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

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Date of Decision: 31.07.2013

+ W.P.(C) 4297/2012

PRESIDENCY EDUCATIONAL TRUST

..... Petitioner

Through: Mr Ajay Kapur, Sr. Adv with Mr Harshbir
Singh Kohli and Mr Dinesh Kumar, Advs.

versus

INDIRA GANDHI NATIONAL OPEN UNIVERSITY..... Respondent

Through: Mr Aly Mirza, Adv.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

On 26.05.2008, a Memorandum of Understanding was executed between IGNOU, The American Hotel and Lodging Education Institute (AH&LEI) and the petitioner-Presidency Educational Trust to offer a three year programme in B.A. (International Hospitality Administration). The petitioner started admitting students to the said course in April, 2012. On 30.05.2012, AH&LEI received a communication asking for the admissions to the said course to be kept in abeyance and the same was forwarded to the petitioner on 12.06.2012. On receipt of the said letter, the petitioner wrote to the University expressing grievance with respect to its

21

decision to keep the admission in abeyance. Since there was no response from the University, the petitioner came to this Court by way of this writ petition.

2. When the writ petition came up for preliminary hearing on 20.07.2013, Shri Sandeep Sethi, senior counsel, who represented the University, stated, on instructions, that University had no objection with regard to students who had been admitted up to 12.06.2012. It was also agreed between the parties that no further admission would be made from that day onwards. However, the said order did not address the issue of students who were admitted after 12.06.2012, but before 20.07.2012.

3. In its counter-affidavit, the respondents-University has stated that it is not within its mandate to conduct face to face programme beyond its campus in collaboration with institutes such as the petitioner or to enter into MOUs or other arrangements for imparting education by way of face to face programmes.

4. Almost similar issues came up for consideration before this Court in HINDUSTAN AVIATION ACADEMY VS. THE INDIRA GANDHI NATIONAL OPEN UNIVERSITY, W.P(C) No. 5789/2012 and connected matters, decided on 23.07.2013 and the following view taken by this Court is pertinent:-

“16. It would thus be seen that the University was set up for imparting higher education through an alternative system of education which dispensed with the requirements of attendance in classrooms, since a large number of persons otherwise desirous of taking higher education were unable to get such education on account

22

of their inability to attend the regular classrooms. It was felt that such an alternative system would prove to be cost-effective, besides equalizing the opportunities to receive higher education through the mode of distance education.

18. Indira Gandhi National Open University Act, 1985, contains no provision for setting up colleges having classrooms on the lines of regular colleges, where attendance to the classes is a mandatory requirement for the students and if they do not attend specified percent of the total classes, in a term/year, they are not allowed to sit in the examination conducted by the university/college. In fact, imparting education through regular classrooms is not at all envisaged in the Act. Therefore, it is not to the university to impart education through the system of regular classrooms where the students are mandatorily required to attend such classes. Though, the university is empowered to set up 'study centres' as defined in Section 2(o) of the Act, such centres cannot impart education through regular classrooms, their purpose being only to advise or counsel the students or render any assistance which they require for the purpose of pursuing their studies through Distance Education System. Such study centres cannot be converted into regular colleges where the students are required to attend the classes during the hours prescribed by the university/college for the purpose. The very definition of 'study centre' as given in the Act, is a clear indicator with respect to the role such centres are expected to play in relation to the education to be imparted by the university.

19. Section 2(e) of the said Act defines "Distance education systems" 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. It would therefore be difficult to dispute that the university had no legal authority to enter into any agreement/MoU/ arrangement,

to set up study centres/ institutions/ colleges, for imparting education by way of a face to face programme, where the students are required to attend regular classes and are taught in person, nor can the university of its own impart education by way of such a classroom programme. The university is mandated, by its Charter i.e. the Act by which it was set up, to impart education only through open school/distance mode of learning.

24. Under the MoU, the petitioner institutes were entitled to admit student to the courses which the MoU permitted them to offer. Therefore, suspension of admission by way of communications dated 9th August, 2012, 17th August, 2012 and 22nd August, 2012 could not have been directed without first terminating the MoU, pursuant to which the students are stated to have been admitted. In any case, the respondent IGNOU being State within the meaning of Article 12 of the Constitution, it could not have suspended admission to the programmes being offered by the petitioner Institutes without following the principles of natural justice which required issue of a show cause notice followed by an opportunity of hearing to the petitioner Institutes.

32. More importantly, if the university had decided on 8.5.2012 and/or 31.5.2012 to suspend admission for the academic year 2012-2013, it was duty bound to issue advertisement in leading newspapers informing public at large that it had suspended admissions for the year 2012-2013 and any person taking admission with the petitioners institutes would be doing so at his own peril. This was necessary considering the fact that in the previous years, the university itself had been advertising these programmes besides issuing registration numbers to the students admitted in the preceding years and conducting examinations for them."

The next question which arose for consideration is as to what happens to the students, who were admitted by the institute prior to 20.07.2012.

24

Admittedly, even while addressing communication dated 31.05.2012 to AH&LEI, the University did not advertise in the newspapers that it had directed the institutes with which it had entered into arrangements such as MOU for imparting education by way of face to face programmes to keep the admission to such programmes in abeyance, nor was any such public notice displayed on the website of the University. As a result, the candidates seeking admission to such face to face programmes would not be aware of the order of the University keeping such programmes in abeyance. Had the University issued public notices cautioning against taking admission to such programmes, probably it would not have been possible for institutes such as the petitioner to admit students on receipt of communication issued by the University.

5. The MOU executed in this case admittedly was for a period of five years and came to be prematurely terminated without given any show cause notice and/or opportunity of hearing to the institutes who were party to the said MOU. This is yet another reason why the University should at least protect the interests of the students who have already taken admission with the petitioner-institute:

6. In these circumstances, the writ petition is disposed of with the following directions:

- (i) the petitioner shall submit the list of students admitted by it for the academic year 2012-2013, to the

28

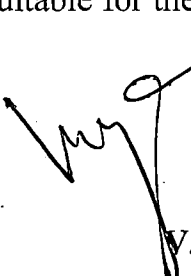
respondent-university, within eight weeks, along with the requisite documents such as admission forms, copies of fees receipts issued to them and shall also remit, within that period, the fees and other charges which the institute was required to pay to the university in terms of the MoU pursuant to which the students were admitted by it for the academic year 2012-2013.

- (ii) The University shall verify within four weeks thereafter, the documents submitted by the petitioner institutes and shall also be entitled to require the students whose names find mention in the list furnished by the petitioners institutes to appear before its officers for the purpose of verification by the university. The students who are found to have been genuinely admitted by the petitioners during the academic year 2012-2013, will be issued registration numbers etc and other documents required for the purpose within two weeks of completing the verification process.

26

- (iii) If the petitioner institutes have collected fees from the students for the academic year 2013-2014, such fee shall be refunded by them to the students within a period of four weeks from today.
- (iv) The respondent university shall hold examinations for the academic year 2012-2013, and those students to whom registration numbers are issued by the university, shall be permitted to appear in the said examination. The examination shall be held within eight weeks of issuing the registration numbers.

The learned counsel for the University states that since they are not running this course at all even through ODL system, they have not admitted any student to the aforesaid course. He also submits that completion of the aforesaid course requires some practical tests which the students have to clear before they can get the degree of the aforesaid course. The University shall make necessary arrangement with some college/University/study centre, suitable for the purpose of practical tests for such students.


V.K. JAIN, J

JULY 31, 2013

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