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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on- 23.04.2018

Date of Decision- 03.05.2018.

+ W.P.(C) 11079/2017 & C.M. Nos.45317/2017, 8887-8888/2018
DRAVIDIAN UNIVERSITY Petitioner

Through: Ms.Geeta Luthra, Sr. Adv. with
Mr.Prem Chhetri, Mr.Anshul
Duggal, Ms.Shivani L. Lohiya,
Mr.A. Siddiqui & Mr.Prateek
Yadav, Adv.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr.Sanjeev Uniyal with
Mr.Dhawal Uniyal, Advs. for
R-1/UOI.
Mr.Apoorv Kurup with Ms.Isha
Mital & Mr.A.C. Boxipatro,
Advs. for UGC.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

1. The Petitioner/University, which is a State University established by the Government of Andhra Pradesh by the Dravidian University Act, 1997, has preferred the present petition seeking a direction to the Respondent No. 2/University Grants Commission (hereinafter referred to as "UGC") to recognize its Open and Distance Learning (hereinafter referred to as "ODL") programme for the academic years 2016-17 and 2017-18. The Petitioner has also

sought quashing of letter dated 30.05.2017 (hereinafter referred to as the "Impugned Letter"), vide which the Respondent No. 2 declined the Petitioner's application for offering a ODL programme and had advised it to not take admissions in any such programme without the prior approval of the Respondent No. 2, failing which the consequences of such admission would be the sole responsibility of the Petitioner.

2. Before delving into the facts relevant for deciding the present petition, it may be noted that the Court had to rely on the facts that emerge from the Writ Petition and accompanying documents, since the Respondent No. 2 did not file any counter affidavit despite repeated opportunities. On 15.02.2018, learned counsel for the Respondent No. 2 made a statement that he would make submissions on the basis of pleadings already on record and, therefore, this Court was compelled to close the Respondent No. 2's right to prefer a counter affidavit. Both the parties have, however, filed detailed written submissions which have been duly considered by this Court.

3. The facts as emerge from the record are that the Petitioner claims to have been established to cater to the needs of underprivileged students from the neighboring rural areas and, since its inception, has been successfully offering ODL courses through its study centers all across Andhra Pradesh. The Petitioner submits that it has become popular with all those students who could not afford to attend regular courses due to family circumstances and had to drop their further education due to poverty. The Petitioner claims that currently it has 105 study centers across Andhra Pradesh, and has

been providing education to over 1300 students by way of regular mode of education in its campus area, while about 6000 students are enrolled with its ODL programme. The Petitioner categorically states that it has not granted any affiliation to any college or Institute and is only running its own study centers. It also submits that its ODL programme had been duly recognized by the Respondent No. 2 for many years, after physically verifying its available infrastructure, and it was vide letter dated 18.03.2016 that the Petitioner was asked by the Respondent No. 2 to submit a fresh application in the prescribed format for seeking recognition of its ODL programme for the academic year 2016-17.

4. The aforesaid letter dated 18.03.2016 required the Petitioner to submit an online application seeking recognition, and deliver a hard copy thereof along with all other necessary documents at the office of the Respondent No. 2 on or before 25.04.2016. Ms. Geeta Luthra, learned Senior Counsel for the Petitioner, submits that immediately upon receiving the aforesaid letter dated 18.03.2016, the Petitioner had duly applied for recognition of its ODL programme vide its application dated 18.04.2016, which was accompanied by all the relevant annexures required by Respondent No. 2. She submits that the Petitioner did not receive any reply or communication from the Respondent No. 2 to its application dated 18.04.2016 for the next three months, and it was only vide letter dated 11.07.2016 that the Petitioner was informed by the Respondent No. 2 that its application had been considered by the Expert Committee and certain general observations had been made in respect thereof. The said letter dated

11.07.2016 contained a clear recommendation in the following terms:-

"[T]he existing courses are approved subject to submission of the required documents and closure of study centres as per UGC territorial jurisdiction policy."

Ms. Luthra further submits that, immediately upon receiving the letter dated 11.07.2016, the Petitioner sent the due compliance vide its letter dated 16.07.2016 to the Respondent No. 2, whereafter there was again no response from the Respondent No. 2 for almost another three months.

5. It was only on 06.10.2016 that the Respondent No. 2 informed the Petitioner that it had only partly complied with the directions and was, therefore, being given a last opportunity to do the needful within ten days, one of the requirements being that the Petitioner had to issue a public notice in two National Dailies and one local newspaper, clearly stating that it had terminated all the Memorandums of Understanding and closed all the study centers outside its jurisdiction in accordance with the UGC norms prescribed for territorial jurisdiction. The Petitioner, after getting the said publication done, sent a letter dated 23.12.2016 to the Respondent No. 2, once again reiterating that it had complied with all the requirements as mandated under the UGC guidelines. It appears that while the Petitioner had sent its compliance letter dated 23.12.2016 to Respondent No. 2, the Respondent No. 2 had contemporaneously on 26.12.2016 sent a final reminder to the Petitioner, which reminder the Petitioner did not reply

to since, according to it, it had already sent its compliance 3 days before, i.e. on 23.12.2016.

6. Ms. Luthra submits that the Petitioner did not receive any response to its letter dated 23.12.2016 from the Respondent No. 2 for another four months and, therefore, was justifiably under the bona fide belief that, since it had complied with all the requisite formalities for the grant of recognition for the academic year 2016-17, it would be automatically granted such recognition. Therefore, vide its letter dated 17.04.2017, the Petitioner informed the Respondent No. 2 that it was going to release the admission notification in anticipation of the grant of recognition by Respondent No. 2/UGC and Distance Education Bureau. It is Ms. Luthra's case that it is only after another one and a half months that the Respondent No. 2 issued the Impugned Letter dated 30.05.2017 informing the Petitioner that its request for offering a ODL programme for the academic year 2016-17 was regretted as its compliance report was found to be unsatisfactory. For the sake of ready reference, the Impugned Letter dated 30.05.2017 is reproduced hereinbelow:-

“This has reference to your letter no. DU/DDE/Recognition-2016-17 dated 27.02.2017 and 23.12.2016 whereby the University submitted its compliance report on the observations/recommendation of the Expert Committee. In this regard, it is to inform you that UGC examined the compliance report and the same has not been found complete/satisfactory on the following point.

1. The University has not submitted Declaration Certificate (in the prescribed format) even after several communications. The same is necessary to process the

recognition matter, which includes several terms and conditions for offering education through distance mode.

2. *With regard to Specific Observation at sr. No.2 of letter dated 11.07.2016, the University has not submitted supportive documents like appointment letter, administrative order etc. for appointing faculty exclusively for distance education programmes.*

Therefore, it is to inform you that the request of the University for offering ODL programmes for 2016-17 is regretted. The University is also advised not to take admission in unapproved ODL programmes. The University will be held responsible for the consequences, if any, arising out of it."

7. On the other hand, Mr. Apoorv Kurup, learned counsel for the Respondent No. 1, while opposing the writ petition, has submitted that the Petitioner's prayer cannot be granted for the reason that it did not comply with the UGC's directives, which was a precondition for the grant of approval for the courses that the Petitioner intended to offer through its ODL programme in the academic year 2016-17. He submits that, since the Petitioner had already been granted recognition for conducting courses through its ODL programme till the academic year 2015-16, the Respondent No. 2 vide its letter dated 18.03.2016 gave the Petitioner sufficient time to apply for the grant of recognition for the academic year 2016-17. He further submits that it is only upon the Petitioner's failure to comply with the mandatory requirements despite repeated opportunities, that the Respondent No. 2 was compelled to refuse the grant of any further recognition to it. He contends that the letter dated 18.03.2016 specifically stated that the admission process should not be initiated by the Petitioner before

obtaining specific approval from Respondent No. 2/UGC or in anticipation of approval of the submitted proposal, and further stipulated that the “*submission of proposal should not be perceived as continuation of recognition till the final decision of UGC is conveyed*”.

8. Mr. Kurup further submits that, though the Petitioner had submitted its application dated 18.04.2016, upon consideration of the same, the Expert Committee of the Respondent No. 2 had found the proposal of the Petitioner to be incomplete for want of the following mandatory compliances on the part of the Petitioner:-

- i. The Petitioner-University was running study centres all over India, in contravention of the order of the Hon’ble Supreme Court in Prof. Yashpal and Anr. v State of Chhattisgarh and Others.
- ii. The Petitioner-University did not have regular faculty exclusively for ODL programmes.
- iii. Part “A” of the proposal was missing.

Mr. Kurup submits that, accordingly, vide letter dated 11.07.2016 the Petitioner was requested to take necessary steps to fulfill not only the aforementioned mandatory conditions but also to comply with the following four requirements:-

- a) Issue a public notice in two national dailies, and in local newspapers in regional language, clarifying that the University/Institution does not have any Study Centre/Examination Centre/Information Centre/Franchising of Study Centres.
- b) Submit a compliance report for the general recommendations made by the Expert Committee.

- c) Submit a declaration certificate on a notarized affidavit, duly signed and stamped.
- d) Submit Part 'A' in offline mode.

9. Mr. Kurup submits that the aforesaid letter dated 11.07.2016 contained a specific caution that the Petitioner should not admit students for the academic year 2016-17 without the prior approval of the Respondent No. 2/UGC, and further stipulated that the Petitioner needed to adhere to the UGC policy on territorial jurisdiction. He further submits that the Respondent No. 2's letter dated 11.07.2016 to the Petitioner was followed by reminders dated 06.10.2016 and 26.12.2016, despite which the Petitioner failed to submit the mandatory compliances to the Respondent No. 2. He contends that the Petitioner had, in fact, published the requisite public notices and cancelled all its study centers outside its territorial jurisdiction only on 21.02.2017, clearly showing that it had acted in accordance with the UGC's directives very belatedly. He contends that, even though on 23.12.2016 the Petitioner had sent a further compliance letter, the same neither contained the requisite Declaration Certificate in the prescribed form nor gave the details of the exclusive faculty as required by the Respondent No. 2's original letter dated 11.07.2016.

10. Mr. Kurup further submits that, since the Petitioner had not complied with the Respondent No. 2's directives, it had sent another letter dated 26.12.2016 to the Petitioner, but even thereafter the Petitioner did not take any steps to comply with the mandatory requirements. He, therefore, submits that in these circumstances the

Respondent No. 2's decision to issue the Impugned Letter rejecting the Petitioner's request for grant of recognition for the ODL programme for the academic year 2016-17 was fully justified. He submits that the very fact that it was only after receiving the Impugned Letter that the Petitioner vide its letter dated 07.06.2017 informed the Respondent No. 2 about the further compliances, in itself shows that the Petitioner had uploaded the requisite information on the University website only after the Respondent No. 2 had rejected the Petitioner's application.

11. Mr. Kurup submits that merely because the Petitioner had admitted a number of students, and that too in clear violation of the Respondent No. 2's directives, it cannot be allowed to circumvent the mandatory approval and recognition procedures of Respondent No. 2. He further submits that, soon after the Petitioner's request for grant of recognition for the year 2016-17 was rejected, the University Grants Commission (Open and Distance Learning) Regulations, 2017 (hereinafter referred to as the "ODL Regulations") were notified on 23.06.2017, and a public notice dated 29.06.2017 was issued clarifying the need to apply afresh under the said Regulations. He, therefore, contends that the Petitioner can now only be considered for the grant of recognition after it applies for and fulfills the conditions prescribed under the ODL Regulations. He draws my attention to the relevant portion of the said public notice dated 29.06.2017, which reads as under:-

“Those HEIs which have submitted applications/representations for their recognition/approval and/or approval and/or addition of new programmes need to apply afresh as per the UGC ODL Regulations, 2017.”

12. Mr. Kurup further contends that, in view of Regulation 3 of the ODL Regulations requiring the submission of documents by the concerned institute six months prior to the commencement of the proposed academic session, it has been decided that the ODL Regulations would be enforced from the academic year 2018-19, for which purpose a public notice dated 17.07.2017 was issued clearly informing the general public that the said Regulations were made applicable from the academic year 2018-19 onwards. He submits that, since the ODL Regulations have not been challenged by the Petitioner, the same are binding on it and it can now seek recognition only under the said regulations.

13. Having heard the learned Senior Counsel for the Petitioner and the learned counsel for the Respondent, I find that there is hardly any dispute regarding the factual position. It is perhaps for this reason that the learned counsel for the Respondent had chosen not to file any counter affidavit and instead desired to oppose the petition on the basis of the pleadings already on record.

14. What, in fact, emerges is that the issue which needs to be determined in the present case is fairly narrow. The Petitioner, a recognized State University, had submitted its application for recognition on 18.04.2016, in response to which the Respondent No. 2 vide its letter dated 11.07.2016, while recommending the grant of approval to the Petitioner, had directed it to submit certain further compliances. While the Petitioner claims that it had duly submitted all compliances, it is the Respondent No. 2's case that the same were,

despite repeated reminders, not submitted until much after the stipulated time to do so.

15. In determining whether the Petitioner had complied with the conditions mandated in the conditional recognition granted to it by the Respondent No. 2 vide its letter dated 11.07.2016, which is the fundamental issue before the Court in the present case, it may be appropriate to first enumerate the letters exchanged between the parties, which are listed hereinbelow:-

- i. Letter dated 18.03.2016 issued by the Respondent No. 2 to the Petitioner;
- ii. Letter dated 18.04.2016 issued by the Petitioner to the Respondent No. 2;
- iii. Letter dated 11.07.2016 issued by the Respondent No. 2 to the Petitioner;
- iv. Letter dated 16.07.2016 issued by the Petitioner to the Respondent No. 2;
- v. Letter dated 06.10.2016 issued by the Respondent No. 2 to the Petitioner;
- vi. Letter dated 23.12.2016 issued by the Petitioner to the Respondent No. 2;
- vii. Letter dated 26.12.2016 issued by the Respondent No. 2 to the Petitioner;
- viii. Letter dated 27.02.2017 issued by the Petitioner to the Respondent No. 2;
- ix. Letter dated 17.04.2017 issued by the Petitioner to the Respondent No. 2;
- x. Impugned Letter dated 30.05.2017 issued by the Respondent No. 2 to the Petitioner;
- xi. Letter dated 07.06.2017 issued by the Petitioner to the Respondent No. 2;
- xii. Letter dated 22.06.2017 issued by the Petitioner to the Respondent No. 2;
- xiii. Letter dated 06.07.2017 issued by the Petitioner to the Respondent No. 2;

16. On examining the aforementioned correspondence between the Petitioner and the Respondent No. 2, I find that in response to the latter's letter dated 18.03.2016 seeking a fresh application from the Petitioner for continuous recognition of its ODL programme for the academic year 2016-17, the Petitioner vide its letter dated 18.04.2016 had not only sent the required information but had also requested the Respondent No. 2 to take necessary action to continue the recognition granted to it. Thereafter, the Respondent No. 2 sent a belated letter dated 11.07.2016 to the Petitioner pointing out various deficiencies in its application dated 18.04.2017. In this letter dated 11.07.2016, the Respondent No. 2, while pointing out the Expert Committee's recommendation that the Petitioner did not have regular faculty exclusively for its ODL programme, did not direct the Petitioner to file a list of such faculty members. Instead it directed the Petitioner to merely fulfill this deficiency in order to have its application considered. The said letter dated 11.07.2016 also directed the Petitioner to file a Declaration Certificate. For the sake of ready reference, the relevant portions of the Respondent No. 2's letter dated 11.07.2016 are reproduced hereinbelow:-

“This is in continuation of detailed proposal submitted by your Institution and subsequent presentation/interaction with the Expert Committee held at UGC office. The matter of continuation of Recognition was assessed by the Expert Committee and its recommendations, duly approved by UGC are as mentioned below:

1. *Dravidian University running study centres all over India, which is not in accordance with the decision of the Supreme Court.*
2. *University does not have regular faculty exclusively for distance education programme.*
3. *Part 'A' of the proposal is missing.*

Recommendation: The existing courses are approved subject to submission of the required documents and closure of study centres as per UGC territorial jurisdiction policy.

...

In view of the above, It is requested that:

1. ...
2. *The Institution/University is requested to submit a compliance report for above mentioned general observations of the Expert Committee to DEB- UGC. UGC will consider the matter of recognition of the Institution/University, after receiving compliance of specific observations made by the Expert Committee during interface meeting.*
3. *Kindly submit declaration certificate on a notarised affidavit duly signed and stamped by Competent Authority, so that matter of recognition for your University/Institution can be completed from this office.*

...

The Institution/University is directed not to admit any students for distance education from 2016-17 without prior approval of UGC, as otherwise, University/Institution shall solely be held responsible for all consequences arising out of it."

17. In response to the aforementioned letter dated 11.07.2016, the Petitioner sent a letter dated 16.07.2016 to the Respondent No. 2 purportedly fulfilling all the deficiencies pointed out by Respondent No. 2. A perusal of the Petitioner's letter dated 16.07.2016 reveals

that, while the Declaration Certificate was not submitted along with the same, the details of the various courses in the ODL programme along with the *number* of regular faculty members appointed for such courses were provided.

18. Thereafter, the Respondent No. 2 sent another belated letter dated 06.10.2016 to the Petitioner, reminding it that it had not received from the Petitioner inter alia a compliance report pertaining to the lack of regular faculty members for the ODL programme or the requisite Declaration Certificate. In response to the said letter, the Petitioner sent another letter dated 23.12.2016 to the Respondent No. 2, whereby it provided inter alia the requisite Declaration Certificate to the Respondent No. 2. However, under the belief that vide its letter dated 16.07.2016 it had already complied with the requirement of providing the details of the regular faculty members appointed for the ODL programme, the Petitioner did not provide any further document pertaining to the regular faculty members appointed for the ODL programme with its letter dated 23.12.2016.

19. Thereafter, as a final reminder, the Respondent No. 2 sent a letter dated 26.12.2017 to the Petitioner, requesting it to submit the compliance reports pertaining to the observations made by the Expert Committee in the Respondent No. 2's letter dated 11.07.2016. However, since the Petitioner had sent to the Respondent No. 2 a letter dated 23.12.2016 along with the last of its pending compliances, it did not respond to the Respondent No. 2's letter dated 26.12.2017.

20. After having received no response to its letter dated 23.12.2016 from the Respondent No. 2, the Petitioner sent another letter dated

27.02.2017 to the Respondent No. 2 along with inter alia a list of the regular faculty members for the ODL programme. However, the Respondent No. 2 did not even reply to this letter sent by the Petitioner and, after a period of three months, issued the Impugned Letter on 30.05.2017.

21. A bare perusal of the Impugned Letter clearly reveals that the Petitioner's application dated 18.04.2016 for recognition of its ODL programme for the academic year 2016-17 was rejected by the Respondent No. 2 only on the following two grounds:-

- i. The Petitioner had not submitted the Declaration Certificate in the prescribed format; and
- ii. The Petitioner had not submitted supportive documents for the appointment of regular faculty exclusively for the ODL programme.

22. After culling out the facts above in detail, I find that the most relevant and undisputed fact necessary to resolve the issue arising in the present case is that, much before the issuance of the Impugned Letter, the Petitioner had provided the Respondent No. 2 with both the Declaration Certificate and the list of regular faculty members for the ODL programme, which two deficiencies are the only two grounds enumerated by the Respondent No. 2 while rejecting the Petitioner's application dated 18.04.2016 for recognition.

23. Mr. Kurup has vehemently contended that the Declaration Certificate provided by the Petitioner was not in the prescribed format and, therefore, could not be accepted. A perusal of the record, however, shows that the Petitioner was never informed that the

Declaration Certificate submitted by it vide its letter dated 23.12.2016 was not in the prescribed format. In fact, what emerges on an examination of the correspondence between the parties is that, the Respondent No. 2 informed the Petitioner that its Declaration Certificate was not in the prescribed format for the very first time through the Impugned Letter. Therefore, insofar as the first ground on which the Impugned Letter rejects the Petitioner's application is concerned, it cannot be denied that the Petitioner did not have any notice of its application being deficient in that respect.

24. Mr. Kurup has not given any justification for not informing the Petitioner that the declaration certificate submitted by it was defective. He has, however, contended that the pro forma for the Declaration Certificate had not only been sent to the Petitioner vide the Respondent No. 2's letter dated 11.07.2016, but was otherwise also available online on the Respondent No. 2's website. Therefore, he contends, it was for the Petitioner to ensure that the Declaration Certificate submitted by it was in conformity with the prescribed format. It has been vehemently contended by Mr. Kurup that in these circumstances, the Petitioner must be deemed to have known about the deficiency in its Declaration Certificate.

25. In my considered opinion, merely because the Respondent No. 2 had sent the pro forma for the Declaration Certificate to the Petitioner and the same was also available online, does not absolve the Respondent No. 2 from its responsibility to at least inform the Petitioner of the deficiencies in its Declaration Certificate. In my considered view, once a particular document is submitted to a

statutory authority, it is the duty of such an authority to point out the deficiencies, if any, in such document. It is not sufficient for such an authority to send a vague letter to the concerned person, merely stating that the document in question is deficient. Therefore, I am of the opinion that it was incumbent upon the Respondent No. 2, being a statutory regulatory body, to inform the Petitioner, which is admittedly a State University, about the deficiencies in its Declaration Certificate.

26. Similarly, as regards the second ground on which the Petitioner's application was rejected, I find nothing on record to show that the Petitioner was ever required to submit a list of the regular faculty members appointed exclusively for the ODL programme. Even otherwise, the Petitioner had admittedly provided the same vide its letter dated 27.02.2017, i.e. much before the Respondent No. 2 issued the Impugned Letter.

27. It is interesting to note that it was only during the course of final arguments, that learned counsel for the Respondent No. 2 for the first time contended that the said list of faculty members submitted by the Petitioner was also not in the prescribed format, and did not show that the enumerated faculty was appointed exclusively for the ODL programme and, therefore, could not be treated as valid. It is trite law that the validity of the Impugned Letter, which is essentially a statutory order, has to be tested only on the reasons stated in the said letter and no other. Reliance may be placed on paragraph 8 of the decision of the Hon'ble Supreme Court in the case of ***Mohinder Singh Gill v. Chief Election Commissioner*** [(1978) 1 SCC 405], the relevant portion of which reads as under:

"8. [W]hen a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

28. In view of the observations of the Hon'ble Supreme Court in ***Mohinder Singh (supra)***, I am not inclined to deal with Mr. Kurup's contention that the list of regular faculty members for the ODL programme was not in the prescribed format. Even otherwise, I find that the Petitioner cannot be faulted for sending this allegedly deficient list of regular faculty members for the ODL programme, since there is nothing on record to show that it had notice that it had to submit the same, and that too in a prescribed format.

29. In my considered view, the Petitioner had duly complied with all the requirements mandated by the Respondent No. 2, and merely because there were some minor defects in the Petitioner's compliances, which were never specifically pointed out, the Petitioner's application for recognition ought not to have been rejected. I cannot lose sight of the fact that the Petitioner is a State University that was established to meet the educational needs of many impoverished students, who would otherwise have no access to education in their dire circumstances. A hypertechnical approach in construing the validity of the Petitioner's compliances, would inevitably cause grave prejudice to the larger social goal of the Indian State to provide access to education to the lesser privileged masses of Indian citizens. In this regard, reliance may be placed on a decision of this Court in the case of

Indian Oil Corporation v. Kapil Bagri [LPA No. 333/2014], wherein while dealing with an inadvertent omission on the part of a notary public in signing a document that he had put his seal and date on, this Court held that the absence of the notary's signatures was a curable procedural lapse caused due to the notary's oversight and, therefore, the same could not be a ground to defeat one's substantive rights. The relevant paragraph 18 of the decision of this Court in ***Indian Oil Corporation (supra)*** reads as under:-

"18. The legal position is quite clear. Courts have repeatedly held that minor curable defects cannot be a ground to defeat the substantive rights of an applicant inasmuch as an applicant cannot be knocked out on frivolous technical pleas."

30. In view of the minor deficiencies in the Petitioner's application dated 18.04.2016 and the settled legal position that minor procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice, I find that the Impugned Letter dated 30.05.2017 issued by the Respondent No. 2 was wholly unwarranted and shows clear non-application of mind.

31. Mr. Kurup has, by placing reliance on the following judgments, also contended that merely because the Petitioner had admitted students, and that too in violation of the Respondent No. 2's directives, the Court cannot sympathize with it and allow it to circumvent the mandatory requirements for recognition prescribed by the Respondent No. 2:

- i. ***Mahesh Kumar and Ors. v. Directorate of Education and Ors.*** [140 (2007) DLT 509];

- ii. *Adarsh Shiksha Mahavidyala and Ors v. Subhash Rangdale and Ors.* [(2012) 2 SCC 425];
- iii. *National Council for Teacher Education and Anr. v. Venus Public Education Society and Ors.* [(2013) 1 SCC 223];
- iv. *New Delhi Municipal Council v. Dan Singh Bawa and Ors.* [2012 (132) DRJ 354 (DB)];
- v. *Commissioner of Municipal Corporation, Shimla v. Prem Lata Sood and Ors.* [(2007) 11 SCC 40]; and
- vi. *Howrah Municipal Corporation and Ors. v. Ganges Rope Co. Ltd. and Ors.* [(2004) 1 SCC 663];

However, in view of my conclusion that the Impugned Letter itself is not sustainable, I do not deem it necessary to examine the aforesaid contention of the learned counsel for the Respondent No. 2.

32. Mr. Kurup has also placed reliance on the decisions of the Hon'ble Supreme Court in *Orissa Lift Irrigation Corporation Limited v. Rabi Sankar Patro and Ors.* [(2018) 1 SCC 468], *Union of India v. Shah Goverdhan L. Kabra Teachers' College* [(2002) 8 SCC 228] and *All India Council for Technical Education v. Surinder Kumar Dhawan and Ors.* [(2009) 11 SCC 726] to contend that the scope of judicial review is extremely limited and Courts should not interfere in education policies or academic standards, which domain is best left to the concerned experts. In my considered view, these decisions are not at all applicable to the instant case, as it is not a case where academic standards or policies are being interfered with, but one in which there is only an issue about the correct implementation of the procedure

already prescribed by the concerned statutory authority, in this case being the Respondent No. 2.

33. Before concluding, I must also deal with Mr. Kurup's contention that, since the Declaration Certificate in the proper format was submitted only in December 2017, i.e. during the course of the present proceedings, therefore, the Petitioner's application can now only be considered in light of the ODL Regulations. Mr. Kurup relies on the decisions of the Hon'ble Supreme Court in *P.T.R. Exports (Madras) Pvt. Ltd. and Ors. v. Union of India and Ors.* [(2006) 5 SCC 268], *Union of India and Ors. v. India Charge Chrome and Anr.* [(1999) 7 SCC 314] and *State of Tamil Nadu v. M/s Hind Stone and Ors.* [(1981) 2 SCC 205] in support of his plea that an application has to be decided in accordance with the law applicable on the date on which the authority granting approval is called upon to apply its mind to the prayer of approval.

34. In view of the admitted position that the Petitioner vide its letter dated 23.12.2016 had submitted to the Respondent No. 2 a Declaration Certificate, in respect of which no deficiencies were ever categorically pointed out, as also the fact that a final decision pertaining to the Petitioner's application was taken on or before 30.05.2017, i.e., before the ODL Regulations were notified/enforced on 23.06.2017, the aforesaid decisions in no way further the case of the Respondent No.2. Since the Petitioner's application was admittedly not considered by the Respondent No. 2 as per the ODL Regulations, a reconsideration of the Petitioner's application at this stage will also have to be as per the regulations applicable on 30.05.2017. There can, in fact, be no

question about the applicability of the ODL Regulations to the Petitioner's application. The ODL Regulations cannot be made retrospectively applicable to an application in respect of which a final decision had been taken before the said regulations were notified or became enforceable.

35. For the reasons aforementioned, the writ petition is allowed and the Impugned Letter dated 30.05.2017 is quashed. The Respondent No. 2 is directed to reconsider the Petitioner's application for grant of recognition as per the regulations applicable on 30.05.2017. It is made clear that, in view of the admitted position that the Declaration Form in the prescribed format has already been received by the Respondent No. 2, the Respondent No. 2 will only be entitled to examine whether the Petitioner's assertion, that it had appointed regular faculty members exclusively for the ODL programme, is correct or not. In case, the said claim of the Petitioner is found to be correct, the Respondent No. 2 will forthwith take steps to grant recognition to the Petitioner's ODL programme for the academic year 2016-17 and grant the Petitioner all other consequential benefits that it will be entitled to. It is clarified that the Respondent No. 2 will take all the necessary steps for considering the Petitioner's application in accordance with the aforesaid directions of this Court within three weeks.

(REKHA PALLI)
JUDGE

MAY 03, 2018
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