

Education Sector Hotline

November 10, 2017

DEEMED TO BE UNIVERSITIES BARRED FROM OFFERING COURSES IN DISTANCE EDUCATION MODE

The Supreme Court of India (“**Court**”) has recently¹ held that:

- Deemed to be Universities² are restrained from offering courses in distance education³ mode from the academic year 2018-19 onwards until and unless it is permissible to conduct such courses in distance education mode
- Prior permission from the statutory/regulatory authorities is required with respect to each course to be offered in distance education mode.
- Study centres⁴/off-campus centres⁵ are required to be inspected and be found adequate by statutory authorities before the programs can be offered through such centres/campuses
- Permission to offer distance education programme will be granted course-wise
- Permission of the All India Council for Technical Education (“**AICTE**”) will be required for offering technical programmes.

Directions were issued by the Court to:

- The University Grants Commission (“**UGC**”) to take steps to restrain Deemed to be Universities from using the word “University” within one month from the date of the judgment
- The Union of India, to consider constituting a 3 members Committee within a month of the judgment, to examine issues raised in the judgment, suggest a plan to set up oversight and regulatory mechanisms in higher education, within 6 months. The Committee may also suggest oversight mechanism to regulate the Deemed to be Universities.
- The Union of India to examine the said report prepared by the Committee and take appropriate actions within one month thereafter and file an affidavit before the Court regarding actions undertaken, on or before August 31, 2018. The matter is to be placed for consideration of Court on September 11, 2018.

FACTS:

Appeals were filed from conflicting judgments of the High Court of Orissa and Punjab and Haryana High Court that dealt with the question of validity of degrees in engineering obtained through distance education mode from Deemed to be Universities.

The controversy related to such degrees granted by the following Deemed to be Universities, namely Vinayaka Mission Research Foundation Salem, Tamil Nadu; IASE Gandhi Vidya Mandir, Sardarshahr, Rajasthan; JRN Rajasthan Vidyapeeth Udaipur, Rajasthan and Allahabad Agricultural Institute, Allahabad, U.P.

The Orissa High Court held that the degrees in engineering obtained through Open Distance Learning (“**ODL**”) mode offered by certain Deemed to be Universities through “off campus Study Centres” were valid, thereby entitling the candidates to benefits available for any serving graduate engineers. The decision rendered by the High Court of Punjab & Haryana in a similar matter was contrary to that of the Orissa High Court.

Since the issues in the two appeals were overlapping, they were considered by the Court collectively in this common judgment.

BACKGROUND CONSIDERATIONS BEFORE THE COURT:

The most important consideration before the Court was whether “Deemed to be Universities” have the right to start/offer courses through distance education mode in subjects leading to award of degrees in Bachelor of Engineering (B.E.) and Bachelor of Technology (B.Tech) or in subjects which are not within their field of specialization. To examine the same, the Court considered the statutory framework governing “Deemed to be Universities” and “Distance Education” more specifically in the field of technical education.

As per the University Grants Commission Act, 1956 (“**UGC Act**”) “Deemed to be University” status can be conferred upon certain institutions for higher studies other than universities.⁶ The UGC also has the power to make rules for defining the minimum standards of instruction for the grant of any degree by any University and regulating maintenance of standards and the coordination of work or facilities in Universities.⁷ Thus, the Court considered that “Deemed to be University” status is conferred upon institutes keeping in view the potential to offer academic programs in specific domain of knowledge, within their field of specialization.

In the year 1985, the Indira Gandhi National Open University Act, 1985 (“**IGNOU Act**”) was enacted to inter alia promote distance education in the country. Section 2(e) of the IGNOU Act defined “Distance Education System” to mean “*the system of imparting education through any means of communication, such as broadcasting, telecasting, correspondence courses, seminars, contact programmes or the combination of any two or more of such means.*”

The powers of IGNOU include (i) conferring degrees, diplomas, certificates or other academic distinctions or recognitions on persons who have pursued a course of study or conducted research in the manner laid down by the law (ii) to determine the

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manner in which distance education in relation to the academic programmes of the University may be organized.

Subsequently, the Distance Education Council ("DEC") was set up under the IGNOU Act as the relevant body for the purpose of ODL.

The All India Council for Technical Education Act, 1987 ("AICTE Act") was enacted to provide for the establishment of AICTE and to regulate technical education system throughout the country. The AICTE is the regulatory body for technical education⁸ in India.

Further, to examine the issue the Court took note of various Notification, Circulars and Guidelines issued by UGC, DEC, AICTE and MHRD from time to time.

Specifically,

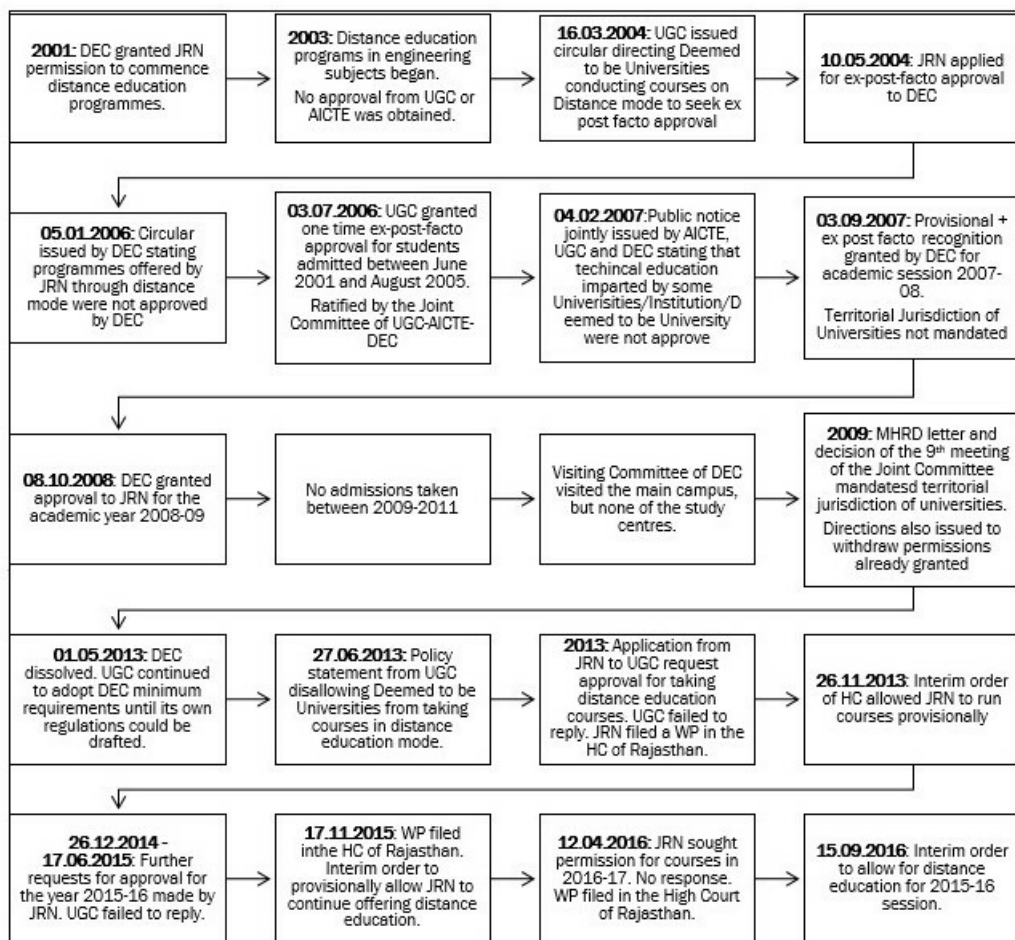
- In 1994, the AICTE (Grant of Approval for starting new Technical Institutions⁹, introduction of courses or programmes and approval of intake capacity of seats for courses or programmes) Regulations were issued ("1994 AICTE Regulations"). Clause 4 of these 1994 AICTE Regulations inter alia states that "*No course or programme shall be introduced by any Technical Institution, University including a Deemed University or University Department or College.....except with the approval of the Council.*"
- In 2004, UGC issued Guidelines for establishing new departments within the campus, setting up of off-campus centre(s)/institution(s)/off-shore campus and starting distance education programmes by the Deemed to be Universities, 2004 ("2004 UGC Guidelines"). The 2004 UGC Guidelines contemplate that Deemed to be University are normally authorized to operate within its own campus to conduct the authorized courses falling within the area of their specialization. However, in deserving cases, the Deemed to be University could start new departments within the university campus or start off-campus centre(s)/institutions/off-shore campus(s) on selective basis with prior specific permission of the UGC in each and every individual case¹⁰. The guidelines also mandated approval by a professional council or statutory body when the nature of the course was technical or professional.¹¹ The 2004 Guidelines further states that a Deemed to be University can offer distance education programmes and open study centres only with specific approval of the DEC and UGC.¹² Further, an ex-post-facto approval from Government of India/DEC/UGC was required in case any distance education programme/study centre was started without the specific approval of DEC/UGC¹³.
- In February, 2004 the DEC published an advertisement stating that it was mandatory for all Centres/Institutions/Directorates providing distance education programs to obtain prior approval or ex post facto approval from the DEC.
- On March 16, 2004, a circular was issued by the UGC directing Deemed to be Universities conducting courses through Distance Education mode to seek ex-post facto approval for the courses conducted by such Deemed to be Universities.

The Court noted that none of the concerned Deemed to be Universities in the present case had taken any prior approval from any of the authorities namely UGC, AICTE or DEC. However, they had sought ex-post-facto approval from DEC for courses conducted by them through distance education mode.

Further, reference and reliance was also placed on the judgment in the case of *Bharathidasan University and Another v. All India Council for Technical Education and Others*¹⁴, which dealt with the question of whether prior approval of AICTE was required for a "University" to start courses in technical education. It was held in the said case that prior approval of AICTE was not required for a University to start technical courses.

Based on the above, the Court inferred that since the term "University" under the UGC Act includes Deemed to be Universities, the understanding entertained by all the authorities was that AICTE was not competent to deal with issues of prior approval in respect of "Universities" for technical courses and AICTE has no power to deal with issues of prior approval for technical courses in respect of Deemed to be Universities as well. Having considered the above factors, the Court proceeded to examine the factual details of this case.

Key milestones are described below:



ISSUES BEFORE THE COURT

The following questions were considered by the Court:

- i. *Whether the concerned Deemed to be Universities in the present case, could start courses through distance education in subjects leading to award of degrees in engineering –*
 - a) *Without any parameters or guidelines having been laid down by AICTE for conduct of such courses in technical education through distance education mode.*
 - b) *Without prior approval under the AICTE Act.*
- ii. *Whether DEC, on its own, was competent to grant permission to the concerned Deemed to be Universities to start such courses through distance education.*

RULING OF THE COURT

With respect to the first issue, the Court held that subjects leading to degrees in engineering, could be taught in distance education mode or not is within the exclusive domain of the AICTE. Hence, the Deemed to be Universities were not justified in introducing such courses without AICTE approval. Further, AICTE has always maintained that courses leading to degrees in engineering cannot be undertaken through distance education mode.

The Court also referred to Clause 4 of the 1994 AICTE Regulations,¹⁵ and held that a Deemed to be University which has achieved excellence in a particular field may be given deferential treatment, but, nonetheless if it desires to introduce new courses in field of engineering it still has to satisfy the requirements for new technical institution. Moreover, even if a Deemed to be University introduce new course in any new areas and not only engineering, it has to seek approval from the concerned authority.

Thus, such Deemed to be Universities were required to abide by the provisions of 1994 AICTE Regulations and could not introduce courses leading to award of degrees in engineering without the approval of AICTE.

Answering the second issue, the Court pointed out the inconsistency between various circulars, policy guidelines and letters issued by the governing bodies, and the one time and ex-post-facto approvals that were granted by the DEC.

The Court noted that the IGNOU Act nowhere entitles IGNOU to be the controlling authority of the entire field of distance education of learning across the country and in relation to programmes of other Universities or institutions as well. Thus, as appreciated by MHRD in its order dated 29.12.2012, DEC constituted under IGNOU Act could not act as a regulator for other Universities.

The Court took a view that the policy guidelines issued from time to time made it abundantly clear that DEC alone was not entitled to grant permission for open distance learning and appropriate permissions from the requisite authorities were always required and insisted upon. Thus, the Court ruled that DEC was not empowered to grant such ex-post-facto approval without consulting the AICTE and such act was completely without jurisdiction. Further, the act of DEC to allow the Deemed to be Universities in question to introduce courses leading to the award of degrees in engineering was thus illegal and opposed to Law.

To understand the questions regarding validity of degrees in engineering awarded by the concerned Deemed to be Universities, the Court divided the same into two groups, based on the year of enrollment:

1. Degrees awarded to students enrolled during 2001-2005, for which ex post facto authorization was granted to the Universities.

2. Degrees awarded to students enrolled post the academic session of 2001-2005

The ex post facto approval granted by the DEC to JRN University led the Court to differentiate between the students who were admitted while approval existed, and students who were admitted after the approval had lapsed.

The Court held that despite infirmity of the ex-post-facto approval, as it was against all the policy guidelines of the UGC, the degrees of students admitted between 2001-2005 would only be suspended till such time they clear a technical examination set under the joint supervision of AICTE-UGC. While all benefits accrued would be suspended, they would be restored upon successfully passing the exam. If a candidate does not appear or clear the test, their degrees in engineering obtained through distance education shall stand recalled and cancelled.

However, degrees in engineering of students who were admitted after the academic session 2001-2005, were clearly illegal and in contravention of UGC and AICTE guidelines, and therefore were invalid. The Court went on to invalidate any benefits that may have accrued to such students. It further directed the concerned Deemed to be Universities to refund entire amount of tuition fee and all other expenditures incurred by such students.

Direction were also issued to the CBI to investigate the conduct of officials involved in the grant of approvals.

While the Court was only dealing with the issue of validity of engineering degrees awarded by way of distance education mode, the Court went a few steps further and restrained all Deemed to be Universities to carry on any courses in distance education mode from the Academic Session 2018-2019 onwards unless (i) it is permissible to conduct such courses in distance education mode and (ii) specific permissions are granted by the concerned statutory/regulatory authorities in respect of each of those courses, and (iii) the Off-campus Centres/Study Centres are individually inspected and found adequate by the concerned statutory authorities. It was clarified that approvals have to be granted course specific.

Further, the Court also directed the Union of India to consider constitution of a 3 member committee within a month of the judgment, to examine issues raised in the judgment, to suggest a plan to set up oversight and regulatory mechanisms in higher education, within 6 months. Committee may also suggest mechanism to regulate Deemed to be Universities. The Union of India has been directed to examine the report and file an affidavit before the Court regarding actions undertaken on or before August 31, 2018. The matter is to be placed for consideration of Court on September 11, 2018.

ANALYSIS

The view of the Court that distance education courses cannot be offered by Deemed to be Universities, as well as the ruling that technical courses such as engineering are not to be offered as distance education courses are not new positions of law. Though the DEC was disbanded in 2013, the UGC decided to continue to use the DEC regulations regarding distance education until such time new regulations could be formulated. The University Grants Commission (Open and Distance Learning) Regulations, 2017 were notified on June 23, 2017, ("**ODL Regulations**") and applies to all programs offered by all Universities. It prohibits distance learning for technical subjects such as engineering and medicine, and mandates prior approval from the concerned body before providing any professional courses.

Further, the ODL Regulations specifically states:

- an institute declared to be Deemed to be University after May 26, 2010 is not allowed to conduct courses in the distance education mode
- institute declared to be Deemed to be University before May 26, 2010 is not allowed to conduct courses in distance mode from any of its off-campus centres or off-shore campuses approved after 26th May, 2010.

Further, it also states that approval for new courses and extension of approval of the courses already run by the Deemed to be Universities under the distance mode would be granted by the UGC, subject to fulfillment of conditions laid down by the UGC. The ODL Regulation also clarifies that UGC has not granted approval to establish study centres to any Deemed to be Universities.

Therefore, the directions of the Court in this regard are a restatement of existing policies concerning distance education as of date.

However, the direction that all degrees in engineering granted by the Deemed to be Universities to students enrolled post academic session 2005 are invalid, and do not count as qualifying degrees, is sure to affect a substantial number of persons. The reasoning of the Court is that the UGC sufficiently notified prospective students about the invalidity of the impugned courses. Further, the illegal action of the universities in offering those courses cannot be cured by any action of the UGC. In light of the large number of students potentially affected by similar such unauthorized courses, we have to wait and see as to the recommendations of the committee that is to be formed by the Government.

On a separate note, what is important is that this judgment once again brings to light the issues of overlapping jurisdiction of authorities such as the AICTE and the UGC, the aspect of misuse of power and corruption in the sector, and the confusion prevailing in the education industry regarding the applicability of multiple, and at times contradictory, regulations to courses/institutes.

The talks to consolidate the education laws in India, revamp or restructure AICTE/UGC and replace them with a new higher education authority have been underway since long. One is hopeful that this case will help in pushing the peddle and make the policy makers work towards comprehensive education reform in India.

— Vivek Kathpalia, Aarushi Jain & Puja Saha

You can direct your queries or comments to the authors

¹ November 03, 2017

² Section 3 of University Grants Commission Act, 1956 states: *The Central Government may, on the advice of the Commission, declare by notification in the Official Gazette, that any institution for higher education, other than a University, shall be Deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of Section 2.*

³ Section 2(e) of the IGNOU Act defined "Distance Education System" as *"the system of imparting education through any means of communication, such as broadcasting, telecasting, correspondence courses, seminars, contact programmes or the combinations of any two or more of such means".*

Regulation 2(m) of the University Grants Commission (Open and Distance Learning) Regulations, 2017, defines *"Open and Distance Learning"* mode as *"a mode of providing flexible learning opportunities by overcoming separation of teacher and learner using a variety of media, including print, electronic, online and occasional interactive face-to-face meetings with the presence of an Higher Educational Institution or Learner Support Services to deliver teaching-learning experiences, including practical or work experiences."*

⁴ 2004 UGC Guidelines definition (d) *Study Centre* means "a centre established and maintained or recognized by the university for the purpose of advising, counseling or for rendering any other assistance required by the students used in the context of distance education."

⁵ 2004 UGC Guidelines definition (c) *"Off-campus centre"* means "a centre of the university located outside its main campus (within or outside the State where the Deemed University is located) operated and maintained as its constituent unit by the resources of the university, having the centre's own complement of facilities, faculty and staff."

⁶ Section 3 of the UGC Act

⁷ Section 26 of the UGC Act

⁸ Section 2(g) of the AICTE Act, 1987 defines "Technical Education" to mean "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;

⁹ Section 2(h) of the AICTE Act, 1987 defines (h) "Technical Institution" to mean "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;"

¹⁰ Para 2 of the 2004 UGC Guidelines

¹¹ Para 3.4 of the 2004 UGC Guidelines

¹² Para 4 of the 2004 UGC Guidelines

¹³ Para 5 of the 2004 UGC Guidelines

¹⁴ (2001) 8 SCC 676

¹⁵ Clause 4 of 1994 AICTE Regulations states "Requirement of Grant of Approval":

4.1 After the commencement of these regulations,

a) No new Technical Institution or University Technical Department shall be started; or

b) No course or programme shall be introduced by any Technical Institution, University including a Deemed University or University Department or College or;

c) No Technical Institution, University or Deemed University or University Department or College shall continue to admit students for Degree or Diploma courses or programmes;

d) No approved intake capacity of seats shall be increased or varied;

Except with the approval of the Council

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