

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4173 OF 2008

**ANNAMALAI UNIVERSITY REP. BY
REGISTRAR**

... APPELLANT

VERSUS

**SECY. TO GOVT. INFN. & TOURSM
DEPT. & ORS.**

... RESPONDENTS

WITH

CIVIL APPEAL NOS. 4189-4191 OF 2008

N. RAMESH

...APPELLANT

VERSUS

SIBI MADAN GABRIEL & ORS.

...RESPONDENTS

J U D G M E N T

S.B. Sinha, J.

1. Interpretation and application of the University Grants Commission (the minimum standards of instructions for the grant of the first degree through non-formal/distance education in the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985 (for short, “1985 Regulations”) framed by the University Grants Commission (for short, “UGC”) in exercise of its powers conferred by clause (f) of sub-section (1) of Section 26 of the University Grants Commission Act, 1956 (for short, “the UGC Act”) vis-à-vis the provisions of the Indira Gandhi National Open University Act, 1985 (for short, “the Open University Act”) is in question in these appeals. They arise out of a common judgment and order dated 4.2.2008 passed by a Division Bench of the High Court of Judicature at Madras in Writ Appeal Nos. 1221 of 2005 and 82 of 2006 and Writ Petition No. 36307 of 2004.

2. Indisputably, N. Ramesh (Ramesh) and Sibi Madan Gabriel (Gabriel) were candidates for appointment to the post of Principal in Film and Television Institute (for short, “the Institute”) of Tamil Nadu. Gabriel was appointed temporarily as a ‘Lecturer in Acting’ in the Institute on or about 26.5.1982. His services were regularized with retrospective effect from the date of his joining by an order dated 20.2.1992. He was subsequently promoted as Head of Section by G.O.Ms. No. 236 dated 17.8.1993. The

next avenue of promotion from the post of Head of Section is the post of Principal in the Institute. In the year 2000, Ramesh was given the additional charge to the post of Principal. Gabriel filed an Original Application before the Tamil Nadu Administrative Tribunal (for short, “the Tribunal”), which was marked as O.A. No. 5275 of 2000 questioning the legality of the said appointment on the ground that Ramesh did not have the requisite essential educational qualification for the post of Principal.

3. The Tribunal, by its judgment and order dated 14.8.2000, directed the State to consider the objections of Gabriel having regard to the qualifications prescribed for the said post vis-à-vis those possessed by Ramesh. The challenge to the qualification of Ramesh was that he did not possess a basic graduation degree and, thus, the post-graduation degree conferred on him by appellant - University is invalid in law. At that stage, the State appointed one Mr. K. Loganathan, which was challenged by Ramesh by way of O.A. No. 2085 of 2003 before the Tribunal. Said application was dismissed by the Tribunal by reason of an order dated 5.1.2004. Ramesh challenged the said order of the Tribunal by filing a writ petition marked as Writ Petition No. 841 of 2004, which had become infructuous as after retirement of said Mr. K. Loganathan, Ramesh was

appointed as the Principal by order dated 6.12.2004. Gabriel challenged the said appointment of Ramesh by filing Writ Petition No. 36307 of 2004.

4. Indisputably, during the pendency of the said writ petition, Gabriel filed W.M.P. No. 43649 of 2004 for stay, which was granted. Ramesh filed W.V.M.P. No. 2428 of 2004 for vacating the stay which was rejected by the learned single judge by order dated 21.6.2005. Writ appeals were preferred thereagainst by Ramesh as also State Government and the Director of Information and Public Relation, which were marked as Writ Appeal No. 1221 of 2005 and Writ Appeal No. 82 of 2006. By reason of judgment and order dated 14.2.2006, while allowing the writ appeals, writ petition preferred by Gabriel was dismissed by the Division Bench of the High Court.

5. Indisputably, the said decision of the Division Bench of the High Court had been challenged in this Court by way of Civil Appeal No. 3178 of 2007, which by reason of a judgment and order dated 20.7.2007 was disposed of by remanding the matter to the High Court for fresh consideration observing that UGC as well as appellant - University should be impleaded as parties in the writ petition.

6. Indisputably, the post of Principal in the Institute is governed by Rules made under the proviso appended to Article 309 of the Constitution

of India. Rule 4 lays down the qualifications for the said post, which reads as under:

Method of Recruitment	Qualification
Promotion	i) a degree in Science or Arts of any recognized University ii) A diploma in any branch of Film Technology awarded by any recognized Institution in India, and iii) Service as Head of Section in any branch of Film Technology in the Government Institute of Film Technology, Madras for not less than five years.

Recruitment by Transfer

- i) a degree in Science or Arts of any recognized University
- ii) A diploma in any branch of Film Technology awarded by any recognized Institute in India, and
- iii) Experience for a period of not less than ten years in film Technology, of which at least five years shall be in teaching in a Film Institute.

7. Indisputably, Ramesh holds a diploma in Film Technology. He also has the requisite experience of five years as Head of Section. He, however, has obtained M.A. Degree in Open University System (OUS) in an examination held by the appellant - University.

8. The Division Bench of the High Court by reason of the impugned judgment allowed the writ petition and disposed of the writ appeals pending before it holding that Ramesh was not eligible to be considered for the post of Principal as the M.A. Degree obtained by him through OUS, without there being a first (Bachelor's) degree, was not a valid one. Consequently,

the State was directed to take steps to fill up the post of Principal in accordance with law.

9. Aggrieved thereby and dissatisfied therewith, the University as also Ramesh are before us.

10. Mr. K. Parasaran, learned Senior Counsel appearing on behalf of the appellant – University would submit:

- i. The system of imparting education between a conventional University and an Open University being different and being governed by the UGC Act and the Open University Act respectively, the High Court committed a serious error in passing the impugned judgment.
- ii. Regulations framed by the UGC both providing for the eligibility to seek admission to the Masters' degree as also information required to be furnished thereabout by the State Universities to the UGC, the later must be held to have relaxed the conditions as no direction in that behalf has been communicated to the University. In any event, as Distance Education Council (DEC) of IGNOU,

being an authority constituted under Statute 28 of the Open University Act, having granted post-facto approval to the courses of studies of the University by a letter dated 21.7.2008 this Court should set aside the impugned judgment.

iii. In view of the decision of this Court in Guru Nanak Dev University vs. Sanjay Kumar Katwal & Anr. reported in 2008 (13) SCALE 760, the decision of the High Court has been rendered erroneous as therein Master's degree under the OUS by the appellant – University has been held to be valid stating that although one University is entitled not to recognize the said degree as an equivalent to the qualification it may have prescribed for eligibility to a higher course.

iv. Regulations framed by UGC in any event being in conflict with the Open University Act must be held to be ultra vires the same particularly in view of the fact that sub-Section (2) of Section 5 of the Open University Act provides for a non-obstante clause. In any event, Open University Act being a later enactment and both statutes

having been passed by the Parliament, the provisions of Open University Act would prevail over the UGC Act.

- v. In any view of the matter as from 1995 till 2005 several persons have received degrees issued by the University and if they are disqualified at this stage, a large number of persons would suffer irreparable injury, this Court should issue appropriate directions in this behalf.
11. Mr. R.V. Kameshwaran, learned counsel appearing on behalf of the appellant - Ramesh would contend:
- i. Having regard to the provisions of the UGC Act and in particular Section 27 thereof providing for delegation of power to the authority, and as a Notification dated 1.3.1995 has been issued directing that the degrees issued by the Universities would stand automatically recognized for the purpose of employment to posts and services under the Central Government subject to approval of the DEC, IGNOU, the High Court must be held to have committed a serious error in holding contra.

- ii. From various correspondences, it would appear that the UGC Regulations were amended only in the year 2003 and the Master's degree awarded upto 30.6.1989 were treated to be valid.
 - iii. Many established Universities like that of Annamalai University across the country, having conducted such courses under OUS and such degrees having been accepted by Public Service Commission, the High Court's judgment even in equity should be set aside.
12. Mr. G.E. Vahanwati, learned Solicitor General who appeared at the request of the Court would contend that from the Statement of Objects and Reasons of Open University Act it is evident that the Parliament made a distinction between formal and non-formal education and UGC Act being concerned with formal education, IGNOU and particularly the DEC had the requisite jurisdiction to lay down syllabus as also duration of such courses.
13. Mr. Amitesh Kumar, learned counsel appearing on behalf of the UGC would urge:

- i. Regulations framed by the UGC being statutory in nature and in any event the constitutionality of the said Regulations having not been challenged, the High Court's judgment must be held to be wholly sustainable.
- ii. In view of the fact that the Vice-Chancellor and the Chairman DEC of IGNOU having accepted in its letter dated 5.5.2004 that the UGC Regulations shall prevail, the contentions raised on behalf of the appellants must be held to be wholly misconceived.
- iii. As Regulations framed by the UGC are required to be laid before the Houses of the Parliament in terms of Section 28 of the Act and furthermore the Ministry of Human Resource Development being a Nodal Ministry of both UGC as also IGNOU, the Regulations having been made at its instance, cannot be said to be subservient to the provisions of the Open University Act.
- iv. UGC having the requisite jurisdiction inter alia to lay down the minimum standard, Regulations framed by it are binding on all Universities and, thus, it would not be correct to contend that

Open University Act shall prevail over the regulations framed by the UGC.

14. Mr. B.D. Sharma, learned counsel appearing on behalf of the writ petitioners – respondents submitted that the purported ex post facto recognition of the M.A. degrees granted by the DEC is wholly without jurisdiction. There being no conflict between the UGC Act and the Open University Act in respect of laying minimum standard, the question declaring the regulations ultra vires of the Open University Act does not arise.

15. Entry 66 of List I of the Seventh Schedule to the Constitution of India reads thus:

“66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.”

‘Education’ is also in the Concurrent List; Entry 25 whereof reads as under:

“25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”

The Central Government as also the State Governments in exercise of their legislative competence in terms of Entry 25 are entitled to make legislations. Pursuant thereto, and in furtherance thereof, Universities like IGNOU had been enacted by the Parliament again in exercise of its legislative competence in terms of Entry 25. UGC Act, on the other hand, comes within the purview of Entry 66 of List I of the Seventh Schedule to the Constitution of India. It was enacted to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a UGC.

UGC was established by the Central Government in terms of Section 4 of the UGC Act. Powers and functions of the Commission have been laid down in Chapter III thereof. Section 12 provides for functions of the Commission; some of the relevant provisions whereof are:

“12. 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 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 under this Act, the Commission may--

...

- (d) recommend to any University the measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation;

...

- (i) require a University to furnish it with such information as may be needed relating to the financial position of the University or the studies in the various branches of learning undertaken in that University, together with all the rules and regulations relating to the standards of teaching and examination in that University respecting each of such branches of learning;”

Section 12A provides for regulation of fees and prohibition of donations in certain cases. Clause (c) thereof reads as under:

- “(c) “prosecution” in relation to a course of study, includes promotion from one part or stage of the course of study to another part or stage of the course of study;”

Section 22 provides for right to confer degrees. Sub-Section (1) and reads as under:

“(1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.”

The Commission is empowered to make regulations by notification in terms of Section 26, inter alia, for the following purposes:

- “26(1)(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instructions;
- (f) defining the minimum standards of instruction for the grant of any degree by any University;
- (g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities.
- (h) regulating the establishment of institutions referred to in clause (ccc) of section 12 and other matters relating to such institutions;”

Section 28 mandates that every rules and regulations must be placed before each House of Parliament.

16. Open University Act was enacted to establish and incorporate an open University at the national level for the introduction and promotion of open university and distance education systems in the educational pattern of the country and for the co-ordination and determination of standards in such systems.

We may also notice the Statement of Objects and Reasons of the said Act, which reads as under:

“ Despite the tremendous expansion of the formal system of higher education since independence, the pressure on the system is continuously increasing. Indeed, the system has not been able to provide an effective means to equalize educational opportunities. The rigidity of the system requiring, among others, attendance in classrooms have been a disincentive to many learners. Moreover the combinations of subjects are inflexible and are often not relevant to the needs of the learners. This has resulted in a pronounced mismatch between the contents of most programmes and the needs of the development sectors.

The experience of several developed or developing countries indicate that distance education programmes can provide an alternative system that will be cost-effective and relevant, while at the same time ensuring effective equalization of opportunities. Though a diversity

of means, including the utilization of modern communication technology, the distance education can provide more flexible and open learning programmes that will suit the needs of various categories of learners, especially the weaker sections of society. The introduction and promotion of distance education in the educational system of the country is, therefore, of great significance.”

We may also notice some provisions of the Open University Act.

“2(e) “distance education system” means 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;

xxx xxx xxx

3. Establishment and incorporation of the University.- (1) There shall be established a University by the name of “the Indira Gandhi National Open University”.

xxx xxx xxx

4. The objects of the University.- The objects of the University shall be to advance and disseminate learning and knowledge by a diversity of means, including the use of any communication technology, to provide opportunities for higher education to a larger segment of the population and to promote the educational well being of the community generally, to encourage the Open University and distance education systems in the educational pattern of the country and to co-

ordinate and determine the standards in such systems, and the University shall, in organizing its activities, have due regard to the objects specified in the First Schedule.

5. Powers of the University.- (1) The University shall have the following powers, namely:-

... ..

(iii) to hold examinations and confer 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 Statutes and Ordinances;

xxx xxx xxx

(v) to determine the manner in which distance education in relation to the academic programmes of the University may be organised;

xxx xxx xxx

(xiii) to recognise examinations of, or periods of study (whether in full or part) at, other universities, institutions or other places of higher learning as equivalent to examinations or periods of study in the University, and to withdraw such recognition at any time;

xxx xxx xxx

(xxiv) to determine standards and to specify conditions for the admission of students to courses of study of the University which may include examination, evaluation and any other method of testing;

xxx	xxx	xxx
xxx	xxx	xxx

5(2) Notwithstanding anything contained in any other law for the time being in force, but without prejudice to the provisions of sub-section. (1), it shall be the duty of the University to take all such steps as it may deem fit for the promotion of the open university and distance education systems and for the determination of standards of teaching, evaluation and research in such systems, and for the purpose of performing this function, the University shall have such powers, including the power to allocate and disburse grants to Colleges, whether admitted to its privileges or not, or to any other university or institution of higher learning, as may be specified by the Statutes.”

In terms of Section 6 thereof, IGNOU has jurisdiction over the whole of India. Section 16 lays down the Authorities of the IGNOU, clause (7) whereof reads as under:

“(7) Such other authorities as may be declared by the Statutes to be the authorities of the University.”

Pursuant to or in furtherance of the said power read with Statute 28 and 28(2A), DEC had been constituted. DEC has been declared as the authority of the IGNOU. Whereas Section 25 provides for the statute making power, Section 27 provides for the Ordinances making power. It has, however, been stated at the Bar that the IGNOU has neither made any regulations nor any statutes.

The First Schedule appended to the Open University Act provides for the objects of IGNOU, the relevant provisions whereof read as under:

“1(e) contribute to the improvement of the educational system in India by providing a non-formal channel complementary to the formal system and encouraging transfer of credits and exchange of teaching staff by making wide use of texts and other software developed by the University;

2. The University shall strive to fulfil the above objects by a diversity of means of distance and continuing education, and shall function in co-operation 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.”

17. Indisputably, UGC in exercise of the powers conferred upon it by clause (f) of sub-section (1) of Section 26 of the UGC Act, made the 1985

regulations. A notification in this behalf was published by the UGC on 25.11.1985. It, however, was given effect from 1.1.1986.

We may notice some of the provisions of 1985 Regulations.

“2. **Admission/Students:-**(1) No student shall be eligible for admission to the 1st Degree Course through non-formal/distance education unless he has successfully completed 12 years schooling through an examination conducted by a Board/University. In case there is no previous academic record, he shall be eligible for admission if he has passed an entrance test conducted by the University provided that he is not below the age of 21 years on July 1 of the year of admission.

(2) No student shall be eligible for the award of the first degree unless he has successfully completed a three year course; this degree may be called the B.A./B.Sc./B.Com. (General/ Honours/ Special) degree as the case may be:

Provided that no student shall be eligible to seek admission to the Master's Course in these faculties, who has not successfully pursued the first Degree Course of three years duration:

Provided further that, as a transitory measure where the universities are unable to change over to a three year degree course, they may award a B.A./B.Sc./B.Com. (Pass) degree on successful completion of two years course, but that no student of this stream shall be eligible for admission to the Master's course unless he has undergone a further one year bridge course and passed the same. The three year degree course after 10+2 stage should in no case be termed as B.A./B.Sc./B.Com. (Pass) degree.”

6. **Information.-** Every University providing instruction through non-formal/distance education shall furnish to the University Grants Commission information relating to the observance of these Regulations in the form prescribed for the purpose. The information shall be supplied to the University Grants Commission within 60 days of the close of the academic Year.

7. The University Grants Commission shall have the right to grant relaxation to a university in regard to the date of implementation or for admission to the first or second degree courses or to give exemption for a specified period in regard to other clauses in the regulations on the merit of each case.”

Regulations 6 and 7 were renumbered as Regulations 7 and 8 at a later stage.

18. Indisputably, Ministry of Human Resource Development (Department of Education) is the Nodal Ministry. The Central Government, therefore, was aware of the provisions of both the Open University Act as also the 1985 Regulations.

The Ministry of Human Resource Development issued a communication on or about 25.11.1988 stating that the degrees/diplomas awarded by the Universities established inter alia by a State Legislature will

stand automatically recognized for the purpose of employment under the Central Government

19. Indisputably, appellant - University established a separate Directorate for Distance Education Programme offering different courses of studies. It, however, started functioning in the year 1991. Offering courses of studies under the OUS is said to be in line with the one followed by the IGNOU in terms whereof anyone who had completed Plus Two (+2) or undergone the preparatory course and passed the written test become eligible to join the undergraduate programme of his or her choice. Similarly, those who had undergone the preparatory course and written test and was of 21 years of age and above became eligible for undertaking the postgraduate course. The said programme is said to have been introduced on an experimental basis. Similar programmes offering courses of undergraduate and post-graduate levels through the OUS were also adopted and followed by various other Universities in India. It is stated that UGC was being apprised of the activities of the appellant - University in regard to instructions/courses offered by it through the non-formal/distance education including the OUS in terms of Regulation 6 of the 1985 Regulations. The Government of Tamil Nadu allegedly at the request of the appellant – University and on the basis of the recommendations made by a Committee constituted by them for

the aforementioned purpose directed that the bachelor and postgraduate degrees and diplomas awarded by the Open Universities be treated on par with those awarded under regular stream for any appointment to the post in public service.

20. Indisputably, the fact that the appellant – University had been granting postgraduate degrees to the candidates concerned although they had not completed three years' course in violation of the Regulation 2 of the 1985 Regulations came to the notice of the UGC as also IGNOU officials. A meeting was held in March 2004. It was agreed in the said meeting that the admission to the Masters' Degree Programme under the OUS without requiring the three years graduate degree qualification be discontinued with effect from July, 2004 as would appear from a letter issued by the IGNOU to the Vice-Chancellor of the appellant – University, the relevant portion whereof reads as under:

“In the meeting, both the undersigned as Chairman DEC and Chairman UGC had emphasized the need to discontinue the Master's Degree Programme without requiring 3 years graduate degree qualification under Open education stream, which is in practice in some Universities of Tamil Nadu.

We drew your kind attention to the UGC regulation 1985 regarding the minimum standard of instructions for the grant of the first degree

through non-formal/distance education dated 25th November, 1985 according to which no student shall be eligible to seek admission to the Master's Degree Programme who has not completed first degree course of three years duration. This clearly stipulates that the practice of admitting students of Master's Degree Programme who have not undergone 3 years undergraduate programme successfully is against the provisions of the above regulation. In view of this, it was agreed in the meeting of March 11, 2004 that new admission to the Master's Degree Programme under open education scheme as prevailing in some Universities in Tamil Nadu should be discontinued with effect from the forthcoming session starting from July 2004. I would feel grateful to receive your confirmation on this matter.”

21. It, however, appears that the degrees obtained after 1.3.1995 upto 20.6.2007 have been recognized by the DEC as would appear from a letter issued by the said DEC dated 21.7.2008, which reads as under:

“This has reference to your application requesting for post-facto recognition of Distance Education Council for programmes offered through distance mode by Directorate of Distance Education of your university.

In this connection, we would like to inform you that based on the recommendation of the expert committee that visited your university, the Chairman, Distance Education Council has accorded post-facto approval to your university for programmes offered through distance mode with effect from 1st March, 1995 to academic year 2006-2007. Prior to March 1995, there was no system for giving recognition to correspondence

courses or distance education programmes and therefore the issue of post-facto approval for such courses during that period does not arise. The certificates issued by the university stand automatically recognized if they were approved by the relevant authorities of the university.

Further, we would also like to inform that, it is the responsibility of the university to follow the norms prescribed by the concerned regulatory bodies or seek their recognition for professional/technical programme/s as per the requirements. Getting approval of concerned statutory apex body for relevant programme/s will be the sole responsibility of the university. The territorial jurisdiction for offering distance education would be as per the Acts and Statutes of your university.
(emphasis supplied)”

22. The question which in the aforementioned situation arises for our consideration is as to whether the DEC had the requisite jurisdiction to grant post-facto approval in terms of its letter dated 21.7.2008.

Before, however, determining the aforementioned question, we may take note of some correspondences also as declared by the UGC in its counter affidavit.

The UGC in its letter No.F.1-75/91 (CPP) dated 30.12.1991 to the Registrar of various Universities regarding application of UGC Regulations

1985, informed them that for admitting candidates in courses for which the First degree was the minimum qualification. the universities may not insist upon the three years duration for the first degree course in respect of candidates who had obtained their First Degree prior to 1985.

Thereafter, UGC vide its D.O. letter No. F.11-4/92 (CPP-II) dated 24.04.1996 informed the Universities of its decision regarding the validity of one year degree course (one-sitting) equivalent to three years regular course of the first degree. The Commission communicated its decision on the said matter:

- “1. According to the UGC Regulations of minimum standards, both formal and non-formal degree courses must be of three years duration.
2. The undergraduate programme has been generally accepted as a three years programme in most of the universities. However, it was noted that in some States, the Universities offer a two-year degree course after 10+2. However, such students are not eligible for admission to the Master’s degree programme.
3. It was desired that the UGC regulations of minimum standards for formal as well as non-formal education be circulated to the universities for compliance.
4. It was decided that the requirement for a three years degree course should also be notified.

5. No private candidate should be permitted to appear for an examination.”

It in the said letter also asked the universities to ensure that the above mentioned decisions be scrupulously followed by them.

In continuation of the said office letter, the UGC, thereafter vide letter F.11-4/92 (CPP-II) dated 14.03.1997 informed the Vice Chancellor's of the Universities as under.

“The degrees of the candidates enrolled for the one time Bachelor's degree programme, upto the year, 1995-96 may be treated as valid. The degree of the candidates declared valid may be treated at par with other degrees of the same university for all purposes including admission to higher degrees and employment”.

Thereafter considering the request and representations received from several candidates regarding the validity of M.A./M.Sc./M.Com. degree (one sitting), the UGC vide its letter No. F.1-30/96 (CPP-I) dated 1st February, 1998 informed the registrars of various universities that:

“no university may be allowed to enroll candidates for one sitting of M.A./M.Sc./M.Com. from the academic year beginning in 1998

onwards and the students already registered may be allowed to complete their course by 30th June, 1999, and the degree awarded to these candidates upto that period may be treated as valid”.

UGC despite requests and representations received from various persons reiterated its earlier decision regarding the validity of M.A./M.Sc./M.Com. Degree (One Sitting) in its letter No. F.1-30/96 (CPP-II) dated 23.07.1998 to the Registrar of the Universities.

Again after considering a number of representations/complaints from various persons, the U.G.C. vide its letter dated 30-06-1999 addressed to the universities reiterated that the candidates who had completed their B.A. under one sitting during the year 1998-99 may be treated as valid. As per the letter, the said degrees were to be treated valid for all purposes including admission to higher degrees and for employment purposes. It also informed the universities that any violation of the said direction would be severely dealt with.

The question as to whether Regulation 2 is repugnant to the provisions of the Open University Act must, therefore, be considered in the aforementioned context.

23. UGC Act was enacted by the Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas Open University Act was enacted by the Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the statement of objects and reasons of Open University Act shows that the formal system of education had not been able to provide an effective means to equalize educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

Was the alternative system envisaged under the Open University Act was in substitution of the formal system is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and informal system is in the mode and manner in which education is imparted. UGC Act was enacted for effectuating co-ordination and determination of standards in Universities. The purport and object for which it was enacted must be given full effect. The provisions of the UGC Act are binding on all Universities whether conventional or open. Its powers are very broad. Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-Section (1) of Section 26 are of wide amplitude. They apply equally to Open Universities as also to formal conventional

universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the co-ordination of work or facilities in universities must be maintained and for that purpose required to be regulated.

The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of the UGC are all pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12A and clauses (a) and (c) of sub-section (2) thereof. Indisputably, as has been contended by the learned counsel for the appellant as also the learned Solicitor General that Open University Act was enacted to achieve a specific object. It opens new vistas for imparting education in a novel manner. Students do not have to attend classes regularly. They have wide options with regard to the choice of subjects but the same, in our opinion, would not mean that despite a Parliamentary Act having been enacted to give effect to the constitutional mandate contained in Entry 66 of List I of the Seventh Schedule to the Constitution of India, activities and functions of the private universities and open universities would be wholly unregulated.

It has not been denied or disputed before us that in the matter of laying down qualification of the teachers, running of the University and the matters provided for under the UGC Act are applicable and binding on all concerned. Regulations framed, as noticed hereinbefore, clearly aimed at the Open Universities. When the Regulations are part of the statute, it is difficult to comprehend as to how the same which operate in a different field would be ultra vires the Parliamentary Act. IGNOU has not made any regulation; it has not made any ordinance. It is guided by the Regulations framed by the UGC. The validity of the provisions of the Regulations has not been questioned either by IGNOU or by the appellant – University. From a letter dated 5.5.2004 issued by Mr. H.P. Dikshit, who was not only the Vice-Chancellor but also the Chairman of the DEC of IGNOU it is evident that the appellant – University has violated the mandatory provisions of the Regulations.

24. The amplitude of the provisions of the UGC Act vis-à-vis the Universities constituted under the State Universities Act which would include within its purview a University made by the Parliament also is now no longer a res integra.

In Prem Chand Jain Anr. vs. R.K. Chhabra [(1984) 2 SCR 883], this court held:

“The legal position is well-settled that the entries incorporated in the lists covered by Schedule VII are not powers of legislation but 'fields' of legislation. *Harakchand v. Union of India* [(1970) 1 S.C.R. 479 at p.489]. In *State of Bihar v. Kameswar* [1952] S.C.R. 889 this Court has indicated that such entries are mere legislative heads and are of an enabling character. This Court, has clearly ruled that the language of the entries should be given the widest scope or amplitude. *Navinchandra v. C.I.T.* [1955] 2 S.C.R. 129 at p. 836. Each general word has been asked to be extended to all ancillary or subsidiary matters which can fairly and reasonably be comprehended. See *State of Madras v. Gannon Dunkerley* [1959] S.C.R. 379 at p. 391. It has also been held by this Court in *The Check Post Officer and Ors. v. K.P. Abdulla Bros* [(1971) 2 S.C.R. 817] that an entry confers power upon the legislature to legislate for matters ancillary or incidental, including provision for avoiding the law. As long as the legislation is within the permissible field in pith and substance, objection would not be entertained merely on the ground that while enacting legislation, provision has been made for a matter which though germane for the purpose for which competent legislation is made it covers an aspect beyond it. In a series of decisions this Court has opined that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature enacting it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature.”

In University of Delhi vs. Raj Singh & ors. [1994 Suppl (3) SCC 516], this Court held:

“13. ...By reason of entry 66, Parliament was invested with the power to legislate on "coordination and determination of standards in institutions for higher education or reach and scientific and technical institutions." Item 25 of List III conferred power upon Parliament and the State legislatures to enact legislation with respect to "vocational and technical training on labour". A six-Judge bench of this Court observed that the validity of State legislation on the subjects of University education and education in technical and scientific institutions falling outside Entry 64 of List I as it then read (that is to say, institutions for scientific or technical education other than those financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance) had to be judged having regard to whether it impinged on the field reserved for the Union under Entry 66. In other words, the validity of the State legislation depended upon whether it prejudicially affected the coordination and determination of standards. It did not depend upon the actual existence of union legislation in respect of coordination and determination of standards which had, in any event, paramount importance by virtue of the first part of Article 254(1).”

In State of T.N. & Anr. vs. Adhiyaman Educational & Research Institute & ors. [(1995) 4 SCC 104], this Court laid down the law in the following terms:

“41. What emerges from the above discussion is as follows:

(i) The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the center under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of Clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the

law made by the center under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the center or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations/ seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the central authority, the State authorities act illegally.”

In State of A.P. vs. K. Purushotham Reddy & ors. [(2003) 9 SCC 564], this Court held:

“19. The conflict in legislative competence of the Parliament and the State Legislatures having regard to Article 246 of the Constitution of India must be viewed in the light of the decisions of this Court which in no uncertain terms state that each

Entry has to be interpreted in a broad manner. Both the parliamentary legislation as also the State legislation must be considered in such a manner so as to uphold both of them and only in a case where it is found that both cannot co-exist, the State Act may be declared ultra vires. Clause I of Article 246 of the Constitution of India does not provide for the competence of the Parliament or the State Legislatures as is ordinarily understood but merely provide for the respective legislative fields. Furthermore, the Courts should proceed to construe a statute with a view to uphold its constitutionality.”

It was observed:

“20. Entry 66 of List I provides for coordination and determination of standards inter alia for higher education. Entry 25 of List III deals with broader subject, namely, education. On a conjoint reading of both the entries there cannot be any doubt whatsoever that although the State has a wide legislative field to cover the same is subject to entry 63, 64, 65 and 66 of List I. Once, thus, it is found that any State Legislation does not entrench upon the legislative field set apart by Entry 66, List I of the VII Schedule of the Constitution of India, the State Act cannot be invalidated.”

UGC Act, thus, having been enacted by the Parliament in terms of Entry 66 of List I of the Seventh Schedule to the Constitution of India would prevail over the Open University Act.

25. With respect, it is difficult to accept the submissions of learned Solicitor General that two Acts operate in different fields, namely, conventional university and Open University. UGC Act, indisputably, governs Open Universities also. In fact, it has been accepted by IGNOU itself. It has also been accepted by the appellant – University.

Reliance placed by Mr. K. Parasaran on Guru Nanak Dev University (supra), in our opinion, is not apposite. The question which arose for consideration therein was as to whether Guru Nanak Dev University was entitled not to treat the degrees awarded by IGNOU as it is not equivalent to three years degree course. Even therein it was noticed:

“...It is true that normally a student cannot enroll for a Master’s degree course unless he has a basic Bachelor’s degree in the chosen subject...”

26. Unfortunately, attention of this Court was not drawn to the Regulations which are imperative in character. The question, as noticed hereinbefore, before this Court therein was the question of equivalence. It has been noticed that the appellant – University did not wish to treat correspondence courses and distance education courses as being the same. It was stated to be a matter of policy. Observations which have been made for holding the degrees granted by appellant – University as valid must be

considered keeping in view the question involved therein, namely, equivalence of degree and not any other question. The questions which have been posed before us did not fall for its consideration. The mandatory regulations were also not brought to its notice. We, therefore, are of the opinion that Guru Nanak Dev University (supra) has no application to the facts of the present case.

27. This Court in Osmania University Teachers Association vs. State of Andhra Pradesh & Anr. [(1987) 4 SCC 671], held as under:

“14. Entry 25 List III relating to education including technical education, medical education and Universities has been made subject to the power of Parliament to legislate under Entries 63 to 66 of List I. Entry 66 List I and Entry 25 List III should, therefore, be read together. Entry 66 gives power to Union to see that a required standard of higher education in the country is maintained. The standard of Higher Education including scientific and technical should not be lowered at the hands of any particular State or States. Secondly, it is the exclusive responsibility of the Central Government to co-ordinate and determine the standards for higher education. That power includes the power to evaluate, harmonise and secure proper relationship to any project of national importance. It is needless to state that such a coordinate action in higher education with proper standards, is of paramount importance to national progress. It is in this national interest, the legislative field in regard to 'education' has been

distributed between List I and List III of the Seventh Schedule.

15. The Parliament has exclusive power to legislate with respect to matters included in List I. The State has no power at all in regard to such matters. If the State legislates on the subject falling within List I that will be void, inoperative and unenforceable.”

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30. 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 standards 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 to role bring about the needed transformation in the academic life of the Universities.”

28. The submission of Mr. K. Parasaran that as in compliance of the provisions contained in Regulation 7, UGC had been provided with information in regard to instructions through non-formal/distance education

relating to the observance thereof by itself, in our opinion, would not satisfy the legal requirement. It is one thing to say that informations have been furnished but only because no action had been taken by UGC in that behalf, the same would not mean that an illegality has been cured. The power of relaxation is a statutory power. It can be exercised in a case of this nature. Grant of relaxation cannot be presumed by necessary implication only because UGC did not perform its duties. Regulation 2 of the 1985 Regulations being imperative in character, non compliance thereof would entail its consequences. The power of relaxation conferred on UGC being in regard the date of implementation or for admission to the first or second degree courses or to give exemption for a specified period in regard to other clauses in the regulation on the merit of each case do not lead to a conclusion that such relaxation can be granted automatically. The fact that exemption is required to be considered on the merit of each case is itself a pointer to show that grant of relaxation by necessary implication cannot be inferred. If mandatory provisions of the statute have not been complied with, the law will take its own course. The consequences will ensue. Relaxation, in our opinion, furthermore cannot be granted in regard to the basic things necessary for conferment of a degree. When a mandatory provision of a statute has not been complied with by an Administrative

Authority, it would be void. Such a void order cannot be validated by inaction.

29. The only point which survives for our consideration is as to whether the purported post facto approval granted to the appellant – University of programmes offered through distance modes is valid. DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. It having accepted in its letter dated 5.5.2004 that the appellant - University had no jurisdiction to confer such degrees, in our opinion, could not have validated an invalid act. The degrees become invalidated in terms of the provisions of UGC ACT. When mandatory requirements have been violated in terms of the provisions of one Act, an authority under another Act could not have validated the same and that too with a retrospective effect. The provisions of UGC Act are not in conflict with the provisions of Open University Act. It is beyond any cavil of doubt that UGC Act shall prevail over Open University Act.

30. It has, however, been argued that Open University Act is a later Act. But we have noticed hereinbefore that the nodal ministry knew of the provisions of both the acts. Regulations were framed almost at the same time after passing of the Open University Act. Regulations were framed at a

later point of time. Indisputably, the regulations embrace within its fold the matters covered under Open University Act also. Submission of Mr. K. Parasaran that in terms of sub-section (2) of Section 5 of the Open University Act a non obstante clause has been created and, thus, would prevail over the earlier Act cannot also be accepted. Apart from the fact that in this case repugnancy of two Acts is not in question (in fact cannot be in question having been enacted by the Parliament and a State in terms of the provisions of the concurrent list) the non obstante clause contained in the Open University Act will be attracted provided the statutes operate in the same field. UGC Act, as noticed hereinbefore, operates in different field. It was enacted so as to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission. Its directions being binding on IGNOU, sub-section (2) of Section 5 of the Open University Act would not make the legal position otherwise. Reliance has been placed upon a decision of this Court in Indian Express Newspapers Pvt. Ltd. vs. Union of India [(1985) 1 SCC 641], wherein it was opined that subordinate legislation must yield to plenary legislation.

The same legal principle has been stated recently in Bombay Dyeing & Mfg. Co. Ltd. (3) vs. Bombay Environmental Action Group & ors. [(2006) 3 SCC 434], wherein this Court held:

“104. A policy decision, as is well known, should not be lightly interfered with but it is difficult to accept the submissions made on behalf of the learned Counsel appearing on behalf of the Appellants that the courts cannot exercise their power of judicial review at all. By reason of any legislation whether enacted by the legislature or by way of subordinate legislation, the State gives effect to its legislative policy. Such legislation, however, must not be ultra vires the Constitution. A subordinate legislation apart from being intra vires the Constitution, should not also be ultra vires the parent Act under which it has been made. A subordinate legislation, it is trite, must be reasonable and in consonance with the legislative policy as also give effect to the purport and object of the Act and in good faith.”

31. There is no quarrel with the aforementioned proposition of law. Regulation 2, however, is not contrary to Open University Act and, thus, the said decisions will have no application.

32. We, therefore, are of the opinion that the High Court is correct in rendering the opinion in the manner it did in its judgment.

33. It is also not a case as has been contended by Mr. K. Parasaran as also Mr. R.V. Kameshwaran, that we should invoke our jurisdiction under Article 142 of the Constitution of India. Writ petitioners – respondents has moved the High Court at the earliest possible opportunity. It is a case of promotion. It is not a case of fresh entry in services. Our judgment would not affect the service of appellant Ramesh. He cannot only be promoted to the post of Principal of the Institute. Even in the earlier round of litigation, the Madras High Court opined:

“9. When all these reasons have been given by the Government for appointing the appellant as the Principal, we see no arbitrariness in the appointment and in particular, when the stand of the University Grants Commission is clear that on the date when the appellant obtained his M.A. Degree, it was possible for a person who did not have the basic degree to obtain the M.A. degree, the order appointing the appellant as the principal cannot be quashed.”

In view of a long pending litigation, in our opinion, it will be unjust to deprive the writ petitioner – respondent from his lawful demand. We, therefore, are of the opinion that it is not a case where discretionary jurisdiction of this Court under Article 142 can be invoked.

34. With the aforementioned reasons, we find no merit in these appeals.

The appeals are dismissed accordingly. No costs.

.....J.
[S.B. Sinha]

.....J.
[Dr. Mukundakam Sharma]

NEW DELHI;
FEBRUARY 25, 2009