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

Date of decision: 28.05.2018

+ W.P.(C) No.11276/2017

NIMS UNIVERSITY, JAIPUR

..... Petitioner

Through Mr.Rajiv Bansal, Sr. Adv. with
Mr.Saurabh S. Sinha, Adv.

Versus

**UNIVERSITY GRANTS COMMISSION
AND ANR**

..... Respondents

Through Mr.Aproov Kurup, Adv. with
Ms.Isha Mittal, Adv. for UGC.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the Petitioner/University has impugned the order dated 02.11.2017 passed by the Respondent No. 1, whereby its application dated 26.09.2016, followed by its reminder dated 28.11.2016, for grant of recognition for conducting the Open & Distance Learning (ODL) Programmes for the academic year 2017-18, has been rejected, on the ground that after the notification of the University Grants Commission (Open & Distance Learning) Regulations, 2017 (hereinafter referred to as the "2017 Regulations"), on 23.06.2017, applications for recognition have to be made only in accordance with the said Regulations.

2. Mr. Rajiv Bansal, learned Senior counsel for the Petitioner, submits that the Petitioner's application dated 26.09.2016 seeking recognition for running ODL courses was admittedly made under the Guidelines of 2009 as contained in the Handbook issued by the Distance Education Council, which were adopted by the UGC. He submits that the Petitioner's application, having been made at a time when only the 2009 guidelines were applicable, was required to be considered by the Respondents on the basis of those guidelines. He, thus, contends that the Impugned Order rejecting the Petitioner's application shows clear non-application of mind as the same has been passed by the Respondents on the ground that the Petitioner failed to apply for recognition under the 2017 Regulations. In support of his aforesaid contention, Mr. Bansal submits that even otherwise, once the Respondents themselves had issued a public notice dated 17.07.2017 clearly stating that the 2017 Regulations would be operationalized only from the academic year 2018-19, the Petitioner's application dated 26.09.2016 for the academic year 2017-18, could not be rejected on the ground that the same had to be submitted in accordance with 2017 Regulations.

3. Mr. Bansal submits that, pursuant to the Petitioner's application dated 26.09.2016, the Respondent No. 1 had inspected the Petitioner/University on 29.01.2017 and had directed it to furnish certain compliances, which were duly

complied with by the Petitioner and communicated to the Respondent No. 1 on 26.04.2017. He thus submits that the Petitioner's application, which was complete in all aspects in 26.04.2017, had to be decided as per the Guidelines of 2009, which were admittedly applicable till 23.06.2017.

4. Mr. Bansal also draws my attention to Regulation 3(2) of the 2017 Regulations to contend that, once the said Regulation provided that an application for recognition had to be made at least '*six months before the commencement of the academic year*', it was, even otherwise, not feasible for any institution to apply for recognition for the academic year 2017-18 in accordance with the said regulations, as that would mean that the application had to be made on or before January, 2017 whereas the 2017 Regulations were admittedly notified only on 23.06.2017. He thus submits that the Respondents, being conscious of the aforesaid ambiguity, had issued the public notice dated 17.07.2017 clearly stating that the 2017 Regulations would be applicable only from the academic year 2018-19.

5. On the other hand, Mr. Apoorv Kurup, learned counsel for the Respondent No. 1, while referring to Regulation 1(4) of the 2017 Regulations, contends that the Regulations having come into force from the date of its publication in the official gazette on 23.06.2017, any application for recognition pending as on 23.06.2017, had to be decided only as per the said

Regulations. He, therefore, contends that since the Petitioner's application was admittedly pending as on 23.06.2017, it was incumbent on the Petitioner to apply afresh for recognition as per the 2017 Regulations. He further submits that even otherwise, once the Respondents had also issued a public notice dated 29.06.2017 clearly notifying all the higher institutes that they had to apply afresh for recognition for conducting ODL programmes in accordance with 2017 Regulations, the Petitioner ought to have submitted a fresh application.

6. Having heard the learned counsels for the parties and perused the record, I find that the only issue which arises for my consideration in the present case is, whether the impugned order dated 02.11.2017, whereby the Petitioner's application dated 26.09.2017 was rejected by the Respondent No. 1 solely on the ground that the same had not been made in accordance with the 2017 Regulations, as notified on 23.06.2017, is sustainable in law? Mr. Bansal contends that the 2017 Regulations, which had only been notified on 23.06.2017, could not at all be made applicable to the academic session 2017-18, since they prescribed a pre-condition therein that all applications thereunder must be made at least 6 months prior to the commencement of the academic session. He, thus, submits that the 2017 Regulations had to perforce be applied only from the next academic session of 2018-19. On the other hand, Mr. Kurup contends otherwise and submits that once the 2017

Regulations had been notified on 23.06.2017, all the pending applications could be considered only in accordance therewith.

7. Before dealing with the rival contentions of the parties, it may be appropriate to refer to Clause 3(2) of the 2017 Regulations notified in the Gazette of India on 23.06.2017, which reads as under:-

“3(2) A Higher Educational Institution intending to offer a programme in Open and Distance Learning mode for academic session immediately after the notification of these regulations and for subsequent years shall, notwithstanding that it has obtained permission from the then Distance Education Council or by the Commission for offering a programme in Open and Distance learning mode for academic session immediately after the notification of these regulations and for subsequent years, shall make an online application in the format specified by the Commission, and upload the same on the specified portal along with scanned copy of the documents specified therein, at least six months before the commencement of the academic session of the programme intended to be offered by such Higher Educational Institution.”

8. Before proceeding further, it would also be appropriate to refer to the public notice dated 17.07.2017 issued by the Respondent No. 1, which is reproduced hereinbelow:-

*“To,
The Education Officer
University Grants Commission
Distance Education Bureau
35, Feroze Shah Road
New Delhi-110001*

Subject: Submission of Compliance Report by the University on the observation/recommendation of Enquiry Committee-regarding.

Ref: Your letter No.F.No.37-I/2016. (DEB-111) dated 11th April, 2017.

Sir,

This is with reference to your letter as above and in continuation of our letter Ref:NIMSUR/Reg./Acad./2017/530 dated 26.04.2017 vide which we submitted compliance report regarding fulfillment of two conditions mentioned in your letter. So far University has not received any intimation of the continuation of recognition to offer programmes under distance mode during the year 2017-18.

As the academic year 2017-18 has commenced and this is the peak period for admission in various programmes, it is requested that the University may be intimated about the continuation of recognition to offer distance mode programees for the year 2017-18.

Thanks and Regards.”

-Sd-

Registrar

*NIMS UNIVERSITY RAJASTHAN
JAIPUR”*

9. In the light of Regulation 3(2) of the 2017 Regulations as also the public notice dated 17th July, 2017, I have given my thoughtful consideration to the contentions of the learned counsels for the parties. In my opinion, once the 2017 Regulations provided that the applications thereunder must be submitted atleast 6 months prior to the commencement of the next academic session, they could, by no stretch of imagination, be made applicable to the applications with respect to the academic year 2017-18. In fact, it is interesting to note that the

Respondent No. 1 itself had issued a public notice dated 17.07.2017, conveying its decision that the 2017 Regulations will be *operationalized* only from the academic year 2018-19.

10. It is, thus, apparent that the rejection of the Petitioner's application for grant of recognition for the academic year 2017-18, is wholly unsustainable. The impugned order dated 02.11.2017 passed by the Respondent No. 1 is set aside.

11. However, before concluding, it is pertinent to note that it is an admitted case of the parties that even if the Petitioner submits a fresh application in accordance with the regulations for the academic year 2017-18, the same would not be considered for want of recognition for the academic year 2017-2018. Thus, even though I have found that the impugned order is wholly unsustainable, keeping in view the fact that the academic session 2017-18 is already over, no useful purpose would be served by directing the Respondent No. 1 to reconsider the Petitioner's application for grant of recognition for that academic year. The matter, however, cannot rest here as the Petitioner cannot be made to suffer on account of the arbitrary action of the Respondent No. 1 and the erroneous rejection of its application for the academic year 2017-18.

12. I am informed that on account of not being a recognized institution for the academic year 2017-18, an application seeking recognition for the academic year 2018-19 would also be rejected which, in my considered view, would be wholly

impermissible. It is directed that, subject to the Petitioner submitting its application for the grant of recognition for conducting ODL Programmes for the academic year 2018-19 in accordance with the regulations and meeting all the other eligibility criteria, the Respondent No. 1 would process the Petitioner's application for the academic year 2018-19 by ignoring the fact that the Petitioner does not have recognition for the academic year 2017-18.

13. The petition is, accordingly, disposed of in the above terms.

MAY 28, 2018

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(REKHA PALLI)
JUDGE

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