

S.C. Jain and Others Vs. Union of India Through Its Secretary Ministry of Information and Broadcasting, New Delhi and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Dec-21-2011

Judge : V.K. Bali, Chairman & the Honourable Dr. Ramesh Chandra Panda, Administrative Member

Appeal No. : OA No. 1308 of 2009 MA No. 479 of 2011 MA No. 2649 of 2011

Appellant : S.C. Jain and Others

Respondent : Union of India Through Its Secretary Ministry of Information and Broadcasting, New Delhi and Others

Advocate for Def. : Shri. S. M. Arif

Advocate for Pet/Ap. : For the Applicants: M.K. Bhardwaj, Advocate. For the Respondents: Amitesh Kumar for UGC and AICTE, S.M. Arif for Official, Gopal Dutt, Aly Mirze for DEC/IGNOU.

Judgement :

Dr. Ramesh Chandra Panda, Member (A) :

MA No.479/2011

1. Applicants have moved this MA praying to implead IASE as necessary party in the controversy. During the hearing all parties agreed that the inclusion of IASE as a party in the OA will expand the scope of the controversy and the adjudication will be delayed. Further, it was noted that the statutory bodies like UGC, AICTE and DEC have been impleaded as party respondents and have filed their reply affidavits which would suffice to adjudicate the controversy. Accordingly, we are of the view that there is no necessity to implead IASE as necessary party. Hence, the MA is dismissed.

MA No.2649/2011

2. Shri Ankur Chhibber, learned counsel has moved on 28.09.2011 this MA with the prayer to implead Shri Madan Mohan serving as AE, DDK, Delhi as intervenor as party respondent in the OA. As the OA has been finally heard, it may not be necessary to include fresh party as respondent which would delay the adjudication. The OA was filed in the year 2009. We do not consider it proper to allow new intervenors at this stage. This MA is accordingly dismissed.

OA No.1308/2009

3. Shri S. C. Jain and five others, the applicants in this OA, are aggrieved by the order dated 27.04.2009 (Annexure-A1) whereby the modified eligibility list of Assistant Engineers working in the All India Radio (AIR) and Doordarshan as on 01.01.2007 for promotion to the JTS Cadre was issued by deleting their names from the list. Assailing the said order the applicants have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

4. While issuing notice to the respondents on 15.05.2009 the following orders were passed on the interim relief:

“Issue notice to the respondents returnable on 18.05.2009. List as per roster.

Counsel for applicant while seeking interim direction, relies upon an interim order passed by this Tribunal in OA No.1260/2009 dated 6.5.2009, an interim order of Hon’ble Jammu and Kashmir High Court as also order passed by the Jodhpur Bench of this Tribunal in OA No.111/2009 dated 8.5.2009.

Issue same interim directions as ordered in OA o.1260/2009 on 6.5.2009.”

5. All six applicants were initially appointed as Engineering Assistants between 19.07.1980 and 30.10.1988 and were promoted to the post of Senior Engineering Assistant and were further promoted to the post of Assistant Engineers. The next higher post for promotion of the applicants is the Assistant Station Engineer (ASE) in the Junior Time Scale (JTS) of `8000-12500. All these applicants completed their M.Sc (Electronics) from Institute of Advance Studies of Education (IASE in short) Gandhi Vidya Mandir, Sardarshahar, Rajasthan through distance education programme. All secured 1st Division in the programme and all except 3rd applicant completed the programme in June, 2006 and 3rd applicant completed the same in December, 2006. On the basis of the said qualification, all applicants requested to the respondents to include their names in the eligibility list of Assistant Engineers for promotion to the post of ASE. However, vide impugned order dated 27.04.2009 (Annexure-A1) the official respondents issued a list containing names of 528 Assistant Engineers but the applicants' names did not figure in the list. Being aggrieved, they have jointly approached this Tribunal in the instant OA.

6. Shri M. K. Bhardwaj, learned counsel for the applicants would submit that the matter is no more res integra in view of various decisions of Hon'ble High Court as well as this Tribunal. He referred to the judgment of Hon'ble High Court of Himachal Pradesh in the matters of Sudesh Kumari and Others versus HPSEB [WP(C) No.3206/2010 decided on 05.04.2011] where the same issue was considered whether degree conferred by IASE (Deemed University) are recognized for appointment/promotion in Central Government/State Government etc. The High Court in its judgment dated 05.04.2011 held that in view of decision taken by Joint Committee of the UGC-AICTE-DEC qualifications conferred by IASE University are recognized for appointment and accordingly allowed the Writ Petition with directions to the HPSE Board to treat the petitioners having Engineering Degree as eligible for promotion. The said order was subsequently upheld by the Division Bench in LPA No.354/2011 decided on 20.09.2011. Thereafter, this Tribunal has considered the said issue in OA No.3741/2009 and OA No.1210/2010 and even the RA in OA no.1210/2010 referring to the judgment of Hon'ble Apex Court in the case of Annamalai University Versus Secretary to

Government Information and Tourism Department and others [JT-2009-4-SC-43], the Tribunal dismissed the RA by detailed order. Shri Bhardwaj would further submit that the objection taken by the official respondents in their counter affidavit regarding non approval by the UGC/AICTE/DEC and decision of UGC dated 12.05.2008 regarding withdrawal of ex-post facto approval were unjustified as the order of withdrawal of ex-post facto approval dated 12.05.2008 was stayed by the Hon'ble High Court of Jodhpur vide order dated 15.09.2008 in the Writ Petition filed by the IASE University. He contends that IASE being Deemed University was competent to issue degrees for the subjects and courses taught as per Section 22 of UGC Act. Referring to the letter of November, 2007 issued by UGC, no separate approval of UGC is required, the approval of UGC-AICTE-DEC joint committee would suffice. DEC in its counter reply has clearly indicated that all courses of IASE have been recognized and as such the degrees issued by IASE are legally valid and admissible to be considered in the matters of appointment/promotion. He submits that as Ministry of HRD being the nodal Ministry has recognized the Diploma/Degree conferred by IASE, other Ministries are bound to follow the said decision. So far as the UGC/AICTE are concerned, they may raise technical objection but the same cannot be taken notice by the Departments unless a decision is taken in this regard by the Ministry of HRD. In OA No.3741/2009, this Tribunal specifically directed for impleading the Ministry of HRD as party and only after reply was filed by the said Ministry to the effect that the degree/diploma conferred by the IASE are recognized for appointment/promotion in Central Government was allowed. Because the official respondents never raised objection regarding the study centres of IASE or otherwise as evident from their reply as they are conscious of the fact that such objections are not justified. So long as the Degrees/Diplomas awarded by Deemed University under distance mode are recognized by the Ministry of HRD, DEC etc. they are valid and cannot be questioned. It is further submitted that as per the policy of DEC, the study centres and regional centres are treated as internal policy matter of the University and no specific approval is required for the same. Because the applicants took admission in the degree course way back in the year 2003 with due approval of the official respondents as a lateral entry candidate as they had already acquired Diploma in same stream from recognized institution. The

applicants got admission in the degree course in the year 2003 and as per the decision of DEC degree of the students who took admission in the period of approval i.e. till 2005 and the year 2007-08 are treated as valid by the Joint Committee decision. It is the responsibility of the Ministry of LandB to verify from the Ministry of HRD and DEC about the recognition of Degree/Diploma conferred by IASE before passing the impugned order. In view of the above contentions, Shri Bhardwaj urges to direct the respondents to treat the Degree awarded by IASE to the applicants as valid Degree and consider them for promotion to the grade of JTS from the date they became eligible against the available vacancies with all consequential benefits including arrears of pay.

7. On receipt of notice from the Tribunal, respondents have submitted their reply affidavits. Opposing the grounds taken by the applicants, Shri Amitesh Kumar, learned counsel appearing on behalf of the All India Council of Technical Education (AICTE) would submit that the policy adopted by the AICTE is not to recognize the qualification acquired through distance education mode at Diploma, Bachelor and Master level in the fields of Engineering, Town Planning, Pharmacy, Hotel Management and Catering Technology, Applied Arts and Crafts and Post Graduate Diploma in Management. The AICTE has the policy to consider only MBA and MCD through distance mode for its recognition. In this regard, AICTE has issued public notice from time to time informing the public and students regarding the above policy and specifically informing all the existing students/prospective students pursuing/wanted to pursue any educational programme in the above mentioned fields to check the approval of the Joint Committee of DEC, UGC and AICTE on the AICTE's web portal. Our attention was also drawn to the advertisement No.Legal/01(02)/2009, Advertisement No.UB/02(02)/2010 and the 3rd Public Notice of UB/04(03)/2010 available at Pages 467 to 469 of the paper book to highlight that such public notices have been issued for information of the persons pursuing their technical education with the Institutes or aspiring to take admission in Institutions for Technical Education. Further, it is submitted that the AICTE has not granted any permission or approval for opening Study centres by the IASE deemed to be University anywhere in the country. It was contended that the Joint Committee of UGC-AICTE-DEC having come into existence, the proposal for approval or ex-post facto approval of

distance education programme was to be considered by the said Joint Committee only. In view of the above, it is submitted that the technical degrees awarded by IASE to the applicants is not valid as per the policy of the AICTE.

8. Learned counsel appearing on behalf of the University Grants Commission (UGC) would submit that the Degree of B. Tech obtained by the applicants through distance mode would not be treated as legally valid degree. It is contended that the technical education and the degree for the same to be awarded by any Institute deemed to be University under the UGC Act is required to follow the standards laid down by the AICTE. The Counsel for UGC would say that AICTE has not granted any permission to the IASE to start the technical education in which the applicants have received degree. It is further submitted that so far as ex-post facto approval issued by the DEC is concerned, the same is not valid in view of the decision of the Hon'ble Supreme Court in the case of Annamalai University (supra) and he drew our attention to paragraph 28 and 29 of the said judgment. It is highlighted that UGC has not delegated any of its power in favour of the Joint Committee of UGC-AICTE-DEC and any action taken by the Joint Committee is still required to be brought before the UGC and the Commission on its turn has to consider and convey its decision to the appropriate organization. The minutes of the Joint Committee of UGC-AICTE-DEC is only to guide in the decision making process of the UGC but is not binding on the UGC. It is submitted that the UGC observed that the IASE has been indulging in the activities in running various professional courses such as B.E, B.Tech, BCA, MCA, BBA, MBA, BTP etc. without the approval of the UGC, despite the fact that the UGC guidelines circulated in the year 2000 and 2004 clearly stipulated that no off campus centre or offshore campus or new courses should be started without the prior approval of the UGC. Further it was inter alia observed that the IASE deemed to be University was running B.Ed, M.Ed and Phd in Education at the time of notification of the same deemed to be University status under Section 3 of the UGC Act, 1956 and the UGC never granted any approval to start any new professional courses. In this background, the UGC sent a show cause notice dated 21.08.2008 to the Registrar IASE directing him to explain as to why appropriate action should not be taken to the effect of recommending withdrawal of deemed to be University status of IASE to the Ministry of HRD. On receipt of IASE explanation dated 6.09.2008 and

24.11.2008, it has been inter alia mentioned that the IASE has started or to be started departments in the engineering, management etc. In the meantime, Ministry of HRD ordered enquiry on the complaints received against IASE. The Enquiry Committee/ Fact Finding Committee visited IASE on 15th and 16th of January, 2009 to verify the situation and submitted its report on 20.03.2009. The said report inter alia mentioned the following :-

“There are no proper norms followed by Directorate of Distance Education, IASE deemed University for offering professional and technical programmes through distance mode because of which the quality of education offered by this institution is being compromised.

The institution is offering certain technical programmes such as B.Tech in various streams such as Diploma in Engineering, and presently DMLT, Bachelors in Hospitality Management etc. without having adequate infrastructure at the Headquarters.

Some of the programmes offered through distance mode is not in tune with the decisions of the Joint Committee and DEC.”

It is also inter alia mentioned that the IASE has completely decentralized the admission, organization, conduct of face to face sessions, as well as conduct of term examinations including valuation of answer sheets to the said centres which amounts to franchise of services which has not been permitted by DEC. It is clearly mentioned by the UGC that IASE, deemed to be University is conducting courses in the distance mode on franchise basis with centres that are independent of the University and such arrangement is not approved by UGC and DEC. In view of the contention raised by the UGC, it is stated that the IASE having not followed the guidelines of UGC in the distance mode, the Degrees and Diplomas given by the IASE to the applicants are not valid degrees.

9. The learned Counsel for DEC would submit that IASE deemed to be University started distance education from the year 2002-03 “although no proper approval of the DEC for starting such courses was ever obtained” and the application for distance education programme was received by DEC only on 19.08.2003. After

inspection, the proposal for distance education was rejected by DEC vide letter dated 27.06.2005. IASE was one of the Universities notified for public information on 05.01.2007 as not recognized for distance education. DEC, AICTE and UGC entered into a Memorandum of Understanding dated 10.05.2007 and a Joint Committee came into existence in pursuit of excellence in technical and general education in the country and to avoid duplication of efforts. In the meantime, IASE applied for recognition of distance education in July, 2007 and the Joint Committee accorded provisional approval for the distance education for the academic year 2007-2008. It is further stated that for imparting technical and professional courses through distance education mode, the DEC holds the view that IASE has to take the approval of AICTE and UGC.

10. Shri Gopal Dutt, learned counsel appearing on behalf of the private respondents would submit that as per the UGC letter dated 30.06.2004, IASE was conducting only the B.Ed, M.Ed and Phd courses in education. After getting the status of deemed to be University IASE started courses like B.Tech and MBA which was not authorized to be operated by the Institute. Further, contention is that the IASE is running independent state centres at different places on franchise basis and granting Degrees in Engineering which is not admissible either by the guidelines of the UGC or the AICTE and DEC. It is stated that the IASE is running 1500 centres and many students are being cheated in the process of such illegal degrees being issued to them. It is also highlighted that the UGC has denied to grant any ex-post fact approval for IASE to run state centres, regional centres, academic centres under the distance education mode. Even the UGC directed them to close down such state centres and such outstation education programmes. Shri Dutt would submit that the applicants have studied only in the state centres run by IASE and obtained technical degrees. He cited example that applicant No.2 who got degree through Baba Saheb Ambedkar Institute of New Delhi; applicant No.1, 3, and 4 got through Society for Human Development and Research, Hauz Khas; and 5th and 6th applicants got through the Software Technology, IT and Management Institute, Rohtak. It is further contended that the IASE had not got prior approval from the statutory bodies like UGC and AICTE for the B.Tech and M.Sc programmes run by it. It is further contended that the ex-post facto approval is not available to the IASE from the competent authorities as the

clearance from DEC alone will not suffice. The MOU signed by the 3 statutory bodies, namely, UGC, AICTE and DEC indicates clearly that ex-post facto approval should be granted only by the statutory bodies jointly not separately and IASE has not got such joint post facto approval from these 3 statutory bodies. Shri Gopal Dutt would place his reliance on the judgment of Hon'ble Supreme Court in the case of Annamalai University (supra). It is, therefore, urged that the OA should be dismissed as the applicants having got invalid degrees and not being eligible and qualified for the post to be considered for promotion, the deletion of the applicants name by the official respondents from the eligibility list is tenable in law.

11. Shri S. M. Arif, learned counsel for the respondents clarified that the course under distance learning system did not have the approval of UGC and that the qualification acquired by the applicants was not a valid qualification as such their names were not approved. He further submitted that the Government of India (MHRD) convened a meeting on 19.02.2008 which was chaired by Secretary. Department of Higher Education. It was decided that approval granted by Distant Education Council (including ex-post-facto) must be reviewed and approval should be granted to the courses and not to the Institutes. Reference was made to the letter dated 2.5.2008 of the UGC to the Vice Chancellors of 18 deemed Universities including the Institute of Advance Studies and Education Sardarsahar, Rajasthan. Specific question was being asked from the Central Public Information Officer of All Indian Council of Technical Education (AICTE) whether IASE Deemed University Sardarsahar Rajasthan has been granted approval to run M.Sc Electronics through distance education mode for the sessions from 2002-03 till 2007. In reply to that it was stated that AICTE has not granted approval to the Institute to run M.Sc Physics or Electronics through distance education mode during this period.

12. Having heard the contentions of the parties, with the assistance of their counsel, we perused the pleadings. The heart of the controversy coming up for adjudication is the non-consideration of the applicants for their promotion to the post of ASE in JTS by deleting their names from the eligibility list on the ground that the Degree that they have obtained from IASE, has been found not to be valid.

13. Before we go into the controversy, it is appropriate for us to go through the judgments relied on by the counsel to identify their applicability or otherwise in the instant OA.

14. The applicants have relied on the orders of the Circuit Bench of Jammu in TA No.2T-JK-2010 in the case of Joginder Paul Anugurana and another versus Prasar Bharati and Others decided on 17.10.2011. The Tribunal considered controversy similar to the one being dealt in the instant OA and relying on the orders of the Principal Bench of this Tribunal in OA No.1210/2010 titled Vikrant Shokhandha versus Delhi Metro Rail Corporation Limited, decided on 19.11.2010 allowed the OA. In Vikram Shoukhanda's case (supra) the issue was with regard to the validity of the degree of Mechanical Engineering obtained in 2005 from the IASF, Rajasthan. Similar objection was also taken in that case which was decided in favour of the applicants in following terms:-

“7. The applicant had got the diploma certificate in Mechanical Engineering in the month of June, 2005. In other words, the programme run by IASE which had the status of Deemed University got post facto approval of DEC for all its programmes till 2005 and ad hoc approval was also given for the programmes up to 2007-2008. This position is borne out from the foregoing discussion. Therefore, the contention of the applicant that he had a valid diploma from recognized Institute stand vindicated and we do not see any justification to sustain the objection of the respondents in this regard.

8. In the circumstances, our findings are that the diploma certificate from IASE obtained by the applicant in the year 2005 was a valid one and the Institute from which the applicant passed out had the status of Deemed University having the powers of running programs in Distance Education mode for which it had post-facto approval from the DEC in respect of the relevant period.”

15. Another judgment of this Tribunal relied on by the Counsel for the applicants is in the matters of Shri M. L. Rastogi versus Government of NCT of Delhi and Others [OA No.3741/2009 decided on 13.04.2011]. Tribunal allowed the OA after taking note of the provisional recognition given to IASE by DEC for the academic year 2007-08. This Tribunal has also decided another case in OA No.1210/2010

decided on 19.11.2010 and the RA No.66/2011 moved by Delhi Metro Rail Corporation in the said OA was dismissed vide order dated 12.09.2011.

16. It is apt for us to note that both the orders of this Tribunal have not taken cognizance of the orders of the Guwahati Bench of this Tribunal in Manas Ranjan Senapati's case (supra). Further, we notice that views of UGC and AICTE have not been sought and considered before the orders in both cases were passed. These three orders will have no binding effect for us to follow.

17. The Guwahati Bench of this Tribunal in Shri Manas Ranjan Senapati versus Union of India and Others considered the case similar to the instant OA and while dismissing the OA No.106/2008 on 05.03.2010, the Tribunal examined the issue whether AICTE has granted approval to the IASE to run M.Sc (Physics) or M.Sc (Electronics) through distance education mode from the sessions 2002-03 till 2007, and it was noticed from the reply received through the instruments of RTI that AICTE had not been granted approval to the IASE to run M.Sc Physics or Electronics through distant education mode during the said period. The Tribunal decided the issue as follows:-

“In order to get promotion to the grade of JTS, it is a necessary condition that the candidate must have the requisite qualification from a recognized institute. It is abundantly clear from the perusal of records that the Institute of Advance Studies and Education Sardarsahar Rajasthan can't be construed to be a recognized Institute for this purpose. AICTE did not grant approval to this Institute to run M.Sc Physics or Electronics through distance mode during the relevant period. As per Memorandum of Understanding signed between UGC, AICTE and the DEC there must be an approval of UGC, AICTE and Distance Education Council with due recommendation of the Joint Committee for approving the courses in question. In the facts of the present case we find that such approval was not accorded. In the facts of the present case we find that such approval was not accorded to the Institute of Advance Studies of Education Sardarsahar Rajasthan as such applicant was not eligible for being considered for promotion to the post of Assistant Section Engineer. We do not find any merit in the contention of the applicant, as such, we dismiss the OA.”

18. In *Annamalai University Rep. by Registrar versus Secretary to Government Information and Tourism Department and Others* [JT 2009-4-SC-43] Hon'ble Supreme Court held that UGC Act having been enacted by the Parliament in terms of Entry 66 of List I of the Schedule of the constitution would prevail over the Open University Act and the DEC being an authority under the Act, its orders ordinarily would have a prospective effect. It was further decided that when a mandatory provision of a statute has not been complied with by an administrative authority, it would be void. Such a void order cannot be validated by inaction. We may refer to the pertinent part of the judgment, which reads thus:-

“If mandatory provisions of the statute have not been complied with, the law will take its own course. The consequences will ensue. Relaxation, in our opinion, furthermore cannot be granted in regard to the basic things necessary for conferment of a degree. When a mandatory provision of a statute has not been complied with by an Administrative Authority, it would be void. Such a void order cannot be validated by inaction.

29. The only point which survives for our consideration is as to whether the purported post facto approval granted to the appellant-University or programmes offered through distance modes is valid. DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. It having accepted in its letter dated 5.5.2004 that the appellant-University had no jurisdiction to confer such degrees, in our opinion, could not have validated an invalid act. The degrees become invalidated in terms of the provisions of UGC ACT. When mandatory requirements have been violated in terms of the provisions of one Act, an authority under another Act could not have validated the same and that too with a retrospective effect. The provisions of UGC Act are not in conflict with the provisions of Open University Act. It is beyond any cavil of doubt that UGC Act shall prevail over Open University Act.”

The above judgment lays the law that an invalid act cannot be validated subsequently and that too with retrospective effect.

19. At this stage, we may refer to the facts of the case and more specifically, the Recruitment Rules, the eligibility criteria for the post of ASE which mandates that

the feeder cadre of AE shall have 3 years of regular service in the grade and must possess minimum educational qualification prescribed for direct recruitment. The provisions of the Recruitment Rules are as follows:-

“A candidate must have

- a. obtained a degree in Engineering from a University incorporated by an Act of the Central or State legislature in India or other Educational Institutions established by an Act of Parliament or declared to be deemed as Universities under Section 3 of the University Grants Commission Act, 1956; or
- b. passed Section A and B of the Institution Examinations of the Institution of Engineers (India); or
- c. obtained a degree/diploma in Engineering from such foreign University/College/Institution and under such conditions as may be recognized by the Government for the purpose from time to time; or
- d. passed Graduate Membership Examination of the Institute of Electronics and Telecommunication Engineers (India); or
- e. passed Associate Membership Examination parts II and III/Sections A and B of the Aeronautical Society of India; or
- f. passed Graduate Membership Examination of the Institution of Electronics and Radio Engineers, London held after November, 1959.

Provided that a candidate for the post of Engineer, Group A, in Wireless Planning and Coordination Wing/Monitoring Organisation, Ministry of Communications and Indian Naval Armament Service (Electronics Engineering Posts), may possess any of the above qualifications of the qualification mentioned below namely:-

M.Sc degree or its equivalent with Wireless Communication, Electronics, Radio Physics or Radio Engineering as a special subject.”

20. Admittedly, IASE is deemed to be University and was granted the said status under the UGC Act for imparting education for award of degrees in B.Ed, M.Ed

and PHD in education. It is noticed that IASE has entered into the field of distance education without getting prior approval of the competent statutory authorities. It must be noted that deemed to be University is different from the conventional universities established under the Statute. As per UGC guidelines, the deemed to be University would carry the courses leading into the award of Degrees/Diplomas will be in the areas of education which have been authorized by the UGC, DEC and AICTE. The reports cited by the respondents clearly lead us to believe that IASE has branched away to the areas for which the Institute has not been authorized by the competent statutory bodies. This would mean that those who get Degrees/Diplomas in the field, not authorized by the competent statutory bodies, would not be legally eligible to be considered either for appointment or for promotion. In this context, the applicants who have received Degrees in MSc (Electronics) would not be in a position to place the said degrees for the purpose of appointment or for promotion to a higher post where such a qualification is required from recognized Universities. It is noted that recognition of deemed to be University does not itself empower the universities to impart education in any field that they may deemed fit. This aspect has been very clearly brought out by the respondents in their pleadings. We do agree with the views and contentions advanced by the respondents. In case of a distance education programme to be imparted, the same is being done by the conventional universities established by a Statute or by the Open Universities. In case of deemed to be Universities, the Ministry of HRD has brought in a Committee with three relevant statutory bodies, namely, All India Council of Technical Education (AICTE), University Grants Commission (UGC) and Distance Education Council (DEC) to examine each case on its merits and decide, which university should be granted distance education and for which courses. Though the applicants have pleaded before us that the Distance Education Council has given a letter to the effect that the IASE (deemed to be University) can undertake distance education for MSc (Electronics), it must be noted that such a letter does not on its own entitle the IASE to continue the course unless all the three statutory bodies, namely, UGC, AICTE and DEC give approval as prescribed in their relevant respective statutes. In this context, it is noticed that the applicants have obtained their degrees through distance education which may not be the right process by which M.Sc (electronics) degrees could be

awarded to the applicants. Further, looking the case from another angle, it is noticed that IASE has franchised the distance education programmes for different courses through Regional Centres, State Centres, Study Centres and such franchise as per the contentions of the respondents are not admissible under the extant guidelines and rules. So much so, that the UGC, AICTE and DEC issued circulars and even some of the advertisements have been issued to indicate that students likely to become students to prosecute their studies through distance education must be aware of recognized and non recognized courses and recognized and non recognized Institutes where such studies can be pursued. It is in this context that we notice that the applicants have passed their respective courses only through the centres and have not studied directly at the IASE. Therefore, from this angle, the applicants would not be entitled to get the benefits of such a degree for consideration to be promoted to the post of ASE.

21. We may also take the extract of the reply affidavit filed by UGC on the controversy, which reads thus:

“[38] That it is submitted that in view of the above findings recorded by the committee, the MHRD, Govt. of India issued a notice dated 17.04.2009 along with which a copy of the enquiry report was also forwarded to the IASE deemed to be University, directing them to submit their explanation, if any, to the findings/observations of the fact finding team and to show cause as to why the Central Government may not withdraw notification dated 25.6.2000 declaring IASE as an Institution “deemed to be University”, for violating conditions mentioned in the said notification. A true copy of the notice dated 17.4.2009 issued by the department of Higher Education, MHRD, Government of India is annexed herewith and being marked as ANNEXURE R-18.

[39] That at this stage it is further relevant to submit that so far as the Joint Committee of UGC-AICTE and DEC is concerned, the same has come into existence by virtue of Memorandum of Understanding signed between UGC-AICTE and DEC on 12th May, 2007 and the duration of the said MOU is for an initial period of 3 years commencing from the date of signing of the said MOU. It is respectfully submitted that one of the purposes as stipulated in the preamble (c) of

the MOU is to avoid duplication of efforts in streamlining of activities. Further, the aims and objectives of the said MOU provide to carry out various functions of UGC and AICTE, as decided by the UGC and AICTE from time to time jointly with DEC to ensure coordinated and integrated development and maintenance of norms and standards of technical and general education through distance and mixed mode in any form and format in the country.

[40] That it is respectfully submitted that the above mentioned Joint Committee of UGC-AICTE and DEC by itself is not a statutory body and the same is merely a Joint Committee which has come into existence by virtue of MOU in order to avoid duplication of efforts in streamlining of activities.

[41] That it is further respectfully submitted that as per the procedure evolved for carrying out the purposes of UGC-AICTE-DEC Joint Committee, even if any approval is granted by the Joint Committee, still, in terms of the minutes of meeting dated 19th February, 2008 (Meeting of Secretary, Higher Education, Govt. of India and Vice-Chancellor, IGNOU), the minutes of the meeting must be circulated to the Chairman, UGC and AICTE and if no comments are received within a period of 10 working days, the minutes should be deemed to have been approved. Further, once the minutes of the Joint Committee are approved, the same should be placed before the Commission (UGC) and the Councils (AICTE and DEC) for information.

[42] That it is further submitted that the University Grants Commission has not delegated any of its powers in favour of the Joint Committee of UGC-AICTE and DEC and even if any action is suggested by the Joint Committee, the matter is still required to be placed before the Chairman, UGC and subsequently before the Commission for information. Thus, it is respectfully submitted that the Joint Committee of UGC-AICTE and DEC has the limited relevance only for the purpose of avoiding duplication of efforts in streamlining of activities.

[43] That it is further submitted that even in the case of approval by the Joint Committee, the approval must be strictly in accordance with the provisions of the MOU between UGC-AICTE-DEC which, among others, stipulates the following:-

“Based on the recommendations of Joint Committee, the letter of approval may be issued by the Joint Committee. The letter should explicitly state “This has the approval of UGC, AICTE and DEC. The letter should be jointly signed by Secretary, UGC, Member Secretary, AICTE and Director, DEC.”

22. The MOU was signed by UGC-AICTE-DEC on 10.05.2007 but the applicants have got their degrees in June/December, 2006 in the distance mode. Hence, the MOU would not come to the help of the applicants. Further, the MOU was operational prospectively for a period of 3 years with effect from the signing date. Thus, the Joint Committee does not have any power to grant post facto approval prior to 10.05.2007. The judgment of Hon’ble Supreme Court in Annamalai University’s case (supra) strengthens the above view in the sense that IASE’s action of imparting distance education prior to 2007-08 cannot get validation by an order of even the Joint Committee less to speak of the order of DEC.

23. We may also refer to the relevant paragraphs of the counter affidavit filed by DEC, which are extracted below:-

“4. That the IASE University started imparting education through distance education mode some time in the year 2003-03 although no prior approval of the DEC for starting such courses was ever obtained.

5. That vide its letter dated 13.12.2002, the answering respondent furnished to the University, the guidelines for establishing distance education centres. However, application for recognition of the distance education programme was received on 19.8.2003.

6. That the said application of the IASE University was rejected by the answering respondent pursuant to inspection carried out by the answering respondent. The rejection of the application for grant of recognition of the IASE University was communicated vide letter dated 27.06.2005.

7. That thereafter when the Distance Education Council issued a public notice on 5th January 2007 on its website listing out various universities which were not recognized for the purpose of imparting education through distance education

mode, the said university again applied for recognition of programmes being imparted through distance education.”

“11. That the following decision by the DEC in its 28th meeting held on 23.3.2007, it was decided that recognition of institution will be considered in place of programme evaluation which was the policy at that time. Thus as a provisional measure, the DEC had given institutional recognition to the above University in place of programme approval. During the period of provisional recognition the University may decide the programme to be offered and it should also take necessary approvals from the retrospective statutory bodies of the university as well as other Apex Bodies in the country, wherever required, the responsibility for which vests with the University concerned.

12. Further, in case of technical/professional programmes such as B.Tech/MBA etc. offered by the university is concerned, wherever required, approval from the concerned apex bodies in the country such as AICTE/UGC etc. is required to be obtained for which the responsibility vests with the University concerned.”

24. The AICTE has also indicated the following which does not support the claims of the applicants:-

“[14] That it is further submitted that the AICTE has not delegated any of its powers in favour of the Joint Committee of UGC-AICTE and DEC and even if any action is suggested by the Joint Committee, the matter is still required to be placed before the Chairman, AICTE and subsequently before the Council for information. Thus, it is respectfully submitted that the Joint Committee of UGC-AICTE and DEC has the limited relevance only for the purpose of avoiding duplication of efforts in streamlining of activities.

[15] That it is further submitted that even in the case of approval by the Joint Committee, the approval must be strictly in accordance with the provisions of the MOU between UGC-AICTE-DEC which, among others, stipulates the following:-

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

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

[16] That it is respectfully submitted that it has been the policy of AICTE not to recognized the qualification acquired through Distance Education mode at Diploma, Bachelors and Master level in the fields of engineering, technology including MCA, Architecture, Town Planning, Pharmacy, Hotel Management and Catering Technology, Applied Arts and Crafts and Post Graduate Diploma in Management (PGDM). AICTE has the policy to consider only MBA and MCD through Distance Mode for its recognition. In these circumstances, the AICTE has been issuing public notices from time to time informing the public and students regarding the above and specifically informing all the existing students/prospective students pursuing/wanted to pursue any educational programme in the above mentioned fields to check the approval by Joint Committee of Dec, UGC and AICTE on AICTE’s web-portal at www.aicte-india.org. True copy of the public notice issued by AICTE has been annexed herewith and being marked as ANNEXURE R-1.”

25.As per the recruitment rules in force, 50% of junior time scale cadre is filled up by promotion from amongst the eligible Assistant Engineers of AIR and Doordarshan who had requisite qualification prescribed for direct recruit candidate of junior time scale. As such it was mandatory that the Assistant Engineer must possess the educational qualification of B.E. B.Tech or Master Degree or its equivalent with Electronic Radio Engineering as one of the subject from a recognized University/Institution and three years regular service in the grade of Assistant Engineer. The office memorandum dated 25.07.2007 issued by Prasar Bharati reads as follows:-

“The Committee also decided that any candidate who has appeared in M.Sc (Physics) or Degree examination and got mark sheet to that effect on or before 31st December of the preceding the year for which promotions are being considered, would be eligible for inclusion in the eligibility list for promotion to the JTD of that vacancy year.”

The intention of the OM is that any candidate who has appeared in qualifying examination on or before 31st December of the year preceding the year for which promotions are being considered would be eligible for inclusion in the eligibility list for promotion to the JTDS cadre of that vacancy year provided the result of the examination in which he has appeared is declared in his favour and the candidates has produced the mark sheet to that effect by 31st March of the subsequent year.

26. In order to get promotion to the grade of JTS it is a necessary condition that the candidate must have the requisite qualification from a recognized institute. It emerges from the perusal of pleadings that the Institute of Advance Studies and Education Sardarsahar Rajasthan can't be construed to be a recognized institute for the purpose of granting M.Sc (Electronics) degree through its centres under distance education mode prior to 2007-08 academic year. It is noted that AICTE did not grant approval to this institute to run M.Sc (Electronics) through distance education mode during the relevant period. UGC has found through the fact finding enquiry that IASE has been running non recognized degree courses through its unauthorized centres on distance education mode. The DEC has been categorical that the IASE has not been authorized to run distance education courses in M.Sc (Electronics). Further, as per Memorandum of Understanding signed between UGC, AICTE and the DEC there must be an approval of all three statutory bodies viz. UGC, AICTE and Distance Education Council with due recommendation of the Joint Committee for approving the course in question. Such an approval has not been admitted by these three statutory bodies.

27. Having considered the facts and circumstances of the present case, we are of the considered conclusion that the applicants' M.Sc (Electronics) degree being from the unauthorized centres and based on non-recognised programme run by IASE through distance education cannot be termed as eligible educational qualification and, therefore, the applicants were not eligible for being considered to be put in the eligibility list for promotion to the post of Assistant Station Engineer.

28. In the result, we do not find any merit in the contentions of the applicants and as such, we dismiss the OA. No costs.