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W.P.No.30359 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.30359 of 2018

International Maritime Academy
Rep. by its Managing Director
Having Administrative Officer at
No.33, Ramanujam Street, T.Nagar
Chennai - 600 017.

Having Academic Campus at
No.41, Jamin Korattur
Pudhuchatiram, Chennai - 602 107

.. Petitioner

VS

Karnataka State Open University
Rep. by its Registrar
Mukhtagangotri, Mysuru
Karnataka - 570 006.

.. Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent University to issue the degree certificates to the 724 students, who have enrolled with it through the petitioner Academy during the Academic Year 2011-12 and 2012-13 and who have completed their course in B.Sc. Nautical Science, B.Tech. (Marine Engineering) and B.Tech. (Naval Architecture and Ship Building).



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For Petitioner : Mr.N.Muralikumaran
for M/s. Mcgan Law Firm

For Respondent : Mr.N.Umapathi

ORDER

The prayer sought for herein is a writ of Mandamus, directing the respondent University to issue the degree certificates to the 724 students, who have enrolled with it through the petitioner Academy during the Academic Year 2011-12 and 2012-13 and who have completed their course in B.Sc. Nautical Science, B.Tech. Marine Engineering and B.Tech. Naval Architecture and Ship Building.

2. It is the case of the petitioner that the petitioner Academy commenced its operation in the year 2000 and have been conducting Maritime courses such as Diploma in Nautical Science, B.Sc. Nautical Science, right from the year 2006 including B.Tech. Maritime Engineering, B.Tech Naval Architecture and Ship Building, etc. It is the further case of the petitioner that for courses like B.Tech. Marine Engineering, approval was accorded by the Directorate General of Shipping, Ministry of Shipping, Government of India, which is the Competent Authority to accord approval. Insofar as the courses called the B.Tech. Naval Architecture and Ship Building courses are concerned, it is accredited by the Royal



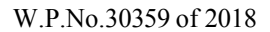
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Institution of Naval Architects.

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3. Therefore, it is the claim of the petitioner that the petitioner Academy is an approved Institution by the Directorate General of Shipping, Ministry of Shipping, Government of India, which is the approving body for the courses such as B.Tech Marine Engineering, B.Sc. Nautical Science, one year Diploma in Nautical Science, six months GP Rating Certificate Courses, etc.

4. While that being so, in the year 2011-12, the petitioner had entered into a tie-up, by way of agreement, with the respondent University viz., the Karnataka State Open University. Under the said agreement, the petitioner Institution would act as a Centre of the University, to offer certain courses relating to Marine Engineering, Nautical Science, etc, through Open University System. The syllabus and curriculum would be prescribed by the University, end year examination would also be conducted only by the University and based on which, the students have to complete the courses and once they successfully complete the courses by writing examinations conducted by the respondent University, they would be entitled to get the degrees in the respective courses, which would be awarded by the respondent University.





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Shipping has granted recognition to the petitioner Institution with their order dated 27.10.2008 to conduct the four years Marine Engineering Degree Course and the approval has been, time and again, extended for various years by approval orders dated 12.01.2009, 23.03.2009, 30.08.2010 and 22.07.2011. The copy of these orders have also been filed in the typed-set of papers.

9. Therefore, as per the approval granted by the Directorate General of Shipping and in pursuance to the affiliation, by way of tie-up with the respondent University, which the petitioner Institution and the respondent University entered into on 02.08.2011, students were enrolled in these courses within the intake capacity and its students completed the courses successfully by witting their end semester examinations. Thereafter, even though the students are eligible or entitled to get the provisional or degree certificates, those certificates have not been so far been released.

10. In this context, learned counsel appearing for the petitioner has further submitted that, in respect of some of the students who studied in the relevant years in various courses, the provisional certificates and the consolidated marks statements have been released and only for the remaining students, such



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documents have not been released by the respondent University.

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11. He would also submit that when this inaction or non-action on the part of the respondent University in granting certificates like the provisional and degree certificates to those students who studied in the year 2011-12 and 2012-13, when requested, the University has stated a reason that, beyond 2012-13, the recognition granted by the erstwhile Distance Education Council of Indira Gandhi National Open University (in short, “DEC of IGNOU”) since was withdrawn, the respondent University did not enjoy the recognition given by the DEC of IGNOU, therefore, from 2015, strong instructions have been given by various communications of the University Grants Commission i.e., the UGC to the respondent University not to pursue any courses by establishing any Study Centres beyond the territorial jurisdiction of the University, as provided under the Act i.e., the Karnataka State Open University Act, 1992 and if at all any courses were conducted through Centres opened on behalf of the respondent University at various places throughout India, those students are not entitled to get any degree or provisional certificates, thus, beyond 2012-13, no such certificates shall be issued or released by the respondent University.



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12. Only based on this dictate from the UGC, the respondent University laid out their hands by leaving the students at lurch, who studied the courses in the petitioner Institution which is recognized as one of the Centres i.e., Distance Learning Centres of the respondent University, without giving the provisional and degree certificates. Therefore, learned counsel appearing for the petitioner would submit that, suitable direction by way of Mandamus may be given to the respondent University for issuance of provisional and degree certificates, including the consolidated mark statements of the students who studied various courses at the petitioner Institution during the Academic Year 2011-12 and 2012-13, as during which period, the respondent University enjoyed the recognition granted by the DEC of IGNOU.

13. On the other hand, Mr.N.Umapathi, learned Standing Counsel appearing for the respondent University would submit that, the respondent University was established under Section 3 of the KSOU Act. The University is empowered to open Centres outside Karnataka, at such places as it deems fit. Accordingly, the University, under its policy making Body, since enjoyed the recognition of the DEC of IGNOU, thought of or decided to start Centres i.e, Distance Learning Centres at various places beyond the territorial jurisdiction of the University i.e., beyond the



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State of Karnataka. Accordingly, the University wanted to open such Centre with the tie-up of the petitioner, as the petitioner is already having the recognition from the Directorate General of Shipping to conduct various Marine courses. Accordingly, a Memorandum of Understanding was entered into between the respondent University i.e., the Karnataka State Open University and the petitioner i.e., the International Maritime Academy, Chennai on 02.08.2011. The learned Standing Counsel would further submit that, a number of academic programmes had been included in the said agreement, like B.Tech. Marine Engineering, B.Tech. Naval Architecture and Ship Building, B.Sc. Nautical Science, etc. Under Clause 3(7), it has been mentioned that, in recognizing a Study Centre, the procedures and standards to be followed will be the same as detailed in the Karnataka State Open University Act, 1992 and each Study Centre, so recognized, will be only a functional Study Centre of the first party i.e., the University.

14. By relying upon various Clauses of the agreement entered into by the University and the petitioner Institution, learned Standing Counsel for the University would further submit that, in respect of the courses, where the recognition was obtained or approval was obtained by the petitioner Institution from the Directorate General of Shipping, the University has supplied curriculum



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and syllabus and pursuant to the tie-up between the parties, those courses were started functioning from the Academic Year 2011-12. Students were enrolled in the Institution i.e., the Centres of the University for the Academic Year 2011-12 and 2012-13 and subsequently also.

15. However, in the year 2013 onwards, i.e. beyond 2012-13, the recognition enjoyed by the University from the DEC of IGNOU, since was withdrawn, the University could not pursue those Study Centres and courses after 2017-18. It means, the learned Standing Counsel would contend that till 2017-18 they have conducted these courses on various Centres despite the fact that the DEC / UGC has withdrawn the recognition already given to the respondent University.

16. Therefore, in this context, learned Standing Counsel appearing for the respondent University would further submit that, though initially for some of the students who studied in the Institution of the petitioner i.e, the Centre of the University, provisional and degree certificates were issued, subsequently, due to the order passed by the UGC that no such certificates shall be issued by the respondent University, the certificates, which were not issued till such time were stopped from issuing the same and therefore, those students would not get the certificates from



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the respondent University.

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17. In this context, the learned counsel relied upon the communication issued by the UGC dated 18.08.2021, where, the following directions was given by the UGC to the University:

“Therefore the Karnataka State Open University is directed not to issue any degree for the years for which either the University was not recognized or territorial jurisdiction has not been complied. If any violation is noticed, punitive action shall be initiated against the university.”

18. Learned Standing Counsel for the respondent University would also submit that, subsequently, the University has written two letters. One is on 15.03.2022 and another on 21.10.2022 i.e. the latest communication, under which, the University requested the UGC to permit the University to release the provisional and degree certificates of the students up to the year 2015 i.e., from 2011-15, treating it as a special case. In this context, learned Standing Counsel would further submit that no response since have come from the UGC for the said request made by the University, the matter stands as stated above and therefore, at this juncture, once the UGC clears the deck, the University will not have any further impediment



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to release the certificates and the results of the students, who studied in the courses in the Academic Year 2011-12 and 2012-13, he contended.

19. However, Mr.P.R.Gopinath, learned Standing Counsel appearing for the UGC, in order to assist the Court, as in the connected writ petition the UGC was a party and in this writ petition, even though the UGC has not been made as a party, has made elaborate submissions.

20. In this context, the learned Standing Counsel appearing for the UGC has submitted that from 2001 onwards, till date, the UGC has consistently written letters and issued proceedings to various Universities like the respondent University, that they do not have any power / authority or jurisdiction to open Study Centres or Franchises beyond their territorial jurisdiction, which has been fixed in the very legislature of the State Legislation concerned, under which, these Universities were established.

21. Learned Standing Counsel would also submit that none of the proceedings or letters issued by the UGC yielded any desired results.



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22. The Universities, unmindful of such kind of directions issued by the UGC, kept going on their own by indiscriminately starting so many Study Centres / Franchises beyond their territorial jurisdiction and in this context, the respondent University is not an exception, which has also done the same mistake.

23. The learned Standing Counsel appearing for the UGC would further submit that insofar as the plea raised by the petitioner herein to give direction to the respondent University to release the results, provisional and degree certificates is concerned, even though the stand of the respondent University that they are ready to release the results, subject to the decks cleared by the UGC, the stand of the UGC according to the learned Standing Counsel is that, even though the respondent University enjoyed the recognition from the DEC of IGNOU up to 2012-13, this recognition was granted to Universities subject to certain conditions. Under those conditions, if they started any Study Centres beyond the jurisdiction, they could not be treated as a valid Study Centre for the purpose of Distance Learning. Therefore, even though the University has enjoyed the recognition, the Study Centres opened by such University beyond the territorial jurisdiction and students enrolled in such Centres and studied in that Centres will not be covered by the recognition which was given by the DEC of IGNOU in the year 2012-13.



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24. He would also submit that beyond 2012-13, since the recognition enjoyed by the University since has been withdrawn by the DEC of IGNOUC, subsequently, the power is only vested with UGC and now the UGC is managing the affairs to Distance Learning programmes, conducted by the various Universities under the Distance Education Bureau i.e, the DEB. The power is now fully vested with the UGC, therefore, beyond 2012-13, absolutely, the respondent University does not have any power to conduct any programmes by opening any Franchise / Centres beyond the jurisdiction. More over, the request now made by the respondent University, as quoted by the learned Standing Counsel appearing for the respondent University to seek permission of the UGC to clear the deck to issue the provisional and degree certificates of the students who completed their courses at various Academic Years up to 2015 or 2016, etc are concerned, the UGC may not grant any such permission to the respondent University. However, that decision is yet to be taken.

25. Learned Standing Counsel appearing for the UGC, insofar as this position is concerned, has relied upon a part of the counter affidavit filed in the connected case i.e, the W.P.No.26637 of 2018, where *inter alia*, he has relied upon



the following:

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“ 25. It is respectfully submitted that the Karnataka State Open University, Mysore, Karnataka State is a State University established by the Act of Karnataka State Legislature and it was accorded Institutional recognition by the erstwhile Distance Education Counsel - UGC-DEB from 2007-2008 to Academic Years 2012-2013, to offer programmes through Distance Mode.

The Recognition given to the University for the aforementioned period was Institutional i.e., for the programmes which were approved by the Statutory Bodies of the University / Institution and not to any specific programme and for Technical / Professional Education to be offered through Distance Mode, the Approval of the concerned APEX Regulatory Body is required for which the entire responsibilities rests with the concerned University.

Since the University was found to be blatantly violating the norms of the Respondent Commission, the Recognition was not continued further beyond te Academic Year 2012-2013 till 2017-18.

The University continued to offer not only general programmes but also Technical and Professional Programmes through Distance mode without having



the requisite Approval and beyond its Territorial Jurisdiction and therefore, in the interest of students at large, this respondent Commission had issued a Public Notice dated 16.06.2015 pertaining to the status of Recognition of Programmes through ODL - Open Distance Learning by the Karnataka State Open University and which was also posted on the respondent Commission's Website.

The University itself was not authorized to offer Distance Education beyond the Academic Year 2012-2013 till 2017-18 and to franchise its programme to other Institutions. Since franchising was never permitted either by the erstwhile DEC or this respondent Commission or even by any law of the land through various judgments, the existence of the so called Study Centres is Non Ernest in the eyes of law.

26. It is respectfully submitted that in the absence of the recognition to these Universities, arrayed as Respondent 2 and 3 in the above writ petition, there programmes would be treated as unrecognized. The unlawful activities of the respondents 2 and 3 would lead to ruining the Career of the Students, admitted by the petitioners in the



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name of Collaborative Programme, as they are not legally entitled to offer such programmes under the name of collaborative programmes and the same should not be allowed to continue.

27. It is further respectfully submitted that this Respondent Commission had notified the University Grants Commission (Open and Distance Learning) Regulations, 2017 on 23rd June 2017. The proposal of the 3rd respondent, the Karnataka State Open University, Mysore, Karnataka State for Recognition of their ODL-Open Distance Learning Courses for the Academic Year 2018-2019 had been considered and Approval for 31 ODL Courses were given for the Academic Session 2018-2019 to 2022-2023, as per this Respondent Commission Regulation, cited supra.”

Relying upon these averments made in the counter affidavit, learned Standing Counsel appearing for the UGC would submit that the prayer sought for in the writ petition could not be granted. Even though UGC is not a party in the writ petition, in order to assist the Court, as the UGC is the controlling authority for these kinds of Distance Learning Programmes, it is the duty of the learned Standing Counsel appearing for the UGC to bring these factors before this Court, accordingly, he



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made these submissions.

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26. I have considered the aforesaid rival submissions, elaborately made by the learned counsel appearing for the respective parties.

27. Though a wide spectrum of issues have been kept before this Court in the present writ petition, the issues to be decided in this writ petition in the considered opinion of this Court is in a very narrow campus.

28. The petitioner Institution got approval from Directorate General of Shipping from 2008 onwards under various orders, which have been quoted herein above. Accordingly, in the said approval orders, certain Maritime related courses, Nautical Science related courses and Maritime Engineering courses can be conducted by the petitioner Institution as per the approval of the Directorate General of Shipping.

29. Insofar as these courses are concerned, if it is a four years Bachelor Degree course or three years Bachelors Degree course, such kind of courses, if it is conducted, ultimately degree has to be awarded by some University and in this



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regard, even though there are conflicting views as to the power and authority of the

Directorate General of Shipping *vis-a-vis*, that is the University concerned, that larger issue need not be traversed at this moment in this writ petition.

30. However, insofar as conducting the examination and awarding the degree is concerned, it is the job of the University, be a State University or Central University, without which, no other authority has got power to grant any degree either Bachelor Degree or Post Graduate Degree, etc.

31. Insofar as the courses which were conducted by the petitioner Institution in the Academic Year 2011-12 and 2012-13 is concerned, during these two Academic Years, it is the admitted fact that the Institution has got a Franchise agreement with the respondent University. Under the said agreement, the University empowered the Institution by recognizing it as a Centre of the University to conduct various programmes, which have been mentioned herein above.

32. The petitioner Institution would be treated as a Study Centre and each Study Centre, so recognized, will be only a functional Study Centre of the



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University.

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33. Accordingly, the petitioner Institution conducted these courses by enrolling students and they have completed the course after three years or four years, as the case may be, and they have written the end semester examination also conducted by the respondent University.

34. Once the results are to be published, it is the case of the petitioner Institution that insofar as the majority of the students, who studied in the petitioner Institution during the two Academic Years referred to above are concerned, those results have not been furnished and the certificates of provisional as well as the degree have not been given to the students.

35. In this context, the difficulty expressed by the respondent University is that, the respondent University, is empowered to open Centres i.e., Study Centres beyond the state of Karnataka within the meaning of Section 3(2) of the said Act and accordingly, when they opened the Study Centres and the petitioner is one of the Study Centres opened by the respondent University as per the agreement between them by the Memorandum of Understanding dated 02.08.2011, the

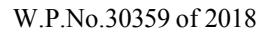


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petitioner Institution has enrolled students in the courses, which was recognized by the Directorate General of Shipping and for those courses, the University had agreed to give or supply curriculum and syllabus and to conduct examinations and to award degrees.

36. It is further to be noted that Section 3(2) of the Act, under which the respondent University was established, empowers the University to open Centres outside Karnataka, on such places as it deems fit.

37. Even though the said provision was subsequently amended and such power vested under the Act to the University since has been subsequently taken away during the relevant point of time, the University was empowered to open the Centres till a particular time. Therefore, we cannot find fault with the University as well as the petitioner to have tie-up to open Centres some time in 2011. More over, in the letter issued by the University Grants Commission at various point of time to the respondent University, it has been made clear that the University enjoyed the recognition from DEC of IGNOU up to 2012-13, that means, beyond 2012-13 there is no such recognition enjoyed by the University.



41. In this context, it is to be made clear that since the University has



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enjoyed the recognition from the DEC of IGNOU which was withdrawn from 2013-14, that means there was no recognition from the DEC of IGNOU for the respondent University beyond 2012-13. The prayer now sought for by the University through the letters referred to above to the UGC is beyond the scope of the recognition enjoyed by them and in this regard, it is for the UGC to take a call and to come to a conclusion.

42. However, insofar as the prayer sought for in this writ petition is concerned, it is only relating to the Academic year 2011-12 and 2012-13 and till that period, admittedly, the respondent University enjoyed recognition and for that period only the petitioner Institution was recognized as a Centre of the University and that kind of power is vested with the University within the meaning of Section 3(2) of the Act as referred to above.

43. Hence, this Court feels that there is absolutely no impediment for the respondent University to release the results as well as the certificates like the degree certificates of the students who studied in the various courses of the University conducted by the petitioner Institution after getting necessary approval from the Directorate General of Shipping during the Academic Year 2011-12 and



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44. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

That there shall be a direction to the respondent University to release the results as well as the degree and provisional degree certificates of the courses affiliated to them, for which they conducted examinations at the petitioner Institution, treating it as a Centre within the meaning of Section 3(2) of the Karnataka State Open University Act, 1992 for the Academic year 2011-12 and 2012-13 alone, within a period of six weeks from the date of receipt of a copy of this order.

45. With these directions, the writ petition is ordered. There will be no order



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23.11.2022

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To

1. The Registrar
Karnataka State Open University
Mukhtagangotri, Mysuru
Karnataka - 570 006.



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R. SURESH KUMAR, J.

(drm)

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