



2024:DHC:4818



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

Reserved on: 17 May 2024

Pronounced on: 1 July 2024

+ W.P.(C) 12345/2023 and CM 48622/2023

NIKUNJ KAPADIYA & ORS.

..... Petitioners

Through: Mr. Arav Kapoor and
Ms. Radhika Gupta, Adv.

versus

INDIRA GANDHI NATIONAL OPEN
UNIVERSITY & ANR.

..... Respondents

Through: Mr. Aly Mirza, Adv. and Mr.
Shiv Verma, Adv. for IGNOU

+ W.P.(C) 16462/2023 and CM 66297/2023 and 66299/2023

SAUMYA DAS & ORS.

..... Petitioners

Through: Mr. Satyajit Sarna, Ms.
Tejaswita, Mr. Raul Kukreja and Mr.
Debarchan De, Adv.

versus

INDIRA GANDHI NATIONAL OPEN UNIVERSITY
& ORS.

..... Respondents

Through: Mr. Aly Mirza, Adv. and Mr.
Shiv Verma, Adv. for IGNOU
Mr. Parmanand Gaur, Standing Counsel
with Ms. Megha Gaur and Mr. Vibhav
Mishra, Advocates, for UGC.
Mr. Umesh Kumar Burnwal and Mr. Kunal
Malik, Advocates, for UOI.

+ W.P.(C) 2139/2024 and CM 8893/2024

ANJAN CHAKRABORTY AND ORS.

..... Petitioners

Through: Dr. Swaroop George and Mr.
Subhojit Dutta, Adv.

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versus

INDIRA GANDHI NATIONAL OPEN
UNIVERSITY & ANR.

..... Respondents

Through: Mr. Aly Mirza, Adv. and Mr.
Shiv Verma, Adv. for IGNOU
Mr. Vikrant N Goyal, Ms. Anushka Jaiswal,
Mr. Abhishrut Singh and Ms. Satvika Goyal,
Advocate and Ms. Perna Dhall, GP, for R-
2/DOI

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

%

01.07.2024**WP(C) 12345/2023****The *lis***

1. The petitioners joined Bachelor's Degree programmes with the Indira Gandhi National Open University¹ on various dates between July 2013 and July 2017, except Petitioner 15, Sumit Kumar Srivastava who joined in July 2008 and Petitioner 17, Jitendra Chaurasia who joined in July 2007.

2. Certain features of the Bachelors' Degree programmes provided by the IGNOU, which were in force at the time when the petitioners joined, are not in dispute.

3. Every student was required to pass all papers in order to be entitled to be awarded a degree. Additionally, a student was required

¹ "IGNOU" hereinafter



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to complete a specified number of “credits”. A credit, loosely speaking, is equivalent to 30 hours of student study, incorporating all learning activities. A total of 96 credits were required to be obtained by a student, to entitle her, or him, to a degree.

4. The examination conducted at the end of every term, of 6 months duration, is referred to as a Term End Examination². TEEs are held twice a year. If, therefore, a student does not clear any paper, or papers, in the TEE held at the end of any particular term, she, or he, gets to attempt the paper/papers again after 6 months. Thus, a student would get multiple attempts to clear any paper, before the end of the entire period of the course. Clause 1.10 of the Prospectus governing the Bachelor’s degree programs in the IGNOU, to the extent relevant, reads as under:

“Term-end Examination and payment of Examination Fee

The University conducts Term-end Examination twice a year in the months of June and December. Students would be permitted to appear inter-end examination subject to the following conditions:–

1. Your registration for these courses is valid and not time barred.
2. You supply the required number of assignments in the process by due date wherever applicable.
3. You have completed the minimum time to pursue these courses as per the provision of your program.
4. You have to take examination fee for all the courses you are appearing in the examination.

In the case of non-compliance of any of the above conditions, the result of all such courses will not be declared.”



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5. Clauses 3.5 and 6.7 of the Prospectus stipulated, with respect to the duration of the Bachelor's degree programs, thus:

“3.5 Bachelors Degree Programs (BDP) – B.A./B.Com//B.Sc.

Duration: Minimum 3 years and Maximum 6 years; offered in both January and July cycle of admissions.”

“6.7 Re-admission

The students were not able to clear their program within the maximum duration can take re-accession for additional period in continuation of the earlier period as under:

Programmes	Duration of the program	Re-admission validity
Certificate programs	6 months	6 months
Diploma/PG Programs and all other Programs* which one year duration	1 year	1 year
Bachelors Degree Programs	3 years	2 years
Masters Degree Programs	2 years	2 years

*BLIS/MLIS/B.Com & M.Com Programs of ICAI, ICSI etc. etc.

For re-admission, the student has to remit pro rata fee for each incomplete course(s).”

There is some amount of debate between learned Counsel for the petitioners and Mr. Mirza, who appears for the IGNOU, on the cumulative interpretation of these clauses. Learned Counsel for the petitioners contend that, by virtue of Clause 6.7, the maximum duration of the Bachelor's degree programmes was not 6 years, but 8 years, as there was no discretion, vested in the authorities by Clause 6.7, to refuse a request for 2 years' re-admission, and the only condition that the student was required to fulfil was to remit the appropriate fees. As against this, Mr. Mirza would seek to contend that Clause 6.7 did not extend the maximum duration of the

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Bachelors' degree programmes beyond the period of 6 years stipulated in Clause 3.5. Be that as it may, the entitlement and the right of a student to 2 years' re-admission, in the event of his being unable to clear the programme within 6 years of admission, is acknowledged in paras 9 and 10 of the counter-affidavit filed by the IGNOU by way of response to the writ petition:

"9. That in this behalf it is submitted that there are around 36 lakhs students enrolled with the respondent University across India in various clauses. The respondent University is an Open and Distance Learning (ODL) University which was established with a view to impart education to those students who did not have the means to access higher education. For this reason, the respondent University had both the minimum duration for completing a degree course in accordance with the various regulations which were issued by the UGC from time to time and also the maximum duration for completing a degree course, which was unlike any other being offered by other conventional universities. The common prospectus issued by the University itself provided for a minimum and maximum duration for completing a course.

10. *In addition to the maximum duration provided as above noted, the respondent University also has the provision for "re-admission", which was meant for students who were not able to clear the programs within the maximum duration as per generally provided. Upon taking "re-admission", the students were provided with additional period of time of 2 years for completing the program."*

(Emphasis supplied)

6. Additionally, a student who was unable to clear all papers or obtain the requisite credits despite having availed the facility of re-admission for 2 years, was further entitled to take fresh admission to the programme and complete it, in which event he could transfer the credits earned by him, in respect of any of the subjects which were left incomplete, and earn the remaining credits in this "second innings". Para 11 of the counter affidavit filed by the IGNOU acknowledges this position, too, thus:

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“11. In addition to the above provision of “readmission”, the respondent University also had a provision for “fresh admission and credit transfer” meant for students who were not able to complete the course either during the maximum duration as provided at the time of admission or the additional period as provided at the time of “readmission”. Such students were required to apply for “fresh admission” and thereafter seek “credit transfer” from their previous lapsed admission for the courses which were completed and had the same syllabus so that they could continue their studies without having to repeat the process already completed. This process can go on *ad nauseam*.”

7. With effect from July 2019, the existing system of earning credits (the Bachelors’ Degree Program³) was replaced by the Choice Based Credit System⁴. Among other differences in the CBCS, *vis-à-vis* the pre-existing system of earning credits in the BDP, were the increase in the number of credits required to be earned in a subject from 2 or 4 to 6 or 8, modification of the curriculum and increase in the number of credits which were required to be earned in all, in order to entitle one to obtain a degree. The total number of credits which were required to be earned by a student pursuing Bachelor’s degree courses with the IGNOU was increased from 96 to 120-132.

8. Following the introduction of the CBCS, the IGNOU issued, on 10 June 2018, the following Notice:

“IG/SRD/CBCS/2019/
10 June 2018

NOTICE

Sub: Non-availability of credit transfer facility in BA, B.Com and B.Sc. Program is offered under a Choice-based Credit System (CBCS)

³ “BDP”

⁴ “CBCS”



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University is offering its Bachelor Degree Programs (BA, B.Com and B.Sc.) under the Choice-based Credit System (CBCS) from July 2019 session. Students who are enrolled till January 2019 session in these Programs shall be allowed to complete their program within the maximum validity period of 6 years. In case they fail to complete all the courses within the maximum validity period, they will be allowed to seek 'Re-admission' as per University rules whereby the validity of their registration shall be extended by a further period of two years, subject to the condition that the total period of validity including Re-admission period shall not exceed eight years.

In case of a student is not able to complete all the courses even after taking Re-admission and joins the same Program offered under CBCS, s/he will not be allowed to transfer the credits are under the old enrolment.

Students enrolled in BA, B.Com and B.Sc Program till January 2019 session are therefore advised to complete their program *within the maximum validity period plus re-admission period.*"

(Emphasis supplied)

Thus, with the issuance of this Notice, the facility of transfer of credits, in the case of a student taking fresh admission, having failed to complete all courses even beyond the re-admission period of 2 years, was withdrawn.

9. The Academic Council⁵ of the IGNOU had its 74th meeting on 21 July 2020. Agenda Item 10 involved consideration and approval of revision of the provision for re-admission (for 2 years beyond the initial period of 6 years). The AC recommended that the scheme of re-admission be withdrawn from the Prospectus of the IGNOU with immediate effect, and the existing students be given a deadline, as decided by the IGNOU, to complete the remaining courses.

10. Following this, on 6 October 2020, the IGNOU issued a

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Notification which, to the extent it is relevant, may be reproduced thus:

“No. IG/SRD/2020/
06 October, 2020

NOTIFICATION

The Academic Council in its 74th meeting held on 21st July, 2020 based on the recommendations of the Committee constituted to review the Pre-Admission Scheme for different programs, as approved for withdrawal of the Pre-Admission Scheme for different programs including the Scheme of Admission to Management Programs through Form-3. The above provisions have been removed from the Prospectus of the July 2020 session also. Consequently, the Pre-Admission Scheme for Management and other programs is NOT available for the old students **ALSO**. However, in order to facilitate completion of their programs up to June 2020 TEE, the old students will be allowed, as a special case, to seek re-admission subject to other eligibility conditions as per the following timeline and complete their programs.

3) Timeline for Bachelors Degree and Masters Degree programs including Management Programs

Maximum duration valid up to	Re-Admission Allowed up to
(1)	(2)
June 2019	June 2021
December 2019	June 2021
June 2020	June 2021
December 2020	June 2021
June 2021	June 2021 (No extension)

Important points:

1. The students, whose Maximum Program Duration is coming to an end in June 2021 TEE and onwards, will **NOT** be allowed Re-admission/extension for appearing in TEE. Therefore, such students will be allowed to complete their respective programs within Maximum Duration of the Program (without re-admission) **ONLY**.

2. The extension of Re-Admission period granted till now to the students whose maximum duration has come to an end as per

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column (1) above of the relevant People will now be restricted to the TEE session as mentioned in column (2) of the same Table.

5. The information will be placed on IGNOU website prominently and run a scroll on the IGNOU homepage for a period of six months.

This issues with the approval of competent authority.”

11. With effect from 4 September 2020, the University Grants Commission (Open and Distance Learning Programmes and Online Programmes) Regulations, 2020 (“the 2020 UGC Regulations” hereinafter) were notified. Inasmuch as the IGNOU places reliance on Regulation 13, it may be reproduced thus:

“13. Program Launching Process for Higher Education Institution:

(A) Common Provisions for Open and Distance Learning Mode and Online Mode:

(1) The proposed programs shall be designed for conventional learners, as well as for working professionals and other individuals aspiring to acquire knowledge and associated academic credentials through Open and Distance Learning Mode and/or Online mode.

(2) Minimum and Maximum Duration of Program:

(i) The minimum duration for completion in the award of degrees at the undergraduate and postgraduate levels in Open and Distance Learning mode and Online mode shall be in accordance with the UGC Notification of Specification of Degrees, 2014;

(ii) The minimum duration for completion and award of Post graduate diploma shall be 2 years;

(iii) The maximum duration for completion and award of degree at the undergraduate and

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postgraduate levels or postgraduate diploma in Open and Distance Learning mode and Online mode shall be double the minimum duration of the respective programs as per items (i) and (ii).”

12. *Vide* Notification dated 28 February 2022, following the 77th meeting of the AC held on 28 December 2021, the IGNOU restored the system of transfer of credits in CBCS based Bachelor Degree programmes as per the Credit Transfer Policy⁶ of the IGNOU with immediate effect.

13. This was followed, however, by a further Notification dated 16 August 2022, by which the petitioners claim to be aggrieved. The relevant paras from this latter Notification may be reproduced:

“No. IG/SRD/CBCS/2022/966

16th August, 2022

NOTIFICATION

Sub: CREDIT TRANSFER POLICY FOR TRANSFER OF CREDITS FROM THE OLD BDP COURSES TO THE NEW CBCS BASED PROGRAMMES

As approved by the Academic Council in its 78 meeting held on 14th June, 2022 *vide* Agenda Item No. 18, the following mechanism will be adopted for transfer of credits from the old BDP courses to the new CBCS based programmes:

1. Since the Foundation Courses of old BDP have no parallel courses in the CBCS based programmes, **NO** credit will be granted for these courses.

5. Students would be allowed to re-register

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simultaneously for leftover courses, subject to maximum of 22 credits in a given semester or 44 credits in a given year as the case may be, by remitting the applicable fee. Students would **NOT** be allowed to opt for more than the credits mentioned above under any circumstances. However, they would be required to pay credit transfer/course change fee of the leftover courses **ONLY** after confirmation of the fresh admission under the new enrolment number.

8. Students will be required to complete 132 credits including the courses allowed under credit transfer, for award of bachelor degree under the new enrolment.”

14. The IGNOU, subsequently, *vide* Notification dated 24 August 2022, also based on the decisions taken in the 78th meeting of the AC of the IGNOU held on 13 June 2022, made available Multiple Entry and Multiple Exit facilities in the IGNOU for BAG, BCOMG, BSCG and BCA Programmes w.e.f. the July 2022 admission cycle. Inasmuch as these facilities were made available only with effect from July 2022, none of the petitioners in these writ petitions were entitled to their benefits.

15. It is in the backdrop of these facts that the controversy in the present writ petition has arisen. The petitioners pray that

- (i) Notification dated 6 October 2020 issued by the IGNOU be quashed and set aside,
- (ii) the petitioners be consequently provided a facility of re-admission in their respective courses based on the terms contained in the Prospectus which were in existence at the time of their enrolment in the courses, without applying, to them, the impugned Notification dated 6 October 2020,
- (iii) Notification dated 16 August 2022 be also quashed and

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set aside to the extent it refused transfer of credits earned by the petitioners for the foundation courses in the BDP to the new courses under the CBCS and, consequently, to permit transfer of the credits earned by the petitioners in the foundation courses in the BDP also, in the event of their seeking fresh admission and,

(iv) in the alternative, and without prejudice to the earlier prayers, the petitioners be granted a final opportunity to clear the remaining credits in the respective courses, on mercy basis, so that their careers are not jeopardised.

Rival Contentions

16. I have heard Mr. Arav Kapoor, Mr. Satyajit Sarna and Dr. Swaroop George, learned Counsel for the petitioners and Mr. Aly Mirza, learned Counsel for the IGNOU, at length.

Submissions of learned Counsel for the petitioners

17. Learned Counsel for the petitioners, among themselves, advance the following contentions:

(i) The impugned Notification dated 6 October 2020, which withdrew the facility of re-admission for 2 years within which the student could complete the programme in which he was enrolled, resulted in divestiture of the rights which are vested in the student at the time of obtaining enrolment to the Bachelor's degree programme in the IGNOU. At that time, the student was

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undisputedly made to understand, through the various provisions in the Prospectus, that he would have 8 years to complete the programme. It cannot be contended that the duration of the programme was 6 years, though it is so stated in Clause 3.5 of the Prospectus, for the simple reason that the right of re-admission, conferred by Clause 6.7 of the Prospectus, was absolute and indefeasible, subject only to the student paying the requisite fees. The IGNOU was not clothed with any discretion in the matter. This position is also acknowledged by the IGNOU in para 10 of the counter-affidavit, as well as in the Notice dated 10 June 2018 *supra*. Re-admission, as envisaged by Clause 6.7 was, therefore, not merely a beneficial dispensation, but was a matter of right. By reducing the number of attempts which were available to a student who, at the time, had papers left to clear, the impugned Notification dated 6 October 2020 retrospectively effaced the right of the student to clear the remaining papers by availing the additional attempts. This was legally impermissible, as it amounted to retrospectively divesting the student of the right which vested in him at the time of obtaining enrolment to the course.

(ii) This situation was not remedied, in any way, by allowing the student time till June 2021 to complete the remaining papers. Learned Counsel have, in this context, emphasised the fact that students enrolled in the IGNOU are often persons who do not possess the resources available to students enrolled in regular face-to-face universities. The very *raison d'etre* of establishing the IGNOU is to enable persons who desire to

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augment their academic credentials, but who may be engaged in other pursuits or may suffer from handicaps which do not enable them to follow a regular classroom course, to be able to undertake the courses and obtain the qualifications. Such students often plan their academic schedule in advance, keeping in mind the structure of the course, as is held out to them in the Prospectus. The student, therefore, enters the Bachelor's degree course in the awareness that he has not 6, but 8, years with him to complete the course. He may, therefore, plan his academic schedule in the IGNOU by opting to attempt certain papers, not in the initial 6 years available to him, but in the remaining 2 years, which are also available as a matter of right. To tell such a student, midway, that he does not have those 2 years with him to complete the papers which remain, is to place him in a position in which it might become impossible for him to complete the course. Even for this reason, the impugned Notification dated 6 October 2020 can, if at all, only apply to students who enrolled thereafter, and not "old" students, as envisaged by the Notification.

(iii) In fact, the Notice dated 10 June 2018, which withdrew the facility of credit transfer consequent on the introduction of the CBCS specifically advised Bachelor's degree students enrolled till January 2019 to complete their programs *within 6+2 years*. Having, thus, itself advised the students to plan their academic schedule in order to complete all papers and credits within 8 years (and not 6), the students, who acted accordingly, could not certainly be told, midway, that the

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period of 8 years stood reduced to 6.

(iv) Clause 6.7 of the Prospectus, and the right of re-admission conferred thereby created, in the student, a legitimate expectation that he would have, with him, 8 years to complete the Bachelor's degree program in which he had taken enrolment. The principle of legitimate expectation also, therefore, did not permit the IGNOU to divest the student of the said opportunity to complete the remaining papers in the re-admission period of 2 years guaranteed by Clause 6.7.

(v) The offshoot of the impugned Notification dated 6 October 2020 was that the students, for whom the period of 6 years from the date of their enrolment with the IGNOU ended in June 2019, alone retained the benefit of 2 years' re-admission, with four more attempts remaining available to them, whereas all other students, whose period of 6 years ended after June 2019, found themselves faced with a reduced number of attempts to complete the remaining papers, *vis-à-vis* the number of attempts which would have been available had the impugned Notification not been applied to them, and had they been continued to be governed by the terms of the Prospectus of the IGNOU which existed at the time when they enrolled in the programme. To wit, a student whose period of 6 years ended in December 2019 was left with three attempts, a student whose period of 6 years ended in June 2020 was left with two attempts, a student whose period of 6 years ended in December 2020, was left with one attempt, and a student whose period of

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6 years ended in June 2021 was completely divested of the right of four additional attempts, as envisaged in Clause 6.7 of the Prospectus.

(vi) The decision taken with respect to Agenda Item AC 74.10.1(b), in the 74th Meeting of the AC held on 21 July 2020 did not envisage retrospective withdrawal of the facility of re-admission.

(vii) The reliance, by the IGNOU, on the 2020 UGC Regulations, was also misplaced. These Regulations, those cited in the counter affidavit as justifying the impugned decision, did not actually do so. They used the expression “shall be” everywhere, thereby indicating that they were intended only to be prospect of an application. In fact, the 2020 UGC Regulations saved earlier acts. Moreover, they made no reference to re-admission at all and could not, therefore, impact the 8-year duration of the Bachelor’s degree programmes as envisaged by Clause 6.7 of the Prospectus.

(viii) Insofar as Petitioners 15 to 17 in WP (C) 12345/2023 (Sumit Kumar Srivastava, Prashanta Banchhor and Jeetendra Chaurasia) were concerned, it was prayed, in the alternative, that they be granted a mercy chance to complete the papers which they yet had to clear.

(ix) Apropos the decision to withdraw the facility of transfer of credits in the event of re-admission, it was submitted that the

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students enrolled under the BDP prior to 2019 would not be entitled to transfer of credits earned for clearing the Foundation Courses of the BDP. They would, therefore, have to complete 36 extra credits along with 24 Foundation Course credits which they had already earned. Given the fact that the students could not earn more than 44 credits in a year, it would take several years for the students to clear the course. In effect, the credits earned by the students in the first 6 years would be completely wasted.

18. In support of their submissions, learned Counsel for the petitioners relied on

- (i) paras 1 to 4, 13, 14, 17, 26 and 27 of the judgment of a learned Single Judge of this Court in *Vikas Bhaskar v. University of Delhi*⁷,
- (ii) paras 2 to 4, 44, 46 and 48 of the judgment of the Supreme Court in *Anushka Rengunthwar v. U.O.I.*⁸ and
- (iii) the judgment of a Division of this Court in *Gourav Joshiya v. G.G.S.I.P.U.*⁹

Submissions of Mr. Ali Mirza on behalf of the IGNOU

19. Mr. Mirza submits, by way of response, as under:

- (i) The decision to discontinue the facility of 2 years' re-admission, to complete pending papers or credits, was a policy

⁷ 2018 (170) DRJ 150

⁸ 2023 SCC OnLine SC 102

⁹ (2015) 151 DRJ 171



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decision, taken in the interests of the IGNOU and to ensure that the Programmes of the IGNOU remained in sync with the 2020 UGC Regulations, specifically Regulation 13. In fact, the UGC was a necessary party to these proceedings and, even for the reason that the petitioners have not completed the UGC, the proceedings must fail. The decision was also taken in view of the National Education Policy (NEP) 2020. Being in the nature of an academic policy decision, the scope of interference in judicial review was next to nil.

(ii) Besides, the writ petitions are in the nature of adventure litigation, and are hopelessly belated. The impugned Notification dated 6 October 2020 was uploaded on the website of the IGNOU at that stage itself. It has come to be challenged only 3 years thereafter in 2023. In the case of some of the petitioners, the challenge has been laid much after the 2 year re-admission period, which, they claim, has also expired. Even on the ground of laches and delay, therefore, the writ petitions are liable to be dismissed.

(iii) To emphasise the manner in which the policy of the IGNOU was being misused, resulting in the need to do away with the facility of re-admission, attention was invited to the case of Petitioner 15 Sumit Kumar Srivastava. Petitioner 15 had initially taken admission in 2008 in the Bachelor's program of the IGNOU. On expiry of 8 years, Petitioner 15 once again took fresh admission for the IGNOU in terms of Clause 6.4 of the Prospectus, thereby giving him 6 more years to complete his

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program. Now, by means of the present writ petition, Petitioner 15 seeks the benefit of the re-admission provision contained in Clause 6.7 of the Prospectus. If the petitioners' stand were to be accepted, Petitioner 15 could, in the event of his being unable to clear all papers within this period, again take fresh admission for another 6, or 8 years. This could continue *ad nauseam*. One of the factors which prompted the decision to withdraw the re-admission facility was curbing of such misuse, which also resulted in dilution of academic standards of the IGNOU. Similar was the case with Petitioner 17, who had initially enrolled in 2007 respectively, for a course of which the specified duration was only 6 years.

(iv) The writ petitions were devoid of any sustainable cause of action. The petitioners were made aware, by the Prospectus itself, that the applicable provisions could be altered at any point of time and that they would be covered by the latest Regulations and provisions which applied. The petitioners could not, therefore, by means of the present writ petition, seek to enforce the pre-existing Prospectus conditions.

(v) The petitioners' plea that the impugned Notification resulted in divestiture of their vested rights was misconceived. Reliance was placed, in this context, on Clause 6.23 of the Prospectus, which specified that a student who had completed 6 years of the program (the "maximum duration") could not apply for undertaking the examination in any course without obtaining re-admission. The right to obtain re-admission,

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therefore, enured, if at all, only after the student had completed 6 years of the program. In respect of the students who had yet to complete the initial period of 6 years at the time of issuance of the impugned Notification on 6 October 2020, therefore, it could not be said that any vested rights had been affected. Reliance is placed, to support this proposition, on

(a) paras 32 to 34 of the judgment of the High Court of Rajasthan in *Virendra Kapur v. University of Jodhpur*¹⁰ and

(b) para 31 of the judgment of the High Court of Himachal Pradesh in *Anil Nag v. State of Himachal Pradesh*¹¹.

(vi) Even otherwise, there was no vested right to re-admission. Reliance was placed, in this context, on para 2 of the judgment of the Supreme Court in *Punjab University v. Subhash Chander*¹². The petitioners were expected to complete their Bachelor's degree programs within the maximum duration thereof, which was 6 years, and not 8 years. They could not seek to contend that they relied on the re-admission policy to complete their programs in 8 years, especially in view of the specific provision that the Rules and Regulations could be modified at any time.

(vii) The prayers in the writ petitions, in fact, seek a mandamus from the Court to rule in violation of the specific

¹⁰ 1964 RLW 1

¹¹ ILR 1978 (7) HP 667

¹² (1984) 3 SCC 603



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Clause, in the Prospectus, entitling the IGNOU to change the Policy at any time and making the latest Rules applicable to the students.

(viii) The issuance of the impugned Notification dated 6 October 2020 did not, in fact, prejudice the petitioners. In the case of all the petitioners, they still had further attempts available to clear the remaining papers. It was only that the number of available attempts were reduced. This is sought to be demonstrated by means of the following tabular statement in para 20 of the counter-affidavit:

Petitioner	Date of admission	Maximum Duration upto
Petitioner 1	June 2016	June 2022
Petitioner 2	July 2015	December 2021
Petitioner 3	January 2016	December 2021
Petitioner 4	July 2016	June 2022
Petitioner 5	December 2016	December 2021
Petitioner 6	January 2015	December 2021
Petitioner 7	July 2016	June 2022
Petitioner 8	January 2017	December 2022
Petitioner 9	June 2016	June 2022
Petitioner 10	July 2017	June 2023
Petitioner 11	January 2017	December 2022
Petitioner 12	July 2016	June 2022
Petitioner 13	January 2014	December 2019
Petitioner 14	July 2014	December 2021
Petitioner 15	July 2008	June 2014
Petitioner 16	July 2013	December 2019
Petitioner 17	July 2007	June 2013

Thus, each petitioner was well aware of the change introduced by the impugned Notification dated 6 October 2020, but did not choose to challenge it at that point of time. The petitioners waited for the entire period, including the 2 years' re-admission

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period, to be over, or nearly over, before instituting these petitions in 2023.

(ix) The challenge to the decision to withdraw the facility of transfer of credits in the event of fresh admission was completely devoid of merit. Credit transfer is possible only if the syllabus of the course has not changed. This is entirely a matter of academic policy, immune from judicial interference. Besides, there is no vested right to transfer of credits. There was a radical change in policy, which included a change in the number of credits which were required to be obtained on taking fresh admission. Besides, it was not as though the facility of transfer of credits was abolished altogether. It was only in the case of 24 credits applicable to the Foundation Course, to which the facility of transfer had been withdrawn. The remaining credits earned during the initial tenure could be transferred to the tenure consequent on re-admission.

(x) Besides, the facility of transfer of credits had been withdrawn in the light of the policy of the UGC. Any interference with this decision would be contrary to the UGC Policy. In fact, Prayer (B) in WP (C) 12345/2023 required the Court to frame a policy, which is obviously impermissible.

20. In support of his submissions, Mr. Mirza relies on

(i) paras 3, 5 and 6 of the judgment of a Division Bench of the High Court of Andhra Pradesh in *Osmania University v. R.*

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*Madhavi*¹³ and

(ii) the judgment of this Bench in *Jiwesh Kumar v. U.O.I.*¹⁴

Submissions of learned Counsel for the petitioners by way of rejoinder

21. In rejoinder, learned Counsel for the petitioners seek to answer the plea of delay and laches, as raised by Mr. Mirza, by submitting that the occasion to approach the Court arose only when, by the impugned Notification dated 16 August 2022, the IGNOU withdrew the facility of transfer of credits, thereby rendering the availability of the option of fresh admission also illusory. It could not, therefore, be said that the petitioners were guilty of delay and laches in approaching the Court. They approached the court only when they found that it had become impossible for them to complete their programs.

Analysis

Nature of rival stands

22. The petitioners have challenged the decisions of the IGNOU to withdraw the re-admission facility available under Clause 6.7 of the Prospectus, and not to allow transfer of the credits earned by the students against the Foundation Course under the BDP system when taking fresh admission in terms of Clause 6.4 of the Prospectus, consequent on the BDP system having been replaced by the CBCS. The IGNOU has contested the petitioners' case on merits as well on

¹³ AIR 1998 AP 130

¹⁴ 2024 SCC OnLine Del 2858



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the plea of delay and laches.

23. The plea of delay and laches cannot, quite obviously, apply to the petitioners' challenge to IGNOU's decision not to allow counting of credits earned against Foundation Courses under the BDP towards the credit required to be earned consequent on fresh admission under the CBCS, as the decision was notified only on 16 August 2022. The challenge to the decision not to allow counting of the credits earned in the Foundation Course has, therefore, to be assessed on merits alone, whereas the respondents' plea of delay and laches would assume significance when examining the petitioners' challenge to the Notification dated 6 October 2020, whereby the facility of re-admission for 2 years was withdrawn.

Challenge to the Notification dated 16 August 2022 not allowing transfer of credits earned in the Foundation Course under the BDP Scheme when taking fresh admission under the CBCS

24. There is clearly no substance in the petitioners' challenge to the Notification dated 16 August 2022, insofar as it disallows credits earlier earned in the Foundation Courses of the erstwhile BDP, in the event of the student taking fresh admission after having failed to clear all courses/credits even by the end of 8 years from the time of enrolment. The decision is based on a principle which is clearly rational, and therefore substantially immune from judicial interference. Even as per the writ petition, a credit is loosely equivalent to 30 hours of study, incorporating all learning activities. There can, therefore, be *prima facie* no justification to allow the credits earlier earned for the Foundation Courses, which had no

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parallel under the CBCS Scheme, to be taken into consideration in reckoning the credits required to be earned by the student consequent on taking fresh admission. Be it noted, in this context, that the petitioners do not dispute IGNOU's stand that there is, in the CBCS, no parallel to the Foundation Courses undertaken by the petitioners under the BDP.

25. The petitioners are, therefore, fundamentally in error in terming the impugned decision as a “withdrawal” of the credit transfer facility earlier available. There is no such withdrawal. So long as the syllabus and structure of the course/subject being undertaken by the student consequent on taking fresh admission was the same as that which she, or he, had undertaken earlier, the credits earned earlier were counted towards the credits required to be earned consequent on fresh admission. That position has undergone no change. In respect of the subjects for which there has been no change in syllabus, the credits earned earlier by the student are *still* taken into consideration in assessing the fulfilment of the number of credits earned after taking fresh admission. As Mr. Mirza correctly submits, the decision not to count credits earlier earned is limited to the credits earned against the Foundation Course in the BDP, *because there is no parallel course in the CBCS*. The policy, therefore, remains the same, viz., to allow the credits earlier earned to be taken into consideration *where there is no change in syllabus*. There is, therefore, no “withdrawal” of the “credit transfer facility” (which itself is somewhat of a misnomer). Utilization of the credits earlier earned – before seeking fresh admission – is envisaged only where the syllabi of the courses is the same. Thus, no course paralleling the Foundation Course in the BDP

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being available in the CBCS, the credits earned towards the Foundation Course cannot, quite obviously, be counted towards the credits required to be earned when pursuing the program under the CBCS. The policy, therefore, remains the same.

26. The impugned dispensation is also eminently wholesome. Credits are obviously subject-specific. They are relatable to the number of hours of study, along with associated activities, spent on a particular subject or course in the entire Bachelor's degree program. There is, therefore, merit in the IGNOU's contention that credits earned in a subject, under the earlier BDP, cannot be counted towards the credits which are required to be earned consequent on fresh admission, in accordance with the new syllabus under the CBCS.

27. On merits, therefore, there is no substance in the challenge, by the petitioners, to the impugned Notification dated 16 August 2022, to the extent it did not permit credits earned by the student in the Foundation Course under the earlier BDP, once the student had taken fresh admission and was governed by the CBCS, to be counted towards the credits required to be earned in the student's "second innings".

28. The challenge to the impugned Notification dated 16 August 2022 has, therefore, necessarily to fail.

Re. first limb of petitioners' challenge – to the Notification dated 6 October 2020 and withdrawal of the facility of 2 years' re-admission thereby

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29. I advert, now, to the main challenge in the writ petitions, which is to the withdrawal of the facility of re-admission by the Notification dated 6 October 2020, available, prior thereto, under Clause 6.7 of the Prospectus.

Interpretation of Clause 6.7 – whether it extends the duration of the program to 8 years

30. Mr. Mirza sought to contend that the maximum duration of the Bachelors’ degree program of the IGNOU was not 8, but 6, years, in view of the express stipulation to that effect contained in para 3.5 of the Prospectus.

31. I am unable to agree.

32. Learned Counsel for the petitioners are correct in their submission that, as Clause 6.7 of the Prospectus does not confer any discretion on the IGNOU to reject an application by a student who seeks re-admission, re-admission, under the said Clause, is a matter of right, subject to the student paying the appropriate fees. It is obvious that the Prospectus has to be read as a whole, and that the use of the expression “maximum duration” in Clause 3.5 has to be read in juxtaposition with Clause 6.7. The student was, therefore, in a sense guaranteed of 8 years’ time within which she, or he, could complete her, or his, papers or credits, at the time of enrolment in the program. The effective duration of the program was, therefore, 8 years, and not 6 years, though Clause 3.5 uses the word “maximum duration”.

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33. Mr. Mirza's submission that the maximum duration of the Bachelor's degree program of the IGNOU was 6 years, and not 8, based on an isolated reading of Clause 3.5 has, therefore, to be rejected.

Re. IGNOU's submission that the provisions in the Prospectus have been misused by Petitioner 15

34. Mr. Mirza also sought to contend that the facility of re-admission and fresh admission were being misused by students such as Petitioner 15, and that one of the reasons for withdrawing the facility of re-admission was to curb such misuse. He points out that Petitioner 15 initially enrolled for the Bachelor's degree program in 2008 and, after failing to complete the program in 6 years, obtained fresh admission in 2016 and now seeks to contend that he is entitled to 8 years with effect from 2016 to complete his course. Such taking of fresh admissions, one after the other, submits Mr. Mirza, amounts to misuse of the facility of fresh admission, and could propagate the process *ad nauseam*.

35. Here, again, I am unable to subscribe to Mr. Mirza's view that Petitioner 15 (or Petitioners 17 or 18) has, in obtaining fresh admission after exhausting the first 6 years, misused the applicable provisions. The Prospectus of the IGNOU admittedly permitted a student, who has not been able to complete all papers, or credits, within 6 years of enrolment, to take re-admission for 2 years. The Prospectus also admittedly permitted a student, who could still not

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complete the program, to get himself freshly admitted to the program and complete it within a fresh period of 6 years, or 8 years. It is true that this process could continue *ad nauseam*, but that is only because the Prospectus of the IGNOU permitted it. It was for the IGNOU to incorporate, in its Prospectus, adequate provisions, or safeguards, to guard against such perceived “misuse”. So long as what Petitioner 15 did was not transgressive of any of the applicable provisions in the Prospectus, it cannot be termed as “misuse”. Availing a benefit available in the law can never be “misuse”.

36. Irrespective of the fate of the challenge, by the petitioners, to the Notification dated 6 October 2020, therefore, I am unable to agree with Mr. Mirza that repeated fresh admissions, as is permissible under Clause 6.4 of the Prospectus, amounts to misuse of the facilities available under the Prospectus of the IGNOU in any manner.

Challenge to IGNOU Notification dated 6 October 2020 and the aspect of delay and laches

37. Mr. Mirza contends that the challenge to the Notification dated 6 October 2020 is grossly belated and has, in fact, been when the re-admission period envisaged by Clause 6.7 of the Prospectus has already expired, or is about to expire. The petitioners cannot, therefore, be granted relief.

38. Here, I am inclined to agree.

39. If one were to tabulate the dates when the period of 6 months, from the days of their respective enrolment in the Bachelor’s degree

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courses in the IGNOU, expired, in the case of each of the petitioners, the following position emerges:

Petitioner No.	Name	Dt of enrolment	Date of expiry of 6 years from enrolment	Date of expiry of 8 years from enrolment
1	Nikunj Kapadiya	June 2016	June 2022	June 2024
2	Anjali Singh	July 2015	December 2021	December 2023
3	Debaprasad Mohapatra	January 2016	December 2021	December 2023
4	Amit Kumar	July 2016	June 2022	June 2024
5	Sonali Swain	December 2016	December 2021	December 2023
6	Vaishali	January 2015	December 2021	December 2023
7	Rajani Kiran	July 2016	June 2022	June 2024
8	Deepak Goswami	January 2017	December 2022	December 2024
9	Bharat Kumar	June 2016	June 2022	June 2024
10	Nampalli Gurusai	July 2017	June 2023	June 2025
11	Susmita Bera	January 2017	December 2022	December 2024
12	Amrita Jadhav	July 2016	June 2022	June 2024
13	Navdeep Kumar	January 2014	December 2019	December 2021
14	Puneet Sharma	July 2014	December 2021	December 2023
15	Sumit Kumar Srivastava	July 2008	June 2014	June 2016
16	Prashanta Banchhor	July 2013	December 2019	December 2021
17	Jitendra Chaurasia	July 2007	June 2013	June 2015

40. The present writ petition was filed in September 2023. The petitioners fall into various categories. Petitioners 1 to 12 and 14 have approached this Court after the expiry of the initial 6-year period of their program, but before the expiry of the additional 2 years available under Clause 6.7. Petitioner 13 has filed the writ petition after the

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expiry of the additional 2-year re-admission period. In the case of Petitioner 15, the initial period of 8 years (including the 2-year re-admission period) expired in 2016, whereafter he took admission afresh. He has approached the court after the expiry of 6 years from the date of fresh admission but before the expiry of 8 years therefrom. Petitioners 16 and 17 have approached the court after the expiry of 8 years from the date of their respective enrolments – in the case of Petitioner 17, after the expiry of 8 years from the date of fresh admission.

41. That all the petitioners are guilty of having approached the court after considerable delay, therefore, goes without saying.

42. The petitioners' submission that no delay could be attributed to them as the real prejudice, which provoked them to move this Court, was the issuance of the Notification dated 16 August 2022, notifying that credits earned against the Foundation Course under the BDP would not be counted towards the credit requirement under the CBCS consequent on taking fresh admission, has merely to be urged to be rejected. The Notification dated 6 October 2020 and the Notification dated 16 August 2022 envisaged two different dispensations, completely unconnected to each other. The petitioners may claim to be aggrieved by both; their grievance, with respect to each, however, is distinct and different from their grievance with respect to the other. The Notification dated 6 October 2020 withdraws the facility of re-admission available under Clause 6.7 of the Prospectus, and applies the decision to old students as well. The Notification dated 16 August 2022 has, however, nothing to do with the facility of re-admission

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envisaged by Clause 6.7 of the Prospectus. It deals, rather, with the facility of fresh admission, in the event of the student being unable to clear the required credits or complete all papers within the “extended” period of 8 years, after having exhausted the benefit of Clause 6.7. It concerns itself with the issue of whether the credits earned by the student during the initial period of 8 years can be reckoned towards the credit requirement which the student has to fulfil after obtaining fresh admission.

43. There is, therefore, nothing in common between the facility of re-admission envisaged by Clause 6.7 of the Prospectus and the decision to withdraw the said facility, by the impugned Notification dated 6 October 2020, and the facility of fresh admission, envisaged by Clause 6.4 of the Prospectus, and the decision not to permit carry over of the credits earned by the student in the Foundation Course under the BDP, on the student obtaining fresh admission, which is governed by the CBCS and the new syllabus.

44. The grievance relating to the Notification dated 6 October 2020 is, therefore, an independent grievance, which the petitioners ought to have challenged when the Notification was issued. They were well aware of the fact that, by the said Notification, the right of 2 years’ re-admission, under Clause 6.7 of the Prospectus, had been taken away. They ought, therefore, to have challenged the said decision immediately thereupon, or at least shortly thereafter.

45. Not only did they not do so, they failed to challenge the decision even when they had completed the period of 6 years and

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were, therefore, under Clause 6.7 of the Prospectus – as it applied prior to the Notification dated 6 October 2020 – entitled to take re-admission. Even at that stage, had they come to this Court, or approached any other competent forum, ventilating their right to take re-admission and challenging the Notification dated 6 October 2020, the Court could have examined the matter on merits. Were the challenge found to be sustainable, the Court could have permitted the petitioners to obtain re-admission, after striking down the Notification dated 6 October 2020.

46. None of the petitioners, however, approached this court, even at the stage when, at the expiry of 6 years from the date when they enrolled in their respective programs under the IGNOU, they became entitled, under Clause 6.7 of the Prospectus, to take re-admission – assuming the Notification dated 6 October 2020 was legally not sustainable. They have waited even thereafter, till the stage when hardly 6 months or, in the case of some of the petitioners, 1 year, remains for the 2 years’ period of re-admission to come to an end. There is no legally sustainable explanation for the petitioners having thus sat back and approached this Court at such a belated stage.

47. It is settled, from the time of *Tilokchand Motichand v. H.B. Munshi*¹⁵, and several other decisions, that delay and laches defeat the entitlement to relief, which may otherwise be available under Article 226 of the Constitution of India.

48. This, moreover, is not a case in which the petitioners would be



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disentitled to relief merely by an abstract application of the principle of delay and laches, but is one where, on account of the laches on the petitioners' part, the reliefs that they seek have become incapable of being granted. Clause 6.7 of the Prospectus envisages students, who were not able to clear the Bachelor's degree program within the "maximum duration" of 6 years, taking re-admission for an additional period (as stipulated in the table contained in the clause) *in continuation of the earlier period*. The Clause does not, therefore, envisage a break between the first 6-year period and the second 2-year "re-admission" period. One has to continue from the other. There must, therefore, be continuity between the first period and the second. In fact, this is the very basis of the petitioners' claim in the writ petition, as their contention is that the duration of the Bachelor's degree program has to be regarded as 8 years, and not 6.

49. The petitioners had, therefore, the opportunity to approach the Court, challenging the Notification dated 6 October 2020, immediately on the expiry of 6 years from the date when they enrolled in the Bachelor's degree programs with the IGNOU, and when, according to Clause 6.7 of the Prospectus, which they seek to invoke, they would have been entitled, but for the impugned Notification, to seek re-admission for a further period of 2 years. They have, however, for no legally sustainable reason whatsoever, allowed that opportunity to go abegging. In the process, they have allowed the only chance for them to avail the benefit of Clause 6.7 – in the event they were to succeed in their challenge to the impugned Notification dated 6 October 2020 – to pass them by.

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50. It is, now, too late in the day for this Court to put the clock back and grant relief to the petitioners. The stage at which they could have availed the benefit of Clause 6.7, and could have moved the Court for that purpose, is over. It is not as if the petitioners were presented with a *fait accompli*, in which they could not have approached this Court immediately upon the impugned Notification dated 6 October 2020 coming to be passed. They had the opportunity to approach this Court not only on the said Notification being issued, but again when the period of 6 years, from the date of enrolment in their respective programs, was over and they could ventilate their right to seek re-admission by seeking quashing of the Notification dated 6 October 2020.

51. For reasons completely unknown, but which have, therefore, to be merely attributed to negligence and indifference, the petitioners did not choose to approach this Court at that point of time. They remained fence-sitters.

52. Indeed, what appears to have happened is that, on the subsequent Notification dated 16 August 2022, whereby credits earned under the Foundation Scheme in the BDP were not allowed to be counted towards the credit requirement under the CBCS, for students who took fresh admission, coming to be issued, the petitioners decided to take a chance and challenge, not only the said Notification dated 16 August 2022, but also the Notification dated 6 October 2020 and seek to resuscitate, in the process, Clause 6.7 of the Prospectus, which was no longer available to them.

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53. This Court, therefore, regrets that it is not in a position to grant the reliefs sought in the writ petitions, on account of the delay and laches on the petitioners' part in approaching the Court.

54. As the writ petition has to fail on this ground, no occasion arises for this Court to examine the dispute on merits.

Conclusion

55. The writ petition accordingly fails and is dismissed, with no orders as to costs.

W.P. (C) 16462/2023 and W.P. (C) 2139/2024

56. In view of the judgment passed in W.P. (C) 12345/2023, which involve identical issue, these petitions are also dismissed on the ground of delay and laches.

C. HARI SHANKAR, J.

JULY 1, 2024

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