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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement reserved on 18.01.2020

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Judgement pronounced on 30.01.2020

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W.P.(C) 10522/2019 & CM No.43560/2019

MO KAREEM

..... Petitioner

Through : Mr. Ankit Yadav, Advocate.

versus

GURU GOBIND SINGH INDRAPRASTHA

UNIVERSITY AND ORS.

..... Respondents

Through : Mr. Jasbir Bidhuri, and Mr. Arun Sanwal, Advocates for R-1/GGSIPU.
Mr. Sanjeev Uniyal, and Mr. Dhawal Uniyal, Advocates for R-2/UOI.
Mr. Apoorv Kurup, Mr. Siddharth Nigotia, Mr. Upama Bhattacharjee, and Mr. Nidhi Mittal, Advocates for R-4/UGC.

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W.P.(C) 11628/2019

JASLEEN KAUR

..... Petitioner

Through : Mr. Vivek B. Saharya, Advocate along with petitioner-in-person i.e. Ms. Jasleen Kaur.

versus

GURU GOBIND SINGH INDRAPRASTHA

UNIVERSITY AND ORS.

..... Respondents

Through : Mr. Jasbir Bidhuri, and Mr. Arun Sanwal, Advocates for R-1/GGSIPU.
Mr. Amit Kumar Yadav, Advocate for R-3/UOI.
Mr. Apoorv Kurup, Mr. Siddharth Nigotia, Mr. Upama Bhattacharjee, and Mr. Nidhi Mittal, Advocates for R-4/UGC.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

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Preface: -

1. The captioned petitions raise a similar issue and hence will be disposed of *via* a common judgment.
2. The petitioners will be referred hereafter by their names. The petitioner in W.P. (C) 10522/2019 is one Mr. Mo Kareem while the petitioner in W.P. (C) 11628/2019 is one Ms. Jasleen Kaur. Furthermore, wherever necessary, Mr. Kareem and Ms. Kaur will be referred to collectively as petitioners.
 - 2.1. Likewise, respondent No. 1 i.e. Guru Gobind Singh Indraprastha University will be referred hereafter as the “University”. The two institutes in which Mr. Kareem and Ms. Kaur had acquired admission which was cancelled are Centre For Development of Advanced Computing (in short “CDAC”) and Institute of Information Technology & Management (in short “IITM”) respectively. The other two respondents in both the petitions are the Union of India (in short “UOI”) and the University Grants Commission (in short “UGC”).
3. The principal grievance of Mr. Kareem and Ms. Kaur is that the University has cancelled their admission *qua* the Master of Computer Applications (in short “MCA”) programme after they had gained admission in their respective institutions i.e. CDAC and IITM respectively.
4. On the other hand, the University claims that both Mr. Kareem and Ms. Kaur had only been admitted provisionally to their respective institutions and since it was discovered that they did not meet the eligibility criteria, their admissions were cancelled.
5. The University’s stand that Mr. Kareem and Ms. Kaur do not fulfill the eligibility criteria is wholly and solely pivoted on the following

stipulation contained in the “Admission Brochure for Academic Session 2019-20 (PART-A)” (in short “Admission Brochure”) issued by it: -

“CHAPTER-2: Eligibility Criteria & Admission Criteria

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2.1 National Level Test for Admissions (Non-Medical Programmes)

S. No.	Name of CET	CET Code	ELIGIBILITY CRITERIA & ADMISSION CRITERIA
XXX 3	XXX MCA	XXX 105	XXX <i>Eligibility Criteria:</i> <i>Indian Nationals securing at least 60% marks in aggregate or 6.5 CGPA on a 10-point scales</i> <i>(55% marks or 6.0 CGPA on a 10-point scale in case of SC/ST) in</i> <i>(i) <u>B.Sc./B.Sc. (Hons.)/BCA/BIT/B/Voc.</u></i> <i>(Computer Science/Computer Applications) <u>of minimum three years full-time from a recognized University with Mathematics/Statistics as one of the subjects</u></i> OR <i>(ii) B.E./B.Tech from a recognized University</i> <i>Admissions Criteria:</i> <i>All applicants are required to appear in NIT MCA Common Entrance Test (NIMCET) 2019 that is conducted by National Institute of Technology's on a rotational basis. The University shall not conduct its own CET for admissions, but shall be utilizing the merit prepared on the basis of NIMCET Merit for its admissions.”</i>

[emphasis is mine]

5.1. Based on the aforesaid clause in the Admission Brochure, it is the University's stance that since the basic qualification i.e. Bachelor of

Computer Applications (in short “BCA”) has been obtained by Mr. Kareem and Ms. Kaur *via* Open Distance Learning (in short “ODL”) institutions, they do not meet the eligibility criteria of having acquired the same by pursuing a “*full-time*” course. In other words, the argument is that the BCA qualification acquired by the petitioners *via* ODL institutions cannot be equated with the BCA qualification obtained by a student from a traditional institute/college.

6. It is important to note that while Mr. Kareem has obtained his BCA qualification from the Indira Gandhi National Open University (in short “IGNOU”), Ms. Kaur has obtained her BCA qualification from the School of Open and Distant Learning, Jamia Hamdard (deemed to be University) [in short “Jamia Hamdard”].

7. At this juncture, it would be relevant to note that although the aspect as to whether the BCA degree issued by aforementioned ODL institutions was at par with that issued by a traditional institute/college was purportedly dealt with by the Equivalence Committee (EC) of the University, its conclusion did not favour the petitioners. As to whether there was any flaw in the determination by the EC is an aspect which I will be dealing with in the later part of my judgement.

8. This being the lay of the ground, the petitioners and the University have squared off against each other.

Background: -

9. However, before I proceed further, it would be important to flesh out the background in which the petitioners have approached this Court only to lend a perspective to their cause and deeper understanding of the difficult circumstance they have been left in due to the conduct of the University.

9.1. Both the petitioners are minority candidates and hail from modest backgrounds.

9.2. As alluded to above, Mr. Kareem acquired his BCA qualification from IGNOU, while Ms. Kaur acquired her BCA qualification from Jamia Hamdard. The BCA course offered by both IGNOU and Jamia Hamdard had a three-year tenure with a course content very similar to that offered by a traditional university/institute/college.

9.3. Consequently, Mr. Kareem and Ms. Kaur, who had enrolled themselves in their respective institutes in 2016, passed out in the middle of June 2019.

9.4. In and about June 2019, the petitioners took the NIT MCA Common Entrance Test (NIMCET), 2019 [hereinafter referred to as “2019 Entrance Exam”]. Both the petitioners passed the 2019 Entrance Exam. Resultantly, in the All India merit list, Mr. Kareem and Ms. Kaur were ranked 3696 and 5136 respectively.

9.5. Having cleared the 2019 Entrance Exam, the petitioners, on 10.07.2019, filed their applications with the University *via* the prescribed online mode accompanied by requisite counselling fee of Rs. 1000/-.

9.6. Pertinently, in the applications filed by Mr. Kareem and Ms. Kaur, disclosure was made of the fact that they had obtained their BCA qualification *via* ODL institutes.

9.7. It is not in dispute that the names of the institutes (i.e. IGNOU and Jamia Hamdard) from which Mr. Kareem and Ms. Kaur had acquired their BCA qualification were set forth in their respective applications.

9.8. Since the petitioners fell in the reserved category, they were called for document verification. For this purpose, Ms. Kaur was asked to report on 13.07.2019, while Mr. Kareem was to report on 17.07.2019.

10. Thereafter, the petitioners communicated their choice, as required, of institutes/colleges in which they were desirous of seeking admission.

10.1. Mr. Kareem chose CDAC, while Ms. Kaur chose IITM.

10.2. Resultantly, the University issued a Provisional Offer Letter (in short “POL”) in favour of the petitioners. In the case of Mr. Kareem, the POL was issued on 30.07.2019, while Ms. Kaur was issued the POL on 26.07.2019.

10.3. Pertinently, the petitioners were required to deposit a part-academic fee amounting to Rs. 40,000/- with the University to become eligible to enter the admission arena. Ms. Kaur made this payment on 26.07.2019, while Mr. Kareem deposited the said amount on 27.07.2019.

10.4. Within ten days or so, the University issued a notification dated 05.08.2019 wherein, *inter alia*, it provided the schedule for reporting *qua* candidates who had been allotted a seat in various institutes/colleges. Amongst other programmes, a candidate who had applied for the MCA programme and had been allotted an institute/college was required to report to the allotted institute/college along with the set of documents stipulated in the said notification.

10.5. *Inter alia*, the documents that a candidate had to carry with him, included the part-academic fee receipt as also marksheets and certificates in original from **Grade-X onwards**. One set of photocopies of such marksheets and certificates duly attested by a Gazetted Officer or self-attested had to be submitted to the University at the time of verification of the documents.

10.6. It was made clear that a candidate who failed to furnish proof of eligibility for gaining admission to the MCA programme would have his/her candidature cancelled.

10.7. Furthermore, in particular, the candidates who had attained their basic qualification through ODL from any recognized university/board/institutions were required to carry with them the necessary documentary evidence pertaining to the location of the candidate's study centre. In other words, the candidates were required to produce proof pertaining to the study centre in the form of a certificate from the university/board/institution imparting open and distance learning to establish the location of the study centre.

10.8. As required, the petitioners reported to their respective institutes/colleges.

11. It is the stance of the petitioners that after the verification of documents had been carried out they deposited the balance academic fee with their respective institutes.

11.1. Accordingly, Mr. Kareem deposited Rs. 28,000/- with CDAC on 05.08.2019, while Ms. Kaur deposited Rs. 1,24,000/- on 08.08.2019 with IITM.

11.2. Since the petitioners had obtained admission, they attended classes concerning the MCA programme in their respective institutes/colleges i.e. CDAC and IITM respectively.

11.3. Mr. Kareem avers that he attended classes regularly between 13.08.2019 and 1st week of September 2019, while Ms. Kaur claims she attended classes between 16.08.2019 and 16.09.2019.

11.4. However, Mr. Kareem was debarred from attending classes from 19.09.2019, while Ms. Kaur suffered a similar fate with effect from 16.09.2019.

11.5. It appears that this action was taken by CDAC and IITM *qua* Mr. Kareem and Ms. Kaur respectively based on the instructions received in that behalf from the University.

11.6. It appears that Ms. Kaur before approaching the Court had filed a petition with the Public Grievance Commission (in short “PGC”) for redressal of her grievance. The PGC, *vide* an order dated 10.10.2019, recommended to the University that it should revisit its decision of cancelling the admission granted to Ms. Kaur.

11.7. Since the University did not comply, Ms. Kaur decided to institute the present writ petition.

11.8. Mr. Kareem, though similarly circumstanced, approached this Court directly by way of the captioned petition.

Submissions of Counsel: -

12. Given this background, arguments on behalf of Mr. Kareem and Ms. Kaur were advanced by Mr. Ankit Yadav, Advocate and Mr. Vivek B. Saharya, Advocate respectively while, on behalf of the University, submissions were made by Mr. Jasbir Bidhuri, Advocate.

12.1. Arguments on behalf of the UGC were advanced by Mr. Apoorv Kurup, Advocate.

Submissions on behalf of the petitioners: -

13. The submissions of Mr. Saharya and Mr. Yadav can, broadly, be paraphrased as follows.

(i) Both Ms. Kaur and Mr. Kareem had made a complete disclosure at the time of filing their respective application to gain admission to the MCA programme concerning their basic qualification. The applications made reference to the ODL institutes from which the petitioners had acquired their BCA qualification.

(ii) In particular, the University had the knowledge of the fact that Ms. Kaur secured her BCA qualification from Jamia Hamdard, which was a deemed university, and that Mr. Kareem had, likewise, acquired his BCA qualification from IGNOU. The University was also aware of the fact that both Ms. Kaur and Mr. Kareem had undergone a three-year programme and had applied for admission to the MCA programme against seats reserved for minorities, after having cleared 2019 Entrance Exam.

(ii)(a) In other words, insofar as Ms. Kaur and Mr. Kareem were concerned, nothing was kept back. The University issued POL's to both Ms. Kaur and Mr. Kareem. As required, pursuant to the notification dated 05.08.2019, both Ms. Kaur and Mr. Kareem reported for admission to their respective institutes i.e. IITM and CDAC along with their original documents including documents which concerned their BCA qualification.

(iii) The balance academic fee was deposited by Ms. Kaur and Mr. Kareem with their respective institutes i.e. IITM and CDAC only after verification of documents was carried out. Ms. Kaur deposited Rs. 1,24,000 with IITM while Mr. Kareem deposited Rs. 28,000 with CDAC.

(iv) The said deposit towards balance academic fee being made and documents having been verified, the petitioners were granted admission. The petitioners, thereafter, attended classes for nearly three-to-four weeks before their admission was cancelled without any opportunity of being heard.

(v) The decision taken by the University to cancel the admission was flawed not only because it violated the principles of natural justice but also on account of the fact that once having allowed the petitioners to seek admission after due verification of documents, the University, was estopped in law from cancelling the admission.

(vi) The eligibility criteria contained in Clause 2.1.3 of the Admission Brochure upon which reliance is placed by the University can be of no avail for the reason that the sifting of candidates who were to be offered admission in the MCA programme was to be carried out by having them sit for 2019 Entrance Exam. Pertinently, 2019 Entrance Exam could be taken not only by candidates who had acquired BCA qualification through traditional universities/institutes/colleges but also by those who had acquired the same qualification through ODL institutes/colleges. The petitioners competed against the best and established their worth by clearing the 2019 Entrance Exam. Therefore, for the University to take recourse to Clause 2.1.3 of the Admission Brochure was both unfair and unlawful. The plea put forth on behalf of the University that the BCA qualification obtained by the petitioners *via* ODL universities was not at par with BCA qualification offered by traditional Universities was clearly lacking in merit given the fact that the petitioners sat for 2019 Entrance Exam and had their knowledge base tested along with those candidates who had acquired their BCA qualification from traditional universities/institutes/colleges.

(vii) The stance of the University that the BCA qualification obtained by the petitioners through an ODL institute/college was not a “*full-time*” course and, hence, cannot be equated with a BCA degree given by a traditional university was erroneous for the following reasons.

(vii)(a) First, the Admission Brochure did not spell out as to what it meant by a full-time course. It almost appears that the expression “*full-time*” course got incorporated in Clause 2.1.3 of the Admission Brochure by mistake.

(vii)(b) Second, if the BCA degree offered by an ODL institute/college was not at par with what was offered by a traditional university, why was this not an impediment in granting admission to the very same MCA programme by the University in the preceding academic session i.e. 2018-2019?

(viii) Clause 2.1.3 of the Admission Brochure violated the principle of equality as engrafted in Article 14 of the Constitution. The University has treated equals unequally. If the University’s action of differentiating between full-time and ODL course is to be sustained, then, it would have to pass the test of reasonable classification. In order to pass this test, the University would have to show a nexus between the classification made *qua* students who acquire their BCA qualification from traditional universities as against those who acquired the same qualification from ODL institutes/colleges and the object which it sought to be achieved *via* this classification. It was submitted that if the object was to admit the best students to the MCA programme, then, that object was achieved by having candidates from both streams sit for the 2019 Entrance Exam and, thereafter, have them seek admittance based on their rank and category and not by excluding students based on the fact that they acquired their BCA qualifications from ODL universities/institutes/colleges.

(ix) The EC which delved into the issue as to whether the BCA qualification obtained by students from ODL universities/institutes/colleges was at par with that which had been obtained by students through traditional

Universities failed to articulate the difference between the two. In other words, as to why BCA degree issued by a traditional university was, in qualitative terms, better than the one issued by an ODL institute/college was not brought out by the EC in its report.

(ix)(a) While one cannot quibble with the proposition that since members of the EC represent domain experts and, therefore, courts would not ordinarily interfere with their conclusions – their actions can be made subject to judicial review if they fail to discharge their duties in accordance with their remit.

(x) The UGC *via* various communications has attempted to exhort traditional Universities to recognize degrees and diplomas conferred upon students by ODL institutes/colleges. In this behalf, reliance was placed on the communications dated 28.07.1993, 05.05.2004, and 14.10.2013 served by the UGC on various Universities.

(xi) Since BCA was a three-year programme, All India Council for Teacher Education (in short “AICTE”) was not required to stipulate norms and conditions *qua* this course. The norms and conditions for BCA programme were to be stipulated only by the UGC. The UGC, undeniably, has recognized the BCA programme offered by both IGNOU and Jamia Hamdard. Since the BCA programmes offered by IGNOU and Jamia Hamdard were recognized by the UGC, they had to be treated at par with a BCA programme offered by a traditional university. In this behalf, emphasis was laid on the UGC’s letter dated 05.05.2004 whereby the UGC indicated that degrees/diplomas/certificates awarded by ODL institutes/universities, in conformity with its standards and norms, had to be *treated* as being

equivalent to corresponding degrees/diplomas/certificates awarded by traditional universities.

(xii) Mr. Saharya in support of his submissions has relied on the following judgments: -

a) *Kanishka Aggarwal vs. University of Delhi & Ors.*, AIR 1992 Delhi 105.

b) *Javed Akhtar & Anr. vs. Jamia Hamdard & Anr.*, 2007 (94) DRJ 299.

Submissions on behalf of the University: -

14. On the other hand, Mr. Bidhuri resisted the reliefs sought in the captioned petitions and, in support of his defense, made the following submissions.

(i) Up until academic session 2019-2020, the University was conducting its own Common Entrance Test. It is for the first time that for various courses, the University adopted the rank obtained by candidates in other All India examinations. Thus, for the MCA programme, the result of 2019 Entrance Exam administered by National Institute of Technology, Surathkal, Karnataka was taken into account and, likewise, for the B.A. LL.B. programme, the result obtained in Common Law Admission Test 2019 (CLAT-2019) was made use of for granting admission. Therefore, the fact that candidates who had acquired their BCA qualification from ODL institute/colleges were also allowed to sit for 2019 Entrance Exam cannot further the cause of the petitioners.

(ii) The University was entitled to fix an eligibility criteria which was higher than that which was provided for taking 2019 Entrance Exam. Thus, if one were to look at the issue at hand, in this perspective, then, no fault can

be found with the action of the University of cancelling the admission of the petitioners. The University is entitled to cancel the admission, at any stage, *inter alia*, on the ground that a candidate did not fulfil the eligibility criteria.

(iii) The issue as to whether the BCA qualification acquired by the petitioner was equivalent to that which was offered *via* traditional University was put before the EC on two occasions. The EC ruled against the petitioners (and other persons who were similarly circumstanced) and, therefore, no relief was given either to the petitioners or other 14 candidates whose admissions were cancelled for the same reason.

(iv) The petitioners were duty bound to accept not only the eligibility criteria provided in Clause 2.1.3 of the Admission Brochure but also the decision taken by the EC. That the decision of the EC was final, was sought to be emphasized by referring to the following clauses in the Admission Brochure.

“1.9 Important Instructions

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4. It is the responsibility of the candidates to ascertain whether he/she possess the requisite eligibility and qualifications for admission. Applying for a particular CET, appearing for the written examination and qualifying the same does not necessarily mean acceptance of eligibility (Chapter 2). Every applicant for a particular CET must satisfy the eligibility criterion as specified in this brochure (or its amendments / corrections).

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36. The decision on the equivalence of the degree, by an equivalence committee constituted by the Vice Chancellor of the University, for admissions to the University, shall be final. The equivalence committee shall comprise of the following:

1. Director Academic Affairs - Chairperson

2. Dean of the concerned school governing the programme of study where admission is sought.

3. *Director Student Welfare*
4. *Two professors of the University nominated by the Vice-Chancellor of the University.*
5. *One Assistant Registrar nominated by the Incharge Admissions – Convenor.”*

(v) The verification carried out on 13.07.2019 in case of Ms. Kaur and on 17.07.2019 in case of Mr. Kareem was concerning the documents which established their minority status. At this stage, verification of documents involving the petitioners' basic qualification was not carried out. Verification as regards the documents was carried out on 08.08.2019 in case of Ms. Kaur and on 05.08.2019 in case of Mr. Kareem when they reported to their respective institutes i.e. IITM and CDAC. These institutes made a mistake in scrutinizing the documents submitted by the petitioners which resulted in the petitioners being admitted contrary to the eligibility criteria provided in Clause 2.1.3 of the Admission Brochure. Once this aspect was brought to the notice of the University, corrective measures were taken and the admission of all candidates, which included the petitioners, who were similarly circumstanced was cancelled.

(vi) The EC had gone into the issue of parity between the BCA degrees offered by ODL institutes and traditional Universities. The EC has ruled against the petitioners. Since the members of the EC are domain experts, this Court ought not to interdict their decision.

(vii) In support of the aforesaid submissions, reliance was placed by Mr. Bidhuri on the following judgements.

- a) *Guru Gobind Singh Indraprasth University vs. Ram Narayan Tiwari*, (2018) SCC OnLine Del 12786.

- b) *Visveswaraiah Technological University & Anr. Vs. Krishnendu Haider & Ors.*, (2011) 4 SCC 606.
- c) *Institution of Mechanical Engineers (India) vs. State of Punjab*, 2019 SCC OnLine SC 1023.
- d) *Guru Nanak Dev University vs. Sanjay Kumar Katwal and Another*, (2009) 1 SCC 610.

Submissions on behalf of the UGC: -

15. Mr. Apoorv Kurup who appeared for the UGC, broadly, made the following submissions.

(i) The UGC is a statutory body constituted under a Central Act i.e The University Grants Commission Act, 1956 (in short “1956 Act”). The UGC is mandated by law to make provisions for coordination and determination of standards in the field of higher education in India. The UGC discharges aforesaid statutory obligation cast upon it under the 1956 Act by taking such steps which promote and help in coordinating higher education in Universities and educational institutions across the country. To achieve this end, the UGC not only determines the standards which are required for teaching, examination and research but also ensures that the same are maintained.

(i)(a) It is with this object in mind (which is also the power vested upon it under the 1956 Act) that it makes recommendations to universities and institutions which enable improvement of education standards in the country. Besides this, the UGC also renders advice on actions to be taken for the purposes of implementing such recommendations.

(ii) The BCA programme of Jamia Hamdard is a recognized programme. It is a deemed university which was granted provisional recognition *qua*

distance learning programmes for the first time on 03.09.2007 by the erstwhile regulator i.e. Distance Education Council (in short “DEC”).

(iii) This recognition was continued by the DEC *vide* communication dated 17.11.2008. In 2013, the DEC was hived off from IGNOU and, thereafter, programme-wise recognition was accorded by the UGC to all universities/colleges which conducted ODL courses as per the conditions and norms stipulated by it. Accordingly, insofar as Jamia Hamdard was concerned, the BCA programme conducted by it was recognized throughout 2013 and up until 2019 by the UGC in continuation of recognition granted to it since 2007 by the DEC. In this behalf, reference was made to communications dated 21.08.2013, 21.11.2016, and 01.02.2019.

(iv) The UGC’s stand with regard to equivalence as between degrees/diplomas/certificates awarded by ODL institutions (which are duly recognized) with corresponding degrees/diplomas/certificates awarded by traditional Universities/institutions is reflected in its letters dated 28.07.1993, 05.05.2004, and 14.10.2013.

(iv)(a) In this behalf, reference was also made to the gazette notification dated 10.06.1995 issued by Central Government and the public notice dated 23.02.2018 issued by the UGC.

(v) The contention was that insofar as the UGC was concerned, while it had not issued any specific direction to any university/college *qua* the issue of equivalence of degrees/diplomas/certificates issued by ODL institutes and those by traditional institutions, the same had to be treated at par for variety of reasons including for the reasons that they contributed to the expansion of higher education and achieving the target of Gross Enrolment Ratio (GER) without compromising on the quality of education imparted by them. In the

event, degrees/diplomas/certificates issued by ODL institutions are not recognized or are not treated at par with corresponding degrees/diplomas/certificates issued by traditional institutions for the purposes of promotion, employment and, in particular, for pursuing higher education, it would prove to be deleterious for the learners and, ultimately, defeat the purpose of Open and Distance Education.

(vi) Since the rigour, standard and quality of education by recognized ODL institutions (in this case IGNOU and Jamia Hamdard) is at par with that which is accorded by traditional institutions/colleges/Universities (such as the University involved in the instant case), the cancellation of admission of the petitioners would fall foul of Article 14 of the Constitution.

(vii) The EC was required to demonstrate that the BCA qualification obtained by the petitioners from recognized ODL institutions (i.e. IGNOU and Jamia Hamdard) was not at par with corresponding qualification obtained by students from traditional universities/colleges/institutions. The two reports rendered by the EC do not deal with the core issue, which is, as to how the BCA qualification obtained by the petitioners lacked the robustness and the rigour of similar qualification obtained by a student from a traditional university/institute/college.

(viii) Since BCA is a three-year programme, the standards and norms *qua* the same are not stipulated by AICTE as is evident upon perusal of its Approval Process Handbook 2018-2019. Such programmes, in particular the BCA programme, thus, come under the sway of the UGC.

(ix) Insofar as the UGC is concerned, whether a student acquires his BCA qualification from a traditional University or an ODL institution, he/she will be awarded a “*degree*” either by the University established or incorporated

by or under the Central Act or a provincial Act or a State Act or by an institution deemed to be a University under Section 3 of the 1956 Act or even by an institution, especially, empowered by an Act of parliament to grant degrees.

(ix)(a) In other words, according to the UGC, the BCA degree awarded to students of IGNOU or School of Open and Distance Learning, Jamia Hamdard would have the same weight and recognition as that which is accorded to a corresponding BCA degree awarded by a traditional University.

(ix)(b) For this purpose, my attention was drawn to Section 22 of the 1956 Act and the gazette notification dated 05.07.2014 issued by UGC, titled, “Specification of Degrees” – in exercise of powers conferred upon it under Subsection (3) of the very same provision. Reference was also made to gazette notification dated 23.06.2018 issued by the UGC in exercise of powers under Section 26(1) read with Section 12(j) of the 1956 Act, whereby, regulations were framed by the UGC for maintenance of minimum standard of instruction by ODL institutions *qua* their undergraduate and postgraduate programmes. In support of his submissions, reliance was placed on the following judgements.

- a) *Abdul Motin vs. Manisankar Maiti and Ors.*, (2018) 16 SCC 533.
- b) *Annamalai University vs. Secretary to Government, Information and Tourism, Department and Others*, (2009) 4 SCC 590.
- c) *Basic Education Board, U.P. vs. Upendra Rai and Others*, (2008) 3 SCC 432.
- d) *Janet Jeyapaul vs. SRM University and Others*, (2015) 16 SCC 530.

- e) *Kumari Shrilekha Vidhyathi and Others vs. State of U.P. and Others*, (1991) 1 SCC 212.
- f) *Prof. Yashpal and Another vs. State of Chhattisgarh and Others*, (2005) 5 SCC 420.
- g) *State of Rajasthan and Others vs. Lata Arun*, (2002) 6 SCC 252.

Analysis and Reasons: -

16. I have heard learned counsel for the parties and perused the record. What has emerged and *qua* which there cannot be any dispute is the following.

(i) Candidates could apply for the MCA programme offered by the University only if they cleared 2019 Entrance Exam. This Entrance Exam, over the years, has been conducted by National Institutes of Technology spread-out in various states of the country. These institutes are established under the National Institutes of Technology Act, 2007. The 2019 Entrance Exam, in particular, was conducted by National Institute of Technology, Surathkal, Karnataka, specifically for sifting candidates for the MCA programme offered by itself and other NIT's as also various other universities/colleges/institutes including the concerned University. The eligibility criteria stipulated for taking the 2019 Entrance Exam, *inter alia*, provided that the candidates should have a basic qualification in BCA irrespective of the same having been attained through traditional University or ODL institution.

“2 Eligibility Criteria to Appear For NIMCET-2019

Indian Nationals securing at least 60% marks in aggregate or 6.5 CGPA on a 10-point scales (55% marks or 6.0 CGPA on a 10-point scale in case of SC/ ST) in

(i) B.Sc. / B.Sc. (Hons) / BCA / BIT / B.Voc. (Computer Science/

Computer Applications) of minimum three years full-time from a recognized University with Mathematics/ Statistics as one of the subjects

OR

(ii) B.E./ B.Tech. from a recognized University

are eligible to appear for NIMCET-2019. Conversion of scored marks from CGPA to percentage and vice-versa is not permitted. (CGPA other than 10-point scale will be converted to 10-point scale based on Unitary method)

Candidates who are appearing for the qualifying examination are also eligible to apply for NIMCET-2019 and such candidates shall have to furnish the proof (in the form of a certificate issued by the Head of institution where the candidate has studied) of candidature for appearing in the examinations during the academic year 2019-20. All candidates shall submit the proof of fulfilling the eligibility criteria of NIMCET- 2019 at the time of Counseling/Admission but not later than September 15, 2019, failing which their admission is liable to be cancelled by the respective NITs.

Note: Students who have completed/completing B.Sc./ B.Sc. (Hons)/BCA/ BIT of 3 years from Open Universities are also eligible to apply provided the programme is approved by UGC / AICTE and Distance Education Council (DEC) of Govt. of India.”

[Emphasis is mine]

(ii) The University adopted the 2019 Entrance Exam merit list for the purposes of offering admission to the MCA programme for academic session 2019-2020.

(iii) In the preceding academic session i.e. 2018-2019, the University sifted eligible candidates for the very same MCA programme via its own Common Entrance Test. This test could be taken by candidates who had

acquired the basic BCA qualification, irrespective of whether the same had been obtained through traditional university or an ODL institution.

(iv) In the Admission Brochure published by the University for academic session 2019-2020, it inserted Clause 2.1.3 which did not find mention in the preceding academic session i.e. 2018-2019.

(v) As required, both Ms. Kaur and Mr. Kareem sat for 2019 Entrance Exam and qualified the same. While Ms. Kaur was ranked 5136, Mr. Kareem was ranked 3696.

(vi) Thereafter, Ms. Kaur and Mr. Kareem filed their applications *via* online mode with the University along with counselling fee of Rs. 1000/-. In the admission form, Ms. Kaur and Mr. Kareem disclosed the fact that they had acquired their BCA qualification from IGNOU and School of Open and Distance Learning, Jamia Hamdard, respectively.

(vii) Since Ms. Kaur and Mr. Kareem were required to give their options as to the institute/college they wished to get admitted to, they chose IITM and CDAC respectively. Ms. Kaur and Mr. Kareem, thereafter, paid a part-academic fee of Rs. 40,000/- and had their documents concerning their minority status verified. In case of Ms. Kaur verification of documents was carried on 13.07.2019, while Mr. Kareem's documents were verified on 17.07.2019.

(viii) The University on 05.08.2019 published a notification which required candidates who had been allotted institutes/colleges of their choice to physically report for grant of admission along with their original documents, which, *inter alia*, concerned the certificates and degrees obtained by them. Ms. Kaur, thus, reported to IITM, along with her original documents which included documents concerning her BCA qualification on 08.08.2019.

Likewise, Mr. Kareem reported, to CDAC, with his original documents on 05.08.2019.

(ix) Both the petitioners, having obtained admission, attended classes in their respective institutes. Ms. Kaur attended classes between 16.08.2019 to 16.09.2019 while Mr. Kareem attended classes between 13.08.2019 and the first week of September 2019.

(x) Ms. Kaur was debarred from attending classes from 16.09.2019 while Mr. Kareem was debarred, likewise, from attending classes from 19.09.2019.

17. The aforesaid undisputed facts would show that the petitioners were lulled into believing both before they applied for the MCA programme and, thereafter, that once they obtained provisional admission in their respective institutes, they met the eligibility criteria.

17.1. The University added to the confusion by using the expression “*full-time*” course in Clause 2.1.3 of the Admission Brochure without defining the same and without explicitly stating that students who had obtained BCA qualifications *via* ODL institutions were not eligible to apply for the MCA programme. What added to the confusion, if there was one, was the following annotation in the notification dated 05.08.2019 issued by the University.

“Reporting of candidates to the allotted institute/college

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Documents required at the time of Reporting of candidates at the Allotted Institute/College

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(e) In case of students who have passed the qualifying examination through distance/open education system of any recognized University/board/institution, the necessary documentary evidence related to location of his/her study centre i.e. study centre proof, certificate from the University, imparting open/distance education certifying the location of the study centre.”

[emphasis is mine]

17.2. There was nothing to suggest, as was sought to be argued on behalf of the University, that this annotation was general in nature, and did not apply to students who had sought admission in the MCA programmes.

17.3. The very fact that the petitioners were allowed to obtain admission and the University was required to refer the matter to the EC even before the petitioners approached this court would show that the University administration was unsure as to whether or not the petitioners and those who were similarly circumstanced i.e. had obtained their BCA qualification *via* ODL institutions were ineligible for being admitted to the MCA programme.

18. The argument advanced on behalf of the University that there cannot be any estoppel (and I assume by this it is meant estoppel by conduct) only because the petitioners were, in the first instance, admitted to the MCA programme, *albeit*, provisionally, is premised on the argument advanced by Mr. Bidhuri that the Admission Brochure is in the nature of a contract entered into between the students and the University. According to Mr. Bidhuri, the students (in this case the petitioners) being aware of the prescribed eligibility criteria, cannot take advantage of the fact that the concerned institutes i.e. CDAC and IITM, mistakenly, granted admission to

them contrary to the prescription made in that behalf in the Admission Brochure.

18.1. Thus, if the argument advanced by Mr. Bidhuri is accepted that the Admission Brochure has the trappings of a contract, then, it must also follow in the event of ambiguity *qua* any term contained in the contract that such a term would have to be read against the maker of the contract. In other words, in such situations, the doctrine of *contra proferentem*¹ would apply. Concededly, the Admission brochure has been drafted by the University, in which, students (i.e. the petitioners) had no role to play. The fact that Clause 2.1.3 of the Admission Brochure did not lend clarity clearly emerges from the events detailed out hereinabove commencing with the conduct of the 2019 Entrance Exam.

19. It is quite possible (and that appears to be the main edifice of the submissions advanced by Mr. Bidhuri on behalf of the University) that the expression full-time course applies to such courses which are offered by traditional universities in contrast to those which are offered by ODL institutions.

19.1. Even if, for the moment, I were to accept this argument, the University would then have to demonstrate that the BCA course offered by ODL institutions recognized by the UGC did not adhere to the same standards and norms which were applicable to BCA courses offered by traditional universities.

¹ ***contra proferentem*** (kon-tra prof-a-ren-tam). [Latin “against the offeror”] The doctrine that, in interpreting documents, ambiguities are to be construed unfavourably to the drafter. – Also spelled *contra proferentes*. – Also termed *ambiguity doctrine*. [Cases: Contracts – 155 C.J.S. *Contracts* § 337.] See: Bryan A. Garner, Black's Law Dictionary (8th ed. 2004).

19.2. Mr. Bidhuri tried to establish the validity of this submission by referring to the two EC reports which are on record. The first report of the EC, which is, dated 09.08.2019 was generated before the petitioners approached this Court. In this report, there is no discussion concerning the petitioners. The report refers to one Mr. Manish who had obtained his BCA qualification from IGNOU. The EC simply rejected the representation of Mr. Manish by holding that the BCA qualification obtained by the candidate cannot be considered a full-time course. There was no discussion as to how the EC had reached this conclusion.

19.3. The second report, which is, dated 27.12.2019 was generated pursuant to proceedings held before me on 17.12.2019². The University, it appears, agreed to convene the EC, once again, having realized that BCA programme offered by the School of Open and Distance Learning, Jamia Hamdard was not even discussed in the EC's report dated 09.08.2019. This report simply adverts to aspects concerning attributability of knowledge with regard to the eligibility criteria as found in the Admission Brochure. The EC has found fault with the petitioners in not raising the issue concerning the parity of BCA qualification either before the commencement of admission or in the period spanning between the allotment of colleges to the students and having them report to the same. The EC also appears to assert that the University

² **“W.P.(C) 10522/2019 & CM APPL. 43560/2019**

5. Counsel for the respondents will have liberty to file counter-affidavits to the amended writ petition.

6. Mr. Bidhuri says that if a fresh representation is made to respondent no. 1 university, the same can be put, once again, to the Equivalence Committee.

6.1 The request is acceded to.

7. The petitioner will make a fresh representation to the respondent no. 1 university as suggested by Mr. Bidhuri at the earliest.

8. Renotify the matter on 19.12.2019.”

could put in place its own eligibility criteria which is over and above the eligibility criteria laid down by AICTE and, therefore, appears to suggest that the eligibility criteria fixed for taking the 2019 Entrance Exam cannot be the measure for seeking admission to the MCA programme offered by the University.

19.4. As noted above, the first report of the EC only gives its conclusion (and that too *vis-à-vis* the BCA programme offered by IGNOU) without even an iota of discussion. The second report says everything but that which was at the heart of the matter i.e. as to why the BCA programme offered by IGNOU and Jamia Hamdard were, in any manner, of a lesser quality as compared to those offered by traditional universities.

19.5. As alluded to above, while there is a bald assertion by the EC that the University could fix an eligibility criteria higher than that prescribed by AICTE (a proposition with which one cannot quibble) – there is no clue given as to why the BCA qualification acquired *via* a traditional university is in qualitative terms better than that which a student acquires through ODL institutes/colleges.

19.6. The EC has not even made an attempt to compare the course content of BCA programmes offered by IGNOU and Jamia Hamdard with those offered by traditional universities.

19.7. The EC reports placed before me do not even remotely suggest that it conducted an exercise of ascertaining as to whether the standards and norms of the BCA course offered by IGNOU and School of Open and Distance Learning, Jamia Hamdard, were at par with those which are offered by traditional universities. Therefore, to my mind, the judgement rendered in ***Visveswaraiah Technological University & Anr. Vs. Krishnendu Haider &***

Ors., (2011) 4 SCC 606 is distinguishable and not applicable to the facts obtaining in this case.

19.8. There is no doubt that ordinarily courts do not interfere with the decisions of bodies which have domain expertise. However, that being said, their decisions are justiciable as was observed by the Supreme Court in *State of Rajasthan v. Lata Arun*, (2002) 6 SCC 252 : 2002 SCC (L&S) 859 [hereinafter referred to as “*Lata Arun’s* case”]. The relevant observations made in this behalf by Supreme Court in *Lata Arun’s* case being apposite are extracted hereafter.

“10. The points involved in the case are twofold: one relating to prescription of minimum educational qualification for admission to the course and the other relating to recognition of the Madhyama Certificate issued by the Hindi Sahitya Sammelan, Allahabad as equivalent to or higher than +2 or 1st year of TDC for the purpose of admission. Both these points relate to matters in the realm of policy decision to be taken by the State Government or the authority vested with power under any statute. It is not for courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification in the case. That is not to say that such matters are not justiciable. In an appropriate case the court can examine whether the policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable ground; whether the decision has been taken on consideration of relevant aspects of the matter; whether exercise of the power is obtained with mala fide intention; whether the decision serves the purpose of giving proper training to the candidates admitted or it is based on irrelevant and irrational considerations or intended to benefit an individual or a group of candidates.”

[emphasis is mine]

19.9. The reliance by Mr. Bidhuri on the judgement of the Supreme court in *Guru Nanak Dev University vs. Sanjay Kumar Katwal*, (2009) 1 SCC 610

[hereinafter referred to as “*Guru Nanak Dev University’s* case”] in support of his plea that the decision of the EC cannot be interdicted is, to my mind, distinguishable for the sole reason as the EC in that case had carried out the exercise of ascertaining as to whether the courses in issue were at par and in doing so it had referred to the Equivalency Book issued in that behalf by the Guru Nanak Dev University.

20. On the other hand, the UGC has contended before me that the degrees awarded by recognized ODL institutions have to be “*treated as equivalent*” to degrees awarded for similar programmes offered by traditional universities. The UGC has been writing in this behalf to Universities/colleges/institutions located across the country, since 1993. It would suffice if I were to advert to the relevant parts of its communication addressed by the UGC to various universities/colleges/institutions as recently as in 2013.

*“University Grants Commission
Bahadur Shah Zafar Marg
New Delhi-110 002*

*F. No. UGC/DEB/2013
Dated 14.10.2013*

*The Registrar/Director
Of all the Indian Universities
(Deemed, State, Central Universities/
Institutions of National importance)*

Subject: Equivalence of Degrees awarded by Open and Distance Learning (ODL) Institutions at par with Conventional Universities/Institutions

Sir/ Madam,

5. As you are aware, the Government of India has envisaged a greater role for the Open and the Distance Education System. The

envisioned role may be fulfilled by recognizing and treating the Degrees / Diplomas/Certificates awarded through distance mode at par with the degrees obtained through the formal system of education. Open and Distance Education System in the county is contributing a lot in expansion of Higher Education and for achieving target of GER, without compromising on quality. Non recognition/non equivalence of degrees of ODL institutions for the purpose of promotion/employment and pursuing higher education may prove a deterrent to many learners and will ultimately defeat the purpose of Open and Distance Education.

6. Accordingly, the Degrees/Diplomas/Certificates awarded for programmes conducted by the ODL institutions, recognised by DEC (erstwhile) and UGC, in conformity with UGC Notification on specification of Degrees should be treated as equivalent to the corresponding awards on the Degree/Diploma/Certificate of the traditional Universities/institutions in the country.

[sd/-]
(Vikram Sahay)
Director (Admn)”

[emphasis is mine]

20.1. A perusal of the extract would show that the UGC is concerned that the students who are not enrolled in universities/institutes/colleges offering formal education are losing out on opportunities both in terms of gaining access to higher education as also employment. This concern has also been articulated by the Government of India in its notification dated 10.06.2015.

21. The Supreme Court has also shed light on this aspect in the judgement rendered in the matter of *Abdul Motin v. Manisankar Maiti*, (2018) 16 SCC 533 : (2019) 1 SCC (L&S) 263 : 2018 SCC OnLine SC 580 [hereinafter referred to as “*Abdul Motin*’s case”].

21.1. The Court in *Abdul Motin*’s case has explained its earlier judgement rendered in the *Annamalai University vs. Secretary to Government*,

Information and Tourism, Department and Others, (2009) 4 SCC 590. The observations of Hon'ble Mr. Justice S.A. Bobde (as he then was) speaking for the Supreme Court in the context of denial of employment to a candidate on the ground that he had acquired his qualification through an ODL institution drives home the point that exclusion of persons from access to higher education only on the ground that they had acquired their qualification from a non-formal sector (i.e. ODL institutions) was unfair. The observations being apposite are extracted hereafter.

“6. The only issue that arises in the instant appeals is whether a PhD degree conferred by an open university under the Netaji Subhash Open University Act, 1997, and a PhD degree conferred by a regular University ought to be treated differently for the purpose of appointment for the post of Principal/Lecturer/Reader, etc., in the non-government colleges where such PhD degree is an essential qualification.

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10. We, accordingly, direct the respondent Commission to recommend the name of Dr Abdul Motin for appointment as Principal for the non-government colleges within a period of one month from today. It is made clear that the above arrangement shall take care of the claims of the rival parties. However, we find that the impugned judgment(s) [Abdul Motin v. Manisankar Maiti, 2014 SCC OnLine Cal 19869 : (2015) 4 CHN 598] passed by the Division Bench of the High Court needs to be considered for it does not lay down good law.

11. The High Court relied on the judgment rendered in Annamalai University v. Information & Tourism Deptt. [Annamalai University v. Information & Tourism Deptt., (2009) 4 SCC 590 : 3 SCEC 532] , for holding that a qualification conferred by an open university cannot be treated on a par with a qualification conferred by a regular university.

12. Having heard the learned counsel appearing for the parties and having considered the ratio in Annamalai University [Annamalai University v. Information & Tourism Deptt., (2009) 4 SCC 590 : 3 SCEC 532] , we are of the view that the effect of that decision is to the contrary. In Annamalai University [Annamalai University v. Information & Tourism Deptt., (2009) 4 SCC 590 : 3 SCEC 532] , this Court observed that the University Grants Commission Act which was enacted by Parliament under Schedule VII List I Entry 66 to the Constitution of India, was so enacted for effectuating coordination and determination of standards in universities. Its provisions are binding on all universities whether conventional or open and its powers are very broad. The Regulations framed under that Act apply equally to open universities as well as also to formal conventional universities vide paras 40-42 of the said judgment which read as under: (SCC p. 607)

“40. The UGC Act was enacted by Parliament in exercise of its power under Schedule VII List I Entry 66 to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the Statement of Objects and Reasons of the Open University Act shows that the formal system of education had not been able to provide an effective means to equalise educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

41. Was the alternative system envisaged under the Open University Act in substitution of the formal system, is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and informal system is in the mode and manner in which education is imparted. The UGC Act was enacted for effectuating coordination and determination of standards in universities. The purport and object for which it was enacted must be given full effect.

42. The provisions of the UGC Act are binding on all universities

whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-section (1) of Section 26 are of wide amplitude. They apply equally to open universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinabove that the functions of UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub-section (2) thereof.”

13. We might also take note of communications dated 5-5-2004 and 14-10-2013 made by the University Grants Commission to the Registrar/Director of all Universities, which are as follows:

“F1-52/2000 (CPP-II)

5-5-2004

The Registrar/Director of

all the Indian Universities (Deemed,

State, Central Universities/Institutions

of National Importance)

Subject : Recognition of Degrees awarded by Open Universities.

Sir/Madam,

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May, I therefore request you to treat the Degree/Diploma/Certificates awarded by the Open Universities in conformity with the UGC notification on Specification of Degrees as equivalent to the corresponding awards of the traditional Universities in the country.

Yours faithfully,

(Dr [Mrs] Pankaj Mittal)

Joint Secretary

University Grants Commission”

AND

“F. No. UGC/DEB/2013

Dated : 14-10-2013

The Registrar/Director

of all the Indian Universities

(Deemed, State, Central

Universities/Institutions of

National Importance)

Subject : Equivalence of Degree awarded by Open and Distance Learning (ODL) Institutions on a par with Conventional Universities/Institutions.

Sir/Madam,

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Accordingly, the Degrees/Diplomas/Certificates awarded for programmes conducted by the ODL institutions, recognised by DEC (erstwhile) and UGC, in conformity with UGC notification on specification of Degrees should be treated as equivalent to the corresponding awards of the Degree/Diploma/Certificate of the traditional Universities/Institutions in the country.

(Vikram Sahay)

Director (Admn.)

University Grants Commission”

14. In view of the observations in Annamalai University [Annamalai University v. Information & Tourism Deptt., (2009) 4 SCC 590 : 3 SCEC 532] and the above directive, we are of the view that as a consequence, PhD degree issued by an open university and another PhD degree issued by a formal conventional university must, therefore, be treated on a par having been so issued under the uniform standards prescribed by the University Grants Commission Act.”

[emphasis is mine]

22. Therefore, even if I were to accept the submission made on behalf of the University that the students were aware of the eligibility criteria provided in Clause 2.1.3 of the Admission Brochure and, thus, could not get around the same as they had only gained provisional admission, would not help its cause as Clause 2.1.3 of the Admission Brochure is clearly violative of Article 14 of the Constitution.

22.1. As rightly argued on behalf of the petitioners and Mr. Kurup on behalf of the UGC, the University had treated equals as unequals. The classification between the students who had acquired their BCA qualifications *via* ODL institutions as against those who acquired the same

through traditional universities is not based on any *intelligible differentia*. The classification is patently discriminatory as it unreasonably excludes students from access to higher education only because they obtained their BCA qualification from ODL institutes. [See: *Venugopala vs. Union of India*, AIR 1969 SC 1094; *Deputy Commissioner vs. Durga Rath*, AIR 1968 SC 394; and *State of Maharashtra vs. Indian Hotels and Restaurants Association*, AIR 2013 SC 2582]

22.2. Since the University's attempt to show that petitioners (and those candidates similarly circumstanced) who had acquired their BCA qualification *via* ODL institutions fell in a different class and the norms and standards applicable to their course was not the same which were applicable to a BCA qualification offered by a traditional university, had failed – the edifice on which cancellation of petitioners admission was based would, in my view, automatically collapse.

22.3. If the object of the purported classification was to ensure that the best students were admitted to the MCA programme, that object failed as well in view of the admitted position that the petitioners had competed against those who had acquired their BCA qualifications *via* traditional universities by sitting for the 2019 Entrance Exam.

22.4. Therefore, to my mind, besides anything else, Clause 2.1.3 of the Admission Brochure falls foul of Article 14 of the Constitution and hence would have to be struck down to the extent that it denies admission to those candidates who have acquired their basic BCA qualifications *via* ODL institutions.

22.5. Before I conclude, I may touch upon two aspects. First, the stand of IITM, to which, Ms. Kaur was admitted. Second, as to why the recommendations of the PGC would have relevance in this case.

22.6. Insofar as IITM is concerned, in a nutshell, it supports the stand of petitioners that students who had obtained their BCA qualification *via* ODL institutions/colleges were eligible for being admitted to the MCA programme. According to IITM, BCA qualification obtained through ODL institutions was at par with that which was obtained through traditional Universities³. [See paragraph 1(i), 1 (ii), 1(vii), and 1(viii) of the counter-affidavit on behalf of IITM filed in W.P. (C) 11628/2019]

³ “i) That the petitioner in the present matter had applied for MCA Programme (GET Code 105) with the respondent no.1. Respondent No. 1 declared in their brochure that for CET Code 105, all admissions shall be made on the basis of the merit of NIT MCA Common Entrance Test (NIMCET) 2019 that is conducted by National Institute of Technology's on a rotational basis. The respondent no.1-University shall not conduct its own CET for admissions, but shall be utilizing the merit prepared on the basis of NIMCET Merit for its admissions. The test NIMCET 2019 was conducted as per the instructions of the National Institute of Technology, Surathkal, Karnataka. The petitioner appeared and qualified NIMCET 2019 entrance exam to be selected for this programme in the respondent no. 1- University. The petitioner was allotted admission to MCA in respondent no.2 by respondent no.1 through online counselling process. Respondent no. 1 provided the admission brochure for admission to MCA Programme. As per the eligibility criteria wherein they mentioned 3- years full time course as a sine qua non for the eligibility for admission to MCA Programme. It is submitted that though, it was conducted by National Institute Technology, however, it is submitted that there itself was an eligibility criteria provided by the NIMCET 2019 brochure, which provides that students who have completed/completing B.Sc./ B.Sc. (E[ons])/BCA/ BIT of 3 years from Open Universities are also eligible to apply provided the programme is approved by UGC / AICTE and Distance Education Council (DEC) of Govt. of India. As the University Grants Commission has itself vide their circular / letter issued in this regard, has clarified in May, 2004 thereby, writing letters to the Registrar / Director of AICTE, the Indian Universities (deemed / State)/ Central University, Institutions of National importance. That a degree / diploma service awarded by Indira Gandhi National Open University are to be treated equivalent to the corresponding awards of the universities of the country. The aforesaid circular issued in this regard by the University Grants Commission is also filed by the petitioner as Annexure P-15 (Colly.).

22.7. Insofar as the PGC's recommendations are concerned, they would have relevance as even as per Resolution No. F.4/14/94-AR, dated 25.09.1997⁴, (cited by the University) – the University was required to revert to the PGC as to why it could not accept its recommendations. Nothing has been placed on record by the University which would show that

ii) That as per this, the petitioner was eligible as she has obtained a degree / BCA from UGC recognized university, Jamia Hamdard University.

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vii) That the Respondent No.2 through its Director made representations on 7.9.2019 and 12.9.2019 in order to impress upon the respondent no. 1 that they are not following the guidelines of UGC as well as NIMCET 2019 and differentia or making any other criteria which is neither recognized by the UGC nor the expert body NIT Surathkal, Karnataka for the MCA programme to be conducted by respondent no.1. The copies of the representations so made are collected annexed as Annexure R-2 (Colly.).

viii) It shall be pertinent to point out here that the Course of the petitioner of three years graduation has been recognized by the respondent no. 1 for the last so many years but now-a-days, the respondent no. 1 is not accepting the same. It is through their own policies and rules as per the act governed by them in which the respondent no. 2 has no control over it.”

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PUBLIC GRIEVANCES COMMISSION

No. F.4/14/94-AR

Dated: the 25th Sept., 1997

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B. POWERS AND FUNCTIONS

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(vi) The Commission shall, on conclusion of the hearing of the complaint, pass an appropriate "speaking" order and in cases where it is held that the allegations made against the officials concerned are prima facie established, the Commission shall also recommend action to be taken against the erring officials. The recommendations thus made by the Commission shall be given due consideration by the appropriate administrative authority for its speedy implementation, However, where the appropriate administrative authority on the basis of the merits of the case takes a contrary view, it shall communicate to the Commission, in writing, specific reasons because of which its recommendations could not be accepted. If the Commission is not satisfied with the reasons indicated for non-implementation of its recommendations, it shall be reflected as a case of non-acceptance of Commission's recommendations in its annual report.”

[Emphasis is mine]

it reverted to the PGC, with the reasons, as to why it could not adhere to its recommendations.

Conclusion: -

23. Thus, for the foregoing reasons, I am inclined to allow the prayers made in the writ petitions. Consequently, the two impugned letters dated 25.09.2019 issued to Ms. Kaur and Mr. Kareem are set aside.

24. Ms. Kaur and Mr. Kareem will be granted admission to the MCA programme in IITM and CDAC respectively. The University will make suitable adjustments as indicated in the proceedings dated 05.11.2019⁵ in view of the University resisting, at that stage, the grant of interim relief to the petitioners.

25. Needless to add, the relief granted in the captioned petitions, insofar as academic session 2019-2020 is concerned, is restricted only to the petitioners as other candidates whose admission was cancelled chose not to approach the court.

⁵ **“W.P.(C) 11628/2019 & CM APPL. 47806/2019**

2. Counsel for respondent no. 1, who appears on advance notice, informs me that a connected writ petition i.e. W.P. (C) 10522/2019 is coming up for hearing on 15.11.2019.

3. Mr. Saharya, who appears on behalf of the petitioner, seeks interim direction to the effect that petitioner be permitted to attend classes.

4. Counsel for respondent no. 1, however, resists the petition.

5. In consonance with the interim direction passed in W.P. (C) 10522/2019 and since respondent no. 1 resists the plea made by petitioner for being permitted to attend classes, it is made clear that in case the petitioner were to succeed in the instant writ petition, then the fact that the petitioner was prevented from attending classes for the period during which the writ petition remained pending will not come in her way in obtaining the final relief.

6. If necessary, respondent no. 1 & 2 will make suitable adjustments, in case, such an eventuality arises with regard to attendance and holding extra classes.

7. Accordingly, the interlocutory application i.e. CM APPL. 47806/2019 is disposed of.”

[Emphasis is mine]

26. The captioned writ petitions are disposed of in the aforesaid terms. Accordingly, pending interlocutory application shall stand closed.

RAJIV SHAKDHER, J.

JANUARY 30, 2020

