

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment reserved on : 10.07.2013
Judgment pronounced on : 23.07.2013

+

W.P.(C) 5789/2012 & CM Nos. 11883/12, 19116/12, 19217/12

HINDUSTAN AVIATION ACADEMY Petitioner/

Through Mr. Roopansh Purohit, Adv.

Versus

THE INDIRA GANDHI NATIONAL OPEN UNIVERSITY
.... Respondent

+

Through Mr. Aly Mirza, Adv.
W.P.(C) 6016/2012 & CM Nos.12378/2012, 19118 and 19218/12

INDIAN INSTITUTE FOR AERONAUTICAL ENGINEERING AND
INFORMATION TECHNOLOGY AND ORS..... Petitioners

Through Mr. Roopansh Purohit, Adv.

Versus

THE INDIRA GANDHI NATIONAL OPEN UNIVERSITY
.... Respondent

Through Mr. Aly Mirza, Adv.

+

W.P.(C) 6021/2012 & CM Nos.12388/12 & 19117-19/12
DEHRADUN INSTITUTE FOR AEROSPACE ENGINEERING.
.... Petitioners

Through Mr. Roopansh Purohit, Adv.

Versus

THE INDIRA GANDHI NATIONAL OPEN UNIVERSITY
.... Respondent

Through Mr. Aly Mirza, Adv.

- + **W.P.(C) 6399/2012 & CM Nos.17043/2012 & 19224/2012**
 AGRAGMI VSM INSTITUTE OF AEROSPACE ENGINEERING
 TECHNOLOGY Petitioners
- Through Mr. Roopansh Purohit, Adv.
- Versus
- THE INDIRA GANDHI NATIONAL OPEN UNIVERSITY
 Respondent
- Through Mr. Aly Mirza, Adv.
- + **W.P.(C) 6495/2012 & CM Nos.17218/12 & 19221/12**
 SIDDARTHA INSTITUTE OF AERONAUTICAL ENGINEERING AND
 INFORMATION TECHNOLOGY
 Petitioners
- Through Mr. Roopansh Purohit, Adv.
- Versus
- THE INDIRA GANDHI NATIONAL OPEN UNIVERSITY
 Respondent
- Through Mr. Aly Mirza, Adv.
- + **W.P.(C) 7044/2012 & CM Nos. 18255/2012 & 19222/12**
 ARIGNAR ANNA ENGINEERING COLLEGE..... Petitioners
- Through Mr. Roopansh Purohit, Adv.
- Versus
- THE INDIRA GANDHI NATIONAL OPEN UNIVERSITY & ORS.
 Respondent
- Through Mr. Aly Mirza, Adv.
- + **W.P.(C) 7045/2012 & CM Nos.18257/12 & 19223/12**
 TIRUPATI FOUNDATION TRUST Petitioners
- Through Mr. Roopansh Purohit, Adv.
- Versus

THE INDIRA GANDHI NATIONAL OPEN UNIVERSITY & ORS.
.... Respondent

Through Mr. Aly Mirza, Adv.

+ **W.P.(C) 7046/2012 & CM Nos.18259/12 & 19220/12**

RAM RAJA SARKAR LOK KALYAN TRUST..... Petitioners

Through Mr. Roopansh Purohit, Adv.

Versus

THE INDIRA GANDHI NATIONAL OPEN UNIVERSITY
.... Respondent

Through Mr. Aly Mirza, Adv.

+ **W.P.(C) 7521/2012 & CM No.19135/2012**

KURMANCHAL INSTITUTE OF DEGREE AND DIPLOMA
ENGINEERING Petitioners

Through Mr. Roopansh Purohit, Adv.

Versus

THE INDIRA GANDHI NATIONAL OPEN UNIVERSITY & ORS.
.... Respondent

Through Mr. Aly Mirza, Adv.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. The respondent-IGNOU entered into different Memorandums of Understanding, all dated 30.7.2010, with the petitioners in W.P(C) No.5789/2012, 6393/2012, 6495/2012 and 6016/2012 to set up study centres, thereby agreeing to work together for development programmes

in the area of Aerospace Engineering. The salient clauses of the said MoU read as under:

1. Objectives.

The main objectives of the cooperation between contracting parties are:

- * To contribute to the development of technical professionals in the area of Aerospace Engineering through joint design and implementation of B. Tech. (Aerospace Engineering) programme by IGNOU and The Host Institute (hereinafter referred to as “the programme”).
- * To form a joint core group to oversee the planning and development of the programme.
- * To undertake and execute all such activities required for the fulfillment of the objectives described above.

2. Monitoring & Implementation Committee (MIC)

There shall be a Monitoring & Implementation Committee (MIC) (hereinafter referred to as “MIC”) which

- (a) Will have the Vice Chancellor of IGNOU (or his nominee) as the Chairman of the Committee.
- (b) Besides the Chairman, it will have 2(two) more representatives from the (Institutes nominated by each Party on rotation basis and two persons of IGNOU nominated by Hon’ble VC of

- IGNOU) excluding Project Coordinator as Convener of the committee (2 nominees from Institutes; accepted & approved by VC IGNOU, 2 from IGNOU + Project Coordinator)
- (c) We determine the curriculum for the programme upon the recommendations of the parties to the MoU.
 - (d) Will define the eligibility criteria for the students for joining the programme.
 - (e) Will lay down guidelines for preparation of course materials for different expert groups;
 - (f) Will decide modus operandi for popularization of the programme;
 - (g) Will lay down criteria for counselors and instructors for extending constant guidance to the students.
 - (h) Will decide suitable fee structure for the programme and its sharing mechanism between the parties.
 - (i) Will decide the number of seats in different training centres on the basis of existing training facilities and infrastructure in the institute.
 - (j) Will undertake further development of the programme etc and also shall draw out the budget for expenditure and decide the responsibilities of two signatories of the MoU.
 - (k) The representative member shall serve for a period of two years. However, they could be changed/ re-nominated at the discretion of the nominating organization.
 - (l) Will meet at the invitation of the Chairman or at the request of one of the parties to the MoU. A quorum of at least four members shall be required for the conduct of the business.

2. Under the said MoU, the IGNOU undertook to discharge the following responsibilities:

- (i) Defining the criteria for admission of candidates and finalization of the registration process.
- (ii) Activation of Programme Study Centres (PSC) will be done by Director, RSD as per IGNOU norms under the guidance of MIC.
- (iii) The course design, curriculum, delivery and review mechanism details will be developed by IGNOU, in consultation with Institutes. Wherever either party deems necessary, consultation could be held with the stakeholders.
- (iv) Will recommend the training institutes to be activated for the programmes after being identified and duly inspected jointly by the officials appointed by the IGNOU.
- (v) Composing and printing of Self Instructional Material (SIM) for the course as and when advised by MIC.
- (vi) IGNOU will monitor the implementation of the programme.
- (vii) IGNOU will be responsible for admission process in terms of releasing advertisement for admission and preparation of Student Handbook & Prospectus (SHP) duly vetted by IGNOU, distribution of SHP to different centers, organization of entrance test (if required) etc as per IGNOU guidelines.
- (viii) IGNOU will hold the examinations and award the degree to the successful participants as per its prevailing norms.

The Institute agreed, *inter alia*, to discharge the following responsibilities:

- (i) The programme is to be delivered in face-to-face mode at the host institutes. The Host Institute shall be fully responsible for ensuring timely delivery of the programme in terms of theory classes, laboratory/workshop sessions, industrial training etc. through the training institutes.
- (ii) Recommend and forward to IGNOU, a panel of subject experts for appointment as Programme-in-charge and Academic Counselors for the programme to be offered under the MoU.
- (iii) Provide reasonable place for office of the Programme-in-charge. A signboard of the IGNOU programme Study Centre will also be prominently displayed.
- (iv) Make available appropriate provision of classrooms for holding counseling, audio-video session and examinations etc as per the norms & standards.
- (v) Make available facility of a library, laboratory/ practical and display room with Computer, TV with DTH & Telephone line facilities etc. (so as to receive IGNOU's teleconferencing signals on GD-2).
- (vi) Ensure the Programme-in-charge maintains record & submits a necessary monthly progress report for conduction of classes and overall delivery of programme at the centre to the Regional Director, IGNOU with copy to the Project /Programme Coordinator, IGNOU.

3. The registration and programme fee was to be shared in the ratio of 70:30 between the institute and IGNOU respectively. The copyright for the course material was to be held exclusively by IGNOU and after

termination of MoU such material was to be returned back to the university. The MoU was to remain in force for five years unless otherwise terminated. The termination clause contained in the MoU reads as under:

“8. Termination

- (i) Either party may terminate it by providing the other party with three calendar months advance notice. Such termination shall take effect at the end of the three month period or the end of the programme in progress at that time, whichever shall occur later.
- (ii) However, either party shall be entitled to terminate this MoU immediately and without further notice in the event of the other party committing a material breach of the terms and conditions of this MoU, and failing to remedy such breach within 60(sixty) days after receipt of written notice calling upon such party to remedy the breach complained of.
- (iii) The termination of this MoU, for whatever reason, will not affect the rights of a party, which might have accrued at the date of termination and will further not affect any rights, which specifically or by their nature survive the termination of this MoU.
- (iv) However, in case of termination of this MoU for any reason, the responsibility of each party shall continue up to completion of running batch.

4. In the case of Dehradun Institute of Airspace Engineering, the petitioner in W.P(C) No.602/2012, there was no MoU between the parties

but vide letter dated 5.4.2011, the said institute was informed by the university that based upon the recommendations of the Committee, constituted for inspecting infrastructure and facilities of the said institute by the Vice Chancellor and with his approval the IGNOU was pleased to accord approval to NIAL Shiksha Sansthan for establishment of Dehradun Institute of Aerospace Engineering, for offering four year, face to face regular degree programme in B.Tech (Aerospace Engineering) from July, 2011. It was further stated in the said communication that degrees/ diplomas/ certificates issued by IGNOU were recognized by all the members of the Association of Indian University (AIU) and were at par with other universities vide UGC No.F.1-8/92(CCP) dated Feb. 1992 and AIU circular no.EV/B (499)94/176915-177115 dated Jan 1994 and AICTE circular no.AICTE/Academic/Nov-Dec/2005, dated 13th May, 2005.

5. The respondent-University also entered into an MoU dated 25.3.2009 with Shri Angla Parmeshvari Educational Trust (SAPET) to launch programmes in India and abroad with IGNOU. The salient clauses of the said MoU with SAPET read as under:

“C. Joint Coordination Committee

There shall be a Joint Coordination Committee (JCC) (hereinafter referred to as ‘JCC’ which:

- a) Will have the Vice Chancellor of IGNOU Pro-Vice Chancellor, IGNOU Chairman and Co-Chairman respectively. The Chairperson (or his/her nominee) of SAPET will be Vice-Chairman of the Committee.

- b) Besides the Chairman, Co-Chairman and Vice-Chairman, Director, SOET and Project Coordinator will be the permanent member and convener of the Committee respectively.
- c) Will have 4(four) more representatives (Two nominated by each Party) excluding Director, SOET and Project Coordinator.
- d) Will lay down criteria for counselors and instructors for extending constant guidance to the students.
- e) Will undertake further development of the programme etc and also decide the responsibility of the signatories of the MoU.
- f) The representatives shall serve for a period of three years. However, they could be charged/re-nominated at the discretion of the nominating organization.

6. The following were the obligations of IGNOU under the said MoU:

- a) Advertisement of the programmes along with other IGNOU programmes.
- b) Defining the criteria for admission of candidates and finalization of the registration process in association with SAPET.
- c) The nomenclature of all the degree programmes will be as per the UGC norms and guidelines. The above mentioned awards will be given by IGNOU after successful completion of the examination by each student.
- d) The programme course design, curriculum, delivery and review mechanism details will be developed by IGNOU in consultation with SAPET
- e) IGNOU will be responsible for transforming the course materials into self instructional format.
- f) IGNOU will monitor the implementation of the programme. The expenses towards this will be borne by IGNOU.

g) IGNOU will conduct the examinations, evaluate and award certificates, Diplomas and Degrees to the successful participants as per its prevailing norms.

h) The Project Office will be set up at IGNOU. The space will be provided by the IGNOU on free of cost.

i) IGNOU shall carry out a visit to the SAPET premises or its learning centres to assess the level of services and facilities etc & performance evaluation (bench marking) of services offered during the process of approval or thereafter it required.

The following were the obligations of SAPET under the said MoU:

a) SAPET will advertise to admit candidates for the programmes after satisfying the eligibility.

b) The course content, curriculum, learning material, laboratory manual and content for faculty development workshops will be developed by SAPET and presented to IGNOU for its approval. IGNOU will be at liberty to modify the same.

g) The programme is to be delivered mostly in fact-to-fact mode as well as in distance mode at various Programme Study Centres. SAPET shall be fully responsible for ensuring timely delivery of the programme in terms of theory classes and laboratory/workshop sessions at their centres. The expenses towards the delivery of the programme shall be borne by SAPET.

i) The examination, evaluation, assessment and certification models of IGNOU will be followed for all the programmes. Continuous assessment project work would be done as per IGNOU norms.

j) SAPET shall admit students as per IGNOU approved eligibility conditions and conduct programmes at approved learning centres under the agreement only.

k) SAPET shall submit student details as per IGNOU norms. IGNOU enrolment number is to be used for each student for all the registration, examination and any other purposes, however, SAPET may also issue their own admission number to each student for their own internal usage internal assessment and record keeping procedure.

F. Terms and Conditions

- d) SAPET will adhere to the required standards of education required for the conduct of the technical education programmes.
- e) The industry interface for project, placements and curriculum development of Program will be responsibilities of SAPET.”

It was agreed that the study centres will be established under the agreement as per IGNOU requirements and approved by the respective IGNOU Authorities or Joint Coordination Committee (JCC). Thirty percent of the fee was to come to IGNOU whereas the 70% was to go to SAPET. It was also agreed that SAPET will remit to IGNOU its fees along with details of students admitted with all necessary information within 20 days from the date of receipt of fees where the said students will be deemed to be a student of the course conducted by IGNOU. It was also agreed that any publicity by SAPET in which the name of IGNOU is to be used shall be done only with the exclusive permission of IGNOU and if SAPET fails to do so that shall be considered a breach of MoU. IGNOU logo, however, could be used in the promotion material and advertisements in all forms to promote the joint programme of SAPET and IGNOU.

7. The termination clause in the said MoU reads as under:

“M. Termination

A) Either party may terminate this MoU by providing the other party will three calendar months advance notice. Such termination shall take effect at the end of the three month period or the end of the programme in progress for all students at that time, whichever shall occur later.

b) However, either party shall be entitled to terminate this MoU immediately and without further notice in the event of the other

party committing a material breach of the terms and conditions of this MoU, and failing to remedy such breach within 60 (Sixty) days after receipt of written notice calling upon such party to remedy the breach complained of.

c) The termination of this MoU, for whatever reason, will not affect the rights of a party, which might have accrued at the date of termination and will further not affect any rights, which specifically or by their nature survive the termination of this MoU.

d) However, in case of termination of this MoU for any reason, the responsibility of each party shall continue up to completion of running batches.”

8. Pursuant to the aforesaid MoU between Sapet and IGNOU, the petitioners in W.P(C) No.7044/2012, 7045/2012, 7046/2012 and 7052/2012 separately applied to start Engineering and Management Programme and deposited the requisite charges with SAPET. According to the writ petitioners, their institute was inspected by the experts including the faculty from IGNOU. This is also their case that their institute was approved by IGNOU-VIEP, though no formal approval letter was issued to them. The case of these petitioners is that pursuant to the Memorandum and arrangement which they had with SAPET, they have been admitting students to the regular B.Tech Course of IGNOU, till academic year 2012-2013.

9. The School Council Meeting (SCM) of School of Engineering and Technology (SOET) of IGNOU, in its meeting held on 8.5.2012, noticed that the face to face programme through SAPET, AERO and other institutes did not meet the legal requirements, but were still being continued considered. Considering the letter dated 24.9.2009, received from AICTE, prescribing its prior approval for commencing programme

in engineering and technology through various institutes, and also taking into account the MoU between IGNOU and SAPET & IGNOU and AERO it was decided that no admission would be permissible under these programmes as severe damage would be caused to the prospective students and as well as due to the recognition issue of their degrees/diplomas under the arrangement between IGNOU and SAPET and IGNOU and AERO and, therefore, the admission process should be kept in abeyance till approval of statutory bodies. It was decided that fresh admissions in B.Tech and Diploma programme under IGNOU and VIEP and IGNOU and AERO Engineering shall be kept in abeyance till further orders and no new student shall be admitted in July, 2013. It was further resolved that existing students shall continue their further studies in their respective institute under the respective project partners but the students admitted at diploma level and continuing studies in non-AICTE approved institutes shall be moved to AICTE approved institution in the third year of diploma programme.

10. In its meeting held on 31.5.2012, the Board of Management of IGNOU took note of the fact that a large number of MoUs had been signed by the University in complete disregard of IGNOU Act, statute and ordinance and such MoUs had resulted in setting up of institutions which were offering programmes without having statutory approvals from the university. It was observed by the Board that the mandate of the university was to offer programme/course through ODL Mode only and therefore it needs to focus on distance education only. The Board therefore resolved that the MoUs signed by IGNOU be thoroughly

examined and reviewed by a Committee and till review is made, the admission to various programmes/Courses under convergence scheme be kept in abeyance. It was also decided that the above information be widely circulated and published so that the potential students remain informed accordingly.

11. Pursuant to the decisions taken by the Board of Management, its meeting held on 31st May, 2012, the University issued a communication dated 18.6.2012, addressed to its various officers, conveying the decisions of the Board. However, the said communication was not addressed either to SAPET or to any of the petitioners before this Court.

12. Vide Notification dated 9th August, 2012, the Registrar of the University notified that the Board of Management, in its meeting held on 31st May, 2012 had decided to review the convergence and community college scheme and all the academic programmes offered under various MoUs entered into by IGNOU with other institutions/organizations etc. and until such time the review was over, admission in all academic programmes for July, 2012 **cycle** under those cycles shall be kept in abeyance. It was further notified that no institution or agency shall be permitted to use IGNOU logo or name for any unauthorized activity related with IGNOU without its prior permission. The case of petitioners before this Court is that the said Notification dated 9th August, 2012 was received by them only on 22nd August, 2012. Vide communication dated 17th August, 2012, the University informed the petitioners that it had taken a decision that there will be no fresh admission for MoU based face to face programmes in the current session. Vide communication dated

22nd August, 2012, the University reiterated that there will be no fresh admission for MoU based face to face programme in the current session.

13. Since the University has refused to allot registration number to the students alleged to have been admitted by the petitioners during the academic year 2012-13, they are before this Court seeking quashing of the communications dated 18th June, 2012, 9th August, 2012, 17th August, 2012 and 22nd August, 2012 issued by the University. They are also seeking direction to the University to receive admission forms/registration forms from them and allot registration number to the students admitted by them.

14. In its counter affidavit, the University has admitted the MoU executed by it with the petitioners in WP(C) Nos.5789/2012, 6021/2012, 6495/2012 and 6399/2012 as also the MoU with SAPET. It has also admitted the letter issued by it to Indian Institute for Aeronautical Engineering, the petitioner in WP(C) 6016/2012. Referring to a communication dated 24th September, 2009 received by it from AICTE stating therein that the partners institutions of the University were required to take permission of AICTE, for starting the programmes which come under the purview of AICTE, it is stated in the reply that the petitioners had failed to obtain the said permission and were thereby violating the permission of AICTE Act. It is further stated in the reply that with a view to check various irregularities and non compliances, the Board of Management of the University set up a High Powered Review Committee and considering the report of the said High Powered Review Committee, the Board in its meeting held on 31st May, 2012 decided that

no admission would be granted for the Academic Year 2012-13. This is also the case of the respondent University that the petitioners were all along aware that the MoUs were being reviewed by the University and they were also aware of the deliberations which took place in the Board meeting dated 8th May, 2012 as well as the decision taken in the meeting held on 31st May, 2012. According to the University, the petitioners were not authorized to advertise the programmes or grant admissions, since the students hand book and prospectus etc. were to be prepared by it and it was also to advertise the programmes.

15. The respondent-Indira Gandhi National Open University was set up under the Indira Gandhi National Open University Act, 1985, an Act to establish and incorporate an open University at the national level for the introduction and promotion of open university and distance education system in the educational pattern of the country and for the coordination and determination of standards in such system.

The Statement of Objects and Reasons of the said Act reads as under:

“Despite the tremendous expansion of the formal system of higher education since independence, the pressure on the system is continuously increasing. Indeed, the system has not been able to provide an effective means to equal educational opportunities. The rigidity of the system requiring among others, attendance in classrooms have been disincentive to many learners. Moreover, the combinations of subjects are inflexible and are often not relevant to the needs of the learners. This has resulted in a pronounced mismatch between

the contents of most programmes and the needs of the development sectors.

The experience of several developed or developing countries indicate that distance education programmes can provide an alternative system that will be cost effective and relevant, while at the same time ensuring effective equalization of opportunities. Though a diversity of means, including the utilization of modern communication technology, the distance education can provide more flexible and open learning programmes that will suit the needs of various categories of learners, especially the weaker section of society. The introduction and promotion of distance education in the educational system of the country is, therefore, of great significance.

Section 4 of Indira Gandhi National Open University Act, 1985 contains the object of the university and reads as under:

“4.The objects of the University shall be to advance and disseminate learning and knowledge by a diversity of means, including the use of any communication technology, to provide opportunities for higher education to a larger segment of the population and to promote the educational well being of the community generally, to encourage the Open University and distance education systems in the educational pattern of the country and to coordinate and determine the standards in such systems, and the University shall, in organising its activities, have due regard to the objects specified in the First Schedule.

16. It would thus be seen that the University was set up for imparting higher education through an alternative system of education which dispensed with the requirements of attendance in classrooms, since a large number of persons otherwise desirous of taking higher education were unable to get such education on account of their inability to attend the regular classrooms. It was felt that such an alternative system would prove to be cost-effective, besides equalizing the opportunities to receive higher education through the mode of distance education.

17. Cambridge Dictionary defines ‘open university’ “a university that usually accepts students without formal qualification and allows them study from home, receiving and sending work by post, by email and over the internet”. The Shorter Oxford Dictionary defines ‘open university’ as “a university having few, if any, restrictions on admission. A university in the UK which accepts people without qualification and teaches mainly by correspondence and broadcasting”. Thus, the very expression ‘open university’ envisages a university without regular classrooms where there is no requirement of attending classes for the students. Distance Education System implies a system whereby course material is sent by post or made available through internet etc and the students are permitted to study at home without requirement of attending classes and are permitted to submit assignments etc to the university from their homes. The university only conducts examination for the purpose of evaluating their learning and awarding degrees to them.

18. Indira Gandhi National Open University Act, 1985, contains no provision for setting up colleges having classrooms on the lines of regular

colleges, where attendance to the classes is a mandatory requirement for the students and if they do not attend specified percent of the total classes, in a term/year, they are not allowed to sit in the examination conducted by the university/ college. In fact, imparting education through regular classrooms is not at all envisaged in the Act. Therefore, it is not to the university to impart education through the system of regular classrooms where the students are mandatorily required to attend such classes. Though, the university is empowered to set up ‘study centres’ as defined in Section 2(o) of the Act, such centres cannot impart education through regular classrooms, their purpose being only to advise or counsel the students or render any assistance which they require for the purpose of pursuing their studies through Distance Education System. Such study centres cannot be converted into regular colleges where the students are required to attend the classes during the hours prescribed by the university/ college for the purpose. The very definition of ‘study centre’ as given in the Act, is a clear indicator with respect to the role such centres are expected to play in relation to the education to be imparted by the university.

19. Section 2(e) of the said Act defines “Distance education systems” to mean the system of imparting education through any means of communication such as broadcasting, telecasting, correspondence courses, seminars, contact programmes or the combination of any two or more of such means. It would therefore be difficult to dispute that the university had no legal authority to enter into any agreement/MoU/ arrangement, to set up study centres/ institutions/ colleges, for imparting education by way

of a face to face programme, where the students are required to attend regular classes and are taught in person, nor can the university of its own impart education by way of such a classroom programme. The university is mandated, by its Charter i.e. the Act by which it was set up, to impart education only through open school/distance mode of learning. In fact, this exactly was the view later taken by the Board of Management of the University. Therefore, the MoUs/ Agreements/ Arrangements entered into by the University with the petitioners or with SAPET, were illegal, being *ultra vires* to provisions of IGNOU Act.

20. The following issues primarily arose for consideration in these cases:

- (a) whether the IGNOU was competent to establish, either of its own or in collaboration with others, the institutes/ colleges to impart higher education through face to face programme and /or recognize such colleges/ institutions?
- (b) whether approval of AICTE was required for starting face to face programmes, which the petitioners institutes were offering to the students admitted by them under MoUs/agreements/ arrangements with IGNOU?
- (c) whether suspension of admission to the petitioner institutes for the academic year 2012-2013, was illegal?
- (d) to what reliefs, if any, the petitioners are entitled, in the facts and circumstances of these cases.

Issues no.1 and 2:

21. In *Association of Management of Private Colleges versus AICTE and other* [Civil Appeal No.1145/2004, decided on 25.4.2013), the appellant colleges which were affiliated to Bharathidasan University & another university were running MCA Courses for which they had not obtained approval of AICTE. The issue which arose before the Court was whether such colleges affiliated to a university were obliged to take permission/ approval from AICTE to run classes for technical courses in which the affiliated university is not required to obtain any permission/ approval under AICTE Act. After considering its earlier decision on the issue, the Apex Court held that it was UGC which had been given the power to regulate universities and make regulations in relation to granting sanction/ approval and maintaining educational standards and overseeing fee structure including admission of students in various courses and programmes that would be conducted by the university and its institutions, the constituent colleges, units and affiliated colleges and, therefore, its decision in *B. Dasan University case* would also be applicable to the appellants before the Court. The following view taken by the Court in this regard is pertinent:

“...A cumulative reading of the aforesaid paragraphs of **Bharathidasan University’s case** which are extracted above makes it very clear that this Court has exempted universities, its colleges, constituent institutions and units from seeking prior approval from the AICTE. Also, from the reading of paragraphs 19 and 20 of **Parashvanath Charitable Trust case** it is made clear after careful scanning of the provisions of the AICTE Act and the University Grants Commission Act, 1956 that the role of AICTE vis-à-vis universities

is only advisory, recommendatory and one of providing guidance and has no authority empowering it to issue or enforce any sanctions by itself.

XXXX

...Therefore, affiliated colleges to the university/ universities are part of them and the exclusion of university in the definition of technical institution as defined in Section 2(h) of the AICTE Act must be extended to the affiliated colleges to the university also, otherwise, the object and purpose of the UGC Act enacted by the Parliament will be defeated. The enactment of UGC Act is also traceable to Entry 66 of List-I. The aforesaid provisions of the UGC Act have been examined by this Court with reference to the provisions of AICTE Act in **Bharathidasan University's case**. Therefore, it has clearly laid down the principle that the role of the AICTE Act is only advisory in nature and is confined to submitting report or giving suggestions to the UGC for the purpose of implementing its suggestions to maintain good standards in technical education in terms of definition under section 2(h) of the AICTE Act and to see that there shall be uniform education standard throughout the country to be maintained which is the laudable object of the AICTE Act for which it is enacted by the Parliament. The provisions of the AICTE Act shall be implemented through the UGC as the universities and its affiliated colleges are all governed by the provisions of the said Act under Section 12A of the UGC Act read with Rules Regulations that will be framed by the UGC in exercise of its power under Sections 25 and 26 of the said Act.”

22. However, since the respondent- IGNOU had no legal authority to set up or recognize institutions/ colleges on the lines of regular colleges where education is imparted by way of face to face programmes, requiring the students to mandatorily attend classes, the petitioners institutes cannot be said to be institutions, constituent colleges, units or affiliated colleges of IGNOU, nor can they be said the 'study centres' within the meaning of section 2(o) of the IGNOU Act. In order to qualify as a 'study centre' of IGNOU, such centre needs to be only advising or counseling the students or rendering any other assistance which they may require for the purpose of taking education through open and distance education system. Any institute, college or centre where education is imparted by way of face to face programmes cannot qualify as a 'study centre' within the meaning of the IGNOU Act. Consequently, since the petitioners institutes cannot be said to be the institutions, constituent colleges, units or affiliated colleges of a university, they are not excluded from the definition of 'technical' institutions given in section 2(h) of the AICTE Act, 1983.

ISSUE NO.3.

23. Admittedly the MoU between the petitioners in WP(C) Nos.5789/12, 6393/12, 6494/12 and 6016/12 executed on 30th July, 2010 was to remain in force for a period of five years. Under Clause 8 of the MoU, it could be terminated by providing the other party with three calendar months' advance notice. It was only in the event of these petitioners committing a material breach of the terms and conditions of the MoU and failing to remedy such breach within 60 days of receipt of a notice in this regard that the MoU could be terminated immediately. In

WP(C) No.6021/2012, there was no MoU between the parties but approval was granted vide letter dated 5th April, 2011 without specifying the period for which the approval was valid. In other petitions, the MoU with SAPET executed on 25th March, 2009 was to remain valid for a period of 5 years and this MoU also had a termination clause identical to the termination clause contained in the MoUs with the petitioners in WP(C) No.5789/12, 6393/12, 6495/12 and 6016/12.

24. This is not the case of the University that the other party to the MoU had committed material breach of some terms and conditions of the MoU and had failed to remedy such breach despite receipt of notice from it to remedy the said breach. Therefore, the MoU could be terminated only by giving three months' advance notice to the other party. Under the MoU, the petitioner institutes were entitled to admit student to the courses which the MoU permitted them to offer. Therefore, suspension of admission by way of communications dated 9th August, 2012, 17th August, 2012 and 22nd August, 2012 could not have been directed without first terminating the MoU, pursuant to which the students are stated to have been admitted. In any case, the respondent IGNOU being State within the meaning of Article 12 of the Constitution, it could not have suspended admission to the programmes being offered by the petitioner Institutes without following the principles of natural justice which required issue of a show cause notice followed by an opportunity of hearing to the petitioner Institutes. Admittedly, no show cause notice or opportunity of hearing was given to the petitioners before suspending admission to the programmes being offered by them pursuant to the

MoUs with the University. Therefore, the suspension of admission was illegal and is liable to be struck down on this ground alone.

Issue No.4

25. The case of the respondent University is that since under the MoUs, it was for them to undertake the admission process such as releasing of advertisements for admission, preparation of students handbook and prospectus, distribution of the handbook and prospectus to the Centre and organization of entrance test, if required, and they did not release any advertisement for admission nor did they release or approve the student handbook and prospectus for the Academic Session 2012-13, the petitioners were not competent to admit students for the said academic year. I find that as far as the Centres/Institutes set up pursuant to the MoU between IGNOU and SAPET, it was for SAPET to advertise to admit students for the programme after satisfying their eligibility though IGNOU was also obliged to advertise the said programmes along with its other programmes. However, it was an obligation of the University to define the criteria for admission of candidates and finalized the registration process, in association with SAPET. In my view, in the facts and circumstances of these cases, nothing really turns on the question as to who was to issue advertisement for the programmes which were being offered by the petitioner and draw up the admission schedule. According to the petitioners in WP(C) No.5889/12, 6393/12, 6016/12, no advertisement was issued by IGNOU even for the Academic Year 2011-12 and therefore following the past practice, they had admitted students in the Academic Year 2012-13, following the same schedule which was

adopted for the Academic Year 2011-12. As far as the Institutes which were offering programme pursuant to the MoU between IGNOU and SAPET are concerned, a perusal of the record would show that for the Academic Session 2011-12, IGNOU did advertise admission to the aforesaid programmes, though under the MoU, this was also the obligation of SAPET to issue advertisement for the programmes subject-matter of the MoU.

26. In WP(C) No.5789/2012, the petitioner vide its letter dated 31st July, 2012 informed the University that it had already committed admission to the first semester by 14th July, 2012. 91 forms of students were also forwarded to the University though the number of admitted students was stated to be 100. The draft comprising tuition fee and registration fee were also sent to the University. Vide letter dated 24th August, 2012, this petitioner again informed the University of the aforesaid admissions. The forms sent to the University were returned by it vide letter dated 7th August, 2012. But, while returning the forms to the petitioner Institutes, the University did not claim that the admissions were unauthorized or that the advertisement for the Academic Year 2012-13 was to be issued and the handbook or the prospectus and handbook of information was to be approved by it. The forms were sent back on the ground that nothing was clear regarding 2012-13 admission.

27. In WP(C) No.6399/2012, the petitioner vide letter dated 5th July, 2012 informed the University that the admission process for the session 2012-2013 had been concluded. It was only by way of communication dated 9th August, 2012 which the petitioner claims to have received on

22nd August, 2012 that the University asked the petitioner in this case to put the admission process on hold. However, at no stage did the University claim that the admission made by it for the Academic Year 2012-13 were unauthorized or that the advertisement and the prospectus for the said academic year were to be approved/or released by the University.

28. In WP(C) No.6495/12, the case of the petitioner is that the admission process was started by it in the second week of April 2012. No communication addressed to the University in this regard however has been filed by this petitioner.

29. In WP(C) No.6016/2012, the petitioner vide communication dated 26th June, 2012 informed the University that the host institutions had already started the admission process for the year 2012-13 and the list of students already admitted would be forwarded to the University for registration. However, this communication clearly does show that pursuant to a discussion held in the office of IGNOU on 25th June, 2012, the petitioner was aware of the decision of the University to keep the admission for the year 2012-13 on hold. The letter also contained the schedule which was being followed since inception of programmes and which envisaged 30th June, 2012 as the last date for receipt of application forms, 5th July, 2012 for display of merit list, 16th July, 2012 as the last date for payment of court fee and 18th July, 2012 as the date for commencement of the course. However, there is no material on record to show that the petitioners in WP(C) No.6393/12, 6495/12, 6016/12 and

6021/12 had sent the list of admitted students along with admission forms and/or the registration fee to the University.

30. In W.P(C) No.7044/2012, the petitioner vide letter dated 9.5.2012 sent to the Coordinator, IGNOU-VIEP Project, referring to non-receipt of admission schedule for the year 2012-2013, intimated that in the absence of any objection from them, they would be following the same schedule which was applied in the year 2011-2012. Vide communication dated 11.5.2012, Mr. A. Ravichandaran of IGNOU-VIEP informed the Director SOET- IGNOU that they had decided to release advertisements for admission during the academic year 2012-13 fixing 16.6.2012 as the last date for submissions of application, 15.7.2012 for payment of fees and 6.8.2012 as the date for commencement of classes and in the absence of any change, they would presume that no change was to be offered. Vide letter dated 25.6.2012, the Admn. Officer VIEP informed the Director IGNOU-VIEP and SOET-IGNOU about the revised schedule fixed for admission during the academic year 2012-2013 and seeking approval of the advertisement enclosed to the said letter. It was further stated that if they did not hear anything, they would presume that IGNOU had no objection to their going ahead with the admission process, for the face to face academic programme under IGNOU-VIEP. Vide email date 4.8.2012 the petitioner in W.P(C) 7044/2012 sent the list of students granted provisional admission for the academic year 2012-2013 to the Coordinator, IGNOU-VEIP. These communications clearly shows that for more than 2 months, IGNOU did not object to the admission schedule intimated to it by way of above communications.

In W.P(C) No.7521/2012, the petitioner claims to have sent the list of students granting provisional admission for the academic year 2012-2013 to the Coordinator, IGNOU-VIEP, but no document in this regard has been filed by the said petitioner.

In W.P(C) No. 7046/2012, the petitioner claims that the admission process was complete by it, by the end of June, 2012 and 137 students were admitted, but no document evidencing the admissions has been filed.

In W.P(C) No.7045/2012, the petitioner claims to have completed the admission process by the end of June, 2012 and admitted 70 students at Vadodara, 48 students at Anand and 89 students in Ahmadabad centres. Again no document evidencing such admission has been filed by this petitioner.

31. It would thus be seen that despite the decision taken in the school counseling meeting of the School of Engineering and technology, held on 8.5.2012, not to permit any admission in the programmes being offered in terms of MoUs, which the university had signed with the petitioners/ SAPET and the view taken by the Board of Management in its meeting held on 31.5.2012, no communication was immediately thereafter sent to the petitioners asking them not to admit any student during the academic year 2012-2013. Of course, the contention of the petitioners is that the decision taken by the Board of Management in its meeting held on 31.5.2012 applied to convergence programmes and not to the programmes which they were offering pursuant to MoU with the University. Be that as it may, the fact remains that prior to 9.8.2012,

there was no communication to the institutes directing them not to admit any student for the academic year 2012-2013. The communication dated 18.6.2012 was neither addressed to the petitioners nor is there any evidence of the said communication having been dispatched to them. Even on receipt of various communications seeking schedule of admission for the academic year 2012-2013, and intimating that in the absence of any objections from the university, admission schedule, which was adopted for the academic year 2011-2012 will be followed for the academic year 2012-2013, there was no response from the university requiring the institutes not to admit any student for the academic year 2012-2013. The petitioner in W.P(C) No.5789/2012, even sent the admission forms of 91 students admitted for the year 2012-2013 to the university on 31.7.2012, but even while returning those forms on 7.8.2012, the university did not say that admission for the academic year 2012-2013 had been suspended by them. It was for the first time vide communication dated 9.8.2012 that the institutes were asked to put the admission process on hold, but, according to the petitioners, by that time they had already completed the admission process for the academic year 2012-2013. Had the university acted promptly after the decision taken in the meeting held on 8.5.2012, it would not have been possible for the petitioners institutes to grant admission to the students for the academic year 2012-2013. Therefore, the university cannot escape from its responsibility in the matter simply by saying that it had not approved the admission schedule and/or the prospectus for the academic year 2012-2013.

32. More importantly, if the university had decided on 8.5.2012 and/or 31.5.2012 to suspend admission for the academic year 2012-2013, it was duty bound to issue advertisement in leading newspapers informing public at large that it had suspended admissions for the year 2012-2013 and any person taking admission with the petitioners institutes would be doing so at his own peril. This was necessary considering the fact that in the previous years, the university itself had been advertising these programmes besides issuing registration numbers to the students admitted in the preceding years and conducting examinations for them. In the absence of any public notice from the university, the students cannot be blamed for taking admission with the petitioners institutes pursuant to MoUs, which the university has executed with SAPET and with petitioners in W.P(C) Nos. 5789/2012, 6016/2012, 6495/2012 and 6399/2012. Same would be the position in respect of the students who took admission with the petitioners institutes in W.P(C) No.6021/2012 which was granted approval by the university to run B. Tech (Aerospace Engineering) Course by way of a letter dated 5.7.2011.

33. In his written submissions, the learned counsel for the respondent university has referred to the decision of the Supreme Court in Minor Sunil Oraon [AIR 2007 SC 458] and MAHATMA GANDHI UNIVERSITY AND ANOTHER Versus GIS JOSE AND OTHERS [(2008) 17 SCC 611]. In the case of **Sunil Oraon (supra)**, the school in question, in which the students took admission, applied for affiliation but did not fulfill the essential conditions prescribed for the purpose nor did it abide by the examination-byelaws of CBSE. Even after giving undertaking in this regard, the school continued to violate the affiliation

byelaws of CBSE. It was in these circumstances that the Apex Court upheld the decision of the CBSE not to allow the students to appear in the examination conducted by it. In **Mahatma Gandhi University (supra)**, the students having less than the cutoff marks in the qualifying examination were given marks in violation of admission rules and were allowed by the Principal of the school affiliated to the appellant university, to complete the course and the examination despite refusal by the Academic Counsel of the University. It was in these circumstances that the Apex Court upheld the decision of the university to withhold the result of such students.

However, as observed above, the facts of this case are altogether different. The respondent-university is clearly guilty of gross negligence and inaction. No attempt was taken by it to ensure that the students who in the absence of public notice from the university, could not be expected to be aware of its decision to suspend admission for the academic years 2012-2013, did not pay fees to the petitioners institutes and did not take admission with them. The university could easily have avoided such a situation had it acted promptly after the decision taken in the meeting held on 8.5.2012. It would, therefore, be wholly unfair and unjust to the students if they are not allowed to complete their study and they are made to lose at least one or may be two precious years of their educational career. The interest of the students being paramount consideration in such matters, the Court would be failing in its duties if, in the facts and circumstances of this case, it does not protect their interest by giving such directions as would safeguard their interest and at the same time avoid perpetuation of illegality which the university as well as the other parties

to the MoUs had committed, by entering into an arrangement to offer face to face programmes, in utter violation of the provisions of IGNOU Act, 1985.

34. Admittedly, the petitioners institutes did not admit any student during the academic year 2013-2014. Admittedly, the university continued to hold examination for the students who were admitted prior to academic year 2012-2013. It has also come in the written submissions of the university that the MoUs have since been terminated during pendency of the writ petitions. In these circumstances, the above writ petitions are disposed of with the following directions:

- (i) The petitioners shall submit the list of students admitted by them for the academic year 2012-2013, to the respondent-university, within two weeks, along with the requisite documents such as admission forms, copies of fees receipts issued to them and shall also remit, within that period, the fees and other charges which the institutes were required to pay to the university in terms of the MoUs/letter pursuant to which the students were admitted by them for the academic year 2012-2013.
- (ii) The University shall verify within four weeks thereafter, the documents submitted by the petitioner institutes and shall also be

entitled to require the students whose names find mention in the list furnished by the petitioners institutes to appear before its officers for the purpose of verification by the university. The students who are found to have been genuinely admitted by the petitioners during the academic year 2012-2013, will be issued registration numbers etc and other documents required for the purpose within two weeks of completing the verification process.

- (iii) If the petitioner institutes have collected fees from the students for the academic year 2013-2014, such fee shall be refunded by them to the students within a period of four weeks from today.
- (iv) The respondent university shall hold examinations for the academic year 2012-2013, and those students to whom registration numbers are issued by the university, shall be permitted to appear in the said examination. The examination shall be held within four weeks of issuing the registration numbers.
- (v) If the university is directly admitting the students for the academic year 2012-2013

onwards, for imparting education through Open Distance Learning (ODL) System, in the courses to which the students were admitted by the petitioners institutes, the students who are issued registration numbers in terms of this order, shall be treated as the students directly admitted by the university to the said courses, thereby obviating the requirement of obtaining approval from AICTE in terms of Section 2(h) of AICTE Act, 1987.

- (vi) If the university has not admitted the students to such courses for the academic year 2012-2013 onwards, the students to whom registration numbers are issued by the university and who qualify in the examination to be conducted by the university for them, in terms of this order, shall be got accommodated, in the second year, in the nearby technical institutes duly approved by AICTE preferably those in which spare seats are available for the purpose of accommodating such students. It is expected that AICTE will render full cooperation to the university in this regard, so that the career of the students is not

prejudicially affected on account of their having taken admission with the petitioner institutes. If it is found necessary to create supernumerary seats in the technical institutions in which such students are accommodated, the university will request AICTE to create such seats and such request will be duly considered by AICTE, as per its regulations. If any transfer fee or other charges is demanded by the technical institutes where these students are accommodated, the same shall be paid by the university.

There shall be no orders as to costs.

V.K.JAIN, J

JULY 23, 2013/rd/ks