
(2014) 01 OHC CK 0038
In the Orissa High Court
Case No : W.P. (C) No. 4202 of 2009

Utkal Ranjan Mohanty

APPELLANT

Vs

Chairman, Distance Education Council

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 10(1)(k), 2(g), 2(h)
Constitution of India, 1950 — Article 32
INDIRA GANDHI NATIONAL OPEN UNIVERSITY ACT, 1985 — Section 16(7)
University Grants Commission Act, 1956 — Section 12, 12(j), 22(3), 25, 26

Citation : (2014) 1 ILR 489 : (2014) 2 OLR 407 Suppl. : (2014) 2 OLR 407

Hon'ble Judges : M.M. Das, J; Akshaya Kumar Rath, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dr. A.K. Rath, J.—A question of far reaching consequence having wide ramification that falls for our consideration is as to whether a Deemed to be University established u/s 3 of the University Grants Commission Act, 1956 can impart Diploma courses in Engineering through Distance Education Mode all over the country. Shorn of unnecessary details short facts of the case of the petitioners are that pursuant to the notification dated 12.01.1987 issued by the Government of India, Ministry of Human Resource Development vide Annexure-1, Rajasthan Vidyapeeth University, Udaipur, Rajasthan was declared as a Deemed to be University u/s 3 of the University Grants Commission Act, 1956 (hereinafter referred to as "the UGC Act"). Subsequently, the name of the University was changed to Janardan Rai Nagar Rajasthan Vidyapeeth, Udaipur, Rajasthan (hereinafter referred to as "the Deemed to be University"). The Degrees/Diplomas awarded by the University stands automatically recognized for the purpose of employment under the Central Government. The University started imparting education through distance education mode from the academic session 2001. The students from all over the country prosecuted their study under the said University by registering their names through distance education

mode. Further case of the petitioners is that while they were serving under the Mahanadi Coalfields Limited (hereinafter referred to as "the MCL")-opposite party No. 5, they sought permission to take admission under the distance education mode in diploma engineering under the University-opposite party No. 4. After permission was accorded, they took admission in their respective subjects, like, Electrical, Mechanical and Civil during the academic session 2003-04, prosecuted their study through distance education mode and completed three years course through lateral entry. After completion of the course, they appeared at the University examination and were declared to have passed in the year 2006. Thereafter, diploma certificates in engineering (lateral entry) were issued to them. They produced the said certificates before the MCL for the next higher posts. While the matter stood thus, vacancies arose in the next higher posts, i.e., Assistant Foreman. The eligibility criterion for consideration of the said posts was Diploma in Engineering. Since they had satisfied the eligibility criteria, they were found suitable for consideration and were directed to appear at the written test. Before they were found eligible, the MCL, opposite party No. 5 had made correspondence with the Chairman, University Grants Commission, New Delhi, (hereinafter referred to as "the UGC") about the validity of the diploma certificate issued by the University. In response to such letter, the UGC had also clarified that the certificates issued by the University are valid certificates for all purposes. They became successful in the written test and were called for the viva-voce held on 29.05.2008. Before the viva-voce test, some unsuccessful candidates made allegations to the MCL questioning the legality of the diploma certificates issued by the University. The MCL did not conduct the viva-voce test. One Uttam Charan Ojha and others filed a writ petition being W.P.(C) No. 15725 of 2008 for a direction to the MCL to conduct the viva-voce test, which is sub judice. Instead of considering their case for promotion to the next higher posts, the MCL issued a memorandum of charges against them that the diploma engineering certificates submitted by them are not recognized by the appropriate authority and they had given false and fabricated information for illegal gratification, vide Annexure-9 series. After a lot of correspondences made by the MCL with the All India Council for Technical Education, New Delhi (hereinafter referred to as "the AICTE")-opposite party No. 3 and UGC, the AICTE had clarified in its letter dated 11.05.2005, vide Annexure-10 series, that in the case of distance mode education, approval of the AICTE is not required for starting any technical programme. Thereafter, the Chairman, UGC constituted a committee to consider the request of the University for ex-post facto approval of the courses through distance education mode started till the year 2005. The Committee in its meeting held on 30.06.2006 examined all aspects of the matter and granted one time ex-post facto approval to the University for the students admitted in various courses from 1st June, 2001 to 31st August, 2005 subject to certain terms and conditions. The decision of the UGC was communicated to the Registrar of the University on 03.07.2006, vide Annexure-11 series. It is further stated that the Distance Education Council is a statutory body. It has recognized programmes/courses undertaken by the petitioners under the University. Since

the University is a Deemed to be University u/s 3(1) of the UGC Act, the question of any doubt with regard to the validity of the diploma certificates granted to the petitioners does not arise. Further, in reply to certain correspondences made by the employers of some other candidates, the Director of DEC, vide letter dated 15.01.2009 had also informed that the Council had given ex-post facto approval to all programmes, which were approved by the statutory Council of the University based on the approval of the Joint Committee comprising of UGC-AICTE-DEC. In the meantime, AICTE had also made an advertisement on 09.01.2009 in the daily newspaper "The Times of India", cautioning to the students seeking admission to the programmes/courses of technical education being imparted through distance education mode. As would evident from the said advertisement that as per the memorandum of undertaking signed by UGC, AICTE, DEC, Deemed to be Universities imparting technical education and technical institutions are required to obtain specific prior approval from the "Joint Committee of UGC-AICTE-DEC" for conducting programmes/courses in technical education through distance education mode. Since the ex-post facto approval has already been granted to the courses imparted by the University, there cannot be any doubt with regard to the validity of the diploma certificates issued to the petitioners and as such, initiation of disciplinary proceedings against them is illegal and arbitrary.

2. With this factual scenario, the petitioners have prayed, inter alia, for issuance of writ of mandamus directing the opposite parties to declare that the certificates issued by opposite party No. 4 under Annexure-5 series are valid and binding on the opposite parties, for a direction to the opposite parties to act in terms of ex-post facto approval as reflected under Annexure-11 series and to declare that no further approval is necessary to such diploma qualification acquired by the petitioners from the Deemed to be University and declare the action of opposite parties 5 to 9 in not accepting the certificates to be invalid and inoperative and such other reliefs.

3. Pursuant to issuance of notice, the Chairman, DEC, opposite party No. 1 has entered appearance and filed a counter affidavit. The case of opposite party No. 1 is that Indira Gandhi National Open University (hereinafter referred to as "IGNOU") is a creation of the statute. It was established in the year 1985 with an object to over come the difficulties faced by the learners in a conventional University. In a conventional University there is rigidity of system requiring attendance in classroom and inflexible curriculum. IGNOU provides various kinds of educational programmes through distance mode of education to meet the continuing needs of the learners. It functions in cooperation with the existing Universities and institutions of higher learning and make full use of the latest scientific knowledge and new educational technology to offer a high quality of education, which matches contemporary needs. For promotion of distance education and determination of standard of teaching, evaluation and research, the DEC was established in the year, 1991 and declared an authority u/s 16(7) of the Act. The University, opposite party No. 4 was also required to obtain requisite

approvals/permission from the DEC for running its distance education programme. The DEC has framed guidelines to be fulfilled by a University desirous to launch programmes through distance mode. The Government of India, Ministry of Human Resources Development (Department of Education) issued notification No. 44, dated 1st March, 1995 stating therein that on the recommendation of the Board of Assessment for Educational Qualifications, it has been decided that all the qualifications awarded through distance education by the Universities established by an Act of Parliament or State Legislature, institutions Deemed to be Universities u/s 3 of the UGC Act, 1956 and institutions of national importance declared under an Act of Parliament stand automatically recognized for the purpose of employment to posts and services under the Central Government, provided it has been approved by DEC and IGNOU. On 13.05.2003, the three statutory bodies, namely, UGC, AICTE and DEC issued a joint letter to Vice Chancellors/different heads of institutions cautioning them on the deterioration in standards in education by granting of franchise by some of the Universities. As a first step, the committee had decided the necessity to limit the system of programme delivery of distance education of the institution to the neighborhood of the location of the main campus or at the most within the State. On 17.08.2001, the Registrar of the University made an application to the Chairman, DEC seeking permission to launch programmes through distance education mode. On 26.09.2001, vide Annexure-D/1, the DEC sent a reply stating therein that the distance education programme should be offered in accordance with the guidelines prepared by the Council. Again, the University made applications for approval of programme through distance education mode on 01.08.2005 and 24.08.2005, which were answered in negative by the DEC on 16.8.2005 and 13.12.2005 respectively, vide Annexure-E/1 series.

4. It is further stated that in spite of the rejection of approval of the Deemed to be University to run the distance education, the same was conducted by the University for which complaints were received by the DEC from the individuals and organizations. The DEC in its letter dated 05.01.2006 vide Annexure-F/1 clarified that the State Universities/Deemed to be Universities are not permitted to offer distance education outside the State of their location. However, subsequently taking into account the interest of the students, the DEC had granted one time ex-post facto approval to the Deemed to be University on the recommendations of the Joint Committee of the UGC, AICTE & DEC in August, 2007 for the programmes (approved by the statutory bodies of the University) offered through distance mode till 2005. The University had also been accorded provisional recognition for one academic year, i.e., from June 2007 to June 2008 and advised to submit fresh application in the prescribed format developed by the DEC. The Deemed to be University had submitted the application for renewal of recognition, which was under process. In the meanwhile, the University had been granted continuation of provisional recognition, till such time an expert committee visited the University and submitted its recommendations to the DEC.

It is further stated that the DEC had given institutional approval in place of programme approval for offering programmes through distance mode to the Deemed to be University. Further, in the case of technical/professional programmes offered by the University, approval from the concerned apex bodies in the country is required to be obtained for which the responsibility vests with the University concerned. It is further stated that pursuant to the direction dated 16.04.2009 passed by this Court in W.P.(C) No. 15725 of 2008, a High Level Committee was constituted consisting of one of the officers of the management of MCL and one of the representatives of the AICTE, DEC and UGC as members and the Director of DEC as the Chairman, in order to find out if the certificates issued by the UGC, AICTE and DEC are correct, genuine and acceptable. The said Committee in its meeting dated 4.6.2009 resolved that DEC had given institutional recognition to the University for offering the programmes approved by statutory bodies of the University through distance mode. The recognition given by the DEC for the degrees/diplomas to the students enrolled from 2001 to August, 2005 was given under ex-post facto recognition. Regular recognition to the institution and its programmes would be given finally on the recommendations/decisions of the Joint Committee (UGC, AICTE & DEC) as decided in the last meeting of the Joint Committee.

5. The UGC-opposite party No. 2 has filed a counter affidavit through Dr. K.P. Singh, Joint Secretary of the UGC. The sum and substance of the case of opposite party No. 2 is that the UGC has been constituted under the provisions of UGC Act, 1956. The Act was enacted to make provisions for the coordination and determination of standards in the Universities. The Commission has been entrusted with the duty to take such steps as it may think fit for the promotion and coordination of the University education and for the determination and maintenance of standards of teaching, examination and research in the Universities. The Commission has been vested with the power to recommend to any University the measures necessary for improvement of the University education and advise the University to take action for the purpose of implementation of the recommendation. The Commission has also been authorised to perform such other functions as may be prescribed or as may be deemed necessary for advancing the cause of higher education in India. It is further stated that keeping in view the wide spread menace of franchising the University Education through the private institutions, the UGC, vide its letter dated 09.08.2001, Annexure-A/2, informed all the Vice-Chancellors including the Vice-Chancellor of the Deemed to be University regarding its decision that any University which proposes to enter into collaboration with any private institution, would be required to take prior approval of the UGC. The Commission has also decided that no University should be permitted to go for off-campus private educational franchise leading to the award of its degrees. Further, the UGC taking serious note of the fact that some of the Deemed to be Universities are introducing new courses, opening up study centres/academic centres, off-campuses, etc. without taking any approval from the UGC and those centres are

opened even in the absence of proper physical and academic infrastructure as also keeping in view its mandate to maintain the standard of teaching and research in the Universities, the UGC framed guidelines for establishing new departments within the campus, setting up of off-campus centre(s)/institution(s)/off-shore campus and starting distance education programme by the Deemed to be Universities. Clause-4 of the guidelines provides that the Deemed to be University could offer the distance education programmes only with the specific approval of the DEC and UGC. Further the UGC in its letter dated 16.3.2004, vide Annexure-B/2, circulated a copy of the guidelines to the Vice-Chancellors of all the Deemed to be Universities including Deemed to be University requesting them to follow the guidelines in letter and spirit. It is further stated that the Deemed to be Universities are not permitted to affiliate any college/institute. Such type of arrangement is treated as franchising, which is not permitted and by its letter dated 9.8.2001, the UGC directed all the Universities to stop such private franchising in the University Education. So far as the Distance Education Programme is concerned, the same is presently controlled by the Joint Committee of UGC-AICTE-DEC. The Joint Committee decides as to whether a particular Distance Education Programme is to be conducted in respect of a particular discipline or not. It also grants approval to the institutions including the Deemed to be Universities for conducting the Distance Education Programme. It is specifically stated that opposite party No. 4 was granted the status of Deemed to be University with effect from 12.01.1987, vide Government of India notification dated 12.01.1987, without any off-campus centre. The said Deemed to be University was not permitted by the UGC to open any study centre or any off-campus centre or to affiliate any institute. Furthermore, the DEC in its letter dated 3.8.2005, vide Annexure-D/2, clarified that it had not recognized the Deemed to be University to offer Distance Education Programme anywhere in the country so far because major deficiencies had been found in the delivery system and self-instructional materials. It is further stated that the UGC had received a large number of letters from the individuals and organizations seeking clarification about the study centres particularly those associated with Janardan Rai Nagar Rajasthan Vidyapeeth. Thereafter, the UGC had issued two notices on 9.8.2005 and 23.8.2005, vide Annexure-E/2 series, respectively regarding non-recognition of study centres/distance education programmes of the Deemed to be University. It was clarified in the notices that the Deemed to be Universities were not permitted by the UGC to affiliate any college/institution and were not allowed to conduct any course through distance education study centre. It is further stated that pursuant to the recommendations of an expert committee and keeping in view the future of large number of students, the UGC, vide its letter dated 3.7.2006, conveyed its one time ex-post facto approval to the Registrar of Deemed to be University for the students admitted in various courses from 1.6.2001 to 31.08.2005 under the distance education mode subject to strict compliance and fulfillment of the various conditions mentioned therein. Subsequently, the Deemed to be University sent a compliance report on 2.9.2007. Thereafter, the matter was placed for ex-post facto approval of the

students already enrolled under the distance mode up to August, 2005 before the Commission in its meeting held on 24.9.2007. The Commission resolved to grant ex-post facto approval to the Deemed to be University for the students already enrolled under distance mode up to August, 2005 after receipt of approval from the DEC.

6. The AICTE-opposite party No. 3 has filed a counter affidavit. It is stated that as per Gazette Notification No. 44, dated 01.03.1995 issued by the Government of India, Ministry of Human Resource Development (Department of Education), the academic qualifications like degree awarded by Universities including Institutions declared as Deemed to be Universities u/s 3 of the UGC Act, 1956 acquired by individuals through Distance Education Mode are recognized for the purpose of employment to posts and services, under the Central Government, provided, those have been approved by DEC, IGNOU, and whenever necessary by AICTE. The technical education programmes, which fall under the purview of AICTE, are in the fields of Engineering & Technology including MCA, Architecture, Town Planning, Management, Pharmacy, Hotel Management and Catering Technology, Applied Arts and Craft and such other programmes and areas as notified by the AICTE from time to time with the approval of the Central Government. It is further stated that it is the policy of the AICTE, at present, not to recognize the qualifications awarded through Distance Education mode by any Universities or Institutions declared as Deemed to be Universities u/s 3 of the UGC Act, 1956 at Diploma, Bachelors and Master's level in the fields of Engineering and Technology including Architecture, Town Planning, Pharmacy, Hotel Management and Catering Technology, Applied Arts and Crafts and Post-Graduate Diploma in Management(PGDM). AICTE only recognizes MBA and MCA programmes through distance mode. The AICTE has signed a Memorandum of Understanding between UGC, AICTE and DEC on 10th May, 2007. It is also stated that the petitioner has obtained Diploma prior to signing of MOU signed by UGC, AICTE and DEC. It is further stated that the Supreme Court in C.A. No. 4173 of 2008 has observed that DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. The policy decision of the AICTE was circulated by its headquarters to recognition/approval of technical education through distance education by Deemed to be University. Furthermore, the AICTE by public notice have cautioned not to recognize the qualifications acquired through distance mode.

7. Opposite party No. 4, the Deemed to be University, has filed counter affidavit through its Registrar. Case of opposite party No. 4 is that u/s 3 of the UGC Act, 1956, the Central Government on the advice of the UGC issued a notification dated 12.01.1987 declaring Rajasthan Vidyapeeth as Deemed to be University, vide Annexure-A/4. Subsequent to another notification dated 19.8.2003 issued by the Central Government, name of the University was changed to Janardan Rai Nagar Rajasthan Vidyapeeth, Udaipur, Rajasthan. The Central Government vide Gazette Notification dated 17.02.2004 decided that all the qualifications awarded through distance education by the Deemed to be Universities stand automatically

recognized for the purpose of employment, vide Annexure-C/4. Thus, the Deemed to be University is competent to award degree qualification through distance education mode. It is further stated that the writ petitioners along with other students had prosecuted their study during the period from June, 2001 to 31st August, 2005 through Distance Education Mode. The UGC in its letter dated 3.7.2006 had granted ex-post facto approval to the students, who were admitted under the distance education mode by the University from 1.6.2001 to 31.8.2005, vide Annexure-D/4. On 19.8.2005, suddenly UGC made a public notice in their website de-recognizing the Deemed to be Universities for offering programmes through distance mode. The same was challenged by many Universities as well as the students, who had prosecuted their study through distance education mode, in different High Courts including this Court. In those writ applications, notices were issued to the University. Opposite party No. 4 moved the UGC as well as the DEC for ex-post facto approval to the admission of those students, who had taken admission during the period 2001 to 2005. Accordingly, the DEC in its meeting held on 1.8.2007 and 2.8.2007 decided to grant ex-post facto approval to the Universities including the opposite party No. 4. In the meantime, the Central Government issued a notification, wherein it was decided to constitute a committee consisting of UGC, AICTE and DEC to accord recognition to open distance learning institutions and accordingly an MOU was signed by the aforesaid three apex bodies for grant of recognition to such institutions throughout the country. A Joint Committee meeting was held on 7.8.2007, wherein the recommendation of the DEC for granting ex-post facto approval/sanction to the four Universities including opposite party No. 4 was accepted. After the decision of the DEC was accepted by the Joint Committee, the DEC communicated its decision on 29.8.2007, vide Annexure-G/4. Thereafter, by another letter dated 3.9.2007, the DEC again granted provisional recognition to the programmes offered by the opposite party No. 4 through distance education mode for one year, i.e., for the session 2007-08, vide Annexure-H/4. The DEC in its letter dated 8.10.2008 accorded provisional recognition for the session 2007-08, vide Annexure-K/4. Pursuant to the order dated 10.4.2009 passed by this Court in W.P.(C) No. 15725 of 2008, a High Level Committee was constituted consisting of one of the Officers of the Management of MCL, one representative of AICTE, DEC and UGC and the Director, DEC was nominated as Chairman. The Committee resolved that since the DEC has given institutional recognition to JRN Rajasthan Vidyapeeth for offering the programmes (approved by statutory bodies of the University) through distance mode, the recognition given by the DEC for the degrees/diplomas to the students enrolled from the year 2001 to August, 2005 would be given under ex-post facto recognition. It is further stated that the MCL, who is the employer of the present petitioners, had made certain correspondences about the genuineness of the students and programme offered by the University from UGC as well as from opposite party No. 4. Opposite party No. 4 immediately sent a reply to the MCL that the programme has got ex-post facto approval of the DEC and also the decision of the DEC approving such course/programme undertaken by the

present petitioners and other students has also been communicated to the employer of the petitioners. The University has also informed that the certificates granted to the students are genuine and there is no occasion to doubt the genuineness of such certificates.

8. An additional counter affidavit has been filed by opposite party No. 4 highlighting the fact that the study centres of the University are recognized and maintained by the University in accordance with the UGC Regulation 1985, UGC Regulation 2003 and UGC Guidelines, 2004. The University conducts the theory as well as practical examination of the students enrolled in various courses. The invigilators and the examination superintendents are appointed by the University. The University sends its observers to oversee the conduct of examination. The UGC has also deputed observers to oversee the conduct of examinations of the University at its examination centres. In the State of Orissa, the UGC has asked the Registrar of Utkal University, Berhampur University and Sambalpur University to appoint observers to oversee the examination process of the University.

9. MCL and its functionaries, opposite party Nos. 5 to 9 have also filed counter affidavit contending, inter alia, that it is a subsidiary Company of Coal India Limited and a Govt. Company. On 3.10.2007, a circular was issued to all the CGM's/GMs of different areas of MCL instructing them to send the list of diploma holders in Mining, Civil, Electrical and Mechanical Engineering in the prescribed format. Thereafter, the General Manager vide internal circular i.e. Ref. No. MCL/HQ/PD/IR/Sein-Asst. FM-2008/5397 dated 22.2.2008 invited applications from departmental candidates having diploma qualification of 3 years duration from the institute recognized by Govt./AICTE/SCTE in different branches for the posts of Asst. Foreman. In response of the Circular dated 22.2.2008, 143 departmental employees including four writ petitioners sent their applications for the said post through the controlling authorities of the respective areas. Petitioner Nos. 2 to 4 submitted their applications along with the diploma certificate obtained from the Deemed to be University. Without scrutinizing the applications of the petitioners, the controlling authority wrongly forwarded the applications of the petitioners to the MCL Headquarter whereafter the petitioners were allowed to appear in the written test held on 27.4.2008. While the matter stood thus, complaints were received pertaining to selection process and the certificates granted or issued by an un-recognized institution. At this juncture, two writ petitions, i.e. W.P.(C) Nos. 8173 and 7120 of 2008 were filed before this Court to conduct the viva-voce test. The said writ petitions were disposed of on 16.4.2009 with a direction to the opposite parties to form a High Level Committee consisting of one of the Officers of the Management of MCL and one of the representatives of the AICTE, DEC and UGC as members and the Director, DEC as the Chairman and enquire into the matter in order to find out if the certificates issued by UGC, AICTE and DEC are correct, genuine and acceptable. Pursuant to the direction of this Court, a Committee of seven members was constituted. The Committee met on 4.6.2009. The Committee in its minutes of meeting resolved as follows:-

The Director, DEC stated that the institution was not accorded post facto permission for the period from September, 2005 to June, 2007 as the UGC had banned the University from offering programmes through Distance mode during that period.

xxx xxx xxx

AICTE nominee informed that they have not recognized the Diploma Engineering course offered by JRN, Rajasthan Vidyapeeth.

10. It is further stated that the functional Directors of MCL decided that the Diploma issued by the Deemed to be University cannot be treated as recognized in reference to the internal circular dated 22.2.2008. The MCL initiated disciplinary proceeding against the officers of MCL, who had forwarded the applications of the candidates and allowed the candidates to sit in the examination. Disciplinary proceedings were also initiated against the candidates who had submitted diploma certificates from unrecognized institutions for promotion to the post of Asst. Foreman. The specific case of the opposite party Nos. 5 to 9 is that the diploma certificate issued by the Deemed to be University is not recognized by AICTE, who is the competent authority under the provisions of AICTE Act, 1987.

11. The Union of India, opposite party No. 10 has filed counter affidavit. The case of the opposite party No. 10 is that UGC is responsible for maintaining and coordinating the standard of Higher Education in general other than the technical and professional education, whereas the AICTE is responsible for maintaining the standard of imparting the technical professional education including management courses. The DEC is authorized to regulate the standard of delivery of education through distance mode. The Janardhan Rai Nagar Rajasthan Vidyapeeth, Udaipur was declared as Deemed to be University by the UGC vide notification dated 12.1.1987 subject to the condition that it will adhere to the guidelines/instructions issued by the UGC from time to time. The UGC's guidelines/instructions for Deemed to be Universities provide for prior approval of the UGC to start distance education programme. So far as recognition of the qualification is concerned, usually the Act of the University concerned empowers it to recognize the degree/diploma of other University/institution for academic pursuit. With regard to the recognition of qualifications for employment, it is the prerogative of the employer concerned to take a final view in the matter as per its requirement. The Central Government as an employer has clarified its position in respect of recognition of qualification earned through distance mode of education for the purpose of employment under it vide Gazette Notification dated 1.3.1995. This notification provides that degrees/diplomas earned through distance mode of education are recognized for the purpose of employment under it, which are approved by the DEC and wherever necessary by AICTE. It is further stated that the apex Court in an identical matter in the case of Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Tourism Dept. and Others, , with regard to the ex-post facto approval granted by DEC to institutions

has observed that DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. It is further stated that the letter dated 17.2.2004 is not specific to degrees awarded through distance mode. The same cannot override Gazette notification No. 44 dated 1.3.1995 which was specifically issued to clarify in respect of degrees/diploma awarded through distance mode whereas letter dated 17.2.2004 does not disclose the grant of approval to opposite party No. 4 to impart technical and professional education through distance mode.

12. We have heard Mr. B. Routray, learned Senior Advocates for petitioners, Mr. R.K. Bose, learned Advocate for opposite party No. 1, Mr. J.K. Mishra, learned Senior Advocate for opposite party Nos. 2 and 3, Mr. R.K. Rath, learned Senior Advocate for opposite party No. 4, Mr. Sanjit Mohanty, learned Senior Advocate for opposite party Nos. 5 to 9 and learned Assistant Solicitor General of India for opposite party No. 10.

13. Mr. B. Routray, learned Senior Advocate for the petitioners submitted that the Deemed to be University has received the recognition of courses conducted by the University through academic centres, study centres, off-campus centres from the Government of India in the Ministry of Human Resources Development, Department of Secondary and Higher Education, vide notification dated 17.2.2004, under Annexure-2. The degrees/diplomas awarded by the Deemed to be University stand automatically recognized for the purpose of employment under the Central Government. The petitioners, with due permission of the opposite parties authorities, took admission in the opposite party-University in correspondence course of diploma engineering through distance mode. They had submitted their application forms for the departmental examination for promotion to the posts of Asst. Foreman in terms of the internal circular dated 22.2.2008 vide Annexure-A/5. In the said circular, it had been categorically mentioned that a candidate possessing 3 years diploma qualification from an institution having Govt./AICTE/SCTE recognition would be eligible for selection/placement to the post of Asst. Foreman, but in the application form under Clause 10, it had been mentioned that whether the institution is recognized by AICTE or SCTE, purposefully the word "Government" has been deleted. It is further submitted that though the petitioners under bona fide impression had mentioned under the column whether recognized by AICTE/SCTE that the University had received Joint Committee approval of UGC-AICTE-DEC but then charge sheet under Annexure-9 had been issued for furnishing false and fabricated information. He submitted that the AICTE is a statutory body under the AICTE Act. On a conjoint reading of Section 2(h), (i) and Section 10(1)(k) of the AICTE Act, it is clear that the AICTE has absolutely no power to grant approval to the institutions affiliated to the University or to be the Universities including the Deemed to be Universities. He placed reliance on the judgment of the Supreme Court in the case of Bharathidasan University and Another Vs. All India Council for Technical Education and Others, to buttress the submission that the role conferred on the AICTE vis-?-vis the University is limited to the purpose of

ensuring the proper maintenance of norms and standards in technical education system so as to confer to the standards laid down, with no further or direct control over the Universities. On a cursory perusal of various provisions of the UGC Act, it is manifest that the UGC is only the competent authority to frame regulation, issue direction and grant approval to the educational institutions imparting education in various faculties including the technical education. So far as the DEC is concerned, the same is a creature of statute namely IGNOU Act, 1985. Under the said statute, the DEC is the only authority to grant approval/permission to various institutions including the Universities imparting education through distance mode. He further submitted that the Deemed to be University has received the approval/permission of the DEC for imparting education under distance mode (diploma engineering). In order to maintain the standard of education, the Deemed to be University is required to follow the guidelines issued by the AICTE and the courses imparted by the University are required to be approved by the three authorities, i.e. UGC/AICTE/DEC simultaneously. Since large number of students were enrolled from the year 2001 to August, 2005, it was mandatorily required for the University to obtain approval from the three competent authorities on ex-post facto basis. Accordingly the Joint Committee consisting of the three statutory bodies namely AICTE-UGC and DEC in their meeting held on 7.8.2007 granted ex-post facto approval to the opposite party No. 4, University for the academic session 2001-2005. In that view of the matter, the certificates issued by the JRN University can be said as not genuine and not binding on the opposite party Nos. 5 to 9. Placing reliance on the judgment of this Court dated 24.9.2012 in Bairagi Charan Nayak and others V. State of Orissa and others, W.P.(C) No. 12566 of 2005 and batch, he submitted that it is not required for a Deemed to be University established u/s 3 of the UGC Act to obtain prior approval of the AICTE for starting a Department or unit as an adjunct to the University itself to conduct/introduce technical education courses or programmes of its choice. He further placed reliance on the judgment of Hon''ble Supreme Court in the case of Association of Management of Private Colleges Vs. All India Council for Technical Education and Others, and submitted that the Hon''ble Supreme Court after interpreting various provisions of the UGC and AICTE Act has held that the AICTE has no competency to issue any regulation in respect of a University including a Deemed to be University or its constituent colleges and only the Universities are to conform to the standards of the AICTE.

14. Mr. R.K. Bose, learned counsel for opposite party No. 1, DEC submitted that DEC was established in the year 1991 and the same was declared by the IGNOU Act, 1985 as an authority u/s 16(7) of the Act. The Deemed to be University is required to obtain requisite approval/permission from DEC for running their distance education programme. The Central Government in its Human Resources Department issued a notification that all the qualifications awarded by the Deemed to be University stand automatically recognized for the purpose of employment provided it has been approved by the DEC. In spite of the best

efforts made by the DEC to maintain the standards of education, number of Universities failed to maintain the same. Letter dated 16.08.2005 was issued by the Controller, DEC under Annexure-E/1 series to the Deemed to be University cautioning them to refrain from offering any programme through distance mode, till the same is approved by the DEC. On 5.1.2006 vide Annexure-G/1, the DEC had clarified that the programmes of four Universities including opposite party No. 4 are not approved by the DEC. He further submitted that since opposite party No. 4 did not adhere to the various policy guidelines framed by the DEC and other statutory authority on the subject and anticipating some coercive action by the authorities, number of writ applications were filed by different interested parties before this Court and the same are pending adjudication. Subsequently, both UGC and DEC had given the Deemed to be University ex-post facto approval with certain conditions. On 3.7.2006 vide Annexure-11, UGC had addressed a letter to the Deemed to be University intimating therein that one time ex-post facto approval to the University for the students admitted for various courses from 1.6.2001 to 31.08.2005 was granted subject to strict compliance and fulfillment of certain conditions. The DEC had conveyed to the University of its approval to all the programmes till 2005, which were approved by the statutory bodies of their institution. Therefore, taking into consideration the interest of the students, the DEC has granted one time ex-post facto approval to opposite party No. 4, University on the recommendation of the Joint Committee of UGC-AICTE-DEC in August, 2007 for the programme approved by the statutory bodies of University offered through distance mode from 2001 to August, 2005. He further submitted that the DEC had given institutional approval in place of programme approval for offering programmes through distance mode to the University. In case of technical/professional programme offered by the University wherever required approval from the concerned apex body is required to obtain for which responsibility vested with the University. He further submitted that pursuant to the order dated 16.04.2009 passed by this Court in W.P.(C) No. 15725/2008, a High Level Committee consisting one of the members of the management of the MCL, representatives of AICTE, UGC and the Director, DEC as the Chairman in its meeting held on 4.6.2009 resolved to grant ex-post facto recognition to the students enrolled from 2001 to August, 2005, since the DEC had given institutional recognition to the Deemed to be University for offering the programmes through distance education mode.

15. Mr. J.K. Mishra, learned Senior Advocate appearing for opposite parties 2 and 3 submitted that the UGC took a serious note of the fact that some of the Deemed to be Universities had introduced new courses, opening up study centres/academic centres, off-campus without taking approval from the UGC. Those centres were opened even in the absence of proper infrastructure. To maintain the standard of teaching and research in Universities, the UGC framed a new guideline providing mandatory procedure for the Deemed to be Universities to obtain ex-post facto approval of the Government of India/UGC/DEC. The ex-post facto approval granted by the UGC on 3.7.2006 was subject to compliance

and fulfillment of several conditions. He submitted that it was mandatory on the part of the Deemed to be University to take approval from the AICTE for imparting technical programmes under distance mode. The AICTE had circulated a letter dated 12.4.2010, clarifying its stand that it had not recognized any qualification on technical programmes awarded by any University through distance mode. He further submitted that a Memorandum of Understanding (MOU) was drawn on mutual agreement between the UGC, AICTE and DEC on 10.5.2007 in accordance with Section 12 of the UGC Act, Section 10 of the AICTE Act and Statute 28 of the IGNOU Act to streamline the three statutory bodies, who had agreed to work in close co-operation, in pursuit of excellence in technical and general education through distance and mixed mode in the country. He further submitted that pursuant to the direction of this Court in W.P.(C) No. 15725 of 2008, a Joint Committee meeting was convened amongst the representatives of DEC, UGC, AICTE and MCL. In the said meeting the UGC nominee had expressed the view that the approval granted by the DEC must be reviewed and any such approval should be strictly as per the provisions contained in the MOU signed between UGC, DEC and AICTE. Similarly, the AICTE nominee informed that they had not recognized the Diploma offered through distance education mode by the Deemed to be University. Finally, it was concluded that the DEC had given institutional recognition to the Deemed to be University for offering the programme (approved by statutory bodies of the University) through distance mode. The recognition given by the DEC for the degrees/diplomas to the students enrolled from 2001 to August, 2005 was given under ex-post facto recognition. So far as regular recognition to the institution and its programmes were concerned, the same would be given finally on the recommendation/decision of the Joint Committee. He further submitted that the Deemed to be University has not complied with any directions of this Court and as such it has no legal right of granting Degree to any person. He further submitted that the Deemed to be University had not complied with many such conditions including the direction of this Court given by order dated 22.6.2006 in W.P.(C) No. 15162 of 2005. He further submitted that the judgment dated 24.9.2012 delivered by this Court in W.P.(C) No. 12566 of 2005 is distinguishable in the facts and circumstances of the case.

16. Relying upon the decision in the case of Bharathidasan University and Another Vs. All India Council for Technical Education and Others, , Mr. Mishra submitted that the question involved in the said case was to start a department for imparting the course of programme or a technical institutions as an "adjunct" to the University itself to conduct/introduce technical education courses or programmes of its choice. In the instant case, the study centres are not adjunct to the Deemed to be University campus and far away from it. Referring to paragraphs 34, 42, 56, 57 and 58 of the case of Annamalai University (supra), he submitted that the ex-post facto approval granted by the DEC is not valid. When the mandatory requirements had been violated the same cannot be validated with a retrospective effect.

17. Mr. R.K. Rath, learned Sr. Advocate appearing for the Deemed to be University-Opp. party No. 4 supported the stand taken by the petitioners. He submitted that opposite party No. 4 is a Deemed to be University and is offering various distance programmes to its students through its authorised study centres established under IGNOU Act, UGC Act, 1956, AICTE Act, 1987, UGC Regulation, 1985, UGC Guidelines 2004 and DEC Guidelines. The University has not opened any off-campus centre either in the State of Odisha or anywhere else. Mr. Rath, learned Sr. Advocate further submitted that u/s 3 of the UGC Act, 1956, the Central Government on the advice of the UGC issued a notification dated 12.01.1987 declaring Rajasthan Vidyapeeth as Deemed to be University vide Annexure-A/4. Subsequent to another notification dated 19.8.2003 issued by the Central Government, the name of the University was changed to Janardan Rai Nagar Rajasthan Vidyapeeth, Udaipur, Rajasthan. The Central Government vide Gazette Notification dated 17.02.2004 decided that all the qualifications awarded through distance education by the Deemed to be Universities would stand automatically recognized for the purpose of employment under Annexure-C/4. Thus, the Deemed to be University is competent to award degree qualification through distance education mode. He submitted that the writ petitioners along with other students had prosecuted their study during the period from June, 2001 to 31st August, 2005 through Distance Education Mode. The UGC in its letter dated 3.7.2006 had granted ex-post facto approval to the students who were admitted under the distance education mode by the University from 1.06.2001 to 31.8.2005 vide Annexure-D/4. On 19.8.2005 suddenly the UGC made a public notice in their website de-recognizing the Deemed to be Universities for offering programmes through distance mode. The same was challenged by many Universities as well as the students who had prosecuted their study through distance education mode in different High Courts including this Court. The Opposite party No. 4 moved the UGC as well as the DEC for ex-post facto approval of the students who had taken admission during the years 2001 to 2005. Accordingly, the DEC in its meeting held on 1.8.2007 and 2.8.2007 decided to grant ex-post facto approval to the Universities including the opposite party No. 4. In the meantime, the Central Government issued a notification wherein it was decided to constitute a committee consisting of UGC, AICTE and DEC to accord recognition to open distance learning institutions and accordingly a MOU was signed by the aforesaid three apex bodies for the purpose of grant of recognition to such institutions throughout the country. A Joint Committee meeting was held on 7.8.2007, wherein the recommendation of the DEC for granting ex-post facto approval/sanction to the four Universities including the opposite party No. 4 was accepted. After the decision of the DEC was accepted by the Joint Committee, the DEC communicated their decisions on 29.8.2007 vide Annexure-G/4. Thereafter by another letter dated 3.9.2007, the DEC again granted provisional recognition to the programmes offered by the opposite party No. 4 through distance education mode for one year, i.e., for the session 2007-08 vide Annexure-H/4. The DEC in its letter dated 8.10.2008 accorded provisional recognition for the session, i.e. 2007-08 vide Annexure-K/4. Pursuant to the

order dated 10.4.2009 passed by this Court in W.P.(C) No. 15725 of 2008, a High Level Committee was constituted consisting of one of the Officers of the Management of MCL, one representative of AICTE, DEC and UGC and the Director, DEC was nominated as Chairman. The Committee resolved that since the DEC has given institutional recognition to JRN Rajasthan Vidyapeeth for offering the programmes (approved by statutory bodies of the University) through distance mode, the recognition given by the DEC for the degrees/diplomas to the students enrolled from 2001 to August, 2005 would be given under ex-post facto recognition. He further submitted that the MCL, who is the employer of the present petitioners had made certain correspondences about the genuineness of the students and programme offered by the University from UGC as well as from the Opposite party No. 4. Opposite party No. 4 immediately sent a reply to the MCL that the programme has got ex-post facto approval of the DEC and also the decision of the DEC approving such course/programme undertaken by the present petitioners and other students has also been communicated to the employer of the petitioners. The University has also informed that the certificates granted to the students are genuine and there is no occasion to doubt the genuineness of such certificates. He further submitted that the study centres of the University are recognized and maintained by the University in accordance with the UGC Regulation 1985, UGC Regulation 2003 and UGC Guidelines, 2004. The University conducts the theory as well as practical examination of the students enrolled in various courses. The invigilators and the examination superintendents are appointed by the University. The University sends its observers to oversee the conduct of examination. The UGC has also deputed observers to oversee the conduct of examinations of the University at its examination centres. In the State of Orissa, the UGC has asked the Registrar of Utkal University, Berhampur University and Sambalpur University to appoint observers to oversee the examination process of the University.

18. Mr. Sanjit Mohanty, learned Sr. Advocate appearing for opposite parties 5 to 9 submitted that MCL is a subsidiary Company of Coal India Limited and a Govt. Company. On 3.10.2007, a circular was issued to all the CGM's/GMs of different areas of MCL instructing them to send the list of diploma holders in Mining, Civil, Electrical and Mechanical Engineering in the prescribed format. Thereafter, the General Manager vide internal circular i.e. Ref. No. MCL/HQ/PD/IR/Sein-Asst FM-2008/5397 dated 22.2.2008 invited applications from the departmental candidates having diploma qualification of three years duration from the institute recognized by Govt./AICTE/SCTE in different branches for the posts of Asst. Foreman. In response to the Circular dated 22.2.2008, 143 departmental employees including four writ petitioners sent their applications for the said post through the controlling authorities of the respective areas. Petitioner Nos. 2 to 4 submitted their applications along with the diploma certificate obtained from the Deemed to be University. Without scrutinizing the applications of the petitioners, the controlling authority wrongly forwarded the applications of the petitioners to the MCL Headquarter whereafter the petitioners were allowed to appear in the

written test held on 27.4.2008. While the matter stood thus, complaints were received pertaining to selection process and the certificates granted or issued by an un-recognized institution. At this juncture, two writ petitions, i.e. W.P.(C) Nos. 8173 and 7120 of 2008 were filed before this Court to conduct the viva-voce test. The said writ petitions were disposed of on 16.4.2009 with a direction to the opposite parties to form a High Level Committee consisting of one of the Officers of the Management of MCL and one of the representatives of the AICTE, DEC and UGC as members and the Director, DEC as the Chairman and enquire into the matter in order to find out if the certificates issued by UGC, AICTE and DEC are correct, genuine and acceptable. Pursuant to the direction of this Court, a Committee of seven members was constituted. The Committee met on 4.6.2009. The Committee in its minutes of meeting resolved as follows:-

The Director, DEC stated that the institution was not accorded post facto permission for the period from September, 2005 to June, 2007 as the UGC had banned the University from offering programmes through Distance mode during that period.

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AICTE nominee informed that they have not recognized the Diploma Engineering course offered by JRN, Rajasthan Vidyapeeth.

19. Mr. Mohanty, learned Senior Advocate further submitted that the functional Directors of MCL decided that the Diploma issued by the Deemed to be University cannot be treated as recognized in reference to the internal circular dated 22.2.2008. The MCL initiated disciplinary proceeding against the officers of MCL, who had forwarded the applications of the candidates and allowed the candidates to sit in the examination. Disciplinary proceedings were also initiated against the candidates who had submitted diploma certificate from unrecognized institutions for promotion to the post of Asst. Foreman. He further submitted that the diploma certificate issued by the Deemed to be University is not recognized by AICTE, who is the competent authority under the provisions of AICTE Act, 1987.

20. The learned Assistant Solicitor General of India for opposite party No. 10 reiterated the stand taken in the counter.

21. The Parliament has enacted the University Grants Commission Act, 1956. First para of the Statement of Objects and Reasons of the UGC Act, 1956 is reproduced below:-

The Constitution of India vests Parliament with exclusive authority in regard to "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions". It is obvious that neither coordination nor determination of standards is possible unless the Central Government has some voice in the determination of standards of teaching and examination in universities, both old and new. It is also necessary to ensure that the available resources are utilized to the best possible effect. The problem has

become more acute recently on account of the tendency to multiply universities. The need for a properly constituted Commission for determining and allocating to universities funds made available by the Central Government has also become more urgent on this account.

22. In the subsequent paragraph, it is stated that the Commission will also have the power to recommend to any University the measures necessary the reform and improvement of University education and to advise the University concerned upon the action to be taken for the purpose of implementing such recommendation. The Commission will act as an expert body to advise the Central Government on problems connected with the coordination of facilities and maintenance of standards in Universities.

23. The preamble of the UGC Act recites that the same is an Act to make provision for the coordination and determination of standards in Universities and for that purpose to establish a University Grants Commission. Section 12(j) of the Act defines function of the Commission, which read as follows:-

12. Functions of the Commission. It shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and coordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may:-

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(j) perform such other functions as may be prescribed or as maybe deemed necessary by the Commission for advancing the cause; of higher education in India or as may be incidental or conducive to the discharge of the above functions.

24. On a conspectus of Section 12(j), it is evident that the general duty of the Commission is to take all such steps for promotion and coordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities. For the purpose of performing functions under the Act, the Commission may perform such other function as may be prescribed or as may be deemed necessary for advancing the cause of higher education in India.

25. In Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, , Professor Yashpal, an eminent scientist and former Chairman of the University Grants Commission, filed a writ petition under Article 32 of the Constitution before the apex Court by way of public interest litigation for declaring certain provisions of the Chhattisgarh Niji Kshetra Vishwavidhyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 as ultra vires and for quashing of the notifications issued by the State of Chhattisgarh in the purported exercise of power conferred by Section 5 of the said Adhiniyam for establishing various universities. After

enactment of the said Adhiniyam, in a short span of about one year as many as 112 universities were established and many of them had absolutely no buildings or campus and were running from one-room tenements. The legislation was enacted in a manner which has completely done away with any kind of control of the University Grants Commission over these private universities. In the aforesaid context, the apex Court has held that a degree conferred by a university is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. A university degree confers a kind of status upon a person like a graduate or a postgraduate. An academic degree is, therefore, of great significance and value for the holder thereof and goes a long way in shaping his future. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies. In paragraph-46, it is held that that Entry 66 which deals with coordination and determination of standard in institutions for higher education or research and scientific technical institutions is in the Union List and Parliament alone has the legislative competence to legislate on the said topic. The UGC Act has been made with reference to Entry 66. The Act has been enacted to ensure that there is coordination and determination of standards in universities, which are institutions of higher learning, by a body created by the Central Government. It is the duty and responsibility of the University Grants Commission, which is established by Section 4 of the UGC Act, to determine and coordinate the standard of teaching curriculum and also level of examination in various universities in the country. In order to achieve the aforesaid objectives, the role of UGC comes at the threshold. The course of study, its nature and volume, has to be ascertained and determined before the commencement of academic session. Proper standard of teaching cannot be achieved unless there are adequate infrastructural facilities in the campus like classrooms, libraries, laboratories, well-equipped teaching staff of requisite calibre and a proper student-teacher ratio. For this purpose, the Central Government has made a number of rules in exercise of powers conferred by Section 25 of the UGC Act and the Commission has also made regulations in exercise of power conferred by Section 26 of the UGC Act and to mention a few, the UGC Inspection of Universities Rules, 1960, the UGC Regulations, 1985 Regarding the Minimum Standards of Instructions for the Grant of the First Degree, UGC Regulations, 1991 Regarding Minimum Qualifications for Appointment of Teachers in Universities and Colleges, etc. UGC with the approval of the Central Government and exercising power u/s 22(3) of the UGC Act has issued a schedule of degrees which may be awarded by the universities.

26. In *Osmania University Teachers' Association Vs. State of Andhra Pradesh and Another*, , the apex Court in paragraph-28 of the report held as follows:

The Constitution of India vests Parliament with exclusive authority in regard to co-ordination and determination of standards in institutions for higher education. The Parliament has enacted the U.G.C. Act for that purpose. The University

Grants Commission has, therefore, a greater role to play in shaping the academic life of the country. It shall not falter or fail in its duty to maintain a high standard in the Universities. Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs. It is hoped that University Grants Commission will duly discharge its responsibility to the Nation and play an increasing role to bring about the needed transformation in the academic life of the Universities.

27. Section 2(g) of the AICTE Act defines the expression "technical education" in the following words:-

"Technical education" means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare.

28. Section 2(h) of the AICTE Act, which defines "technical institution", reads as follows:-

"Technical institution" means an institution, not being a University, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions.

29. In *Bharathidasan University and Another Vs. All India Council for Technical Education and Others*, the question that fell for consideration before the Hon"ble Supreme Court is as to whether the appellant University created under the Bharathidasan University Act, 1981 having its area of operation over three districts of the State of Tamil Nadu, should keep prior approval of the AICTE to start a department for imparting a course or programme in technical education or a technical institution as an adjunct to the University itself to conduct technical courses of its choice and selection. Interpreting the provision of the AICTE Act and the provisions of the UGC Act their Lordships held that the role of AICTE vis-?-vis universities is only advisory, recommendatory and a guiding factor and thereby sub-serves the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except submitting a report to UGC for appropriate action. It is further held that the AICTE created under the Act is not intended to be an Authority either superior to or supervise and control the Universities and thereby super impose itself upon such Universities merely for the reason that it is imparting teaching in technical education or programmes in any of its Departments or Units (emphasis is ours). The same has no application in the facts and circumstances of this case. Even in the case of *Bharathidasan University* (supra), the Supreme Court has held that the UGC and universities have always had and have an accepted and well-merited role of primacy to play

in shaping as well as stepping up a co-ordinated development and improvement in the standards of education and research in the sphere of education.

30. Similarly, decision in the case of Bairagi Charan Nayak (*supra*) is also distinguishable and the same has no application in this case. In paragraph-9 of the said judgment, it is held that it is not required for a "Deemed to be University" established u/s 3 of the UGC Act to obtain prior approval of AICTE for starting a department or unit as an adjunct to the university itself to conduct/introduce technical education courses or programmes of its choice.

(emphasis is ours).

31. Imparting Diploma Course in Engineering through distance education mode all over the country by the Deemed to be University, can by no stretch of imagination be said that the same is a department or unit as an adjunct to the University. In view of the same, reliance placed on Bharathidasan University (*supra*) by the learned counsel for the petitioners is wholly misplaced.

32. The matter may be examined from another angle. The University is incorporated as a legislative head being in the State List. The whole gamut of the university which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State Legislature on account of a specific entry on coordination and determination of standards. In view of the fact that the Constitution of India vests Parliament with exclusive authority in regard to "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions for which UGC Act was enacted, UGC is the only authority to determine and coordinate the standard of teaching curriculum and also level of examination in various universities in the country. Amongst other functions, it is the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions, the Commission may perform such other functions as would be evident from Section 12 of Chapter III of the University Grants Commission Act, 1956.

33. The specific case of the DEC is that on 17.8.2001, the Registrar of the Deemed to be University made an application to the Chairman, DEC seeking permission to launch programmes through distance mode. A reply was given to the said letter by the Director of the DEC on 26.9.2001 wherein he had clarified the position and sent a copy of the DEC guideline to be followed in establishing Distance Education Wing and development and design of the courses. Again the Deemed to be University made applications for approval of programmes through distance mode on 1.8.2005 and 24.8.2005 which were answered in negative by the Deputy Director and the Director on 16.8.2005 and 13.12.2005 respectively,

vide Annexure-E/1 series. In spite of the fact that the application for approval of the Deemed to be University for distance education was rejected, the Deemed to be University run distance education for which number of complaints seeking clarification on recognition/approval status of the programmes were received by the DEC from the individuals and organizations. In an attempt to answer on the complaints, the DEC issued a notice/circular on 5.1.2006, vide Annexure-G/1 stating therein that the State Universities/Deemed to be Universities are not permitted to offer distance education outside the State of their location. Private study centres/franchising is not permissible. The said circular further reveals that the programmes of the above mentioned universities/Deemed to be Universities offered through distance mode are not approved by the DEC. It is further stated that the DEC has given institutional approval in place of programme approval for offering programmes through distance mode to the Deemed to be University. Therefore, the DEC has not given any separate approval to any specific programmes offered by above University. Further, in the case of technical/professional programmes offered by the University is concerned, approval from the concerned apex bodies in the country is required to be obtained for which the responsibility vests with the university concerned as would be evident from the letter of the DEC dated 16.8.2005 and 13.12.2005, vide Annexure-F/1, which, inter alia, shows that several complaints were received against the Deemed to be University pertaining to imparting courses through distance education mode. The Deemed to be University was refrained from offering any programme through distance mode till approval of DEC would be obtained. It is further revealed that in the absence of any communication from UGC about recognition of study centres, it would not be possible for the DEC to process the request further for approval of programmes offered through distance mode and finally, it was decided not to approve the programmes offered through distance education mode by the university.

34. In spite of repeated warning of the DEC, the Deemed to be University offered Diploma courses in Engineering in the State of Rajasthan which is outside the territorial jurisdiction of the State. An additional affidavit has also been filed by the Deemed to be University stating therein that the study centres of the University are established, maintained and recognized by the University in accordance with the UGC Regulations and Guidelines. The study centre has to fulfill the terms and conditions and minimum norms as prescribed by the University. It is further stated that the University conducts the theory as well as practical examination of the students enrolled in various courses. The examinations are conducted at neutral examination centres. The invigilators and the examination superintendent are also appointed by the university. The university also sends its observers to oversee the conduct of examination. The UGC has also deputed observers to oversee the conduct of examinations of the university in its examination centres. So far as the State of Orissa is concerned, the UGC asked the Registrar of Utkal University, Berhampur University and Sambalpur University to appoint observers to oversee the examination. But there

is no whisper on the said aspect in the counter affidavit filed by the AICTE and UGC.

35. We have also gone through the list of examination centres provided by opposite party No. 4. Those are private industrial training institutes. There is nothing on record that any observer of Utkal University, Berhampur University and Sambalpur University had in fact visited the examination centres to oversee the conduct of the examination of theory as well as practical.

36. Much reliance has been placed on ex-post facto approval granted by the joint committee consisting of members of UGC-AICTE-DEC on 3.7.2006 for the course offered through distance education programme till 2005. The ex-post facto approval of the admission was granted for the year 2001-2005. The Deemed to be University has also misrepresented the facts to cover up its lacuna. Though the petitioners prosecuted their studies from 2003 to 2006, in the counter affidavit filed by the Deemed to be University, it is stated at paragraph 3(v) that they prosecuted their studies through distance education mode from June, 2001 to August, 2005. We are not impressed by the aforesaid submissions. Merely because one time ex-post facto approval was granted, the same does not authorize the university to violate the law and conduct the course in spite of repeated warnings by the DEC. A statutory body, which violates the provision of the statute and circulars issued by the statutory body is to be dealt with stern hand. Though the Deemed to be University has no infrastructure for imparting any kind of education through distance mode, it was alluring students all over the country to open study centres and befooling the students. The manner in which the Deemed to be University is functioning would result in creating a complete chaos in the system of higher education in the country. The expert bodies created by the Central Government like UGC, AICTE etc. for coordination and determination of standards in their respective fields, in such circumstances would not be able to perform their statutory duty and this would make their functioning not only difficult but almost impossible.

In the result, the writ petition being devoid of merit, stands dismissed. There shall be no order as to costs.