

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 23.03.2015

+ **W.P.(C) 8094/2014 & CM Nos.18890/2014 & 2781/2015**

ADITYA SANWAL & ORS

..... Petitioners

versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS**

..... Respondents

AND

+ **W.P.(C) 9429/2014 & CM No.21294/2014**

ASHUTOSH CHAMOLI & ORS

..... Petitioners

versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS**

..... Respondents

AND

+ **W.P.(C) 8193/2014 & CM No.19070/2014**

PALAK GUPTA

..... Petitioner

versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS**

..... Respondents

AND

+ **W.P.(C) 604/2015 & CM No.1035/2015**

SARAPREMASHISH BUTOLA & ORS.

..... Petitioners

versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ANR.**

..... Respondents

Advocates who appeared in this case:

For the Petitioners

: Mr Rakesh C. Agrawal, Mr N. K. Bhatnagar
and Ms Astha in W.P.(C) 8094/2014.
Mr Deepak Vohra and Mr Vipin Malik
in W.P.(C) 8193/2014.
Mr K. Anand Singh and Mr Lauv Kumar
in W.P.(C) 604/2015.

For the Respondents

: Mr Sudhir Nandrajog, Sr. Advocate, Mr Tushkar

Mehta, ASG with Mr Ajay Digpaul, CGSC and
Ms Arti Bansal for R-1 in all matters.
Mr Anil Soni for AICTE in all matters.
Mr V. Sudeer and Mr Alvin for UGC in
W.P.(C) 8094/2014 & W.P.(C) 9429/2014.
Mr A. B. Pandey for Intervener
in W.P.(C) 8094/2014.
Mr Ambar Qamuddin for R-5 in W.P.(C)
8094/2014.
Mr Vijay Chandra Jha and Ms Sonia Sharma for
GNCTD W.P.(C) 9429/2014.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These petitions have been preferred by some of the students who were pursuing B.Tech. Programme with Guru Premsoh Memorial College of Engineering (hereafter 'GPMCE'), which was affiliated to Guru Gobind Singh Indraprastha University (hereafter 'the University'). The accreditation granted to GPMCE by All India Council for Technical Education (hereafter 'AICTE') was withdrawn and, therefore, the petitioners along with other students were required to be shifted to other accredited institutions. By an office order dated 19.11.2014 (hereafter the 'impugned order') issued by the University, the students studying in second, third and fourth year at GPMCE have been directed to be shifted to Mahavir Swami Institution of Technology (hereafter 'MSIT'), an institution located in the State of Haryana. The petitioners are aggrieved by this action of the University. According to the petitioners, campus of MSIT is located at a remote place, which is not easily accessible. The petitioners also assert that the infrastructure facilities available at MSIT are inadequate. The

petitioners further contend that the impugned order is contrary to the mandatory provisions of All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010 (hereafter ‘the AICTE Regulations’).

2. The relevant facts are briefly outlined as under:-

2.1 By an order dated 24.06.2014, AICTE withdrew the accreditation granted to GPMCE - an Institute affiliated to the University - in view of several deficiencies pointed out by an expert committee. GPMCE filed a writ petition (being W.P.(C) No.4007/2014) before this Court challenging the said order of withdrawal of accreditation, which was dismissed by an order dated 15.09.2014. A Letters Patent Appeal (being LPA No.665/2014) filed by GPMCE challenging the said order dated 15.09.2014 also met the same fate and was dismissed by a Division Bench of this Court by an order dated 07.11.2014.

2.2 Thereafter, a committee was constituted by the University for deliberating on the modalities for reallocation of affected students (hereafter ‘the Committee’). In a meeting held on 17.11.2014, the Committee approved and accepted MSIT’s proposal to transfer all students of GPMCE to MSIT. The University, thereafter, issued the impugned order, *inter alia*, directing shifting of the students to MSIT. The relevant extract of the impugned order is quoted below:-

“1. Reallocation of students .

All the existing students of B.Tech.programme on the rolls of Guru Premsukh Memorial College of Engineering and studying in 2nd, 3rd and 4th years at present i.e. during the

Academic Session 2014-15 are shifted to Mahavir Swami Institute of Technology, Sonapat with immediate effect. There shall be no additional financial burden in terms of fee etc on affected students.

2. Absorption of Faculty.

The faculty members currently working with Guru Premsookh Memorial College of Engineering shall be absorbed by Mahavir Swami Institute of Technology subject to their fulfillment of all eligibility conditions as prescribed by AICTE provided that the concerned faculty members express in writing their willingness to be absorbed by Mahavir Swami Institute of Technology.”

Submissions

3. The learned counsel appearing for the petitioners contended as under:

3.1 That the impugned order is in violation of Regulation 4.31 of the AICTE Regulations. It was urged that vacant seats were available in other AICTE approved institutions affiliated with the University, which were located nearby and yet, the students of GPMCE were shifted to MSIT.

3.2 That the impugned order is also in violation of the third proviso to Article 1.2 of Chapter IV of All India Council for Technical Education Approval Process Handbook, which mandates that the students be redistributed to other Institutions in the jurisdiction of the affiliating University. It was urged that ‘redistribution’ does not entail shifting of the students to one particular institution/college.

3.3 That on 24.06.2014 - the date on which the order de-recognizing GPMCE was passed - MSIT was not affiliated to the University for the second, third and fourth year; MSIT was granted affiliation by the

University, for Academic Year 2013-14 (i.e. for 2nd Year students), Academic Year 2012-13 (i.e. for 3rd Year students) and Academic Year 2011-12 (i.e. for 4th Year students) with retrospective effect. It is contended that the University did not have the power to grant retrospective affiliation to an Institute. Further, even the affiliation granted by the University was provisional in view of Clause 4 of Ordinance 1 of the University governing 'Procedure for Considering Proposals for Affiliation of Colleges and Institutions'.

3.4 That the exercise of power by a State university beyond the territorial limits of the State is contrary to Article 245 of the Constitution of India. The petitioners relied upon the observations made by a Division Bench of this court in LPA No. 756/2011 captioned as '*State of Haryana v. Global Educational & Social Trust & Ors.*'

3.5 That the reasons recorded by the Committee in its minutes dated 17.11.2014 for rejecting the proposal of Maharaja Agrasen Institute of Technology, New Delhi was contrary to the letter dated 14.10.2014 written by the said Institute to the University for accommodating all students even if the students may not be in a position to pay the fee to the said institute for that session.

3.6 That the requisite standards and infrastructural facilities of MSIT were not inspected/confirmed by the University before approving the proposal of MSIT as the necessary inspection was conducted on 28.11.2014, that is, much after the impugned order was passed.

3.7 That vacant seats of MSIT, which was affiliated with Deenbandhu

Chhotu Ram University of Science and Technology, Murthal, Haryana (hereafter 'DCRUST'), could not be considered as the University was obliged to transfer the students to its affiliated colleges/institutions.

3.8 That there was sufficient precedent as to the manner in which students of de-recognized institutes were to be re-allocated; It was contended that the University had re-allocated the students of DPC Institute of Management Dwarka, New Delhi in August-September, 2014 and Bhagwan Mahaveer College of Education, Jagdishpur, Sonipat in October, 2014, to other affiliated colleges on the basis of their preference and merit in the first year.

3.9 That the students have the right of choice; to choose an institution for studying while considering various factors such as Institute's reputation, Institute's year of establishment, placement options to be provided by the Institute, Institute's affiliations & approvals, infrastructural facilities available with the institute, distance and travel time, means of transport, safety issues in the nearby area, etc. and the students cannot be forced to choose and shift to a particular college.

4. The learned ASG, appearing for the University contended that Regulation 4.31 of the NCTE Regulations could not be read literally. He submitted that the University retained the discretionary power to transfer the students *en masse* to any institution, as it may consider appropriate in the given facts.

5. The learned ASG submitted that the University had decided to transfer the students of GPMCE to MSIT for several reasons. First of all,

other colleges had declined admission to the students. This contention was, subsequently, withdrawn. Secondly, there were hardly any seats available in other colleges and the exercise to redistribute the students to other colleges would be time consuming. Thirdly, MSIT had agreed to absorb the teaching faculty and other staff of GPMCE and the University felt that this would be most beneficial to the said faculty/staff as they would be rendered jobless consequent to the withdrawal of recognition by AICTE. Fourthly, the same would ensure a smooth transfer of students from GPMCE to MSIT with minimal disruption. Fifthly, MSIT had agreed to accept the students without any additional burden of fees for the current year and transferring the students to other colleges would subject them to additional financial burden.

6. He contended that the decision of the University was not subject to judicial review unless the same was perverse or arbitrary; and as the impugned order was supported by cogent reasons, the same could not be assailed in these proceedings under Article 226 of the Constitution of India.

7. The contention that other colleges affiliated to the University had refused to accept the students of GPMCE was withdrawn; but, it was now contended on behalf of the University that the University was of the view that granting admission to the students of GPMCE to other colleges - which may be more prestigious than GPMCE - would be unfair to other students who had secured admission to those colleges on the basis of the order of merit. It was submitted that the students of GPMCE could not be allowed to be transferred to more prestigious colleges “merely because of the

fortuitous circumstances” and this was one of the considerations that weighed with the University while deciding to shift the students to MSIT.

Discussion and Conclusion

8. I have heard the learned counsel for the parties. A number of applications had been filed on behalf of the students for being impleaded as petitioners. These applicants were also heard. In addition, some of the teachers of GPMCE had also filed an application (CM No.2601/2015 in W.P.(C) No.8094/2014) seeking to intervene and support the impugned order; the learned counsel for the interveners was also heard.

9. At the outset, I must note that the conduct of the University has been less than fair. In the course of hearings, several reasons were provided as to why the University had decided to transfer the students of GPMCE to MSIT; most of them were not found on the relevant records pertaining to the decision making process. It was first contended that other colleges had declined to admit the students of GPMCE. On the basis of the aforesaid contentions, this Court had, by an order dated 29.01.2015, directed the University to place on record all communications exchanged by the University with other colleges. No such communication was produced; however, the University filed an affidavit withdrawing their stand that other colleges had declined admission to the students of GPMCE or indicated their reluctance to absorb them. It was stated that the said conclusion was a *bona fide* mistake. By an order dated 29.01.2015, the University was called upon to affirm on affidavit the number of seats available in various colleges in Delhi. In compliance of this order, the University filed an affidavit

affirmed on 06.02.2015 stating that there were total of 148 seats available with various affiliated colleges.

10. Respondent no.1 filed another affidavit affirmed on 18.02.2015, once again enclosing a tabular statement which indicated the vacancies available with other colleges. It was further stated in the affidavit that the vacant seats with respect to second shift conducted by various colleges had been ignored as GPMCE was only permitted one shift and, thus, it was assumed that all students of GPMCE would only be interested in the first shift only. I have little doubt that this was urged only to persuade this court to accept the contention that the vacancies available with the other colleges were insignificant. There is no material on record that indicates that the students of GPMCE would be reluctant to join other affiliated institutions in the second shift; more importantly, a bare perusal of the relevant minutes of the meeting of the Committee of the University held on 17.11.2014 does not indicate that this aspect was at all in the contemplation of the committee while considering the issue of transfer of students to other institutions. It was next contended that redistribution of students to other institutions would present practical and logistic problems, because of which the University had decided to avoid the same. Clearly, this contention too is an afterthought canvassed to defend the impugned order in these proceedings; the Committee had not deliberated on the logistics involved in redistribution of students or pointed out any practical difficulty in doing so at the meeting held on 17.11.2014.

11. The University's contention that the students of GPMCE were not reallocated to other more prestigious colleges as that would be unfair to

other meritorious students who had secured admission to those institutions or may secure admission to those institutions, was yet again another attempt to provide another justification for the impugned order, which was not in contemplation of the decision making authorities at the relevant time.

12. The affidavit filed on behalf of the University on 18.02.2015 also disclosed the vacancy position of MSIT. It is material to note that the statement indicating the vacancy position in MSIT was with respect to affiliation granted by DCRUST. It was not disputed that MSIT was not affiliated with the University for second, third and fourth year and was affiliated to DCRUST. Obviously, MSIT had not been able to fill these seats as it was stated that out of 960 seats, only 193 seats had been filled up. These vacant seats available with MSIT were apparently taken note of by the University even though the affiliation granted by the University to MSIT could not be considered to extend to these vacancies.

13. The petitioners, on the other hand, produced a copy of the letter dated 14.10.2014 sent by Maharaja Agrasen Institute of Technology (a college in Delhi affiliated to the University) confirming that as a goodwill gesture, the said college was willing to accept the students of GPMCE in the B.Tech. Programme in the second, third and fourth year provided the appropriate permission is accorded by the University. Maharaja Agrasen Institute of Technology had further agreed to waive of the fee for the students of GPMCE for the current session in order to not burden the students of GPMCE with additional fees over and above the fees that the students had already paid for the current academic session. Although, this

communication was available with the University, it does not appear that it was considered by the Committee in its meeting held on 17.11.2014.

14. It is apparent from the above narration that the University embarked upon an exercise to try and justify the impugned order by supporting the same by reasons which were not in contemplation while passing the impugned order. The impugned order was passed on the basis of the recommendation of the concerned Committee pursuant to its meeting held on 17.11.2014. Therefore, the University's decision to shift the students must be examined on the basis of the reasons as indicated in the minutes of the said meeting held on 17.11.2014 and it is not open for the University to now provide other reasons to justify the impugned order (see **Mohinder Singh Gill v. Chief Election Commr.:** (1978) 1 SCC 405)

15. The said minutes indicate that the Committee had considered the following options:-

- “1. The affected students of GPMCE may be shifted to USICT.
2. The students may be shifted to other affiliated institutes.
3. There are proposals from two institutes namely Maharaja Agrasen Institute of Technology, New Delhi and Mahavir Swami Institute of Technology, Sonapat, as placed on records by the admission branch.”

16. The second option, that is, to redistribute the students to other colleges was rejected and the said decision was recorded as under:-

“The second proposal regarding shifting of affected students of GPMCE to different affiliated institutes may create an administrative/financial difficulty etc, as there are so many institutions and the students will be divided in varying numbers

and would be seriously suffering from dislocation regarding projects and practical/instructional and other academic activities.”

17. At this stage it would be expedient to refer to Regulation 4.31 of the NCTE Regulations, which reads as under:-

“4.31 The affiliating Universities shall transfer the students of the Institutions, whose programs/courses have been discontinued by the Council or approval is withdrawn or suspended to other nearby AICTE approved technical Institutions affiliated to it and the Council shall allow supernumerary seats in such Institutions to accommodate the transferred students appropriately till they complete the programs/ courses.”

18. Concededly, the NCTE Regulations are mandatory. A plain reading of the aforesaid Regulation 4.31 indicates that it is not necessary that all students from the de-recognized college be transferred to one institution. On the contrary, the said regulation indicates that the students would be transferred to other nearby AICTE approved technical Institutions.

19. The All India Council For Technical Education Approval Process Handbook (2015-16) also provides that if the approval of an Institution is withdrawn “...the students admitted to the Institute whose approval has been withdrawn shall be redistributed to other Institutions in the jurisdiction of the affiliating University...” (see proviso to clause 1.2. of chapter IV of the Handbook). Plainly, on NCTE withdrawing approval granted to an Institute, its students are required to be redistributed to other affiliated colleges/institutions and not transferred *en masse* to another college/institution, which on account of its unpopularity may have a large number of vacancies.

20. It is not disputed that MSIT was not affiliated with the University for the second, third and fourth year. Admittedly, MSIT was affiliated to DCRUST for the said years. Ordinance I of the University provide for the “Procedure for Considering Proposals for Affiliation of Colleges and Institutions”. Article 4 of the said Ordinance reads as under:-

“4.0 Provisional and permanent Affiliation.

4.1 Affiliation granted initially to a college or an institution shall be provisional in nature and shall be required to be renewed on a year to year basis.

4.2 Request for permanent affiliation may be considered only after at least two batches of the college or the institution , as the case may be, have successfully completed their degree course and it has fulfilled all the conditions of affiliation and attained academic standards prescribed by the University from time to time.”

21. It is apparent from the above - and it is also not disputed - that MSIT could only be granted provisional affiliation to be renewed on a year to year basis; a permanent affiliation could be considered after at least two batches of the college had successfully completed their degree course. Obviously, MSIT is not a permanent affiliated institute. MSIT may be granted permanent affiliation only after two batches of students had completed a degree course. However, the University had transferred students to the second, third and fourth year. This was, clearly, irregular - to say the least - as the other students who are currently in the second, third and fourth year would be students of DCRUST. Thus, MSIT would now conduct the second, third and fourth year course simultaneously with the two universities.

22. It is also relevant to note that Clause 4.31 of the NCTE Regulations mandate that students would be transferred to other institutions affiliated to the University. Admittedly, as on 19.11.2014 (i.e. the date of the impugned order), MSIT was not an affiliated institute with the University for the second, third and fourth year and at the material time, MSIT was affiliated with the university for the first year students only. This is apparent from the minutes of the meeting held on 25.11.2014 pursuant to the orders passed by this Court on 24.11.2014. The said minutes indicate that the University had agreed to provide the necessary affiliation in relation to second, third and fourth year students who were being shifted from GPMCE to MSIT; thus, plainly, the requisite affiliation had not been granted, at least, till then.

23. At this stage, it is also relevant to note that, as per Clause 20(b) of Appendix-20 of the Approval Process Handbook, the last date for granting affiliation by the University to the technical institution for the ensuing academic year is 31st May of the year in which the academic session is to commence. The Supreme Court in number of decisions has held that the time schedules provided in such matters must be adhered to. (see **Parshvanath Charitable Trust & Ors. v. AICTE & Ors.**; (2013) 3 SCC 385).

24. I am inclined to accept the submission that by virtue of Clause 4.31 of the NCTE Regulations, the students of GPMCE could only be shifted to a college/institution that had already been affiliated with the University. It was contended by the University that Clause 4.31 of the NCTE Regulations vests discretion with the affiliating university to transfer students to other colleges/institutions affiliated with them. And, the provision that the

students must be accommodated in 'nearby' colleges cannot be considered as mandatory. The representatives of the University had also expressed a view at the meeting held on 25.11.2014 (pursuant to the order passed by this Court on 24.11.2014) that the requirement of reallocating the students in other nearby institutions cannot be taken as a guiding factor while reallocating students of an institution which has been de-recognised. In my view, the said contention cannot be accepted. Concededly, the NCTE Regulations are mandatory. Indisputably, the University does have certain discretion in matters relating to transfer of students of a de-recognised institution/college to other affiliated colleges/institutions, however, the language of Clause 4.31 of the NCTE Regulations cannot be ignored and must guide the University in exercising such discretion. The words that students must be reallocated to other '*nearby AICTE approved technical institutions*' clearly required the university to try and reallocate the students of de-recognised institute with other nearby institutions. This aspect has, concededly, been ignored by the University in the decision making process. In my view, the impugned order would, thus, fall foul of Clause 4.31 of the NCTE Regulations.

25. Although, it was contended that reallocating students of GPMCE to other nearby Institutes would entail practical and logistic problems, however, there is no material on record to indicate that the University had applied its mind to the logistics of the practicalities involved in such transfer. During the course of arguments, it was pointedly enquired from the learned ASG, as to the practical difficulties that would be faced; the only answer given was that an exercise to place students based on a preference cum merit criteria - which is similar to counseling - would have

to be undertaken for the students of GPMCE. Concededly, the University has, in the past followed the mandate of Clause 4.31 of the NCTE Regulations and reallocated students of a derecognized college to other affiliated colleges. It is not disputed that the recognition of DPC Institute of Management, Dwarka was withdrawn for the Academic Year 2013-14 and the students of the said Institute were, thereafter, reallocated to 13 different colleges or institutions affiliated with the University. Thus, undeniably, there is sufficient precedent to support the contention that the University has to undertake the logistic exercise of reallocating the students amongst other institutions/colleges affiliated with it. It was argued on behalf of the University that in the case of DPC Institute of Management, there were only 57 students in MBA course and, therefore, their reallocation did not cause any logistic problems. This contention is also not persuasive as in the present case, there is no indication as to what practical or logistic problems are envisaged and/or considered by the University before allocating the students. The University would have to ascertain the number of students that could possibly be absorbed by other affiliated colleges/institutions and thereafter, reallocate the students on the basis of their preference cum merit. This exercise may require some effort. However, that cannot be the reason for ignoring the mandate of Clause 4.31 of the NCTE Regulations.

26. It was also argued on behalf of the University that the students of GPMCE could not be admitted to other colleges merely due to “*fortuitous circumstances*” as they were considered more prestigious. I find it difficult to appreciate this contention especially when urged on behalf of a University which owes a duty to its students to provide the best that it can. Indisputably, the students of GPMCE have been placed in the situation they

are in, partly due to the fault of the University. It has been contended that GPMCE had functioned for 13 years as an affiliated college of the University without having the necessary infrastructure. In such a situation, if the University has to now take steps to reallocate the students, it is its duty to ensure that the same is done in a manner which is most beneficial to the students and insofar as practical, on the basis of their preference. Any reservation that the University may have in placing the students in colleges/institutions that are more prestigious, is wholly misplaced; more so, when the colleges/institutions are willing to accept the students on transfer. Strangely, the University has not examined the problems that the students would face in commuting to the campus of MSIT which is located outside Delhi. It is not disputed that the campus is located at considerable distance from the main highway and there is no public transport available to reach MSIT campus. This certainly would have been a relevant aspect to be considered by the University before deciding to reallocate the students *en masse* to MSIT. But, the minutes of the meeting held on 17.11.2014 of the concerned committee indicates that the committee had completely ignored this aspect of the matter also.

27. In my view, the decision of the University to transfer the students of GPMCE to MSIT is not in conformity with Regulation 4.31 of the NCTE Regulations and, therefore, cannot be sustained.

28. Having stated above, one must now examine the reasons which led the University to take an affirmative decision to transfer the students to MSIT. The relevant extracts of minutes of the meeting held on 17.11.2014

of the concerned committee with regard to reallocating the students to MSIT are quoted below:-

“The third proposal regarding two institutes namely Maharaja Agrasen Institute of Technology and Mahavir Swami Institute of Technology were considered on merit and it was felt that since the fee structure of Maharaja Agrasen Institute of Technology is comparatively higher than Mahavir Swami Institute of Technology, the affected students of GPMCE on shifting would be suffering from additional financial burden if they are shifted to Maharaja Agrasen Institute of Technology. Moreover, in this case, the faculty and supporting staff of Guru PremSukh is already declared surplus due to closure of the institute. The Faculty and Staff of GPMCE have also prayed to University to kindly be considerate for their appointment as they will be thrown out due to closure of the Institute, so the University may be kind enough for their adjustments along with the Students. In order to maintain the minimum dislocation of the affected students of the GPMCE studying in 2nd, 3rd and 4th year, the committee felt that in case the same Faculty/staff is also made available to teach these students, the services of such faculty/ staff can be utilized that will be in turn will also save the affected faculty/staff on the Institute being closed. Mahavir Swami Institute of Technology, Sonipat, has assured in writing to absorb the teaching faculty of GPMCE, if students of this Institute are shifted to their Institution, besides other reasons to shift the students to Mahavir Swami Institute of Technology along with that they have sufficient infrastructural and instructional facilities as per AICTE norms etc., as stated vide its letter dated 16.10.2014.

In view of the facts and circumstances of the matter and in larger interests of students without any additional financial burden in terms of fees etc., to the affected students and also absorption of the faculty/staff of affected Institute on closure of whosoever are willing to continue, the proposal at S.no 3 appears to be practical, feasible and acceptable for the University in the given circumstances and present conditions. Accordingly Committee recommends the third option as stated

above for consideration of shifting affected students of GPMCE to the Mahavir Swami Institute of Technology as proposal submitted. The above recommendations of the committee on being approved by competent authority may be forwarded to State Government i.e. Govt of NCT of Delhi for consideration and approval, as stated in the AICTE order letter dated 24/6/2014.”

29. The said minutes indicate that the third option was accepted, however, the proposal of Maharaja Agrasen Institute of Technology was rejected as it was felt that the students would suffer additional financial burden. In addition, the faculty and staff of GPMCE had also requested to be adjusted along with students and the same was only possible if the students were shifted to MSIT. This would also ensure minimum disruption in the academic continuity as the teachers would maintain the academic course. Thirdly, MSIT had confirmed that it had sufficient infrastructure and instruction facilities as per AICTE norms.

30. First of all, the reason that there would have been additional financial burden on the students is without any basis as Maharaja Agrasen Institute of Technology, by its letter dated 14.10.2014, had also confirmed that it would not charge any fee for the current session. In so far as the fee structure is concerned, there is no material to indicate that the students would have any reservation to pay the additional fee; the fact that the petitioners have moved this court and prayed that they be transferred to Maharaja Agrasen Institute of Technology, is clearly, indicative that this is not an issue. Further, there was no effort on the part of the University to ascertain from other colleges whether any fee concession could be granted to the students of GPMCE. It is also apparent that the University did not conduct any exercise in ascertaining the vacancies available with the other

colleges in Delhi. The Committee also did not consider the question of inconvenience that may be caused to the students to commute to another State.

31. It is strange that the University had passed the impugned order without even ascertaining whether MSIT had the requisite infrastructure facilities. The first inspection to ascertain the same was conducted on 28.11.2014 after the impugned order had been passed.

32. It is apparent that singularly most important consideration that weighed with the University for transferring the students from GPMCE to MSIT was the offer of MSIT to accept the teaching faculty and other staff of GPMCE. However, there is no indication that any exercise was conducted by the University to ascertain the number of teaching faculty and/or other staff that were committed to join MSIT. It also transpires from the affidavits filed in this Court that a significant number of teaching faculty and other staff did not join MSIT. Further, some members of the faculty/ staff of GPMCE that joined MSIT did not report for their duty. The affidavit filed by the University on 10.03.2015 indicates that GPMCE had a teaching faculty of sixty-one members and employed thirty-four non-teaching and technical support staff. The affidavit filed by MSIT in compliance with the order dated 27.02.2015 affirms that only thirty-four members of the teaching staff were appointed out of which four did not report for duty and, therefore, have not been paid any salary. Similarly, eleven members of non-teaching and technical support staff of GPMCE were appointed and only seven reported for duty. It is clear from the above that more than half of the staff of GPMCE did not opt to join MSIT. A bare

perusal of the minutes of the Committee indicates that MSIT's offer that the teaching faculty and staff of GPMCE would be absorbed by MSIT loomed large in the decision making process. It was assumed that the faculty would also move along with the students and, therefore, there would be minimal disruption in the academic programme. Clearly, this assumption was wrong. The University had not conducted any exercise in determining whether the teaching faculty and other staff member would also agree to join MSIT but acted on a representation of some members of the teaching staff. Whilst, the University cannot be faulted for taking into account the loss of employment caused to the teaching faculty/other staff of MSIT, the said factor would be secondary to the welfare of the students. Even this aspect had not been examined properly as there was no material before the concerned committee which would indicate as to the members of teaching faculty/other staff that would in fact shift to MSIT.

33. As is now apparent, the assumption that the students and teachers/staff could be shifted lock, stock, and barrel did not hold true as most of the teaching faculty did not join MSIT. The assumption that transferring the students would cause minimal disruption if the students are transferred *en masse* to MSIT also does not seem to have been thought through. As indicated above, the campus of MSIT is located in a remote place which makes it difficult for the students as well as faculty/staff members to commute to the said campus on a daily basis. It was also important to take into account that MSIT was also conducting courses affiliated with DCRUST and, thus, two separate parallel classes would have to be held for students on the rolls of DCRUST and the students transferred from GPMCE respectively.

34. It is not difficult to understand the distress of the students in being forced to join MSIT. It is not disputed that the campus of MSIT is located a few kilometers inside from the main highway; there is no public transport available to commute to MSIT's campus; the path from the main highway to the campus passes through agricultural fields and the students (specially the girls) fear for their safety. In absence of a regular public transport, it is not possible for the students to leave the campus as and when their classes get over. It has been contended on behalf of the University that MSIT has six buses and would hire more for transporting the students from a particular point to the campus. This would not replace the public transport as the students would have to wait for all the classes of other students to get over for availing such facility. It would not be possible for the students to leave the campus as and when their respective classes are over for the day. Most of the teaching faculty and other staff have also not joined MSIT particularly, perhaps for the reason of its remote location.

35. It is also apparent that MSIT is not a popular institution as it is stated that out of 960 sanctioned seats for the academic years 2011-12 to 2013-14, only 193 students had taken admission. MSIT also has a chequered history. It was first affiliated to Maharshi Dayanand University, Rohtak for two years and, thereafter, was affiliated to the DCRUST. It is also not disputed that MSIT has always struggled to attract students. It is apparent that out of 300 sanctioned seats for the Academic Year 2011-12 (i.e. 4th Year) only 58 seats were filled up for various B.Tech courses, out of 300 sanctioned seats for the Academic Year 2012-13 (i.e. 3rd Year) only 84 seats were filled and out of 360 sanctioned seats for the Academic Year 2013-14 (i.e. 3rd Year) only 51 seats were filled. It is thus, understandable why the students of

GPMCE are resisting their transfer to MSIT. It is clear that by virtue of the impugned order, MSIT has been provided students that it could not otherwise attract on its own steam.

36. It was contended on behalf of the petitioners that MSIT would require a no objection certificate from the State Government of Haryana which had not been obtained. Therefore, it would not be permissible for MSIT to accept the students of GPMCE on its rolls. This was disputed by MSIT by contending that MSIT is a minority institution and, therefore, did not require any no objection certificate. The learned counsel for MSIT also stated that the National Commission for Minority Educational Institutions, by an order dated 12.06.2013, had passed the necessary direction in this regard. In view of the statement on behalf of MSIT, the controversy whether MSIT is exempt from obtaining NOC from the State of Haryana (considering that it is affiliated to DCRUST) is not necessary to be examined in these proceedings.

37. The petitioners further contended that MSIT is located in the State of Haryana which is outside the jurisdiction of the University. This was disputed by the University and the attention of this Court was drawn to Section 4(1) of the Indraprastha Vishwavidyalaya Act, 1998 which reads as under:-

“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).”

38. The aforesaid statutory provision, thus, clearly empowers the University to affiliate colleges within the National Capital Region. Although it is contended that the same would be *ultra vires* to the Article 245 of the Constitution of India, it is not necessary to examine the said controversy in these proceedings. Admittedly, a large number of colleges affiliated to the University are situated in Noida and Greater Noida. The same is also reflected in the brochure of the University and the petitioners were well aware of this fact at the time of taking admission with the college affiliated to the University.

39. Although, in my view, the impugned order transferring the students of GPMCE to MSIT *en masse* is not sustainable, it is also necessary to bear in mind that part of the semester is already over and the exercise of reallocating the students to other college/institutions affiliated with the University is likely to take some time. In the circumstances, the University is directed to commence the process for ascertaining the number of students that could be absorbed in other affiliated institution/colleges. AICTE would approve the supernumerary seats in those colleges as mandated by Regulation 4.31 of the NCTE Regulations. The University shall frame a scheme for reallocating the students to different colleges based on their preference cum merit. The students shall be reallocated in the other colleges/institutions commencing with the next semester (i.e. after the current semester). Since the number of students is large and the number of vacant seats indicated in other colleges/institutions affiliated with the University is limited, significant number of students may have to be accommodated with MSIT. It would thus be open for the University to also

take into account the seats available with MSIT while drawing up the scheme for reallocation of the students.

40. The petitions are disposed of with the aforesaid directions. All pending applications also stand disposed of. No order as to costs.

VIBHU BAKHRU, J

MARCH 23, 2015
RK/MK

