

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: March 07, 2017
Judgment delivered on: March 16, 2017

+ W.P.(C) 1557/2017 & CM 7018/2017

SHUBHANSHU SINGH & ORS

..... Petitioners

Through: Mr. Arvind K.Nigam, Sr. Adv. with
Ms.Parijata Bhardwaj, Ms.Vrinda
Grover, Mr.Nikhil Sharda, Ms.Padma
Priya, Ms.Ratna A., Advs.

versus

JAWAHARLAL NEHRU UNIVERSITY

..... Respondent

Through: Mr.Tushar Mehta, ASG with
Ms.Monika Arora, Adv.

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by five petitioners with the following prayers:

*“WHEREFORE, in the light of the above facts and circumstances,
the Petitioner most respectfully prays that this Hon’ble Court be
pleased to issue appropriate writ, order or direction, including a writ
of mandamus and / or any other writ:*

*a. Quash and set aside the Admission Policy 2017 dated
11.02.2017; Resolution 10 of the 141st AC meeting,*

Resolution 6.1 of the 266th EC meeting and Resolution 6 of the 142nd AC meeting; and any other Ordinance, Resolution or Amendment in consequence of the afore-stated impugned Resolutions;

- b. Quash & set aside the Corrigendum to Admission to Direct Ph.D. programme for Monsoon Semester 2017-18 published on the University website on 31.01. 2017;*
- c. To direct the Respondent to make public all the correspondence with the UGC regarding the clarifications to the UGC Notification 2016;*
- d. To direct the Respondent to convene a Academic Council meeting to deliberate the adoption and implementation of the UGC Notification 2016 in the light of the clarifications received from the UGC and the academic schedule of 2017-2018;*
- e. To direct the Respondent to allow the students enrolled to integrated M.Phil / Ph.D. programme to continue with their provisional Ph.D enrolments till the deliberation and adoption, if any, on the Admission Policy in the light of the UGC Notification by the Academic Council;*

Such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed.

2. Respondent herein is Jawaharlal Nehru University established under the Jawaharlal

Nehru University Act, 1966.

3. Petitioner no.1 is enrolled in an Integrated M.Phil / Ph.D Programme in 2014 and is currently in his provisional Ph.D. Petitioner no.2 belongs to OBC category has completed her BA/MA in German Language and currently is studying MA in Labour and Development Study from the Centre for Informal Sector and Labour Studies and intends to apply for the Integrated M.Phil / Ph.D Programme at the Centre for Study of Regional Development or the Centre for Study of Discrimination and Exclusion. Petitioner no.3 is currently in the 4th Semester of the Integrated M.Phil / Ph.D Programme at the Centre for Media Studies. Petitioner no.4 has completed her M.Phil Programme and it is her case that her application for Ph.D Programme was rejected due to change in Admission Policy. Petitioner no.5 is in the 2nd Semester of the Integrated M.Phil / Ph.D Programme with the Centre for Political Studies.

4. The facts as noted from the writ petition are that a Notification dated July 5, 2016 was issued by the University Grants Commission notifying Regulations titled as University Grants Commission (Minimum Standards and Procedure for Award of M.Phil / Ph.D Degree) Regulation, 2016 (Regulations in short). It is averred that on May 27, 2016, taking into consideration the concerns over the discriminatory impact of viva-voce marks on candidates from marginalized and disadvantaged background, the Academic Council in its 140th (A) meeting had set up a Committee under the Chairmanship of Professor Abdul

Nafey to look into the allocation of marks for viva-voce in the admission process. On September 28, 2016, the Agenda for the 141st (A & B) meeting of Academic Council (AC) to be held on October 7, 2016 was circulated amongst the AC members. The Agenda items included approval of the Minutes of the 140th (A) meeting and the consequent Report of Action (Item no.2) and admissions for the year 2016-17 (Item no.3) for 141st (A) meeting and adoption of Notification of 2016 of the UGC (Regulations) for 141st (B) meeting. That on October 7, 2016, the Academic Council vide Resolution (iv) approved the intake / proposed offers for admission to direct Ph. D Programme. It is the case of the petitioners that as the meeting went for several hours till late night, the 141st (B) meeting had to be adjourned. It is also averred that on October 13, 2016, the Academic Council members were informed that the adjourned 141st (A & B) will be held on October 20, 2016. On October 20, 2016, the 141st (B) meeting was held and no decision was taken on adoption of Notification of 2016 (Regulations). It is their case that a deeper deliberations / clarifications on the same were required. It is the case of the petitioners that the Nafey Committee on November 4, 2016 recommended the reduction of Viva-Voce marks from 30% to 15% to stop discrimination in admissions and 85% weightage be given to the written examination. It is their case that on November 22, 2016, 266th Executive Council meeting was held when vide resolution no. 6.1, the Executive Council considered the recommendation of 141st AC meeting culled out from unapproved minutes and approved them. None of the approvals were made subject to the subsequent confirmation of the minutes by the AC. Thus, in effect

the EC wrongly confirmed the adoption of UGC Notification, 2016 (Regulations). It is stated that on December 15, 2016 a letter was addressed by JNU Students' Union to postpone the AC meeting scheduled on December 23, 2016 to any date after January 6, 2017. According to them on December 12, 2016, a circular was issued intimating the adoption of Notification of 2016 by the AC in the 141st (B) meeting vide resolution no. 10 and approved by the EC vide resolution no. 10 in its 266th meeting. They rely on the Public Appeal by JNU Teachers' Association dated December 21, 2016 to the members of the AC to ensure that policy decisions regarding admission and evaluation of M.Phil / Ph.D courses are equitable and in line with the Admission Policy of the University. On December 23, 2016 and December 26, 2016 the 142nd (A) and 142nd (B) of the AC meetings were held. In the meeting held on December 23, 2016, the Minutes vide resolution 4 approved the intake for admissions 2017-18 but noted that the final intake would be decided after clarifications were received from the UGC in the light of UGC Notification, 2016 (Regulations). It is averred that despite lack of clarity regarding UGC notification, 2016 (Regulations) resolution 5 noted that the recommendation of the Nafey Committee regarding viva-voce marks will not be applicable to the M.Phil and Ph.D admissions on the ground that the same was to be governed by the UGC Notification (Regulations) which has been adopted by the AC. On December 26, 2016, the AC had adopted amendments to the ordinance for admissions to M.Phil / Ph.D vide resolution no. 6 in the 142nd (B) meeting by the AC. They would aver that this was in clear violation of Statute 15, II Schedule of the

Act inasmuch as, it is only for decisions regarding faculty positions, recruitment, conditions of service and academic freedom and actual process of evaluating academic performance and merit of students that the students are not to be part of the deliberations. However in the 142nd AC meeting, the adoption of UGC Notification 2016 (Regulations) which directly impacted admissions of students was taken in the absence of student representatives and the same is in clear violation of the procedure established under the Act. It is averred that the admission procedure under the Act clearly states that the decision regarding the intake of students are to be taken only by AC based on the recommendation by the Centres / School. They would rely on Clause 5.2 and 5.3 of the UGC Notification, 2016 (Regulations) which allows University to decide the criterion for admission as well as intake in conformity with the reservation policy. It is the case of the petitioners in the 142nd AC meeting held on December 26, 2016 the amendments to the Ordinances for M.Phil/Ph.D admissions were approved vide resolution 6 but on the insistence of the JNUTA, it was resolved to seek further clarification from the UGC regarding the eligibility requirement in the light of UGC Notification, 2016 (Regulations). According to the petitioners, a perusal of Annexure-I and Annexure-II of the 142nd (B) minutes, i.e., the proposed amendments to the Ordinances reveal that three step admission procedure as well as the clause on provisional award of degree was not suggested and neither was an amendment suggested on the question of intake and the same was listed under items to be discussed for inclusion. Therefore, yet again decision with regard to the framing of the Admission Policy in light of the UGC

Notification, 2016 (Regulations) was deferred. It is their case that several AC Members were not allowed to participate in the decision making process. On January 3, 2017, the 267th EC meeting was held in derogation of the established factors, inasmuch as the unapproved minutes of the 142nd AC meeting were tabled for confirmation. It was only on January 05, 2017 the Assistant Registrar (Admission) circulated a letter to the JNUSU seeking their comments on the adoption of the UGC notification, which was replied by the JNUSU on January 16, 2017 highlighting grave procedural violation in adoption of the UGC notification, 2016 (Regulations) and also the same was against principles of social justice practiced by the University. They would highlight that on January 30, 2017 a meeting was held between the administration of the University and the students agitating over the implementation of the UGC Notification (Regulations). In fact, a press release dated January 30, 2017 was issued assuring the students that the Admission Policy of 2017 would be in line with the principles of social justice and that clarification has been sought from UGC regarding the concerns of the students. It is stated that on January 31, 2017 a corrigendum to the application form for direct Ph.D was released by the Admission Branch informing students that the admission process has been amended in the light of UGC Notification and application form would not be accepted. The students were intimated that they have to apply again by conforming to the amended policy. On the same day, the JNUSU wrote to the Chairman Standing Committee (Admissions) stating their reservation to the arbitrary and illegal adoption of UGC Notification (Regulations) and harassment of

the students who had applied for the direct Ph.D programme. According to the petitioners, the minutes of the Standing Committee on admissions categorically state that everyone present agreed that the UGC notification, 2016 (Regulations) should not be implemented immediately and efforts should be made to fill up the vacant faculty posts. They referred to letter dated January 3, 2017 of JNUSU to the Director (Admissions) citing the procedural irregularities in the adoption of UGC notification, 2016 (Regulations). On February 7, 2017, the respondent University without deliberating on the Admission Policy at the AC uploaded tentative intake list of faculty wise M.Phil/Ph.D students on the University website. The petitioners and the students committee wrote to the President of India highlighting the arbitrariness and irregularities in adoption of the UGC Notification (Regulations).

5. On February 11, 2017, the Director (Admission) sent a mail to JNUSU President informing that on the basis of the clarifications obtained from the UGC and legal opinion, the Admission Policy of M.Phil/Ph.D 2017 had been approved by the EC and the same was sent as an attachment to the mail. The petitioners have averred that the respondent amended the Ordinance governing admission to Ph.D and M.Phil courses without deliberating the same before the AC and securing the approval of the AC. They rely on Statute 36. It is there case that, the respondent University was established with the aim of facilitating the participation of students and teachers from across the country in academic programmes,

guided by principles of social justice. The implementation of the Notification 2016 (Regulations) would imply drastic reduction not only in the M.Phil/Ph.D courses but also make it almost impossible to students from marginalized communities to gain education in the University.

6. The respondent in its counter affidavit has taken a plea that the UGC is a necessary and proper party as the petitioners are challenging the UGC Notification, 2016 (Regulations) and its implementation. The respondent states, that the University has implemented the UGC Notification, 2016 (Regulations) and as per clause 1.2 of the notification the same shall apply to every University established or incorporated by or under a Central Act, a Provincial Act or a State Act, every affiliated College, every Institution deemed to be a University under Section 3 of the UGC Act, and hence the Notification (Regulations) is binding and is mandatory in nature and is to be followed by all the Universities including the respondent University. The respondent also referred to Section 2(f) of the University Grants Commission Act, 1956 (UGC Act, 1956 in short), which defines the 'University'. The respondent University has been enacted by an Act of Parliament in the year 1966. It is obligatory for the respondent University to apply the said Notification (Regulations). It is not the discretion of any University to apply or reject the Notification (Regulations). The respondent University has further stated that the UGC Notification, 2016 (Regulations) have been formulated under Section 26(1)(f) & (g) of the

UGC Act, 1956 and Section 14 of the UGC Act, 1956 clearly states that in case of non compliance of UGC Norms and Regulations, the Grants available to the University may be withheld.

7. The University has taken a stand that the adoption of the UGC Notification (Regulations) by the respondent University was in accordance with the provisions of the JNU Act, Statutes and Policies. It also states that the new Admission Policy of 2016 is in accordance with the reservation policy of the Govt. of India and therefore, any apprehensions in this regard are misplaced. It is also stated that existing JNU students will not be affected by new Admission Policy. It is also stated that deprivation point system will continue as per existing practice. It is also stated that the weight age of viva-voce in the admission procedure was concerning the students at large and was therefore taken upon in 141st (A) meeting of the Academic Council in which student's representatives were also present. In the aforesaid meeting, recommendation of the Nafey Committee were also deliberated for admission to M.Phil/Ph.D under the new UGC Regulations, weightage for written and viva-voce was to be in the ration of 80:20 respectively. However, the rest of the notification (Regulations) was/were to be adopted in toto and had no concern with the admission process. Therefore, it was put up in 142nd (B) of the meeting. The University has also stated that the students themselves cannot decide the intake of students for any academic courses under the faculty.

8. If the writ petition is allowed, it would have an adverse ramifications for admission in the academic year 2017-18 and shall be in contravention of the UGC Gazette Notification, 2016 (Regulations). The University is only intending to follow the Gazette Notification, which is applicable for every University established or incorporated by or under a Central Act etc. The University would state that as per clause 6.2 of the UGC Notification (Regulations), the final intake of the students for M.Phil and Ph.D courses will be dependent upon the actual number of the regular Teachers employed by the University and not against the sanctioned strength of the Teachers. It is also the stand of the University that the Academic Council decided to adopt the UGC Gazette Notification, 2016 (Regulations) in its 141st (B) meeting held on October 20, 2016, the Agenda item was circulated well in advance on September 30, 2016 and no objection was raised. There was enough time for all the Members to go through the Agenda and raise objections, if any. The first Academic Council meeting was held on October 7, 2016 and its adjourned meeting was held on October 20, 2016. The recommendation of Academic Council was placed before Executive Council on November 22, 2016 and Executive Council approved the recommendation of the Academic Council. In other words, the UGC notification (Regulations) was adopted in the 141st Academic Council Meeting held on October 20, 2016 Committee (B) Meeting. In the 142nd Meeting, it was placed only for confirmation of minutes. The Executive Council approved the recommendation of the AC in its meeting held on November 22, 2016. It is the stand of the University in the counter-affidavit that

the minutes of the meeting are circulated to the Members inviting comments thereon, if any within two weeks. However, views received, if any are discussed in the subsequent meeting and any changes in the minutes can be made with the consent of all Members in that meeting which might be held after sometime. The follow up action on decision taken cannot be postponed till the next meeting as any delay in taking follow up action in time bound manner may lead to serious consequences. It is stated that the Nafey Committee recommendations were discussed in the Academic Council meeting held on December 23, 2016 on reduction of viva-voce marks for admissions to various programmes but there was no consensus. It is also stated that the admission to M.Phil/Ph.D under the new UGC Regulations, weightage for written and viva-voce would be in the ratio of 80:20. The University has also stated, the reasons for convening the meeting of Academic Council on December 20, 2016. The University denied the petitioners averments that it lacked clarity with regard to UGC Gazette Notification, 2016 (Regulations) as immediately after the meeting of the Academic Council held on December 26, 2016 the Vice Chancellor wrote a letter to the Secretary, University Grants Commission on December 29, 2016 seeking certain clarifications including permission of the UGC to modify certain provisions in the light of the existing policy of the JNU. The University has annexed a letter dated February 13, 2017 from the UGC wherein it has been stated that the Regulations are mandatory in nature and are applicable to the Universities without any deviation. In the end, the University seeks the dismissal of the writ petition.

9. A rejoinder has been filed by the petitioners, wherein they have controverted the stand of the University.

Submissions:-

10. Mr. Arvind Nigam, learned Senior Counsel for the petitioners states that the respondent University is governed by the Jawaharlal Nehru University Act, 1966 (Act of 1966 in short) and the same has been admitted as a matter of record by the respondent. The respondent in para 2 of the counter-affidavit admits that the Admission Policy, 2017 has to be in accordance with the Statutes and Ordinances of the University. It is his submission that the Act demarcates a clear and mandatory procedure of thorough deliberation in the Academic Council and the Executive Council prior to adopting a Notification and the same is admitted by the respondent in para 12 of the counter-affidavit. He would state, the Act vide Statute 36, IInd Schedule provides a clear and cogent process which is to be mandatorily followed by the University while amending the Ordinances governing admissions in the University. Under the aforesaid statute, the power to propose amendments and finalise the same vests with the Academic Council and no unilateral changes can be made in the same by Executive Council without reverting the same back to the Academic Council. Further, Clause 4.1 of the Admission Procedure categorically recognizes the right of the Academic Council to approve the intake for admissions. The AC meetings are divided into Part A and Part B meetings. The Part A meetings are attended by

student representatives who actively take part in the deliberations in exercise of their statutory rights. The participation of the students in the meetings is governed by Statute 15, IInd Schedule of the Act. He would state, as per clause 3(b) of Statute 15, IInd Schedule students cannot participate in meetings concerning; (a) Faculty positions, recruitment, conditions of service and academic freedom; (b) Actual processes of evaluating academic performance and merit of students. These issues are deliberated in the Part B meeting of the Academic Council. The actual processes of evaluation refer to deliberation on conferment of scores and grades to students. He would state that admissions are not one of the issue wherein student participation is disallowed. Therefore, it is in the Part A meeting of the Academic Council, wherein the adoption and implementation of the UGC Notification, 2016 (Regulations) and the Admission Policy are thoroughly deliberated, discussed and approved.

11. Regarding violation of Statute 15, IInd Schedule, he would state that it is an admitted fact that the UGC Notification, 2016 (Regulations) was tabled for adoption in the 141(B) meeting of the Academic Council. Furthermore, the deliberations regarding the amendments to the Ordinance in light of the UGC Notification 2016 (Regulations) were also held in the Part B meeting of the 142nd Academic Council. He would state that the respondents have erroneously relied on clause 3(b) of Statute 15, IInd Schedule to justify tabling the UGC Notification, 2016 (Regulations) in the Part B meeting. Clause 3(b) does

not cover the issue of admissions and students have a right to participate and deliberate the Admission Policy. Thus, the statutory right of the students to participate and deliberate on the issue was violated.

12. As regard violation of Statute 36, IInd Schedule, he would state that the documents of the respondent clearly reflect a lack of clarity with regard to the UGC Notification, 2016 (Regulations). A perusal of Resolution 6 of the 142nd Academic Council meeting reveals that even while deliberating the amendments to the Ordinance the Academic Council lacked clarity on UGC Notification, 2016 (Regulations). Further, no amendment had been proposed in the 142nd (B) Academic Council meeting with regard to clause 6.5 (concerning cap on Research Supervisors) and 13 (concerning Award of degree) of the UGC Notification, 2016 (Regulations).

13. It is his submission that Statute 36, IInd Schedule categorically identifies the Academic Council as the only body competent to make amendments to the Ordinances governing admissions. Furthermore, the integrated M.Phil./Ph.D course provided by the University is a unique course aimed at inculcating an academic discipline and excellence in research. The unique nature of this course entails detail deliberations with regard to the formulation of the Admission Policy to ensure that the quality of education being imparted to the students does not suffer. Thus, in the absence of the University having any clarity on the UGC Notification, 2016 (Regulations), the Admission Policy has not been finalized by

the Academic Council as many clarifications were still awaited.

14. On the aspect of circulation of Meeting Minutes in derogation of established practice, it is his submission that the University has a well established practice of seeking approval of Minutes of meetings and the same has been admitted by the respondent in para 9 of the counter-affidavit. However, the minutes of the 141st AC meeting were not approved in the manner stated above but were noted to have been duly approved by the Chairperson without ever having been circulated amongst the Members. It was these Minutes which had not been approved in accordance with the established practice that were tabled before the 266th Executive Council Meeting. He would state, similarly, the Minutes of the 142nd Academic Council meeting were circulated on January 4, 2017 i.e after the same had been tabled in the 267th Executive Council meeting on January 3, 2017. Further, the Members were provided a deadline till January 19, 2017 to revert with their comments. Therefore, the decisions in both the 266th and 267th Executive Council meeting were taken in violation of established procedure. As the decision in the AC was yet to be finalized the same could not have been ratified by the EC.

15. As regards, violation of precedent setting norms with regard to the adoption of the predecessor UGC Notification, 2009, it is the submission of Mr. Nigam that procedure followed by the respondent University with regard to the UGC Notification, 2016 (Regulations) is in contravention of established statutory procedure. The University Grants

Commission (Minimum Standards and Procedure for Award of M.Phil / Ph.D Degree) Regulation, 2016 supersedes the University Grants Commission (Minimum Standards and Procedure for Award of M.Phil / Ph.D Degree) Regulation, 2009. The 2009 regulations were deliberated in the 126(A) meeting of the Academic Council. Furthermore, Resolution 6 of the 126(A) Academic Council illustrates how in the past the University has been successful in harmoniously interpreting the UGC Regulations into the JNU Act. This process of harmonious integration was completed in 2014 when the University complied with the UGC Regulations completely. Additionally, such a practice of harmonious construction has ensured that the quality of education provided by the University does not suffer and it is this commitment to maintain the highest standards of education that has led to the University being awarded the Visitor's Award for the Best Central University in 2017. He would state, this flexibility in adopting the UGC Notification (Regulations) has also been admitted by the respondent in their counter wherein they admit to altering the 2016 Regulations.

<i>Alteration by Respondent</i>	<i>UGC Regulation, 2016</i>
<i>Viva-Voce to be given 20% weightage only</i>	<i>Viva-Voce to be given 100% weightage</i>
<i>Deprivation Points provided in Admission Policy</i>	<i>Does not mention Deprivation Points</i>
<i>Will not apply to existing students, which includes students admitted to the Direct Ph.D programme in August, 2016</i>	<i>To apply to all students admitted after 5 July, 2016</i>

16. As regard the submission of the respondent that in any case students do not decide

how many students shall be taken, it is the submission of Mr. Nigam that this is a false submission and is invalidated by the documents of the respondent University itself wherein in both the 141(A) meeting vide Resolution 4(iv) and in the 142nd (A) meeting vide Resolution 4 students participated in the AC meeting which considered and approved the intake of the University. Further, it has been admitted by the respondent in para 15 of the counter-affidavit that the intake is still to be finalized. The deliberation on the question of intake in the Part A meeting is essential to overcome the legitimate fears of the petitioners that the present Admission Policy implies a zero year for several centres and schools of the University.

17. He would state, that the UGC Notification, 2016 (Regulations) is not under challenge in the present petition but only the process of adoption and implementation. The UGC Notification, 2016 (Regulations) provides the Minimum standard which is to be followed and allows Universities to supplement the same to ensure quality education is imparted as was done by the respondent University in 2009. Furthermore, the UGC Notification (Regulations) itself vide clause 5.2.1 and 5.3 recognises the autonomy of the University and the University is required to formulate its own Admission Policy and Procedure in accordance with its statutes. Thus, the Regulations provides only a framework to guide the Admission Policy, which is to be arrived by the University in compliance of the Act. Therefore, he seeks setting aside of the Admission Policy of the respondent University in

light of violation of the procedure mandated by the statute and the lack of clarity on part of the respondent.

18. It is further his submission that the Vice-Chancellor under Miscellaneous Regulation 1 has the right to convene an emergency meeting of the Academic Council on his own or on a requisition made by 15 Members of the Academic Council. He would state, it is an admitted fact that the Admission Policy is matter of utmost importance and needs to urgently finalized. Further, a requisition for the meeting has been made on January 6, 2017 itself by 34 Members of the Academic Council. Thus, it is imperative to immediately reconvene the Academic Council to deliberate the adoption and implementation of the UGC Notification, 2016 (Regulations) and the Admission Policy.

19. On the other hand, Mr. Tushar Mehtra, learned Additional Solicitor General would state that the respondent University is the “University” within the meaning of Section 2(f) of the UGC Act, 1956, and the UGC is empowered to and is under an obligation to make “regulations” under Section 26 of the said Act. He states, on perusal of the scheme of the UGC Act, 1956 and more particularly that of Section 14 thereof, it would become clear that the “regulations” framed by the University Grants Commission under Section 26 of the Act are mandatory in nature and it is obligatory for all Universities to comply with the same. The said position of law is very clear in view of the judgment of the Supreme Court reported in [2009 4 SCC 590 (para 42)] Annamalai University v. Secretary to Govt.

Information and Tourism Department and Ors. He would state, when it is not a position in dispute between the parties that the respondent is the “University” as defined under Section 2(f) of the UGC Act, 1956 all “regulations made by UGC under Section 26 of the Act are per se binding upon the respondent University and all the Universities in the country and are not dependent upon being “adopted” by the University. He states, the University Grants Commission [Minimum Standard and Procedure for award of M.Phil/Ph.D Degrees] Regulation, 2016 are regulations made under Section 26(1)(f) & (g) of the UGC Act, 1956 and it binds the respondent University the day the same Regulations are notified in the Official Gazette i.e. w.e.f 5th July, 2016. The said Regulations also make the said position very clear which is apparent from the following regulations themselves:-

“No.F. 1-2/2009 (EC/PS) V(I) Vol.II- In exercise of the powers conferred by clauses (f) and (g) of sub-section (1) of Section 26 of the University Grants Commission Act, 1956 (3 of 1956) and in supersession of the UGC Minimum Standards and Procedure for Award of M.Phil/Ph.D Degrees) Regulations, 2009, notified in the Gazette of India (No.28, Part III-Section 4) for the week July 11-July 17, 2009 the University Grants Commission makes the following Regulations, namely:-

1.2 They shall apply to every University established or incorporated by or under a Central Act, a Provincial Act, or a State Act, every affiliated college, and every Institution Deemed to University under Section 3 of UGC Act, 1956.

1.3 They shall come into force from the date of their publication in the Gazette of India.

13.2 Prior to the actual award of the degree, the degree awarding Institution shall issue a provisional certificate to the effect that the Degree has been awarded in accordance with the provisions of these UGC Regulations, 2016.”

20. He would state, it is clear from the above regulations read with Section 26 of the Act that the UGC has exercised the powers under Section 26(1)(f) & (g) of the UGC Act with a view to ensure that minimum standards of imparting education in M.Phil and Ph.D are maintained. He would rely on clause 6.5 of the said Regulations. He states, the said provision is not given retrospective effect which becomes clear from clause 12. The operation and implementation of clause 6.5 is not dependent upon the full strength of the faculty members which becomes clear from clause 5.2 of the Regulations. He would state, the expression “annual basis” makes it clear that it is not dependent upon the vacancies. The number of scholars are to be decided “every year” based upon “the number of available Research Supervisors”.

21. He states, the applicability and binding nature of the said Regulations is not dependent upon it being “adopted” or “accepted” by the respondent University or any other University in the country. It has a statutory force and binds all Universities in the country including the respondent University. Any act on the part of the respondent University in seeking to “adopt” the binding statutory Regulations were, therefore, absolutely unnecessary and irrelevant and, therefore, all prayers prayed for in the petition based upon the alleged procedural lacunae while adopting the binding statutory Regulations are

incapable of being prayed for and granted. He states, it is a pure legal contention and can be raised at any stage. He also states, the respondent University, in view of the concern shown by the students had sought clarification in this regard from the UGC. The UGC, vide its communication dated February 13, 2017 clarified in unequivocal terms that the said regulations (which are not under challenge in the present petition) have been framed after detailed deliberations with the help of experts and with the approval of Government of India (Ministry of HRD) and are mandatory in nature. It is categorically clarified by the UGC that the said Regulations are applicable to all Universities without any deviation.

22. It is his contention that the above arguments are not raised for the first time. He states, the affidavit in reply/counter affidavit filed by the University is in two parts:-

- a) The Regulations framed by UGC are mandatory in character and, therefore, nothing further needs to be done by any University except complying with the same; and
 - b) Even otherwise, alternatively, the procedure for “adoption” of the same is followed.
- He states, this fact would become clear from paras 2, 3 and 4 of the affidavit in reply.

23. He states, in view of the above referred settled legal position which is already pointed out in the counter, it is not necessary to argue the second part namely, the petitioner’s case regarding the procedure followed while adopting the mandatory statutory Regulations which are otherwise binding irrespective of being adopted by the University. He states, the petitioners have not challenged the University Grants Commission [Minimum Standard and

Procedure for award of M.Phil/Ph.D Degrees] Regulations, 2016. As a matter of fact during the hearing of this petition, the said fact is made very clear by the petitioners that they are not challenging the said regulations and this fact is recorded by this Court. When the challenge is, thus, confined only to the procedure followed for adopting the mandatory Regulations none of the reliefs prayed for deserves to be granted. The prayers prayed for deserves rejection. He would state, (i) even if the said two resolutions (which are resolutions respectively of the Academic Council and Executive Council adopting the regulations) are set aside, the Regulations would nonetheless bind the University and, therefore, the question of granting the said prayer will serve no purpose and cannot be granted; (ii) the corrigendum again seeks to recommend amendment of existing Ordinance based upon the Regulations of 2016. Even in absence of amendment to internal Ordinances of the University, the statutory Regulations are bound to be followed by every University and everyone concerned and, therefore, there may not be any occasion to quash and set aside the said corrigendum; (iii) in view of the concerns expressed by the students, the Vice Chancellor sought clarification from UGC which letter is on record. The reply of the UGC is also on record. Nothing further, therefore, requires to be done; (iv) This Court would never issue a writ directing convening of meeting of academic council for adoption of statutory Regulations which have the force of law and are binding per se; (v) in view of clause 12 in the Regulations of 2016 itself, the existing students are not affected and, therefore, the question of grant of the said relief would not arise.

24. In rejoinder arguments, Mr. Nigam would state that the oral arguments of the respondent are in complete contradiction to its counter-affidavit and thus, beyond the scope of the pleadings. The respondents resiled completely from the averments made in the counter affidavit and took not only a new but contradictory stand to that set out in the counter-affidavit. He would state, pleadings form the bedrock of civil proceedings. Pleadings not only provide a brief summary of the case of each party, which is readily available for reference, and from which the nature of the claim and defence may be easily apprehended, but also to constitute a permanent record to the issues and questions raised in the action and decided therein. In written arguments, the petitioners relied on Bullen and Leake and Jacob's "Precedents of Pleadings" 1975 Edn. At p. 112 is stated:

"The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises and incidentally to save costs."

25. In the written arguments, it is stated, in light of this principle of fairness that parties are estopped from making submission beyond their pleadings. They refer to the judgment of the Supreme Court in the case reported as (2007) 10 SCC 528 Deewan Singh and ors v. Rajendra Prasad Ardevi and ors to contend that a party cannot contradict the averments made in its pleading and same is barred by the principle of estoppel. Reliance is placed on the judgment of this Court in the case reported as (2010) 166 DLT 629 Prakash Rattan Lal

v. Mankey Ram and on the judgment of this Court in the case RFA(OS) 35/2009 Asha Sharma and ors v. Sanimiya Vanijiya P. Ltd. & Ors, which upholds the doctrine of ‘estoppel by pleadings’. It is the submission of Mr. Nigam that in the present case the respondent’s have not moved any application to amend their counter-affidavit and on the contrary when confronted with the submissions in the counter-affidavit completely resiled from it.

26. Insofar as the contention of the petitioners that a different stand is taken during submissions than the stand taken in the counter, the respondent in the written arguments has taken the following stand:-

- a) There is absolutely no divergence and the University has pointed out categorically that the Regulations are mandatory in nature and are binding per se.
- b) The arguments regarding binding nature of the statutory Regulations and, therefore, the procedure of adopting the Regulations being followed by the University being unnecessary is a pure question of law and can be raised at any time.
- c) Any action of the University which is not in consonance with the statutory Regulations cannot be given effect to and the statutory Regulations would occupy the field. The only deviation from the statutory regulations is division into 80:20 ratio between the ‘written test’ and the ‘viva-voce’ and therefore, the same cannot be given effect to and the statutory Regulations in this behalf shall have to be followed.

d) Furthermore, the question involved in the present proceedings and argued before this Court is a pure question of law, and hence, it can be raised at any stage. Reliance in this regard is placed on the judgment of the Supreme Court in the case reported as (2015) 7 SCC 561 Ariane Orgachem (P) Ltd. v. Wyeth Employees Union.

27. Having heard the learned Counsel for the parties, the issue which arises for consideration is whether in view of the prayers made by the petitioners in the writ petition, the respondent / University should re-convene a meeting of its Academic Council to deliberate the adoption and implementation of the UGC Notification, 2016 whereby it has notified Regulations with regard to Minimum Standards and Procedure for Awards of M.Phil / Ph.D Degree.

28. Before I deal with the submissions made, an issue arose during oral arguments that the arguments advanced are at variance with the stand of the University in its counter affidavit. A perusal of the counter affidavit and the written arguments filed by the University, the common stand is, the UGC Notification (Regulations) shall apply to every University established or incorporated by or under a Central Act, a Provincial Act or a State Act etc. and is binding and is mandatorily to be followed by all Universities including the respondent / University. The respondent / University referred to Section 2 (f) of the UGC Act, 1956 which defines University. It is the stand of the University, no discretion is vested with it to apply or reject the notification. It is the University's stand that the UGC

Regulations have been formulated under Section 26 (1)(f) and (g) of the UGC Act and Section 14 of the said Act clearly states that in case of non-compliance of UGC Norms and Regulations the grants available to the University may be withheld.

29. The stand which is at variance is, on the weightage for written and viva-voce. In the Counter-affidavit it has been stated that weightage for written and viva-voce would be in the ratio of 80:20 whereas in the arguments it was contended that weightage in the ratio of 80:20 is a deviation from the statutory Regulations and the same cannot be given effect to as the statutory Regulations shall have to be followed.

30. Mr. Arvind Nigam may be right in contending that the arguments on behalf of the respondent in this regard are in complete contradiction to its counter-affidavit and thus beyond the scope of pleadings. But the stand of the University in the arguments need to be seen from the perspective whether University can deviate from the Regulations of 2016 in view of the provisions of the UGC Act, 1956 as contended by Mr. Mehta. This, I say so in view of the judgment of the Supreme Court in the case of Jay Narain Parasrampuriah v. Pushpa Devi Saraf 2006 7 SCC 756, wherein the Supreme Court held as under:-

“33. While applying the procedural law like the principle of estoppel or acquiescence, the court would be concerned with the conduct of a party for determination as to whether he can be permitted to take a different stand in a subsequent proceeding, unless there exists a statutory interdict.”

Surely, if the arguments advanced are, in conformity with Law and statutory Regulations, the principles of estoppel or acquiescence shall not be applicable.

31. To examine this aspect and the issue raised, it is important to reproduce some of the provisions of the UGC Act. Before that, I may only note, the UGC Act, 1956 has been enacted by the Parliament in view of Entry 66 of List I of Seventh Schedule of the Constitution, which vests in Parliament the exclusive authority in regard to co-ordination and determination of standards in Institution of higher education.

“Provisions of UGC Act, 1956

2. In this Act, unless the context otherwise requires:-

*(f) **“University”** means a University established or incorporated by or under a Central Act a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act.”*

“26. (1) The Commission [may, by notification in the Official Gazette, make regulations] consistent with this Act and the rules made thereunder-

(f) defining the minimum standards of instruction for the grant of any degree by any University;

(g) regulating the maintenance of standard and the co-ordination of work or facilities in Universities.

“14. If any University grants affiliation in respect of any course of study to any college referred to in subsection (5) of section 12A in contravention of the provisions of that sub-section or fails within a reasonable time to comply with any recommendation made by the Commission under Section 12 or section 13, or

contravenes the provision of any rule made under clause (f) or clause (g) of sub-section (2) of section 25, or of any regulation made under clause (e) or clause (f) or clause (g) of section 26, the Commission, after taking into consideration the cause, if any, shown by the University 3 for such failure or contraventions may withhold from the University the grants proposed to be made out of the Fund of the Commission.”

32. That apart the Supreme Court in its opinion reported as 2009(4) SCC 590 Annamalai University v. Secretary to Govt. Information and Tourism Department and Ors. (connected Appeal) has in Para 42 held as under:

“42. The provisions of the UGC Act are binding on all Universities whether conventional or open. Its powers are very broad. The 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.”

33. Having noted the provisions of the UGC Act and law laid down by the Supreme Court in *Annamalai University (Supra)* and on a perusal of the UGC Notification notifying Regulations, it is clear that the same has been issued/framed in exercise of Power conferred by Clauses (f) and (g) of Sub-Section 1 of Section 26 of the UGC Act, 1956. I may state here, the UGC Notification (Regulations) has not been challenged in this petition.

34. The Jawaharlal Nehru University, the respondent herein was established under the provisions of Jawaharlal Nehru University Act, 1966 enacted by the Parliament much after the UGC Act, 1956 was enacted, which occupies the field, with regard to co-ordination and determination of standards in Institution of higher education.

35. 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 Parliament is well settled. In the case reported as *(1995) 4 SCC 104 State of Tamilnadu v. Adhiyaman Educational and Research Institute* in para 41(i), the Supreme Court has held as under:-

“41. (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."

36. Similarly, in the case reported as **(1987) 4 SCC 671 Osmania University Teachers' Association v. State of A.P.**, the Supreme Court in paras 14 and 30, 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.

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.”

37. The Supreme Court also held in *Annamali University (supra)*, even though in the context of Open University Act enacted under Entry 25 of List III, that the UGC Act having been enacted by Parliament in terms of Entry 66 of List I of Seventh Schedule to the Constitution would prevail over the Open University Act, as the field regarding providing of Minimum Standards of Education is covered by the UGC Act, 1956.

38. The plea of Mr.Nigam that the UGC Notification, 2016 (Regulations) provides the minimum standards which is to be followed and allows Universities to supplement the same to ensure quality education is imparted as was done by the respondent University in 2009 cannot be accepted. In this regard, I note the University in its counter-affidavit has taken the following stand, which I reproduce:-

“XXXX XXXX XXXX XXXX

It is mandatory to adopt the UGC regulations and when the UGC gazette notification of 2009 was not implemented in toto, compliance certificate to the university students could not be issued. UGC Notification 2009 was implemented in a partial manner in

JNU because of which hundreds of students who are waiting for their degree to be certified as UGC 2009 compliant are facing problems since University cannot give such compliance certificates. Their applications for employment are being rejected because of their degrees not being UGC 2009 compliant.”

I may state here that the petitioners in rejoinder affidavit have stated the aforesaid stand in the counter-affidavit of the respondent that students are being harassed due to non compliance of the UGC Regulation 2009 is misleading, false and incorrect.

39. In any case, the position of law has been dilated above. The UGC having framed the Regulations, vide Notification of 2016, the University is required to follow the same.

40. Insofar as the plea of Mr. Nigam that Regulation 5.2.1 and 5.3 recognizes the autonomy of the University and the University require to formulate its own admission policy and procedure in accordance with its Statutes is on a misreading of the provisions of the Constitution, UGC Act and the Regulations itself.

41. A perusal of Regulation 5.2.1 (of the UGC Notification, 2016), it is revealed that the same is subject to Regulation 6.5 which prescribes norms regarding the Scholar-Teacher ratio. It is within the student teacher ratio prescribed under Regulation 6.5 the education institution shall determine the annual basis (i.e intake) through their academic bodies. In no case, the Institution can deviate or exceed the limit prescribed under Regulation 6.5. It is legally impermissible for the University to formulate its own admission policy in violation of UGC Act and the Regulations. I may state here, the Supreme Court in its opinion

reported as 1999 (7) SCC 120 Dr. Preeti Srivastava v. State of M.P. while dealing with the scope of Entry 66 of List I vis-à-vis Entry 25 of List III considered the basis on which standard of education in any institution can be analyzed, to include Student – Teacher ratio (Reference: Paragraph 36).

42. Regulation 5.3 only stipulates admission shall be based on the criteria notified by the Institution, keeping in view the norms issued by the UGC and other statutory bodies taking into consideration the reservation policy of Central Government/State Government. The plea of Mr. Nigam based on Regulation 5.2 and 5.3 is rejected.

43. Even the plea of Mr. Nigam that procedure to be followed by the Academic Council/Executive Council under the provisions of the Statutes vide Statute 15, 36 has been violated while adopting the Notification of 2016 (Regulations), is liable to be rejected as the UGC Act, 1956 having been enacted by the Parliament in terms of Entry 66 of List I of the Seventh Schedule of the Constitution of India would prevail over the JNU Act and the Statutes made thereunder.

44. Mr. Mehta is justified in his submission that Regulations are mandatorily to be followed by the University without any deviation and the binding nature of the said Regulations is not dependent upon it being adopted or accepted by the respondent University or any other University in the Country. In other words, the Regulations are binding on the University by operation of Law, i.e., UGC Act, 1956. This aspect has been

clarified by the UGC in its communication dated February 13, 2017.

45. From the above discussion, the following position is deduced:-

- (i) The Constitution vests in the Parliament with the exclusive authority in regard to coordination and determination of Standards in Institutions of higher education, in terms of Entry 66 of List I;
- (ii) The Parliament enacted UGC Act, 1956 for that purpose;
- (iii) The respondent University having been constituted under the Central Act is a University within the meaning of Section 2(f) of the UGC Act, 1956;
- (iv) The UGC in exercise of its powers under Section 26(1) (f) & (g) has framed Regulations of 2016 relating to Minimum Standards and Procedure for award of M.Phil/Ph.D degrees;
- (v) The said Regulations are applicable/binding on the respondent University in view of the operation of provisions of the UGC Act, 1956;
- (vi) The Academic Council and Executive Council are necessarily to adopt the Regulations in the University Ordinance without any deviation.

46. In view of the aforesaid discussion, the plea of Mr. Nigam by relying upon the judgments in the case of Deewan Singh (supra), Asha Sharma (supra) and Prakash Rattan Lal (supra), which have no applicability in the facts of this case, needs to be rejected. Suffice to state, the aspect of weightage in the ratio of 80:20 of written and viva-

voce is a deviation from the Regulations as notified on July 5, 2016, which have a statutory force and such weightage could not have been allowed and the plea is a legal plea based on the interpretation of the provisions of the UGC Act, 1956 and the Regulations made thereunder, could have been urged in arguments. In *Ariane Orgachem (P) Ltd. (supra)*, the Supreme Court in Para 36.2 and 36.3 has held as under:

“36.2. A similar view has also been taken by this Court in V.L.S. Finance Ltd. Vs. Union of India and Greater Mohali Area Development Authority Vs. Manju Jain, wherein, it has been held that pure question of law can be raised at any stage of litigation.

36.3. In National Textile Corpn. Ltd. Vs. Nareshkumar Badrikumar Jagad, it has been held by this Court that a new ground raising pure legal issue for which no inquiry or proof is required, can be raised at any stage”.

47. That apart, the plea as advanced on behalf of the petitioners if accepted then the same would result in rewriting Entry 25 of List III of the Seventh Schedule of the Constitution, which is impermissible and such an interpretation would also run contrary to the provisions of the UGC Act and the law as laid down by the Supreme Court and would have wide ramifications across all the Universities in India.

48. In view of my discussion above, I do not see any merit in the petition and the same is dismissed. No costs.

CM 7018/2017 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

MARCH 16, 2017

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