that the petitioner admittedly does not have recognition from the AICTE for conducting the MBA course through Distance mode and requested permission to continue with the course without any valid ground solely based on the undertaking to comply with AICTE guidelines in the future, which the respondent No.1 submitted is not permissible as per the provisions of the UGC (ODL) Regulations, 2017.

54. The learned counsel for the respondent No.1 has further submitted that the petitioner consciously chose to ignore the directions of the UGC by not taking any steps till January, 2019 and is now wrongly attempting to create rights under the garb of protecting the interest of students. (It is essential to observe that the present petition W.P.(C) No.261/2019 was instituted only on 17.1.2019 by the petitioner after withdrawal of the recognition to the MBA (ODL) course by the respondent No.1 on 5.11.2018.) 55. Inter alia, the respondent No.1 has submitted that in terms of the verdict of the Honble Apex Court in *Orrisa Lift Irrigation Corporation Ltd. vs. Rabi Sankar Patro & Ors.*, (2018) 1 SCC468 the recognition to the programmes conducted through the distance mode cannot be granted without following the norms and procedure laid down by the AICTE and the reliance was placed by the respondent W.P(C) 261/2019 Page 39 of 82 No.1 on the observations of the Honble Supreme Court in the said verdict to the effect:-

"involving actual application concept of imparting it in clear imparting of to have accepted Technical education leading to the award of degrees in Engineering consists of lessons in theory as well as practicals. The practicals form the backbone of such education which is hands-on approach of principles taught in theory under the watchful eyes of demonstrators or lecturers. Face to face imparting of knowledge in theory classes is to be reinforced in practical classes. The practicals, thus, constitute an integral part of the technical education system. If this established technical education as a qualitative norm is to be modified or altered and in a given case to be substituted by distance education learning, then as a concept AICTE ought terms. What parameters ought to be satisfied if the regular course of imparting technical education is in any way to be modified or altered, is for AICTE alone to decide. The decision must be specific and unequivocal and cannot be inferred merely because of absence of any guidelines in the matter. No such decision was ever expressed by AICTE. On the other hand, it has always maintained that courses leading to degrees in Engineering cannot be undertaken through distance education mode. Whether that approach is correct or not is not the point in issue. For the present purposes, if according to AICTE such courses ought not to be taught in distance education mode, that is the final word and is binding unless rectified in a manner known to law. Even National Policy on Education while emphasising the need to have a flexible, pattern and programmes

through distance education learning in technical and managerial education, laid down in Para 6.19 that AICTE will be responsible for planning, formulation and maintenance of norms and standards including W.P(C) 261/2019 Page 40 of 82 maintenance of parity of certification and ensuring coordinated and integrated development of technical and management education. In our view, whether subjects leading to degrees in Engineering could be taught in distance education mode or not is within the exclusive domain of AICTE. The answer to the first limb of the first question posed by us is therefore clear that without the guidelines having been issued in that behalf expressly courses in Engineering through distance education mode, the deemed justified in introducing such courses. to be universities were not permitting degree 56. The respondent No.1 has further submitted that the Regulation 21 of the UGC (ODL) Regulations, 2017 is with reference to the removal of the difficulties whilst implementing the regulations and that in the present matter, the restoration/grant of recognition was not accorded because of the non-compliance on the part of the petitioner and that there is/are no difficulty/difficulties in the implementation of the present regulations and the contentions thus raised on behalf of the petitioner in relation thereto were misplaced.

57. The respondent No.1 has further submitted that the Regulatory Authority with reference to the technical degrees is the AICTE and the law laid down by the Honble Supreme Court in *Orrisa Lift Irrigation Corporation Ltd. vs. Rabi Sankar Patro & Ors*; cannot be challenged by the petitioner through the present petition.

58. The respondent has further submitted that in terms of Regulation 4 of the UGC (ODL) Regulations, 2017, it is well within its power to withdraw the recognition accorded to the petitioner herein. W.P(C) 261/2019 Page 41 of 82 59. During the course of the proceedings in the present petition at the time of consideration of CM No.1245/2019, filed by the petitioner seeking the grant of interim relief vide order dated 20.5.2019 it was brought forth that in terms of communication dated 28.8.2018 from the AICTE to the UGC in relation to the formulation and notification of the Regulation for the professional programmes to be conducted by the Higher Education Institutes in open and distance learning mode, the admitted position brought forth was that the petitioner fell in the category of the institutions covered

by para 3 of the said communication which reads to the effect: and such 3. For all other Deemed to be Universities interested in running ODL programs in MBA, MCA and Travel & Tourism, AICTE shall invite application Deemed-to-be-Universities shall submit applications online on the AICTE web portal within notified deadline and shall be processed as per laid down procedure, duly notified by AICTE. AICTE will forward the recommendations to UGC for further necessary action in the matter. In view of the above, the comments of UGC, if any, may be provided urgently. 60. It was also brought forth on the said date i.e. 20.5.2019 as has been brought forth during the course of submissions made on behalf of either side on 1.7.2019 that despite the said letter dated 28.8.2018 issued by the AICTE in respect of the ODL courses there are no regulations on the basis whereof applications could be made to the AICTE in place nor was there any portal of the AICTE W.P(C) 261/2019 Page 42 of 82 functional so as to enable compliance qua paragraph 3 of the said communication.

61. Vide order dated 20.5.2019 apart from the prayer made seeking grant of an interim stay as sought through the application having been declined, the AICTE was directed to file an affidavit within a week as to the steps that had been taken to enable compliance with paragraph 3 of the communication dated 20.8.2018 of the AICTE and also explaining the delay that had been occasioned in that regard. Further more, the respondent No.1 was directed to place within a week under cover of an appropriate index the record of deliberations, at various stages by various committees before passing of the orders dated 17.10.2018 and 5.11.2018.

62. Vide the affidavit dated 21.6.2019 submitted in compliance of direction dated 20.5.2019 on behalf of the respondent No.1 the copies of documents submitted were to the effect: the UGC Letter dated 06.06.2018 by the Registrar/Director, Dayalbagh Educational Institute highlighting the deficiencies in the proposal submitted by the Dayalbagh Educational Institute. A copy of the letter dated 06.06.2018 by the University Grants Commission to the Registrar/Director, Dayalbagh Educational Institute is annexed herewith and marked ANNEXURE A-1. b) Recommendations of the UGC Expert Review Committee based on consideration of the reports of the Visiting Expert Committee. A copy of recommendations of the Expert Review Committee in meeting held on 24.09.2018

is annexed herewith and marked ANNEXURE A-2. c) Minutes of the 535th meeting of the UGC held on 27.09.2018. A copy of the minutes of the 535th meeting of the UGC held on 27.09.2018 is annexed herewith and marked ANNEXURE A-3. W.P(C) 261/2019 Page 43 of 82 the application submitted online d) UGC letter to the Dayalbagh Educational Institute to attend the Interface Meeting with the Expert Committee on 12.10.2018. A copy of the UGC letter dated 10.10.2018 issued to Dayalbagh Educational Institute to attend the Interface Meeting with the Expert Committee on 12.10.2018 is annexed herewith and marked ANNEXURE A-4. e) Proforma to evaluate the proposal as per 535th meeting held on 27.09.2018 and recommendations of the UGC Expert Committee. A copy of the recommendations of the UGC Expert Committee based on the Interface Meeting held on 12.10.2018 is annexed herewith and marked ANNEXURE A-5. And f) Commission's order dated 15.11.2019 on the application submitted online for recognition of programmes to be offered in Open & Distance Learning mode from the academic year 2018-19 onwards. A copy of the Commission order dated 15.11.2019 on for recognition of programmes to be offered in Open & Distance learning mode from the academic year 2018-19 onwards is annexed herewith and marked ANNEXURE A-6. g) Expert Committee on representations submitted by the

... Petitioner

and the interface meeting. A copy of the Expert Committee recommendations dated 26.11.2018 based on representation submitted and interface meeting is annexed herewith and marked ANNEXURE A-7. h) Minutes of the 537th meeting of the UGC held on 10.12.2018. A copy of the minutes of the 537th meeting of the UGC held on 10.12.2018 is annexed herewith and marked ANNEXURE A-8. i) Commission decision dated 22.01.2019 on the representation submitted for the review of programmes found deficient for 2018-19 Session beginning from January, 2019 and onwards to be offered in Open 85 Distance Learning mode. A copy of the Commission decision dated 22.01.2019 on the representation submitted for the review of programmes found deficient is annexed herewith and marked ANNEXURE A-9., for recognition recommendations based W.P(C) 261/2019 Page 44 of 82 and referred to the letter dated 28.8.2018 sent by the AICTE to the UGC already adverted to hereinabove annexed to the writ petition as

Annexure P-12 which was to the effect:-

""For all other Deemed-to-be Universities [Other than category-I as per UGC]. interested in running ODL programs in MBA, MCA and Travel & Tourism, AICTE shall invite applications and such Deemed-to-be-Universities submit applications online on the AICTE web portal within notified deadline and shall be processed as per laid down procedure, duly notified by AICTE. AICTE will forward the recommendations to UGC for further necessary action in the matter."

, shall and reiterated thus that it thus sent the impugned letter dated 5.11.2018 to the petitioner withdrawing the ODL recognition for the MBA course and submitted that the withdrawal of the ODL recognition of MBA for the year 2018-19 vide letter dated 05.11.2018 is validas per the UGC (ODL) Regulations, 2017 and the AICTE's letterdated 28.08.2018 and the letters detailed in the said affidavit dated 21.6.2019 have been adverted to herein above except the letter dated 22.1.2019 of the UGC to the petitioner. Vide the said letter it was detailed in paragraphs 4,5, 5(B), 7, 8, 9 and 10 as follows: 4. Based on the decision of the Commission in its 537thMeeting dated 10.12.2018, I am directed to issue this Order, thereby communicating the Commission decision, on for programme wise recognition status of the programmes to be offered in Open and Distance Learning mode, from academic year 2018-19 onwards by the Dayal Bagh Educational Institute, in addition to programmes already recognized vide letter mentioned in Para 1 above, as detailed in point No.5below. therepresentation received, W.P(C) 261/2019 Page 45 of 82 5. Programme wise recognition status based on representation:

5. A) Programme recognised S. No.Name of the Programme Period of Recognition 1 Nil 5(B) Programmes Not Recognised S. No.Name of the Programme Period of Recognition 1 MASTER OF BUSINESS ADMINISTRATION submission of prior Non respective approval the Regulatory Authority academic session 2018-19 and onwards of for 6. ..

7. For the programmes not recognised in 5(B) above, the Higher Educational Institution may prefer an appeal to the Commission, if any, along with fee of Rupees ten thousand per programme in the form of demand draft drawn in favour of Secretary, UGC, within 30 days from the date of this order, as per the provision

of sub-regulation (5) of Part- II of the University Grants Commission (Open and Distance Learning) Regulations, 2017 and decision of the Commission in its 534th Meeting dated 02.08.2018.

8. If the HEI fails to comply with the conditions of recognition or if it is found conducting affairs in a manner that leads to deterioration of academic standards, or if any information, documentary evidence submitted/produced by the HEI is found to be false or fake at a later date, UGC shall take action as per Regulation (4) Part -II of UGC (ODL) Regulations, 2017.

9. Higher Educational Institutions (HEIs) are required to comply with all the provisions of the UGC (ODL) Regulations, 2017 and its amendments. If any deviation by the HEI is noticed, the same would entail not only withdrawal of permission/ recognition for such W.P(C) 261/2019 Page 46 of 82 ODL courses but also for other courses offered by the institutions, on regular and conventional mode.

10. The Commission in its 537th meeting held on 10.12.2018 has decided the time limit for completion of admission process by the HEIs for offering ODL programmes as mentioned below: a) Academic session for January - admission last date February, end. b) Academic session for July - admission, last date August end. The Commission has also directed that the HEIs shall upload the admission details within ten days from the last date of the admissions in the respective academic session, i.e., 10th September for July academic session and 10th March for January academic session. Accordingly, the HEIs shall comply with the above decision of Commission.

63. The respondent No.2, the AICTE through the affidavit of Dr. Uday Srivastava, Assistant Director (Legal), AICTE, dated 20.2.2019 submitted that it was constituted under an Act of Parliament (52 of 1987) with a view to the proper planning and coordinated development of the technical education system throughout the country, the promotion of qualitative improvement of such education in relation to planned quantitative growth and the regulation of proper maintenance of norms and standards in the technical education system and for matters connected therewith and submitted further that in terms of Section 10 of the AICTE Act, 1987 the function of the Council is prescribed which mandates

that it shall be the duty of the Council to take all necessary steps, it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards.

64. The respondent No.2 has further submitted that the petitioner institute is deemed to be University and has been running MBA W.P(C) 261/2019 Page 47 of 82 course both through Regular classes and through Open Distance Learning (ODL mode and that the petitioner Institute has obtained the approval of both the regulatory authorities (i.e. UGC for GDI Mode and AICTE for Regular Course) to run the MBA program up to the Academic Year 2017-18.

65. The respondent No.2 has further submitted that for the Academic Year 2018-19, the petitioner institute obtained approval for the MBA course through the Regular MBA Programme from the UGC and that vide letter dated 05.11.2018, the UGC informed the petitioner institute that the approval for the MBA program under the ODL mode (as uploaded on UGC website on 17.10.2018) stood withdrawn in the background of communication dated 28.08.2018 received from AICTE regarding their draft regulations i.e. Draft AICTE (Open and Distance Learning for Standalone Institutions) Regulations, 2018 and accordingly, the petitioner institute was advised to obtain the necessary approval from AICTE for running the MBA program and further advised/directed to cancel the admissions made in the MBA program under the ODL mode.

66. It was also submitted on behalf of the respondent No.2 that it had granted letter of approval for the academic year 2018-19 to 11 stand alone institutions for conducting Diploma, PG Diploma & PG Certificate courses through the ODL mode after conducting a visit by the Expert Visit Committee, however, the institutes were to satisfy the ODL Regulations for Standalone institutions (which were then under preparation) after 2019-20 for continuation of their approval and that the Institute had also obtained approval from the AICTE to conduct W.P(C) 261/2019 Page 48 of 82 regular MBA program for the Academic Year 2018-19 and that the AICTE had given such approval vide letter dated 04.04.2018.

67. Inter alia, the respondent No.2 adverted to the verdict of the Honble Supreme Court in Orrisa Lift Irrigation Corporation Ltd. vs. Rabi Sankar Patro & Ors.(Supra)

in CA No.17869-

dated 3.11.2017 and to the specific observations therein in paragraph 66 thereof which reads to the effect:-

"We restrain all deemed to be universities to carry on any courses in distance education mode from the academic session 2018-19 onwards unless and until it is permissible to conduct such courses in distance education mode and specific permissions are granted by the statutory/regulatory authorities concerned in respect of each of these courses. It has thus been submitted on behalf of the respondent No.2 that 68. as per the provisions contained in AICTE Act, 1987 (52 of 1987), for all technical courses to be conducted by technical institutes/affiliated/constituent colleges and deemed to be universities, the approval of AICTE is mandatory and thus in compliance of the directions of the Honble Apex Court, the AICTE decided to frame Regulations, norms and standards for giving approval to the Deemed to be Universities who are conducting the technical courses or are likely to commence such courses in the future.

69. The respondent No.2 has further submitted that in order to finalize the Draft AICTE (Open and Distance Learning Regulation for Standalone Institutions]. Regulations, 2018, the AICTE constituted a Committee and the recommendations of this Committee were placed before the Executive Committee/Council in its meeting held on W.P(C) 261/2019 Page 49 of 82 14.08.2018 for consideration which deliberated on various provisions of the Regulations, as applicable to the Standalone Institutions and also referred to the UGC(ODL) sanctity of admissions, examinations, learning materials, learning support centers, territorial jurisdiction and effective use of ICT.

70. The respondent No.2 through the affidavit dated 20.2.2019 of its Assistant Director submitted that the AICTE has finalized the draft Regulations and sent them to the Ministry of Human Resource Development (MHRD), Government of India for final approval which till then was yet to be received by the AICTE. The respondent No.2 further submitted that the case(s) of professional bodies which are running different professional and technical course(s) through the ODL mode are pending before the Hon'ble Supreme Court as well and before this Court in

W.P. (C) No.945/2013 and that the next, date of hearing before the Hon'ble Supreme Court is on 23.01.2019 and the next date of hearing before this Court was 28.01.2019. The respondent No.2 has further submitted that it is only after receipt of the approval from the Ministry of the MHRD that further, further necessary action would be taken in the matter.

71. In terms of the directions dated 20.5.2019 of this Court, the additional affidavit submitted by Mr. A. Sreenath, Director (Legal), of the respondent No.2 dated 29.5.2019, the submissions that had been made in the previously instituted counter affidavit were reiterated with it having been further submitted through the affidavit that the draft Regulations i.e. Draft-AICTE (Open and Distance Learning for Standalone Institutions) Regulations, 2018, the AICTE had then been W.P(C) 261/2019 Page 50 of 82 finalized and sent to the MHRD for their consideration with it having been submitted that the standalone institutes in terms of regulation 2(h) of 2019 are defined as : 2(h) Standalone Institutions mean those institutions which are not affiliated to any of the Universities, and imparting course through regular or through Open Distance Learning Systems, leading to Diploma, Post Diploma Certificate, Post Graduate Certificate and Post Graduate Diploma levels in Management and allied areas, Computer Applications and Travel & Tourism with the approval of the AICTE. 72. During the course of arguments addressed in this petition on 1.7.2019, it was submitted by the learned CGSC for the respondent No.2 that the said regulations of the AICTE (Open & Distance Learning Standalone Institutes) Regulations 2019 have since been notified. It was further submitted through the said additional affidavit that after the letter dated 28.8.2018 sent by the AICTE to the UGC it had initiated the process under Section 23 of the AICTE Act, 1987 for framing Regulations for giving approval to the technical institutes and Universities for the Academic year 2019-20 and that on 31.12.2018, the AICTE notified its Regulations which included the Regulation No.6.6 relating to the institutions deemed to be Universities and published its Approval Process Handbook for the Academic Year 2019-20 which contains the norms and standards to be followed by the technical institutes/deemed to be universities for conducting different technical programme(s)/ courses and that chapter IV thereof is exclusively for the Universities of various kinds which includes the deemed to be Universities. W.P(C) 261/2019 Page 51 of 82 73. The said additional affidavit of

the respondent No.2 reiterates that in terms of directions dated 3.11.2017 of the Hon'ble Supreme Court, in Clause 4.1 (d) of the said Handbook it has been stated that the institutions deemed to be universities offering technical programme(s) shall not admit students without prior approval of the Council and that the institution deemed to be University having multiple campuses/off campuses/constituent shall apply separately for approval.

74. It has further been submitted through the additional affidavit that in clause 4.5.4(e) of the aforesaid APH, it is stated that the applicants are classified into three categories, as Category I and II. Universities with a NAAC score more than 3.51 and above; and above 3.26 to 3.50 and notified by UGC as Category I and II respectively as per the UGC (Categorization of Universities (Only) for Grant of Graded Autonomy) Regulations, 2018 are considered as Category I and II respectively and that the University shall be in Category III, if it does not come either under Category I or Category II. In Clause 4.6, it is stated that as University granted approval for offering technical program at Diploma/Post Diploma Certificate/Under Graduate Degree/Post Graduate Diploma/Post Graduate Degree Level shall submit an application to the Council every year for extension of Approval of Course(s) offered by the University.

75. Inter alia, respondent No.2 has submitted that in clause 4.10 it has further been stated that the Universities offering Technical Programme(s) approved by the Council, falling under category I and II as declared by the UGC are exempted from taking approval for increase in intake/new course from the AICTE and that such Universities shall W.P(C) 261/2019 Page 52 of 82 have to update the data in AICTE web portal on annual basis and comply the norms and standards as specified by the AICTE from time to time and that if any violations are received about the violation of the norms, the AICTE shall inspect the University and inform the UGC to take appropriate action and that in case of an Institution which is a Deemed to be University, the action as specified in the Approval Process Handbook shall be initiated and informed to the UGC.

76. The respondent No.2 has further submitted that the petitioner Deemed to be University is neither covered under Category I nor is it covered under Category II

and thus it comes in Category III and thus the petitioner, a Deemed to be University, had been getting approval of the UGC to conduct the course of MBA through the ODL Mode.

77. The respondent No.2 further submitted that the AICTE has already accorded approval an intake of 60 candidates in regular MBA course for the Academic Year 2019-20 to the petitioner deemed to be University.

78. The respondent No.2 further submitted that as regards the contention of the petitioner that since there was no portal for making entry for ODL courses in the AICTE, hence it could not file the application for the AY201819 for the MBA Course through ODL Mode and that in this connection, it was submitted that the Regulations for ODL Mode studies by the Deemed to be Universities were yet to be framed and that the delay in the framing of the Regulations was because of the fact that the AICTE was engaged in the approval process of more than 10,000 technical institutes including the Universities for the academic year 2019-20 from January, 2019 to 30.04.2019 which job is W.P(C) 261/2019 Page 53 of 82 very strenuous and to be completed by 30th April of every Calendar year as per the directions dated 13.12.2012 issued by the Honble Supreme Court in CA No.9048/2012 titled as Parshvanath Charitable Trust v. AICTE and Others.

79. The respondent No.2 further submitted that AICTE had notified its regulations 2018 and published its Approval Process Handbook 2019-20 for giving approval to the technical institutes/Universities which include the Deemed to be Universities and that it is further submitted that as far as the Regulations for Deemed to be Universities for conducting ODL Mode courses, it was regretted and informed that the AICTE was in the process of finalizing the draft Regulations and that as soon as they were finalized, the same would be notified in the Gazette of India for information of all stakeholders and after giving due public notice, the applications would be called for to process them to accord approval to the Deemed Universities for the conduct of the ODL Mode courses.

80. The respondent No.2 thus submitted as was also submitted on its behalf by its learned Standing Counsel that it is working upon the training of the regulations for the deemed to be universities that seek to offer courses through the ODL mode

and sought that the directions be passed by the Court granting them some time to finalize the regulations for the deemed to be universities to conduct the ODL mode courses submitting that it would aid them in compliance of the formulation of the regulations in relation to the deemed universities to offer courses through the ODL mode. W.P(C) 261/2019 Page 54 of 82 81. The petitioner through its rejoinder to the additional affidavit filed by the AICTE i.e. the respondent No.2 has submitted that the AICTE has misinterpreted the judgment of the Honble Supreme Court in the case of Orissa Lift Irrigation Corporation Case (supra) and that the said communication dated 28.8.2018 of the AICTE to the UGC clearly discriminates the deemed to be university for seeking AICTE's approval. It has further been submitted by the petitioner that the said communication dated 28.8.2018 of the respondent No.2 in view of the draft regulations took the decision to exempt all the deemed to be universities of the category I seeking AICTE's approval for professional programmes like MBA/MCA/Travel and Tourism and on the basis of such decision, the UGC is allowing such institutions on that premise and it has been submitted by the petitioner that the same is in violation of their own regulations which did not have any provision for permitting the same.

82. The petitioner has further submitted that the AICTE has also adopted the policy vide its communication dated 8.8.2018 to exempt its State and Central Legislated Universities from seeking AICTE's approval on the on the ODL mode and the UGC on that premise has allowed such universities to conduct the MBA and such other professional programmes in the ODL mode and that the standard benchmark NAAC has also not been taken into consideration and that the Universities even with lesser NAAC score than the petitioner have been permitted to conduct such courses and in all 27 universities have been recognized to run MBA in ODL mode on the premises of deemed approval. It is further submitted that 15 of such Universities do not W.P(C) 261/2019 Page 55 of 82 have a NAAC score of 3.26 and 9 Universities do not have any NAAC score and despite the same such universities have been allowed to de hors any quality standards on the basis of legal fiction based on the method of incorporation to conduct the MBA ODL Course. A chart has been annexed by the petitioner in support of this contention:-

"S.No.State UNIVERSITY (TYPE OF UNIVERSITY A.P.

1. ACHARYA NAGARJUNA UNIVERSITY (STATE UNIVERSITY) PERIOD PROGRAMMES NAAC SCORE2

3. 4 5 ASSAM ASSAM DON BOSCO UNIVERSITY (PRIVATE UNIVERSITY) CHHAHIS GARH C.V.RAMAN, C.V.RAMAN UNIVERSITY (PRIVATE UNIVERSITY) DELHI INDIRA GANDHI NATIONAL OPEN UNIVERSITY (CENTRAL UNIVERSITY) 2018-19 TO201920 MASTER OF BUSINESS ADMINISTRATION201819 TO201920 MASTER OF BUSINESS ADMINISTRATION201819 2022-23 TO I.MASTER OF BUSINESS ADMINISTRATION2 MASTEROF BUSINESS ADMINISTRATION (BANKING AND FINANCE) HARYANA GURU JAMBESHWAR UNIVERSITY OF SCIENCE &TECHNOLOGY(STATEUNIVERSIT Y) 2018-19 2022-23 TO MASTER OF BUSINESS ADMINISTRATION W.P(C) 261/2019 Page 56 of 82 2018-19 TO201920

1. Master of Business Administration

2. Master of Business Administration (Finance)

3. Master of Business Administration (Human Resource Management)

4. Master of Business Administration (Marketing) 5.Master of Business Administration (Tourism & Travel Management) 3.08 2.56 2.61 NA328 6 7 8 9 10

11 12 13 14 15 16 KARNATA KA KARNATAKASTATE OPEN UNIVERSITY STATE OPEN UNIVERSITY KARNATA KA MANGALORE UNIVERSITY (STATE UNIVERSITY) KARNATA KA KUVEMPU UNIVERSITY (STATE UNIVERSITY) KERALA UNIVERSITY OF KERALA (STATE UNIVERSITY MAHARAS HTRA MAHARAS HTRA MAHARAS HTRA MADHYA PRADESH MAHATMA GANDHI ANTARRASHTRIYA HINDI VISHWAVIDYAIAYA (CENTRAL . UNIVERSITY) SHIVAJI UNIVERSITY (STATE UNIVERSITY) YASHWANTRAO CHAVAN MAHARASHTRA OPEN UNIVERSITY (STATE OPEN UNIVERSITY) DEVI AHILYA VISHWAVIDYALAYA (STATE UNIVERSITY) ORISSA NORTH ORISSA UNIVERSITY (STATE UNIVERSITY RAJASTH AN JAIPUR NATIONAL

UNIVERSITY (PRIVATE UNIVERSITY) RAJASTH AN SURESH GYAN VIHAR-
UNIVERSITY (PRIVATE UNIVERSITY) RAJASTH AN JAGAN NATH
UNIVERSITY (PRIVTE UNIVERSITY) 17 2018-19 2022-23 2018-19 2019-20 TO
TO MASTER OF BUSINESS ADMINISTRATION MASTER OF BUSINESS
ADMINISTRATION (TOURISM) 2018-19 2019-20 TO MASTER OF BUSINESS
ADMINISTRATION20189 TO2019 20 MASTER OF BUSINESS
ADMINISTRATION20189 TO2019 20 MASTER OF BUSINESS
ADMINISTRATION201819 2019-20 TO MASTER OF BUSINESS
ADMINISTRATION201819 TO. 2022-23 2018-19 2019-20 2018-19 TO201920
2018-19 2019-20 2018-19 2019-20 2018-19 2019-20 TO TO TO MASTER OF
BUSINESSADMINISTR ATION TO MASTER OF BUSINESS ADMINISTRATION
MASTER OF BUSINESS ADMINISTRATION (MBA) MASTER OF BUSINESS
ADMINISTRATION MASTER OF BUSINESS ADMINISTRATION MASTER OF
BUSINESS ADMINISTRATION NA NA305 3.03 3.06 3.16 NA NA256 2.28 3.1
2.35 W.P(C) 261/2019 Page 57 of 82 18 19 RAJASTH AN JAYOTI VIDYAPEETH
WOMEN'S UNIVERSITY (PRIVATE UNIVERSITY) TAMILNA DU UNIVERISITY
OF MADRAS (STATE UNIVERSITY) 2018-19 TO201920 2018-19 2022-23
TO2021 TAMIL NADU ANNA UNIVERSITY (STATE UNIVERSITY) TAMIL NADU
TAMIL NADU OPEN UNIVERSITY (STATE OPEN UNIVERSITY) 2018-19 2022-
23 TO201819 TO2022-23 MASTER OF BUSINESS ADMINISTRATION1
MASTER OF BUSINESS ADMINISTRATION (HUMAN RESOURCE'MANAGE
MENT)

2. MASTER OF BUSINESS ADMINISTRATION (FINANCE MANAGEMENT)
3. IMASTER OF BUSINESS ADMINISTRATION (HOSPITAL MANAGEMENT)
4. MASTER OF BUSINESS ADMINISTRATION (LOGISTICS A'NDSUPPLY
CHAIN MANAGEMENT)
5. MASTER OF BUSINESS ADMINISTRATION (MARKETING MANAGEMENT)
6. MASTER OF BUSINESS ADMINISTRATION (SYSTEMS MANAGEMENT)
MASTER OF BUSINESS ADMINISTRATION1 MASTER OF BUSINESS
ADMINISTRATION2 MASTER OF BUSINESS ADMINISTRATION (HOSPITAL

ADMINISTRATION)

3. MASTER OF BUSINESS ADMINISTRATION (LOGISTICS MANAGEMENT)
2.63 3.32 3.46 W.P(C) 261/2019 Page 58 of 82 22 23 24 25 26 TAMIL NADU
TAMIL UNIVERSITY (STATE UNIVERSITY) TRIPURA INSTITUTE OF
CHARTERED FINANCIAL ANALYSIS OF INDIA AGARTALA (PRIVATE
UNIVERSITY) TELANGA NA DR.B.R.AMBEDKAR OPEN UNIVERSITY,
HYDERABAD (STATE OPEN UNIVERSITY) 2018-19 2019-20 2018-19 2019-20
2018-19 20122-23 TO TO TO UTTARAK HAND UTTARAKHAND OPEN
UNIVERSITY (STATE OPEN UNIVERSITY) UTTARAK HAND UNIVERSITY OF
PETROLEUM AND ENERGY STUDIES (PRIVATE UNIVERSITY) 2018-19 2022-
23 2018-19 2019-20 TO TO U.P. 27 SWAMI VIVEKANAD SUBHARTI
UNIVERSITY (PRIVATE UNIVERSITY) 2018-19 2019-20 TO4 MASTER OF
BUSINESS ADMINISTRATION (SHIPPING AND LOGISTICS MANAGEMENT)
MASTER OF BUSINESS ADMINISTRATION MASTER OF BUSINESS
ADMINISTRATION1MASTER OF BUSINESS ADMINISTRATION2 MASTER OF
BUSINESS ADMINISTRATION (HOSPITAL AND HEALTH CARE
MANAGEMENT) MASTER OF BUSINESS ADMINISTRATION1 MASTER OF
BUSINESS ADMINISTRATION (AVIATION MANAGEMENT)

2. MASTER OF BUSINESS ADMINISTRATION (INFRASTRUCTURE
MANAGEMENT)

3. MASTER OF BUSINESS ADMINISTRATION (INTERNATIONAL BUSINESS)
4.MASTER OF BUSINESS ADMINISTRATION5MASTER OF BUSINESS
ADMINISTRATION MASTER OF BUSINESS ADMINISTRATION NA252 2.62 NA
NA NA308.

83. The petitioner has further submitted that through the additional affidavit, it has been submitted that the AICTE had granted approval to W.P(C) 261/2019 Page 59 of 82 eight stand alone institutions for conducting diploma and PG certificate course through ODL mode after the visit of the Expert Visit Committee of the council and that even for the stand alone institutions at the time of the submission of the additional affidavit the ODL regulations qua such institutions were under process and that such stand alone institutions had been given special and

discriminatory treatment without any basis. It is essential to observe that the respondent No.2 has since submitted that the stand alone institutions have already been notified.

84. The petitioner has further submitted that the respondent No.2 has itself communicated to the UGC vide letter No.F. No.AICTE/P&AP/Misc./2019/788 dated 03.05.2019 (much before the filing of their Additional Affidavit) that the UGC may amalgamate its ODL and online Regulations and bring out a single Regulation and may permit the proposal for conducting MBA/MCA/Travel and Tourism programme through online mode submitted by HEI's for UGC approval and that the said AICTE has opined in the said letter: 9. . there is very thin line of distinction between the course conducted under ODL mode and Online mode. The AICTE has advised UGC to amalgamate ODL and online Regulations based on the five parameters. The status of the

... Petitioner

s/Institute on the said parameters as stated by the AICTE is as under: i. The eligibility criteria for admission and process of admission should be on the lines of ODL courses; It is humbly submitted so far as the

... Petitioner

is concerned, the criteria for admission and process of admission for the ODL courses is same as for the Regular courses. The admissions are done by the common entrance W.P(C) 261/2019 Page 60 of 82 examination and procedure. The

... Petitioner

/Institute meets the aforementioned parameter. The true copy of the Comparison between the ODL and Regular mode regarding different attributes be it course structure, credits, course material etc. in chart form is annexed herewith and marked as Annexure R-3. ii. Availability for good quality course content/regular updation of course content for a rich learning experience of the candidates enrolled. It is humbly submitted that DEI's ODL MBA programme is highly sought programme that imparts high quality management education. It is available to students even from low and middle income groups of our country who cannot

afford education in other premier institutions on account of their very high fee structure. DEI's objective is to serve the last, lowest and least of the country who cannot bear the higher costs of education either in public or in private institutions. The

... Petitioner

/Institute squarely fulfils the above parameter. iii. Availability of reputed experts of respective disciplines for online interaction or through Skype or any other digital medium, for clarifications/clearing of doubts of candidates enrolled in online courses; It is humbly submitted that the

... Petitioner

/Institute is imparting ODL Course Synchronous mode. DEI has been a pioneer in adopting Synchronous learning to give access to as many students as possible while making distance redundant. Synchronous learning is defined as an event in which geographically distributed students are engaged in learning at the same time. Synchronous learning is enabled and facilitated via video/ Web conferencing tools with which students listen to a lecture while simultaneously taking part in a discussion. Internationally, this is being increasingly adopted, within the University campus and beyond, to handle, large classes with the same lecture delivered by the same professor being attended by students in diverse locations with high bandwidths enabling high W.P(C) 261/2019 Page 61 of 82 quality user experience. The UGC and AICTE has also permitted 20% credits to be acquired through on-line courses with no loss in quality. The synchronous mode for combating the problem of large class sizes is a natural extension of the same idea with the additional benefits due to two-way communication enabling direct teacher students interaction. This technology enhancement fully enables the face - to - face interaction as in a regular classroom. The first step in implementing Synchronous learning is technology building. To this end DEI has invested in the following: a. Video Conferencing Infrastructure: A Polycom Core System comprising CMA4000 Application Server, RMX2000 HD MCU, RSS4000 Stream recorder and generator, VMCI000 Video Media Center and VBP 5300 STVideo Border Proxy has been installed at the Data Centre in the Multimedia Laboratory. This enables 1000 client live stream reception and 100 client platform- free HD

video conferencing with Polycom CMA Software. Besides this a number of Polycom 7000 series systems and SONY IPELA systems have been installed across the campus for synchronous delivery of classes and programmes. b. Impartus System: The video conferencing, streaming and automated lecture capture system from impartus has been installed in five classrooms. c. Bigbluebutton: The open source virtual classroom software big blue button has been coupled with the Moodle LMS to provide synchronous delivery of classes across various platforms, including mobile devices. d. Public Video Conferencing Applications: Several publicly available applications such as Google Meet are accessible via an Institute login. e. e-Classrooms: Many classes have been equipped with the resource to receive and transmit lectures f. High band width LAN and Internet Connectivity: The DEILAN has a fibre optic backbone connecting all locations and a One Gbps Internet connection JB-on the National Knowledge Network. W.P(C) 261/2019 Page 62 of 82 to enrolled It is therefore, humbly submitted that the

... Petitioner

also fulfils the aforementioned parameter. iv. Arrangements of regular assignment candidates and their online evaluation/feedback. It is humbly submitted that the

... Petitioner

/Institute follows a continuous evaluation system wherein the students have to do daily home assignments and are administered class assignment on a weekly basis. They also have to participate in seminars and group discussion and take periodical tests, and end-semester examinations. The continuous evaluation system is identical to that for Regular MBA students and they undertake the same examinations. It is submitted that the

... Petitioner

/Institute also fulfils the aforementioned parameter. V. The Examination system should be proctored to ensure fairness and transparency. It is humbly submitted that the

... Petitioner

/Institute ensures that all the internal evaluation components are returned back duly evaluated to the students for them to verify the evaluation. The end semester evaluation is performed by external experts from outside the Institute. Therefore, it is submitted that the

... Petitioner

/Institute fulfils the above mentioned parameter.

10. That the AICTE is only concerned to determine the quality of professional programme like MBA. The bench mark of quality of Deemed to University/University is NAAC Score. The NAAC score is aggregated over a large number of parameters and many of these parameters may or may not be relevant to the context at hand that is to determine the quality of MBA programme. The

... Petitioner

/Institute is also ranked by NIRF which is an authority of MHRD for qualitative assessment of all Institutions and Universities of India. The

... Petitioner

/Deemed to be University is placing a chart of the relevant parameters including the parameters as enumerated for validating the proposal for ODL mode MBA programme. The assessment as enumerated in the aforementioned chart is based on NIRF, NAAC, Statutory body of the Deemed to be University and Alumni feedback. The chart is given herein below: letter dated 03.05.2019 in AICTE W.P(C) 261/2019 Page 63 of 82 (Primary Source NIRF and Statutory authorities of the Deemed to be University and equal Criterion S.No. Teaching, Learning & ODL Resources (NIRF, NAAC, AICTE) Evaluation (AICTE, NAAC, NIRF) Availability of Reputed Experts (AICTE, NIRF) Graduate outcome (NIRF, NAAC) Women Diversity, Inclusivity and Extension (NAAC, NIRF) Curriculum (AICTE, NAAC) Library (NAAC, NIRF) Eligibility Criteria for Admission (AICTE) Arrangement for regular assignments (AICTE) Values and Innovation (NAAC) 1.

2.

3.

4.

5.

6. 7.

8. 9.

10. weightage to all parameters) Source (Out of

4) Weight(%) Weighted Score Source 10 0.33 NIRF33 4 3.6 4 4 4 4 4 4 3.84 10 10
10 10 10 10 10 10 10 100 0.4 NIRF036 NIRF04 0.4 0.4 0.4 0.4 0.4 NIRF NIRF
Expert Evaluation Expert Evaluation Expert Evaluation Expert Evaluation 0.384
Alumni Feedback 3.874 (CGPA out of

4) The NIRF ranking since 2016 to 2019 is available on the NIRF website qua the

... Petitioner

/Institute regarding the parameters herein above. W.P(C) 261/2019 Page 64 of 82

It is humbly submitted that according to the above data, the Petitioner/Institute is fully qualified to offer both regular and ODL MBA programmes as it meets all the important quality criteria that are relevant and desired for this purpose.

11. That it is humbly submitted that the curriculum that is the model course structure of MBA, as proposed by AICTE, is being substantially/completely followed by the

... Petitioner

/Institute. A detailed mapping of DEI MBA course structure with model course structure of MBA- AICTE in a chart form is annexed herewith and marked as Annexure No.R-4.

12. That the discriminatory policy of AICTE as per communication the

... Petitioner

/Institute/Deemed to be University seriously prejudiced the

... Petitioner

/Institute. The AICTE may visit thePetitioner/Institute to evaluate the requirements and quality of MBA ODLprogramme being offered by the

... Petitioner

/Institute pending their draftRegulation or parameters/norms as done by them in case of Stand AloneInstitutions. It is pertinent to mention here that one of the Deemed toUniversity namely Dr. D Y Patil Vidyapeeth was visited by the expertcommittee of the AICTE to assess the MBA programme in ODL mode for session 2018-19. 28.08.2018 dated qua 85. The Stand alone institution notification has since been notified on 18.1.2019 vide Gazette No 20, that F.No.AICTE/P&AP//Sis/2019 which implicitlyspells forth clearly that the petitioner Dayalbagh Educational Institute, a deemed university situated at Dayal Bagh, Agra, is a deemed to be university falling under category III and that it does not fall under the domain of a Stand Alone Institute.

86. Through the rejoinder of the petitioner to the counter affidavit of the respondent No.1, the petitioner has sought to contend that the recognition that had been accorded to it for running the MBA W.P(C) 261/2019 Page 65 of 82 programme for the academic session 2018-19 on 17.10.2018 on the portal of the UGC was following the due procedure laid down in the ODL regulations 2017 and was not an inadvertent mistake. The petitioner has further submitted that the admission process for the MBA programme in the Distance Education for the academic session 2018-19 is common for both the main campus as well as the distance education and that for admissions in the year 2018-19 in 2018 for MBA students, the interview was conducted from 27 to 29.6.2018, the group discussion was conducted on 2-3.7.2018 at the main campus and on 19.7.2018, the petitioner was informed by the UGC about the visit of the Expert Committee on 23 and 24 July, 2017 to evaluate/assess the suitability of the diploma and PG progammes under the ODL mode and hence the petitioner had to put on hold the declaration of the admission results pending the decision of the UGC.

87. Reliance was also placed on behalf of the respondent No.1 on the verdict of the Honble Supreme Court in Ram Chandra Tripathi v. U.P.Public Services Tribunal IV and Others; (1994) 5 SCC180 Vividh Marbles (P) Ltd v. Commercial

Tax Officer; (2007) 3 SCC580 to contend that merely because a reasonable opportunity of making a representation against the order of withdrawal of recognitions to the MBA ODL course for the year 2018-19 had not been granted in terms of Section 4 of the UGC Open and Distance Regulations, 2017, the same cannot detract from the factum that the approval accorded by the respondent No.1 for the MBA (ODL) course to be conducted by the petitioner for the year 2018-19 had been inadvertently granted without taking into account F. No.DEC/Dayalbagh/UP/10 dated 25.7.2011 W.P(C) 261/2019 Page 66 of 82 specifying the category therein with the requisite approval of the regulatory authority having not been obtained and thus had essentially to be corrected in any event and as laid down in Vividh Marbles (P) Ltd v. Commercial Tax Officer; (2007) 3 SCC580 vide paragraph 13 thereof, the statutory authorities are entitled to rectify their mistakes and when such mistakes are apparent on the face of the record, even no opportunity of hearing is necessary as laid down by the verdict of the Honble Supreme Court in Maharashtra State Seeds Cropn. Ltd. V. Hariprsad Drupadrao Jadhao: 13 The statutory authorities are entitled to rectify their mistake. When such mistakes are apparent on the face of the record even no opportunity of hearing is necessary. 88. The petitioner submitted that its recognition of the DEI of the four degree level course including MBA in distance mode was uploaded by the DEB/UGC on their website on 17.10.2018 giving the petitioner three days to complete the admission process by 20.10.2018, which was the cut off date for admission and that the UGC had issued a public notice vide No.1-6/2018(DEB-I) dated 01.10.2018 qua their decision to extend the last date of admission in the recognized open and distance learning programmes to the offered by the HEIs for the academic session 2018-19 to October 20, 2018 and the HEIs were instructed to complete the admission process by 20.10. 2018 and no admissions were to be made after that date and thus the petitioner made adequate preparation for the admissions, and that the petitioners institute was able to complete the admission process in time. The petitioner has W.P(C) 261/2019 Page 67 of 82 reiterated that an illegal procedure has been adopted by the UGC for withdrawing the recognition to accord the permission to take admissions in the MBA programme in ODL mode for the session 2018- 19. The petitioner has further submitted that the petitioner stands on a different footing as the petitioner has the approval of AICTE in the

regular mode to run the MBA programme from the past many years including the session 2018-19 and the MBA programme does not have any practical examinations and that the petitioner institute had been imparting distance education in synchronous mode and also submitted that the mode of delivery could not affect the quality of standard and education of MBA programme in the case of petitioner. The petitioner further submitted that the approval of the course in the regular mode may be considered as substantial compliance of the UGC (ODL) Regulations 2017 at that stage taking into account also the factum that the AICTE has also admitted that there were no existing specific Regulations for the MBA/other professional programmes in the ODL mode. The petitioner has further submitted that the verdict of the Honble Supreme Court in Orrissa Lift Irrigation case (supra) only mandates specific permission to be granted by the Regulatory authority in respect of the course and does not deal with the mode of delivery.

89. The petitioner has further submitted that there has been a non- implementation of condition (i) of Regulation 3(I) of the UGC (ODL) Regulation, 2017 from the date of notification as per Regulation 1 (4) of the said Regulations in as much as the same has resulted into the freezing of the MBA/professional programmes to be offered by the HEIs in the distance mode because of non-existence of Regulations of W.P(C) 261/2019 Page 68 of 82 AICTE for approval of such programmes specifically in the ODL mode and because of non-existence of Regulations of AICTE for approval of such programmes specifically in ODL mode has resulted into the difficulty and it is the UGC only, which has powers conferred under Regulation 21 of the UGC (ODL) Regulation 2017 for removal of such difficulties, as described in the letter dated 31.8.2007 and 20.8.2018 of the AICTE of the UGC in as much as the petitioner institute is neither a Central Legislated nor a State Legislated university nor an open university nor a deemed to be university notified by the UGC as Category-I.

90. The petitioner submits that it is, admittedly, imparting the MBA course through the regular mode for several years and has the approval of the AICTE for imparting MBA for the regular mode for the academic year 2019-20. The petitioner has submitted that it is imparting distance education in a synchronous mode and the same lectures as are being given in the regular mode are transmitted to the

students of distance learning and there is a both ways communication between the teachers and the taught and that the petitioner has all legitimate expectations to get the approval of its MBA (ODL) course once the regulations of the ODL mode of the AICTE are framed and notified and that their portal is enabled for the same. The petitioner has further sought to submit that it has been running the MBA Course in the ODL mode since the year 2011 and its students are getting excellent jobs with attractive packages and that the withdrawal of the recognition of the MBA (ODL) Course now would be unfair to its students. W.P(C) 261/2019 Page 69 of 82 91. The communication dated 28.8.2018 of the respondent No.2 to the UGC is categorical that the deemed to be university as the kind of the petitioner interested in running the ODL programmes of MBA, MCA, Diploma/Degree in Travel and Tourism in ODL mode shall submit online applications when it invites on the AICTE web portal within notified deadline and shall be processed as per the laid down procedure duly notified by the AICTE and that AICTE is to forward the recommendations to the UGC for further necessary action in the matter.

92. It has been brought forth through the proceedings of the present petition that the regulations for the ODL mode studies to be conducted by the deemed to be university are yet to be framed.

93. In terms of the verdict of the Honble Supreme Court in Orrissa Lift Irrigation Corporation Limited (supra) in para 66.11 there is a categorical restraint against all deemed to be universities to carry on any courses in distance education mode from the academic session 2018-19 onwards unless and until it is permissible to conduct such course in the distance mode and specific permissions are granted by the statutory/regulatory authorities concerned in respect of each of those courses and unless the off-campus centres/study centres are individually inspected and found adequate by the statutory authorities concerned with it having been directed specifically by the Honble Supreme Court that the approvals have be course specific.

94. The respondent No.2 has submitted that it is in terms of the said directions in para 66.11. of the Honble Supreme Court that the W.P(C) 261/2019 Page 70 of 82 respondent No.2 is in the process of framing its regulations and norms and

standards for giving approval to the deemed to be universities which are conducting the technical courses or are likely to conduct such courses in future through the ODL mode.

95. The available record in the instant case makes it categorically clear that vide a public notice dated 9.8.2018 issued by the UGC, the respondent No.1, the recognition of the interface committees and approval of the ODL programme for 2018-19 in its 534th meeting held on 2.7.2018 put forth specifically its decision No.1 to the effect: 1. All professional programmes i.e. MBA / MCA / B.Ed / M.Ed/B.Ed(Special Education) / M.Ed Special Education)/Hotel Management/Travel/Tourism and Management Programmes in ODL mode shall; not be accorded recognition without prior approval of the respective Regulatory Authority valid for the year 2018-19 & onwards, as per sub regulation 2(p) of Regulation 1, Part -I of UGC (ODL) Regulation, 2017:

96. This public notice dated 9.8.2018 made it categorical that all professional programmes including MBA in the ODL mode shall not be accorded recognition without prior approval of the respective regulatory authority for the year 2018-19 and onwards as per sub regulation 2(P) of Regulation 1, part-1 of the UGC ODL Regulation, 2017.

97. Significantly, vide the recommendations of the respondent No.1 after the interface meeting held between the petitioner and the respondent No.1 on 12.10.2018 and after considering the documentary evidence that had been submitted by the petitioner it was recommended that the petitioner may run the MBA ODL course if it complied with all W.P(C) 261/2019 Page 71 of 82 the provisions of the UGC ODL regulations, 2017 and its amendments which required the submission of the prior approval of the AICTE. The regulatory authority for the academic year 2018-19 and onwards in terms of sub regulation 2(P) of Regulation 1, part-1 of the UGC ODL Regulation, 2017 which came into effect with 23.6.2017 defines: (o) "Programme" means a course or programme of study leading to the award of a Degree at graduate and post graduate levels in a higher educational institution including Certificate or Diploma or Post Graduate Diploma; (p) "Professional programmes" means a programme other than programmes in

engineering, medicine, dental, pharmacy, nursing, architecture, physiotherapy and programmes not-permitted to be offered in distance mode by any Statutory Councils or Regulatory Authorities to be conducted by the Higher Educational Institutions under Open and Distance Learning mode or Distance Education mode if any, should be considered only if the same are approved by the respective Statutory Councils or Regulatory Authorities. It is categorical through this definition that the professional for the purpose of these regulations, 98. programmes other than engineering, medicine, dental, pharmacy, nursing, architecture, physiotherapy and programmes not-permitted to be offered in the open and distance learning mode or distance mode could be considered only if the same are approved by the respective statutory council or the regulatory authorities.

99. Significantly, vide letter dated 26.9.2016 of the UGC to the petitioner also, the petitioner had been informed not to start any programme without prior approval of the UGC and other concerned regulatory authorities in anticipation of recognition with it having been stated to the effect in relation to the recognition for offering W.P(C) 261/2019 Page 72 of 82 programmes in open and distance learning ODL mode from the academic year 2016-17 and 2017-18 was subject to adherence and compliances as had been mentioned in the letter. The petitioner submits that annexed to this letter dated 26.9.2016 was the annexure with the name of the programme Master of Business Administration (General) in relation to which through the distance mode for the academic year 2016-17 and 2017-18 imparting of the said course of MBA(General) Master of Business Administration (General) had been approved.

100. However, as brought forth through the counter affidavit of the respondent No.2 that in terms of the verdict of the Honble Supreme Court in Orissa Lift Irrigation Corporation case (Supra) all the deemed universities have been restrained from carrying out any course in the distance education mode from the academic session 2018-19 onwards unless and until it has been made permissible to conduct such courses in distance education mode and specific permissions are granted by the statutory and regulatory authorities concerned in respect each of these courses. It is apparent through the counter affidavits of the respondent No.1 submitted on behalf of the respondents No.1 and 2 as already observed herein

above, that the requisite framework and regulations and norms and standards for granting approval to the deemed to be universities to cater to open and distance learning are yet to be finalized and no such approval for granting any open and distance learning has been granted to the petitioner for the year 2018-19.

101. The submission that was made on behalf of the petitioner was to the effect that the restraint in para 66.11. of the verdict of the Honble Supreme Court in Orrisa Lift Irrigation Corporation case (Supra) does W.P(C) 261/2019 Page 73 of 82 not relate to the courses other than those in which technical education is being imparted and that the said verdict related to the engineering courses alone.

102. Undoubtedly, the subject matter of the proceeding in Orrisa Lift Irrigation case (Supra) related to the educational qualifications and thus the service conditions of engineers including Junior Engineers in the base cadre in the Engineering wing of the Orrisa Lift Irrigation Corporation (supra) which had been converted from the Directorate of Lift Irrigation in the Government of Orrisa and all the engineers therein having acquired diplomas in the Electrical Engineering, B.Tech (Civil) Degree from the deemed to be university. The petitioner also placed reliance on the observations in para 3 of the said verdict in wherein there was reference to letter dated 6.10.2010 of the AICTE to the effect: 3. The Directorate of Lift Irrigation in the Government of Odisha was converted into Orissa Lift Irrigation Corporation Limited (hereinafter referred to as the OLIC). The service conditions of Engineers including Junior Engineers which is the base cadre in the Engineering Wing of OLIC are governed by Orissa Service of Engineers Rules, 1941 (1941 Rules for short) as amended from time to time. Junior Engineers form the feeder cadre for promotion to the next level, namely, that of Assistant Engineers. Respondent No.11 Rabi Sankar Patro, a Diploma holder in Electrical Engineering, joined OLIC as Junior Engineer (Electrical) and while in service, he acquired B.Tech (Civil) Degree from a Deemed to be University namely JRN Rajasthan Vidyapeeth W.P(C) 261/2019 Page 74 of 82 to University, Udaipur, through Distance Education in the year 2009 and thereafter filed Writ Petition No.3848 of 2010 in the High Court Orissa. According to him, he being an in- service graduate Engineer was entitled to be promoted as Assistant Engineer. Said In the matter arising out of SLP(C) No.19807-19808 of 2012 writ petition was allowed without

issuing notice the respondents, placing reliance on an earlier order dated 14.12.2009 passed by the High Court in OJC No.13251 of 2001 by which OLIC was directed to consider the case of the concerned candidates as in- service graduate Engineers. OLIC being aggrieved, filed Review Petition No.58 of 2012 which was dismissed by the High Court on 15.03.2012 along with certain similar review petitions. The submissions recorded in support of the review petitions in the order of the High Court were as under:-

"The argument advanced by Mr. Ashok Mohanty learned Sr. Counsel for the review petitioners that the opposite parties- employees have acquired Degree Qualification of distance/correspondence education course from JRN Rajasthan Vidyapeeth which is not recognized by AICTE. Therefore, they are not qualified....Learned Sr. Counsel Mr. Mohanty placed much reliance upon the letter issued by AICTE on 6th October, 2010 wherein the AICTE has categorically stated as under: It has been the policy of the AICTE, not to recognize the qualifications acquired through distance education mode at Diploma, Bachelors & Masters level in the fields of Engineering including Technology W.P(C) 261/2019 Page 75 of 82 Architecture, Town Planning, Pharmacy, Hotel Management & Catering Technology, Applied Arts & Crafts and Post Graduate Diploma in Management (PGDM).AICTE only recognizes MBA and MCA programme through distance mode. to contend that the AICTE itself has stated that it only recognizes MBA and MCA programme through the distance mode, thus submitting to the effect that the MBA programme through distance mode did not require any approval from the AICTE for conducting thereof through any regulatory mechanism.

103. It is essential in relation to this aspect to observe that para 66.11 of the verdict of the Honble Apex Court already adverted to elsewhere herein above makes it categorical that the Honble Supreme Court has restrained all deemed to be universities to carry on any course in distance education mode from the academic session 2018-19 and onwards unless and until it is permissible to conduct such courses in distance education mode and specific permissions are granted by the statutory and regulatory authorities concerned in respect each of these courses and unless the off-campus centres/study centres are individually inspected and found adequate by the statutory authorities concerned with it being

specifically directed that the approval had to be course specific.

104. It is not refuted in the instant case that the AICTE is a regulatory authority and that the said regulatory authority has not accorded approval of the MBA (ODL) mode of the MBA programme 2018-19 to W.P(C) 261/2019 Page 76 of 82 the petitioner herein and thus merely because as submitted by the respondent No.1 that inadvertently on the website of the respondent No.1 approval of the MBA course through the ODL mode qua the petitioner was uploaded on 17.10.2018, which was withdrawn on 5.11.2018 taking into account that there had been an overlook of the aspect that the regulatory authority had not accorded approval or grant for running such MBA (ODL) course in the MBA stream by the petitioner, can in no manner suffice to bring forth that the petitioner could have allowed admissions to commence in the MBA (ODL) programme, 2018-19 of its institute even before any approval of such programme was accorded for in the instant case.

105. The rejoinder affidavit of the petitioner to the counter affidavit of the respondent No.1 itself makes it clear that the petitioner had chosen to conduct the written test for the MBA students on 22.6.2018 with the interview conducted on 27-29.6.2018 with group discussions conducted on 2-3.7.2018 and the said scheme for admission to the petitioner was conducted for all MBA students i.e. both, for the regular course and the ODL course which admission mechanism qua the ODL course apparently could not have been conducted by the petitioner.

106. The other aspect that is material to be observed is to the effect the observations of the Honble Supreme Court in Orrisa Lift Irrigation Corpn. (Ltd.) case (supra) in paragraph 54 thereof which read to the effect:-

" 54. Conceptually there is some difference between the status of a University established under a State law and that of a Deemed to be University. Normally, a University is established with an idea that particular areas or districts W.P(C) 261/2019 Page 77 of 82 of the State need to be catered to. Such University is expected to satisfy the needs or aspirations of people in the area for education and correspondingly empowered to initiate new courses, keeping in tune with the needs of time. The expectations from a Deemed to be University are of a different

dimension. What is expected is excellence, research and advancement in its chosen field for which such status was accorded. There is no embargo on such Deemed to be University in entering new areas of education or introducing new courses but in that case, it can't demand or receive complete relaxation from regulatory regime. It must satisfy all those requirements which a normal institution is required to. The stand taken by the UGC in the affidavit of Dr. Ved Prakash, as well as its submissions in our view, are correct and we reject the submission of Dr. Dhavan. The logical conclusion is that a Deemed to be University in the second category mentioned hereinabove is still an institution of the stature of a technical institution and if it desires to introduce new courses it must fulfill the requirements of 1994 AICTE Regulations. A Deemed to be University which has achieved excellence in a particular field may be given deferential treatment but nonetheless it has to satisfy the requirements for new technical institution. Pertinently, both JRN and IASE, while establishing their faculty or colleges in engineering at their main Campus sought approvals from AICTE. Further, even for introducing courses in management which come under the definition of technical education under the AICTE Act, appropriate permissions were sought from AICTE. We therefore conclude that the Deemed to be Universities in the present case were required to abide by the provisions of 1994 AICTE Regulations and could not introduce courses leading to award of degrees in Engineering without the approval of AICTE. 1994 AICTE Regulations or any subsequent Regulations will have to be understood in the light of our decision. W.P(C) 261/2019 Page 78 of 82 107. The same is abundantly made clear from the Section 2(g) of the All India Council for Technical Education Act, 1987 which defines the technical education to be: 2. Definitions. In this Act, unless the context otherwise requires, (a).. (b) . (c) (d) .. (e) .. (f) .. education in engineering (g) technical means programmes of education, research and training 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) .. (i) .. thus making it apparent that the programmes for imparting education in management fall within the domain of technical education in the ambit of Section 2 (g) of the All India Council for Technical Education Act, 1987.

108. In the circumstances, the contention raised by the petitioner that the verdict of the Honble Supreme Court in Orrisa Lift Irrigation W.P(C) 261/2019 Page 79 of 82 Corpn. (Ltd.) (supra), i.e., the verdict dated 3.11.2017 which put the embargo on all deemed to be universities to carry on any course in open and distance learning education mode from the academic session 2018- 19 onwards until it was permissible to conduct such courses in distance education mode and specific permissions granted by the statutory/regulatory authorities in respect thereof with the approval being course specific could only be permitted to be in relation to the engineering courses, cannot be even remotely accepted and the word any courses in para 66.11 of the verdict of the Honble Supreme Court cannot in any manner be read ejusdem generis to the word engineering courses as put forth in the said verdict of the Honble Supreme Court .

109. Significantly, the verdict of the Honble Supreme Court dated 22.1.2018 in Orrisa Lift Irrigation Pvt. (supra) in which the application had been filed seeking clarification and modification of directions of the judgment dated 3.11.2017 referred to herein above, also does not in any manner remove the embargo as put forth in para 66.11 in the verdict of the Orrisa Lift Irrigation Corpn. Ltd. (supra) decided on 3.11.2017.

110. As rightly submitted on behalf of the respondent No.1 that Regulation 21 which relates to the removal of difficulty is as follows:

4. In the said regulations, after regulation 20, regulation 21 shall be inserted, namely:-

""21. Removal of difficulty UGC remove the difficulty/difficulties in the course of implementation of the Government of India, Ministry of Human Resource Development."

in consultation with these Regulations reserves right to W.P(C) 261/2019 Page 80 of 82 cannot relate to a situation of the present kind where the petitioner has chosen to induct the students for the MBA (ODL) course for the year 2018-19 without approval thereof having been accorded by the respondent No.2 in relation thereto and consequently by the respondent No.1.

111. The prayers made by the present petition to the effect:-

"a) To issue a Writ in the nature of Certiorari quashing the order dated 05.11.2018 and all actions and procedure adopted by Respondent No.1 vide communications dated 15.11.2018 and 16.11.2018 subsequent to the aforesaid order. b) To issue Writ in the nature of Mandamus to University Grants Commission/Respondent No.1 directing it for the removal of difficulty by virtue of powers conferred under Regulation 21 of the UGC (Open and Distance Learning) Regulation, 2017 for implementation of condition (i) of Regulation 3 (1) which is part of the Part-II from the date of Notification as per Regulation 1 (4) of the said Regulations., thus cannot be granted.

112. Placed on record is CM No.28966/2019 filed by the petitioner seeking that the AICTE i.e. the respondent No.2 be directed to conduct an inspection/evaluation and take all necessary steps for the three-year MBA(ODL) programme commencing from the session 2018-19 to be conducted by the petitioner institute and grant necessary approval for the same. In relation to the said aspect the response of the respondent no.2 through its additional affidavit dated 29.5.2019 of Sh. A. Shreenath, Director (Legal), is taken into account as well as the W.P(C) 261/2019 Page 81 of 82 submission made on behalf of the respondent No.2 by the learned standing counsel Mr.Anil Soni that directions be passed granting AICTE the time frame to finalize the regulations for the deemed to be universities to conduct the ODL mode courses.

113. Taking all submissions made on behalf of either side into account, the respondent No.2 is thus directed to frame the requisite regulations for the deemed to be universities wanting to offer courses through the ODL mode as expeditiously as possible and latest by the date 30.09.2019. In the circumstances presently, no inspection or revaluation of the petitioner, as prayed, through CM No.28966/2019 for the three-year MBA ODL course can be granted. ANU MALHOTRA, J.

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