

Orissa Lift Irrigation Corp.Ltd. vs Rabi Sankar Patro on 3 November, 2017

Equivalent citations: AIR 2017 SUPREME COURT 5179, 2018 (1) SCC 468, AIR 2018 SC (CIVIL) 340, (2017) 4 SCT 683, (2017) 6 SERVLR 249, (2017) 13 SCALE 148, (2018) 1 ESC 22, (2018) 1 SERVLJ 126, 2018 (5) ADJ 95 NOC

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Bench: Uday Umesh Lalit, Adarsh Kumar Goel

1

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 17869-17870 /2017

(Arising out of Special Leave Petition (C) Nos.19807-19808/2012)

ORISSA LIFT IRRIGATION CORP. LTD

.....APPELLANTS

VERSUS

RABI SANKAR PATRO & ORS.

....RESPONDENTS

With

CIVIL APPEAL NOS. 17871-17872 /2017

(Arising out of Special Leave Petition (C) Nos.19851-19852/2012)

CIVIL APPEAL NOS. 17899-17900 /2017

(Arising out of Special Leave Petition (C) Nos.19848-19849/2012)

CIVIL APPEAL NOS. 17897-17898 /2017

(Arising out of Special Leave Petition (C) Nos.19842-19843/2012)

CIVIL APPEAL NOS. 17895-17896 /2017

(Arising out of Special Leave Petition (C) Nos.19844-19845/2012)

CIVIL APPEAL NOS. 17879-17880 /2017

(Arising out of Special Leave Petition (C) Nos.19824-19825/2012)

CIVIL APPEAL NOS. 17885-17886 /2017

(Arising out of Special Leave Petition (C) Nos.19828-19829/2012)

CIVIL APPEAL NOS. 17881-17882 /2017

(Arising out of Special Leave Petition (C) Nos.19814-19815 /2012)

CIVIL APPEAL NOS. 17883-17884 /2017
(Arising out of Special Leave Petition (C) Nos.19830-19831/2012)

2

CIVIL APPEAL NOS. 17893-17894 /2017
(Arising out of Special Leave Petition (C) Nos.19840-19841/2012)

CIVIL APPEAL NOS. 17877-17878 /2017
(Arising out of Special Leave Petition (C) Nos.19826-19827/2012)

CIVIL APPEAL NOS. 17889-91780 /2017
(Arising out of Special Leave Petition (C) Nos.19838-19839/2012)

CIVIL APPEAL NOS. 17875-17876 /2017
(Arising out of Special Leave Petition (C) Nos.19812-19813/2012)

CIVIL APPEAL NOS. 17873-17874 /2017
(Arising out of Special Leave Petition (C) Nos.19820-19821/2012)

CIVIL APPEAL NOS. 17887-17888 /2017
(Arising out of Special Leave Petition (C) Nos.19834-19835/2012)

CIVIL APPEAL NOS. 17891-17892 /2017
(Arising out of Special Leave Petition (C) Nos.19836-19837/2012)

CIVIL APPEAL NO. 17901 /2017
(Arising out of Special Leave Petition (C) No.14686/2014)

AND

CIVIL APPEAL NOS. 17902-17905 /2017
(Arising out of Special Leave Petition (C) Nos.35793-35796/2012)

VIJAY KUMAR AND OTHERS, ETC. ETC.APPELLANTS

VERSUS

KARTAR SINGH AND OTHERS, ETC. ETC.RESPONDENTS

With
CIVIL APPEAL NO. 17906 /2017
(Arising out of Special Leave Petition (C) No.37028/2012)

3

CIVIL APPEAL NO. 17907 /2017
(Arising out of Special Leave Petition (C) No.37957/2012)

CIVIL APPEAL NO. 17908 /2017
(Arising out of Special Leave Petition (C) No.38211/2012)

CIVIL APPEAL NO. 17910 /2017
(Arising out of Special Leave Petition (C) No.38230/2012)

CIVIL APPEAL NO. 17909 /2017

(Arising out of Special Leave Petition (C) No. 38220/2012)

CIVIL APPEAL NO. 17912 /2017

(Arising out of Special Leave Petition (C) No.38846/2012)

CIVIL APPEAL NO. 17911 /2017

(Arising out of Special Leave Petition (C) No.38458/2012)

CIVIL APPEAL NO. 17913 /2017

(Arising out of Special Leave Petition (C) No.4108/2013)

CIVIL APPEAL NO. 17915 /2017

(Arising out of Special Leave Petition (C) No.9495/2013)

CIVIL APPEAL NOS. 17916-17917 /2017

(Arising out of Special Leave Petition (C) Nos.11793-11794/2013)

CIVIL APPEAL NO. 17918 /2017

(Arising out of Special Leave Petition (C) No.11799/2013)

CIVIL APPEAL NO. 17914 /2017

(Arising out of Special Leave Petition (C) No.12244/2013)

CIVIL APPEAL NO. 17921 /2017

(Arising out of Special Leave Petition (C) No.17004/2013)

CIVIL APPEAL NO. 17920 /2017

(Arising out of Special Leave Petition (C) No.17005/2013)

CIVIL APPEAL NO. 17919 /2017

4

(Arising out of Special Leave Petition (C) No.17003/2013)

CIVIL APPEAL NOS. 17926-17950 /2017

(Arising out of Special Leave Petition (C) Nos.20658-20682/2013)

CIVIL APPEAL NO. 17922 /2017

(Arising out of Special Leave Petition (C) No.15283/2013)

CIVIL APPEAL NO. 17923 /2017

(Arising out of Special Leave Petition (C) No.15329/2013)

CIVIL APPEAL NO. 17924 /2017

(Arising out of Special Leave Petition (C) No.17006/2013)

CIVIL APPEAL NO. 17925 /2017

(Arising out of Special Leave Petition (C) No.14933/2013)

CIVIL APPEAL NO. 17951 /2017

(Arising out of Special Leave Petition (C) No.36487/2013)

CIVIL APPEAL NO. 17952 /2017
(Arising out of Special Leave Petition (C) No.914/2014)

CIVIL APPEAL NOS. 17953-17960 /2017
(Arising out of Special Leave Petition (C) Nos.31487-31494/2014)

With
CONTEMPT PETITION (C) NOS. 194-197/2016
in Special Leave Petition (C) Nos. 35793-35796/2012

JUDGMENT

Uday Umesh Lalit, J.

1. Leave to appeal granted in all Special Leave Petitions.

2. These are two groups of appeals, one arising from the Judgment and Order passed by the High Court of Orissa at Cuttack while the other arising from the decision of the High Court of Punjab and Haryana at Chandigarh. Since the issues involved in these matters are same, both sets of matters are being disposed of by this common Judgment.

3. The Directorate of Lift Irrigation in the Government of Odisha was converted into Orissa Lift Irrigation Corporation Limited (hereinafter referred to as the “OLIC”). The service conditions of Engineers including Junior Engineers which is the base cadre in the Engineering Wing of OLIC are governed by Orissa Service of Engineers’ Rules, 1941 (“1941 Rules” for short) as amended from time to time. Junior Engineers form the feeder cadre for promotion to the next level, namely, that of Assistant Engineers. Respondent No.11–Rabi Sankar Patro, a Diploma holder in Electrical Engineering, joined OLIC as Junior Engineer (Electrical) and while in service, he acquired B.Tech (Civil) Degree from a Deemed to be University namely JRN Rajasthan Vidyapeeth University, Udaipur, through Distance Education in the year 2009 and thereafter filed Writ Petition No.3848 of 2010 in the High Court Orissa. According to him, he being an in-service graduate Engineer was entitled to be promoted as Assistant Engineer. Said In the matter arising out of SLP(C) No.19807-19808 of 2012 writ petition was allowed without issuing notice to the respondents, placing reliance on an earlier order dated 14.12.2009 passed by the High Court in OJC No.13251 of 2001 by which OLIC was directed to consider the case of the concerned candidates as in-service graduate Engineers. OLIC being aggrieved, filed Review Petition No.58 of 2012 which was dismissed by the High Court on 15.03.2012 along with certain similar review petitions. The submissions recorded in support of the review petitions in the order of the High Court were as under:-

“The argument advanced by Mr. Ashok Mohanty learned Sr. Counsel for the review petitioners that the opposite parties- employees have acquired Degree Qualification of distance/correspondence education course from JRN Rajasthan Vidyapeeth which is not recognized by AICTE. Therefore, they are not qualified.....Learned Sr. Counsel Mr. Mohanty placed much reliance upon the letter issued by AICTE on 6th October, 2010 wherein the AICTE has categorically stated as under:

“It has been the policy of the AICTE, not to recognize the qualifications acquired through distance education mode at Diploma, Bachelors & Master’s level in the fields of Engineering Technology including Architecture, Town Planning, Pharmacy, Hotel Management & Catering Technology, Applied Arts & Crafts and Post Graduate Diploma in Management (PGDM). AICTE only recognizes MBA and MCA programme through distance mode.” ” The Review Petition was dismissed by the High Court, observing inter alia, “..... Substantial number of persons have also acquired Engineering Degree through Universities providing Distance Education which are also Indian Universities. Further Clause

(d) of Rule 9 of the Rules, 1941 does not specify that the qualifications obtained through distance education is not permissible & the Degree should be obtained from the approved Universities of the AICTE.”

4. Disposal of Review Petition and similar such petitions led to the filing of these appeals, by special leave, by OLIC. It is principally submitted by OLIC that the degrees in Engineering obtained by the concerned candidates by distance education from JRN Rajasthan Vidyapeeth University and similar Deemed to be Universities are not recognized degrees and as such the concerned candidates cannot be said to be Graduate Engineers eligible for benefits under the concerned Rules. It is further submitted that in its Circular dated 09.08.2005 the University Grants Commission (“UGC” for short) had notified that JRN Rajasthan Vidyapeeth University, Udaipur was neither permitted to affiliate any colleges or institutes nor allowed to conduct any course through distance education.

5. While issuing notice in the matters, All India Council of Technical Education (“AICTE” for short) and UGC were added as party-respondents, whereafter AICTE filed its counter affidavits. The matters were taken up on 11.12.2014 when the following Order was passed by this Court:-

“In the course of hearing of these cases we noticed that the UGC even though impleaded as a party respondent had not filed any counter affidavit. We would have proceeded with the hearing even in the absence of a counter affidavit but for the fact that additional documents filed by Respondent No.1 include several documents concerning the UGC some of them in the nature of letters, circulars and communications addressed to several other authorities. It was in that backdrop that we required the personal presence of the Chairman of the UGC, Professor Ved Prakash who has appeared and broadly explained the UGC stand on the questions that fall for determination. According to Professor Ved Prakash the UGC recognises technical degrees by the distant mode only if the University concerned awards such degrees after obtaining the permission of the AICTE for offering such degrees/courses by distance education. Professor Ved Prakash further states that wherever the UGC notices that technical educational degrees are being awarded by deemed university without the approval of the AICTE, it can and does take action against the defaulting university by reporting the matter to the Central Government who confers the status of deemed university on such institutions. When asked whether Professor Ved Prakash can on affidavit state the above position, Prof.

Prakash was more than willing to do so. Needless to say some of the counsel appearing in these cases were critical of the stand taken by the UGC and argued that the same was not the true position either on facts or in law. Be that as it may, we deem it just and proper to permit the UGC to file a detailed counter affidavit to this SLP which shall apart from answering other submissions made in the SLP elaborate on the following aspects:

- 1) Whether the UGC recognises degrees in technical education by open and distance education mode. If so, subject to what conditions, if any.
- 2) If such degrees are recognised only when they are awarded after obtaining the permission of the AICTE, what happens when the Universities award degrees without obtaining such permission.
- 3) What action, if any, is the UGC empowered to take under the UGC Act or any other provision of law against the University awarding degrees without the approval of the AICTE and whether any such action has been taken in the past or is proposed to be taken against such Universities hereafter.
- 4) Whether the Government of India have issued any instructions/circulars regarding recognition of technical education degrees through ODL mode offered by the deemed or statutory universities. If so, what are these instructions/circulars and what is the action/steps to be taken in regard to the degrees awarded or status of such degrees as have already been issued before the issue of such instructions.
- 5) How does UGC explain its stand in view of the documents filed by respondent No. 1 in I.A. Nos. 5 and 6 of 2014 in these petitions or those enclosed with the SLP or counter affidavit.
- 6) Since the controversy relates to different deemed universities namely Vinayaka Mission's research Foundation, Salem, Tamil Nadu, IASE Gandhi Vidya Mandir, Sardarshahr Rajasthan, JRN Vidyapeeth Udaipur, Rajasthan and Allahabad, Agriculture Research Institute, Allahabad, U.P. the proposed affidavit by Professor Ved Prakash shall state whether the UGC recognises the degrees awarded by the said Universities by ODL mode even when the same are degrees in technical education including degrees that have already been awarded. We grant to Professor Ved Prakash, Chairman of the UGC four weeks' time to file the affidavit copy whereof shall be served upon learned counsel for the counsel opposite who shall have two weeks' time thereafter to file their response."

6. Prof. Ved Prakash, Chairman, UGC, filed an affidavit on 30.01.2015 dealing with the aforesaid questions. The subsequent Order dated 04.08.2015 of this Court was as under:

“There are a large number of cases pending on the principal issue raised in SLP (C) Nos.19807-19808 of 2012 (Orissa Lift Irrigation Corporation Ltd. & Ors.). Mr. Raju Ramachandran, learned senior counsel appearing on behalf of the petitioners submits that the principal issue is whether degrees given by some institutions/universities through distant education ought to be recognized by the employer. He submits that All India Council for Technical Education (AICTE) and University Grants Commission (UGC) have taken the stand that such degrees in technical courses are not recognized by AICTE and therefore not recognized by UGC as well.

Mr. Rajiv Dutta, learned senior counsel appearing for UGC affirms that the UGC does not recognize the degrees. It is the submission of Mr. Rajiv Dutta, learned senior counsel that in a meeting convened by the Ministry of Human Resource Development (MHRD) on 19th February, 2008 it was decided that the approval granted by Distant Education Council (including) must be reviewed and the approval should be granted to the courses and not to the Institute.

That being the position, we are of the opinion that the concerned Secretary in the MHRD should be impleaded as a party so that the stand of the Government of India is clear.

Mr. Raju Ramachandran, learned senior counsel makes an oral request for impleadment of the concerned Secretary in the MHRD as a party respondent. On his oral request, the concerned Secretary in the MHRD is impleaded as a party respondent. Amended memo of parties be filed within two weeks.”

7. An affidavit has since then been filed on behalf of MHRD². In the Order dated 26.04.2017 it was recorded:-

“.....Our attention was drawn to letter dated 03.12.2007 addressed to UGC seeking ex post facto approval annexing a list of 295 courses run by the JRN Rajasthan Vidyapeeth University under Distance Education system.

From the record, it is not clear what type of expertise the said University has, for granting degrees for such large number of courses by distance education mode. It is also not clear as to what is the methodology followed for monitoring the standard of education imparted by its centres on the basis of which such professional degrees are granted. It is also not clear what type of infrastructure is available with the said University.”

8. Civil Writ Petition No.1640 of 2008 was filed by one Kartar Singh in the High Court of Punjab and Haryana, in public interest. Certain Deemed to be Universities, such as JRN Rajasthan Vidyapeeth University, Udaipur, Vinayak Mission Research Foundation, Tamil Nadu, IASE Deemed University, Rajasthan were respondents in the petition. It was submitted that these Deemed to be Universities had set up “off campus centers” and “study centers” in violation of the Regulations

framed by the UGC; that very same Ministry of Human Resources and Development, Government of India study center, at times was operating for more than one Deemed to be University; that these study centers completely lacked infrastructure and facilities for courses in Engineering and that the programmes through distance education mode were illegal and without approval. Appropriate reliefs were prayed for, including directions that degrees in Engineering obtained through distance education be declared to be invalid for the purposes of Government jobs in the State. This Writ Petition was allowed by the High Court vide its decision dated 06.11.2012. Para 184 sums up the decision as under:-

“184. In terms of the directions of the Commission, it was necessary for the Deemed to the Universities to seek approval from AICTE. In view of the above, we hold that the Deemed to be Universities have started courses in technical education in violation of the guidelines, instructions, circulars and regulations framed by the Commission not only when they started such courses but also in establishing Study Centres outside their territorial limits and in subjects for which they were not granted Deemed to be university status. Therefore, degrees awarded by such Deemed to be Universities is an illegal act and such illegality cannot be removed or cured by the actions of either the Commission or DEC.”

9. The declaration invalidating the degrees in Engineering obtained through distance education mode has been the subject matter of challenge by various students-candidates and institutions. Since the issues raised in those petitions are same as raised in matters arising out of the decision of the High Court of Orissa, these matters were taken up soon after the matters from Orissa. We are principally concerned in these cases only with courses leading to the degrees in Engineering through distance education mode.

10. Thus, the degrees in Engineering obtained by serving diploma holders through Open Distance Learning mode offered by certain Deemed to be Universities through “off campus Study Centres” have been found valid entitling the concerned candidates to benefits available for any serving graduate engineers by the High Court of Orissa whereas the decision rendered by the High Court of Punjab & Haryana is to the contrary. Considering the importance of the issues involved in the matters, this Court vide Order dated 04.05.2017 appointed Mr. C.A. Sundaram, learned Senior Advocate to assist the Court as Amicus Curiae.

11. It may be appropriate at this stage to quote Para 19 of the affidavit filed by Mr. Ved Prakash Chairman UGC:-

“It is pertinent to note that, while bringing the 2010 Deemed Universities Regulations to the notice of the general public, including vide public notice No.F.27-1/2012 (CPP-II), dated 27.06.2013 [annexed and excerpted later in the instant affidavit], the UGC has also clarified that “the UGC has not granted approval to any institution Deemed to be university to establish Study Centres.” This is relevant because, firstly, Deemed to be university status is conferred on academic programmes in specific domains of knowledge. In this case, four Deemed to be

universities were conferred that status to offer programmes in the following areas.

S. No.	Deemed University	Field of specialization for institutions Deemed to be Universities status
1.	JRN Vidyapeeth, Rajasthan	Rajasthan Social Work, Education, Udaipur, Arts and Commerce
2	Institute of Advanced Studies in Education, Sardarshahr, Rajasthan	Education
3	Allahabad Agricultural Institute, Uttar Pradesh	Agricultural Engineering Food & Nutrition Biotechnology, Dairy Technology
4.	Vinayaka Mission's Research Foundation Salem, Tamil Nadu	Medical Science, Dental Science, Nursing, Engineering & Technology, Pharmacy, Pysiotherapy and Homoeopathy

Yet, three institutions- Deemed to be Universities (namely, JRN Vidyapeeth Udaipur, Rajasthan; IASE Gandhi Vidya Mandir, Sardarshahr, Rajasthan; and Allahabad Agriculture Research Institute, Allahabad, U.P.) overstepped their mandate and started distance education programmes, including for award of B.E./B.Tech degrees outside their field of specialization without UGC/AICTE approval.

Secondly, vide letter dated 09.08.2001 [annexed and excerpted later in the instant affidavit], the UGC has made it clear that franchising of education through private agencies/establishment is not permitted. In addition, the UGC, AICTE and DEC have issued a joint letter dated 13.05.2003 [annexed and excerpted later in the instant affidavit] to Vice- Chancellors/Heads of Institutions asking them to limit the system/programme of delivery of distance education of their institution to the neighbourhood of the location of their main campus or at the most within the State. And, as mentioned earlier, vide public notice dated 27.06.2013, the UGC has stated that institutions Deemed to be Universities can operate only within its headquarters or from those off campuses/off-shore campuses which are approved by the Government of India through notification published in the official gazette, though the UGC has not granted approval to any institutions Deemed to be Universities offered distance education mainly through franchisee arrangements and Study Centres which are not established with the permission of the UGC.”

12. The aforesaid chart shows that the “Deemed to be University” status was conferred keeping in view the potential to offer academic programs in specific domains of knowledge. For example institutions at serial Nos.1 and 2 in the aforesaid table had specialized in Social Work, Education, Arts and Commerce. However by virtue of their “Deemed to be University” status, these institutions

thereafter started distance education programs in subjects or courses leading to award of B.E. and B.Tech degrees which were not within their field of specialization. Whether the Deemed to be Universities concerned were within their rights to do so is the basic question. We, therefore, need to consider the statutory framework governing “Deemed to be Universities” and ‘Distance Education’ more specifically in the field of technical education.

13. “The University Grants Commission Act, 1956” (hereinafter referred to as “the UGC Act”) was enacted to make provisions for co-ordination and determination of standards in universities and for that purpose, to establish University Grants Commission (“UGC for short”). Section 2(f) defines “University” to mean “...a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act”. Section 3 contemplates conferral of “Deemed to be University” status upon certain institutions for higher studies other than universities. Section 12 delineates functions of the UGC while Section 13 deals with power of inspection for the purposes of ascertaining the financial needs of the university or its standards of teaching, education and research.

Section 26 empowers the UGC to make regulations consistent with the Act and with the Rules made thereunder which include, inter alia:-

“(f) defining the minimum standards of instruction for the grant of any degree by any University;

(g) Regulating the maintenance of standards and the co-

ordination of work or facilities in Universities.”

14. In the year 1985, the Indira Gandhi National Open University Act, 1985 (hereinafter referred to as “the IGNOU Act”) was enacted to establish and incorporate Open University at the national level, for the introduction and promotion of distance education systems in the educational pattern of the country and for co-ordination and determination of standards in such systems. Section 2(e) defines “Distance Education System” to mean “..the system of imparting education through any means of communication, such as broadcasting, telecasting, correspondence courses, seminars, contact programmes or the combinations of any two or more of such means”. The definitions of “Study Centre” and the “University” are as under-

“Study Centre” means a centre established, maintained or recognized by the University for the purpose of advising, counseling or for rendering any other assistance required by the students;

“University” means the Indira Gandhi National Open University established under the Act.” Study Centre referred to in the IGNOU Act is a centre established by IGNOU and not by any other University. Section 5 then deals with powers of IGNOU and sub-Clauses (i), (iii) and (v) are:-

“(i) To provide for instruction in such braches of knowledge, technology, vocations and professions as the University may determine from time to time and to make provision for research;

(iii) to hold examinations and confer degrees, diplomas, certificates or other academic distinctions or recognitions on persons who have pursued a course of study or conducted research in the manner laid down by the Statutes and Ordinances.

(v) to determine the manner in which distance education in relation to the academic programmes of the University may be organized.” Sub clause (v) speaks of ‘distance education’ in relation to the academic programme of IGNOU. Few other clauses of Section 5 however refer to other universities and institutions of higher learning and they are:-

“(vii) to co-operate with, and seek the co-operation of, other universities and institutions of higher learning, professional bodies and organizations for such purposes as the University considers necessary;

(xiii) to recognize examinations of, or periods of study (whether in full or part) at, other universities, institutions or other places of higher learning as equivalent to examinations or periods of study in the University, and to withdraw such recognition at any time;

(xxiii) to recognize persons working in other universities, institutions or organizations as teachers of the University on such terms and conditions s may be laid down by the Ordinances” At this stage Clauses (i) and (j) of Section 24 of IGNOU Act also need to be noted.

“Section 24 subject to provisions of this Act, the Statutes may provide for all or any of the following matters, namely:-

(i) The conferment of autonomous status on Colleges and Study Centres;

(j) the co-ordination and determination of standards in the open University and distance education systems and the allocation and disbursement of grants to Colleges and other universities and institutions.”

15. Section 16 of IGNOU Act deals with authorities of the University and clause (7) deals with “such other authorities” as may be declared by the Statutes to be the authorities of the University. In pursuance of powers conferred under Section 16(7) read with Section 24 and 2nd Schedule to the IGNOU Act, Distance Education Council (“DEC”, for short) was constituted vide Notification dated 22.11.1991. Para 3 of the Notification stated that DEC would consist of certain members including Secretary of UGC and a member to be nominated by the Chairman, UGC. However, there was nothing in this Para requiring any member or representative of AICTE (which by 1991 was a

Statutory Authority) to be member of DEC. Para 4 dealt with powers and functions of DEC and the relevant portion of said Para is to the following effect:-

“4. Powers and Functions of the Distance Education Council

a) It shall be the general duty of the Distance Education Council to take all such steps as are consistent with the provisions of this Act, the Statutes and the Ordinances for the promotion of the open university/distance education systems, its coordinated development, and the determination of its standards and in particular:

(i) To develop a network of open universities/distance education institutions in the country in consultation with the State Governments, Universities and other concerned agencies;.....

(viii) To take such steps as are necessary to ensure the coordinated development of the open university/distance education system in the country.

(xiii) To advise State Governments, universities and other concerned agencies on their proposals to set up open universities or to introduce programmes of distance education;”

16. The All India Council for Technical Education Act, 1987 (hereinafter referred to as the “AICTE Act”) was enacted to provide for the establishment of AICTE with a view to proper planning and coordinated development of the technical education system throughout the country, the promotion of qualitative improvement of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. Terms “Technical Education”, “Technical Institution” and “University” as defined in the AICTE Act are as under:

“(g) “technical education” means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare;

(h) “technical institution” means an institution, not being a University, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions;

(i) “University” means a University defined under clause

(f) of Section 2 of the University Grants Commission Act, 1956 (3 of 1956) and includes an institution Deemed to be a University under Section 3 of that Act.”

17. Chapter II of the AICTE Act speaks of “Establishment of the Council”, namely AICTE and Section 10 deals with the “Powers and Functions of the Council”. Section 10 is as under:

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

(a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education;

(b) coordinate the development of technical education in the country at all levels;

(c) allocate and disburse out of the Fund of the Council, such grants on such terms and conditions as it may think fit to—

(i) technical institutions, and

(ii) Universities imparting technical education in coordination with the Commission;

(d) promote innovations, research and development in established and new technologies, generation, adoption and adaptation of new technologies to meet developmental requirements and for overall improvement of educational processes;

(e) formulate schemes for promoting technical education for women, handicapped and weaker sections of the society;

(f) promote an effective link between technical education system and other relevant systems including research and development organisations, industry and the community;

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

(h) formulate schemes for the initial and in-service training of teachers and identify institutions or centres and set up new centres for offering staff development programmes including continuing education of teachers;

(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;

- (j) fix norms and guidelines for charging tuition and other fees;
- (k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;
- (l) advise the Central Government in respect of grant of charter to any professional body or institution in the field of technical education conferring powers, rights and privileges on it for the promotion of such profession in its field including conduct of examinations and awarding of membership certificates;
- (m) lay down norms for granting autonomy to technical institutions;
- (n) take all necessary steps to prevent commercialization of technical education;
- (o) provide guidelines for admission of students to technical institutions and Universities imparting technical education;
- (p) inspect or cause to inspect any technical institution;
- (q) withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the Council within the stipulated period of time and take such other steps as may be necessary for ensuring compliance of the directions of the Council;
- (r) take steps to strengthen the existing organisations, and to set up new organisations to ensure effective discharge of the Council's responsibilities and to create positions of professional, technical and supporting staff based on requirements;
- (s) declare technical institutions at various levels and types offering courses in technical education fit to receive grants;
- (t) advise the Commission for declaring any institution imparting technical education as a deemed University; (u) set up a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendation to it, or to the Council, or to the Commission or to other bodies, regarding recognition or de-recognition of the institution or the programme;
- (v) perform such other functions as may be prescribed."

18. UGC, DEC and AICTE as well as MHRD Government of India have issued various Notifications, Circulars and Guidelines touching upon the issues involved in the present cases, which may now be referred to:

A. On 25.11.1985, UGC (the minimum standards of instructions for the grant of the first degree through formal education in the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Science) Regulations, 1985 (hereinafter referred to as 1985 UGC Regulations) came into force which applied to every University including a Deemed to be University. The relevant portion of these Regulations are:-

“2(3). No student shall be eligible for the award of the first degree unless he has successfully completed a three year course; this degree may be called the B.A./B.SC/B.Com. (General/Honors/Special) degree as the case may be....

3(1). Every University enrolling students for the 1st Degree Course shall ensure that the number of actual teaching days does not go below 180 in an academic year.....

3(2). The total periods provided in the timetable shall not be less than 40 clock hours a week. The timetable on working days shall be so drawn up that physical facilities are adequately utilized and not used only for a few hours a day.” B. In 1986, National Policy on Education was published by Government of India, Part VI of which dealt with Technical and Management Education, Paras 6.6, 6.8 and 6.19 of the Policy were:-

“6.6. In view of the present rigid entry requirements to formal courses restricting the access of a large segment of people to technical and managerial education, programmes through a distance learning process, including use of the mass media will be offered. Technical and management education programmes, including education in polytechnics, will also be on a flexible modular pattern based on credits, with provision for multi-point entry. A strong guidance and counseling service will be provided.

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

6.19. The All India Council for Technical Education, which has been given statutory status, will be responsible for planning, formulation and maintenance of norms and standards, accreditation, funding of priority areas, monitoring and evaluation, maintaining parity of certification and awards and ensuring the coordinated and integrated development of technical and management education. Mandatory periodic evaluation will be carried out by a duly constituted Accreditation Board. The Council will be strengthened and it will function in a decentralized manner with greater involvement of State governments and technical institutions of good quality.” C. The AICTE (Grant of Approval for starting new Technical Institutions, introduction of courses or programmes and approval of intake capacity of seats for courses or programmes) Regulations were issued in 1994 (1994 AICTE Regulations, for short).

Clause 4 of these Regulations was to the following effect-

“4.0 Requirement of Grant of Approval 4.1 After the commencement of these regulations,

- a) No new Technical Institution or University Technical Department shall be started; or
- b) No course or programme shall be introduced by any Technical Institution, University including a Deemed University or University Department or College or;
- c) No Technical Institution, University or Deemed University or University Department or College shall continue to admit students for Degree or Diploma courses or programmes;
- d) No approved intake capacity of seats shall be increased or varied;

Except with the approval of the Council.” D. On 01.03.1995, a notification was issued by Government of India 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 National 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- 110 002.” E. On 03.07.1997, DEC published Guidelines for Design, Development and Delivery of programmes/courses through distance mode. These were essentially dealing with distance education as a concept without specifying the details or mechanism as to how and in what circumstances the concerned universities and institutions were expected to initiate courses in distance education.

F. In 2004, UGC issued 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 to be universities, 2004 (2004 UGC Guidelines, for short). The terms institution, off-campus centre, off-shore campus and Study Centre were defined by these Guidelines as under:-

“(a) “Institution” means an institution set up by the same management to impart studies in a specialized branch of study and registered under the same society or trust under which the existing deemed university is registered.

(b) “Off-campus centre” means a center of the university located outside its main campus (within or outside the State where the deemed university is located)’ operated and maintained as its constituent unit by the resources of the university, having the centre’s own compliment of facilities, faculty and staff.

(c) “Off-shore Campus” means a campus of the university located outside the country, established and maintained as its constituent unit by the resources of the university having its own compliment of facilities, faculty and staff.

(d) “Study Centre” means a centre established and maintained or recognized by the university for the purpose of advising, counseling or for rendering any other assistance required by the students used in the context of distance education.” It was laid down that a Deemed to be University shall normally be authorized to operate within its own campus to conduct the authorized courses falling within the area of their specialization. However, in deserving cases, the Deemed to be University could start new departments within the university campus or start off-campus centre(s)/institutions/off-shore campus(s) on selective basis with prior specific permission of the UGC in each and every individual case. The procedure in that behalf was laid down as under:

“2. All Deemed to be universities intending to set-up new departments within their campus, off-campus centre(s) or an institution outside the main campus of the deemed university may apply as follows:

2.1 The deemed university intending to open a new department in its campus or an off-campus center/ institution shall approach the University Grants Commission (UGC) at least six months prior to opening such center on a proforma prescribed for this purpose (Annexure-I). The deemed university desirous of starting the new off-campus center / institution or introducing a new course/ programme in a professional subject, shall comply with all the requirements as required by statutory professional Councils and obtain their prior approval before approaching the UGC.

2.2 The new Departments, new off-campus center/ institution shall be set up only after obtaining approval of the UGC and that of the concerned state Government where such a center is proposed to be established. The UGC shall cause spot visit/ verification of the proposed new departments, new off-campus center/institutions to verify its infrastructure facilities, programmes, faculty, financial viability, etc. before giving permission to start the centre. The report of the committee shall be considered by the Commission for its approval.

2.3 An off-shore campus shall be set up only after due permission from the Government of India on the recommendations of the UGC and also that of the Government of the host country” Paras 3.3, 3.4 and 3.8 were as under:

“3.3 The off-campus centre/institution/off-shore campus shall conform to the relevant regulations/norms of the UGC and other statutory bodies concerned regarding minimum standards of instruction, qualifications of teachers, merit-based admission of students on an all India basis and the fee structure etc. and shall have adequate number of qualified teachers.

3.4 The new off-campus centre/institution/off-shore campus shall offer only those courses which are approved by the appropriate bodies of the deemed university. If the course to be offered in the centre is in technical/professional subject, its academic programmes shall have to be approved by the concerned statutory professional council.

3.8. The over-all performance of the off-campus centre/ institution/off-shore campus shall be monitored annually, initially for three years, and subsequently after every five years by the UGC whose directions for management, academic development and improvement shall be binding. The UGC shall associate the nominee(s) of the concerned statutory professional council in the monitoring process.” Paras 4 and 5 dealt with Distance Education and Ex-Post-Facto Approval in following terms:

“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 / offshore 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.” G. On 03.02.2004 DEC published an advertisement that it was mandatory for all Centres/Institutions/Directorates offering programmes through Distance Education mode to apply to DEC and obtain prior approval before starting any new Centres/Institutions/Directorates of programme. It further stated that the Distance Education Centres/Institutions/Directorates already offering programmes through distance mode should submit their applications for approval of DEC in the prescribed format.

H. A circular was issued by the UGC on 16.03.2004 directing Deemed to be Universities conducting courses through Distance Education mode to seek ex post

facto approval for the courses conducted by such Deemed to be Universities.

19. We have referred to the notifications, circulars and guidelines as were in existence and in force in 2004. The Deemed to be Universities in the present case had started their distance education programmes without taking any prior approval from any of the authorities including UGC, AICTE or DEC. However, it appears that in terms of paragraphs 4 and 5 of 2004 UGC Guidelines, the advertisement of DEC dated 03.02.2004 and circular of UGC dated 16.03.2004, the concerned Deemed to be Universities sought ex-post-

facto approval for courses conducted by them through distance education mode. Before we deal with the facts leading to the consideration of such ex- post-facto approval, an important development must be adverted to. On 24.09.2001 a decision was rendered by this Court in Bharathidasan University and Another v. All India Council for Technical Education and Others³. The appellant therein, created under Bharathidasan University Act with its area of operation over three districts in the State of Tamil Nadu had (2001) 8 SCC 676 commenced courses in Technological subjects in its own departments as an adjunct to the University without any approval of AICTE. A writ petition was filed by AICTE submitting that no such courses could be started without its prior approval. The plea was accepted by the High Court of Madras which view was challenged in this Court. While dealing with question whether prior approval of AICTE was required for a “University” to start courses in technical education, this Court held that the definition of “Technical Institution” under the AICTE Act excludes a “University” and since the power of grant of approval for starting new “technical institution” and for introduction of new courses or programmes under Section 10(k) of the AICTE Act would not cover a “University” but only a technical institution, the appellant-university was within its rights to start such courses without the prior approval of the AICTE.

20. Bharathidasan (supra) having laid down that prior approval of AICTE was not required for a University to start technical courses, the subsequent guidelines, notifications issued by the UGC, AICTE and the Government of India were framed in the light of said decision. The understanding entertained by all the authorities was that AICTE was not competent to deal with issues of prior approval in respect of “Universities” for technical courses and since the term “University” under the UGC Act includes Deemed to be Universities, AICTE has no power to deal with issues of prior approval for technical courses in respect of Deemed to be Universities as well.

21. We now turn to the aspect of consideration by the concerned authorities of request for grant of ex-post facto approval for courses in Technology/Engineering conducted by Deemed to be Universities, namely, JRN Rajasthan Vidyapeeth, Rajasthan (‘JRN’ for short), Institute of Advanced Studies in Education, Rajasthan (‘IASE’ for short), Allahabad Agricultural Institute, Allahabad (‘AAI’ for short) and Vinayaka Mission Research Foundation, Tamil Nadu (‘VMRF’ for short). None of these Deemed to be Universities had taken any prior permission from any of the authorities, namely, UGC, AICTE and DEC, nor had they even intimated at any juncture the fact that they were conducting such courses in Technology/Engineering through distance education mode. Pertinently, JRN, IASE and AAI had no expertise or specialization in the fields of Technology/Engineering. None of these three Deemed to be Universities was having any regular Engineering college or Faculty in

Technology/Engineering at their own campus when they commenced courses in Technology/Engineering by distance education mode through Study Centres all over the Country. The facts stated hereinafter narrate how their applications for ex-post facto approval were dealt with and by way of illustration the facts pertaining to JRN, are dealt with in detail.

A. On 10.05.2004 JRN sought approval of DEC for courses conducted by it under distance education. The information supplied in regard to technical courses leading to degrees in Engineering in various disciplines⁴ show that details of 19 Study Centres with names of Coordinators and Counsellors were given. Said Co-ordinators and Counsellors were common for all disciplines and courses. At the same time there was no Study Centre in the State of Orissa. B. On 27.07.2004, UGC asked JRN to submit a complete list of its off campus centres giving details of its courses/infrastructure within 21 days of the receipt of the letter failing which public notice would be issued that such degrees were not recognized by UGC. The relevant portion of the letter was to the following effect:

“1. The Commission vide its letter of even number dated 5th May, 2003 and subsequent reminders dated 6th August, 2003 and 13th October, 2003 had requested the Vidyapeeth to submit the details of its Study Centres. In response to that the Vidyapeeth vide its letter No.RVU/VC/2004-2005/26 dated 2nd April, 2004 submitted a list of 517 centres, but did not furnish any details about the approval of UGC, the statutory Councils B.Tech (Computer Science), M.Tech (Computer Science) B.Tech (Civil) and M.Tech (Civil)) and the concerned State Governments nor did the Vidyapeeth submit any information about the Infrastructural facilities, faculty etc. provided in these Centres.....

5. The Commission has been receiving a number of complaints that Rajasthan Vidyapeeth, Udaipur is engaged in offering Undergraduate and Postgraduate level courses in various disciplines including Computer Science, Business Studies, Para-medical Studies and Physiotherapy etc. through Study Centre(s) spread all over the country which do not have required infrastructure to maintain the standard of education.

6. A warning was also issued to the Vidyapeeth vide this office letter of even number dated 11th June, 2004 that the degrees awarded in violation of the instructions contained in the Guidelines shall be regarded as unspecified and render the Vidyapeeth to be punishable under relevant provisions of the UGC Act, 1956.

7. The Study Centre/off-campus centres in distance mode opened by Rajasthan Vidyapeeth are without prior approval of UGC.

8. The Vidyapeeth is silent on furnishing the details of fulfilling the norms as laid down by the Distance Education Council nor has attached specific approval of Distance Education Council and UGC.

9. It may be pointed out that unless the Vidyapeeth is fully prepared in terms of faculty and infrastructure laid down by the Statutory bodies, it would not be desirable to start any graduate and postgraduate level courses.” C. In response to a query from Commissioner (Higher Education) Government of Gujarat, IGNOU informed vide its letter dated 03.08.2005 that DEC had not recognized JRN and AAI to offer Distance Education programmes anywhere in the Country as major deficiencies were found in their delivery system and self instructional materials.

D. On 09.08.2005, a notice/circular was issued by UGC to the following effect:

“UNIVERSITY GRANTS COMMISSION BAHADUR SHAH ZAFAR MARG NEW DELHI – 110 002 F-6-9/2004(CPP-I) 9th August, 2005 Subject: Non-Recognition of Study Centres of Deemed Universities-(i) JRN Rajasthan Vidyapeeth, Udaipur (ii) Allahabad Agricultural Institute (AAI), Allahabad & (iii) IASE Gandhi Vidya Mandir (IASE) (Deemed University), Sardarshahr, Rajasthan The University Grants Commission has been receiving a large number of letters from individuals and organizations seeking clarification about Study Centres of Deemed Universities particularly those associated with

(i) Janardan Rai Nagar Rajasthan Vidyapeeth (Deemed University), Udaipur (ii) Allahabad Agricultural Institute (Deemed University), Allahabad (iii) Institute of Advanced Studies in Education of Gandhi Vidya Mandir (IASE) (Deemed University), Sardarshahr, Rajasthan.

It is hereby informed that (i) Janardan Rai Nagar Rajasthan Vidyapeeth (Deemed University), Udaipur (ii) Allahabad Agricultural Institute (Deemed University), Allahabad (iii) Institute of Advance Studies in Education of Gandhi Vidya Mandir (IASE) (Deemed University), Sardarshahr, Rajasthan have been declared as Deemed to be Universities by the Government of India under Section 3 of the UGC Act 1956. These Institutions are empowered to award degrees as specified by the UGC under Section 22 of the UGC Act 1956.

However above three Deemed Universities have not been permitted to affiliate a College/Institute. These Institutions have also not been allowed to conduct any course through Distance Education Study Centre so far, by the Distance Education Council/UGC.

Needless to mention that prior approval of Distance Education Council, IGNOU Campus, New Delhi-110 067 is also required for starting courses offered under Distance Education mode.

It is for the information of all concerned that no Deemed to be University can start Study Centres/franchises without the prior approval of UGC and that of State Government where the Centre(s) is/are proposed to be opened. Private franchising is not allowed. Moreover, for starting any UGC approved degree course through Distance mode, prior approval of the Distance Education Council is mandatory.

Students are advised to keep these things in mind while getting admission in Deemed to be Universities.

(V.K. Jaiswal) Under Secretary Ph: 011-23235640 Publication Officer UGC Website New Delhi” E. On 30.08.2005 a communication was addressed by UGC to JRN, the relevant portions of which were:-

“.....The Vidyapeeth has reportedly been running 649 Study Centres/off campus centres under Distance Education mode without the approval of UGC/Statutory councils/State Government. The Distance Education Council (IGNOU, New Delhi) has not recognized Rajasthan Vidyapeeth to offer Distance Education Programme anywhere in the country so far because major deficiencies have been found in the delivery system and self instructional materials. (Ref.IGNOU/DEC letter No.IG/PVC/05 dated 3rd August, 2005).

The Vidyapeeth may please ensure compliance of the following:

1. All off-campus centres/Extension Centres/Study Centres and Academic Centres offering distance education programmes of the Vidyapeeth running without the approval of UGC and Distance Education Council be closed down immediately.

A list of such centres may also please be sent to UGC along-with the documentary evidence of closure of these centres.

2. Awarding of X and XII certification be stopped immediately and a public notice to this effect may be published in National Newspapers.

3. An explanation/comments may also be furnished on complaint(s) regarding Study Centres particularly those operating in Gujarat.” F. A show-cause notice dated 27.10.2005 was thereafter issued by UGC to JRN for non-adherence to UGC norms regarding Study Centres and an explanation was sought within 15 days failing which appropriate action could be taken by UGC.

G. On 28.11.2005, All India Council for Technical Education (AICTE) Grant of Approval for starting new technical institutions, introduction of courses or programmes and increase/variation of intake capacity of seats for the courses or programmes and Extension of approval for the existing technical institutions and maintenance of norms and standards in Universities including Deemed to be Universities Regulations, 2005 (2005 AICTE Regulations, for short) were issued. Para 2.5 of the Regulations dealing with grant of approval was to the following effect:-

“2.5 Requirement of grant of approval (1) No new technical institution of Government, Government Aided or Private (self financing) institution, whether affiliated or not affiliated to any University shall be started and no new courses or programs shall be introduced and no increase and/or variation of intake in the existing Courses/Programmes shall be effected at all levels in the field of ‘Technical

Education' without obtaining prior approval of the Council. The Council may take Legal action against such defaulting Institution/Society/Company/Associated Individuals as the case may be for contravening provisions of this regulations by conducting courses/programmes in "Technical Education" without obtaining prior approval from AICTE.

(2) No existing technical institution of Government, Government Aided or Private (self financing) institution whether affiliated or not affiliated to a University shall conduct any technical course/programme without prior approval of the Council.

(3) No University including Deemed University shall conduct technical courses/programmes without ensuring maintenance of the norms and standards prescribed by AICTE.

(4) No University, Board or any other body shall affiliate technical courses/programmes not approved by the AICTE.

(5) No admission authority/body/institution shall admit students to a course/programme of technical education not approved by AICTE." H. On 05.01.2006 a circular was issued by DEC stating that the programmes of JRN through Distance Mode were not approved by DEC.

I. On 01.02.2006 a letter was addressed by JRN to UGC undertaking to close its Distance Education Programme but requesting UGC to grant one time specific approval insofar as existing students in the programmes currently in operation. J. On 05.04.2006 a Notification was issued by MHRD, Government of India in exercise of powers vested in the Central Government under Section 20(1) of UGC Act and under Section 20(1) of AICTE Act clarifying the role of the UGC and AICTE in maintaining standards of education in institutions notified as deemed to be universities. The relevant portion of the notification is as under:

"It is not a pre-requisite for an institution notified as a "Deemed to be University to obtain the approval of the AICTE, to start any programme in technical or management education leading to an award, including degrees in disciplines covered under the AICTE Act, 1987. However, institutions notified as 'Deemed to be University' are required to ensure the maintenance of the minimum standards prescribed by the AICTE for various courses that come under the jurisdiction of the said Council. It is expected that the institutions notified as 'Deemed to be University' maintain their standards of education higher than the minimum prescribed by the AICTE.

In accordance with provisions under Section 11(1) of the AICTE Act, 1987, the AICTE may cause an inspection of the relevant departments of the institution declared as 'Deemed to be University' offering the courses that come under the jurisdiction of the AICTE Act, 1987 in order to ensure the maintenance of standards by them." K. The

application preferred by JRN for ex-post facto approval was considered by UGC in its meeting dated 11.06.2006 and the Chairman was authorized to do the needful through appropriate mechanism. The Chairman, UGC accordingly constituted a two members Committee with Legal Consultant, UGC, as Special Invitee.

This Committee held meeting in the UGC office on 30.06.2006 and interacted with representatives of JRN. The decision of the Committee was as under:-

“After examining all the aspects regarding one time ex- post-facto approval to Sri Janardan Rai Nagar Rajasthan Vidyapeeth, Udaipur for the students admitted in various Degree courses under Distance Education Mode from 1st June, 2001 to 31st August, 2005 as also keeping in view the future of a large number of innocent students, the Committee recommended one-time ex-post-facto approval for the students admitted under the distance education mode by Sri Janardan Rai Nagar Rajasthan Vidyapeeth, Udaipur in Degree Courses from 1st June, 2001 to 31st August, 2005 subject to strict compliance and fulfillment of the following conditions:

1. The one time approval will cover students admitted between 1st June, 2001 and 31st August, 2005 admitted in Degree courses under Distance Education Mode only subject to the condition that Sri Janardan Rai Nagar Rajasthan Vidyapeeth, Udaipur shall ensure that it has permission of relevant Statutory Bodies or Councils wherever necessary and shall maintain the norms and standards laid down by the relevant Statutory Bodies and Councils.

2. Only such students shall be considered for regularization who fulfill the eligibility conditions, prevalent in other universities and prescribed by the statutory authorities for the courses they have been admitted. Non-eligible candidates shall be offered alternative courses according to their eligibility or the entire fee shall be refunded by the Vidyapeeth along with the compensation claimed.....” L. Thereafter, on 03.07.2006 UGC granted one time ex-post facto approval in respect of courses conducted by Distance Education Mode by JRN from 01.06.2001 to 31.08.2005. The conditions mentioned by the Committee in its recommendations dated 30.06.2006 were incorporated in this communication.

M. On 03.11.2006 a letter was addressed by the UGC to JRN that the conditions of approval as incorporated in the communication dated 03.07.2006 had not been complied with. It appears that on 29.12.2006 an Expert Committee was constituted by UGC to look into the documents/information received from JRN.

N. On 04.02.2007 a public notice was issued jointly by AICTE, UGC and DEC. The notice stated as under:

“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." O. On 15.06.2007 JRN filed an application with DEC seeking approval to start 69 programmes in Distance Education from the Session 2007-2008. The letter stated that as directed by the UGC, JRN had stopped new admissions after August 2005. The letter requested for ex-post facto approval for the programmes/students between 01.06.2001 to 31.08.2005 and approval for programmes proposed to be started from the Session 2007-2008. 69 Programmes indicated in the application comprised of six programmes leading to the award of Bachelors Degree in Technology in the disciplines of Computer Science, Information Technology, Civil Engineering, Mechanical Engineering, Electrical Engineering and Electronics/Tele- Communications. List of Study Centres numbering 38 was also appended.

P. A Visiting Committee constituted by the Chairman, DEC, had visited the main campus of JRN on 15.06.2007 itself. Some of the relevant portions from the report of the Visiting Committee are as under:

".....The University has large infrastructure of Study Centres totaling 852. These Care located mostly in private institutions. It has also Study Centres at its headquarter.

The details of facilities available at each Centre along with the list of equipments is given in Annexure – VIII.

The university now proposes to reduce the number of Study Centre significantly and offer programmes through a network of 38 Study Centres only. (list enclosed)" After making above observations, the Committee made the following recommendations:

"Keeping in view the above facts the committee recommends that the request of the university for post facto approval may be favorably considered. It also submits that the request of the university for continuation of its programmes may be considered by DEC as per norms being adopted for institutional recognition." Q. In its meeting

dated 01.08.2007 and 02.08.2007 the reports submitted by the Visiting Committee in respect of AAI (visit dates 26th and 27th October, 2004), JRN (visit dates 15th and 16th June, 2007), VMRF (visit date 04.02.2007) and IASE (visit dates 3rd and 4th September, 2004) were considered by the DEC. The minutes of the meeting of DEC were:-

“The Committee deliberated upon the recommendations of the visiting committees with respect to each institution and came up with the following recommendations:

1. The above four institutions may be given ex-post facto sanction till the academic session June-July 2007 only.

2. These institutions should be communicated the deficiencies/improvements identified by the visiting committees.

3. For recognition of the institution from next academic calendar i.e. from June-July 2008 another visiting committee may be constituted by the Competent Authority to visit and submit a fresh report on the basis of which further decision on recognition may be taken.” The minutes further show that ex-post facto approval granted to the aforesaid institutions was to be a one time measure and not to be treated as a precedent in future.

22. At this stage, while ex-post facto approval sought by JRN, IASE, AAI and VMRF was under consideration, a Memorandum of Understanding was arrived at on 10.05.2007 among UGC, AICTE and DEC to work in close co-

operation in pursuit of excellence in technical and general education through distance and mixed mode in the country. Para 10 of the Memorandum of Understanding was as under:

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

i) In the first meeting held on 11.05.2007, the Chairman stated that a large number of distance education programmes were being offered for commercial purposes; that there was deterioration of quality particularly in technical and professional programmes that were being offered through distance mode and the joint committee was expected to ensure quality of all distance education programmes in general and professional & technical programmes in particular.

The decision taken in the meeting included inter alia:

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

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

ii) The recommendations made by the DEC on 1st and 2nd of August 2007 ratifying the recommendation of the Visiting Committee of DEC to grant ex-post facto approval to JRN, IASE, AAI and VMRF as mentioned hereinabove, were then placed before and accepted by this Joint Committee in its third meeting held on 07.08.2007. The relevant minutes of the meeting were:-

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

iii) In the fifth meeting held on 17.04.2008, convened on the requisition of AICTE, complaints against IASE and VMRF were discussed and it was decided to constitute Visiting Committees to review their programmes.

iv) In the sixth meeting held on 28.07.2008, following decisions were taken:-

“(i) It was decided that the Chairman, Joint Committee will write to the Chairman, UGC and the Chairman, AICTE communicating that once the decision on approval is taken by the Joint Committee, it should be considered as approval given by the UGC, AICTE and DEC and the same should not be referred to the respective Commission and Councils; otherwise the entire purpose of the Joint Committee will be defeated.

(ii) Copies of all applications for approval of programmes in technical and professional areas will be sent to the AICTE and AICTE will send its recommendations to the Joint Committee for further processing.

v) In the ninth meeting held on 05.08.2009, the stand taken by MHRD vide letter dated 29.07.20095 regarding withdrawal of permission given to institutions to

conduct B.Tech/B.E. programmes through distance mode and to stop admissions to such programmes was noted. The unanimous decision was taken that till such time the matter was resolved, the Joint Committee would not accord any approval to B.Tech/B.E. programmes.

23. After the Joint Committee of UGC, AICTE and DEC had accepted the recommendations of DEC for granting ex-post facto approval to JRN, IASE, AAI and VMRF in its meeting held on 07.08.2007, the further factual developments were as under:-

i) The formal approval was communicated by IGNOU to JRN in following terms vide its letter dated 29.08.2007 “In connection with ex-post-facto recognition, we would like to convey that all programmes (that were approved by the statutory bodies of your institute) are approved till date. As you have not been offering education through distance mode since 2005, all your programmes (approved by the statutory bodies of your institute) till 2005 happen to be approved by the DEC.

Referred to in Para 23(xiii) However, for recognition of your institution for offering programmes through distance mode from next academic year, i.e. from June-July, 2008, you are requested to submit fresh application in the prescribed format developed by DEC.”

ii) JRN thereafter applied to UGC for approval for academic Session 2007-08 submitting that “one time ex-post-facto approval” vide letter dated 03.07.2006 was already granted by UGC and that DEC had also granted ex-post-facto approval for programmes offered by JRN through distance education mode till date. Thereafter, JRN addressed a communication to UGC on 02.09.2007 submitting compliance for final ex-post-facto approval in terms of approval dated 03.07.2006.

iii) On 03.09.2007 DEC granted provisional recognition to JRN in respect of programmes offered through distance education mode for a period of one year from the date of its letter in following terms:

“Dated 03.09.2007 Sub.: Provisional Recognition 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 the DEC has decided not to insist on territorial jurisdiction to be followed by institutions in offering programmes through distance mode and on that matter universities should be governed by their own Acts and Statutes.

With regards Yours sincerely, Sd/-

(SWARAJ BASU) Prof. L.S. Bhat Vice Chancellor Janaradan Rai Nagar Rajasthan Vidyapeeth (Deemed University) Pratap Nagar, Udaipur- 313 001, Rajasthan.”

iv) Having received provisional recognition for the academic year 2007-2008 from DEC, JRN then applied to UGC on 13.09.2007 and on 13.11.2007 UGC sent a letter in reply to JRN as under:

“UNIVERSITY GRANTS COMMISSION BAHADURSHAH ZAFAR MARG NEW DELHI 110 002 No.F.6.3(Centre)/2003 (CPP-I) November 13, 2007 The Vice-Chancellor Janardan Rai Nagar Rajasthan Vidyapeeth (Deemed University) Pratapnagar, Udaipur- 313 001 (Rajasthan) Subject: Courses under Distance mode –Regarding Sir, With reference to your proposal on the subject cited above. I am directed to inform you that the Commission has noted that DEC, a statutory council in regular distance education, has already conveyed the approval (ex-post-facto as well provisional approval for the year 2007-2008) to certain courses run by your University under distance mode based on the approval of the UGC-

AICTE-DEC joint committee. Therefore, no separate approval from UGC is required for the same. You are requested to send list of the courses (year-wise) run by the Deemed University under distance mode as approved by the Joint Committee.

This issues with the approval of Chairman, UGC.

Yours faithfully (K.P. Singh) Joint Secretary”

v) On 05.12.2007 JRN informed UGC that in view of the approval dated 29.08.2007 granted by DEC, JRN would be offering distance education programmes in the year 2007-08 as well.

vi) At a meeting held on 19.02.2008 wherein Secretary, Department of Higher Education (Distance Learning Division), MHRD, Heads of UGC, AICTE & IGNOU and Joint Secretary (Distance Education) participated, it was decided that the approvals should be granted to the courses and not to the institute. The following decisions, were inter alia, taken in the meeting:

“e. In addition to existing agreement of AICTE for conduct of MCA and MBA programs by distance mode, AICTE must also consider to agree to allow conduct of B.Tech. programmes through distance mode for Diploma holders in Engineering/Technology with work experience. Similarly, distance education programmes for ITI certificate holder, with some work experience, leading to award of Diploma could be allowed and encouraged for their vertical academic mobility. f. The approvals should be granted to the courses and not to the institute.

g. The approval, including the cases of granting of ex-post-facto approvals conveyed by the DEC, to Allahabad Agricultural Institute, Allahabad, Annamalai University, TN, IASE Sardarshahr, Raj, JRN Rajasthan Vidyapeeth, Udaipur, Vinayaka Mission, Salem must be reviewed within the next month.”

vii) Though the decision was taken in the meeting of 19.02.2008 a letter was addressed only on 12.05.2008 by UGC to various institutions including JRN, AAI, AISE and VMRF as follows:-

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

“Based on the recommendations of Joint Committee, the letter of approval may be issued by the Joint Committee. The letter should explicitly state: This has the approval of UGC, AICTE and DEC. The letter should be jointly signed by Secretary, UGC, Member Secretary, AICTE and Director, DEC.” In view of the above mechanism and instructions issued by MHRD, you are advised to approach the Joint Committee through Distance Education Council, IGNOU, Maidan Garhi, New Delhi.

Yours faithfully (S.C.Chadha) Deputy Secretary”

viii) In the meantime, on 08.05.2008 JRN sought approval for the year 2008-09 from DEC for its courses in distance education mode.

Nine professional/technical programmes⁶ leading to the award of degrees in engineering were listed in respect of which approval was sought. In Table 3.12 Programme-wise student enrolment in respect of said programmes was mentioned as 4142, 1258, 3166, 1380, 312, 1792, 4216, 516 and 103 respectively; which in effect aggregated to 16885 for all 9 courses put together.

(ix) In the 447th meeting of the UGC held on 21.05.2008 decision was taken in respect of report submitted by the Chairman, UGC as under:

“1.02(a) to ratify the action taken on certain matters.

(i) To report the decision by the Chairman, UGC regarding courses run under distance mode by JRN Rajasthan Vidyapeeth, Deemed University, Udaipur, Rajasthan.

The Commission ratified the action taken by the Chairman, UGC.”

x) Various show-cause notices were thereafter issued by UGC on 26.06.2008 and 21.08.2008 regarding alleged violation of UGC Guidelines by concerned Deemed to be Universities but the record is Bachelor of Technology in (i) Mechanical Engineering; (ii) Chemical Engineering;

(iii) Electrical Engineering; (iv) Computer Science; (v) Information Technology;

(vi) Electronics & Telecommunication; (vii) Civil Engineering; (viii) Electronics & Communication Engineering; (ix) Bio-Informatics. not clear what further steps were taken and what decisions were arrived at.

xi) On 27.06.2008, DEC issued a public notice titled “Recognition of degree/diploma/certificates for employment and recognition and distance education institutions” wherein it was clarified:-

“The provisional approval granted by DEC is not to be construed to be in lieu of the approval required by the Institutions from the AICTE in respect of the standards to be maintained for technical education programmes and from the UGC for offering any programme in leading to award of a degree which is at variance with the nomenclature of degrees mentioned in the UGC Regulations under Section 22 of the UGC Act, 1956.”

xii) On 08.10.2008 DEC granted approval to JRN for the academic year 2008-2009. The relevant portion of the letter was as under:-

“This has reference to your letter No.JRNRVU/DEW/2008-2009/811, dated 8 May, 2008 requesting Distance Education Council for continuation of recognition of your Institute for programmes offered through distance mode for the year 2008-09.

In this connection we would like to inform you that vide our letter No.F.No.DEC/Univ/State/07/5739, dated 3.9.2007, your University was accorded Provisional recognition for one academic year i.e. 2007-08 for programmes offered through distance mode. Further, your proposal for grant of regular recognition of your University is under process. Meanwhile, your University has been granted continuation of provisional recognition till such time a visiting committee visits your Institute and submits its recommendation.

With regards Yours sincerely, Sd/-

(Manjulika Srivastava) Prof. L.S. Bhat, Vice Chancellor, Janaradan Rai Nagar Rajasthan Vidyapeeth (Deeded University), Pratap Nagar, Udaipur-313001, Rajasthan”

xiii) On 29.07.2009, MHRD wrote to Chairman DEC as under:-

“D.No.6-7/2008-DL Dear Prof. Pillai, The matter regarding recognition of B.Tech Degrees awarded by UGC recognised Universities through Distance Education Mode was examined in the Ministry. After a detailed examination of the subject matter referred above, the following course of action has been approved at the highest level in the Ministry.

(i) DEC should immediately withdraw permission given to various institutions to conduct B.Tech/B.E. Programmes through Distance Mode and no student should be admitted in the current year also.

(ii) Those who have already been admitted will have to pass both practical and written examination as may be prescribed in this regard so as to give validity to the B.Tech/B.E. degree acquired by them through distance education.

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

Yours sincerely, Sd/-

(N.K. Sinha) Prof. V.N. Rajasekharan Pillai, Vice Chancellor & Chairman, DEC, Indira Gandhi National Open University, Maidan Garhi, New Delhi-110068.”

xiv) Soon after the aforesaid letter, DEC informed JRN on 13.08.2009 as under:-

“Dear Sir/Madam This has reference to the MHRD letter No.D.O.No.6- 7/2009-D.L. Dated 29th July, 2009 vide which MHRD has directed the DEC to immediately withdraw permission given to various institutions to conduct B.Tech/BE programmes through distance mode and also ensure that no students are admitted in the current year.

In this connection the Joint Committee of UGC-AICTE and DEC has not yet accorded any approval to B.E./B.Tech programme of any University offered through distance mode. Any such programmes offered by a University are hence illegal and are not approved by the DEC.

Thus it is notified that the above notification of the MHRD is to be strictly adhered to and no University should offer any B.E./B.Tech programme through distance mode. Any deviation from this policy may invite de-recognition of the concerned University by the DEC.

With regards, Yours sincerely, Sd/-

(Manjulika Srivastava) To The Vice Chancellor, Janardan Rai Nagar Rajasthan Vidyapeeth, Airport Road, Pratap Nagar, Udaipur-313001 Rajasthan.”

xv) On 21.05.2010, the UGC (Institutions Deemed to be Universities) Regulations, 2010(hereinafter referred to as “2010 UGC Regulations”) were issued consolidating Guidelines issued from time to time in respect of factors to be taken in consideration before granting the status of Deemed to be University. Regulation 2.14 which defined statutory body includes inter alia AICTE and Regulation 8.02 prescribes that the Institution Deemed to be University shall submit a certificate and an undertaking that the professional programmes being conducted by it, if any, have the approval of the relevant statutory/regulatory body. Regulation 12 deals with “new departments, off campuses and off shore campuses” and Regulation 12.11 is as under:-

“12.11. The off-Campus Centre/Off-shore Campus shall be directly administered by the parent institution deemed to be university in matters of admission, instruction, evaluation, conferring of degrees, etc. In case of the off- shore Campus, lease in the name of the institution Deemed to be university may be acceptable (as per the procedure of the country in which such off-shore campus is proposed to be established). In case lease is not permissible in any particular country, land and other assets in the name of a Strategic Partner shall be accepted. For this, the institution Deemed to be university shall have a duly registered MoU/collaboration with the Strategic Partner which shall be governed in accordance with the law for the time being in force, in India.” Further, Regulation 18 was as under:-

“18.0 DISTANCE EDUCATION No institution Deemed to be university, so declared by the Central Government subsequent to these Regulations, shall be allowed to conduct courses in the Distance mode. Also, such institutions declared as such, prior to these Regulations, shall not be allowed to conduct courses in the Distance mode from any of its off-Campus Centre /off-shore Campus approved subsequent to these Regulations.” xvi) On 23.09.2011, JRN requested DEC for continuation of its provisional recognition which was granted vide letter dated 08.10.2008. In response, DEC replied,:-

“In this regard, I am to inform that the competent authority has acceded to your request for continuation of provisional recognition conveyed by DEC vide letter No.F.DEC/JRN/RJ/08/14236 dated 08.10.2008 in order to ensure continuity of the programmes offered by your University through distance mode, till the date of

visit/approval of recommendations of the Visiting Expert Committee.

Further, it is the responsibility of the University to follow the norms prescribed by the concerned regulatory bodies and seek their approval for professional/technical programmes as per the requirement. Thus getting the approval of concerned statutory apex body for relevant programme(s) will be the sole responsibility of the University.” xvii) On 29.12.2012 an order was issued by MHRD as under:-

“In view of the recommendations of the Madhava Menon Committee Report and Government’s decision thereon, the Distance Education Council of Indira Gandhi National Open University (IGNOU) created under Statute 28 of the IGNOU Act cannot act as a regulator for other Universities as it creates conflict of interest. The Distance Education Council and the Board of Management of IGNOU have already passed resolution to repeal the Statute 28 and dissolve DEC under IGNOU. Therefore, the 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:-

(i) 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.....” xviii) On 01.05.2013, IGNOU dissolved DEC and regulatory functions of “Open and Distance Learning Education” were taken over by UGC, whereafter a notification was issued by UGC on 17.06.2013 that till it formulated Regulations for maintaining standards in Open and Distance Learning systems/courses, the UGC would adopt the Guidelines of the DEC on minimum requirements for recognition of Institutions.

xix) On 27.06.2013 a public notice was issued by UGC stating that Deemed to be Universities were not allowed to take courses in distance education mode. The relevant portion of public notice was to the following effect:-

“A Deemed University shall operate only within its Headquarters or from those off campuses/off-shore campuses which are approved by the Government of India through notification published in the official gazette.

In case of distance education programmes, no institution Deemed to be university, so declared by the Govt. of India after 26th May, 2010 [date of publication of UGC (Institutions Deemed to be Universities) Regulations, 2010] is allowed to conduct courses in the distance mode. The institutions Deemed to be universities declared before 26th May, 2010 are not allowed to conduct courses in distance mode from any

of its off-campus centres/off- shore campuses approved after 26th May, 2010. Approval for new courses and extension of approval of the courses already run by the Deemed to be Universities under distance mode would be granted by the UGC subject to the fulfillment of conditions as laid down by the UGC.

The UGC has not granted approval to any Deemed to be university to establish Study Centres.

Any information/clarification with regard to recognition of Private Universities/Deemed Universities and the courses offered by them may be obtained from JS (CPP- I) UGC. Bahadurshah Zafar Marg, New Delhi.” xx) Despite the aforesaid policy statements that no Deemed to be University was allowed to take technical courses in distance education mode, JRN again requested UGC to grant approval in terms of the earlier report of the Committee and when no response was received from UGC, Civil Writ Petition No.13900 of 2013 was filed by JRN in the High Court of Judicature for Rajasthan at Jodhpur in which following order was passed by the High Court on 26.11.2013:-

“Issue notice. Notice be also issued on the stay application. Rule is made returnable on 16.12.2013.

In the meantime, the respondents shall not de- recognize the courses run provisionally under the “distance education mode.” xxi) On 26.12.2014 JRN submitted further proposal to Distance Education Bureau of UGC for starting new courses in distance education mode from academic session 2015-2016. Soon thereafter, on 28.02.2015 another letter was written by JRN to UGC to grant continuation of recognition to JRN for the academic session 2015-

2016. According to JRN, a further letter in reminder was sent on 17.06.2015 and when no response was received from UGC, JRN filed Civil Writ Petition No.8832 of 2015 in the High Court of Judicature for Rajasthan at Jodhpur and the following order was passed by the High Court on 17.11.2015.

“.....At this stage, Mr. Singhvi, Learned Senior Counsel, has argued that some interim protection be granted to the petitioner, which is a deemed university and involved in imparting education through distance mode since 2001 of the approved programmed of UGC. Mr. Singhvi further submits that although there was an interim protection by this Court not to take any coercive action against the petitioner-University and not to de- recognize the courses run by it, the respondent-UGC has issued communication (Annex. 36) wherein the petitioner University has not been mentioned to impart education through distance mode.

Considering the fact that petitioner-University is involved in imparting education by distance mode since 2001 and there is interim protection granted to the University, the respondent-UGC is directed to provisionally include the name of the petitioner-deemed University in the list of the Universities,

which are allowed to offer the approved programme through distance mode for the Academic Session 2015-16.

It is made clear that this interim arrangement shall not create any right or equity in favour of the petitioner- University and shall remain subject to the final decision of the writ petition. It is further clarified that UGC shall be free to carry out the requisite inspection for verifying the requisite infrastructure available with the petitioner- University for imparting education through distance mode.

Stay petition is disposed off.” xxii) On 12.04.2016 JRN submitted further proposal seeking recognition for programmes offered by it through distance education mode during the academic session 2016-2017. According to JRN, there being no response from UGC, JRN filed Writ Petition No.10310 of 2016 in the High Court of Judicature for Rajasthan at Jodhpur to include name of JRN in the list of recognized Universities in the academic year 2015-2016 and following order was passed by the High Court on 15.09.2016:-

“Issue notice to the respondent No.1 only. Issue notice of stay petition as well and be given ‘dasti’ to learned counsel for the petitioner for service.

seeks some more time to file reply to the writ petition. Time prayed for is granted.

In the meantime, the respondent Nos.2 and 3 are directed to provisionally include name of petitioner- Deemed University in the list of universities, which are allowed to offer the approved programme for Distance Education mode for the Academic Sessions 2016-2017.

Put up on 20.10.2016 along with S.B. Civil Writ Petition Nos.5531/2015, 13900/2013, 5194/2014, 7419/2015 and 8832/2015.”

24. In the aforementioned backdrop of facts leading to the ex-post-facto approvals granted to JRN, IASE, AAI and VMRF and the subsequent facts, the stand of the authorities as taken in their affidavits may now be adverted to. We have already quoted paragraph 19 of the affidavit of Mr. Ved Prakash, Chairman, UGC. Since the stand of the UGC in the present matter is quite crucial, the relevant portions of the affidavit starting from paragraphs 7 to 10 and 12 to 18 in relation to the first question posed by this Court in its Order dated 11.12.2014 are extracted as under:-

“7. Whether the UGC recognizes degrees in technical education by open and distant education mode. If so, subject to what conditions, if any.

8. It is humbly submitted that the UGC used to consider the grant of approval to programmes conducted by institutions Deemed to be Universities for awarding B.E./B. Tech. degrees through ODL mode. The conditions for granting such UGC approval to ODL programmes conducted by institutions Deemed to be Universities

for awarding B.E./B.Tech. degrees are described below.

9. After the MHRD issued a notification dated 01.03.1995 (no.44, F.No.18-15/93-TD.V/TS.IV.) making it mandatory to obtain approval for ODL qualifications from the DEC and, wherever necessary, from the AICTE, for employment with the Central Government, the UGC required the approval of AICTE wherever necessary for programmes conducted by institutions Deemed to be Universities leading to the award of B.E./B.Tech degrees through ODL mode, as an imperative for the validity of such programmes.....

10. Then, in 2004, the UGC framed “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” [the “2004 UGC Guidelines”]. These guidelines were framed in keeping with the UGC’s mandate to maintain the standard of teaching and research in universities and stipulated,

12. Thus, even as per the 2004 UGC Guidelines, the institutions Deemed to be Universities were required to have the approval of the AICTE, in addition to that of the UGC/DEC, for programmes leading to the award of B.E./B.Tech. degrees through ODL mode.

13.Here, it may be briefly noted that the DEC had granted such ex-post facto approval because, as per the MHRD’s gazette notification No.44, dated 01.03.1995, qualifications were required to have mandatory approval of the DEC and, wherever necessary, AICTE to be valid for Central Government jobs. However, since the DEC started giving such approvals in 2004-5 and the proper mechanism could be put in place only in 2007, most universities/institutions were not recognized by the DEC though many universities were offering programmes through correspondence and distance mode even before the establishment of the DEC (or its policy for giving recognitions). As a result, many students who had obtained their qualifications through distance mode started facing problems because of non-recognition of their qualifications, including many who were in employment for years. Therefore, in order to safeguard the interest of these students, the DEC started the process of ex-post facto approvals and, consequently, many universities offering programmes through distance mode (including technical programmes) were accorded ex-post facto approval. However, the universities concerned were required to follow the norms of the appropriate regulatory bodies and seek their approval wherever required.)

14. It is pertinent to note that the Joint Committee referred to in the aforesaid letter dated 12.05.2008 was formed pursuant to an MoU dated 10.05.2007 between UGC, AICTE and DEC.

The MoU was “aimed to avoid duplication of efforts in streamlining of activities” between the three bodies who had “mutually agreed to 1) carry out various functions of UGC & AICTE mandated under the Acts, as decided by the UGC and AICTE from time to time jointly with Distance Education Council 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....” The Joint Committee was “to oversee the implementation of MoU and to design action plan for approval and monitoring of institutions offering technical programmes through distance and mixed mode” and applications for approval of programmes in distance and mixed mode in the field of technical and general education were to be submitted to the Secretary to the Joint Committee.

15. Therefore, since the AICTE was a member of the Joint Committee, the UGC considered approval from the Joint Committee as tantamount to approval from AICTE as well. As such, the aforesaid letter dated 12.05.2008 from the UGC actually nullified an earlier decision to accept the recommendation to grant ex-post facto approval to JRN Rajasthan Vidyapeeth and other institutions Deemed to be universities taken at the third meeting of the Joint Committee of UGC-AICTE. DEC held on 17.08.2007 as well as a letter dated 13.11.2007 issued by the UGC which stated that, in light of the DEC’s approval, “no separate approval from UGC is required” by JRN Rajasthan Vidyapeeth for courses under distance education mode.

16. It is also pertinent to note that, subsequent to the UGC’s letter dated 12.05.2008, the Joint Committee of UGC-AICTE- DEC; or UGC independently, did not accord any approval to these institutions Deemed to be Universities for starting programmes leading to the award of degrees in technical education through ODL mode. Therefore, till date, the deemed universities, namely, JRN Vidyapeeth Udaipur, Rajasthan; Vinayaka Mission’s Research Foundation, Salem, Tamil Nadu; IASE Gandhi Vidya Mandir, Sardarshahr, Rajasthan; and Allahabad Agriculture Research Institute, Allahabad, U.P. have not been accorded the UGC’s approval for their ODL programmes leading to the award of B.E./B. Tech. degrees.

17. In any event, vide letter dated 29.07.2009, the MHRD had informed the erstwhile DEC that the latter “should immediately withdraw permission given to various institutions to conduct B.Tech/B.E. Programmes through Distance Mode and no student should be admitted in the current year also. Those who have already been admitted will have to pass both practical and written examination as may be prescribed in this regard, so as to give validity to the B.Tech/B.E. degree acquired by them through distance education.” Accordingly, the erstwhile DEC had issued a letter dated 13.08.2009 stating that “the Joint Committee of UGC-AICTE and DEC has not yet accorded any approval to BE/B.Tech programme of any University offered through distance mode. Any such programmes offered by a University are hence illegal and are not approved by the DEC. Thus it is notified that the above notification of the MHRD is to be strictly adhered to and no University should offer any BE/B.Tech programme through distance mode. Any deviation from this policy may invite de-recognition of the concerned University by the DEC.”

18. Thereafter, in 2010, the UGC framed the UGC (Institutions Deemed to be Universities) Regulations (the “2010 Deemed Universities Regulations”). As per Regulation 18.0 therein.

“No institution Deemed to be university, so declared by the central Government subsequent to these Regulations, shall be allowed to conduct courses in the Distance mode. Also such institutions declared as such, prior to these Regulations, shall not be allowed to conduct courses in the Distance mode from any of its off-

Campus Centre/Off-shore Campus approved subsequent to these Regulations.”

25. The AICTE in its affidavit in reply referred to its Regulations and Guidelines. Adverting to the decision in *Bharathidasan* (supra), it was submitted that after said decision, “..... only the “Technical Institutions” other than University were required to have prior approval of the AICTE. However, the universities which applied for approval of the AICTE on their own, were considered for grant of approval as per norms and standards of AICTE in force. At this stage, it is necessary to clarify that the study centers and campuses of universities which were not the constituent units of the universities, were required to have prior approval of the Council for conducting any technical course or programme....” Further, reference was made to notification dated 05.04.2006 issued by MHRD, which inter alia dealt with the issues concerning maintenance or standards of education in institutions notified as Deemed to be universities. The affidavit further stated that:

“That it is respectfully submitted that it has been the policy of AICTE not to recognize qualification acquired through Distance Education mode at Diploma, Bachelors and Master level in the fields of Engineering, Technology and 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 MCA 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.. It is respectfully submitted that AICTE has given various public notices in different newspapers regarding its aforesaid policy from time to time as per AICTE Act.

That it is submitted that in view of the position explained hereinabove, the conduct of a technical course through distance education mode other than a course in MBA and MCA is not permissible. Thus, any technical course conducted by the technical institutions including the institution Deemed to be university concerned through distance education mode, except a course in MBA and MCA, is contrary to the policy of the AICTE. Hence, degrees or diplomas in technical course through distance education mode other than a course in MBA and MCA awarded by the technical institutions including the institution Deemed to be university cannot be treated valid degree or diploma.

That it is submitted that in the present matter, the Private Respondent has obtained degree in Engineering from JRN Rajasthan Vidyapeeth, an institution Deemed to be

University, through Distance Education Mode and through study centers which is not permissible as per the policy of the AICTE. Thus, such degree in Engineering awarded by JRN Rajasthan Vidyapeeth, an institution Deemed to be university, through distance mode is not valid.”

26. DEC having been dissolved in May 2013, we do not have its stand on record but the stand of MHRD in its affidavit is to the following effect:

“VII. I further submit that upto year 2007 Distance Education Council (DEC) used to give recognition to institution offering general courses in the distance mode but during that year, Distance Education Council (DEC) also started giving recognition to such institutions to conduct technical programmes under the distance mode. This was in contradiction to policy adopted by AICTE which makes it mandatory to conduct technical programmes through the regular (Conventional) mode of education. This created confusion amongst the stakeholders which gave unfair advantage to unscrupulous institutions conducting such courses in the distance mode. Accordingly, a Tripartite Committee of UGC-AICTE-DEC was constituted through an MOU in May, 2007 for a limited period of three years.

VIII. In the meantime, on 19.02.2008 a meeting of Secretary, Department of Higher Education, MHRD was held with the Heads of UGC, AICTE, IGNOU and Joint Secretary (DL) to discuss the issue of co-ordination and maintenance of standards in Higher Education through distance. In the said meeting, it was inter alia decided that the approvals should be granted to the courses and not to the institute. However, all those aforesaid arrangements did not live to the expectations.”

27. The stand taken by the Deemed to be Universities in their respective affidavits and the documents on record is as under:-

A. JRN was founded in the year 1937, was conferred Deemed to be University status in January 1987 and is principally engaged in teaching and research in the field of adult and continuing education for working people. Following averments made in paragraphs 22 and 23 of its affidavit are noteworthy:-

“22. That after permission from DEC the University started the Distance Education programmes through its Study Centres as per the guidelines prescribed by the DEC and UGC. ON 26th October 2002 the Academic Council of the University took the decision to start the Engineering Courses (in all branches) amongst others through Distance Education Mode from academic year 2003 onwards.

23. The Faculty of Engineering and Technology of the University in the year 2003 when the University started its Engineering Courses through distance education mode. Since the University did not conduct any course through full time mode the University did not seek any approval from AICTE and the same was not mandatory in

view of this Judgment of the Hon'ble Court in Bharathidasan's case as well as provisions of the AICTE Act that does not envisage University seeking any approval from the AICTE to offer technical programs.

Further as communicated it also did not consider Technical programs under distance education program mode for approval, which was later held to be contrary to national policy." As regards, its activities in the field of technical education at its main campus, it is averred:-

"(i) The Institute of Management Studies has been granted approval by the AICTE for the Masters in Business Admission program (Full Time) from the year 1998-99 onwards and granted extension till current academic session.

(ii) The Department of Computer Science and Information Technology has been granted approval by the AICTE for conducting the Master in Computer Application (Full time) from the Academic Year 2003-04 onwards granted extension till current academic session.

(iii) The Faculty of Engineering and Technology has been granted approval by the AICTE for conducting the under graduate courses in Engineering and Technology [Electronics and Communication Engineering, Civil Engineering, Computer Science Engineering, Mechanical Engineering and Electrical Engineering] (Full time) from the Academic Year 2010-11 onwards and granted extension till current academic session.

(iv) The Rajasthan Vidyapeeth Technology College has been granted approval by the AICTE for conducting the Diploma in Engineering and Technology (Electronics and Communication Engineering, Civil Engineering, Computer Science & Engineering, Mechanical Engineering and Electrical Engineering) Master in Computer Application (Full time) from the Academic Year 2012-13 onwards and granted extension till current academic session." After dealing with factual details leading to the ex-post-facto approvals by UGC and DEC, JRN submitted that no approval from AICTE was required for a Deemed to be University. However despite order dated 26.04.2017 passed by this Court, nothing was placed on record as to what type of infrastructure is available with JRN and what was the methodology followed for monitoring standard of education imparted in its Study Centres. In response to queries from the Court, it was submitted across the bar that JRN was conducting distance education programmes through 660 Study Centres out of which four centres were being maintained and managed by JRN while 656 centres were autonomous institutions. Though Study Centres would in turn employ demonstrators/lecturers, they were not on the payroll of JRN but course material would be provided by JRN. Further, though Faculty in Engineering was set up in the year 2003 there was no regular Engineering College at the main campus of JRN and said Faculty received AICTE approval to conduct regular four year degree courses in Engineering only from the year 2010 and at Study Centres no regular four year degree courses in

Engineering were being conducted but students having diplomas in engineering would be given lateral entry at second year level.

B. IASE submitted an application on 19.12.2002 with DEC for starting distance education programme, copy of which was also sent to UGC. According to IASE, since there was neither any denial nor any objection from these authorities, it started conducting B.Tech programmes through distance education mode in 2003. It is stated that IASE stopped B.Tech courses from the year 2005 through distance education mode though it continues to conduct diploma courses in engineering through distance mode. It is further stated that its regular Engineering College started functioning at main campus from 2005 after getting recognition from AICTE. Like JRN, IASE has also not placed on record any material regarding infrastructure and methodology for monitoring standard of education in its Study Centres.

C. The stand of VMRF is that it conducts only diploma courses through distance education mode and it does not grant any degree in professional courses through distance education mode. It however submitted that it is on par with State Universities and therefore entitled to conduct distance education programmes across the Country.

28. Mr. C.A. Sundaram, learned Amicus Curiae submitted that the ex-post-facto approvals for their degree courses in Engineering were sought by JRN and IASE only in the year 2005 when they had already begun their courses two to three years earlier. No inspection of their facilities or infrastructure available at the site was conducted by any authority and the only inspection that was done was confined to checking the documents. Any approval granted without any inspection, satisfaction and recommendation of the AICTE was meaningless. According to him, even assuming that the principle laid down by this Court in *Bharthidasan* (supra) was to apply to Deemed to be Universities as well, the UGC guidelines themselves required the application to be in terms of specifications of AICTE and therefore even if one were to accept that satisfaction of AICTE was not required under the AICTE Act, the UGC guidelines did contemplate the same. In his submission, the Deemed to be Universities in question admitted students, conducted courses and granted degrees without any statutory approvals and in the teeth of numerous public notices. In the face of such blatant misuse, the grant of ex-post-facto approvals was not called for. In his note the learned Amicus Curiae submitted:-

“The further issue that arises is as to whether in technical education and other specialized fields, the non-involvement of technical / specialized body is permissible or advisable. There is a difference between open distance learning in general fields and those in specialized fields. While in *Bharathidasan* (supra), this Court has held that the AICTE has no power of granting approvals to Universities, it nonetheless recognizes the significant role played by the AICTE as a recommendatory / advisory body. This would necessarily mean that before any approvals are given, AICTE recommendation for grant of such approval ought to be obtained. An approval granted without an inspection, satisfaction and recommendation of the AICTE is itself meaningless. Therefore, while the judgment in *Bharathidasan* (supra) has excluded the requirement of approvals from AICTE, the approval of a university or

course cannot be granted without the recommendation and satisfaction of all relevant competent bodies. In other words, in the case of distance learning education for general courses, the approval of UGC and IGNOU are required and in the case of specialized technical courses, the satisfaction and recommendation of AICTE or such other specialized body would be additionally called for.”

29. UGC in its Written Submissions submitted:-

a) 1985 UGC Regulations did not include education programmes in technical subjects leading to award of B.E. or B .Tech. degrees.

b) In Bharathidasan (supra), this Court was not concerned with the question of regulatory framework of Open Distance Learning.

c) 2004 UGC Guidelines required submission of information whether the existing and proposed course curriculum was as per UGC/AICTE/DEC specifications and approval/accredited by concerned statutory council. Thus there was a specific role of AICTE in respect of technical courses through distance learning.

d) Taking advantage of Notification of MHRD dated 01.03.1995, the DEC started giving approvals without any proper mechanism in place and since its approvals were not getting recognized, it mooted the idea of ex-post-facto approval. But stand of UGC was clear in letter dated 12.05.2008 that approvals granted by DEC (including ex-

post-facto) must be reviewed and approval be granted to the courses and not to the institute.

e) After 12.05.2008, neither the Joint Committee of UGC-AICTE- DEC nor UGC independently accorded any approval to JRN, IASE, VMRF and AAI for their distance learning programmes leading to the award of B.E./B. Tech. degrees.

f) In any case, letter dated 29.07.2009 of MHRD was clear that DEC should withdraw permissions granted for conducting B.Tech/B.E. programmes through distance learning. This was followed by UGC letter dated 13.08.2009.

The specific submission was:-

“It is humbly submitted that so far as UGC is concerned, B.E./B.Tech. degrees awarded by institutions Deemed to be Universities through ODL mode without AICTE approval will not be treated as valid qualifications by the UGC.

The UGC has never given any ex-post-facto approval to the aforesaid institutions which are “deemed universities” including JRN Rajasthan Vidyapeeth, although the erstwhile DEC has given such approval to many universities/deemed universities

including JRN Rajasthan Vidyapeeth.

The ex-post-facto approval relied upon by the petitioner JRN Rajasthan were not unconditional but were subject to approval of relevant statutory bodies or councils [which can only mean bodies like AICTE and such other similar regulatory bodies] wherever necessary.”

30. In its written submissions, JRN submitted:

- 1) 1985 UGC Regulations applied and covered degrees in Engineering as well, since Engineering is an applied branch of science.
- 2) JRN was granted permission by DEC to commence distance education programmes on 26.09.2001 pursuant to its application dated 17.08.2001 and in its Hand-book issued in May, 2003 by DEC, JRN was included in the list along with details of courses offered by it.
- 3) It applied for ex-post-facto approval pursuant to DEC advertisement dated 03.03.2004, providing details of the Faculty of Engineering and other details as per proforma.
- 4) From 31.08.2005 to 2007 no fresh admissions were made in distance education.
- 5) UGC granted ex-post-facto approval of 03.07.2006 for students admitted between June 2001 to August, 2005 which decision was later ratified by the Joint Committee of UGC-AICTE-DEC and ex-post-facto approval was accorded on 29.08.2007.
- 6) In respect of academic session after 2007, provisional recognition was granted by DEC on 08.10.2008.
- 7) JRN did not take any admissions in Engineering Courses from 31.08.2009 till 11.10.2011 in view of letter dated 26.08.2009 issued by DEC.
- 8) It also referred to interim orders passed by High Court of Judicature at Rajasthan which are referred to hereinabove in respect of subsequent academic years.
- 9) JRN was declared to be a Deemed to be University for its experience and expertise in the field of admission and continuing education, and its expertise in a System of methodology of education/learning and not in a particular subject or discipline.
- 10) It commenced its courses in Engineering through distance education mode in the year 2003 for people who were already employed in technical fields and had previous technical qualifications but could not apply further due to various restraints.

11) It established Faculty of Engineering although there is no prerequisite for a university to have a full time faculty in a particular subject to start its course through distance education mode and there were no circulars/notices issued by any statutory body prohibiting a University to offer distance education courses in Engineering stream.

12) A Deemed to be University is not confined to a state or region like university created by state legislatures and it can open Off- Centres/Campus Centres in any part of India with the approval of UGC. Similarly, Study Centres for distance education can be established and maintained or recognized in any part of India for the assistance of students enrolled in distance learning programmes.

13) It gave a list of 18 Deemed to be Universities having Off Campus Centres in various parts of the country including three such Deemed to be Universities having Off Shore Campus outside the country.

14) It then referred to judgment of this Court in Bharathidasan (supra) in support of the submission that Universities do not require any approval from AICTE for conducting technical courses. It also relied upon the judgment of Madras High Court in Satyabama Institute of Science & Technology v. Union of India⁷ which held that Universities including Deemed to be Universities could start a department or commence new courses or programmes in technical education without approval of AICTE. Reliance was also placed on the judgment of Delhi High Court in Sam Higginbottom Institute of Agriculture, Technology and Sciences v. University Grants Commission⁸ to the effect that there was no restriction on a Deemed to be University to start new course or department until UGC Regulations of 2010 were issued. Further reliance was placed on Association of Management of Private Colleges v. All India Council for Technical Education & Ors.⁹ to the effect that universities, its 2006 (3) MRJ 870 W.P. (C) 486/2015 decided on 4.12.2015 (2013) 8 SCC 271 colleges and institutes were exempted from seeking prior approval of AICTE.

31. Appearing for JRN, Dr. Rajeev Dhavan, learned Senior Advocate submitted that in terms of the decisions of this Court in Bharathidasan (supra) and Association of Management of Private Colleges (supra) no operational control could be exercised by AICTE over Universities including Deemed to be Universities. However some sort of cooperation was certainly envisaged in Bharathidasan (supra) which was purely in the nature of advisory role for AICTE. He further submitted that power of a Deemed to be University to start new courses was unlimited and a Deemed to be University would be bound by regulatory mechanism only in two ways:-

a. Its recognition as a Deemed to be University could be withdrawn if it was found to be not functioning within the limits, and b. Regular inspections in terms of statute could be undertaken by UGC though as a matter of fact these inspections never take place.

According to him though there was no express empowerment under any statute enabling a Deemed to be University to initiate various courses and disciplines outside its area of excellence, there was no negative mandate either and as an extension of

this principle a Deemed to be University could enter the field of distance education in any subject or discipline. Mr. M.L. Verma, learned Senior Advocate appearing for IASE made his submissions on similar lines.

Mr. Vikas Singh, Mr. Nidhesh Gupta, Mr. Jayant Bhushan and Mr. Sanjay Hegde, learned Senior Advocates and other learned Advocates led by Mr. Ashok Mahajan, learned Advocate, appearing for various candidates adopted the submissions of Dr. Dhavan and Mr. Verma. In their submissions, the concerned candidate-in-service diploma holders took admission to degree courses in Engineering and have successfully completed such courses and advanced in life. They submitted that in any view of the matter the degrees obtained by these candidates may not be nullified.

32. Mr. Raju Ramachandran, learned Senior Advocate appearing for OLIC reiterated the stand of OLIC that the degrees in Engineering obtained by concerned in-service diploma holders through distance education were invalid and as such no benefit ought to accrue to such candidates. Similar submission was advanced by Mr. V. K. Bali, learned Senior Advocate appearing for State of Punjab in matters arising from the decision of High Court of Punjab and Haryana.

33. Mr. Maninder Singh, learned Additional Solicitor General appearing for UGC submitted that inclusive definition of “University” in UGC Act was in a completely different and limited context and the idea was essentially to recognize Deemed to be University for the purposes of funding and that such Deemed to be University is not a University for all purposes. In his submission, if such Deemed to be University is desirous of starting any technical course it ought to obtain express approval from AICTE. He also placed reliance on Section 23 to submit that a University established or incorporated by or under a Central Act, a Provincial Act or a State Act alone is entitled to have the word “University” associated with its name which again signified the distinction between a University established or incorporated under a legislation as against a Deemed to be University.

34. Thus, we are principally concerned in the present matters with questions regarding validity of degrees in Engineering awarded by the concerned Deemed to be Universities in two periods. a) Where students were admitted during 2001 to 2005 in respect of which ex-post-facto approval was granted; and b) In respect of students admitted by JRN during 2007-08, 2008-09 and from 2011-12 onwards.

The crucial facts as they emerge from the narration in the preceding paragraphs are:-

a) The concerned Deemed to be Universities namely AAI, JRN and IASE started distance education programmes leading to degrees in Engineering, outside their field of specialization. Such programmes were started without taking any approval from UGC and/or AICTE and when there was no approved engineering college or faculty at their main campus.

b) Further, such programmes were being conducted in Study Centres, majority of which were not maintained and managed by the concerned Deemed to be

Universities. The demonstrators/lecturers employed at such Study Centres were not on the payroll of and were not selected by such Deemed to be Universities.

c) Those Study Centres were not inspected at any stage, nor any facilities therein were assessed to see if they meet the standards prescribed for imparting courses in Engineering. Similarly, no authority had checked what kind of courses were being conducted nor was there any inspection at the time the examinations were said to have been conducted.

d) The Visiting Committee of DEC had visited the main campus of the concerned Deemed to be Universities and seen the record but not visited any Study Centres. No member or representative of AICTE was part of such Visiting Committee, the report of which was simply endorsed by the Joint Committee of UGC-DEC-

AICTE.

e) Under 1985 UGC Regulations, minimum of 180 actual teaching days in an academic year with 40 clock hours every week are required for courses leading to degrees of B.A./B.Sc./B.Com. Assuming that these Regulations apply to courses in Engineering, this requirement would be more pronounced and crucial when courses leading to award of degrees in Engineering are in issue. Such technological programmes by very nature require extensive practical training.

f) The application preferred by JRN for ex-post-facto approval shows that its Study Centres for programmes leading to degrees in Engineering were located in institutions which themselves were running independent courses. If 180 actual teaching days with 40 clock hours per week is the requirement which must be satisfied by those institutions for running their own courses, no scope is left for any outside institution such as JRN for using such facilities for imparting any courses in technical education. If the facilities were sufficient to justify the independent strength of those institutions, the additional burden caused by students of JRN could not possibly be accommodated.

g) The inspection to ensure maintenance of standards was specifically contemplated under the Notification of MHRD issued on 05.04.2006. Para 10 of the Memorandum of Undertaking dated 10.05.2007 also spoke of inspection for the purposes of continuation/withdrawal of approval. In the teeth of these Policy statements, the Joint Committee of AICTE-DEC-UGC endorsed its acceptance on 07.08.2007 without there being inspections at all.

h) Aforesaid aspects regarding complete absence of any inspection become crucial particularly when communications of DEC and UGC issued from time to time highlighted complaints regarding those Deemed to be Universities.

i) As far as second period is concerned, again no inspections, at any stage, were carried out. The provisional approval dated 03.09.2007 by DEC was completely mechanical and the assertion therein that DEC would not insist on territorial jurisdiction, was against the mandate of MHRD in its letter dated 29.07.2009 and of the decision in the ninth meeting of the Joint Committee of UGC-

DEC-AICTE. The consequent approval dated 13.11.2007 by UGC is equally mechanical and suffers from same infirmity.

j) Though decision was taken in the meeting held on 19.02.2008 to review cases of ex-post-facto approvals within a month, nothing was done. In fact, the first communication thereafter was three months after on 12.05.2008. It spoke nothing about review of ex- post-facto approval already granted. At this juncture, the logical exercise ought to have been to consider and assess the claim course-wise, cause inspections and see whether ex-post-facto approvals were rightly granted or not. However, that was not to be.

k) On the other hand, UGC in its meeting of 21.05.2008 went on to ratify the decision of the Chairman to accord approval. At the same time, in response to application dated 08.05.2008 by JRN, DEC went on to grant provisional recognition for the year 2008-

09.

l) In spite of clear instructions by MHRD in its letter dated 29.07.2009 to withdraw permissions already given to conduct B.Tech/B.E. programmes through distance education and not to admit students for current year, no steps were undertaken to implement those directions and withdraw permissions already given.

m) Even after dissolution of DEC and Public Notice dated 27.06.2013 issued by UGC that no Deemed to be University would be allowed to take courses through distance education, when JRN again applied to UGC for grant of approval, no reply was given by UGC; on which score JRN was able to get an interim order dated 26.11.2013 from the High Court. As a matter of fact in the face of Regulation 18 of 2010 UGC Regulations, such a request or application could never have been considered.

n) Similar is the case with regard to interim orders dated 17.12.2015 and 15.09.2016. Thus JRN could continue admitting standards despite aforementioned Policy statements, on the strength of interim orders.

o) During this period, the High Court of Punjab and Haryana vide its decision dated 06.11.2012 had already held the degrees in Engineering awarded by Deemed to be Universities through distance education mode to be invalid. That decision was appealed against by students and IASE but not by JRN. In any case, the Interim Order of this Court only protected concerned students whose degrees stood invalidated.

p) If interim orders dated 26.11.2013, 17.11.2015 and 15.09.2016 by one High Court could become a justification for continuing to conduct courses leading to degrees in Engineering through distance education mode across the country, the final declaration issued by another High Court on 06.11.2012 and the policy statements referred to earlier, had greater binding force.

q) On one hand it was being proclaimed by the concerned authorities in their public notices like 27.06.2008 and 27.06.2013 or policy statements such as 2010 UGC Guidelines that no Deemed to be University will be allowed to conduct courses in distance education mode, and on the other hand DEC kept granting provisional approval and UGC helped the concerned Deemed to be University by its total inaction.

35. In the backdrop of aforesaid facts, the learned Amicus Curiae is right in his submission that the ex-post facto approvals granted in the present matters were completely opposed to the policy statements governing the matters in issue. He is right that the concerned Deemed to be Universities admitted students, conducted courses and granted degrees in the absence of statutory approvals. It is, however, the submission of Dr. Rajeev Dhavan, learned Senior Advocate that a Deemed to be University is entitled to start new courses in technical education (including through distance education mode) in terms of law laid down by this Court in *Bharathidasan* (supra) and that there was no bar or prohibition in any statute or statutory instrument when the Deemed to be Universities started the instant courses in distance education mode. According to him, the inspections could of course be undertaken by UGC in terms of the Statute and if no inspections, as a matter of fact were conducted, the Deemed to be Universities could not be at fault. The following questions, therefore, arise for our consideration.

A. Whether the concerned Deemed to be Universities in the present case, could start courses through distance education in subjects leading to award of degrees in Engineering –

a) Without any parameters or Guidelines having been laid down by AICTE for conduct of such courses in technical education through distance education mode.

b) Without prior approval under the AICTE Act.

[B. Whether DEC, on its own, was competent to grant permission to the concerned Deemed to be Universities to start such courses through distance education.

36. The definition of “Technical Education” in Section 2(g) of the AICTE Act shows that the emphasis is on the programmes of education, research and training in Engineering Technology in general and the idea is not limited to the institutions where such programmes of education, research and training are to be conducted or imparted. However, the definition of “Technical Institution” in Section 2(h) leaves out an institution which is a University. The distinction between the broader concept of “Technical Education” and the limited scope of “Technical Institution” is clear from Section 10 of the AICTE Act where certain functions concern the broader facets or aspects of technical education which by very nature must apply to every single institution (whether university or not) where such courses are conducted or imparted. At the same time, certain functions are relatable to technical institutions alone, which by definition are not applicable to universities. For example, Functions in sub-clauses (a), (b), (d), (e), (f), (l) and (n) are concerned with broader facets of technical education, while functions in Clauses (k), (m), (p) and (q) deal with matters concerning technical institutions and thus may not apply to universities, whereas there are certain functions as set out in Clauses (g) and (o) which apply to both “Technical Institutions” and “Universities”

imparting technical education. Clauses (c), (d) and (f) of Section 10 deal with subjects, inter alia, coordination of the technical education in the country at all levels; promoting innovation, research, development, establishment of new technologies, generation, adoption and adaptation of new technologies to meet the developmental requirements; and promoting and effecting link between technical education and systems and other relevant systems. AICTE is thus the sole repository of power to lay down parameters or qualitative norms for “technical education”. What should be course content, what subjects 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 AICTE.

37. In *Bharathidasan* (supra) the issue was whether a University established under a State Law, within its area of operation, was entitled to start courses in technical education as an adjunct to the University itself without any approval of AICTE. The requirement of grant of approval under Section 10(1)(k) of the AICTE Act being specific in respect of technical institutions alone, the conclusion was arrived at that the AICTE could not insist upon such grant of approval when a University wished to start courses in technical education as an adjunct to the University itself. The discussion in *Bharathidasan* shows that this Court accepted the role of AICTE in laying down norms and standards in technical education system which is evident from following portions from paragraph Nos.10 and 16.

“10.....A careful scanning-through of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition, will show that the role of AICTE vis-à-vis the universities is only advisory, recommendatory and a guiding factor and thereby subserves the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except submitting a report to UGC for appropriate action.....”

16.....We also place on record the statement of the learned Senior Counsel for the appellant, which, in our view, even otherwise is the correct position of law, that the challenge of the appellant with reference to the Regulation in question and claim of AICTE that the appellant University should seek and obtain prior approval of AICTE to start a department or commence a new course or programme in technical education does not mean that they have no obligation or duty to conform to the standards and norms laid down by AICTE for the purpose of ensuring coordinated and integrated development of technical education and maintenance of standards.....”

38. 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 the 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 emphasizing 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 the 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.

39. We now move to the second limb of the first question. Under 1994 AICTE, Regulations, “no courses or programmes shall be introduced by any Technical Institution, University including a Deemed University or University Department on College except with the approval of the Council”. Bharathidasan (supra) declared 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 Association of Management of Private Colleges (supra) 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 un-related 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.

We are concerned in the present cases with the second category of Deemed to be Universities. In the present cases, none of the Deemed to be Universities was conferred such status for its excellence in the field of Engineering. Their fields were completely un-related. As a matter of fact, JRN and IASE did not even have regular college or faculty for Engineering at its main campus. And yet, they started courses in Engineering through distance education mode without the approval of AICTE, relying on the dictum in Bharathidasan. According to Dr. Rajeev Dhavan, learned Senior Advocate, they were entitled as a matter of right to start such courses.

40. The affidavit of Dr. Ved Prakash as referred to hereinabove as well as the stand of UGC and the submissions made by Mr. Maninder Singh, learned Additional Solicitor General make it clear that such Deemed Universities in the second category mentioned above are not entitled, as a matter of right, to introduce courses leading to degrees in Engineering without the approval of AICTE. According to the submission of the learned Additional Solicitor General, the conferral of status is only because of excellence in a particular field or subject which then entitles the Deemed to be University to utilise its excellence to conduct research and achieve advancement in that field. However merely because such status was conferred on the concerned institution, in his submission, would not entitle it to similar protection in the second category cases, as available to a University by virtue of the decision of this Court in Bharathidasan (*supra*).

41. Paras 1 and 2 of Bharathidasan (*supra*) show that the University constituted under the State law had its area of operation over three Districts of Tamil Nadu and by virtue of such State law could provide among other things, instructions and training in such branches of learning as it may determine. The express grant or empowerment thus came from the State enactment to enter into any field of learning as it may determine and introduce new courses in that behalf. However the University would be bound by territorial restrictions, in that it could not go beyond the territory of three Districts over which it was given Jurisdiction. But if we accept the submission of Dr. Rajeev Dhavan, learned Senior Advocate, there would be no such territorial restrictions on a Deemed University and it could open new departments, introduce new courses in any field anywhere in the Country. By way of illustration, we can consider the case of a private institution affiliated to a University such as Bharathidasan University, which after some length of time is conferred Deemed to be University status for excellence achieved by such private institution, say in the field of adult education. If we accept the submission of Dr. Dhavan, upon such conferral of Status as Deemed to be University, this originally affiliated private institution can now introduce any courses in technical education anywhere in the Country but the original University would be bound by territorial restriction.

42. The grant or empowerment in Bharathidasan (*supra*) in favour of the University in question came from the State enactment which was its Charter. There is no such Charter or grant in favour of a Deemed to be University under any provision of the UGC Act. All that the UGC Act does is to confer Deemed to be University status on an Institution which has achieved excellence in its chosen field so that its development in the concerned field and its attempts to attain excellence and conduct

research are not hampered on any count and at the same time it could be extended the facilities of Aid. It is precisely for this that the distinction between a regular University established under a Central Act, a Provincial Act or a State Act and an Institution Deemed to be University is maintained in the UGC Act. A Deemed to be University can certainly award degrees but cannot use the word “University” by virtue of Section 23 of the UGC Act. Even after conferral of such status it still continues to be “an Institution Deemed to be University” and if it is equated with a University in every sense of the term it would lead to incoherent and incongruous results, in that its area of operation or the field of its activity would be completely unlimited and unregulated. In our view that is certainly not the intent of the UGC Act.

43. Conceptually there is some difference between the status of a University established under a State law and that of a Deemed to be University. Normally, a University is established with an idea that particular areas or districts of the State need to be catered to. Such University is expected to satisfy the needs or aspirations of people in the area for education and correspondingly empowered to initiate new courses, keeping in tune with the needs of time. The expectations from a Deemed to be University are of a different dimension. What is expected is excellence, research and advancement in its chosen field for which such status was accorded. There is no embargo on such Deemed to be University in entering new areas of education or introducing new courses but in that case, it can't demand or receive complete relaxation from regulatory regime. It must satisfy all those requirements which a normal institution is required to. The stand taken by the UGC in the affidavit of Dr. Ved Prakash, as well as its submissions in our view, are correct and we reject the submission of Dr. Dhavan. The logical conclusion is that a Deemed to be University in the second category mentioned hereinabove is still an institution of the stature of a “technical institution” and if it desires to introduce new courses it must fulfill the requirements of 1994 AICTE Regulations. A Deemed to be University which has achieved excellence in a particular field may be given deferential treatment but nonetheless it has to satisfy the requirements for new technical institution. Pertinently, both JRN and IASE, while establishing their faculty or colleges in engineering at their main Campus sought approvals from AICTE. Further, even for introducing courses in management which come under the definition of technical education under the AICTE Act, appropriate permissions were sought from AICTE. We therefore conclude that the Deemed to be Universities in the present case were required to abide by the provisions of 1994 AICTE Regulations and could not introduce courses leading to award of degrees in Engineering without the approval of AICTE. 1994 AICTE Regulations or any subsequent Regulations will have to be understood in the light of our decision.

44. 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.

45. It was laid down by this Court in *Annamalai University v. Secretary to Government, Information and Tourism Department and Others*¹⁰ that no relaxation could be granted in regard to the basic things necessary for conferment for a degree and if a mandatory provision is not complied with by an administrative authority, the action would be void. This leads us to conclude that the permissions granted by DEC in the first instance allowing the Deemed to be Universities in question to introduce courses leading to the award of degrees in engineering were illegal and opposed to Law. The (2009) 4 SCC 590 illegality in the exercise of power was to such an extent that it could not be cured by ex post facto approvals granted later. We have also seen that the exercise of grant of ex post facto approvals, as a matter of fact, was only superficial and perfunctory. Such exercise was done in the face of declared policy statements governing the field and even when specific complaints were received about concerned Deemed to be Universities. Yet, without causing any inspection such power was exercised which part is already dealt with and the exercise of power has been found by us to be suffering from illegality and infirmity. The only thing in favour of the concerned Deemed to be Universities is the fact that the Joint Committee of UGC – AICTE – DEC had endorsed the decision though such exercise was also completely flawed. That exercise was against Para 10 of the MoU dated 10.05.2007, which contemplated causing of inspections and the decision dated 11.05.2007 of the Joint Committee itself that for an Institution/University to offer distance education programmes it was mandatory to offer the same in face to face mode.

46. Having found the entire exercise of grant of ex-post-facto approval to be incorrect and illegal, the logical course in normal circumstances would have been not only to set aside such ex-post-facto approvals but also to pass consequential directions to recall all the degrees granted in pursuance thereof in respect of Courses leading to award of degrees in Engineering. However, since 2004 UGC Guidelines themselves had given liberty to the concerned Deemed to be Universities to apply for ex-post-facto approval, the 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.

47. The AICTE is directed to devise within one month from the date of this judgment modalities to conduct appropriate test/tests both in written examination as well as in practicals for the concerned students admitted during the academic sessions 2001-2005 covering all the concerned subjects. It is entirely left to the discretion of AICTE to come out with such modalities as it may think appropriate and the tests in that behalf shall be conducted in the National Institutes of Technology in respective States wherever the students are located. The choice may be given to the students to appear at the examination which ideally should be conducted during May- June, 2018 or on such dates as AICTE may determine. Not more than two chances be given to the concerned students and if they do not pass the test/tests their degrees shall stand recalled and cancelled. If a particular student does not wish to appear in the test/tests, the entire money deposited by such student towards tuition and other charges shall be refunded to that student by the concerned Deemed to be University within a month of the exercise of such option. The students be given time till 15th of January, 2018 to exercise such option. The entire expenditure for conducting the test/tests in respect of students who wish to undergo test/tests shall be recovered from the concerned Deemed to be Universities by 31.03.2018. If they clear the test/tests within the stipulated time, all the advantages or benefits shall be restored to the concerned candidates. We make it clear at the cost of repetition that if the concerned candidates do not clear the test/tests within the time stipulated or choose not to appear at the test/tests, their degrees in Engineering through distance education shall stand recalled and cancelled. It goes without saying that any promotion or advancement in career on the basis of such degree shall also stand withdrawn, however any monetary benefits or advantages in that behalf shall not be recovered from them.

48. As regards the students who were admitted after the ex-post-facto approval granted in favour of such Deemed to be Universities, in our view, there was no sanction whatsoever for their admission. The Policy Statements as well as warnings issued from time to time were absolutely clear. The students were admitted on the strength either provisional recognition or on the strength of interim orders passed by the High Court. We therefore, declare that in respect of students admitted after the academic sessions of 2001-2005, the degrees in Engineering awarded by the concerned Deemed to be Universities through Distance Education Mode shall stand recalled and be treated as cancelled. Any benefit which a candidate has secured as a result of such degrees in Engineering in the nature of promotion or advancement in career shall also stand recalled. However, if any monetary benefit was derived by such candidates that monetary benefit or advantage will not be recovered by the concerned departments or employers. We, further direct that the entire amount paid by such students to the concerned Deemed to be Universities towards tuition fee and all other expenditure for such courses through distance education learning shall be returned by the concerned Deemed to be Universities to the respective students. This direction shall be complied with by the concerned Deemed to be Universities scrupulously and the amounts shall be returned by 31st of May, 2018 and an appropriate affidavit to that extent shall be filed with UGC within a week thereafter.

49. The factual narration mentioned hereinabove makes certain things distinctly clear. The affidavit of Mr. Ved Prakash discloses how permissions were granted to introduce courses in the present

cases without any authority. On one hand, the authorities were proclaiming their policy statements and on the other, despite there being complaints, they went about granting permissions. Their conduct and approach is difficult to explain on any rational basis and leaves much to be desired. We are, prima facie of the view that the conduct of the concerned officials needs to be looked into and investigated whether the exercise of power by them was completely genuine or colourable. We do not express any final opinion in that behalf but direct the CBI to carry out thorough investigation into the matter and to take appropriate steps after culmination thereof.

50. The record further shows that time and again warnings were issued to the concerned Deemed to be Universities. Dr. Rajeev Dhavan, learned Senior Advocate is right in his submission that if a Deemed to be University is not to be found functioning within the limits, its recognition as Deemed to be University could be withdrawn. In our view, the concerned Deemed to be Universities had gone far beyond their limits and to say the least, had violated binding policy statements. Even when they did not have any experience in the concerned field and had no regular faculty or college in Engineering, they kept admitting students through distance education mode. When there was nothing at the core, the expansion was carried at the tertiary levels in brazen violation. The idea was not to achieve excellence in the field but the attempts appear to be guided by pure commercial angle. We therefore, direct the UGC to consider whether the Deemed to be University status enjoyed by the concerned institutions, namely, JRN, AAI, IASE and VMRF calls for any such withdrawal and conduct an inquiry in that behalf. If the concerned Deemed to be Universities fail to return the moneys to the concerned students as directed above, that factor shall also be taken into account while conducting such exercise.

51. We must also put on record what we have observed during the course of the hearing and consideration of the present matters. It has come to our notice that many institutions which are conferred the status of Deemed to be Universities are using the word “University”, which in our view is opposed to the spirit of Section 23 of the UGC Act. The UGC shall take appropriate steps to stop such practice.

52. The present case shows the extent of commercialization of education by some of the Deemed Universities. The commercialization of education seriously affects creditability of standards in education, eroding power and essence of knowledge and seriously affecting excellence and merit. The present case further displays lack of effective oversight and regulatory mechanism for the Deemed to be Universities. The UGC had completely failed to remedy the situation. Serious question has therefore arisen as to the manning of the UGC itself for its effective working. We have already found that facilities at Study Centres were never checked nor any inspections were carried out which has led us to direct suspension of degrees for the students enrolled during academic sessions 2001-2005 and annulment of degrees of students admitted after academic sessions of 2001- 2005. We have also found that there was complete and flagrant violation of norms and policies laid down by the authorities by the Deemed to be Universities. AICTE had been illegally kept out. Thus, interest of justice requires that the following issues also need to be addressed:

- (i) Action for failure of system, inter alia, on account of misconduct of some of the functionaries who failed to uphold the law and granted approvals contrary to the

policy and the rules;

(ii) Manning of the UGC;

(iii) Appropriate oversight and regulatory mechanism especially for distance education degrees especially those relating to technical education by the Deemed to be Universities in future;

(iv) Review of the Deemed to be Universities status granted to the Deemed to be Universities in the past in the light of this Judgment and in the light of their working; and The above issues need immediate steps to be taken by the Union of India. Review of oversight and regulatory mechanism is of utmost priority for the future of technical and professional education at the hands of Deemed Universities. In this regard, we may note the observations of the Constitution Bench of this Court in *Modern Dental College and Research Centre and others v. State of Madhya Pradesh and others*¹¹ highlighting need for review of regulatory mechanism for medical admissions and profession. We also note the observations in *Mahipal Singh Rana, Advocate v. State of Uttar Pradesh*¹² with regard to legal profession.

53. Accordingly we direct:

I 1994 AICTE Regulations, do apply to Deemed to be Universities and the Deemed to be Universities in the present matter were not justified in introducing any new courses in Technical Education without the approval of AICTE.

II Insofar as candidates enrolled during the Academic Sessions 2001-2005, in the present case the ex post facto approvals granted by UGC and their concerned authorities are set aside.

III Consequent to aforesaid direction No.II, all the degrees in Engineering awarded by concerned Deemed to be Universities stand suspended.

(2016) 7 SCC 353 – Paras 86 to 92, 108 to 111 (2016) 6 SCC 335 IV The AICTE shall devise the modalities to conduct an appropriate test/tests as indicated in Para 47 above. The option be given to the concerned students whose degrees stand suspended by 15.01.2018 to appear at the test/tests to be conducted in accordance with the directions in Para 47 above. Students be given not more than two chances to clear test/tests and if they do not successfully clear the test/tests within the stipulated time, their degrees shall stand cancelled and all the advantages shall stand withdrawn as stated in Paras 46 and 47 above. The entire expenditure for conducting the test/tests shall be recovered from the concerned Deemed to be Universities by 31.03.2018.

V Those students who do not wish to exercise the option, shall be refunded entire money deposited by them towards tuition fee and other charges within one month of the exercise of such option. Needless to say their degrees shall stand cancelled and all advantages/benefits shall stand withdrawn as mentioned in Para 47. VI If the students clear the test/tests within the stipulated time, all the advantages/benefits shall be restored to them and their degrees will stand revived fully.

VII As regards students who were admitted after the Academic Sessions 2001-2005, their degrees in Engineering awarded by the concerned Deemed to be Universities through distance education mode stand recalled and be treated as cancelled. All benefits secured by such candidates shall stand withdrawn as indicated in Para 48 above. However, the entire amount paid by such students to the concerned Deemed to be Universities towards tuition fees and other expenditure shall be returned by the concerned Deemed to be Universities by 31.05.2018, as indicated in Para 48. VIII By 31.05.2018 all the concerned Deemed to be Universities shall refund the sums indicated above in VII and an appropriate affidavit to that extent shall be filed with UGC within a week thereafter.

IX We direct the CBI to carry out thorough investigation into the conduct of the concerned officials who dealt with the matters and went about the granting permissions against the policy statement, as indicated in Para 49 above and into the conduct of institutions who abused their position to advance their commercial interest illegally. Appropriate steps can thereafter be taken after culmination of such investigation.

X The UGC shall also consider whether the Deemed to be University status enjoyed by JRN, AAI, IASE and VMRF calls for any withdrawal and conduct an inquiry in that behalf by 30.06.2018 as indicated above. If the moneys, as directed above are not refunded to the concerned students that factor shall be taken into account while conducting such exercise.

XI We restrain all Deemed to be Universities to carry on any courses in distance education mode from the Academic Session 2018- 2019 onwards unless and until it is permissible to conduct such courses in distance education mode and specific permissions are granted by the concerned statutory/regulatory authorities in respect of each of those courses and unless the off-campus Centres/Study Centres are individually inspected and found adequate by the concerned Statutory Authorities. The approvals have to be course specific.

XII The UGC is further directed to take appropriate steps and implement Section 23 of the UGC Act and restrain Deemed to be Universities from using the word 'University' within one month from today.

XIII The Union of India may constitute a three members Committee comprising of eminent persons who have held high positions in the field of education, investigation, administration or law at national level within one month. The Committee may examine the issues indicated above and suggest a road map for strengthening and setting up of oversight and regulatory mechanism in the relevant field of higher education and allied issues within six months. The Committee may also suggest oversight mechanism to regulate the Deemed to be Universities. The Union of India may examine the said report and take such action as may be considered appropriate within one month

thereafter and file an affidavit in this Court of the action taken on or before August 31, 2018. The matter shall be placed for consideration of this aspect on 11.09.2018.

54. Before we part, we express our sincere appreciation for the efforts put in by Mr. C.A. Sundaram, learned Amicus Curiae. We are extremely grateful for the assistance rendered by him. We are also thankful for the assistance given by all the learned counsel.

55. We thus accept the view taken by the High Court of Punjab and Haryana at Chandigarh and set aside the decision of the High Court of Orissa. With the aforementioned observations, appeals are disposed of. No order as to costs. No orders are called for in Contempt Petition Nos.194- 197/2016 which stands disposed of.

.....J. (Adarsh Kumar Goel)J. (Uday Umesh Lalit) New Delhi,
November 3, 2017