

SUPREME COURT OF INDIA

Vinit Garg

Vs.

University Grants Commission

W.P.(Civil)No.1510 of 2018

(Uday U.Lalit and Sanjiv Khanna,JJ.,)

29.08.2019

JUDGMENT

Sanjiv Khanna,J.,

1. The petitioners, 92 in number, in this writ petition under Article 32 of the Constitution of India have prayed for directing the University Grants Commission, (hereinafter referred to as 'UGC') to issue a clarification that the degrees of Bachelor of Technology (hereinafter referred to as 'B.Tech.')

acquired by them through open and distance learning mode from the Thapar Institute of Engineering and Technology, Patiala, (hereinafter referred to as 'TIET, Patiala') are valid, recognised and should be treated at par with degrees granted to regular students who have undertaken such courses in TIET, Patiala and other recognised universities.

2. UGC is refusing to treat the technical degrees issued by TIET, Patiala under distance learning mode as valid, primarily for the reason that the B.Tech. courses conducted by TIET, Patiala were without their approval and approval of the All India Council for Technical Education (hereinafter referred to as 'AICTE').

3. The petitioners who are diploma holders in Civil/ Computer Science/ Electrical/ Mechanical Engineering and working in the Government of Punjab have stated that they were selected for the B.Tech. degree course through the distance mode programme on the basis of competitive examination conducted by TIET, Patiala, which is deemed to be a university under Section 3 of the University Grants Commission Act, 1956 (hereinafter referred to as 'UGC Act'). The petitioners highlight that TIET, Patiala, rated as one of the premier engineering universities/colleges by the Ministry of Human Resource Development, Government of India, was set up in 1956 for promoting the study of technical education and has a 250 acre campus located in Patiala with teaching faculty strength of 391, including 301 Ph.D. holders, and undertakes 11 undergraduate courses and 23 postgraduate courses. The total strength of students is more than 8000 with nearly 700 research students doing Ph.D. The National Assessment and Accreditation Council, an autonomous body established by the Ministry of Human Resource Development,

Government of India, has accredited the said institution/deemed to be university Grade ‘A’ status besides placing the institution in Tier-I accreditation. Distance Education Council (hereinafter referred to as ‘DEC’) vide its letter dated 3rd September, 2007 had granted provisional recognition to TIET, Patiala for offering programmes through distance mode for a period of one year on the basis of which TIET, Patiala had offered B.Tech. degree in Civil / Computer Science / Electrical / Mechanical Engineering to working professionals who already had a diploma and had at least two years’ experience in the respective branches in engineering in the academic years 2007-08 and 2008-09. No admissions were made after 29th July, 2009. The petitioners had taken admission in the prestigious deemed to be university verily believing that all approvals were in place. The petitioners, relying on the judgment of this Court in *Bharathidasan University and Another v. All India Council for Technical Education and Others*, have argued that a deemed to be university is not required to seek prior approval of the AICTE to start a department for imparting a course or a programme in technical education. Reference was made to paragraph 49 of the judgment of this Court in *Orissa Lilt Irrigation Corporation Limited v. Rabi Sankar Patro and Others* (hereinafter referred to as *Orissa Lilt Irrigation Corporation Limited-I*) to assert that TIET, Patiala, being a premier institution authorised to undertake courses and issue degrees in the aforesaid technical fields, was not required to take any approval of the AICTE. Reliance was also placed on the order and judgment dated 10th April, 2018 in Civil Appeal Nos. 3697-3698 of 2018 in *Jawaharlal Nehru Technological University v. The Chairman and Managing Director, Transmission Corporation of Telangana Limited*². There were no off-campus centres or study centres and all instruction, practicals and examinations were conducted on the campus of TIET, Patiala using the same faculty and infrastructure as used in the traditional B.Tech. courses. The studies were of high standard as the students had to pass 42 subjects with practicals to earn the degree. Out of 1168 students admitted to the B.Tech. courses through distance learning mode, only 822 students were awarded degree.

4. We may at the outset record that the petitioners have given up and not raised the contention that the decision authored by one of us (Uday Umesh Lalit, J.) in *Orissa Lilt Irrigation Corporation Limited-I* is per incuriam for the ratio is contrary to the decision in *Bharathidasan University* (supra). Indeed, such contention cannot be accepted as the latter decision has been considered in *Orissa Lift Irrigation Corporation Limited-I*.

5. We record our inability to accept the contentions raised by the petitioners, for they are misconstruing the judgment of this Court in *Orissa Lift Irrigation Corporation Limited-I* which settles the controversy beyond any doubt and debate.

6. The UGC Act was legislated for coordination and determination of standards of higher education in India with commandment to the UGC to take such steps as may be necessary for promotion and coordination of higher education in universities and institutions. The UGC, therefore, fixes and ensures maintenance of standards in teaching, examination and research in higher education. To fix and enforce these standards, the UGC has framed rules and regulations, and issues guidelines under the UGC Act.

7. Referring to the UGC Act in *Annamalai University Represented by Registrar v. Secretary to Government, Information and Tourism Department and Others*³, this Court had observed that no relaxation can be granted with regard to the basic things necessary for conferment of a degree and if the mandatory provisions are not complied with by an administering authority, the action would be void. Decision of this Court in *Annamalai University* (supra) has some relevance for it had examined the interplay between the provisions of the UGC Act and Indira Gandhi National Open University Act, 1985 (hereinafter referred to as 'Open University Act') and the purported repugnance between the two. The UGC Act, it was observed, was enacted to make provisions for coordination and determination of standards in universities and for this purpose, the UGC was established by the Central Government in terms of Section 4 of the UGC Act with its powers and functions laid down in Chapter III. Section 12 of the UGC Act provides for functions of the UGC, relevant provisions of which are reproduced as under:

“12. Functions of the Commission.—It shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may—

(d) recommend to any University the measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation;

(i) require a University to furnish it with such information as may be needed relating to the financial position of the University or the studies in the various branches of learning undertaken in that University, together with all the rules and regulations relating to the standards of teaching and examination in that University respecting each of such branches of learning;”

Section 22 of the UGC Act relates to the rights of a university/deemed university/institution to confer degrees and sub-section (1) thereof reads as under:

“22. Right to confer degrees.—(1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.” was held, was enacted to establish and incorporate an open university at the national level for the introduction and promotion of open university and distance education systems in the educational pattern of the country and for coordination and determination of standards in such system. Recording the contention that the distance education programme attenuates the rigidity of the traditional system requiring attendance in class rooms that disincentivises many learners, this Court in *Annamalai University* (supra), referring to the UGC Act and

the role of the UGC, had observed as under:

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

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

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

8. Annamalai University (supra) makes a reference to an earlier judgment in *State of Tamil Nadu and Another v. Adhiyaman Educational and Research Institute and Others*⁴ in which this Court had, with regard the enactment of the UGC Act by Parliament in exercise of power under Entry 66 of List-I, observed as under:

“41. What emerges from the above discussion is as follows:

(i) The expression ‘coordination’ used in Entry 66 of the Union List of Seventh Schedule of the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make

‘coordination’ either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.”

Reference was also made to *Osmania University Teachers’ Association v. State of Andhra Pradesh and Another*⁵ wherein, with regard to the responsibility entrusted upon the UGC under the UGC Act, it was held as under:

“30. The Constitution of India vests Parliament with exclusive authority in regard to coordination and determination of standards in institutions for higher education. The Parliament has enacted the UGC Act for that purpose. The University Grants Commission has, therefore, a greater role to play in shaping the academic life of the country. It shall not falter or fail in its duty to maintain a high standard in the universities. Democracy depends for its very life on a high standard or general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs. It is hoped that University Grants Commission will duly discharge its responsibility to the nation and play an increasing role to bring about the needed transformation in the academic life of the Universities.”

9. Accordingly, in *Annamalai University* (supra) it was held that the UGC Act would prevail over the Open University Act, observing:

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

10. In *Orissa Lilt Irrigation Corporation Limited-I*, reference was made to All India Council for Technical Education Act, 1989 (hereinafter referred to as ‘AICTE Act’) and distinction was drawn between ‘technical education’ and ‘technical institution’ as defined in Section 2(g) and 2(h) respectively to observe that functions of the AICTE stipulated under sub-clauses (a), (d), (e), (f), (l) and (n) of Section 10 of the AICTE Act are concerned with the broader facets of ‘technical education’, while functions enumerated under sub-clauses (k), (m), (p) and (q) deal with matters concerning ‘technical institutions’ and the functions as set out in sub-clauses (g) and (o) apply to both ‘technical institutions’ and universities imparting ‘technical education’. Sub-clauses (b), (d) and (f) of Section 10 deal with, inter alia, coordination of the technical education in the country at all levels; promoting innovation, research and development, establishment of new technologies, generation, adoption and adaptation of new technologies to meet the development requirements; and promoting effecting link between technical education and systems and

other relevant systems. Drawing on the distinction between ‘technical education’ and ‘technical institution’ and multifarious functions of the AICTE prescribed by Section 10 of the AICTE Act, it was held that the AICTE is the sole repository of power to lay down parameters or qualitative norms for ‘technical education’ and it would, therefore, not matter whether the term ‘technical institution’ would exclude a university/deemed to be university. What should be course content, what subjects should be taught and what should be the length and duration of the courses as well as the manner in which those courses be conducted is a part of the larger concept of ‘technical education’. Any idea or innovation in that field is also a part of the concept of ‘technical education’ and must, as a matter of principle, be in the exclusive domain of the AICTE.

11. Accordingly, the Court in Orissa Lift Irrigation Corporation Limited-I distinguished the decision in Bharathidasan University (supra), which had, relying upon the definition in clause 2(h) on the meaning of the term ‘technical institution’, held that a deemed to be university established under a state law was entitled to start courses in ‘technical education’ without any approval of the AICTE. This was done by limiting Bharathidasan University’s (supra) application to courses/programmes integrally adjunct/connected to the sanctioned and permitted courses and programmes, and not to new and different courses/programmes like award of B.Tech. degrees through distance learning mode. On role of the AICTE and distance learning as a mode for acquiring B. Tech degrees, it was held in Orissa Lift Irrigation Corporation Limited-I that:

“48. Technical education leading to the award of degrees in Engineering consists of imparting of lessons in theory as well as practicals. The practicals form the backbone of such education which is hands-on approach involving actual application 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 concept of imparting 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 to have accepted it in clear 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 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 by AICTE expressly permitting degree courses in Engineering through distance education mode, the deemed to be universities were not justified in introducing such courses.”

From the dictum laid down above, it is plainly clear that approval of the AICTE was mandatory for starting the aforesaid courses. Admittedly, approval of the AICTE was not obtained by TIET, Patiala.

12. We would now revert to the question of approval of the UGC. In Orissa Lilt Irrigation Corporation Limited-I, reference was made to paragraphs 4 and 5 of the ‘Guidelines for Establishing New Departments Within the Campus, Setting Up of Off-Campus Centre(s)/Institution(s)/Off-Shore Campus and Starting Distance Education Programmes by the Deemed Universities’ (hereinafter referred to as ‘2004 Guidelines’), issued by the UGC which dealt with the procedure to be followed by deemed to be universities offering distance education programmes, which read as under:

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

5. Ex post facto approval.—The deemed universities shall obtain the ex post facto approval of the GOI/UGC/DEC, whichever applicable within a period of six months in the following cases:

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

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

Paragraph 4 makes it crystal clear that post the 2004 Guidelines, every deemed to be university would require approvals of the UGC and DEC, for starting any degree course through open and distance learning mode. The condition of approval was mandatory. It is not the case of the petitioners or TIET, Patiala that the latter had taken prior approval of the UGC for the B.Tech. degrees obtained through distance learning mode. Paragraph 5 relates to ex-post facto approval of the UGC/DEC for continuation of distance education programmes/study centres started without specific approval of the UGC/DEC. Paragraph 5 is not applicable in the present case as the degree courses were started post enactment of the 2004 Guidelines.

13. Faced and conscious of the clear violation of paragraph 4 of the 2004 Guidelines and absence of the AICTE's approval, learned senior counsel for the petitioners had relied on paragraph 49 of Orissa Lilt Irrigation Corporation Limited-I, which reads as under:

“49. We now move to the second limb of the first question. Under the 1994 AICTE Regulations, “no courses or programmes shall be introduced by any technical institution, university including a deemed university or university department or college except with the approval of the Council”. Bharathidasan declared the said Regulation to the extent it required a university to have approval for introducing any courses or programmes in technical education, to be bad. Same thought was amplified in Assn. of Management of Private Colleges to say that affiliated colleges of the University were entitled to the same protection. The question is, whether a deemed to be university is also entitled to the same protection. The matter can be considered under two categories:

(a) The first category could be of a deemed to be university, which was conferred such status for its excellence in a field of technological subject, is now desirous of introducing courses or programmes integrally connected with the area in respect of which it was conferred deemed to be university status. For example, an Engineering college which because of its excellence in the field was conferred deemed university status, now wishes to introduce courses in subjects like Robotics or Nano Technology which are Engineering subjects and integrally connected with its own field of excellence.

(b) The second category could be 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. For example, an institution engaged in teaching Fine Arts and Music, for its excellence in that chosen field—or for that matter an institution engaged in teaching Law had been conferred such status. Can such a deemed to be university claim immunity from regulatory control of AICTE and say that it is entitled, as a matter of right, to introduce courses in Engineering on the strength of the decision of this Court in Bharathidasan?’

In our opinion, the petitioners and TIET, Patiala are misconstruing paragraph 49 of Orissa Lilt Irrigation Corporation Limited-I. The aforesaid paragraph refers to the 1994 Regulations issued by the AICTE under which no courses or programmes could be introduced by any technical institution/ university, including a deemed university or a university department or college, except with approval of the AICTE. In Bharathidasan University (supra) this mandate of the 1994 Regulations was declared to be bad to the extent that it had required the university to take approval for introducing any course or programme in technical education. Same opinion was expressed in *Association of Management of Private Colleges v. All India Council for Technical Education and Others*⁶ to state that affiliated colleges of the university are entitled to the same protection. Thereupon, in Orissa Lilt Irrigation Corporation Limited-I a distinction was made by

creating two categories of deemed to be universities - Category-I, i.e. such deemed to be universities that have been conferred status of 'excellence' in the field of technical subjects and desire to introduce courses or programmes 'integrally connected' with the area of subjects for which they had been conferred deemed to be university status. Clarifying this, the Court had cited an example of an engineering college of excellence that has been conferred deemed to be university status and now wish to introduce courses in new or specialised subjects like robotics and nanotechnology, which subjects were integrally connected to the university's own field of excellence. Category-II would be of those universities that have been conferred deemed to be university status for excellence in subjects, but want to introduce new courses unrelated to the field for which they were conferred status of excellence. In the latter category, the deemed to be university cannot claim immunity from regulatory control of the AICTE and must take approval of the AICTE. Paragraph 49, we would like to clarify, deals with universities including deemed to be universities imparting higher education for degree courses/programmes through regular mode. This paragraph does not specifically deal with or confer any right upon the deemed to be universities to start distance education courses, even if integrally connected with the approved regular courses.

14. The foregoing analysis becomes clear when we read Orissa Lilt Irrigation Corporation Limited-I in its entirety, particularly the immediately preceding paragraph, i.e. paragraph 48 as quoted above, wherein it has been specifically stipulated and mandated that whether subjects leading to degrees in engineering would be taught in distance education mode or not is within the exclusive domain of the AICTE.

15. In view of the aforesaid statutory provisions and lack of prior approval of the UGC or AICTE, we do not think that TIET, Patiala was competent to award graduation degrees in technical courses via distance mode.

16. In Orissa Lilt Irrigation Corporation Limited-I, the Court also made a distinction between students who had taken admission in deemed to be universities offering technical degrees through distance learning in the academic years 2001 to 2005 and 2005-2006 onwards. The reason for distinction was paragraph 5 of the 2004 Guidelines and ex-post facto approvals granted by the UGC and DEC to deemed to be universities that had offered technical degrees in the academic years 2001-2005. It was held that the said exercise of grant of ex-post facto approvals was completely uncalled for and contrary to law and illegal. Accordingly, the ex post facto approvals were set aside with the consequential directions to recall all the engineering degrees granted pursuant to the said approvals. However, conscious that the ex post facto approvals were in terms of paragraph 5 of the 2004 Guidelines, while suspending the degrees awarded to students who had been enrolled during the academic years 2001 to 2005, the Court had given these students an opportunity to appear and clear such examination under joint supervision of the AICTE-UGC. It was observed:

“57. [T]he matter is required to be considered with some sympathy so that interest of those students who were enrolled during the academic sessions 2001-2005 is

protected. Though we cannot wish away the fact that the concerned Deemed to be Universities flagrantly violated and entered into areas where they had no experience and started conducting courses through distance education system illegally, the over bearing interest of the concerned students persuades us not to resort to recall of all the degrees in Engineering granted in pursuance of said ex-post-facto approval. However, the fact remains that the facilities available at the concerned Study Centres were never checked nor any inspections were conducted. It is not possible at this length of time to order any inspection. But there must be confidence and assurance about the worthiness of the concerned students. We, therefore, deem it appropriate to grant some chance to the concerned students to have their ability tested by authorities competent in that behalf. We, therefore, direct that all the degrees in Engineering granted to students who were enrolled during the academic years 2001 to 2005 shall stand suspended till they pass such examination under the joint supervision of AICTE- UGC in the manner indicated hereinafter. Further, every single advantage on the basis of that degree shall also stand suspended.” The aforesaid directions were not in respect of any engineering degree granted by deemed to be universities to candidates admitted/enrolled post the academic year 2004-2005. Grant of any degree for students enrolled post the academic year 2004-2005 was held as contrary to law and illegal, and could not be treated as regular and at par with the regular degrees. Therefore, paragraph 49 would not be of any avail to the petitioners.

17. We would also refer to the second round of litigation as applications were filed seeking clarification and modification of the directions in Orissa Lilt Irrigation Corporation Limited-I. The decision dated 22nd January, 2018 in Orissa Lilt Irrigation Corporation Limited v. Rabi Sankar Patro and Others (hereinafter referred to as ‘Orissa Lift Irrigation Corporation Limited-II’) had decided several applications of diploma holders who had enrolled for engineering or B.Tech. degree in deemed to be universities through distance learning mode. One of the contentions raised in the applications was that the deemed to be universities awarding engineering degrees through distance learning mode in Orissa Lilt Irrigation Corporation Limited-I were not institutes of excellence in the field of engineering and, thus, there would be a distinction between engineering degrees awarded through distance education mode by deemed to be universities declared as institutions of excellence and the degrees awarded by other deemed to be universities. This contention was squarely rejected by referring to the fact that engineering degrees through distance education mode awarded by *Vinayaka Mission’s Research Foundation in Orissa Lift Irrigation Corporation Limited-I* had been also declared to be invalid, though the said institution in its field of activity and excellence included the subject of engineering. Dealing with other contentions raised by the applicants, the Court in Orissa Lift Irrigation Corporation Limited-II held as under:

“25. We now turn to the general submission advanced by all the learned counsel that the candidates after securing the degrees in Engineering through distance education mode, have advanced in career and that their ability was tested at various levels and as such requirement of passing the examination in terms of the judgment

be dispensed within their case. We cannot make any such exception. The infirmity in their degrees is basis and fundamental and cannot be wished away. At the same time, we find some force in their submission that if the suspension of their degrees and all advantages were to apply as indicated in the judgment, the candidates concerned may lose their jobs and even if they were to successfully pass the test, restoration of their jobs and present position would pose some difficulty.

The Court, therefore, granting a one-time relaxation to the candidates who had enrolled themselves during the academic years 2001-2005, held that candidates would, in terms of the judgment in Orissa Lift Irrigation Corporation Limited I, be eligible to appear for the test conducted by the AICTE.

18. Given the aforesaid ratio, we reject the plea that the petitioners are entitled to relief as was granted to the petitioners in Orissa Lift Irrigation Corporation Limited I and II. This contention is unacceptable for the reason that in Orissa Lift Irrigation Corporation Limited I and II, no relief was granted to the candidates who had taken admission in 2005 or thereafter. Relief in the form of one-time relaxation vide examination to be conducted by the AICTE was granted to those candidates/students who had taken admission in academic years beginning from 2001 and till 2004-2005.

19. TIET, Patiala in their additional affidavit have referred to the correspondence with the DEC expressing their desire to start B.Tech. courses in Civil Engineering/ Computer Sciences and Engineering/ Electrical Engineering/ Mechanical Engineering through distance learning programme, vide their letter dated 17th May, 2006 and reply of the DEC vide its letter dated 16th June, 2006 that such approvals can only be granted after evaluation of the course material by an expert committee and for which TIET, Patiala should apply in the prescribed format with requisite fee. Thereupon, TIET, Patiala had submitted an application in the required format and an expert committee constituted by the Chairman of the DEC had evaluated infrastructure and other services etc., provided by TIET, Patiala. The expert committee, which included the Director, School of Engineering and Technology, IGNOU, gave a favourable report subsequent to which the letter of provisional recognition dated 31st August, 2007 was issued by the DEC permitting TIET, Patiala to start the course. Reference was also made to the press note dated 23rd May, 2007 released by Press Information Bureau, Government of India, which had published a list of universities including deemed to be universities offering distance education. This list also included TIET, Patiala.

20. As already stated, the petitioners have also relied upon letter dated 3rd September, 2007 written to TIET, Patiala by the DEC providing them provisional recognition for one year in programmes offered through distance mode. The said letter reads as under:

“INDIRA GANDHI NATIONAL OPEN UNIVERSITY
Maindan Garhi, New Delhi - 110068, India Phone: (O) 91-11-29535923-32,
29533340 (O) Telefax: 91-11-295536668 Email: basuswaraj@hotmail.com
Website: www.ignou.ac.in/www.dec.ac.in

DISTANCE EDUCATION COUNCIL

F.No. DEC/Univ/State/07/5580 Dated: 03.09.2007 Prof. Swaraj Basu Director

Dear Sir,

This has reference to your application to the Distance Education Council requesting for recognition of programmes offered through distance mode by your University.

We would like to inform you that your university has been granted provisional recognition for offering programmes (approved by the statutory bodies of your university) through distance mode for a period of one- year w.e.f. the date of issue of this letter.

However, for recognition of your institution for offering programmes through distance mode in the next academic year, i.e. from June-July, 2008, you are requested to submit a fresh application in the prescribed format developed by the DEC which may be downloaded from the DEC website: www.dec.ac.in.

We would also like to inform you that that DEC has decided not to insist on territorial jurisdiction to be allowed by institutions in offering programmes through distance mode and on that matter, universities should be governed by their own Acts and Statutes.

With regards,
Yours sincerely Sd/-
(Swaraj Basu)

The Vice Chancellor Thapar University Patiala - 147004, Punjab” The aforesaid letter states that TIET, Patiala had made an application to the DEC requesting for recognition of programmes offered through distance mode and that they had been granted provisional recognition for offering such programmes. The letter records that an application was submitted by TIET, Patiala but no specific reference was made to the programmes or courses offered nor the date when the application was filed is indicated. The letter also does not refer to approval by the AICTE or UGC. It had further required TIET, Patiala to submit a fresh application for the next academic year from June-July 2008.

21. We have already referred to the 2004 Guidelines issued by the UGC and the AICTE Act to hold that TIET, Patiala had failed to take their prior approval before starting B. Tech. degree courses through distance education mode. Provisional recognition by the DEC being contrary to the law would not matter for at best the DEC would be equally guilty for violating the law in terms of 2004 Guidelines issued by the UGC and the AICTE Act. The legal issue stands foreclosed and cannot be argued in view of the clear dictum and ratio enunciated in Orissa Lift Irrigation Corporation Limited-I. We would also refer to the notification issued by the Government of India on 1st March 1995 quoted in Orissa Lift

Irrigation Corporation Limited-I on distance education programme by deemed to be universities etc., which was to the following effect:

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

Clearly, therefore, in terms of the said notification also approval of the AICTE was required.

22. TIET, Patiala accepts that no approval, provisional or otherwise, was granted for the next academic year, i.e. June-July 2008, yet B.Tech. degree programmes through distance mode for the academic year June-July 2008 were offered by TIET, Patiala contrary to the statutes and law.

23. TIET, Patiala, to justify admissions in the academic year 2008–2009 in their additional affidavit, have referred to correspondence and submission of application to the UGC for offering B. Tech. degree courses through distance education programme for the academic session i.e. 2008-2009. This is surprising as TIET, Patiala had not applied to the UGC for the previous academic session i.e. 2007-2008. Thereafter, the additional affidavit refers to correspondence exchanged between the DEC and TIET, Patiala pursuant to which a Joint Expert Committee was constituted comprising of members of the UGC, DEC and AICTE to assess the administration and management of distance learning programmes offered by TIET, Patiala, which panel had visited their premises on 2nd June, 2009 and had recommended the recognition of as many as seven programmes for a period of five years. However, the Central Government had, in exercise of powers under Section 20 of the UGC Act and in terms of a policy decision, issued a notification on 29th July, 2009 that the B.Tech. degrees would not be offered through open distance learning programme. In view of this policy decision, the DEC had to immediately withdraw the permission to various institutions to conduct B.Tech. degree courses through distance education mode and no further student was admitted in the current year and thereafter. However, the notification states that those who had already been admitted would have to pass practicals and written examination as may be prescribed so as to obtain the B.Tech. degrees through distance education.

24. The submission/contention of the petitioners and TIET, Patiala completely overlooks several developments, correspondence and policy decisions taken which have been noticed in Orissa Lift Irrigation Corporation Limited-I, particularly the notification issued by the

AICTE on 28th November, 2005 clearly stating that no technical institution of the Government/ Government aided/ private institution, whether affiliated or not to any University, shall start new courses or increase the intake for the same without approval of the AICTE. Notification issued by the Ministry of Human Resource Development, Government of India on 5th April, 2006 in exercise of powers vested in the Central Government under Section 20(1) of the UGC Act and Section 20(1) of the AICTE Act had clarified the role of the UGC and AICTE for maintaining standards of education and that the deemed to be universities are required to maintain minimum standards prescribed by the AICTE for various courses within the jurisdiction of the said Council. This was followed by a joint public notice issued by the AICTE, UGC and DEC on 4th February, 2007 to the following effect:

“It has come to the notice of the University Grants Commission (UGC), the All India Council for Technical Education (AICTE) and the Distance Education Council (DEC), that some Universities, Institutions Deemed to be Universities and other institutions are offering technical education programmes in the ‘distance mode’ without the approval of the concerned Statutory Council.

All Universities, Institutions, Deemed to be Universities and other institutions are hereby cautioned that running such programmes and giving misleading advertisements regarding unapproved ‘distance mode courses and programmes of study, shall attract severe action under the provisions of applicable laws, including that of de-recognition and withdrawal of institutional approval;

It is hereby clarified, in the public interest that there are a number of courses or programmes of study leading to Degree/Diploma or other awards in Engineering & Technology, Management, Computer Applications, Architecture & Town Planning, Pharmacy, Hotel Management & Catering Technology, Applied Arts and Crafts, etc. which have not been approved by the appropriate Statutory Council for being conducted in the ‘distance mode’. It is also reiterated that all courses or programmes of study in the ‘distance mode’ require the approval of DEC.”

The public notice had cautioned that the universities/ institutions/deemed to be universities offering technical education programme through distance education mode without approval of concerned statutory authorities were doing so in contravention of the law and would be treated severely. The last sentence of the notification had made it clear that in addition to the concerned statutory councils, all courses and the programmes offered for study in distance mode would require approval of the DEC. A memorandum of understanding was arrived at on 10th May, 2007 among the UGC, AICTE and DEC to work in close co-operation in pursuit of excellence in technical and general education being imparted through distance and mixed mode in the country.

25. In any case these aspects and contentions were fully considered in Orissa Lift Irrigation Corporation Limited-I and it has been held that B.Tech. degrees could not have been awarded through distance learning mode without the approval of the DEC and without any

specific approval of the AICTE and UGC and award of such degrees without approval of the three were invalid and cannot be recognised.

26. Functioning of the DEC has come in for rather strong criticism in several quarters. Till 2006, the DEC had approved about 45 programmes of 23 universities out of applications for approximately 200 programmes. In 2007, the DEC repealed the programme approval process and the system of institutional recognition was started. As per this decision, all programmes approved by respective authorities of the institution were deemed to have recognition of the DEC. As a result of this decision, within a short span, the number of approved programmes increased to over 3000 in 2010. The provisional recognition letter of the DEC would uniformly state that before starting such programmes, the required approvals from other regulatory bodies have to be obtained but the said stipulation was not followed in most cases and provisional recognition was granted by the DEC to technical programmes through distance mode without recognition/approval of the AICTE or UGC. This had paved way for commercialisation and was a retrograde step which had resulted in deterioration of the quality of open learning programmes/degrees. After burning its fingers, the DEC switched back to programme recognition. The DEC itself was finally wound up in 2013.

27. In Orissa Lift Irrigation Corporation Limited-I, this Court, took note of the order dated 29th December, 2012 issued by the Ministry of Human Resource Development, Government of India in view of the recommendations suggested in the Madhava Menon Committee report for regulating the standards of education being imparted through distance mode to hold that the unilateral approvals of the DEC were invalid. It was observed:

“55. Para 3 of the notification dated 22.11.1991 which constituted DEC shows that there was no representation for any Member or representative of AICTE. The provisions of IGNOU Act show that the Study Centres as defined in the IGNOU Act are that of IGNOU and not of any other University or Institution. The concept of distance education under sub-clause (v) of Section 5 is also in relation to the academic programmes of IGNOU. It undoubtedly has powers under Clauses (vii), (xiii) and (xxiii) to cooperate with other Universities but the IGNOU Act nowhere entitles IGNOU to be the Controlling Authority of the entire field of distance education of learning across the Country and in relation to programmes of other Universities or Institutions as well. The Order dated 29.12.2012 issued by MHRD therefore correctly appreciated that DEC created under statute 28 of IGNOU Act could not act as a regulator for other Universities. In any event of the matter, the policy Guidelines issued from time to time made it abundantly clear that DEC alone was not entitled to grant permission for open distance learning and appropriate permissions from the requisite authorities were always required and insisted upon. Despite such policy statements, DEC went on granting permissions without even consulting AICTE. Such exercise on part of DEC was completely without jurisdiction. The said order, the Court noted, had definitively vested the UGC and AICTE, among other statutory regulators, with powers to regulate technical courses

imparted through distance learning mode and made it mandatory for institutions intending to impart such courses to seek their approval and recognition, observing as under: “[T]he Central Government in exercise of the powers conferred by sub-section 1 of section 20 of the UGC 1956 and the AICTE Act, 1987 hereby directs: -

The UGC and AICTE as already empowered under their respective Acts, would also act as a regulator for Higher Education (excluding Technical Education) and Technical Education through open & Distance Learning (ODL) mode respectively Universities are empowered under their respective Act to offer any programme course including in Technical Education in the conventional mode. However, if they offer any programme/course in ODL mode they would require recognition from the UGC, AICTE, NCTE and other such regulators of the conventional mode of education in those areas of study.”

28. In view of the aforesaid discussion, we do not find any merit in the present Writ Petition and the same is dismissed. However, in the facts of the case, there would be no order as to costs.

Judgment Referred.

¹(2001) 8 SCC 0676

²(2018) 1 SCC 0468

³(2009) 4 SCC 0590

⁴(1995) 4 SCC 0104

⁵(1987) 4 SCC 0671

⁶(2013) 8 SCC 0271

⁷(2018) 2 SCC 0298