



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7339 OF 2023

SHRADDHA
KAMLESH
TALEKAR

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1. Symbiosis Open Education Society
and Symbiosis Skills and Professional
University
Through its Principal Director,
Pro Chancellor,
Dr. Swati Shantaram Mujumdar

2. Dr. Swati Shantaram Mujumdar
Age 53 years,
being – Principal Director,
Having address at
Symbiosis Open Education Society,
Pune, Open Education Society,
1065-B, Symbiosis Bhavan,
Gokhale Cross Road, Model Colony,
Pune – 4111016.

...Petitioners

Versus

1. University Grants Commission,
Bhahadur Shah, Zafar Marg,
New Delhi – 110002,
(Email :contact.vge@nic.in)
2. Union of India,
(Through the Ministry of Education)
[Summons to be served on the Learned
Government Pleader appearing for
State of Maharashtra under Order
XVII, Rule 4, of the Code of Civil
Procedure, 1908.]
3. Secretary,
Ministry of Skill Development &

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Entrepreneurship,
Kaushal Bhawan, Near Leela Palace Hotel,
New Moti Bagh, New Delhi – 110023

...Respondents

Mr. Ravi Bharadwaj a/w. *Mr. Ravindra Keshavrao Adsure, Bhushan Bhadgale i/b Mr. Sidheshwar Biradar, Advocates for the Petitioners.*

Mr. Rui Rodrigues a/w. *Mr. Jainendra Sheth, Advocates for the Respondents.*

**CORAM: B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

Reserved on : May 06, 2024

Pronounced on : June 28, 2024

JUDGEMENT: (Per, Somasekhar Sundaresan, J.):

1. Rule. By consent of parties, Rule is made returnable forthwith, and taken up for hearing and final disposal.

Introduction and Context:

2. The challenge in this Writ Petition is to the constitutional validity of four provisions contained in the *University Grants Commission (Open and Distance Learning Programmes and Online Programmes) Regulations, 2020* (“***Distance Learning Regulations***”),

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subordinate law made under the *University Grants Commission Act, 1956* (“*UGC Act*”).

3. The provisions under challenge stipulate two entry barriers for offering undergraduate and postgraduate programmes (collectively, “*programmes*”) through the ‘open and distance learning’ (“*ODL*”) mode and the ‘online’ (“*OL*”) mode. First, any ‘Higher Educational Institution’ (“*HEI*”)¹ must meet a certain basic accreditation score or ranking as a condition precedent for offering programmes through the ODL and OL modes. Second, the programme proposed to be offered through the ODL or OL mode should also be on offer in the ‘conventional mode’² i.e. through face-to-face interaction between the teacher and the learner in the regular classroom environment, and one batch should have passed out from such programme.

4. Symbiosis Open Education Society (“*SOES*”) is the “sponsoring body”³ of the Symbiosis Skills and Professional

¹ Defined in Regulation 2(n) of the Distance Learning Regulations, to mean universities and deemed universities under the UGC Act.

² Defined in Regulation 2(f) of the Distance Learning Regulations

³ Defined in Section 2(xxii) of the SSPU Act

University (“**SSPU**”), under the *Symbiosis Skills and Professional University Act, 2017* (“**SSPU Act**”), a State legislation. Under this law, SSPU is meant to be self-financed (without funding from the Government of Maharashtra). However, in respect of academic standards, SSPU is required to comply with norms and conditions stipulated by “regulatory bodies”⁴ which brings the University Grants Commission (“**UGC**”), the author of the Distance Learning Regulations, into the picture.

5. SSPU is a “skill university”⁵, with a focus on offering programmes focused on skill development and employment. For instance, a Bachelors of Business Administration programme, an undergraduate degree could have a focus on retail marketing or on ports and container terminals. Such programmes are meant to provide a focus on development of employable skills, and are currently being offered in the conventional mode. SSPU is desirous of offering some of these programmes through the ODL mode.

⁴ Defined in Section 2(xix) of the SSPU Act

⁵ A “skill university” is understood to be a HEI that offers programmes that are specifically skill-based, job-oriented and of an applied nature. Skill universities offer programmes that have a higher job potential and employability in the market. The degrees they award need to conform to the National Skills Qualification Framework, authored by Respondent No. 3.

However, SSPU is unable to meet the accreditation norms stipulated in the Distance Learning Regulations, which is the underlying reason for the challenge in this Writ Petition.

6. According to the Petitioners, the requirement for accreditation or ranking is *per se* arbitrary and unreasonable. That apart, according to the Petitioners, such a requirement should not apply to skill universities, because the parameters by which traditional HEIs are currently being accredited do not lend themselves as a fair means for assessing skill development programmes appropriately. The Petitioners are also challenging the requirement to offer the same programmes in the conventional mode, with one batch having passed out. The Petitioners submit that the UGC itself has resolved to remove the requirement of one batch passing out, but the formal amendment of the Distance Learning Regulations has not yet been carried out.

7. The Distance Learning Regulations are a self-contained regulatory framework to govern the provision of ODL and OL programmes by HEIs. Under Regulation 1(3) of the Distance

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Learning Regulations, the UGC has the powers to exempt any HEI from compliance with the stipulated norms. As an alternative to challenging the constitutional validity of the Distance Learning Regulations, the Writ Petition seeks a direction to the UGC to grant an exemption from compliance with the provisions under challenge, taking into account, the character of SSPU as a “skill university”.

Array of Parties:

8. Against this backdrop, the array of parties may be noticed. SOES is Petitioner No. 1 and Dr. Swati Shantaram Majumdar, Principal Director, SOES is Petitioner No. 2. UGC is Respondent No. 1. The Union of India, through the Ministry of Education, Government of India is Respondent No. 2. The Secretary, Ministry of Skill Development and Entrepreneurship is Respondent No. 3.

9. Respondent No. 3 was added pursuant to an order of this Court dated 10th April, 2024 (at the fag end of the proceedings) only to examine if that ministry could throw better and nuanced light on the accreditation parameters that are currently in vogue, being a misfit for accreditation of skill universities. It became apparent from

the material on record that that ministry had appointed expert working groups precisely to address regulatory norms for skill universities.

Relevant Provisions under Challenge:

10. The challenge on the ground of constitutional validity, is to the following provisions contained in the Distance Learning Regulations, which are extracted below:

Regulation 3(A)(i)

3. Institutional Level Eligibility Criteria.—

(A) Open and Distance Learning Mode: Any Higher Educational Institution, may apply for offering programmes through the Open and Distance Learning mode, which fulfils the following conditions, namely:-

(i) shall be accredited by the National Assessment and Accreditation Council with minimum score of 3.01 on a 4-point scale;

or

having rank in top-100 in University category of National Institutional Ranking Framework, at least once in two preceding cycles (at the time of application):

*Provided that **the NAAC and NIRF Ranking requirements shall be valid for next three academic years i.e. 2021-2022, 2022-2023 and 2023-2024. Thereafter shall be reviewed by the Commission for the academic session 2024-2025 (session beginning July 2024) and onwards:***

Provided further that in view of unprecedented circumstances due to

COVID-19 pandemic, the Higher Educational Institutions recognised by the University Grants Commission to offer programmes in Open and Distance Learning mode till the academic session 2019- 2020 to enable them to reach the prescribed quality National Assessment and Accreditation Council benchmark and had submitted an undertaking to the effect that they will attain a National Assessment and Accreditation Council score of 3.26 on a 4-point scale before the end of academic session July 2019 - June 2020, and have also submitted an application to the National Assessment and Accreditation Council till 29 February, 2020, shall continue to offer programmes, already recognised for the academic session 2019-2020, in Open and Distance Learning mode for a period of one year, academic session 2020-2021, starting from July 2020. Thereafter these Higher Educational Institutions shall be required to attain the eligibility mentioned at sub-clause (i) above:

Provided also that the NAAC condition mentioned above shall not be applicable to the Open Universities already recognised by the Commission for offering Open and Distance Learning Programmes for the academic year 2019-2020. These Open Universities shall be required to submit an affidavit that they shall obtain NAAC accreditation prior to the completion of the current recognition period, as specified in the Commission order already issued, failing which the Commission shall not accord further recognition to the programmes of such Open Universities under Open and Distance Learning mode:

Provided also that Open Universities not recognised by the Commission under UGC (Open and Distance Learning) Regulations, 2017 shall be required to obtain National Assessment and Accreditation Council (NAAC) accreditation within one year of their becoming eligible for accreditation by the National Assessment and Accreditation Council (NAAC), failing which the Commission shall not accord further recognition to the programmes of such Open Universities under Open and Distance Learning mode:

Provided also that an Institution Deemed to be a University under

section 3 of the University Grants Commission Act, 1956 shall offer programmes in Open and Distance Learning mode in accordance with the extant Deemed to be University Regulations and also in compliance to the provisions of these regulations;

Regulation 3(B)(b)(ii)

Any Higher Educational Institution, may apply for offering programmes through the Online mode, which fulfils the following conditions, namely:-

- (i) shall be in existence for at least three years; **and**
- (ii) **shall be accredited by the National Assessment and Accreditation Council with minimum score of 3.01 on a 4-point scale;**

or

shall be in the top-100 in University category in the National Institutional Ranking Framework for at least once in last two preceding cycles (at the time of application):

Provided that **the NAAC and NIRF Ranking requirements shall be valid for next three academic years i.e. 2021-2022, 2022-2023 and 2023-2024. Thereafter shall be reviewed by the Commission for the academic session 2024-2025 (session beginning July 2024) and onwards:**

Provided further that the condition mentioned at item (ii) of sub-clause (b) shall not be applicable to the Open Universities already recognised by the Commission for offering Open and Distance Learning programmes or Online programmes for the academic year 2019-2020. These Open Universities shall be required to submit an affidavit that they shall obtain National Assessment and Accreditation Council (NAAC) accreditation prior to the completion of the current recognition period, as specified in the Commission order already issued, failing which the Commission shall not accord further recognition to the programmes of such Open Universities under Online mode:

Provided also that a Higher Educational Institution having National Assessment and Accreditation Council (NAAC) valid score equal or more than 3.26 or having rank in Top-100 in University category of National Institutional Ranking Framework at least twice in three preceding cycles shall be permitted to enroll International Learners also:

Provided also that an Institution Deemed to be a University under section 3 of the University Grants Commission Act, 1956 shall offer programmes in Online mode in accordance with the extant Deemed to be University Regulations and also in compliance to the provisions of these regulations.

Regulation 4(B)(ii)

(B) Provisions for Open and Distance Learning Mode:

*(i) *****

(ii) A Higher Educational Institution shall be eligible to offer only those degree programmes at undergraduate and postgraduate levels and post graduate diploma programmes, which it has already been offering in conventional mode of classroom teaching and from which at least one batch has passed out:

Provided that this sub-clause shall not be applicable to Open Universities:

Provided further that Science based programmes, which require hands-on experience, experimental setup, shall be offered only by the Higher Educational Institutions having NAAC score of 3.26 and above or by the Open universities or by the Higher Educational Institutions having rank in top-100 in University category of National Institutional Ranking Framework (NIRF), at least twice in three preceding cycles:

Provided also that the Science based programmes shall be offered from the Head Quarters and/or only from such Learner Support Centres which are offering same programme under conventional mode atleast for seven years.

Regulation 4(C)(ii)*(C) Provisions for Online Mode:**(i) ******

(ii) A Higher Educational Institution, shall be eligible to offer only those degree programmes at undergraduate and postgraduate levels and post graduate diploma programmes, which it has already been offering in conventional mode of classroom teaching or in Open and Distance Learning mode and from which at least one batch has passed out:

Provided that any programme requiring practical or laboratory course as a curricular requirement, shall be prohibited through Online mode, except in cases where practical component is limited to programming and coding including software tools.

[Emphasis Supplied]

11. From a plain reading of the foregoing provisions, it would be apparent that:-

- a) Under Regulation 3(A)(i), any HEI may apply for offering programmes through the ODL mode if it has an accreditation from the National Assessment and Accreditation Council (“**NAAC**”) of not lower than 3.01 on a 4-point scale;
- b) Alternately, the HEI ought to rank among the top 100 in the “university” category in the ranking assigned under the

National Institutional Ranking Framework (“**NIRF**”) at least once in the two cycles preceding the application made by the institution;

- c) The same criteria also apply under Regulation 3(B)(b)(ii) for offering programmes through the OL mode;
- d) Regulation 4(B)(ii) permits an HEI to offer through the ODL mode, only those programmes that it has already been offering in the conventional mode, with at least one batch having passed out; and
- e) Regulation 4(C)(ii) permits an HEI to offer through the OL mode, only those programmes that it has already been offering either in the conventional mode or in the ODL mode, and from which at least one batch has passed out.

12. The stipulation of the aforesaid standards is self-explanatory. The first eligibility condition is one relating to the quality of the institution while the second relates to experience of the institution in offering the programme in question.

13. Unless an HEI meets a certain quality threshold as an institution (accreditation score of at least 3.01 on a 4-point scale) in the conduct of its conventional classroom programmes, the Distance Learning Regulations do not consider the HEI to be worthy of being permitted to offer programmes through the ODL or OL mode. In short, as a legislative policy choice, HEIs that do not meet the quality threshold in the conventional classroom mode are disallowed to take on the more challenging ODL and OL modes, which do not entail face-to-face classroom interaction.

14. As regards the eligibility condition imposed in relation to the programmes proposed to be offered, by ensuring that the same programme has already been offered in the conventional mode and at least one batch has passed out, the Distance Learning Regulations stipulate a proven track record in delivery of the programme by the HEI in the conventional mode.

15. Even a plain reading of the provisions and their evident import would show that the policy choice would not lend itself to

interference on the premise of being *ex facie* arbitrary. Such a policy choice – of ensuring a basic institutional quality and a basic proven track record with the programme in question – cannot be lightly assailed as being unconstitutional. Even if one were to consider the stipulations to be unwise, for them to be regarded as unconstitutional, the stipulations ought to be palpably and manifestly devoid of a rationale for them to be arbitrary.

Legislative and Policy History:

16. It would be fruitful to examine the history of the aforesaid policy choice. The Ministry of Human Resources Development, Government of India, constituted a Committee under the Chairmanship of Prof. N.R. Madhava Menon (“**Menon Committee**”) by an Office Memorandum dated 5th August, 2010, with the following terms of reference:

To harmonize the legal position in respect of distance education programmes in various disciplines, as they concern the UGC Act, AICTE Act and IGNOU Act

To recommend framework for approval of Distance Education Courses/institutions within functional jurisdiction of UGC, AICTE and DEC in dealing with the subject matters of distance education

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To recommend outcome benchmarks for distance education systems which will facilitate equivalence with conventional modes

To recommend guidelines for processing of the approval of technical programmes through distance and mixed mode

To suggest ways towards enhanced contribution of Distance Education to reach the targeted Gross Enrolment Ratio (GER) of 30% by 2020

[Emphasis Supplied]

17. The Menon Committee conducted detailed discussions with the regulators in the field (including the UGC) and submitted a report dated 4th April, 2012, with specific recommendations to enhance enrolment in higher education through distance education, without compromising on quality. The Committee found a convergence of the ODL mode and the conventional mode worldwide, including in India, facilitated by technology. For instance, the Indira Gandhi National Open University (“**IGNOU**”), which was primarily an open university, had started offering education in the conventional classroom mode just as open universities in other parts of the world had started issuing full-time residential programmes in their own campuses or in collaboration with other public and private

institutions. It was noted that over 50% of the programmes in open universities worldwide were being offered through the dual mode.

18. The Committee quoted with approval, the following extract from a book titled ‘*Quality Assurance of Distance Education*’ by Prof. V.S. Prasad, a veteran in ODL and the assessment systems of the NAAC:

“The distance education system in India can be described as one system, many models. There is great variation in quality assurance policies, systems and practices of these institutions. At one end of the spectrum we have IGNOU and SOUs which do have quality assurance practices like good study materials, student support services, technology infrastructure etc. At the other end of the spectrum, many institutions are offering sub-standard DE programmes with large enrolments by franchising delivery. Some of them are also offering on-line education and training programmes. Mechanisms to ensure the quality of these programmes are yet to be developed.”

[Emphasis Supplied]

19. Concerns about quality and the desire to enhance the gross enrolment ratio lie at the heart of the recommendations of the Menon Committee. One of the key conclusions of the Menon Committee was that the assessment and accreditation systems available in India were in initial stages of development and were yet to make the desired level

of impact. It was noted way back in 2012 by the Menon Committee that every conventional university and institution, including technical and professional ones should be encouraged to switch over to a dual mode of imparting education by offering ODL programmes. The infrastructure already available with them was to be put to use as study centres for practical instructions to augment the ODL mode. It was felt that enrolment of students in higher education could be enhanced by two to three times by this approach.

20. As regards the legal framework to govern such a thrust, it was noted that prior to the *Indira Gandhi National Open University Act, 1985* (“*IGNOU Act*”), the UGC was the sole regulator for the entire higher education system including technical education and distance education. The IGNOU Act gave IGNOU the responsibility for development, coordination and determination of standards to be applied for the ODL mode.

21. The *All India Council for Technical Education Act, 1987* (“*AICTE Act*”) was passed to set up the All India Council for Technical Education (“*AICTE*”) with the objective of developing the technical

education system throughout the country. The AICTE Act did not deal with distance education, and excluded universities (regulated by UGC) from its jurisdiction. However, AICTE was empowered to enforce quality parameters of technical education in universities, which would thereby give it an implied mandate to stipulate standards in respect of technical education imparted through the ODL mode as well.

22. In 1991, IGNOU established a Distance Education Council (“*DEC*”) for regulatory oversight of the ODL system. The Committee noted that the DEC, not being a statutory body, did not enjoy statutory powers to enforce its regulations. Therefore, the regulatory oversight of ODL was amorphous – notifications by the Government of India stipulated that for purposes of employment under the Central Government, degrees acquired through distance education would be recognised, provided such degrees had been approved by the DEC, and wherever necessary, by the AICTE. The DEC too had developed its own guidelines for distance education but, in the opinion of the Menon Committee, due to the lack of adequate manpower, technological support and statutory power, the DEC left much to be

desired. On the basis of approval by the DEC, many universities and institutions started offering technical education without approval of the AICTE. In the words of the Menon Committee, “the proliferation of such ODL institutions, behaving like degree dispensing means, has affected the credibility and acceptability of such programmes adversely”. Consequently, many employers had refused to treat the ODL degrees on par with conventional degrees. The Bar Council of India had gone to the extent of disapproving applicants for law education if their first degree had been obtained through ODL.

23. The Menon Committee also adversely commented on the propriety of IGNOU (itself was an open university) controlling the standards of compliance for other open universities through the DEC. Consequently, the Menon Committee recommended setting up an independent regulatory authority to govern distance learning in the form of an independent statutory body that may be called the Distance Education Council of India (“*DECI*”). The Menon Committee’s vision was to eventually convert multiple education regulators such as UGC, AICTE and DECI into a single over-arching education regulator. Towards this end, the Menon Committee even

drafted a Distance Education Council Bill to be passed into law.

24. The Menon Committee recommended that as a first step, a conventional university should be granted recognition by the DECI only for such programmes as have been offered by them in the conventional mode. As regards, the OL mode, the Menon Committee recommended that prior approval of the DECI must be mandated.

25. It is noteworthy that the Government of India, in-principle, accepted the Menon Committee's recommendations even while rejecting the creation of a separate regulatory authority for distance education. By an order dated 29th December, 2012, passed under Section 20(1) of the UGC Act (power to issue directions on matters of policy), the Department of Higher Education, the Ministry of Human Resources Development, Government of India directed that the UGC and AICTE would develop appropriate regulations for maintaining standards for the ODL programmes, in compliance with recommendations contained in the Menon Committee's report. Towards this end, the order listed the "actionable points" on the Menon Committee's recommendations to indicate which recommendations had been accepted. It was also directed that the

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DEC would be dissolved in terms of a resolution already passed by IGNOU's Board of Management.

26. A couple of these “actionable points” that were essentially decisions on matters of policy, are noteworthy for purposes of this Writ Petition, namely, that: (i) every conventional university was meant to be encouraged to switch to a dual mode of education by offering ODL programmes in addition to the conventional programmes to better utilise the infrastructure already available with it; and (ii) a conventional university would be granted permission only for such ODL programmes as are being offered through the conventional mode, with the syllabus and evaluation parameters being common for both the conventional and the distance learning mode.

27. Consequently, the UGC formulated the *University Grants Commission (Open and Distance Learning) Regulations, 2017* and the *University Grants Commission (Online Courses or Programmes) Regulations, 2018*. With effect from 4th September, 2020, the aforesaid two predecessor regulations were superseded and replaced by the Distance Learning Regulations, four provisions of which, are

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under challenge in this Writ Petition.

Constitutional Validity Tested:

28. It is against this backdrop that one would need to test if the impugned provisions stipulating eligibility criteria are manifestly arbitrary, unreasonable and unconstitutional. The Petitioners' primary contention is that stipulating the NAAC accreditation threshold is *per se* unreasonable and in conflict with the desire to enhance the enrolment in higher education. According to the Petitioners, the stipulation of a specific minimum accreditation score by the NAAC or the NIRF ranking has no nexus with the subject matter of offering programmes in ODL and OL modes. According to the Petitioners, the actionable points directed by the Central Government did not include a stipulation of a minimum NAAC accreditation as an entry norm, and the introduction of such a norm by the UGC is unwarranted.

29. We are unable to agree with the contention that the stipulation of quality control standards in the form of a minimum accreditation score or ranking, is *per se* arbitrary, or that it is without

nexus to the regulatory objective of the Distance Learning Regulations. From a review of the record and the policy history for the provisions, it is evident that the lack of quality control mechanisms had been identified to be a serious threat to the utility of ODL programmes in enhancing enrolment into higher education in Indian society. The Menon Committee has analysed this issue threadbare. It is true that the Central Government issued directions on matters of policy emanating from the Menon Committee's report, but that does not mean that any facet on which the Central Government did not issue a policy direction is outside the domain of the UGC to legislate as a norm. The Central Government indeed rejected the recommendation for setting up an over-arching education regulator to subsume the UGC, the AICTE and others. However, in the absence of a positive rejection of any other facet of the Menon Committee's recommendation as a matter of a policy direction, we cannot agree that the UGC is without power to stipulate an entry-level quality control for HEIs that desire to offer programmes on ODL and OL platforms.

30. Both the NAAC accreditation and the NIRF ranking present empirical and objective tools to measure institutional quality. Therefore, such measures bring in the ability to stipulate a measure to determine if an institution should be allowed to offer programmes through the ODL and OL modes i.e. in a teaching environment that is more challenging than a conventional classroom. Therefore, it would stand to reason that if an institution is poorly rated in the conduct of programmes even in the classroom mode, it is reasonable to not permit it to take on the even more challenging platform of ODL and OL modes.

31. Therefore, we are not inclined to accept the argument that the introduction of a NAAC accreditation or an NIRF rating as being *per se* unreasonable and arbitrary. Perhaps an expert may critique the stipulation as being unwise, but that would not mean that the stipulation is arbitrary and unreasonable to the point of being rendered unconstitutional.

32. As regards the stipulation that the same programme as proposed in the ODL mode, must also be offered in the conventional

mode, with at least one batch having passed out, we do not find the same to be irrational and disproportionate. In our opinion, this norm is nothing but a requirement that the HEI must demonstrate “proof of concept” in offering a programme. If at least one batch has passed out from the same programme in the conventional mode, it would validate a track record for the HEI in conducting that programme with market acceptability for it, which would give a greater assurance of quality in offering it in the more-challenging ODL and OL modes.

33. Therefore, the essence of these requirements may be stated thus: if the HEI meets the minimum quality threshold (evidenced by its accreditation or ranking), and also has validated its offering with proven experience in offering the programme with one batch having passed out, it would be regarded as a safe provider of the educational programme in the ODL and OL modes. This is a rational and reasonable policy choice that has been reduced to legislative stipulations in the impugned provisions contained in the Distance Learning Regulations. In our opinion, such a policy choice does not lend itself to being regarded as palpably irrational, unreasonable or arbitrary, for them to be struck down as being *ex facie*

unconstitutional, as canvassed by the Petitioners.

Valid Legislation; Inappropriate Accreditation Process:

34. Having found that the requirement of an accreditation or ranking may be validly imposed, we reviewed the regulatory framework governing the process for such accreditation and ranking.

35. Accreditation by NAAC is governed by the *University Grants Commission (Mandatory Assessment and Accreditation of Higher Educational Institutions) Regulations, 2012* (“**UGC Accreditation Regulations**”), a subordinate law notified by the UGC. Under these Regulations, the term “assessment” is defined in Regulation 2(c) as the process of ascertaining or verifying the capabilities of an HEI in terms of physical infrastructure and human resources prior to the commencement of its academic programmes. The term “accreditation” is defined in Regulation 2(a) as the process of quality control in higher education whereby, as a result of evaluation or assessment or by any other scientific method, an HEI or any programme conducted in an HEI is recognised as conforming to quality benchmarks determined by the UGC.

36. Upon a careful consideration of the record with the assistance of the learned counsels for the parties, what stands out is that the current NAAC accreditation process is inappropriate for application in accreditation of a skill university such as SSPU. Worse, such inappropriateness is not only well acknowledged by the Respondents, but it is also sought to be addressed by the Government of India with measures being adopted to resolve the problem. It is another matter that no remedial steps have actually been implemented.

37. We called for a chart from the Petitioners to explain their submission that the parameters that the NAAC currently uses for rating traditional universities are a misfit and inapplicable to rating of skill universities. Likewise, we called for a tabulated response from the UGC to deal with the contentions in this regard. From a review of the same, we are of the opinion that the accreditation criteria in use by the NAAC for traditional universities is evidently not totally appropriate for a skill university.

38. For example, if universities are rated on their ability to

attract pure scientists with strong academic research credentials into its faculty, it would be totally appropriate to apply that parameter to an Indian Institute of Technology. However, for a skill university, the parameter may be inappropriate, since such a university ought to be assessed on its ability to attract faculty with industrial experience to be more apt in imparting practical skills to the students. Likewise, a traditional university should be assessed on its ability to provide a pure research environment to attract pure scientists to campus. In contrast, a skill university should be assessed on its ability to attract scientists with a focus on applied technological research to its campus. The focus of a traditional university would be to prepare its graduates to the next higher level of academic pursuit while the focus of a skill university would be on making its graduates market-ready for employment in a skilled job. A pure scientist would be less keen to join a skill university while a technologist would be more keen to engage with a skill university. Such vital differences would mean that there cannot be a one-size-fits-all approach. It is an admitted position that the NAAC accreditation process does not make any such distinction.

39. It is in this backdrop that an order dated 11th October, 2022, passed by the Ministry of Skill Development & Entrepreneurship (Respondent No. 3) gains significance. This order acknowledges the need for a differently-nuanced content in the regulatory framework for skill universities. Three working groups were constituted, and SSPU was made a member of two of them. One of the working groups was meant to suggest a distinct regulatory framework on aspects of eligibility to induct students, and key differentiators from traditional universities. The other working group was to suggest differential faculty norms for skill universities, with specific requirements of vocational and industrial experience.

40. The Petitioners have also brought on record their repeated efforts in engaging with the UGC and the NAAC to highlight the challenges faced in applying the parameters for accreditation of traditional universities to skill universities. The Petitioners have made actual suggestions for variance in the weightage assigned to specific parameters when processing accreditation of skill universities in order to get the UGC and the NAAC to move away from a one-size-fits-all approach and make the accreditation more objective for

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accreditation of skill universities.

41. It is also a matter of record that the Department of Higher Education, Ministry of Education, Government of India (Respondent No. 2) constituted an “Overarching Committee” which has submitted its report in November 2023 titled ‘*Transformative Reforms for Strengthening Assessment and Accreditation of Higher Education Institutions in India*’. This Committee had been constituted with the specific mandate to recommend how the accreditation process could be strengthened, taking into account the “*plurality of all-encompassing information (much of which may not be completely applicable for diverse categories of HEIs) as well as the long and cumbersome process for collection of information for the accreditation*”.

42. One of the specific reforms proposed by this Committee is that “*the heterogeneity of HEIs in the country*” be considered, to “*categorize them based on their orientation / vision and heritage / legacy, and then seek information from the HEIs that are appropriate for their category (rather than a one-size-fits-all model in vogue currently)*”.

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43. In short, the record indeed makes it evident that Respondent No. 2 and Respondent No. 3 have acknowledged that the current methodology for accreditation of universities is a one-size-fits-all approach and does not deal with the heterogeneous nature of different types of universities. Since the process currently adopted by the NAAC does not lend itself to an appropriate rating of skill universities, efforts are underway to remove such anomaly and enable a fair and objective assessment and accreditation of skill universities.

44. From the submissions of the Respondents that we called for on this issue, it is evident that the NAAC is in fact preparing a manual for rating of skill universities. In the words of the UGC:

*"As on date, the Skills Universities can apply for NAAC accreditation under existing University Manual, viz., "NAAC Institutional Accreditation Manual for Self Study Report for Universities". However, NAAC is developing a separate Skills University Manual "NAAC Institutional Accreditation Manual for Self Study Report for Skills Universities". NAAC Institutional Accreditation Manual for Self Study Report for Universities page number 22, under sub-section IV: Eligibility for Assessment and Accreditation by NAAC under Section-A states that "**Higher Education Institutions (HEIs), if they have a record of at least two batches of students graduated or have been in existence for six years, whichever is earlier, are eligible to apply for the process of Assessment and Accreditation (A&A) of NAAC, and fulfil the other conditions as are covered by the other provisions, (if any), as mentioned below : ..."***

“NAAC has constituted a Committee involving Skill Universities to prepare a draft NAAC Institutional Accreditation Manual for Self Study Report for Skill Universities. The Manual is under preparation.”

[Emphasis Supplied]

45. The aforesaid factual position indeed presents an undesirable conundrum. Regulation 3A(i) and Regulations 3(B)(b) (ii) stipulate accreditation by NAAC with a minimum score of 3.01 on a 4-point scale as an entry pre-condition. For the reasons articulated above, we have held these provisions as constitutionally valid. Therefore, unless there is an accreditation by NAAC leading to a score of at least 3.01, no HEI can offer any programme in the ODL mode or the OL mode. However, if the accreditation process followed by NAAC is admittedly not geared to appropriately assess skill universities, and in fact a new manual is being prepared to address precisely this issue, it begs the question if the application of an inappropriate process would lead to the accreditation outcome being arbitrary and unreasonable.

46. The need to make the accreditation manual currently in vogue, appropriate for review of skill universities was recognised in

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the Overarching Committee's report of November 2023. In fact, a new manual appropriate for accreditation of skill universities is under preparation. The corollary, therefore, is that, pending the devising of an appropriate set of parameters, the outcome of review of a skill university by NAAC would not be an appropriate one. Such a position calls into question the reasonableness of the due process to be applied, and give rise to conflict with the protection against arbitrariness guaranteed under Article 14 of the Constitution of India.

47. We have already expressed our opinion about how the measure of using the NAAC accreditation or the NIRF ranking is not inherently unconstitutional. What one needs to address is the effect of the NAAC accreditation process or the NIRF ranking process being inappropriate, in its blanket application to skill universities such as the SSPU.

48. If a constitutionally-valid provision of law is applied to a class of persons, but such application were to be evidently unreasonable in its application for that specific class, instead of assailing the provision's validity, it would be appropriate for a

constitutional court to issue directions to address such anomaly and to make its application fair, reasonable and appropriate.

49. With that approach in mind, we called upon the Learned Counsel for the Respondents to assist us with the current status of resolving the dichotomy and the anomaly presented in the application of the NAAC parameters to skill universities. We also called for an update on the status of the working groups' findings and an update on the recommendations of the Overarching Committee's report. The response of the UGC on this facet of the matter is extracted above.

50. It is noteworthy that way back in April 2012, the Menon Committee cited with approval an observation from a book (published in 2006) that mechanisms to ensure quality of distance learning programmes are yet to be developed. The Menon Committee had also noticed that the assessment in accreditation system available with DEC and NAAC were not of a standard that would have a desired level of impact. The inappropriate nature of the accreditation metric has been commented upon by the Overarching Committee's report made in November 2023.

51. It is in this context that exchange of correspondence between the Petitioners and the UGC gains significance. The Petitioners wrote to the UGC on 23rd October, 2017 applying for recognition to offer ODL programmes from the academic session beginning July 2018. On 19th April, 2018, the SSPU again wrote to the UGC for the next academic year requesting permission to start ODL Programmes. On 6th June, 2018, the UGC wrote to SSPU directing it not to admit any student for ODL programmes without the prior approval of the UGC on the premise that SSPU was not yet accredited by the NAAC. Letters from the Petitioners, dated 21st September, 2022, and 27th December, 2022 with an explanatory note articulating what changes in NAAC's criteria for accreditation of skill universities would be necessary, have also been brought on record. It is evident that SSPU has even given a criterion-wise suggestion for change in weightage that should be applied in respect of skill universities to make the current accreditation process relevant for skill universities.

Resolution for Other Universities in the Same Boat:

52. We also find from the record that other universities placed in similar circumstances – of a fair accreditation not being possible

due to absence of appropriate parameters and weightage – have been given relaxations and working arrangements by the UGC. It is a matter of record that in the 535th meeting of the UGC held on 27th September, 2018, the *Rashtriya Sanskrit Sansthan* was exempted from the condition of having a NAAC accreditation for offering ODL programmes, on the premise that a separate set of norms for grants and accreditation purposes for Sanskrit Universities would be necessary and that the current NAAC manual would not be an appropriate basis to assess such a university.

53. At the same meeting, a Jain University was given approval for twelve ODL programmes on similar grounds. A similar difficulty for four more universities was acknowledged, namely, that they would not get appropriate accreditation by the currently applicable accreditation procedures. These four universities were (i) Jagadguru Shri Shivarathreeswara University; (ii) Jain Vishwa Bharati Institute; (iii) Dayalbagh Educational Institute; and (iv) Dr. D.Y. Patil Vidyapeeth. Hence, these universities were invited for a face to face interaction to resolve the issue.

54. Indeed, the UGC has the power to grant exemptions under Regulation 1(3) of the Distance Learning Regulations. Indeed, exemption cannot be demanded as a matter of entitlement, but in our opinion, since a fair outcome in the accreditation by applying the current process is not possible, the UGC ought to give due weightage to this anomaly in the case of skill universities such as SSPU. It would follow that rather than mechanically reject the repeated requests and constructive suggestions to deal with the modifications that are necessary, the UGC ought to apply its mind and resolve the conundrum posed by a university that is otherwise compliant with the Distance Learning Regulations and is keen to commence its programmes.

55. In this light, to examine the intensity of the assurance that the NAAC accreditation would provide, we examined the record to examine the NAAC accreditation of “open universities” that offer courses only through the ODL mode. Indeed, the Distance Learning Regulations do not apply to open universities, which, by design, engage only in distance education. However, it would be instructive to see how they fare by application of an accreditation process that is

otherwise an entry barrier to even commence with an ODL programme. We find that out of 15 open universities, five have a NAAC accreditation of below 3.01 on a 4-point scale, and one does not have an accreditation at all. These universities continue to offer ODL programmes. Therefore, if a skill university cannot expect a fair and reasonable accreditation by reason of the parameters and the manual not being designed appropriately, it would stand to reason that the UGC must consider all other facets of compliance with the Distance Learning Regulations, even while an accreditation manual appropriate for review of skill universities is finalised.

56. It is in this backdrop that we have issued directions to address this anomaly, taking care not to disturb the constitutional validity of the provisions impugned in this Writ Petition. We are conscious that the provisions impugned, and the quality control measures contained in them, apply to all HEIs and not just to skill universities. Consequently, the directions issued by us factors in the means by which the constitutional validity of the impugned provisions is saved, even while ensuring that the effect of operation of the impugned provisions does not result in arbitrary and

unreasonable outcomes for the Petitioners.

NIRF Ranking Procedures:

57. Purely for completeness, we also clarify that we have reviewed the process for the NIRF rankings and are refraining from making any interference in relation to the same. *Vide* an email dated 2nd February, 2024 (when these proceedings were pending), the NIRF Helpdesk has confirmed that for 2024, two new segments have been introduced – for skill universities and open universities. We are informed that SSPU has applied on 8th March, 2024.

58. We note that even for the NIRF process, there is yet another time deferral – NIRF rankings can only be obtained by institutions that have graduated at least three batches of students in full-time undergraduate programmes (minimum duration of three years) or postgraduate programmes (minimum duration of two years). However, since a special category for ranking of skill universities has indeed been created by NIRF, we refrain from any further comment on the NIRF ranking. Suffice it to say, if SSPU obtains a ranking from the NIRF that makes the NAAC accreditation

unnecessary, it would be entitled to proceed with offering the ODL and OL courses without waiting for the NAAC accreditation.

Proven Track Record Requirement:

59. As regards, the provisions stipulating that a programme being offered in ODL or OL mode having to be offered first in the conventional mode with one batch having passed out, we have already ruled that it is a stipulation to demonstrate “proof of concept”. While we are not inclined to accept the challenge to that requirement, for completeness, we deal with the submissions of the Petitioners challenging that stipulation.

60. On 28th February, 2022, the UGC issued a public notice proposing draft amendments to the Distance Learning Regulations based on its decision at the 555th meeting of the UGC held on 12th February, 2022, to accept the recommendations of yet another expert committee set up with the objective of simplifying the recognition system and processes without eroding quality. One of the recommendations was to amend Regulation 4(B)(ii) and Regulation 4(C)(ii) to permit offering programmes through the ODL and OL

modes without such programme being offered through the conventional mode. This is a significant departure from the current position – that the programme ought to have been offered in the conventional mode and one batch ought to have passed out. Although the UGC had resolved to make this amendment, it has not actually carried out and notified the amendment to these provisions.

61. The written submissions of the UGC indeed acknowledges that the said amendment has been suggested after numerous inputs were received and were considered by the said expert committee. The UGC has indeed accepted the suggestion to remove the obligation to provide the same programme in the conventional mode for it to be validly offered under the ODL or OL modes. However, the tabulated summary of submissions of the UGC states that the proposed reform has been put on hold, purportedly due to the announcement of a “Digital University”. Now, yet another expert committee is reviewing the Distance Learning Regulations comprehensively.

62. As a constitutional court, we would be unable to rule that a pending proposal to amend an impugned provision, can have any

relevance to the determination of constitutional validity of the unamended provision. The wisdom of a policy choice, the assessment of such choice turning out to be unwise, and the wisdom in making a new policy choice, are all in the domain of the legislature (in this case, the author of the subordinate legislation, namely, the UGC). We have already ruled that the provisions stipulating a proven track record cannot be found fault with. Indeed, based on expert inputs, it would be open to the UGC to modify, amend and sharpen its policy choice. So indeed, it may transpire that the Distance Learning Regulations may not finally get amended to do away with the dual-offering requirement.

63. None of that can have a bearing on our adjudication of the challenge to the constitutional validity presented to us. We have restricted ourselves to judicial review of whether the provision that is currently applicable is constitutionally valid. For purposes of determining the constitutional validity of the provision, this Court can only examine whether the impugned provisions as they stand, pass muster on the touchstone of reasonableness or whether they are manifestly arbitrary, warranting intervention from a constitutional

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court. Simply put, the requirement for a concurrent offering of a programme in conventional mode as a pre-condition to offer it in the ODL or OL mode cannot be held to be arbitrary and constitutionally invalid.

Skewed Validity Periods for Accreditation:

64. There is one other facet of the matter. The Distance Learning Regulations, initially made with effect from 4th September, 2020, stipulated that the NAAC accreditation and NIRF ranking would be valid only for one year. Amendments were made with effect from 1st July, 2021 to make the NAAC and NIRF assessments valid for a block of three years instead of limiting the validity to one academic year at a time. Regulation 5.1 of the UGC Accreditation Regulations stipulates that an accreditation once made shall be valid for a period of five years, and every accredited HEI must apply for re-accreditation six months before expiry of the five-year period.

65. Both, the UGC Accreditation Regulations and the Distance Learning Regulations are made by the UGC. The former enables a legal recognition for a period of five years, while the latter truncates its validity for ODL and OL programmes to just three years. Without

any apparent rationale for curtailing the accreditation validity period, having two inconsistent validity periods for the same HEI would give rise to uncertainty and inexplicable compliance costs. An HEI that is offering programmes in the dual mode – in the conventional mode as well as in the ODL or OL mode – would have to undergo an accreditation exercise afresh every three years even while a traditional university that does not offer ODL or OL programmes would have to undergo the re-accreditation only after five years.

66. We trust the UGC will apply its mind to rationalising its stipulations in a manner that the regulatory framework is made easy to comprehend and comply with, so that the real objective of Distance Learning Regulations i.e. to enhance the penetration of higher education in Indian society, is achieved.

Directions relating to Specific ODL Programmes:

67. We asked the Petitioners to tender a list of the programmes that SSPU proposes to offer through the ODL mode. We are informed that SSPU is currently offering Bachelors degrees in Business Administration, Science, Architecture, and Technology, and Master of Business Administration in the conventional mode, with a special

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focus on skill development. The Bachelors and Masters in Business Administration would have variants with focused skill development in multiple areas such as digital media and marketing, financial technology, logistics and supply chain management, ports and terminal management, and retail and e-commerce management.

68. The programmes that are proposed to be offered at this stage through the ODL mode are essentially programmes of Bachelors in Business Administration, Bachelor of Science and Master of Business Administration. These are programmes that are already being offered in the conventional traditional classroom mode, and we are informed that one batch has passed out already. Therefore, the requirements of Regulation 4(B)(ii) and Regulation 4(C)(ii) (of demonstrable proof of concept) would be met. Therefore, SSPU may be permitted to offer them in the ODL mode, so long as there is compliance with all other applicable provisions of the Distance Learning Regulations, subject to our directions in relation to the NAAC accreditation.

69. SSPU also proposes to offer Bachelor of Commerce and the

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Bachelor of Computer Applications programmes, which are currently being offered in the conventional mode, but where the first batch would pass out in December 2024. SSPU would therefore be entitled to offer the same with effect from January 2025. Considering the enormous length of time for which the basic issue of an inappropriate accreditation process being forced on skill universities has remained unaddressed, we permit SSPU to make an enabling application for offering these additional programmes with effect from January 2025. Such a direction would enable the time until January 2025 to be constructively utilised for processing SSPU's application even while waiting for the first batch to pass out in December 2024.

Findings, Conclusions and Directions:

70. In the light of the analysis set out in the preceding paragraphs, our conclusions may be summarised thus:-

- a) Regulation 3(A)(i), Regulation 3(B)(b)(ii), Regulation 4(B)(ii) and Regulation 4(C)(ii) are not manifestly arbitrary and unreasonable, and are therefore, not unconstitutional;

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b) Therefore, the policy choice made in the Distance Learning Regulations to stipulate the empirical measure of a NAAC accreditation of at least 3.01 on a 4-point scale does not call for any interference in its general application to accreditation of HEIs;

c) We find that it is an acknowledged position that the NAAC accreditation process is a misfit for an appropriate and reasonable accreditation of skill universities since it relies on a one-size-fits-all manual currently in vogue;

d) It is a matter of record that an accreditation manual that is responsive, proportionate and relevant for an objective accreditation of skill universities is indeed in the process of being prepared;

e) Pending such manual being prepared and finalised, SSPU shall be entitled to apply to the UGC for recognition to offer the proposed programmes set out

above, in the ODL and OL mode without waiting for NAAC accreditation, provided all other stipulations and conditions (other than the NAAC accreditation process) in the Distance Learning Regulations and other applicable law, are met;

f) Once such an application is made by SSPU, the UGC shall process and decide upon the same within a period of twelve weeks from the receipt of the application that is complete in all respects, without insisting upon SSPU obtaining the NAAC accreditation as a pre-condition to offering the ODL programmes;

g) If all other eligibility conditions are met, the UGC shall permit SSPU to offer its programmes under the Distance Learning Regulations, which permission shall be subject to the eventual outcome of the accreditation process (after an appropriate accreditation manual and process for assessing skill universities is brought into force);

h) The UGC shall be entitled to grant an exemption to SSPU from strict compliance with the NAAC accreditation requirement on its own (as it has done with other universities facing a similar problem) and permit SSPU to offer programmes through the ODL and OL modes, subject to such conditions as it may reasonably impose, provided they are not inconsistent with the findings and conclusions returned in this judgement.

71. We make it clear that our intervention is limited to enabling SSPU deal with the anomaly arising out of the absence of an appropriate and proportionate accreditation process that would be relevant to gauge skill universities. As and when the proposed accreditation manual for skill universities is developed, SSPU shall subject itself to a NAAC accreditation, and its entitlement to continue with the ODL programmes shall depend on the outcome of the accreditation. Likewise, should SSPU be accorded a ranking by NIRF that makes it eligible, it would be entitled to proceed with ODL and OL courses on that footing.

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72. Rule is made absolute in the aforesaid terms. The writ petition is disposed of accordingly. No order as to costs.

73. This judgment will be digitally signed by the Private Secretary / Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this judgment.

[SOMASEKHAR SUNDARESAN, J.]

[B.P.COLABAWALLA, J.]

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