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

Date of decision: 12th April, 2019

+ W.P.(C) 3838/2019 & CM Nos. 17443-17444/2019

SELF-FINANCING EDUCATIONAL INSTITUTIONS
ASSOCIATION

..... Petitioner

Through: Mr. Rajiv Bansal, Sr. Adv. with
Mr. Sameer Rohatagi, Mr. Namit Suri, Mr.
Kunal Kumar, Mr. Dipender Chauhan, Mr.
AkshitParadhan, Ms. Soumya Sarin and Mr.
Parul Panthi, Advs.

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY
AND ORS.

..... Respondents

Through: Mr. Ramesh Singh, SC
GNCTD with Ms. Warisha Farasat,
Mr. Chirayu Jain and Ms. Nikita Goyal,
Advs.
Mr. Mukul Talwar, Sr. Adv. for R-1 with
Mr. Kunal Bahri, Adv. for R-2

**CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR**

ORDER (ORAL)

% **12.04.2019**

CM No. 17444/2019 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CM No. 17443/2019(for stay)

3. Detailed arguments on this application have been addressed by Mr. Rajeev Bansal, learned Senior counsel appearing for the petitioner/applicant, assisted by Mr. Sameer Rohatagi and Mr. Mukul Talwar, learned Senior counsel appearing for the Guru Gobind Singh Indraprastha University (hereinafter referred to as “the GGSIPU”), assisted by Ms. Anita Sahani.

4. The ire of the petitioner is directed against order, dated 11th February, 2019, issued by the Directorate of Higher Education (hereinafter referred to as “the DHE”), Government of National Capital of Territory, constituting part of Annexure P-1 to the writ petition, and a circular, dated 26th February, 2019, issued by the GGSIPU, as a sequel to the afore-mentioned order, dated 11th February, 2019 of the DHE, constituting Annexure P-2 to the writ petition.

5. The order, dated 11th February, 2019, (*supra*), purports to have been issued by the DHE in exercise of the powers conferred by Clause (g) of Section 3, read with Section 13 of the Delhi Professional Colleges and Institutes (Prohibition of Capitation Fee Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to ensure Equity and Excellence), Act 2007 (hereinafter referred to as “the 2007 Act”). The relevant para of the said order may be extracted thus:

“(To be published in Part-IV of the Delhi Gazette
Ordinary)

Government of National Capital Territory of Delhi

Directorate of Higher Education
B-Wing, 5-Sham Nath Marg, Delhi-110054

Dated: 11th February, 2019

ORDER

No.DHE 4(61)/2010-11/Part File/733 In exercise of the powers conferred by Clause (g) of section 3 read with section 13 of the Delhi Professional Colleges or Institutions (Prohibitions of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence) Act, 2007 (Delhi Act 08 of 2007), the Government of National Capital Territory of Delhi hereby permits the Guru Gobind Singh Indraprastha University which was appointed as the designated agency under the said Act vide order dated the 5th May, 2011 to adopt the National Level Tests for admission to the following Courses/Programmes from the academic year 2019-20, namely:-

(a) xxx xxx xxx

(b) For the Academic Session 2019-20, the following National Level Tests are allowed:-

Sl. No	National Level Test	Programme	Common Entrance Test code in Academic Session 2018-19	Remarks
1.	JEE-Main 1	B.Tech	131	
2	NIMCET	MCA	105	
3.	CLAT-UG	BA/BBA	121	

		LLB		
4.	CLAT-PG	LLM	112	
5.	CAT	MBA	101	Since the test date of common admission test is over, Central Management Admission Test Conducted by National Testing Agency is allowed after 31 st July, 2019 for admission, if seats remain still vacant after exhausting the merit list prepared on the basis of score of Common Admission Test by Guru Gobind

				Singh Indraprast ha University.
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(J.P.Agarwal)
Director (Higher Education)”

6. As a sequel to the above order, dated 11th February, 2019, the GGSIPU issued the impugned Circular, dated 26th February, 2019, the relevant portion of which reads thus:

“Guru Gobind Singh Indraprastha University
Sec-16 C, Dwarka, New Delhi-110078

GGSSIPU/Admissions/2019/10039

February 26, 2019

CIRCULAR

Admissions for the Academic Session 2019-20

In continuation to earlier GGSIPU advertisement published in national dailies on 26.10.2018 for information to all the interested candidates that the GGSIP University is likely to admit students in the programmes for the Academic Session 2019-20, through National Level Tests as mentioned against programmes.

And now, as per Order No. DHE.4(61)/2010-11/Part File/733 dated 11.02.2019 from Director Higher Education; by Order and in the name of Lt Governor, National Capital Territory of Delhi, the GGSIP University will carry out admissions in the following courses/programmes in University Schools of Studies and its affiliated colleges during Academic Session 2019-20,

				remain still vacant after exhausting the merit list prepared on the basis of score of Common Admission Test by Guru Gobind Singh Indraprastha University.
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It is for information of all prospective candidates and other stakeholders that for admission to the other programmes (other than listed in (A) & (B) as above), which are also being offered by the GGSIPU in its University Schools of Studies/affiliated colleges; or any new course (if any) for the Academic Session 2019-20 shall be based on the merit of the Common Entrance Test to be conducted by the GGSIPU or as directed by Govt. notifications, and/or as specified for programme in the 'Admission Brochure 2019-20' and which will be notified accordingly.

The detailed information for admissions as GGSIPU 'Admission Brochure 2019-20' is likely to be released in the first week of March, 2019.

All Candidates and stakeholders are requested to visit the website (www.ipu.ac.in) regularly for updates please.

This issues with the approval of competent authority.

Sd/-
(Dr. Nitin Malik)

Joint Registrar (Admissions)”

7. The grievance of the petitioner is against the stipulation that the GGSIPU could adopt the scores in the CET and NIMCET (the “Common Law Admission Test” and “Central Management Admission Test”) for admission to MCA courses offered by Colleges affiliated to it.

8. The arguments advanced by learned counsel on both sides in the present matter are similar to those advanced in W.P.(C) 2353/2019. However, Mr. Sameer Rohatagi, learned counsel for the petitioner, submits in addition that, in the present case, the impugned notification was issued after the CET and NIMCET had already been conducted on 25th November, 2018 and 28th January, 2019 and the results thereof declared on 5th January, 2019 and 8th February, 2019. Mr. Rohatagi submits that, therefore, in the present case, the issuance of the impugned order and circular had completely wiped out the chances of students, who were desirous of seeking admission to MCA Courses being conducted under the GGSIPU University.

9. To this, Mr. Mukul Talwar, learned Senior Counsel submits that the proposal to adopt the CET/NIMCET for admission to MCA Courses conducted by the GGSIPU University was made known to the public as far back as in October, 2018. However, Mr. Samer Rohatagi submits in response thereto, that the said information was only by way of a newspaper advertisement (Annexure P-10 to the writ petition) and that the actual notification, making the scores in the CAT applicable

for admissions to MBA Courses conducted by the GGSIPU University were issued only after the said tests were held and the results thereof declared.

10. I have considered the above submissions (except for the submission that the impugned notice and circular were issued after the tests were actually held) in my order dated 1st April, 2019 in W.P.(C) 2353/2019 (*supra*). I have also dealt with the plea of delay and laches, which were raised by Mr. Mukul Talwar who appeared for the GGSIPU University, in the said writ petition as well. My *prima facie* findings, on these aspects, as contained in paras 23 to 38 of the said order may be reproduced thus :

“28. In other words, though the common entrance test has necessarily to be conducted by the “da”, the admissions, on the basis thereof, may be made to another institution.

29. The first of these requirements, *prima facie*, is ‘fatal to the impugned order dated 11th February, 2019 of the DHE, GNCTD as well the Circular dated 26th February, 2019 issued by the GGSIPU as a sequel thereto.

30. The reliance, by Mr. Mukul Talwar, on the notification dated 28th March, 2016 (*supra*), is, in my view, completely misplaced. The said notification, quite clearly, designates the CLAT (this appears to be a malapropism; it ought appropriately to be the agency conducting the CLAT) as a designated agency, to conduct the test for admission to the relevant courses of the GGSIPU for *filling up remaining vacancies, if any, after 31st day of July of that year.*

31. Read in juxtaposition with Clause 14 of the policy guidelines, dated 12th January, 2016 (*supra*), issued by the DHE, GNCTD, it is clear that while the GGSIPU was designated as the “designated agency”, to conduct the CET and counselling for selection to courses conducted by it, it was *only in respect of vacancies which remained unfilled after 31st July, 2016*, that the notification, dated 28th March, 2016 (*supra*) designated the agency conducting the CLAT to be the designated agency. This is underscored by the fact that, having designated the CLAT as the designated agency, the notification went on *to deem the test conducted by such designated agency to be the test conducted by the designated agency for admission to courses under the GGSIPU*. The designation of the agency, conducting the CLAT, by the notification, dated 28th March, 2016 (*supra*), as the designated agency for admission to courses conducted by the GGSIPU, was, therefore, clearly for a very limited purposes, i.e. to fill unfilled seats remaining vacant after the 31st day of July of that year. It cannot be read, by any stretch of imagination, as conferring the agency, conducting the CLAT, the status of a designated agency in perpetuity, or for admission to courses conducted by the GGSIPU for subsequent years.

32. Mr. Bansal is entirely correct in pointing out that there is no similar notification, designating the agency conducting the CLAT as the designated agency for effecting admissions to courses being conducted by the GGSIPU for the academic session 2019-2020, i.e. for this year.

33. In the absence of any such notification, Mr. Bansal would *prima facie* correctly, contend, the entire exercise of adoption of the scores of the CLAT for making admissions to the law courses conducted by the GGSIPU, is completely vitiated. The 2007 Act does not, anywhere, provide for adoption, by one institution, of the score in the examination, conducted by another institution, even if the latter institutions were to be conferred “designated agency” status. The sequitur, of conferment, on such

latter institution, of the status of a “designated agency”, would be that admissions to the institution could be made on the basis of examinations conducted by such designated agency. It would not clothe the institution with the authority to adopt scores in the examination conducted by such designated agency, where the agency was not actually designated, for that year, to conduct examinations, for admissions to the institution in question.

34. The above position would be further underscored by a reference to the impugned order, dated 11th February, 2019 (*supra*). The said order is clearly premised on an earlier order, dated 5th May, 2011, designating the GGSIPU as the designated agency, and is not based on the notification, 28th March 2016, whereby the CLAT was designated as designated agency for a limited purpose as afore-noted. The order, dated 11th February, 2019 (*supra*), proceeding, as it does, on the designation of the GGSIPU as the designated agency conducting the CET, the CET would also have to be conducted by the GGSIPU itself, and not by any other agency, including the agency conducting the CLAT.

35. As such, the entire exercise of adoption of the score of the CLAT, as a basis for effecting admissions to law courses conducted by the GGSIPU, or under its aegis, is, in my *prima facie* view, completely contrary to the provisions of the 2007 Act, and cannot be supported on the basis of the Notification dated 28th March, 2016 (*supra*).”

11. The above findings apply, *mutatis mutandis*, to the present case, the only difference between the fact situation as obtaining in W.P.(C) 2353/2019, and the present writ petition, being that, in that case, the examination in question was the CLAT, for admission to LLB Courses, whereas in the present case, the examination in question are

the CET and NIMCET, for admission to the MCA Courses, under the aegis of the same University, i.e. the GGSIPU University.

12. Accordingly, issue notice on this application to the respondents, returnable on 23rd May, 2019. The respondents are at liberty to file replies to this application, if they so choose to do, before the next date of hearing.

13. Till the next date of hearing, there shall be an *ad interim* stay of operation of the impugned order dated 11th February, 2019, issued by the DHE, GNCTD as well the consequent circular dated 26th February, 2019, issued by the GGSIPU University.

14. This interim order would, needless to say, apply only to the admission to the MCA Courses, being conducted by the GGSIPU university.

15. Mr. Mukul Talwar seeks also to urge a contention that the petitioners lack locus to move this writ petition, as they are not affected. I am unable, *prima facie*, to sustain this contention, as the petitioners is an association of institutions, which conduct MCA Courses, resulting in degrees awarded by the GGSIPU and, therefore, they cannot be said as having no interest or concern with the Regulation and the procedure by which students are admitted to the said Courses.

16. The application for interim relief stands allowed accordingly.

17. The University is directed to upload/reflect this order on its website, so that all stakeholders would be aware thereof.

C. HARI SHANKAR, J

APRIL 12, 2019/kr

HIGH COURT OF DELHI



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