



2024:DHC:4819



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

Reserved on : 3 June 2024

Pronounced on : 1 July 2024

+ **W.P.(C) 1743/2020 and CM APPL. 36575/2022**

PANDYA KUSHALBHAI GHANSHYAMBHAI

& ORS.

.... Petitioners

Through: Mr. Nachiketa Joshi, Ms. Himadri Haksar, Ms. Karishma Rajput, Ms. Sagrika Arya, Advs.

versus

INDIRA GANDHI NATIONAL OPEN

UNIVERSITY MAIDAN & ORS.

..... Respondents

Through: Mr. Aly Mirza, Adv. For IGNOU

Mr. Apoorv Kurup and Ms. Gauri Goburdhun, Advocates, for R-3/UGC.

Mr. Niraj Kumar, Sr. Central Govt. for UOI/R-4

Mr. Anil Soni, SC with Mr. Devvrat Yadav, Advs. for AICTE

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

01.07.2024

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Facts

1. The Indira Gandhi National Open University¹ entered into a Memorandum of Understanding² with the Shri Angla Parameshvari

¹ "IGNOU" hereinafter

² "MoU" hereinafter



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Educational Trust³ on 25 March 2009 to provide degree and diploma courses in Engineering through a Vertically Integrated Engineering Programme⁴. Admissions to degree and diploma courses under the said course were made only in the year 2009-2010 and 2010-2011, whereafter the IGNOU-VIEP was discontinued. The minimum and maximum duration of the courses provided under the IGNOU-VIEP were as under:

S. No.	Programme	Minimum Duration	Maximum Duration
1.	B. Tech Degree (After 10+ 2)	4 Years	8 Years
2.	B. Tech Degree (Lateral Entry)	3 Years	6 Years
3.	Diploma in Engineering (After 10 th)	3 Years	6 Years
4.	Diploma in Engineering (Lateral Entry)	2 Years	4 Years

2. All the petitioners were admitted to the B. Tech Degree Programs in Engineering under the IGNOU-VIEP on face-to-face basis during the above years 2009-2010 and 2010-2011. They pursued their courses in the School of Engineering and Technology⁵.

3. On 28 August 2009, the Ministry of Human Resource Development⁶ issued a direction to stop providing Technical Degree Programmes by Open Distance Learning⁷. Resultantly, the IGNOU discontinued providing technical programmes involving extensive

³ "SAPET" hereinafter

⁴ "IGNOU-VIEP" hereinafter

⁵ "SOET" hereinafter

⁶ "MHRD" hereinafter

⁷ "ODL" hereinafter



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laboratory components by ODL. This does not seriously affect the petitioners as their B. Tech programs were on face-to-face basis.

4. On 27 September 2010, the Academic Council⁸ of the IGNOU decided, in its 53rd meeting, to allocate colleges to applicants for degree/diploma programs in Engineering under the IGNOU-VIEP. Consequent thereupon, the petitioners were allotted institutes affiliated to the IGNOU from where they persuaded their respective courses.

5. The decision in *Hindustan Aviation Academy*

5.1 On 23 July 2013, judgment in WP (C) 5789/2012 (*Hindustan Aviation Academy v. I.G.N.O.U.*⁹) and connected cases was rendered by a learned Single Judge of this Court. The said decision dealt with MoUs executed by the IGNOU with various parties to set up Study Centres for conducting development programs in the area of Aerospace Engineering, and also made reference to the MoU dated 25 March 2009 between IGNOU and SAPET. This Court noted, further, that the School Council Meeting of School of Engineering and Technology (SOET), in its meeting dated 8 May 2012, noted that the face-to-face programmes conducted by IGNOU through SAPET did not conform to the legal requirements stipulated by All India Council for Technical Education¹⁰. Admissions in the said programmes were therefore decided to be kept in abeyance till approval of AICTE was obtained. Thereafter, in a meeting held on 31 May 2012, the Board of

⁸ "AC" hereinafter

⁹ 2013 SCC Online Del 2754

¹⁰ "AICTE" hereinafter



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Management¹¹ of the IGNOU noticed that several MOUs had been executed by the IGNOU contrary to the statutes governing it and that the IGNOU was intended to provide distance education and not to run face-to-face programmes. The Board of Management also, therefore, decided that the MoUs executed by the IGNOU with SAPET and other institutions be reviewed by a duly constituted Committee and that till then, admissions to programmes/courses conducted under the said MoUs be kept in abeyance.

5.2 As a result, as already noticed earlier, admissions under the IGNOU-VIEP were discontinued after 2011. The students who had applied for admission to the said face-to-face programmes during 2012-2013, and were denied admission, therefore, approached this Court, seeking that the communications rejecting their applications be quashed and that they be admitted to the said courses.

5.3 The IGNOU, in its counter-affidavit, admitted the MoUs executed with various institutions, including the MoU dated 25 March 2009 with SAPET. Nonetheless, as the programmes had been started without obtaining permission of the AICTE, an informed decision was taken to discontinue admissions after 2011. The issues that arose for consideration were thus delineated by this Court in para 20 of the decision:

“(a) Whether the IGNOU was competent to establish, either of its own or in collaboration with others, the institutes/ colleges to impart higher education through face to face programme and /or recognize such colleges/ institutions?”

¹¹ “BoM” hereinafter



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- (b) Whether approval of AICTE was required for starting face to face programmes, which the petitioners institutes were offering to the students admitted by them under MoDs/agreements/arrangements with IGNOU?
- (c) Whether suspension of admission to the petitioner institutes for the academic year 2012-2013, was illegal?
- (d) To what reliefs, if any, the petitioners are entitled, in the facts and circumstances of these cases?"

5.4 Issues 1 and 2 were decided by holding that the IGNOU had no legal authority to set up institutions/colleges to impart education by face-to-face programmes. Such institutions/colleges could not before be regarded as affiliated colleges of the IGNOU.

5.5 Issue 3 was decided by holding that the MoUs executed by the IGNOU, including the MoU dated 25 March 2009 executed with SAPET, were to remain valid for 5 years and could be terminated only on three months' advance notice. Immediate termination was permissible only in the event of the institution committing material breach of terms and conditions of the MoU and failing to remedy such breach within 60 days of such notice from the IGNOU. No such material breach having been alleged, and three months' advance notice not having been provided by the IGNOU, the termination of the MoUs was held to be illegal. Consequently, suspension of admission under the communications impugned before this Court in that case without prior termination of the MoUs was also held to be illegal and was accordingly struck down.



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5.6 In these circumstances, this Court held, ultimately, among other things, that students who had been validly admitted during 2012-2013 be granted registration numbers.

5.7 Though Mr. Mirza, learned counsel for the IGNOU, has placed reliance on this decision, it cannot seriously impact the present case, as it dealt with the entitlement to admissions after 2011, i.e., from the 2012-2013 academic session onwards, whereas the petitioners in this writ petition have all been admitted to degree courses under the IGNOU-VIEP prior to 2012-2013.

6. By a Circular dated 27 January 2017, the IGNOU informed that the Competent Authority had approved Extension of the Registration Period¹² for diploma programmes in engineering offered under the IGNOU-VIEP Project for a period of two years beyond the maximum duration of the programmes. The circular also invited students who had backlog papers to be cleared at the end of the stipulated maximum duration of the diploma programmes to apply for ERP so that they could clear their backlog.

7. It is not in dispute, however, that the VIEP facility was provided only for diploma courses in Engineering and not for B. Tech degree courses such as those undertaken by the petitioners. This, essentially, is the main grievance of the petitioners, which has persuaded them to approach this Court. The petitioners' case is that the ERP facility should also have been extended to students who were admitted to



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degree courses in Engineering under the IGNOU-VIEP and that the preferential treatment granted to diploma students infracts Article 14 of the Constitution of India and partakes of invidious discrimination.

8. Petitioner 1, therefore, addressed a representation to the IGNOU in January 2017, submitting that he had also certain backlog papers to clear, though the maximum duration of his course ended in 2016. He, therefore, prayed that two years' ERP be granted to him so that he could clear his backlog.

9. The decision in *Orissa Lift Irrigation Corporation Ltd.*

9.1 On 3 January 2017, the Supreme Court rendered judgment in *Orissa Lift Irrigation Corporation Ltd. v. Rabi Sankar Patro*¹³. Mr. Mirza has placed considerable reliance on this decision.

9.2 In my opinion, this decision, too, has no impact on the present case as the Supreme Court held that the Engineering programmes could not be provided by the ODL mode. In as much as the B.Tech programmes undertaken by the petitioner under the VIEP were on face-to-face basis, the decision in *Orissa Lift Irrigation Corporation* has no application.

10. The decision in *Jawahar Lal Nehru Technological University*



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The rigour of *Orissa Lift Irrigation Corporation* came thereafter to be somewhat diluted by the Supreme Court in its judgment dated 10 April 2018 in *Jawahar Lal Nehru Technological University v. Transmission Corporation of Telangana Ltd.*¹⁴. The Supreme Court was concerned, in that case, with Engineering degrees provided by the Jawaharlal Nehru Technological University¹⁵ by ODL mode. The Supreme Court noted the fact that the JNTU was a State University, which admitted only Government employees in a transparent manner and conducted the Engineering courses with the requisite faculty and included practical work. Standards of education had not therefore been compromised. In these circumstances, the Supreme Court chose to grant one-time validity to the Engineering courses provided by the JNTU by ODL mode, despite its earlier decision in *Orissa Lift Irrigation Corporation*.

11. The decision in *Mukul Kumar Sharma*

The benefit of this decision was further extended to B. Tech Degrees/diplomas provided by the IGNOU by ODL mode by order dated 30 July 2018 passed by the Supreme Court in *Mukul Kumar Sharma v. AICTE*¹⁶, which read thus:

“ORDER

Heard the learned Senior Counsel/Counsel for the parties.

The present case involves Indira Gandhi National Open University (IGNOU) established under an Act of Parliament. We are concerned, in the present case, with the B.Tech Degree/Diploma course of study.

¹⁴ (2019) 13 SCC 620

¹⁵ “JNTU” hereinafter

¹⁶ Order dated 30 July 2018 in WP (C) 382/2018



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In a similar case decided on 10.04.2018, namely, Jawaharlal Nehru Technological University vs. The-Chairman and Managing Director, Transmission Corporation of Telangana Ltd. & Ors. (Civil Appeal Nos. 3698/2018), we had made it clear that given the fact that the appellant-University in that case had been set up by the State Statute, it is enough that AICTE norms should be followed while granting the B.Tech Degree/Diploma.

We follow this order and state that in the present case, AICTE norms will be adhered to & strictly by the institution in question but that AICTE approval for the said course is not necessary.

The Writ Petition is disposed of accordingly.”

12. In the interregnum, the SOET had, its 56th Board meeting, *vide* Agenda Item No.16, considered the issue of grant of re-admission for students undergoing diploma and degree courses in Engineering under the VIEP programmes of IGNOU. It was noted that these programmes were conducted under the MoU dated 25 March 2009 executed with the SAPET. The SOET submitted a proposal to the IGNOU for considering special re-admission for the students who had undergone the diploma and degree courses in Engineering under the VIEP in order to enable them to clear their backlog papers. There can be no manner of doubt that this was merely a suggestion mooted by the SOET.

13. On 29 August 2018, the IGNOU wrote to the AICTE requesting the AICTE to issue a Notification notifying that B. Tech degrees/diploma courses provided by the IGNOU were equivalent to any other technical degree/diploma courses provided by other Universities. In response, the AICTE issued the following Circular on 11 December 2018:

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“ALL INDIA COUNCIL FOR TECHNICAL EDUCATION
(A Statutory Body of the Govt. of India)
(Ministry of Human Resource and Development)
Nelson Mandela Marg, Vasant Kunj, New Delhi.

F.No. AICTE/P&AP/Misc/2018/622

dated 11.12.2018

To,

Prof. Nageshwar Rao,
Vice Chancellor,
Indira Gandhi national Open University,
Maidan Garhi, New Delhi – 110068

Subject: Recognition of IGNOU's B.Tech. Degree/Diploma Programmes

Sir,

Kindly refer your letter No. IG/VCO/2018/83 dated 29.08.2018, on the above noted subject.

You have requested in your letter that in pursuance of the judgment of the Hon'ble Supreme Court dated 30.07.2018, AICTE should issue notification/communication conveying that B.Tech degree/diplomas awarded by IGNOU are to be treated as equivalent to any other Technical degree/diploma issued by any university/institution in the country.

We would like to inform you that AICTE Executive Committee in its meeting held on 11.10.2018 discussed the matter regarding recognition to B.Tech. degree/diploma (Open and Distance Learning Mode) awarded by IGNOU. It is informed that *AICTE honours the judgment of the Hon'ble Supreme Court in the case W.P.(C) No. 382 of 2018, Mukul Kumar Sharma & others Vs. AICTE and others dated 30.07.2018 and has no objection for B.Tech. degree/diploma in Engineering awarded by IGNOU to the students who were enrolled upto academic year 2009-10 to be treated as valid as a special case and it could not be taken as a precedence.* It is also suggested that IGNOU should not run or start such technical programme (s) in distance education mode which have extensive laboratory component and keeping in view the directions issued by MHRD vide its letter dated 29.08.2009 wherein DEC-IGNOU was directed to discontinue all technical degree programme being offered through ODL Mode and accordingly IGNOU stopped offering these programs.

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IGNOU is requested to take necessary action accordingly.

Regards,

Sd.

(Prof. Rajive Kumar)

Advisor-I

Policy and Academic Planning Bureau”

(Emphasis supplied)

14. In the interregnum, on 25 September 2018, the 70th meeting of the AC of the IGNOU took place. Agenda item 16(iii) dealt with degree and diploma programs under the IGNOU-VIEP. The request of the SOET for grant of special permission to students who had undertaken the diploma and B. Tech degrees in Engineering, so as to enable them to clear their backlog papers, was noted and considered. The AC, however, felt that the matter required fresh examination at the end of the SOET and therefore, opined *vide* AC 70.16.2, thus :

“AC 70.16.2

The matter was discussed in detail. The Academic Council opined that Engineering programmes, like other programmes, have a minimum and maximum duration and should be run within the prescribed norms and guidelines of AICTE. The School should be more cautious in following the norms of regulatory body. Therefore, the Academic Council decided to refer it back to the School Board of SOET to re-examine the same. The Academic Council also decided that the concerned Programme Coordinator(s) would submit an Affidavit that the extension of the validity of registration period of the programme is being made strictly as per the AICTE norms to protect the interest of our engineering graduates.”

15. The ball was therefore back in the court of the SOET.

16. The SOET went on, on 30 January 2019, to issue the following Circular, with which the petitioners are essentially aggrieved:



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**“Indira Gandhi National Open University
School of Engineering & Technology**

NO. IG/SOET/2019

Dated: 30.01.2019

Sub: Uploading of Information regarding further extension of validity period/special re- admission in Engineering programmes of SOET.

Please refer to the minutes of the 70th meeting of Academic Council .held on 25.09.2018, in which the report of the Committee on extension of Validity period of Registration upto Dec. 2019 to the BTME, DCLE(G), DME and IGNOU-ViEP students was placed.

In its meeting, the Academic Council decided:

- to refer it back to the School Board of SOET to re-examine the same in view of the Engineering programmes, a minimum and maximum duration and should be run within the prescribed norms and guidelines of regulatory body.
- that the concerned Programme Coordinator(s) would submit an Affidavit that the extension of the validity of registration period of the programme is being made strictly as per the AICTE norms to protect the interest of our engineering graduates.

Keeping in view, Academic Council's in its 70th meeting. Action Taken by the School/concerned programme coordinator(s) was required to be submitted/placed in the next i.e. 71st AC meeting. As such no specific action/suggestion has been received from the concerned programme coordinators with regard to further extension activities and said Affidavit.

The undersigned had a meeting with the Vice-Chancellor, & was asked about the status of the Action taken with regard to extension of registration-period/special re-admission.

Keeping above in view, the following may be urgently uploaded on IGNOU Website in order to avoid the further inconvenience I confusion to stakeholders:

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“There is no provision for special readmission/re-registration beyond the prescribed period of registration for engineering degree/diploma programmes ”

If the above is not agreeable to the concerned programme coordinator(s), then he/she can submit their objections with full justification in writing to the Director, SOET by 4.30 p.m. of 30.01.2019.

(Rakhi Sharma)
Director, SOET”

17. On 30 April 2019, the 72nd meeting of the AC of the IGNOU was convened. Agenda Item 14 considered the maximum duration of various programmes offered by the IGNOU. AC.72.14.1 thereunder read thus:

“The Member Secretary informed the Academic Council that the University has been offering more than two hundred programmes at various levels including Certificate, Diploma, Post Graduate Diploma, Under Graduate Degree, Master’s Degree and Research Degree. The University has specified minimum and maximum duration of these programmes. *In addition, the learners, who were not able to complete all the courses of a programme in the maximum duration, they could take re-admission to complete the remaining courses, as per given below:*

Level of Programme	Minimum duration	Maximum duration	Additional time provided under Re-admission
Certificate	6 months	2 years	6 months
Diploma/PG Diploma and all other Programmes with one year duration	1 year	3 years	1 year
<i>Bachelor Degree Programmes</i>	<i>3 years</i>	<i>6 years</i>	<i>2 years</i>
Master Degree Programmes	2 years	5 years	2 years

However, a variation of 4 to 8 years in the maximum duration has been noted across a few Post Graduate degree programmes.



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Similarity, in PG Diploma programmes, the variation of upto two years has been noticed in the maximum duration.

In addition the University has regularly been receiving requests of learners and Schools of Studies for giving additional chances beyond maximum prescribed duration including re-admission and the issue was being dealt with on case to case basis in absence of uniform policy on the matter.”

(Emphasis supplied)

18. The petitioners contend that, in the decision AC 72.14.1 in the 77th AC meeting, it was clearly observed that all students who had not been able to complete the courses of a program within the maximum duration thereof, could take re-admission to complete the remaining courses. In respect of Bachelors’ degree programmes having a maximum duration of six years – such as those undertaken by the petitioners – a period of two years’ re-admission was provided.

19. Though Mr. Mirza seeks to contend that the decision in AC 72.14.1 only pertained to ODL courses, no basis for this contention is forthcoming. The decision does not state, explicitly or impliedly, that it applies only to ODL courses. It has, therefore, to be taken as applicable across the board covering all Certificate/Diploma/Bachelors degrees and Masters degree programmes provided by the IGNOU.

20. Despite this, the petitioners were not granted two years re-admission beyond the maximum duration of the degree programmes undertaken by them under the IGNOU-VIEP.



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21. The petitioners, therefore, sought information under the Right to Information Act, 2005¹⁷ from the IGNOU, in response to which the IGNOU, *vide* communication dated 3 June 2019, informed that no ERP beyond the maximum duration of B. Tech programmes undertaken by students under the IGNOU-VIEP Scheme, which had expired in June 2017, could be granted. It was also conceded that diploma students under the IGNOU-VIEP Scheme were granted approval to do so as a special case, not to be treated as a precedent.

22. Aggrieved thereby, the petitioners moved the Supreme Court by way of WP (C) 1564/2019, which was withdrawn on 9 January 2020, with liberty to approach the High Court.

23. It is thus that the petitioners have approached this Court by means of the present writ petition, praying that the IGNOU be permitted to grant ERP to the petitioners as granted to the students who undertook the diploma course in Engineering under the IGNOU-VIEP programme so that they could complete their backlog papers.

Rival Contentions

24. Pleadings in the writ petition were completed. I have heard Mr. Nachiketa Joshi, learned Counsel for the petitioners, and, for the respondents, Mr. Aly Mirza for the IGNOU, Mr. Apoorv Kurup for the UGC, Mr. Niraj Kumar, learned Senior CGSC for the Union of India and Mr. Anil Soni, learned Standing Counsel for the AICTE.



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Stands taken in the pleadings

The case set up in the writ petition.

25. In the writ petition, the simple case set up by the petitioners is that the grant of additional chances to students who underwent the diploma courses under the IGNOU-VIEP, and denial of such additional chances to students who underwent the B. Tech degree courses, is violative of Article 14 of the Constitution of India, and amounts to invidious discrimination between persons identically situated. It is submitted that no sustainable justification, for this discrimination, is forthcoming. The writ petition also places reliance on the order passed by the Supreme Court in *Mukul Kumar Sharma* and seeks to analogise the case of the petitioners with that of the petitioners before the Supreme Court. Further, the petition draws attention to the fact that the AICTE, in its circular dated 11 December 2018, clearly stated that it had no objection to the students enrolled in the IGNOU-VIEP programmes till 2009-2010 being treated as a special case. Reliance has also been placed on the decision no. AC 72.14.1 against Agenda Item 14 in the 72nd AC meeting of the IGNOU, which specifically stated that students who were unable to complete all courses of the programmes in which they were enrolled within the maximum duration thereof could take re-admission to complete the remaining courses as per the table provided in the said decision. For Bachelor's degree programs, which had a minimum duration of three years and maximum duration of six years, two years'



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additional time by way of re-admission was envisaged. The petitioners submit that they are only seeking the benefit of this decision.

26. The writ petition draws attention to the information provided by the IGNOU under RTI on 3 June 2019, which states that, while degree students under the IGNOU-VIEP were not entitled to two years' re-admission, diploma students had been extended the said benefit.

27. In these circumstances, the writ petition asserts that the SOET could not have, by the impugned circular dated 30 January 2019, taken a decision that no ERP facility was available to degree students under the IGNOU-VIEP. The decision has also been challenged as without jurisdiction, as the jurisdiction in that regard vested in the AC of the IGNOU and not in the SOET.

28. Inasmuch as the AICTE had no objection to the petitioners being granted two years' re-admission, the AC of the IGNOU too has so expressed in the 72nd Meeting held on 30 April 2019 and the SOET had no jurisdiction to take a decision to the contrary, the petitioners seek the benefit of two years' re-admission, as was extended to diploma students under the IGNOU-VIEP.

Respondents' stand in counter affidavits

29. The IGNOU and the AICTE have differed in the stand set up by them by way of the response to the writ petition. While the IGNOU



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opposes the writ petition, the AICTE effectively supports the case of the petitioners.

IGNOU's stand in pleadings

30. The IGNOU, in its counter affidavit, submits that there is no comparison between Diploma engineering courses and Degree engineering courses under the IGNOU-VIEP. The petitioners cannot seek to analogise the two or claim parity with students who were admitted to Diploma courses. In fact, it is submitted that the duration of the degree course was longer than that of the diploma courses, so that there was really no need to grant extension to the students undergoing the degree course.

31. The writ petition has also been contested on the ground of delay and laches. Further, reliance has been placed on the decision of the AC of the IGNOU in its 70th meeting held on 25 September 2019 (AC 70.16.2.) in which the AC had expressed the opinion that engineering programmes, for which minimum and maximum duration was specified, had to be conducted in accordance with the norms and guidelines fixed by the AICTE. It is contended that, when the matter was re-examined consequent on the decision taken in the 70th meeting, it was found that the proposal for extension beyond the maximum duration of the course did not meet “the criteria of statutory bodies”. The reliance, by the petitioners, on the decision in *Mukul Kumar Sharma* has been stated to be misguided, as that case dealt with degree and diploma courses imparted through the ODL mode.



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The stand taken by the AICTE

32. As against this, the AICTE, in its counter affidavit, has averred that the decision on whether to grant the facility of two years' re-admission to students who had not been able to clear all papers within the maximum duration of the course was within the domain of the IGNOU, and the AICTE has nothing to do with it. The IGNOU has extended the said benefit to diploma holders, but has not chosen to extend the benefit to degree holders. Insofar as the judgment of the Supreme Court in *Orissa Lift Irrigation Corporation* is concerned, the AICTE has, in its para 11 of its counter affidavit, pointed out that the Supreme Court had clarified that it was not dealing with diploma courses. It is further pointed out that, consequent to a meeting of the Executive Committee of the AICTE, convened on 11 October 2018, the AICTE had responded to the request dated 29 August 2018 received from the IGNOU, stating that it had no objection to validation of B. Tech degrees/diplomas in Engineering being awarded by the IGNOU to students enrolled upto 2009-10, though it was not to be taken as a precedent.

Oral submissions of learned Counsel

Submissions of Mr. Nachiketa Joshi

33. Mr. Joshi has broadly reiterated the contentions of the petitioners, already noted hereinabove. He submits that the extension

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of the benefit of two years' re-admission to complete backlog papers to diploma students under the IGNOU-VIEP, and denial of similar benefit to degree students, is invidious and unconstitutional and infracts Article 14. Insofar as the validity of the courses themselves are concerned, he submits that, once the AICTE had, by its communication dated 11 December 2018, retrospectively validated the diploma as well as degree engineering programmes undertaken by the students till 2009-2010, no objection to their validity could be taken. He has placed extensive reliance on the decision, in the 72nd meeting of the AC of the IGNOU, which specifically allowed students who had undertaken bachelor's degree courses to take two years' re-admission to complete their backlog papers. In these circumstances, he submits that the SOET could not have decided, in its circular dated 30 January 2019, that the facility of re-admission was not available to degree students. The SOET, he submits, had no jurisdiction to take such a decision, as the power in that regard vests with the AC of the IGNOU.

34. In these circumstances, he submits that the ERP facility was required to be extended to degree students under the IGNOU-VIEP just as it had been extended to diploma students. The decision not to do so was, therefore, liable to be set aside.

Submissions of Mr. Aly Mirza

35. Responding to the submissions of Mr. Joshi, Mr. Aly Mirza, arguing for the IGNOU, submits that Decision No. AC 72.14.1 in the 72nd AC Meeting of the IGNOU was intended to apply only to ODL

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courses, and did not apply to face-to-face engineering courses such as those undertaken by the petitioners. He submits that the IGNOU was classically set up for providing distance education. Face-to-face engineering courses provided by the IGNOU did not have recognition from the AICTE. The IGNOU, therefore, had no jurisdiction to provide professional courses by face-to-face mode. In that view of the matter, he submits that there can be no question of granting any relief to the petitioners, who had been admitted to the B. Tech programmes under the IGNOU-VIEP on face-to-face basis.

36. Mr. Mirza has placed reliance, instead, on the minutes of the 70th AC of the IGNOU, specifically Decision No. AC 70.16.1, followed by the Circular dated 30 January 2019 of the SOET.

37. Mr. Mirza further relies on the judgment of the learned Single Judge of this Court in *Hindustan Aviation Academy*, which clearly observes that there was no formal approval from the AICTE to the degree courses in engineering provided under the IGNOU-VIEP. He has also referred to paras 5, 6, 14, 25 to 26, 46 and 48 of the judgment of the Supreme Court in *Orissa Lift Irrigation Corporation*. The right urged by the petitioners, he submits, is itself based on an irregularity, as IGNOU could not have provided engineering courses by face-to-face mode. Despite this, against a duration of the course of three years, IGNOU had already granted undue benefits to the petitioners by allowing them to complete the courses within six years. There is no justification, he submits, for the petitioners to seek two years' further time to complete backlog papers. He draws attention to



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“UGC Guidelines on Determination of a Uniform Span Period Within which a Student may be allowed to Qualify for a Degree”¹⁸, as issued by the UGC which, he submits, binds the IGNOU, and which reads thus:

“The Commission has observed that universities across the country adopt varying span period within which a student may be allowed to complete a programme to be qualified for a degree. In order to evolve a uniform policy, the Commission had constituted an Expert Committee to consider the issue of determining a uniform span period. On the basis of the recommendations made by the Committee, the Commission has formulated following guidelines for compliance of the universities:

1. Normally, the student is expected to complete his “programme” within the minimum period as laid down under the relevant Regulation of the university which should be in conformity with the UGC Regulations on the award of First Degree and Masters Degree and also in line with the notification, issued from time to time, on Specification of Degrees under Section 22 of UGC Act, 1956.

2. A student who for whatever reasons is not able to complete the programme within the normal period or the minimum duration prescribed for the programme, may be allowed two years period beyond the normal period to clear the backlog to be qualified for the degree. The general formula, therefore should be as follows:

a) Time Span= $N+2$ years for the completion of programme.

where N stands for the normal or minimum duration prescribed for completion of the programme.

b) In exceptional circumstance a further extension of one more year may be granted. The exceptional circumstances be spelt out clearly by the relevant statutory body concerned of the university.

c) During the extended period the student shall be considered as a private candidate and also not be eligible for ranking.



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3. Ordinarily, no student should be given time beyond the extended period of two years. However, in exceptional circumstances and on the basis of the merits of each case university may allow a student one more year for completion of the programme.

4. These guidelines are subject to the Rules and Regulations of the statutory bodies and universities governing the grant of degrees.”

38. Thus, under the UGC Guidelines, students could be allowed only $N + 2$ years to complete their degree, where N was the minimum duration of the program. The minimum duration of the IGNOU-VIEP degree program undertaken by the petitioners as lateral entry students was three years. The petitioners were, therefore, entitled only to ask $3 + 2$ i.e., five years to complete the program. They had already been granted six years to do so. They could not, therefore, seek two more years by way of re-admission to complete backlog papers. Grant of any such relief, he submits, would be in the teeth of the UGC Guidelines. Further, he submits that, if the court were to grant the relief that the petitioners seek, it would amount to legitimising conducting of professional courses by the IGNOU by face-to-face mode, which is clearly illegal and would result in confusion across the board.

39. The circular dated 30 January 2019, submits Mr. Aly Mirza, was incorrectly characterized by Mr. Joshi as a circular issued by the SOET. In fact, the header of the said circular itself indicates that it was issued by the IGNOU and not by the SOET. Further, the circular indicated that it was based on the decision taken in the 70th AC meeting of the IGNOU.

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40. Mr. Mirza has placed reliance on para 6 of the counter affidavit filed by the IGNOU, which reads thus:

“6. It is submitted that answering Respondent had to undertake and conduct the courses within the prescribed norms set by academic council and other autonomous bodies in lieu of which Petitioners cannot wake up from deep slumber at any point and ask for extension of the course. Even otherwise, there is no power and provision authorizing the answering Respondent to give re-admission in the programs after the expiry of maximum period. It is settled law that fence-sitters cannot be allowed to raise the dispute at a belated stage. It is further submitted that no party can claim the relief as a matter of right is one of the grounds for refusing relief to that person approaching the court is guilty of delay and the laches”

41. Insofar as the 56th meeting of the SOET held on 14 May 2018 was concerned, Mr. Aly Mirza submits that, in its 70th AC meeting, the IGNOU took the said minutes into consideration. They cannot, therefore, now enure to the benefit of the petitioners.

Submissions of Mr. Joshi in rejoinder

42. Mr. Joshi, in rejoinder, has, besides reiterating the submissions already made, stated that the decision of the learned Single Judge of this Court in *Hindustan Aviation Academy* has no application, as it relates to the right of students to enrolment in the degree courses provided under the IGNOU-VIEP in 2012. The petitioners had been enrolled in the said courses prior to 2012, and the decision could not, therefore, affect them. Equally, it is submitted that the reliance on the judgment of the Supreme Court in *Orissa Lift Irrigation Corporation* is also misguided, as it pertains to awarding of engineering degrees by

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the IGNOU by ODL mode, whereas, the courses undertaken by the petitioners were specifically on face-to-face basis.

43. In view of the fact that the AICTE has granted no objection to the courses undertaken by the petitioners, it is submitted that the IGNOU cannot deny the petitioners' right to two years' re-admission solely on the ground that their courses were on face-to-face mode. Mr. Joshi, therefore, reiterates the prayers in the writ petition.

Analysis

44. Having heard learned Counsel and perused the material on record, I am of the opinion that there is no justification to deny, to the petitioners, the facilities of two years ERP, as was extended to diploma students, and that the petitioners are therefore entitled to succeed in the writ petition, for the following reasons:

(i) The B. Tech programs undertaken by the petitioners are admittedly face-to-face. The reliance, by Mr. Aly Mirza, on the judgment of the Supreme Court in *Orissa Lift Irrigation Corporation* is, therefore, *ex facie* misconceived, as the Supreme Court was dealing, in that case, with the conducting of ODL professional courses by the IGNOU. The Supreme Court held that professional courses could not be conducted by distance education and, in fact, endorsed their being held face-to-face. The decision in *Orissa Lift Irrigation Corporation*, if anything, approves conducting of engineering courses by face-to-face



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mode rather than by ODL mode.

(ii) Insofar as the submissions that engineering courses could not have been provided by the IGNOU on face-to-face basis, it is clear that such a submission cannot lie in the mouth of IGNOU at all. In fact, it is really surprising that the IGNOU has chosen to adopt such a stand. In so submitting, the IGNOU impliedly admits that it had misled students into undergoing B. Tech courses in engineering believing them to be authorised. Having advertised the said course, and admitted students, from whom the IGNOU naturally charged fees, it cannot lie in the mouth of IGNOU, at this stage, to question the legitimacy of the courses.

(iii) That apart, the AICTE has, in its response dated 11 December 2018, to the communication 29 August 2018 of the IGNOU, stated that it had no objection to the B. Tech degree/diploma in engineering awarded by IGNOU to students who had enrolled up to 2009-2010. This was apparently to remain in conformity with the order passed by the Supreme Court in *Mukul Kumar Sharma. Mukul Kumar Sharma*, which followed the earlier decision in *Jawaharlal Nehru Technological University*, validated engineering programs conducted by the IGNOU by ODL mode, though, in *Orissa Lift Irrigation Corporation*, this was specifically held to be impermissible. A one-time relaxation was, therefore, provided in the interests of the students who had undertaken the courses. When the decision in *Orissa Lift Irrigation Corporation* had



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specifically held that engineering courses could not be provided by ODL mode, and, nonetheless, engineering programs provided by the IGNOU by ODL mode were retrospectively validated by the Supreme Court, it would be incongruous not to extend similar benefits to students who had undertaken the degree programs in engineering on face-to-face basis, especially in view of the observations, in para 48 of the decision in ***Orissa Lift Irrigation Corporation***, to the effect that professional courses were ideally required to be provided on face-to-face basis.

(iv) Besides, the communication dated 11 December 2018 from the AICTE to the IGNOU does not limit itself to the engineering degrees/diplomas awarded by the IGNOU to its students by ODL mode. In that view of the matter, there is no reason why the benefit of the circular dated 11 December 2018 should not be extended to students who had undertaken the said programs on face-to-face basis.

(v) The submission of Mr. Aly Mirza that, if the Court were to adopt such a view, it would result in confusion regarding whether the IGNOU can undertake face-to-face engineering courses, does not commend itself to acceptance. The Court is in this case concerned with the peculiar situation regarding the IGNOU-VIEP courses which were conducted only for two years and have not been continued after 2011. This decision is, therefore, rendered in these peculiar circumstances, and is not to be treated as a validation by the Court to the conducting of



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engineering programs by the IGNOU on face-to-face basis. That is a larger issue, with which this Court is not required to grapple in the present case.

(vi) The reliance, by Mr. Aly Mirza, on the 70th AC meeting of the IGNOU, held on 25 September 2018, also does not further the case that he seeks to urge. In the said meeting, the IGNOU had referred the matter back to the SOET. However, in the subsequent 72nd meeting of the AC of the IGNOU, it has specifically been stated that the students undertaking bachelors' programs in engineering under the IGNOU, which had a maximum duration of six years, are entitled to two years re-admission to complete backlog papers. The decision in the 72nd AC meeting of the IGNOU does not purport, either expressly or by necessarily implication, to be limited to ODL courses. Mr. Mirza's contention to that effect is, therefore, liable to be rejected outright. There is substance, therefore, in Mr. Joshi's reliance on the minutes of the 72nd meeting of the AC, specifically with respect to decision AC 72.14.1, taken under Agenda Item No. 14. Even on the basis of this decision, therefore, the petitioners would be entitled to relief.

(vii) The said decision taken by the AC of the IGNOU in its 72nd meeting, therefore, overrules the decision of the SOET in its noting dated 30 January 2019. It is not possible, therefore, to hold the petitioners to be disentitled to two years' re-admission to complete their backlog papers on the basis of the SOET decision



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dated 30 January 2019.

(viii) I may note, here, that, though Mr. Mirza has sought to contend that the decision dated 30 January 2019 was not taken by the SOET but by the IGNOU, the submission does not commend itself to acceptance. The decision, plainly read, is taken by the SOET. It is signed on behalf of the SOET. The power of the IGNOU to take such decisions vests with the AC. There is nothing to indicate that the decision dated 30 January 2019 was ever taken by the AC of the IGNOU or with its approval. Rather, as already noted, the AC of the IGNOU in its subsequent 72nd meeting held on 30 April 2019, allowed students who had undertaken bachelors' degree programs in the IGNOU, with a maximum duration of six years, to the benefit of two years' re-admission to complete backlog papers, without limiting the dispensation, expressly or impliedly, to ODL courses.

(ix) The IGNOU has admitted, in the information provided to the petitioners on 3 June 2019 under the RTI Act, that students of engineering who had undertaken the IGNOU-VIEP program had been given as many as three extra attempts to complete their backlog papers. The IGNOU has not, in its pleadings, or in oral submissions advanced by Mr. Mirza, been able to provide any legally sustainable justification to restrict this beneficial dispensation only to diploma students. Article 14, and its sweep, applies as much to legislative acts as to acts taken by the official executive. The executive cannot act in a manner which



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discriminates between persons who are identically situated, or between whom there is no intelligible differentia which has any rational nexus to the object of the dispensation. No intelligible differentia can be said to exist between students who had undertaken diploma, and those who had undertaken engineering courses under the IGNOU-VIEP, insofar as the providing of the two-year ERP facility to complete backlog papers is concerned. There being no intelligible differentia between these two categories of students, which has any rational nexus to the object of providing two years' ERP, which is only to ensure that the students complete their programs and obtain degrees, there is no basis on which the Court can uphold the extension of this benefit only to diploma students, and its denial to degree students.

(x) The UGC Guidelines, on which Mr. Mirza relies, cannot inhibit the Court from granting relief, as they are subject to the Rules and Regulations of individual universities and institutions, as is clearly stated in the concluding para thereof.

45. For all these reasons, I am of the opinion that the petitioners are entitled to succeed in their claim to be extended the benefit of ERP of two years to complete the backlog papers, which remained to be cleared in the B. Tech programs undertaken by them under the IGNOU-VIEP.

Conclusion



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46. For all the aforesaid reasons, the petitioners are entitled to succeed.

47. Accordingly, a writ of mandamus shall issue, directing the IGNOU to extend, to the petitioners, the benefit of two years' ERP, within which they may attempt to clear the backlog papers remaining to be cleared in the B. Tech programs undertaken by them under the IGNOU-VIEP, as was extended to diploma students.

48. The writ petition accordingly succeeds and is allowed, with no orders as to costs.

C. HARI SHANKAR, J

JULY 1, 2024

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