
(2014) 07 KL CK 0088
In the High Court Of Kerala
Case No : Writ Appeal No. 245 of 2012

M.G. Sindhu

APPELLANT

Vs

Santhosh P.G.

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Constitution of India, 1950 — Article 19, 21, 22, 226, 226(1)
Indian Nursing Council Act, 1947 — Section 10, 11, 13
Indira Gandhi National Open University Act, 1985 — Section 4
Specific Relief Act, 1963 — Section 34

Citation : (2014) 3 ILR 971 : (2014) 3 KLJ 537

Hon'ble Judges : Dama Seshadri Naidu, J;Antony Dominic, J

Bench : Division Bench

Advocate : Kaleeswaram Raj, Advocate for the Appellant; Raju Joseph, Sr. Adv., J. Julian Xavier, S. Jamal, Sr. GP, P.M.M. Najeeb Khan, SC, Abraham P. Meachinkara, SC and P. Parameswaran Nair, ASG, Advocate for the Respondent

Judgement

Dama Seshadri Naidu, J.—The State of Kerala filed WA No. 403 of 2012 assailing the judgement, dated 04-11-2011, rendered by a learned Single Judge in WP (C) No. 27554 of 2010 (T). Similarly, it has also filed OP (KAT) No. 52 of 2013, impugning the Order, dated 11-06-2012, rendered by a learned Bench of the Kerala Administrative Tribunal (KAT), Thiruvananthapuram, in OA No. 454 of 2012. It is pertinent to note that the KAT rendered the Order in question based on the judgement of the learned single judge in WP (C) No. 27554 of 2010 (T).

2. Simultaneously, certain employees of the State, 18 in number, being the staff/head nurses working under the Directorate of Health Services, filed the other appeals, namely WA No. 750 of 2013, WA No. 245 of 2012 and WA No. 1024 of 2013, with the leave of the Court, contending that, though they were not originally parties to the writ petition, they too have been affected by its outcome.

3. In all the batch of writ appeals and the original application, since the sustainability of the judgement, dated 04-11-2011, in WP (C) No. 27554 of

2010, is called in question by the State and certain putatively affected persons, involving, on the other side, the same set of respondents, we propose to dispose of all the batch of matters through a Common Judgement. Needless to observe that, apart from having factual conformity, all the matters raise the same questions of law for adjudication. For case of reference and felicity of appreciation, the facts as pleaded in W.A. No. 403 of 2012 are taken as the basis for the discussion of the issues.

BACKGROUND:

4. Initially, the respondents 1 to 39 herein filed WP (C) No. 27554 of 2010, seeking a declaration that Post-basic B.Sc., (Nursing) degree awarded by Indira Gandhi National Open University ("IGNOU" for brevity) is sufficient qualification for appointment by transfer to the cadre of Nursing Tutor as per the Kerala Health Services (Nursing in Education Wing) Subordinate Service Rules ("the Rules"). They have also sought the relief of quashing certain proceedings issued by the appellant State in not recognising the degree awarded by IGNOU as an equivalent qualification. Indeed, in the manner stated above, a learned Single Judge of this Court through judgement, dated 04-11-2011, allowed the writ petition granting the relief sought by the respondents 1 to 39 herein.

FACTS:

5. Possessing the basic qualification of diploma in Nursing and Midwifery awarded by the recognised Universities in the State of Kerala, the respondents 1 to 39 secured employment as head/staff nurses through PSC in the establishments of the Directorate of Health Services. To improve their career prospects, respondents 1 to 39 joined the undergraduate course of degree of Bachelor of Science (Nursing) conducted by IGNOU. In fact, respondents 1 to 16 and 39 had already completed the course, while respondents 17 to 38 were pursuing it by the time of their filing the writ petition.

6. For head nurses/staff nurses the promotional post is Nursing Tutor. The mode of recruitment for the said post is by transfer from the category of head nurse/staff nurse grade I/staff nurse grade II, and by direct recruitment by KPSC, in the ratio of 3:1. In terms of regulations, the requisite qualification for appointment by transfer is M.Sc. (Nursing) or B.Sc. (Nursing) (basic or post basic) from a recognised University. Even a diploma in Nursing Education and Administration is also said to be a sufficient qualification.

7. When the authorities concerned initiated the process to fill up the posts of Nursing Tutor, the respondents 1 to 16 submitted their qualifications and other details, in the pro-forma prescribed, to the Heads of Institutions, who, however, refused to accept them on the ground that Post-basic B.Sc (Nursing) courses passed from IGNOU cannot be treated as equivalent to B.Sc (Nursing) mentioned in the Special Rules.

8. Though the respondents 1 to 6 and other similar applicants approached the

higher authorities seeking redressal of their grievance, when their efforts proved futile, they filed WP (C) No. 30950 of 2007, which eventually was disposed of by this Court on 18-10-2007, directing the authorities concerned to dispose of the representations of the writ petitioners within three months. In compliance with the direction of the Court, when the representations were forwarded, the government passed orders, dt. 01-07-2008 (Ext.P14) holding that B.Sc Nursing degree of IGNOU has not been recognised as equivalent to regular B.Sc. Nursing as a qualification to the promotional post of Nursing Tutor in the Government Schools of Nursing.

9. Taking a cue from Ext. P14, Indian Nursing Council ("INC" for brevity), respondent No. 40, passed Ext. P15, a resolution, dated 18-07-2009, echoing the same view on the issue of equivalency.

10. Under these circumstances, threatened with denial of promotional avenues, the private respondents herein took recourse to public law remedy. It may be pertinent to note that in WP (C) 27554 of 2010, the State of Kerala, the Directorate of Health Services, INC and IGNOU have been arrayed as respondents.

THE IMPUGNED JUDGEMENT:

11. The learned Single Judge has, on appreciation of the rival contentions, especially by placing reliance on State of Kerala and Others Vs. Thulasibai and Others, , held that no distinction can be made between the regular course and the course conducted by IGNOU. Having declared that the respondents 1 to 39 are eligible to be included in the list of candidates for promotion to the post of nursing tutor, the learned Single Judge has further directed the authorities to take necessary follow-up steps in that regard.

WRIT APPEALS:

12. The government, being a party to the lis all through, carried the matter in WA No. 403 of 2012. Its OP (KAT) 52 of 2013, filed against a similar order, dated 11-06-2012 in OA No. 454 2012, has also been tagged on to the writ appeal. Insofar as the other appellants are concerned, not being the parties to the original proceedings, they are said to have come to know of the impugned judgement of the learned Single Judge, when they made enquiries with the authorities concerned in relation to the alleged delay in effecting the promotions to the post of Nursing Tutor. Thus, claiming themselves to be the affected parties, they filed the other writ appeals, details of which have already been provided supra.

RIVAL CONTENTIONS:

FOR APPELLANTS: Smt. Sumathi Dandapani, the learned Senior Counsel, appearing for the learned counsel representing the cause of some of the appellant employees, has led the arguments, effectively supplemented by the rest of the learned counsel. The frontal thrust of the arguments advanced by the

learned Senior Counsel for the appellants has been centred on the supposed inadequacy of distance education in imparting proper training involving professional courses such as Nursing. According to the learned Senior Counsel, the gap in the standard of the regular courses and that of distance education is unbridgeable. The appellants, though similarly placed in rank, took the trouble of obtaining long leave to pursue their regular course, thereby denying to themselves certain financial benefits and career advantages. On the other hand, comfortably positioned as they have been, the respondents pursued their course through distance education, which does not have any specific standard.

13. Referring to the Student Handbook and Prospectus, 1997, the learned Senior Counsel for the appellants has strenuously contended that, as per the very IGNOU, it has only 20 colleges of Nursing in the country as its program study centres, but the respondents have miserably- failed to establish that they studied in any of those 20 study centres. The learned Senior Counsel has also drawn our attention to the communications, dated 20-09-2010, 26-11-2011 and 16-09-2010 from the Universities of Kerala, Kannur and Calicut respectively (Annexure III (1) (2) and (3)), all of which have declared that the said universities have taken a decision not to equate the distance education program in Post-basic Nursing conducted by IGNOU with the regular programme or course.

14. The learned Senior Counsel has further contended that as per Ext. P11, to be appointed by transfer to the post of Nursing Tutor, one must possess either M.Sc. (Nursing) or B.Sc. (Nursing) (basic or post basic) from a recognised University. Laying emphasis on the expression "Recognised University", the learned Senior Counsel would urge us to accept the proposition that the recognition must be by the apex professional body of nursing, i.e., respondent No. 40. In that context, the learned Senior Counsel has drawn our attention to Sections 10 and 11 of Indian Nursing Council Act, 1947 and to Ext. P 16, a resolution circular, dated 15-07-2010 passed by Indian Nursing Council (INC).

15. According to the learned Senior Counsel, the bar imposed in Ext.P14 and Ext.P16 is insurmountable. Further, as a matter of alternative submission, the learned Senior Counsel would contend that INC has recognised only a few study centres and that the candidates who pursued their courses, though through the mode of distance education, only from those centres can have their qualifications recognised but not others. In that context, the learned Senior Counsel has stated that the respondents have not pursued their courses in any of those centres.

16. Adverting to the relief granted by the learned Single Judge in the judgement impugned, the learned Senior Counsel has submitted that there was only a mere declaration of the alleged rights of the private respondents, without anything more. In this regard she has placed reliance on Makhan Singh Vs. State of Punjab (and connected appeals), , a 7 Judge Bench decision of the Hon"ble Supreme Court. The learned Senior Counsel has further postulated that all the recruitment rules, including those concerning the educational qualification, must be interpreted in consonance with the statutory rules or the legislative acts

holding the field on the issue. In support of the said submission, she has placed reliance on *State of H.P. & Anr. v. Haridev Ram & Ors.*, 1993 Supp. (2) SCC 640 . In reiteration of the well settled legal principle that in the matters of suitability involving academic qualifications, the view of the experts shall have primacy and the courts, having not been well-equipped in that regard, shall not venture into those uncharted territories, the learned Senior Counsel has placed reliance on *Bihar Public Service Commission and Others Vs. Kamini and Others*, , *State of Rajasthan and Others Vs. Lata Arun*, , *Veterinary Council of India Vs. Indian Council of Agricultural Research*, and *Union of India (UOI) and Others Vs. Shah Goverdhan L. Kabra Teachers College*, .

17. In fact, the learned Government Pleader for the official appellants, and the learned counsel for other appellants, has advanced, with equal vehemence and eloquence, substantively similar arguments. Having taken due note of them, we avoid their reiteration or repetition.

FOR INC: It is, however, necessary to advert, briefly though, to the contentions of the learned Standing Counsel for INC, since the entire issue seemingly turns on the view taken by INC in recognising or not recognising the course offered by IGNOU. The learned Standing Counsel has, in the first instance, submitted that Post-basic B.Sc., (Nursing) course offered by IGNOU cannot be compared, much less equated, with regular B.Sc., (Nursing) course, inasmuch as the syllabi for both the courses are different, the regular course being intensive in nature. He has further submitted that INC has recognised only 23 study centres run by IGNOU and that the students getting trained in any other study centre would not have their degree recognised by INC. According to the learned Standing Counsel, the decision of the government in Ext. P14 has been duly considered and endorsed by the INC in Ext. P16. Lending support to the contentions of the appellants, the learned Standing Counsel would say that the action of the government is well considered and has obtained the imprimatur of the INC as well.

FOR RESPONDENTS:

18. Mr. Raju Joseph, the learned Senior Counsel appearing for the private respondents, who are to defend the judgement impugned, has strenuously opposed the claims and contentions of the appellants. In furtherance of his submissions, the learned Senior Counsel has stated that, by the time the respondents joined the course, it had been fully recognised by not only the Government, but also by INC. The principal contention of the learned Senior Counsel for the respondents is that till 2008 both the Government of Kerala and INC recognised the Nursing Courses offered by IGNOU. Taking the year 2008 as the reckoning point, the learned Senior Counsel submits that by the said year most of the respondents had completed their courses. Expatiating further, he would submit that even the remaining respondents had secured admission into the course by 2008, essentially led by the recognition accorded to the courses by all concerned, which include INC and various universities in the state of Kerala,

as well.

19. Illustratively, the learned Senior Counsel for the respondents has drawn our attention to Ext.P4, a communication, dated 14-06-2001, from INC, declaring that the Nursing degree offered by IGNOU has been recognised by INC. To the same effect is Ext.P6, issued on 07-05-1999 by the National Employment Service recognising all the courses offered by IGNOU. The learned Senior Counsel also referred to Ext.P8, a communication from the Government of Kerala on 30-04-2005, informing the Director of Public Instruction of the State that all the certificates, degrees and diplomas awarded by IGNOU ought to be treated as equivalent to the corresponding awards of the Universities of the State. The learned Senior Counsel has also taken us through the entire record, drawing our attention to Exts.P9, 10, etc., to establish that various universities of the State have also recognised the courses of IGNOU.

20. The learned Senior Counsel has strenuously contended that the respondents have fulfilled all the eligibility criteria as laid down in Ext.P11. According to him Ext.P14 is without any justification; no exception can be given to Ext.P16, wherein INC, without applying its mind, has simply reproduced Ext.P14. He has also made elaborate submissions with regard to the quality of education imparted by IGNOU. Eventually, the learned Senior Counsel for the private respondents has taken us to Ext.R41(d), which categorically demonstrates that the course offered by IGNOU has been recognised by INC.

21. Once rule making authority has not made any distinction between persons who have acquired a qualification after undergoing regular course of study and those who have acquired the same qualification after undergoing course of study through distance education or correspondence course, it does not lie in the realm of the recruiting authorities to make any finer distinctions thereto. In support of this proposition, the learned Senior Counsel has placed reliance on Kerala Public Service Commission Vs. Abdul Rasheed and Others , State of Kerala Vs. Suja Kumari, , Udayan Vs. Kerala Agro Machinery Corporation Ltd, , State of Kerala and Others Vs. Thulasibai and Others, and Ani G. and Another Vs. State of Kerala and Another, .

22. The learned Senior Counsel has further drawn our attention to a judgement of the High Court of Delhi in Jincy Joy & Anr. v. IGNOU, (W.P.(C) No. 644/2011 dated 27.09.2013) rendered by a learned Single Judge in the context of what is said to be identical set of facts as have been involved in the present batch of writ appeals. The learned Senior Counsel has also stated that the said judgement of the High Court of Delhi has been relied on by a learned Division Bench of High Court of Punjab and Haryana in Saroj Bala v. State of Haryana & Ors. (LPA No. 2115 of 2013 (O & M) dated 14.01.2014).

FOR IGNOU: Being the alma mater of the respondents, IGNOU has strenuously supported the claim of the respondents. The learned Standing Counsel for IGNOU has drawn our attention to the statement of objects and reasons of the Indira

Gandhi National Open University Act, 1985, and has further submitted that the University has as its Chancellor, none other than the Hon"ble President of India. The learned Standing Counsel has further referred to the First Schedule under Section 4 of the Act as to the objects of the University. He has laid much emphasis on the fact that IGNOU has initially started the courses in Nursing only on the invitation of INC. He has further stated that, before introducing the course in B.Sc., (Nursing), the University has obtained all the requisite permissions and recognitions from all the authorities concerned.

23. The learned Standing Counsel has asserted that the Post-basic B.Sc., (Nursing) program, through distance education, has more number of hours of study of theory and clinical practice than, and is in no way inferior to, the regular courses conducted by the Universities. According to the learned Standing Counsel, Colleges of Nursing at Kottayam and Trivandrum have been approved as work centres for B.Sc., Nursing programme. The learned Standing Counsel has also elaborated on the course material, the number of extra hours the students of distance education are required to put in to make themselves eligible for the course. In Ext.P16 INC has not specifically stated anything about the alleged non-recognition of the course offered by IGNOU, contends the learned Standing Counsel. According to him, apart from INC, Kerala Nurses and Midwives" Council also has recognised the Post-basic B.Sc., (Nursing) programme conducted in Kerala as per letter, dated 30-06-2008. Summing up his submissions, the learned Standing Counsel has strenuously supported the claim of the respondents for recognition of their qualification awarded by IGNOU as equivalent to any other regular one offered by other universities.

REPLY SUBMISSIONS:

24. The learned Senior Counsel for the appellants has made valiant efforts to dilute the impact of the dictum in Jincy Joy (Supra). She has contended that it being a judgement of a learned single judge, it has already been appealed against in intra-court proceedings. She has further stated that it cannot be a precedent insofar as this court is concerned. According to the learned Senior Counsel, the entire issue in Jincy Joy is with regard to admission into a higher course; a fortiori, the reckoning of equivalency in qualification stands entirely on a different footing in academic matters. The learned Senior Counsel has, in contrast, stated that it is a case of imparting training as nursing tutor, which requires higher skills, and which essentially calls for closer scrutiny of qualification.

25. The learned Senior Counsel has also stated that none of the pleas raised in Jincy Joy has been raised by IGNOU in the present instance. According to her, after 2006 Post-basic B.Sc., (Nursing) offered by IGNOU has not been recognised. It is further stated that the recognition granted by INC is essentially study centre based and as such, the private respondents pursuing their courses outside of those study centres cannot be taken note of. In other words, the private respondents ought to have studied in any of those 20 studies centres

alone.

26. Heard the learned counsel for the respective parties, apart from perusing the record.

ISSUES:

27. On appreciation of the rival submissions of both the parties, and on perusal of the respective pleadings, we find the following issues emerging for consideration:

1. Whether Ext.P11 notification maintains any distinction between a degree obtained from an Open University and that obtained from a regular University?
2. Whether IGNOU is a recognised University as per Notification in Ext.P11?
3. Whether recognition from INC is sine qua non to sustain the qualification of Post-basic B.Sc., (Nursing) offered by IGNOU; and, if the answer is in the affirmative, whether the said course offered by IGNOU has the necessary recognition from INC?
4. Whether the students are required to pursue their courses, as has been contended by INC, only in the study centres recognised by it?
5. Whether the impugned judgement, dated 04-11-2011, of the learned Single Judge can be sustained in the face of specific challenge that it was a mere declaration without anything further?
6. Whether the courses offered by Open Universities through the mode of distant education are inherently inferior in quality and content to those offered by the regular Universities?

In re, Issue No. 1:

28. Ext.P 11 notification prescribes the qualification to be appointed Nursing Tutor by transfer in the following manner: "M.Sc., Nursing or B.Sc., Nursing (Basic or Post-Basic) from a recognised University with 4 years of teaching experience." From a plain reading of the notification no distinction is discernible as the source of qualification. To be more precise, the notification does not circumscribe any limitations on account of the manner of obtaining the qualification-regular or open University. When a particular mode of construction has the potential of non-suiting a person to a benefit, it is axiomatic to state that the said construction should be purposive in nature. Even otherwise, unless it is explicit, no limitation can be read into the qualification by introducing artificial parameters, which are not palpable even by necessary implication. In this regard, a learned Division Bench of this court in Abdul Rasheed has held that the recruiting agency, in that case PSC, has no power to go beyond the qualification prescribed by the appointing authority as has been reflected in the notification. Placing reliance on *Mujeeb Rahman Vs. State of Kerala*, their Lordships have considered an identical issue as to the distinction between persons who acquired

qualification after undergoing regular course of study and those who acquired the same qualification after undergoing course of study through distance education or correspondence course. Similar proposition of law has found favour with another learned Division Bench of this court in Suja Kumari.

29. At this juncture, it is requisite to examine the ratio laid down in Hardev Ram by the Hon''ble Supreme Court, as has been relied on by the appellants. It is held that recruitment rules shall be interpreted in consonance with legislative acts. On the facts of the matter, it can be seen that the diplomas/degrees awarded by a particular institution was statutorily mandated not to be recognised after certain specified date. Since the private respondents obtained their degrees after the date so specified in the Act, their Lordships have held that in the absence of any recognition of the said qualification they cannot be considered for determining eligibility. In the present case, no such factual position as has been obtained in Hardev Ram is discernible. Nor can it be said that any particular legislative Act has barred taking cognizance of the qualifications awarded by IGNOU. Accordingly it is to be held that Ext.P11 notification maintains no distinction between a degree obtained from an Open University and that obtained from a regular University.

In re, Issue Nos. 2 & 3:

30. It is indisputable that by the time most of the private respondents obtained their degrees from IGNOU or by the time some of the private respondents secured admission to the course, not only the State of Kerala, but also INC duly recognised Post-basic B.Sc., (Nursing) offered by IGNOU. The learned Standing Counsel for IGNOU has effectively demonstrated, based on cogent material, that initially the very course was commenced based on the recommendation of, and in consultation with, INC.

31. It does not require much cogitation on our part to hold that no decision of an authority, in this case INC, shall act to the prejudice of a person, who initially moulded his course of action in tune with the assertion made by the said authority. In other words, INC is estopped by conduct from invalidating retroactively the qualification offered by IGNOU, more particularly in the absence of any statute operating against the said estoppel. As has already been stated, most of the students, initially secured their admission, and later passed out the course, essentially based on the recognition offered by INC, the apex body of nursing standards in education. If for whatever reason INC has found that the course offered by IGNOU suffered from any qualitative deficiencies, its decision as to non-recognition could be prospective, more particularly after affording an opportunity to IGNOU as to the alleged deficiencies. INC, by no stretch, can take the student community by surprise, with its volte-face on the issue of recognition, when the student community bona fide believed its earlier assertions.

32. Indeed, Exts. P-3, P-4, P-6, P-8 to P10 & R 41(d) amply demonstrate that all along, till 1-07-2008, when the Government of Kerala issued Ext. P14, the

authorities concerned had recognised Post-basic B.Sc., (Nursing) awarded by IGNOU. At the cost of repetition, it may have to be stated that by 01-07-2008, the private respondents either completed the course or actively pursuing it on the strength of Ext. P3, etc., as stated above.

33. It is nobody's case that IGNOU is not a recognised University. It is worthwhile to bear in mind the distinction between recognition of the University and recognition of a course. It is the University Grants Commission (UGC) that recognises Universities; it is expert bodies like AICTE, MCI, INC, that recognise particular courses, based on the course content, as these expert bodies are primarily concerned with the standard of particular courses. Going by a plain reading of Ext. P 11, IGNOU is a recognised University. Even otherwise, in relation to the private respondents Post-basic B.Sc., (Nursing) stood recognised by INC. It pays to bear in mind that vis-a-vis the government, expert bodies like INC play only an advisory role. From the material on record, it is evident that INC has not taken any independent decision but only reiterated the Government's decision.

34. It is illustrative to examine the contents of Ext. P4, which is as follows:

"It is for your kind information that the nursing qualification recognised by Indian nursing council or registrable with any state nursing council in India. As the P.C. B.Sc (EN) degree granted by IGNOU has been recognised by Indian nursing council; therefore, the candidate possessing the said degree or eligible for registration with any state nursing council as an additional qualification."

Not much different is Ext. P8, which reads thus:

"I am to invite your attention to the reference cited. The government as per go cited 1st have ordered that qualification obtained through regular courses of study alone shall be considered for appointments to teaching posts those orders were subsequently cancelled.

Indira Gandhi National open University (IGNOU) has been established under sub-section (2) of section (1) of the IGNOU act, 1985 (50 of 1985) passed by the Parliament. The certificates, degrees and diplomas awarded by the IGNOU ought to be treated equivalent to the corresponding awards of the universities of the state. Hence there is no justification in denying the benefit to the petitioners in this case. I am to request you to issue directions in this regard to all subordinate offices and also to initiate urgent corrective steps to set right the anomalies on this count so far."

35. Indeed, Ext. P4 amply establishes that the course in question has the due recognition of INC in terms of Section 10 of the Indian Nursing Council Act, 1947, and, ipso facto, all the consequences contemplated under Section 11 shall also follow. Accordingly, the issue Nos. 2 & 3 shall be held in favour of the private respondents and are accordingly held so.

In re, Issue No. 4:

36. Another contention of the appellants, as well as INC, is that the private respondents ought to have pursued their courses only in the study centres recognised by INC.

37. Though the learned Senior Counsel for the appellants has contended that none of the pleas taken in Jincy Joy has been taken by IGNOU presently, it is worthwhile to note that the entire discussion in Jincy Joy is concerning the INC's justifiability on its insisting that the course could be recognised only when the students had pursued their courses in specified study centres. In the said judgement, it has been observed, backed up by record, that instead of examining all the centres, INC has chosen to examine only a few centres selectively, despite the fact that IGNOU has paid the inspection fee for all the centres. Even in the counter affidavit filed by IGNOU in W.A. No. 403 of 2012, there is a specific reference to the aspect of cross-sectional inspection of study centres by INC. In our considered view, the facts in Jincy Joy are identical to those in the present appeals. Though there is no gainsaying the fact that the decision in Jincy Joy does not have any precedential value, as a matter of judicial comity, it does appeal to us to have sound reasoning as a ratio. We are in respectful agreement with the judicial opinion of the High Court of Delhi in holding that there could not have been any selective recognition of a course based on its study centres. It is rather anomalous and incongruous to contend that the same course offered by the same institution is good once the said course is pursued in a particular study centre, and bad, if pursued in another study centre. It may be borne in mind that study centre, in the course make up, plays only a partial role, not assuming the proportion of subsuming the merit of the entire course. Incidentally, under identical fact situation, a learned Division Bench of High Court of Punjab and Haryana in *Saroj Bala v. State of Haryana & Ors.* have also given its judicial imprimatur to Jincy Joy.

38. It is profitable to examine Para No. 4 of the counter affidavit filed by IGNOU, which has specifically averred thus:

"[F]urther as per the program guide for BSE (Nursing) of IGNOU page 40, College of nursing, Kottayam, and the college of nursing, Trivandrum, had been approved as work centres for BSE nursing programme.... These work centres were functioning under the study centres, CMS college, Kottayam, and IMG, Trivandrum, respectively. While the theory classes were conducted at study centres the practical classes were conducted at work centres. Both the work centres are proved study centres of Indian nursing counsel as per the circuit No. 20-24/97-INC, dated 23-04-1998 and certificate No. 20-25/08-INC, dated 12-02-1999, respectively issued by the Indian nursing counsel."

39. It is evident that the appellants have probably failed to maintain the distinction between the work centres and study centres. As a result, the learned counsel advancing the cause of the appellants have repeatedly asserted that most of the study centres and listed by IGNOU have nothing to do with nursing education. It can, in fact, safely be stated that for imparting theoretical course

content, it hardly matters whether the study centre is a nursing school; for imparting practical training, it is essential that it shall be done only in a hospital of repute, which IGNOU has done by selecting Colleges of Nursing at Kottayam and Trivandrum. Even focusing on the study centres, it can be seen from Annexure R42(a) that the State of Kerala has only one College of Nursing for IGNOU course recognized and permitted to admit students for the academic year as on 13.12.2012. It does not, however, control the course of action of IGNOU in a time much anterior.

40. In this context, the observation of the High Court of Delhi in Jincy Joy, extracted herein below, assumes importance:

"As noted by this Court in Ms. Bessy Edison and Another case (supra), Safdarjung Hospital is a large premier hospital being visited by thousands of patients everyday. It would be difficult to even say that the aforesaid hospital did not have adequate infrastructure required for the Post Basic B.Sc. (Nursing) course. This is more so when the Regulations framed by the Council do not prescribe the infrastructural requirements in such centres and this is not the case of the Council in the counter affidavit that Safdarjung Hospital and Sriganganagar Centres, in fact, did not, possess the infrastructure necessarily required for the aforesaid course."

41. On the controversy of non-inspection of certain study centres, Jincy Joy observes with telling effect, and the said observation bears somewhat extensive reference:

"8. Admittedly, no inspection of any study centre of the University was carried out by the Council before the letter dated 6.4.1994 came to be issued by it to the University. The aforesaid letter contained no condition or stipulation either for inspection of the study centres by the Council or the provision of any particular infrastructure in such centres. There is no explanation from the Council as to why such a blanket approval was granted by it without first carrying out an inspection in terms of Section 13 of the Act. Had the Council insisted upon carrying out inspection of the study centres before issuing the aforesaid letter dated 6.4.1994, or had it granted conditional approval subject to inspection of the study centres in terms of Section 13 of the Act, it would not have been possible for the University to start Post Basic B.Sc. (Nursing) Course, on the strength of the letter dated 6.4.1994, unless such an inspection carried out. Having allow the University to set up study centres and admit students by granting such a blanket approval, it would be difficult for the Council to refuse recognition to the aforesaid course.

9. The case of the University is that the first inspection of its study centres was carried out by the Council between 16th and 20th August, 1999. According to the University, the Council, instead of inspecting each and every study centre chose to inspect only six (6) centres on cross-sectional basis, though it had as many as twenty-one (21) study centres functioning by that time. This is also the case of

the University that the notification dated 2.6.2000 came to be issued by the Council on the basis of the aforesaid cross-sectional inspections. A perusal of the resolution dated 2.6.2000 would show that this was an unconditional and unqualified approval to the Post Basic B.Sc. (Nursing) course of the University, without any stipulation with respect to inspection of the individual study centres or the provision of any particular infrastructural requirement. I, therefore, see no good reason to reject the case of the University that the aforesaid resolution dated 2.6.2000 was based upon cross-sectional representative inspections carried out by the Council to assess the availability of infrastructural and other facilities available in various study centres of the University. It appears to me that considering that IGNOU is a statutory University, not actuated by any monetary considerations, the Council chose not to inspect each and every study centre of the University since it felt that the infrastructure available in the centres which it had inspected shall also be available in other study centres of the University, and that is why the resolution dated 2.6.2000 was passed without physical inspection of all the study centres of the University.

10. In view of the approval dated 6.4.1994 coupled with the resolution dated 2.6.2000, the Council in my view would be precluded from refusing recognition to the Post Basic B.Sc. (Nursing) course of the University considering that the students taking admission to the aforesaid course would not be aware of the correspondence between the University and the Council and on being apprised of the approval dated 6.4.1994 coupled with the approval/resolution dated 2.6.2000, they would certainly be entitled to assume that the aforesaid course of the University was duly recognized by the Council. It would, therefore, be highly unjust, unfair and unreasonable to the students if after having passed the aforesaid course or taking ad interim therein, they are denied recognition by the Council solely on the ground that each and every study centre was not inspected by it."

42. Though the learned Senior Counsel for the appellants has strenuously contended that the prospectus has shown only 20 study centers and that the respondents ought to have studied in any of those 20 study centers, it is only stated to be rejected. Without touching on the aspect of the legal status of academic prospectus, contradistinguished with a corporate prospectus, we may state that as for the prospectus dealing with educational facilities, it is not a fossilized firman or an edict etched in stone. The academic institutions are always at liberty to provide more facilities, as study centers are certainly regarded as the necessary facilities, over and above what has been promised in the prospectus. It is the detraction from, but not improvement on, the prospectus that should be an issue of concern.

43. It may further be noted that the issue of study centres considered in Jincy Joy is on all India basis and even the counter affidavit of IGNOU referred to above contains a specific reference to the blanket recognition and cross-sectional inspection of study centres as well. Accordingly, in our considered view, the

observations in Jincy Joy involving both IGNOU and INC do have relevance in adjudicating the present controversy, which is not different from the one in Jincy Joy.

44. In the light of the above discussion, we hold issue No. 4 in favour of the private respondents, and against the appellants.

In re, Issue No. 5:

45. Unconnected with the matter on merits, the learned Senior Counsel for the appellants has, however, raised a technical objection of sorts as to the legality of what is termed by her a mere declaration by the learned Single Judge without considering the other relief, consequential or otherwise, sought by the private respondents in the writ petition. To begin with, the private respondents sought quashing of Ext. P14 and P16; they also sought a declaration that Post-basic B.Sc., (Nursing) degree awarded by IGNOU is sufficient qualification; and finally, a direction in the nature of mandamus to the authorities of the State to include all the private respondents herein with Post-basic B.Sc., (Nursing) qualification awarded by IGNOU in the seniority list for the purpose of appointment to the cadre of nursing tutors.

46. Indeed, as has rightly been contended by the learned Senior Counsel for the appellants, there is no specific interdiction of Exts. P14 and P16 by the learned Single Judge. In the same breath, it is requisite to observe that the learned Single Judge, instead, chose to issue a comprehensive declaration that the petitioners in the writ petition are eligible to be included in the list of candidates for promotion to the post of Nursing Tutor, in view of the rules formulated and notified as borne out by ext. P11. As a consequential measure, the learned Single Judges has also directed the authorities to take the necessary follow-up steps in the light of the declaration made. It is trite to observe that the procedural precincts circumscribing the adjudicatory process are only to subserve and to advance the cause of justice, but not to obfuscate, much less to make the matters of merit perish on the altars of technicalities. Even in terms of sections 34 of the Specific Relief Act, we may, being conscious of the fact that the proceedings are under Art. 226, observe that any person entitled to any legal character, or to any right as to any property - "property" having been used in an expansive sense - may institute a proceeding against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such proceeding ask for any further relief, provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Indeed, the relief sought by the petitioners in the writ petition is very comprehensive; the relief granted by the learned Single Judge, though not enumerative, is equally comprehensive.

47. In this context, we may undertake the exercise of examining the ratio of Makhan Singh relied on by the learned Senior Counsel for the appellants. In

Makhan Singh, certain persons had been detained by the Punjab and the Maharashtra State Governments under Rule 30(1)(b) of the Defence of India Rules. It was in the wake of imposition of emergency in the context of Indo-China war in 1962. The detenu applied for their release under now repealed Section 491(1)(b) of the Code of Criminal Procedure, which was a statutory provision a la habeas corpus. All the petitions have been dismissed on the ground that the Presidential Order which has been issued under Art. 359 of the Constitution creates a bar which precludes them from moving the High Court under s. 491(1)(b) Cr.P.C.

48. It is pertinent to observe that this case was pre-1978, when the Constitution underwent 44th Amendment, whereunder both articles 358 and 359 were amended. The Presidential Order under Art. 359(1), as can be seen, suspended the rights of citizens to move any Court for the enforcement of the rights conferred by Art. 21 and 22 of the Constitution for the period during which the proclamation of emergency issued on October 26, 1962 would be in force. Under Art. 359(1) the right to judicial remedy has been barred, but the very fundamental rights, the violation of which has been complained of, have not been suspended. In that context, the appellant, before the Hon'ble Supreme Court, has urged that there can be a declaration that there is an infraction of some of his fundamental rights, which as a whole, save Art. 19 falling under Art. 358, have not been suspended under Presidential Order. Since only the relief of judicial remedy is barred, still the declaration can be made as to the invalidity of the Presidential Order affecting the fundamental rights, without the consequential relief of release of the detenu. In that context, a Seven-Judge Bench of the Hon'ble Supreme Court, with K. Subba Rao J, as his Lordship then was, dissenting, has held:

"[I]n our opinion, this argument cannot be accepted. What s. 359(1) purports to do is to empower the President to make an Order by which the right of the detenu to move the Court to challenge the validity of his detention on the ground that any of his fundamental rights specified in the Order have been contravened; is suspended, and so, it would be unreasonable to suggest that what the detenu cannot do in order to secure his release, he should be allowed to do merely for the purpose of obtaining an academic declaration. A proceeding taken under s.491(1)(b) like a petition filed under Art. 226(1) or Art. 32(1) is intended to obtain relief, and the relief in such cases means the order for the release of the detenu. If the detenu is prohibited from asking for an order of release on the ground that the challenge to the validity of his order of detention cannot be made during the pendency of the Presidential Order, we do not see how it would be open to the same detenu to claim a mere declaration either under s. 491, Cr.P.C. or Art. 226(1) or Art. 32(1) of the Constitution. We do not think that it was open to the High Court to consider the validity of the impugned Act without relation to the prayer made by the detenu in his petition. The proceedings commenced by the detenu by means of his petition under s. 491(1)(b) constitute one proceeding and if the sole relief which the detenu seeks to

obtain cannot be claimed by him by virtue of the Presidential Order, it would be unreasonable to hold that he can claim a different relief, viz., a mere declaration; such a relief is clearly outside the purview of the proceedings under s. 491(1)(b) and Arts. 226(1) and 32(1)."

49. As such, we regret our inability to persuade ourselves to hold that Makhan Singh has any relevance to the issue on hand. Accordingly, issue No. 5 is answered.

In re, Issue No. 6:

50. It is illustrative to recall the evocative expression of a learned Single Judge in Mohanan Nair Vs. State of Kerala and Others, , which in fact stood quoted with approval in Suja Kumari by a learned Division Bench. It is profitable to extract the said observation, which is as follows:

"9. Distance education or continuing education is often erroneously considered inferior to the technical formal education by attendance of regular classes. A perceptive study of distance education, made in "OPEN UNIVERSITIES-IVORY TOWERS THROWN OPEN" edited by Ram Reddy, places the subject in perspective. The availability of full-time teachers, classrooms, limitation of rigid hours of classes and the expenses, etc., limit the access to learning to a few. This works discrimination against the sections of the society which cannot, due to socio-economic factors, afford formal education. Those who have missed educational opportunities need a second chancy. The urge of the working people, housewives and others, is met by deformalising education. The system of distance education removes the imbalance in the opportunities of education caused by socio-economic factors. The fundamental principle of distance education is that it provides equality of opportunity of education and access to higher education.

It was the UNESCC Commission on education that suggested that education should be deformalised and replaced by flexible diversified models. Distance education marks the transformation of the closed formal rigid, elitist, educational system into an open and flexible system.

The syllabi of distance education courses are carefully drawn by academicians to match the syllabi of the formal degree courses. Theory and practicals are provided at times suitable to the students. There is no reason for considering distance education degree any less of a degree than the degree obtained by attending classes. The Government of Kerala therefore, rightly recognised degrees from statutory Universities without limiting it to degree obtained by attendance of classes. The limitation of recognition to statutory universities, as distinct from private institutions assures the quality of education which equals "regular" degrees."

51. As can be gleaned from its official website, IGNOU has been established by the Government of India by an Act of Parliament in 1985 (Act No. 50 of 1985)

with the objective of enhancing access to quality higher education through distance mode. The University has been mandated to provide access to higher education to all segments of the society; offer high-quality, innovative and need-based programmes at different levels, to all those who require them; reach out to the disadvantaged by offering programmes in all parts of the country at affordable costs. Indeed, it is not a profiteering academic misadventure by a fly-by-night businessman or businessmen.

52. IGNOU has been recognized globally for its enrolment and outreach, scale of operations and quality of educational provisions. IGNOU has been recognized as a "Centre of Excellence in Distance Education" by the Commonwealth of Learning, Canada in 1993. It has received "Award of Excellence for Distance Education Material" by the Commonwealth of Learning, Canada in 1999. UNESCO has declared IGNOU as the "Largest Institution of Higher Learning in the World" in 2010.

Meritorious as IGNOU has been, in the light of the definitive pronouncements of the Hon'ble Supreme Court in reiteration of the well settled legal principle that in the matters of suitability involving academic qualifications or excellence, the view of the experts shall have primacy and the courts, having not been well-equipped in that regard, shall not venture into those uncharted territories, as enunciated in *Kamini, Lata Arun, Veterinary Council of India, and Shah Goverdhan L. Kabra Teachers' College*, we refrain from adjudicating on the issue of relative merits, if any, of the regular courses vis-à-vis the distance education courses.

CONCLUSION:

We acknowledge the power and the competence of the State, as well as those of INC, in recognising or derecognising particular courses. We, however, hold that the derecognition, so to say, cannot be midstream, taking the student community by surprise and rendering years of their study nugatory, more particularly when the student community initially went by the assurance of either the State or the expert bodies such as INC as to the validity of the course. Essentially, recognition of particular courses is a matter of policy, which, axiomatically, cannot easily be interfered with. Stated thus, we cannot lose sight of the fact that even the change in policy shall pass the constitutional muster as to arbitrariness, to cite one singular instance. Circumspection is all the more the need of the hour when the so called change of policy has retrospective implications involving, as in this case, student community, whose time and efforts, a fortiori, their career, are at stake.

53. In the facts and circumstances, we hold that Exts. P14 & 16 may have prospective application affecting the students who choose to join the course after those dates, but not those who have either completed their courses or secured admission by the said dates. It is, however, always open for the IGNOU to call in question the decision of the State or INC, if they are thereby aggrieved. The said issue is outside the purview of the present lis.

54. Instead of invalidating them in their entirety, having thus limited the application of Exts. P14 and P16, we confirm the rest of the findings of the learned Single Judge in the impugned Judgement, dated 04-11-2011, in WP (C) No. 27554 of 2010.

In the manner stated above, the batch of writ appeals and OP (KAT) stand dismissed. No order as to costs.