

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: May 26, 2017
Judgment delivered on: June 05, 2017

- + W.P.(C) 2377/2017, CM No. 10223/2017
- + W.P.(C) 2393/2017, CM No. 10328/2017
- + W.P.(C) 2465/2017, CM No. 10633/2017
- + W.P.(C) 3148/2017, CM No. 13715/2017
- + W.P.(C) 2798/2017, CM No. 12198/2017
- + W.P.(C) 2955/2017, CM No. 12864/2017

MANGALMAY INSTITUTE OF MANAGEMENT & TECHNOLOGY AND
ANR
ACCMAN BUSINESS SCHOOL AND ANR
TRINITY INSTITUTE OF INNOVATION IN PROFESSIONAL STUDIES &
ANR
INSTITUTE OF ENGINEERING & TECHNOLOGY
GREATER NOIDA INSTITUTE OF TECHNOLOGY & ANR
DELHI INSTITUTE OF TECHNOLOGY &
MANAGEMENT

..... Petitioners

Through: Mr.Sacchin Puri, Sr. Adv. with Mr.Sanjeev
Nasiar, Ms.Mehak Tanwar, Advs. for the
petitioners in W.P.(C) No. 2393 of 2017
Mr.R.K.Saini, Ms.Asha Jain Madan,, Mr. Varun
Nagrath & Mr. Udit Malik Advs. also appearing
for the petitioners in W.P.(C) Nos. 2377/2017,
2393/2017, 2465/2017 & 2798/2017
Mr. Kirti Uppal, Sr. Adv. with Mr. Manjit Singh
Ahluwalia, Ms.Wamika Trehan, Advs. in
W.P.(C) 2955/2017
Ms. Anubha Agrawal, Adv. for the petitioner in
W.P.(C) 3148/2017

versus

GGSSIP UNIVERSITY AND ANR

..... Respondents

Through: Mr.Mukul Talwar, Sr.Adv. with Ms.Anita Sahani
and Ms. Leela Suman, Advs. for R1-GGSIP
University in W.P.(C) Nos. 2377/2017,
2393/2017, 3148/2017 and 2955/2017.

Mr.Parag P.Tripathi, Sr. Adv. with
Mr.Sradhananda Mohapatra, Adv. for GGSIP in
W.P.(C) 2798/2017
Mr. Devesh Singh, ASC (GNCTD) with Ms.
Neelam Kholiya, Adv. for R-2 in W.P.(C)
2377/2017, 2393/2017, 2465/2017, 3148/2017
and 2798/2017

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. As common issue arises for consideration in this batch of writ petitions, which is primarily a challenge to the letter dated February 2, 2017 of the respondent No.2 to the respondent No.1, they are being decided by this judgment.

Facts in W.P.(C) 2377/2017

2. The present petition has been filed by two petitioners Mangalmay Institute of Management & Technology and Mangalmay Foundation Trust. It is the case of the petitioner No.2 herein that it has established an Educational Institution with all infrastructure and facilities to start academic activities and imparting education from the academic session 2017-18. As the territorial jurisdiction of the respondent No.1 University extends to the whole of National Capital Region, the respondent No.1 has been considering applications for affiliation of educational institutes located/established in NCR.

3. It is the case of the petitioners, on December 22, 2016, the petitioner No.2 Institute was granted the NOC by the concerned State Government i.e. U.P.

Government for its affiliation with the respondent No.1 University for several courses. It is their case that on December 28, 2016, the petitioner also informed respondent No.1 University about the same and requested it to grant affiliation, subject to completion of formalities. It is averred that the University starts the process of inviting applications and then considering proposals for affiliation in the month of March, 2017. However, without any prior notice or information, the Directorate of Education, Government of NCT of Delhi respondent No.2, all of a sudden, issued an order/letter dated February 2, 2017 to the Registrar of respondent No.1 University stating that the Competent Authority has approved that affiliation of new institutions located in NCR be kept in abeyance till further orders. It is their case that the said letter was uploaded only on February 14, 2017. On February 17, 2017, the petitioners and other affected educational institutes made a representation to the Hon'ble Lt. Governor of Delhi stating that the said communication is in contravention of Section 4 (1) of the Indraprastha Vishwavidyalaya Act, 1998, (Act of 1998) which equally applicable to the institutions in NCT of Delhi and also institutions situated in NCR. A similar representation was made on February 16, 2017 to the Secretary, Higher Education, Govt. of NCT of Delhi. It is their case on March 02, 2017, the respondent No.1 University has posted, on its website, a notice calling for applications from Societies/Trusts/Govt. Departments/Government Institutions for establishment of new institution to conduct programmes in affiliation with the respondent No.1 University for the academic session 2017-18. Pursuant thereto, representation dated March 3, 2017 was made and also a meeting was held with the Hon'ble Lt. Governor of Delhi on

March 10, 2017. Insofar as new institutions located in NCR are concerned, the petitioners averred that the notice referred to the letter dated February 2, 2017 by respondent No.2 to the respondent No.1 for keeping affiliation of new institutions located in NCR outside NCT of Delhi in abeyance.

Facts in W.P.(C) 2393/2017

4. The present petition has been filed by Accman Business School and Balibhadra Foundation, a Registered Trust. It is the case of the petitioner No.2 herein that it has established an Educational Institution with all infrastructure and facilities to start academic activities and imparting education from the academic session 2017-18. As the territorial jurisdiction of the respondent No.1 University extends to the whole of National Capital Region, the respondent No.1 has been considering applications for affiliation of educational institutes located/established in NCR. It is the petitioners case, on June 16, 2016, the petitioner No.2 was granted NOC by the concerned State Government i.e. U.P. Government. Soon thereafter, petitioner No.2 submitted the NOC to the respondent No.1 University on June 20, 2016. It is their case, on February 19, 2016 it submitted all necessary documents along with application for affiliation for three programmes/courses with the respondent No.1 University. This was followed by reminder dated October 20, 2016. It is their case, on February 4, 2017 the petitioner No.1 made an application for affiliation, online. It made a representation dated February 9, 2017 confirming that all required infrastructures and facilities have been arranged at the campus. The petitioners referred to the communication dated February 2, 2017 from the respondent No.2 to respondent No.1. It is also the case of the

petitioners that the said letter was uploaded on February 14, 2017. The petitioners also referred to the joint representation made to the Hon'ble Lt. Governor stating that the said letter is in contravention of Section 4(1) of the Act of 1998. The petitioners also referred to the notice posted on the website inviting applications for proposal from the Societies/Government Departments/Government Institutions for establishment of new institution to conduct programme in affiliation with the respondent No.1 University for the academic session 2017-18. The petitioners also referred to the meeting they had with the Hon'ble Lt. Governor and the Director of Higher Education. Insofar as new institutions located in NCR are concerned, the petitioners averred that the notice referred to the letter dated February 2, 2017 from the respondent No.2 to the respondent No.1 for keeping affiliation of new institutions located in NCR outside NCT of Delhi in abeyance.

Facts in W.P.(C) 2465/2017

5. The present petition has been filed by two petitioners, Trinity Institute of Innovation in Professional Studies and Everyday Exim (a Non-Profitable Company). It is the case of the petitioners herein that it has established an Educational Institution with all infrastructure and facilities to start academic activities and imparting education from the academic session 2017-18. As the territorial jurisdiction of the respondent No.1 University extends to the whole of National Capital Region, the respondent No.1 has been considering applications for affiliation to educational institutes located/established in NCR.

6. It is their case, on January 3, 2017 the petitioner No.2 institute was granted NOC

by the concerned State Government i.e U.P. Government. It also refers to the fact that between January and March, 2017, the University starts the process of inviting applications and then considering the proposals for affiliation. The petitioners refer to the letter dated February 02, 2017 from the respondent No.2 to the respondent No.1 University. The petitioners also state that the said letter was uploaded on the website of the respondent No.1 University on February 14, 2017. On February 16, 2017, the petitioners made a representation to the Secretary, Higher Education, Govt. of NCT of Delhi for reconsideration of the same. They also refers to a joint representation made along with certain affected private educational institutions to the Hon'ble Lt. Governor of Delhi pointing out that the decision is in contravention of Section 4(1) of the Act of 1998.

7. It is averred, on February 21, 2017, a similar representation was made to the Secretary, Higher Education, Govt. of NCT of Delhi. However, no response was received on the same. The petitioners also refers to the notice dated March 2, 2017, a reference of which has already been made above. They also refers to a communication dated March 03, 2017 and the meeting held with the Hon'ble Lt. Governor of Delhi and the Director, Higher Education of Govt. of NCT of Delhi on March 10, 2017.

Facts in W.P.(C) 3148/2017

8. The present petition has been filed by Institute of Engineering & Technology. It is the case of the petitioner, the Society namely All India Society for Advance Education & Research established the petitioner institute at Alwar in the year 1998 and has been successfully running B.Tech, M.Tech, MBA, MCA courses with the approval

of the AICTE and affiliation from Rajasthan Technical University, Kota. The AICTE and the Rajasthan Technical University have granted extension of approval to the petitioner institute and also for affiliation for the academic session 2016-17. It is averred that the respondent No.1 University has the jurisdiction to grant affiliation to institutes, which are located in NCR as defined in National Capital Region Planning Board Act, 1985. On January 16, 2017, the petitioner Institute had applied to the respondent No.1 University for grant of affiliation. The petitioner had also applied to the Directorate of Training for issuance of NOC for change of affiliating University. It is the case of the petitioner that on January 30, 2017, the petitioner applied to the Rajasthan Technical University for issuance of No Objection Certificate for change of affiliating University. The petitioner herein referred to the letter dated February 2, 2017, a reference of which has already been made above. It is stated that the Govt. of NCT vide its letter dated February 15, 2017 requested the petitioner to submit documents for further processing of request for grant of NOC for change of affiliating University. The petitioner again sought approval from the AICTE for the session 2017-18 vide its letter dated February 17, 2017. On February 21, 2017, the Rajasthan Technical University has given its No Objection for change of affiliating University. On March 08, 2017 the State Government of Rajasthan has also granted NOC to the petitioner to change the affiliating University. It is averred, the petitioner vide its letter dated March 10, 2017 again submitted all documents to the respondent No.1 University for grant of affiliation. It is the petitioner's case that it vide its letter dated March 16, 2017 applied for issuance of NOC to the Director, Directorate of Training & Technical

Education, Govt. of NCT of Delhi. The petitioner also submitted to the respondent No.1 University, the No Objection Certificate issued by the Government of Rajasthan to Rajasthan Technical University for grant of NOC by the said University on March 22, 2017. It is the case of the petitioner that despite NOC, the respondent No.1 University failed to grant affiliation to the petitioner Institute.

Facts in W.P.(C) 2798/2017

9. The present petition has been filed by Greater Noida Institute of Technology and Shri Ram Educational Trust. It is the case of the petitioners herein that it has established an Educational Institution with all infrastructure and facilities to start academic activities and imparting education from the academic session 2017-18. As the territorial jurisdiction of the respondent No.1 University extends to the whole of National Capital Region, the respondent No.1 has been considering applications for affiliation of educational institutes located/established in NCR.

10. It is their case, on January 29, 2016, the petitioner No.2 submitted a proposal to the University for three courses. On December 8, 2016, the petitioner Institute applied for grant of NOC to the concerned State Government for several courses and the same was granted by the U.P. Government and the same was submitted to the respondent No.1 University. It is the case of the petitioners normally the process of inviting and then considering proposal for affiliation is between the months of January and March, 2017 of the particular year. On February 13, 2017, the petitioner made an application for affiliation to the respondent No.1 University as well as to the Secretary, Department of Training & Technical Education, Govt. of NCT of Delhi. It is the case of the

petitioners that without prior notice or information, the Directorate of Education, Govt. of NCT issued letter dated February 02, 2017 to the respondent No.1 University, which was uploaded on the website of the respondent No.1 University on February 14, 2017. It was only thereafter, the petitioners have come to know that the Competent Authority has decided to keep in abeyance the affiliation of new Institutions located in NCR till further orders. Since the communication dated February 2, 2017 is against the interest of similarly situated educational institutes, they made a representation dated February 17, 2017 to the Hon'ble Lt. Governor stating that the same is in contravention of Section 4(1) of the Act of 1998. A representation was also made on February 27, 2017 to the respondent No.1 University but none of the representations evoked any response. The petitioner has referred to the notice posted on the website of the respondent No.1 University calling for applications from Societies/Trusts/Govt. Department/Govt. Institutions for establishment of new institution to conduct programmes in affiliation with the respondent No.1 University for the academic session 2017-18. The said notice also refers to the letter dated February 2, 2017 keeping affiliation of new institutions located in NCR in abeyance. It is their case, that they have made representation to the Hon'ble Lt. Governor of Delhi on March 3, 2017. They also refer to a meeting on March 10, 2017. No concrete results have followed till the filing of the writ petition.

Facts in W.P.(C) 2955/2017

11. The present petition has been filed by Delhi Institute of Technology and Management. It is averred in the writ petition that the petitioner was granted approval by the AICTE and is affiliated to DCR University of Science & Technology, Sonapat.

On March 02, 2015 the petitioner applied to respondent No.1 University for affiliation for academic session 2015-16, which was responded to by the respondent No.1 University, stating that NOC from the State of Haryana was required. It is also stated that the National Commissioner for Minority Educational Institution issued the certificate dated September 27, 2016 certifying that the petitioner institute has been declared as minority institution on the ground that the petitioner was established and being administered by the Members of the Sikh Community. Vide letter dated January 18, 2017, the Commission granted NOC to the petitioner Institution. The petitioner refers to the letter dated February 2, 2017, a reference of which has already been made above.

12. It is the case of the petitioner that it came to know on February 14, 2017 about the letter dated February 2, 2017 through the website of respondent No.1. The petitioner, being aggrieved by the said letter dated February 2, 2017 made representations to respondents 1 and 2 on March 8, 2017 and March 2, 2017 respectively. On March 9, 2017, the respondent No.2 forwarded the representation to the respondent No.1 for consideration.

13. It may be stated here that the respondents 1 and 2 have filed short affidavits. Suffice to state, the affidavits does not contain the parawise reply. The stand of the respondents in their respective affidavits, being identical, I am referring to the short affidavit as filed by the University in W.P.(C) No. 2377/2017. It is the case of the respondent No.1 that the University was created under the Guru Gobind Singh Indraprastha Act, 1998 (Act of 1998) passed by the Legislative Assembly of NCT of

Delhi to establish and incorporate an affiliating University at Delhi to facilitate and promote studies, research and extension work in emerging areas of higher education with focus on professional education for example engineering, technology, management studies, medicine, pharmacy, nursing, education and also to achieve excellence in these and connected fields and other matters connected therewith or incidental thereto. Respondent no.1 denied that Section 4 of the Act of 1998 enjoins upon the University a duty to affiliate any and every institution. On the contrary, Section 4 creates power in favour of the University exercisable in the area of the NCR Zone. Respondent no.1 states, the grant of affiliation with the University is done as per the Act, Statute, Ordinance & the regulations of the University. Every year the University invites the proposals for grant of affiliation. For the academic session 2016-17, the proposal was invited vide public notification dated January 29, 2016 and the last date for submission of application by online mode was March 29, 2016 till 11:59 pm. & the last date for submission of printout of online application was March 31, 2016 at 3.00 pm. Till the last date of submission of the application, the petitioner did not submit any application for affiliation in the Academic Session 2016-2017. Respondent no.1 denied that the decision of the University to keep in abeyance, the affiliation of new institution in the NCR Zone outside Delhi is without jurisdiction or discriminatory. Section 4 of the Act of 1998 is only an enabling legislation extending the jurisdiction of the University to the areas covered in the NCR zone. The exercise of this power in the NCR Zone is subject to the provisions of the Act or the Rules made thereunder. Further, the said decision dated February 02, 2017 is not discriminatory as the same is based on permissible

classification under Article 14 of the Constitution of India. In the last two years the admission in the institutions situated in the NCR zone beyond Delhi was around 40% in 2015-16, and the same is around 47% in 2016-17, whereas the admission in the institutions situated in the NCT Delhi is around 95% during the same period. The issue of huge vacancy in the NCR zone outside Delhi in comparison to the institutions located in Delhi was examined by a duly constituted Committee of the University in its meeting dated 08.11.2016. The committee Inter Alia, amongst other observed as follow:

“The committee understands that the Guru Gobind Singh Indraprastha University had the unique mandate and the privilege to affiliate institutions based in NCR of Delhi. However, given the huge difference between the pattern of admissions in NCT of Delhi and beyond the NCT of Delhi the committee is of the view that the abnormally high state of vacant seats in the Outside NCT Delhi institutions are not only economically and academically not-viable but also it reflects poor image on the overall reputation of the University. Because of this reason the committee is of the view that until the admission status vis-a-vis the vacancy against the existing seats do not improve and matches with the Delhi based institutions and further affiliation to new institutions beyond the NCT of Delhi should be suspended as an interim policy measure. Accordingly, the committee unanimously recommends that the University should not affiliate new institutions beyond the NCT of Delhi, till the admission statistics in outside Delhi institutions improves to an acceptable level, i.e., atleast 80% seats are filled, from the coming Academic Session 2017-18 onwards. This policy decision through interim, shall have the effect of overall consolidating the existing affiliated institutions of the NCT of Delhi and Outside NCT of Delhi and thus add to the academic standard and economic viability of those institutions as well as stop erosion to the reputation of the University because of the staggering vacancies against the existing admission seats.”

14. It is their case, thereafter, the matter was, inter alia, discussed in the meeting held on November 25, 2016 in the office of Secretary, Education, Govt. of Delhi. The following members were present in the meeting:

1. Secretary, Higher Education, Govt. of NCTD.
2. Director, Higher Education, Govt. of NCTD.
3. Director, Training and Technical Education, Govt. of NCTD.
4. Registrar, Guru Gobind Singh Indraprastha University, Delhi.
5. Incharge, Affiliation, Guru Gobind Singh Indraprastha University, Delhi.
6. Incharge, Admissions, Guru Gobind Singh Indraprastha University, Delhi.

15. The details of the discussion held and recommendations of the Committee are as under:

“The Registrar, Guru Gobind Singh Indraprastha University apprised the members about the status of admissions in the University for the academic session 2016-17. On the of the observations was that in the institutions located outside the NCT of Delhi in the NCR, the status of admissions has been dismal, upto 45% of seats remain vacant. Moreover in the last few years new affiliations have been primarily granted in the NCR region (outside the NCT of Delhi). Since a major portion of seat in the institutions located in NCR (outside the NCT of Delhi) are remaining vacant, affiliation of new institution in NCR (outside the NCT of Delhi) may not lead to any fruitful exercise. Moreover, currently there are about 120 institutions affiliated to the University. As per the Rashtriya Uchchatar Shiksha Abhiyan report (page 111). Following are the paths that can be taken in reforming the affiliation system:

.....

(I). Limit the number of colleges to be affiliated to any University to 100.”

16. Based on the recommendations made in the meeting held on November 25, 2016 in the office of the Secretary, Education on November 30, 2016, the Affiliation Branch put up a separate proposal to keep affiliation of new Institutions in NCR (Outside Delhi) in abeyance for approval of Hon'ble Chancellor of the University (Lieutenant Governor of NCT of Delhi).

17. The approval of the Competent Authority for keeping Affiliation of new institutions located in NCR (Outside Delhi) in abeyance, was conveyed by the A.O. (HE), Directorate of Higher Education, Govt. of NCT of Delhi vide DHE4 (60)/Policy guideline/14-15/Pt.File/435-437 dated February 02, 2017.

18. The Board of Affiliation of the University in its meeting dated 06.03.2017 took note of various issues relating to the affiliating capacity of the University, the maintenance of desired academic standards in the affiliated institutions, the relevant facts and proposal regarding keeping the affiliation of new institutions located in NCR Outside NCT of Delhi in abeyance and its approval by the Competent Authority vide letter NO. DHE-4 (60)/Policy guideline/14-15/Pt. File/435-437 dated February 02, 2017 and ratified the same.

19. The policy decision dated February 02, 2017 is not discriminatory. There are as many as around 13 self financing private affiliated Institutes in the NCR Zone which have been affiliated in the past as per the policy then applicable. The details of these institutions with their respective year of initial affiliation are stated herein below:

1.	<i>Army Institute of Education, Greater NOIDA, UP</i>	2003
2.	<i>Army Institute of Management and Technology, Greater NOIDA, UP</i>	2004
3.	<i>Delhi Metropolitan Education, NOIDA, UP</i>	2012
4.	<i>Delhi Technical Campus, NOIDA, UP</i>	2013
5.	<i>JIMS Engineering Management Technical Campus, Greater NOIDA</i>	2013
6.	<i>Shri Krishna College of Education, Baghpat, UP</i>	2013
7.	<i>SGIT School of Managerment, Gaziabad, UP</i>	2015
8.	<i>BLS Institute of Technology Management, Bahadurgarh, Haryana</i>	2007
9.	<i>Delhi Global Institute of Management, Faridabad, Haryana</i>	2016
10.	<i>Bhagwan Mahveer School of Architecture, Sonapat, Haryana</i>	2015
11.	<i>Mahavir Swami Institute of Technology, Sonapat, Haryana</i>	2014
12.	<i>BM Institute of Engineering & Technology, Sonapat, Haryana</i>	2016
13.	<i>Bhagwan Mahavir College of Engineering & Management, Sonapat, Haryana</i>	2016

20. All these Institutions have been given affiliation prior to the notification dated February 02, 2017. The impugned policy dated February 02, 2017 is applicable for

Academic Year 2017-18 and beyond till further orders. The Amity Law School is temporarily operating from the campus of Amity University since 2007 which was affiliated as early as 1999.

21. It is stated that the grant of NOC by the respective State Govt. and creation of infrastructure etc. petitioner does not create any legal right to demand affiliation from the University.

22. It is stated that right under Article 19(1)(g) of the Constitution is not an unqualified right. The decision to keep the affiliation in abeyance is based on considered regulatory frame work within Article 19(1)(g) of the Constitution of India. It is stated that the petitioners have option to seek affiliation from other Universities in the State of UP and thus pursue their freedom under Article 19(1)(g) of the Constitution of India.

23. It is stated that the decision of the respondents is based on considered facts and issues to promote quality education and research with respect to institutions affiliated to the University. In this context one of the foremost recommendation of the Rashtriya Higher Education may be particularly taken note that the number of affiliated Colleges to any University should be limited to 100. Further, to ensure imparting higher standard of teaching and research the University has to play a critical role in terms of its affiliating capacity. The University has already around 120 institutions with around 80,000 students.

24. That the affiliating capacity of the University has not grown on the same pace as the number of affiliated institutions and the students. Mere grant of affiliation to an institute does not serve the public interest or the interest of the students until the University is in a position to ensure desired academic standards in its affiliated Institutions.

25. In these circumstances, it is stated that the present Petition is devoid of any merit and is an abuse of process of law. The Petitioner is not entitled to any relief much less the relief prayed for.

26. Mr. R.K. Saini, learned counsel appearing for the petitioners in W.P.(C) Nos. 2377/2017, 2465/2017 & 2798/2017 would submit that the decision to keep in abeyance the affiliation of new institutes located in NCR (outside the NCT of Delhi) is both arbitrary, unjust and without jurisdiction. He would state, after the petitioner had incurred huge expenditure on the infrastructure for the establishment of the Institute and had obtained the NOC from the concerned State Government, it could not have been denied the affiliation by the respondent No.1 except on the grounds mentioned under the Indraprastha Vishwavidyalaya Act, 1998 Statute or Ordinance thereunder. However, the impugned order/action of the respondents gave no reason in support of its decision to deny affiliation to be new institutes. He states, being a State University, every decision of the respondents 1 and 2 is obliged to be supported by reason else the same would be arbitrary and thus hit by Article 14 of the Constitution of India. He would state, Section 4 of the Act of 1998 provides that the limits of the area within which the

University shall exercise its power, shall be those of NCR as defined in the National Capital Region Planning Board Act, 1985. The preamble of the National Capital Region Planning Board Act, 1985 talks of the object of the Act to provide for the constitution of a planning board for the preparation of a plan for the development of the National Capital Region and for coordinating and monitoring the implementation of such plan and for evolving harmonized policies for the control of land use and development of infrastructure in the NCR. He would state, an obligation is cast upon the respondents by the statute to ensure about that the development of the infrastructure in the entire NCR. The respondents cannot discriminate between the institutes in NCT of Delhi and NCR (outside the NCT of Delhi) as they all form one class. He would state, since as per section 4 of the Act of 1998, it is applicable to the entire NCR, all institutes within the NCR are equal and no classification can be made between the institutes in NCT of Delhi and those in the NCR (outside the NCT of Delhi), particularly when the classification has no nexus to the object sought to be achieved. Thus by allowing the affiliation of new institutes in the NCT of Delhi and not allowing affiliation to those situated outside the NCT of Delhi, the respondents have acted in total contravention to the provisions of Article 14 of the Constitution of India. He would state, the impugned action of the respondents is arbitrary inasmuch as the respondents have debarred the petitioners from applying for affiliation at the threshold. He would state, the affiliation is governed by the provisions of the Act of 1998 read with the Statute/Ordinance/Regulations framed thereunder. Section 4 of the Act makes it mandatory for the respondents to grant affiliation if the institution agrees to accept the

statute and the ordinances.

27. It is his submission that Statute 24 which lays down essential terms and conditions of affiliation and ordinance-I which prescribes the procedure for application for affiliation and its processing and consideration by the University. He states, grant of affiliation is mandatory for an institution which has accepted the statutes and the ordinances and has complied with all the provisions prescribed therein. He submits it is not the case of the respondents here that the petitioners have not accepted the statute and the ordinances or that it has not complied with any of the mandatory requirements prescribed under the Act/Statute/Ordinance. It is thus fallacious for the respondents to contend that the provisions of Section 4 are not obligatory. He submits that the contention that the admissions in the institutions located outside the NCT of Delhi in the NCR has been dismal, is not a valid ground for denial of affiliation under the Act, as by the executive action or policy decision, the provisions of the Act enacted by the legislature, cannot be modified or curtailed. He submits, in any case the aforesaid contention is factually incorrect. A perusal of the chart (page 93) would show that in some of the institutes the vacancy position is as low as 10%. He would state, a general order cannot be passed denying affiliation to all the institutes in the NCR (outside the NCT of Delhi) on the general ground that the vacancy position in the NCR (outside the NCT of Delhi) is dismal, even if true. The respondents cannot presume that even in the case of petitioner Institute the vacancy position would remain dismal. The right of the petitioner cannot be infringed on the basis of presumptions and exemptions and by prejudging the issue. He submits the petitioner cannot be denied an opportunity to prove

itself, particularly when the statute/ordinance provides for the discontinuation of affiliation on the ground of non performance for consecutive 2-3 years. In this regard, he would place reliance upon the minutes of meeting held on 25th November, 2016 wherein it was decided that at the time of renewal of NOC for any program for grant of intake for any program, status of admission as against the sanctioned seats will be reviewed and if for any programme in an institute the admission has been less than 50% of the sanctioned seats constitutively for the last three academic years then no fresh admission will be allowed. As regards the affiliated institutes it has been decided that if for a programme in an affiliated institution the admission has been less than 50% of sanctioned seats consecutively for two years when the university will issue a warning letter that a further third consecutive year also the admission is less than 50% then no fresh admission will be considered for the fourth year.

28. He would state, the above provision duly takes care of the interest of the respondents and the students by debarring the non performing institutes from getting NOC after 2/3 years of failure/non performance. This can thus not be a valid ground for denial of affiliation to the petitioner. According to him, to the contrary, the decision to debar the new institutes from getting affiliation appears to be in collusion with the existing institutes in the NCR (outside the NCT of Delhi) which are guilty of non-performance in the past. The petitioner is entitled to give a competition to the existing institutes in the NCR (outside the NCT of Delhi) and to prove itself once affiliation is granted. The impugned decision is thus both, arbitrary and unjust and stinks of malafide. He states, 85% seats of the NCR (outside the NCT of Delhi) are reserved for

the Delhi residents, who cannot be denied the opportunity of getting admission in good institutes even if located in the NCR (outside the NCT of Delhi). The impugned decision is thus contrary to the interest of the Delhi residents. He submits the reliance placed by the respondents on the RUSA is also misplaced inasmuch as RUSA 2013 as a condition for grant of funds to the State, has recommended affiliation reforms, to the effect that the number of colleges to be affiliated to any University be restricted to 100. The said provision has no relevance inasmuch as the number of affiliated colleges to GGSIP University has already crossed 100 (126). The RUSA guidelines came in the year 2013. The respondents have no explanation as to why they allowed the crossing of the prescribed strength of 100 in the past and added more colleges beyond the figure of 100 even after coming into force of RUSA Guidelines, in the academic years 2014-15 and 2015-16 and are ready to do so even during this academic year i.e 2017-18, as long as the new institutions/colleges applying for affiliation are situated within the limits of NCT of Delhi. He states, the guidelines themselves provide that if the number is restricted to 100, then new Universities shall be established. The respondent State was thus obliged to establish a new University to cater to the needs of the Delhi/NCR residents. He would draw the attention of the Court to the relevant extract of the RUSA guidelines, which is reproduced as under:-

“Under RUSA, the State government’s commitment to undertake reforms in the affiliation system is a priori condition for getting the funding. Following are the paths that can be taken in reforming the affiliation system:

- (i) Limit the number of colleges to be affiliated to any University to 100.*

However, this would mean establishing more affiliating Universities than the present number.”

29. According to him, the aforesaid guidelines cannot be resorted to by the respondents to deny affiliation to the petitioner, particularly when it is not the case of the respondents that the State Government has no funds and RUSA is refusing to provide funds till the time the number of colleges affiliated to GGSIP University is brought down to 100 or affiliation of new institutions is to be stopped altogether. He would rely upon the following judgments in support of his contention:-

- (i) ***(1991) 1 SCC 212 ShrilekhaVidyarthi (Kumari) v. State of U.P.***
- (ii) ***W.P.(C) No. 775/2016 Vidha Sudha Welfare Foundation Samiti v. National Council for Teacher Education.***

30. Ms. Anubha Aggarwal, learned counsel for the petitioner in W.P.(C) 3148/2017 would state, the act of University and State to restrict grant of affiliation is malafide, arbitrary and ultra vires the powers of the authority which refused affiliation. Hence, the impugned letter and action of GGSIP is liable to be quashed. The action of GGSIP is to protect vested interests of presently affiliated institutes by creating monopoly in their favour and not de-affiliating them despite their poor performance / low standards of education. Restricting entry of new institutes would not ensure enhancement in standards of education. She states, the reason for denial is the impugned letter dated February 02, 2017 issued by the Government of NCT of Delhi, but the same cannot override / amend the Act and statutes. Further, all applications could not have been kept in abeyance for an indefinite period of time, without assigning any reasons. The

impugned letter, being a non-speaking communication could not be a basis for rejection of all applications for affiliation. The letter issued by the State Government is also without the approval of the competent authority. She states, the genesis of this letter is illogical reasoning of GGSIP that fresh affiliations may not be granted to institutes in NCR because existing institutes have very low percentage of admissions. This is devoid of merit and not a sustainable ground for such refusal. Firstly, admissions in other colleges cannot be a ground for refusing affiliation to the petitioner. Secondly, further limiting the institutes would eliminate competition, create monopoly of existing institutes and would not improve the standards of admission / education. This contention of University is in fact a garb to protect the vested interests of existing affiliated institutes and has been done at their behest, since GGSIP has not taken any steps to dis-affiliate the non-performing / below standard institutes. No such undertaking has been given by GGSIP before this Court, which prima facie falsifies the ground for maintaining high standards. Without even considering the application of the petitioner on conducting inspection, GGSIP without any basis or record cannot conclude that the petitioner institute does not confirm to high standards of education. If the University really keen on maintaining the standards, then it should dis-affiliate the existing institutes and consider the new applicants on the basis of their individual merits. She states, the petitioner institute has been granted Accreditation in 2006 by the National Board of Accreditation (NBA), which reflects international standard in Education. Considering the infrastructure, facilities and quality education, etc., National Project Implementation Unit (NPIU), A Unit of Ministry of HRD, Govt. of

India for implementation of World Bank Assisted Project in Technical Education has granted Technical Education Quality Improvement Programme (TEQIP) Phase II. IET-Alwar is the only Private Engineering College of Rajasthan which has selected by the NPIU for the World Bank project in view of its infrastructure, facilities, manpower, quality education etc. It is also relevant to mention that the petitioner institute has an average admission rate of more than 60% over the last few years. The petitioner is a deserving institute located within the jurisdiction of GGSIP University and hence liable to be granted affiliation. She would state, another contention of GGSIP that Rashtriya Uchhtar Shiksha Abhiyan (RUSA) scheme limits the number of affiliated colleges to any University to 100 has been quoted out of context. The complete recommendation has not been placed before this Court which would have clarified things. An abstract has been quoted only to mislead the Court. RUSA is a Centrally Sponsored Scheme, launched in 2013 which aims at providing support funding to eligible state funded institutions. However, in the present case, it is neither the contention of the State or the University or the institute that any funding is required from the Central Government. Self financed institutions are not covered under the Scheme. It is relevant to mention that the report was published in the year 2013, but GGSIP on its own never followed the same and as per their own admission, has granted affiliation to colleges till the year 2016. This plea taken now is a mere afterthought to deny affiliation to the petitioner. Now GGSIP cannot deny claim of the petitioner to be considered for affiliation on the basis of said report. She would state, the next contention of GGSIP that the petitioner cannot be affiliated on the ground that an alternative affiliating university is available is

also not sustainable. Availability of an alternative gives the petitioner choice to seek affiliation from any of them, upon fulfilling the criteria and eligibility conditions. There is no statutory bar to seek affiliation from a university of choice, in case more than one affiliating universities have jurisdiction over the institute. The action of the university is arbitrary, discriminatory and violative of rights of the petitioner to seek affiliation. She states, the further contention of GGSIP that there is no obligation on the university to grant affiliation is also unsustainable. Since the petitioner institute fulfils all the essential conditions for affiliation, the petitioner is entitled to be considered for the same. GGSIP cannot act arbitrarily and is under an obligation to consider all the applications for affiliation as per the Act, statutes and ordinances governing the same. She would rely upon the judgment of the Apex Court in the case of ***Rungta Engg. College v. Chhattisgarh Swami Vivekanand Technical University, (2015) 11 SCC 291*** to contend, that Supreme Court has set aside the decision of the university not to grant the affiliation to the College since the same was without any justifiable basis. Hence the Court directed grant of affiliation to the institute. In the present case also, affiliation is being denied without any basis especially when the petitioner institute has been getting regular AICTE approvals. She states, the impugned action of GGSIP University is violative of Articles 14 and 19(1)(g) of the Constitution of India. The respondents have not granted affiliation, without assigning any reasons for the same. It is her submission, GGSIP University herein has admitted and accepted that online applications have been invited from the existing institutes located in NCR (outside Delhi) for grant of provisional affiliation for Academic year 2017-18. The petitioner institute has been in

operation and working since the year 1998 and is an existing institute. Hence, as per the own admission by the University, affiliation is being granted for the current academic year to existing institutes which are located in NCR. Therefore, the petitioner institute is entitled to be granted affiliation for the current academic year by the university as per its own policy. She states, despite impugned letter dated February 02, 2017, the Government of NCT of Delhi vide letter dated February 15, 2017, has requested the petitioner to submit documents for further processing of request for grant of “No Objection Certificate” for change of Affiliating University of the institute. It is relevant to mention that the said letter has been issued subsequent to a general letter issued by the Government of Delhi to the Registrar of the University on February 02, 2017. But, till date no further action has been taken in that regard by the respondent no.2 University. She states, the arbitrary action of GGSIP creates discrimination even amongst the similarly situated institutes within the NCR region. Limiting the number of affiliated institutes within NCR to 100, creates monopoly in favour of those granted the benefit of affiliation thereby eliminating competition from better institutes which may come up in the NCR regions. This would not ensure that quality of education would be maintained and rather the same may fall and the students would be forced to pay much higher fees to such institutes. The distance of RTU-Kota from IET-Alwar is approx. 550 Kms. (10 hours journey and there is no direct connectivity from Alwar City) and the GGSIP, Delhi is only approx. 160 Kms. From IET-Alwar and well connected with road and train transport facility. Therefore, the students and parents are uncomfortable (money wise and time wise) to visit RTU-Kota for their work. IET-Alwar is the oldest

private Engineering College of Rajasthan established in 1998 and have good reputation in NCR. After affiliating from GGSIP, the NCR students including Minority and backward students will be benefitted. She states, once the petitioner institute is eligible affiliation cannot be denied to the petitioner due to pick and choose policy by GGSIP and admission in other institutes cannot be a ground for declining affiliation to the petitioner.

31. Mr. Sacchin Puri, learned Senior Counsel for the petitioners in W.P.(C) No. 2393/2017 would state the Act categorically provides for the jurisdiction vide Section 4 of the Act & Ordinance 1 Rule 3. The Act provides that the same can be amended only in terms of Section 26 of the Act, the relevant portion of which is reproduced as under:

“26(2) The Board of Management may, from time to time, make new or additional Statutes or may amend or repeal the Statutes referred to in sub-section(1):

Provided that the Board of Management shall not make, amend or repeal any Statutes affecting the status, powers or constitution of any authority of the University until such authority has been given a reasonable opportunity of expressing its opinion in writing on the proposed change and any opinion so expressed within the time specified by the Board of Management has been considered by the Board of Management.”

32. He would state, the admitted case of the respondents is that the letter dated February 2, 2017 is merely a guideline and does not amend the Act per se. The impugned letter has the effect of bringing about an amendment in the Act inasmuch as it tends to restrict the affiliation under the Act prospectively with respect to new colleges

which may wish to seek affiliation with the respondent No.1. He would state, in the counter-affidavit of respondent no.1 it has been admitted that it is only a guideline and not a Notification though the respondent No.1 affiliation Board's deemed Notification as reproduced hereinunder:-

“The approval of the Competent Authority for keeping Affiliation of new institutions located in NCR(Outside Delhi) in abeyance, was conveyed by the A.O. (HE), Directorate of Higher Education, Govt. of NCT of Delhi vide DHE4(60)/Policy guideline/14-15/Pt.File/435-437 dated 02.02.2017.”

33. He would state, the respondents in their argument have not sought to justify or state that the said guidelines is either permissible in law or that the same was notified and has the effect of amending the Act. Merely the respondents have argued that they have the right to reject any college which seeks affiliation on said principles and norms. He would state, the reliance placed by the respondents on the judgment of the Supreme Court is misplaced inasmuch as the Supreme Court has specifically held that the respondents have the right to reject an application but at no place, it was held that the respondents can by themselves bring out guidelines to stop an institute from applying itself. The entire attempt of the respondents is to create a smoke screen by giving reasoning that they have power to stop the institute from applying for affiliation, under which provision they could have done so vis-à-vis the fact that the Act itself envisages that an institute which is situate within the jurisdiction of the University has a right to apply and that unfettered right of making application cannot be curbed or taken away by way of any reason whatsoever. He would state, the attempt of the respondent to state that the Act was primarily meant for State of Delhi is misconceived and on the face of it

is liable to be rejected for the reason that while interpreting an Act, the Act itself is to be seen and nothing can be added or subtracted from the Act. The attempt is to add something which does not exist in the Act and as such this argument of the respondents is liable to be ignored. He would state, at this point in time the controversy does not involve evaluation of an application but only involves whether the respondents have a right to restrict the petitioner from applying or seeking affiliation. The petitioners had already filed the application on February 09, 2017 which has not been considered. Even otherwise, vide judgment reported as **(2015) 10 SCC 80 Ponnaiyah Ramajayam Institute of Science and Technology Trust v. Medical Council of India and Another**, the Supreme Court held that an application must be considered on merits even if it is made after the expiry of period provided. He states, in view of the fact that the respondents have virtually conceded that the Act has not been notified and have been unable to show any provision under a guideline can be framed which has the effect of curbing the jurisdiction under a Statute, it is to be deemed that the guideline is ultra vires of the Act and is liable to be set aside. The consequent application of the Institute is liable to be considered on merits. He would state without prejudice, the so-called reasoning given by the respondents for bringing out the guidelines is virtually illegal and malafide. He relies on a chart handed over to show that a Greater Noida institute has 80% seats filled vis-à-vis the Institute situated in Dwarka which are in the region of 45% to 50%, this information has been downloaded from the website of the respondent University and have not been rebutted by the respondent even though the same was handed over to respondent on May 24, 2017, which shows that the respondent No.1 has

misled the Delhi Government by saying that number of vacancies outside Delhi is not even 50%, it is to be noted that the respondents have the power under Section 5 to disaffiliate an institute which is having less than 50% filled up seats, having said that the respondent has not utilized its powers for any of its institute for the reasons best known to them thus cannot today bring out reason for stopping an application to be considered on its merits. He would state, the respondent's affidavit filed in another case stating that they have rejected the 15 institutes of Delhi in the year 2017 on the face of it shows that the same were considered on merits then rejected for the reason that the respondent Management did not reject them but the scrutiny committee rejected. The very fact that the security committee scrutinized the application shows the intent of the respondent in allowing the application for Delhi and considering them on the merit itself, which cuts across the feeble attempt of the respondent to try and say that they have not given any affiliation in the year 2017 for the reason that they do not wish to expand though no such reason has been stated in the affidavit itself in which the language has been very carefully used so as to attempt to mislead this Court. He would state, the RUSA committee is merely a committee giving guidelines which guidelines have to be applied in its totality and cannot be applied selectively having said this it is maintained that these guidelines do not have statutory force and then themselves have been violated by the respondents. He would state, the respondents' action of accepting application and considering for the institutes from Delhi is discriminatory against the petitioners whose applications have not been accepted and considered, though said 15 institutes and the petitioner fall on same footing being in the same jurisdiction to which the said Act

applies.

34. Mr. Kirti Uppal, learned Senior Counsel appearing for the petitioners in W.P.(C) No. 2955/2017 would state, the petitioner is impugning inter-alia the decision dated February 02, 2017 of the Government of NCT of Delhi whereby it has decided to keep in abeyance, till further orders, filing and consideration of applications for affiliation to the Guru Gobind Singh Indraparastha University/ R-1 by the new educational institutes established in NCR (outside NCT of Delhi) but new institutes in the NCT of Delhi are allowed to apply for affiliation and the University notice dated March 02, 2017 issued to that effect. He would state, the petitioner has been recognized as a Minority Educational Institution run by a Sikh Foundation and is free to run its own affairs, and in view of the Section 10A The National Commission for Minority Educational Institution (Amendment) Act, 2006 the petitioner is well within its right to apply for affiliation, moreover there is no statutory bar for the petitioner to apply for affiliation even if there is already subsisting affiliation. He would state, the decision to keep in abeyance the affiliation of new institutes located in NCR (outside the NCT of Delhi) is both arbitrary, unjust and without jurisdiction. After the petitioner had incurred huge expenditure on the infrastructure for the establishment of the Institute and had obtained the NOC from the concerned state Government, and the said infrastructure/facilities as well as the facilities in the institution are of impeccable standard, the petitioner could not have been denied the affiliation to the respondent no.1 except on the grounds mentioned under the Indraprastha Vishwavidyalaya Act, 1998 Statute or Ordinance thereunder. However the impugned order/action of the respondents gave no reason in

support of their decision to deny affiliation to the new institutes. Being a State University, every decision of the Respondent nos.1 and 2 is obliged to be supported by reason else the same would be arbitrary and thus hit by article 14 of the Constitution of India. He would rely upon the judgment of the Supreme Court in the case reported as **(1991) 1 SCC 212 Shrilekhavidyarthi (Kumari) v. State of U.P**; wherein the Supreme Court held as under :-

“13 Termination of an appointment without the existence of any cogent reason in furtherance of the object for which the power is given would be arbitrary and, therefore, against public policy...”

35. He submits, as per the settled law the reasons in support of any decision must exist initially. The validity of an action cannot be judged by the reasons in the shape of affidavit or otherwise given in the court subsequently. He would state, the reasons given for the first time in the counter affidavit filed by the respondents for giving different treatment to the institutes situated in the NCR (outside the NCT of Delhi) and the institutes of NCT are: -

- a. That in the institutions located outside the NCT of Delhi in the NCR, the status of admissions has been dismal, upto 45% of seats remain vacant.
- b. That there are already about 120 institutions affiliated to the University whereas according to the report of Rashtriya Uchchatar Shiksha Abhiyan (RUSA) the prescribed limit of the number of colleges to be affiliated to any university is 100.

36. He submits Section 4 of the 1998 Act provides that the limits of the area within which the university shall exercise its powers, shall be those of NCR as defined in the National Capital Region Planning Board Act, No.2 of 1985. The preamble of the

National Capital Region Planning Board Act, 1985 talks of the object of the Act to provide for the constitution of a planning board for the preparation of a plan for the development of the National Capital Region and for coordinating the monitoring the implementation of such plan and for evolving harmonized policies for the control of land use and development of infrastructure in the NCR. Thus an obligation is cast upon the respondents by the statute to ensure development of the infrastructure in the entire NCR. The respondents cannot discriminate between the Institutes in NCT of Delhi and NCR (outside the NCT of Delhi) as they all form one class. Since as per section 4 of the 1998 Act, it is applicable to the entire NCR, all institutes within the NCR are equal and no classification can be made between the institutes in NCT of Delhi and those in the NCR (outside the NCT of Delhi), particularly when the classification has no nexus to the object sought to be achieved. Thus by allowing the affiliation of new institutes in the NCT of Delhi and not allowing affiliation to those situated outside the NCT of Delhi, the respondents have acted in total contravention to the provisions of Article 14 of the Constitution of India. He would state, the impugned action of the respondents is arbitrary in as much as the respondents have debarred the petitioners from applying for affiliation at the threshold. He would state, the affiliation is governed by the provisions of the 1998 Act read with the statute/ ordinance / regulations framed thereunder. Section 4 of the Act makes it mandatory for the respondents to grant affiliation if the institution agrees to accept the statute and the ordinances.

37. According to him, a perusal of Section 4 of the Act clearly establishes that grant of affiliation is mandatory for an institution which has accepted the statutes and the

ordinances and has complied with all the provisions prescribed therein. It is submitted it is not the case of the respondents here that the petitioners have not accepted the statute and the ordinances or that it has not complied with any of the mandatory requirements prescribed under the Act/ Statute/ Ordinance. It is thus fallacious for the respondents to contend that the provisions of section 4 are not obligatory.

38. He states, the contention that the admission in the institutions located outside the NCT of Delhi in the NCR has been dismal, is not a valid ground for denial of affiliation under the Act, as by the executive action or policy decision, the provisions of the Act enacted by the legislature, cannot be modified or curtailed. Without prejudice to the above, he would state, in any case the aforesaid contention is factually incorrect. According to him, a general order cannot be passed denying affiliation to all the institutes in the NCR (outside the NCT of Delhi) on the general ground that the vacancy position in the NCR (outside the NCT of Delhi) is dismal, even if true. The respondents cannot presume that even in the case of petitioner institute the vacancy position would remain dismal. The right of the petitioner cannot be infringed on the basis of presumptions and by pre-judging the issue. He would state, the petitioner cannot be denied an opportunity to prove itself, particularly when the statute/ ordinance provides for the discontinuation of affiliation on the ground of non-performance for consecutive 2-3 years. Reliance is placed upon the minutes of meeting held on 25.11.2016 wherein it was decided that at the time of renewal of NOC for any program for grant of intake for any program, status of admission as against the sanctioned seats will be reviewed and if for any programme in an institute the admission has been less than 50% of the

sanctioned seats constitutively for the last 3 academic years then no fresh admission will be allowed. As regards the affiliated institutes it has been decided that if for a programme in an affiliated institution the admission has been less than 50% of sanctioned seats consecutively for 2 years when the university will issue a warning letter that a further third consecutive year also the admission is less than 50% then no fresh admission will be considered for the fourth year.

39. He would state, the above provision duly takes care of the interest of the respondents and the students by debarring the non-performing institutes from getting NOC after 2/3 years of failure/ non-performance. This can thus not be a valid ground for denial of affiliation to the petitioner. He would state, to the contrary, the decision to debar the new institutes from getting affiliation appears to be in collusion with the existing institutes in the NCR (outside the NCT of Delhi) which are guilty of non-performance in the past. The petitioner is entitled to give a competition to the existing institutes in the NCR (outside the NCT of Delhi) and to prove itself once affiliation is granted. The impugned decision is thus both arbitrary and unjust and stinks of malafide. He states, 85% seats of the NCR (outside the NCT of Delhi) are reserved for the Delhi residents, who cannot be denied the opportunity of getting admission in good institutes even if located in the NCR (outside the NCT of Delhi). The impugned decision is thus contrary to the interest of the Delhi residents. He states, the reliance placed by the respondents on the RUSA is also misplaced inasmuch as the Rashtriya Uchchatar Shiksha Abhiyan (RUSA) 2013, as a condition for grant of funds to the State, has recommended affiliation reforms, to the effect that the number of colleges to be

affiliated to any University be restricted to 100. The said provision has no relevance inasmuch as the number of affiliated colleges to GGSIP University has already crossed 100(126). The RUSA guidelines came in the year 2013. The respondents have no explanation as to why they allowed the crossing of the prescribed strength of 100 in the past and added more colleges beyond the figure of 100 even after coming into force of RUSA Guidelines, in the academic years 2014-15 and 2015-16 and are ready to do so even during this academic year i.e. 2017-18, as long as the new institutions/ colleges applying for affiliation are situated within the limits of NCT of Delhi. In any case the guidelines themselves provide that if the number is restricted to 100, then new universities shall be established. The respondent state was thus obliged to establish a new University to cater to the needs of the Delhi/ NCR residents. He would submit, the petitioner institute though affiliated to small time university in Sonapat having students of more than 70% from Delhi and wants to affiliate to university which has name and there is no impediment / bar for having affiliation to a university of its choice. No statute or law debars the petitioner to choose a university. He states, the present petitioner university has state of the art infrastructure and faculty and more than 1300 students are enrolled with the petitioner out of which more than 70% are domiciled in Delhi and as such petitioner has legitimate expectations that they can choose the respondent university. He would rely upon the following judgments in support of his submissions:-

- (i) ***(1991) 1 SCC 212 Shrilekhavidyarthi (Kumari) v. State of U.P;***
- (ii) ***(1978) 1 SCC 405 Mohinder Singh Gill v. Chief Election Commissioner;***

- (iii) *W.P.(C) No. 775/2016 Vidha Sudha Welfare Foundation Samiti v. National Council for Teacher Education decided on February 02, 2016*
- (iv) *(2015) 11 SCC 291 Rungta Engineering College, Bhilai and Another v. Chhattisgarh Swami Vivekanand Technical University and Another.*

40. Mr. Parag P. Tripathi, Mr. Mukul Talwar, learned Senior Counsels and Mr. Devesh Singh appearing for the respondents would state, though couched as a writ of certiorari, the relief sought by the Petitioners is actually a writ of mandamus, commanding the Respondent University to permit the Petitioners to apply for affiliation to it. The only ground raised is that Section 4 of the Act of 1998 confers jurisdiction upon the Respondent University to affiliate institutes located not only in the NCT of Delhi but also to institutes located in other parts of the NCR. Insofar as legal right is concerned, they would state, A mere reading of Section 4 reveals that it is only an enabling provision and does not confer any legal right upon the Petitioners to compulsorily seek affiliation from the University. In fact, sub-section (2) of Section 4 of the Act makes it clear that affiliation is not compulsory and even those who are admitted to its privileges have to agree to accept the statutes and ordinances of the University. The use of the word ‘privileges’ by the Legislature is illuminating. The said term implies a discretion on the part of the University even in the matter of inviting application for affiliation. It is trite law that a writ of mandamus shall be issued only where the Petitioners are able to establish a legal right and this Hon’ble Court shall not issue a writ of mandamus to enforce only an enabling provision.

41. Regarding petitioners already affiliated or have a right to their respective State Universities is concerned, they would state, it is an admitted case that all three states of Uttar Pradesh, Haryana and Rajasthan have at least one or more State Universities to which the Petitioners are entitled to apply for affiliation. In fact two of the Petitioners out of six connected Writ Petitions are admittedly already affiliated to their respective State universities. There is therefore no question of placing any restriction on the Petitioners' right under Article 19 of the Constitution of India which in any case is available only to citizens. The petitioner herein described itself as a Trust or Companies and is therefore not a citizen.

42. Insofar as Policy decision is rational or not is concerned, they would state, the decision of the University to invite applications from new Institutes located only in the NCT of Delhi is a policy decision taken by the University considering the current circumstances and to meet certain exigencies. The said decision, even according to the Petitioner, does not suffer from the vice of malice, malafide or arbitrariness. The decision is based upon the fact that the University has about 120 institutes affiliated to it whereas the Rashtriya Uchchatar Shiksha Abhiyan (RUSA) (National Higher Education Mission), taking note of the falling quality of academics & research and the unmindful commercialization of education in affiliating university has recommended that the Universities should not, ideally, have more than a hundred institutes affiliated to it. The decision is further based upon the fact that the Institutes located in the other parts of NCR on the average of vacancy position of upto 45% of the seats which is much higher than the average figure for the Institutes located in the NCT of Delhi. In this regard, in

the month of October, 2016 the Academic Branch of the University had initiated a discussion within the University and had forwarded a note to the Vice Chancellor, upon which he appointed a High Powered Committee to examine the said issue. The Committee gave its report on 13th November, 2016. The said Committee in its report discussed the issue of abysmally low pattern of admission in the NCR Zone institutions vis-a-vis the NCT of Delhi based institutions and it was of the view that the abnormally high state of vacancies in the Outside Delhi Institutions make them economically and academically non-viable which directly impact the quality and standard of teaching, research and academics and thus the interest of admitted students and the society in general. The state of low admission in affiliated institutions also reflects poorly on the overall reputation, academic standing and goodwill of the University. The credibility, reputation and goodwill of the University are legitimate concerns of the University. They rely on the observation of the Division Bench of this Court in ***Rahul Dhaka Vikas Society and Anr. v. Guru Gobind Singh Indraprastha University & Ors.*** 89 (2001) ***DLT 337 (DB)***.

43. It is their submission, the Report of the High Powered Committee of the University dated 13th November, 2016 was further considered and discussed in a meeting held on 25th November, 2016 headed by the Secretary Incharge of Higher Education. In the said meeting the recommendations of the RUSA for reform in affiliating process with the objective to improve the quality of education and minimizing the commercialization of education in the affiliating university was also discussed and the Committee took note the specific suggestion of RUSA that the number of institutions

affiliated with the University should not be more than 100. It was resolved in the meeting that a separate proposal on this issue be initiated by the University and sent to the Government. A proposal to this effect was sent to the Government dated 30th November, 2016 thereafter, the Government – Respondent no.2 considered the proposal and issued its communication dated 2nd February, 2017 which is impugned in the present petition.

44. They would state, the policy decision impugned which has been ratified by the Board of Affiliation of the University in its 66th meeting, is in no way discriminatory. It is submitted that the University is a State University and has been set up by the Government of NCT of Delhi. Public funds available to the Government for the welfare of the citizens and residents of Delhi have been used on the capital expenditure expended for setting up of the University. In fact, the land on which the University is situated in Dwarka was granted and thus is owned by the Government of NCT of Delhi. Moreover, the petitioners have option of applying for affiliation to their respective state universities whereas the Institutes similar self-financing institutes situated in Government of NCT of Delhi can only apply to the Respondent University for affiliation. Finally, a comparison of the status of admissions and utilization of the capacity of the Institutes located in the NCT of Delhi and those located in other parts of the NCR show a glaring difference, with the Institutes located outside NCT of Delhi showing a vacancy position of upto 45% of the seats; which affects the reputation, goodwill and standing of the University as explained above. It also lowers the economic and financial viability of the concerned Institutions which may give rise to legal and

practical difficulties for the University and besides subjecting the admitted students therein to poor quality of education and academic hardships.

45. Insofar as the issue of commercialization is concerned, they would state, the University cannot permit its name to be used or its jurisdiction to be abused by the institutes for commercializing education. In fact, the Petitioners are insisting that it should be affiliated by the Respondent University and not by its own respective state Universities is seeking to encash the good reputation and standing of the Respondent University. The University is well within its rights and powers to regulate the affiliation process and take a policy decision not to invite applications from the Petitioners and other institutes located outside Delhi keeping in mind the average track record of all such institutes as a whole.

46. They would state, all self-financing institutions affiliated to the Respondent University, irrespective of whether they are situated in Delhi or in other areas of NCR, require that 85% of their seats be reserved for Delhi students. The balance 15% are filled up on an All India basis. These institutions located in the NCR Zone do not command sufficient confidence of the Delhi based students and thus leading to huge vacancies in such institutions. The low admission classroom fail to raise desired kind of academic wholesomeness for maintaining high standard of teaching and academic deliberations in classrooms as well as at institution level. The admitted students in such institutions with low admissions are left to suffer with poor classroom and institutional academic deliberation. Such institutions even if they want to raise standard of teaching

at par with other established institutions in right earnest, they fail to do so, as being self financing they are palpably constrained by economic resources, which they are not able to raise and sustain because of low admissions.

47. It is their submission, the Respondent University has filed an affidavit in the present Writ Petition putting on record certain subsequent facts in its affidavit dated May 25, 2017. The University has brought on record the fact that even the Institutes located in NCT of Delhi who had applied for affiliation for the ensuing academic year have not been granted affiliation. They would state, alongwith its additional affidavit dated May 25, 2017, the Respondent University has filed a copy of the resolution of the 67th Meeting of the Board of Affiliation held on 12th May, 2017. The cases of all the new institutes located in the NCT of Delhi who had applied for affiliation for Academic year 2017-18 have been decided. It is further submitted that at this stage the Petitioner Institutions cannot be considered for affiliation for the Academic Year 2017-18 as it would lead to reopening the process of affiliation from the beginning which shall entail inviting application from all other aspirant institutions which may be more than the six Petitioner Institutions. It will entail giving a public notification inviting applications, then processing of these applications, thereafter inspection of these institutions by duly constituted Committees, followed by processing of inspection reports for consideration by the Board of Affiliation, convening the Board of Affiliation and consideration of the Inspection Reports and then communication of the decision of the Board of Affiliation to the Applicant Institutions. All this processes are likely to take another two months which in turn would unsettle the notified timeline for admission for the Academic

Session 2017-18 consequently, affecting the commencement of the Academic Session by 1st August, 2017. The Supreme Court in the *Parshavanath Charitable Trust & Ors. V. All India Council for Tech. Edu & Ors. (2013) 3 SCC 385* has laid down timeline for affiliation, admission and commencement of the academic session which is binding and sacrosanct. Opening the affiliation process of the University for consideration of the new Institutes for the academic year 2017-18 at this stage would unsettle compliance with the timeline set by the Supreme Court.

48. Having heard the learned counsel for the parties and considering the written submissions / synopsis filed by them, the question which arises for consideration is whether the respondents, Govt. of NCT of Delhi and Guru Gobind Singh Indraprastha University, (University in short) are justified in their decision to keep the affiliation of new institutions located in National Capital Region (outside NCT of Delhi) in abeyance till further orders.

49. In so far as the submissions made that the impugned decision violates Article 19 (1)(g) of the Constitution is concerned, the petitioner not being “*Citizens*” cannot plead violation of Article 19 (1)(g) of the Constitution. A reference in this regard may be made to the judgments of the Supreme Court in the cases reported as “*AIR 1963 SC 811 State Trading Corporation of India and Ors. v. The Commercial Tax Officer, Vishakhapatnam & Ors.; 2011 3 SCC 193, Shree Sidhballi Steels Ltd. & Ors. V. State of UP and Ors.* Further, it is not the case of the petitioners that the impugned decision has an effect on their existence / Constitution or their right to carry any profession or

carry on any occupation, trade or business (as Trust/Societies). Similar is the position with regard to the institutes established by the Trust/Societies. The grievance of the petitioners primarily is that they have been restrained from applying for affiliation. Seeking affiliation is a statutory right under the provisions of the Act of 1998 / Statute 24 / Ordinance-I. So, the impugned decision cannot be said to be in violation of Article 19(1)(g). The Supreme Court in the context of Article 19 (1)(c) of the Constitution in the case reported as ***AIR 1962 SC 171 All India Bank Employees' Association v. National Tribunal*** has *inter alia* held the right to form Association does not entitle the Citizen or individual or Group forming the Association a concomitant right to claim that the objects for which the Association is formed too is part of the larger fundamental right to form Association. I reproduce the relevant Paras of the said judgment as under:

“the argument of the learned Counsel, viz., that the right guaranteed to form "an union" carries with it a concomitant right that the achievement of the object for which the union is formed shall not be restricted by legislation unless such restriction were imposed in the interest of public order or morality, that calls for critical examination. We shall be referring a little later to the authorities on which learned Counsel rested his arguments under this head, but before doing so we consider it would be proper to discuss the matter on principle and on the construction of the constitutional provision and then examine how far the authorities support or contradict the conclusion reached. The point for discussion could be formulated thus : When sub-clause (c) of cl.(1) of Art.19 guarantees the right to form associations, is a guarantee also implied that the fulfilment of every object of an association so formed is also a protected right with the result that there is a constitutional guarantee that every association shall effectively achieve the purpose for which it was formed without interference by law except on grounds relevant to the preservation of public order or morality set out in clause (4) of Article.19? Putting aside for the moment the case of Labour Unions to which we shall refer later, if an association were formed, let us say for carrying on a

lawful business such as a joint stock company or a partnership, does the guarantee by sub-cl.(c) of the freedom to form the association, carry with it a further guaranteed right to the company or the partnership to pursue its trade and achieve its profit-making object and that the only limitations which the law could impose on the activity of the association or in the way of regulating its business activity would be those based on public order and morality under clauses (4) of Article 19? We are clearly of the opinion that this has to be answered in the negative. An affirmative answer would be contradictory of the scheme underlying the text and the frame of the several fundamental rights which are guaranteed by Part III and particularly by the scheme of the seven freedoms or groups of freedoms guaranteed by sub-clauses (a) to (g) of clause (1) of Art. 19. The acceptance of any such argument would mean that while in the case of an individual citizen to whom a right to carry on a trade or business or pursue an occupation is guaranteed by sub-clause (g) of clause (1) of Article 19, the validity of a law which imposes any restriction on this guaranteed right would have to be tested by the, criteria laid down by clause (6) of Article 19. if however he associated with another and carried on the same activity-say as a partnership, or as a company etc., he obtains larger rights of a different content and with different characteristics which include the right to have the validity of legislation restricting his activities tested by different standards, viz., those laid down in clause (4) of Art. 19. This would itself be sufficient to demonstrate that the construction which the learned Counsel for the appellant contends is incorrect, but this position is rendered clearer by the fact that Art. 19-as contrasted with certain other Articles like Articles 26, 29 and 30-grants rights to the citizen as such, and associations can lay claim to the fundamental rights guaranteed by that Article solely on the basis of their being an aggregation of citizens, i.e., in right of the citizens composing the body. As the stream can rise no higher than the source, associations of citizens cannot lay claim to rights not open to citizens, or claim freedom from restrictions to which the citizens: composing it are subject.

The resulting position way, be illustrated thus If an association were formed' for' the purpose of arriving on business, the right to form it would be Guaranteed by sub-clause (c) of clause (1) of Article 19 subject to any law restricting that right conforming to clause (4) of Article 19. As regards its business activities, however, and the achievement of the objects for which it was brought into existence, its rights would be those guaranteed by

subclause (g) of clause (1) of Article 19 subject to any relevant law on the matter conforming to clause (6) of Article 19; while the property which the association acquires or possesses would be protected by sub-el. (f) of cl. (1) of Art. 19 subject to legislation within the limits laid down by cl. (5) of Art. 19. We consider it unnecessary to multiply examples to further illustrate the point. Applying what we have stated earlier to the case of a labour union the position would be this: while the right to form an union is guaranteed by sub-clause (c), the right of the members of the association to meet would be guaranteed by sub-el. (b), their right to move from place to place within India by sub-cl.(d), their right to discuss their problems and to propagate their views by sub- cl. (a), their right to hold property would be that guaranteed by sub-clause (f) and so on each of these freedoms being subject to such restrictions as might properly be imposed by clauses (2)to (6) of Article 19 as might be appropriate in the context. It is one thing to interpret each of the freedoms guaranteed by the several Articles in Part III a fair and liberal sense, it is quite another to read which guaranteed right as involving or including 'Concomitant rights necessary to achieve the object which might be supposed to under lie the grant of each of those rights, for that construction would, by a series of ever expanding concentric circles in the shape of rights. concomitant to concomitant rights and so on, lead to an almost grotesque result.'"

50. That apart, I agree with the submission of Mr. Tripathi and Mr. Talwar that two out of six petitioners are already affiliated to their respective State Universities; so there is no question of placing any restriction on the petitioners right under Article 19 of the Constitution. Even with regard to the balance four petitioners they can seek affiliation with the State Universities. Hence this plea on behalf of the petitioners is liable to be rejected.

51. In so far as the submissions of Mr. R.K. Saini and Mr. Kirti Uppal and other counsels that (i) Section 4 of the Act of 1998 provides that the limits of the area within which the University shall exercise its powers shall be those of NCR as defined in the

National Capital Regional Planning Board, 1985; (ii) makes it mandatory for the respondents to grant affiliation if the institution agrees to accept the Statute and Ordinances; (iii) the respondents cannot discriminate between the institutes of Delhi and NCR as they form one class and no classification can be made particularly when the classification has no nexus to the object sought to be achieved are concerned, it is necessary for answering these submissions to reproduce Section 4 of the Act of 1998 as under:

“4. Jurisdiction:**

(1) Save as otherwise provided by or under this Act, the limits of the area within which the University shall exercise its powers, shall be those of The National Capital Region as defined in the National Capital Region Planning Board Act, 1985 (2 of 1985).

(2) No college or institution situated within the jurisdiction of the University shall be compulsorily affiliated to the University, and affiliation shall be granted by the University only to such college or institution as may agree to accept the Statutes and the Ordinances.”

52. From the perusal of Section 4 it is seen that it confers upon the University, the geographical limits within which it can exercise its powers under the Act, i.e., NCR. The geographical limits have been fixed in terms of the National Capital Region Planning Board Act, 1985. This would not mean, the powers of the University would include the powers specified in the Act of 1985. Further, the first part of sub-clause 2 of Section 4 stipulates no college or Institution situated within the jurisdiction of the University shall be compulsorily affiliated to the University. In other words, there is no obligation on a College or Institution within the jurisdiction to be affiliated to the

University. The later part of sub-section 2 of Section 4 of the Act of 1998 makes it clear that even those who are admitted to its privileges have to agree to accept the Statutes and Ordinances of the University. The conditions under which Colleges and Institution may be admitted to the privileges of the University and the conditions under which such privileges can be withdrawn, are laid down in Statute 24. It is necessary that such conditions are fulfilled by a College or an Institution. Clause-3 (iii) of Statute 24 provides that University can reject a request for affiliation or grant it in whole or in part. Clause 9 of Statute 24 contemplates suspension or withdrawal of affiliation. Similarly, Clause 3.1 of Ordinance-I contemplates a College or Institution applying for affiliation to the University within the time limit fixed by the University.

53. It is a conceded case of the petitioners as submitted during the arguments and is also clear from Clause 3.1 of Ordinance-I that till such time the applications are invited by the University, an Institute on its own cannot submit an application for affiliation. If that be so, no institute be that in NCT of Delhi or NCR can submit an application for affiliation till such time the University invites applications. There is nothing in Section 4 / Statute 24 / Ordinance-I which obligates the University to call for applications every year for affiliation. So it follows, the University may or may not invite applications for affiliation or it can limit the applications in a particular manner as has been done vide the impugned order / letter. This necessarily means Section 4 / Statute 24 / Ordinance-I does not make the grant of affiliation mandatory. The only question to be decided is whether the decision is discriminatory and no classification can be made. The stand of the respondents in justifying the decision as noted from the short affidavit is as under:

“8. It is submitted that in the last two years admissions in the institutions / professional colleges etc. situated in NCR Zone beyond the NCT of Delhi was around 40% of the total vacancies in the year 2015-16, and the same was found to be around 47% in the year 2016-17, whereas the admission in the institutions situated in the NCT of Delhi was around 95% of the total vacancies during the same period. The issue of huge vacancy in the NCR Zone outside the NCT of Delhi in comparison to the institutions located in Delhi was examined by the Respondent No.1 and it was observed that there was a huge difference between the pattern of admissions in NCT of Delhi and those beyond the NCT of Delhi. The abnormally high number of vacant seats in the institutions located in the NCR Zone beyond the NCT of Delhi were found to be unviable and it was for this reason that the Respondent No.1 had the view that until the admission status vis-à-vis the vacancy position against the existing seats does not improve and matches with the position in Delhi based institutions, any further affiliation to new institutions beyond the NCT of Delhi should be suspended as an interim policy measure. Accordingly, the Respondent No.1 recommended that they should not affiliate any new institutions beyond the NCT of Delhi, till the admission statistics in outside Delhi institutions improves to an acceptable level, i.e. at least 80% seats are filled, from the coming Academic Session 2017-18 onwards. This shall have the effect of overall consolidating the position of the existing affiliated institutions of NCT of Delhi and outside NCT of Delhi and thus add to the academic standards and ensure maintenance / up-gradation of the quality of these institutions. In this regard a meeting held on 25.11.2016 in the office of Secretary, Education, Govt. of NCT of Delhi. The following members were present in the said meeting:

- i. Secretary, Higher Education, Govt. of NCT of Delhi.*
- ii. Director, Higher Education, Govt. of NCT of Delhi.*
- iii. Director, Training and Technical Education, Govt. of NCT of Delhi.*
- iv. Registrar, Guru Gobind Singh Indraprastha University, Delhi.*
- v. Incharge, Affiliation, Guru Gobind Singh Indraprastha University, Delhi.*
- vi. Incharge, Admissions, Guru Gobind Singh Indraprastha University, Delhi.*

9. The details of the discussion held and recommendations of the committee are as under:

“The Registrar, Guru Gobind Singh Indraprastha University apprised the members about the status of admissions in the University for the academic session 2016-17. One of the observations was that in the institutions located outside the NCT of Delhi in the NCR, the status of admissions has been dismal, upto 45% of seats remain vacant. Moreover, in the last few years new affiliations have been primarily granted in the NCR region (Outside the NCT of Delhi). Since a major portion of seats in the institutions located in NCR (outside the NCT of Delhi) are remaining vacant, affiliation of new institution in NCR (Outside the NCT of Delhi) may not lead to any fruitful exercise. Moreover, currently there are about 120 institutions affiliated to the University. As per the Rashtriya Uchchatar Shiksha Abhiyan report (Page-111).

Following are the paths that can be taken in reforming the affiliation system:

- (I) *Limit the number of colleges to be affiliated to any university to 100*

Considering these aspects, the members recommended that new affiliation in NCR (outside Delhi) be put in abeyance. The University should put up a proposal for the same separately.”

The Minutes of the Meeting held on 25.11.2016 are annexed herein as Annexure-R-1.

10. Based on the recommendation made in the meeting held on 25.11.2016 a proposal was received from the Respondent No.1, i.e., Guru Govind Singh Indraprastha University for approval of Hon'ble Chancellor of the University (Lieutenant Governor of NCT of Delhi) and the Hon'ble Chancellor (GGSIPU) / Lt. Governor, Govt. of NCT of Delhi has approved that affiliation of new institutions located in NCR, outside of NCT of Delhi be kept in abeyance till further orders. In compliance of the same, the order no. DHE4(6) Policy guideline / 14-15/Pt.file/435-437 dated 02.02.2017 was issued.”

54. The aforesaid reveals two reasons which weighed with the authorities for taking the impugned decision, (1) the Seats remaining vacant to the extent of 40% in the academic year 2015-16 and 47% in the academic year 2016-17, in the Institutes in NCR as against admission in the Institutes in NCT of Delhi being 95% during the same period; (2) for limiting the number of affiliation to 100 in terms of RUSA.

55. With regard to 1 above, the following statistics have been taken into consideration when the proposal was mooted on October 13, 2016,

Status of Admissions for Major CETs for the Academic Year 2016-17 and 2015-16													
		Delhi				Outside Delhi				Total			
	Academic Session	Intake	Filled	Vacant	% vacancy	Intake	Filled	vacant	% Vacancy	Intake	Filled	Vacant	% vacancy
	2015-16	22393	21081	1312	5.86	2860	1700	1160	40.56	25253	22781	2472	9.79
Total	2016-17	22544	21433	1111	4.93	4280	2243	2037	47.59	26824	23676	3148	11.74

56. I may state here during the course of hearing, a Chart was handed over to contend that Greater Noida Institute has 80% seats filled vis-à-vis the Institute situated in Dwarka which has 45% - 50% seats filled as per the information downloaded from the website of the respondent / University. On this Mr. Tripathi has taken an objection that the Chart does not depict the source of information. It is noted that the Chart produced does show the information with regard to seats in Greater Noida is based on the IP University list. A comparison is made with an Institute in Greater Noida and an Institute in Delhi. To get a clear picture on the data which resulted in the decision the concerned file was produced before the Court. The Chart as depicted above was the basis of the decision. For outside Delhi Institutes the statistics was regard to all the Institutes outside Delhi including Greater Noida. So the decision is on a consideration of overall position

of the Institutes outside Delhi and not confining to Greater Noida. The figures are glaring. There is some basis for classification between the Institutes within Delhi and those outside Delhi. Suffice to state there are valid reasons for the respondents to take a decision as rampant affiliation may affect the credibility, reputation and goodwill of the University as has been held by this Court in *Rahul Dhaka Vikas Society and Anr.* (*Supra*). The Submission of Mr. Tripathi that the petitioners have option of applying for affiliation in their respective State Universities whereas similar self-financing Institutes situated in NCT of Delhi can only apply to the respondent University for affiliation is appealing. The submission of Mr. Tripathi that lower admission statistics in the Institutes in NCR also lower the economic and financial viability of the concerned Institutions may give rise to legal and practical difficulties for the University and besides subjecting the admitted students therein to poor quality of education. In other words education standards need to be maintained is also appealing. His relatable submission that the University cannot permit its name to be used or its jurisdiction to be abused for commercializing education and the University is well within its right and power to regulate affiliation process by taking a policy decision not to invite applications from the Institutes located outside Delhi for certain good valid reasons is also appealing. The above said decision has been approved at the highest level by the Chancellor of the University / Lt. Governor of Delhi and Board of Affiliation and cannot be faulted.

57. In so far as the second reasoning for the impugned decision based on RUSA recommendation is concerned; the said stand was countered by the counsel for the petitioners by stating that the figure has crossed above 100 that too after the

recommendation of the RUSA, 2013 in the academic years 2014-15 and 2015-16 and the RUSA recommendations are only in the nature of guidelines. There is no dispute that RUSA did recommend for the restricting the affiliation to 100. It is also conceded position that the affiliations have gone beyond 100 i.e., 126. But that cannot a reason for allowing further affiliations which would take the figure beyond 126. The stand of the University in the additional affidavit dated May 25, 2017 is that 15 Institutions from within the NCT of Delhi had applied for affiliation to the University. However, none of the said Institutes were considered for affiliation for the academic year 2017-18 by the Board of Affiliation. In other words, the respondent University has not granted affiliation to any new Institutes. This aspect may indicate that the University is adhering to the RUSA recommendation. If that be so, no prejudice has been caused to the petitioners. The plea of discrimination shall also be unsustainable. In so far as the judgment referred to by Mr. Saini in the case of ***Vidha Sudha Welfare Foundation Samiti (Supra)*** and connected writ petitions are concerned, the said judgment would not be applicable in the facts of this case inasmuch as in those cases, this Court was concerned with a challenge to a Notice dated February 27, 2015 of the NCTE inviting applications for Teacher Training Courses by excluding certain districts of Madhya Pradesh where the petitioner institutes were situated. This Court referred to (i) a judgment / order dated January 20, 2016 passed in W.P.(C) 19819/2015 by the High Court of Madhya Pradesh wherein the High Court held all applications received before the cut-off from the excluded district of state of Madhya Pradesh shall be treated as valid and eligible to participate in the consideration process, (ii) judgment of this court in

Divine Mission Society (Regd.) v. National Council for Teacher Education and ors.

W.P.(C) 2889/2013 and (iii) to an earlier interim order passed in the same writ petitions.

It disposed of the writ petitions with a direction to consider the application of the petitioners and a final decision to be taken thereon. Suffice to state the decision of this Court is based on the judgment of the Madhya Pradesh High Court in W.P.(C) 19819/2015; judgment of this Court in W.P.(C) 2889/2013. Surely, if an application is legally valid, it needs to be considered. On facts, the judgment is distinguishable.

58. One of the submissions made by Mr. Sacchin Puri, learned Sr. Counsel for the petitioners in W.P.(C) 2393/2017 is that the impugned decision would necessarily require an amendment to the Statute in terms of Section 26 (2) of the Act of 1998. The said submission is without merit. I have already held that Section 4 of the Act of 1998 / Statute 24/Ordinance-I does not obligate the University to call for applications for affiliations nor they obligate grant of affiliation mandatory. Mr. Puri could not point out as to how the impugned decision, which according to Mr. Puri is in the nature of guideline is at variance with the provisions of the Act / Statute 24 / Ordinance-I and require amendments. As the impugned decision is not in violation to the Act / Statute 24 and Ordinance-I no amendment is required. The reliance placed by Mr. Puri on the judgment of the Supreme Court in the case of ***Ponnaiyah Ramajayam Institute of Science and Technology Trust (supra)*** is concerned, there the Supreme Court is concerned with the facts where the petitioner Institute's proposal for establishment of a new medical college for the academic year 2015-16 was returned on the ground the same was submitted after the cut-off date of August 31, 2014. The Single Judge of this

Court allowed the Writ Petition. The judgment was reversed by the Division Bench. One of the documents, essentiality certificate was submitted on September 10, 2014. The Central Government rejected the application on the ground that essentiality certificate was not submitted before the cut-off date of August 31, 2014. The Supreme Court held the Institute was not at fault in the matter of submission of application and other required documents and the approach of the Central Government is unjustified. The Supreme Court allowed the SLP and directed the consideration of the application. Having seen the judgment of the Supreme Court, the same has no relevance / applicability to the facts of these cases. In the said judgment, the Supreme Court was concerned with the rejection of the application for grant of recognition. In the case in hand, the challenge is to the decision of the Govt. of NCT / University not to call applications from Institutes in NCR for affiliation.

59. In so far as the submission of Mr. Kirti Uppal, learned Sr. Counsel appearing for the petitioners in W.P.(C) 2955/2017, that the petitioner institute has been recognized as a minority educational institution run by a Sikh Foundation and is free to run its own affairs and in view of Section 10 (A) of the National Commission for Minority Educational Institution (Amendment Act, 2006) and the petitioner is within its right to apply for affiliation is concerned, the same is without any merit. The declaration under Section 10(A) of the Amendment Act of 2006 is only a declaration with regard to an institution being a minority institution and nothing more. The declaration does not confer a right in favour of the petitioner to apply / seek affiliation. In this regard a reference can be made to a judgment of this Court reported as **180 (2011) Delhi Law**

Times, 268, Medical Council of India v. All Karim Educational Trust and Anr.

wherein this Court has held that the NOC granted by the National Commission for Minority Educational Institution is for the purpose of establishing an Institution as a Minority Educational Institution and not for the purpose of affiliation by the CBSE. No benefit shall flow to the petitioner in W.P.(C) 2955/2017 on the basis of the declaration under Section 10 (A) of the National Commission for Minority Educational Institution (Amendment Act, 2006).

60. In so far as the submission on behalf of the petitioners that as Statute / Ordinance contemplates debarring non-performing Institutes from getting NOC after 2/3 years of failure / non-performance and the ground on which the impugned decision is taken, is concerned, suffice to state the ground of failure / non-performance pertains to those Institutes which have affiliation. Even otherwise, that would still not preclude / restrain the respondents, taking a decision in the manner now taken in view of the judgment of the Supreme Court in the case of *National Council for Teacher Education v. Sri Shyam Shiksha Prashiksham Sansthan 2011 (3) SCC 238* wherein the Supreme Court in Para 33 has held as under:

“33. The consultation with the State Government/Union Territory Administration and consideration of the recommendations/suggestions made by them are of considerable importance. The Court can take judicial notice of the fact that majority of the candidates who complete B.Ed. and similar courses aspire for appointment as teachers in the government and government aided educational institutions. Some of them do get appointment against the available vacant posts, but large number of them do not succeed in this venture because of non-availability of posts. The State Government/Union Territory Administration

sanctions the posts keeping in view the requirement of trained teachers and budgetary provisions made for that purpose. They cannot appoint all those who successfully pass B.Ed. and like courses every year. Therefore, by incorporating the provision for sending the applications to the State Government/Union Territory Administration and consideration of the recommendations/suggestions, if any made by them, the Council has made an attempt to ensure that as a result of grant of recognition to unlimited number of institutions to start B.Ed. and like courses, candidates far in excess of the requirement of trained teachers do not become available and they cannot be appointed as teachers. If, in a given year, it is found that adequate numbers of suitable candidates possessing the requisite qualifications are already available to meet the requirement of trained teachers, the State Government/Union Territory Administration can suggest to the concerned Regional Committee not to grant recognition to new institutions or increase intake in the existing institutions. If the Regional Committee finds that the recommendation made by the State Government/Union Territory Administration is based on valid grounds, it can refuse to grant recognition to any new institution or entertain an application made by an existing institution for increase of intake and it cannot be said that such decision is ultra vires the provisions of the Act or the Rules." (emphasis supplied)

61. The aforesaid judgment of the Supreme Court holds that for valid grounds the regional committee can refuse recognition to new institution or entertain applications made by an existing institution for increasing intake. The judgment is applicable in all fours, to the cases in hand.

62. In so far as the judgment relied upon by Mr. Kirti Uppal and Ms. Anubha Aggarwal in the case of ***Rungta Engineering College, Bhilai and Anr. (Supra)***, is concerned, the same has no application in the facts of this case as the issue which fell for consideration was not the same, which is being decided in this batch of petitions. Similarly, the reliance placed by Mr. Saini on the judgment of the Supreme Court in ***Shrilekha Vidyarthi (Kumari) (Supra)*** is concerned, the same has no application in the

facts of this case and in view of my conclusion above. Even the reliance placed on the judgment of the Supreme Court in *M.S. Gill (Supra)* has no application.

63. The submissions, that the impugned decision has been taken in collusion with the existing institutes in the NCR, which are guilty of non-performance in the past is an allegation of malafide. It is stated by the respondents that the impugned decision has been taken at the level of Chancellor (Hon'ble Lt. Governor of Delhi) and the Board of Affiliation. If that be so, the allegations are unsustainable and also cannot be looked into as it is a settled law that there has to be sufficient pleadings and persons against whom the allegations are made should be impleaded as parties.

64. The plea advanced with regard to infrastructure / facilities etc. possessed by the petitioners is concerned, the same has no bearing on the impugned decision and on my conclusion above.

65. I may only state here, that the decision of the respondents is to keep the affiliation of new institutions located in NCR in abeyance till further orders, which means, it is not a decision of permanent nature.

66. In view of the discussion above, this Court is of the view that the impugned decision cannot be interfered with in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petitions are dismissed. No costs.

CM No. 10223/2017 in W.P.(C) 2377/2017
CM No. 10328/2017 in W.P.(C) 2393/2017
CM No. 10633/2017 in W.P.(C) 2465/2017
CM No. 13715/2017 in W.P.(C) 3148/2017

CM No. 12198/2017 in W.P.(C) 2798/2017

CM No. 12864/2017 in W.P.(C) 2955/2017

Dismissed as infructuous.

V. KAMESWAR RAO, J

JUNE 05, 2017

ak/jg

