



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D. B. Civil Writ Petition No. 14095/2020

Jaipur National University, Jaipur-Agra Bypass, Near New RTO Office, Jagatpura, Jaipur -302017 through its Registrar Shri D.K. Mathur.



-----Petitioner

Versus

1. Union of India, through Secretary Ministry of Education Department of Higher Education 127-C Shastri Bhawan New Delhi.
2. University Grant Commission, through its Secretary, Distance Education Bureau, Bahadurshah Zafar Marg, New Delhi-110002.
3. National Assessment & Accreditation Council, Post Box No.: 10502, IUAC Campus, Aruna Asaf Ali Marg, New Delhi-110067

-----Respondents

For Petitioner	:	Mr. K.K. Sharma Senior Advocate assisted by Mr. Rishabh Khandelwal Advocate.
For Respondents	:	Mr. Kirti Kapoor Advocate. Mr. Manoj Ranjan Sinha Advocate with Mr. Neeraj Batra and Mr. Ravindra Pal Singh Advocate.

**HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE SAMEER JAIN**

Order

REPORTABLE

29/09/2022

By the Court:(Per Manindra Mohan Shrivastava, Acting CJ.)

By this petition under Article 226 of the Constitution of India, the petitioner-University seeks to assail the legality and validity of second proviso to Regulation 3(A) of the University Grants Commission (Open and Distance Learning Programmes and Online Programmes) Regulations, 2020 (for short 'the Regulations of



2020') to the extent it prescribes a condition of having submitted an application to National Assessment and Accreditation Council (for short 'the NAAC') on or before 29.02.2020 as an eligibility criteria for Higher Educational Institutions (HEIs) to offer programmes through Open and Distance Learning (ODL) mode, for the academic session 2020-21 commencing July, 2020. The petitioner has prayed that the aforesaid proviso to the extent indicated above be declared unconstitutional, ultra vires Article 14 of the Constitution of India, University Grants Commission Act, 1956 (for short 'the Act of 1956') and consequently, void, illegal and invalid.

The petitioner has also prayed for writ or direction in the nature of Mandamus to the respondents to allow the petitioner to run and conduct Open and Distance Learning (ODL) courses for next academic session 2020-21.

2. In this petition, initially an interim order was passed on 25.08.2021 allowing the petitioner to submit offline application in prescribed format to the University Grants Commission (for short 'the UGC') for its approval to run Open and Distance Learning and Online Programme courses for the session 2021-22 with a further direction that the application shall be considered by the UGC in terms of prevalent regulations and the same shall not be rejected for not applying to the NAAC till 29.02.2020 in view of the impugned second proviso to Regulation 3(A) of the Regulations of 2020 and due to existing NAAC score of the petitioner. By the aforesaid interim order, it was also directed that since the UGC has fixed last date for admission till 15.12.2021, the NAAC shall conduct the inspection of the petitioner-University to award



necessary score of accreditation well in time so that further complications and difficulties may be avoided. The permission/approval of the UGC was made subject to the outcome of the writ petition.

3. When the matter came up for consideration before this Court on 08.12.2021, application for vacating the interim order, preferred by the UGC, was rejected.

The respondent-UGC, aggrieved by the rejection of application for vacating stay order, filed Petition for Special Leave to Appeal (C) No. 20769-20770/2021 before the Hon'ble Supreme Court and vide order dated 17.12.2021, the Hon'ble Supreme Court stayed the operation of order dated 25.08.2021 passed in the writ petition and order dated 08.12.2021 passed in misc. application.

The Hon'ble Supreme Court further directed that the NAAC can conduct the inspection for accreditation without reference to the pendency of Special Leave Petition.

4. Though, academic session 2020-21 commencing from July, 2020 is over, learned counsel for the respondents at the outset contended that this petition is rendered academic as even if the petitioner succeeds, no effective direction can be issued in favour of the petitioner, learned Senior Counsel appearing on behalf of the petitioner urged this Court to decide the issue stating that the petitioner-University may be affected adversely in conducting courses in subsequent academic sessions on the ground that it had failed to comply with directives of the UGC to submit application on or before 29.02.2020 for running Open and Distance Learning (ODL) courses and, therefore, a declaration





would be necessary that the impugned second proviso to Regulation 3(A) of the Regulations of 2020 was bad in law and such a condition could not be imposed and further that under the existing NAAC guidelines, the petitioner was entitled to submit its application for improvement even after 29.02.2020.

5. The petitioner is a University established under the provisions of Jaipur National University, Jaipur Act, 2008 and, as pleaded, is a self financed University imparting courses in several subjects including undergraduate and postgraduate courses through Regular, Open and Distance Learning (ODL) mode.

Case of the petitioner is that the petitioner possessed the NAAC accreditation from 01.05.2015 to 30.04.2020 vide Accreditation Certificate (Annexure-1 attached with the writ petition) issued in its favour by the NAAC. Fresh applications were invited vide public notice dated 01.11.2019 by the UGC from eligible Higher Educational Institutions (HEIs) for offering Open and Distance Learning (ODL) programmes for the academic session 2020-21 beginning from July, 2020 onwards. The petitioner-University had also submitted its application seeking recognition for imparting Open and Distance Learning (ODL) programmes for the academic session 2020-21 beginning from July, 2020 onwards claiming to be eligible under the applicable regulations. A letter was issued on 31.01.2020 by the UGC stating that Higher Educational Institutions (HEIs) may opt for General University Manual or Dual Mode Universities Manual for assessment and accreditation by the NAAC. The petitioner was permitted to short close the current accreditation period as one time measure. According to the petitioner, the said relaxation of





applying either in General University Manual or Dual Mode Universities Manual and short closing of the accreditation was applicable until June, 2020-21 and thereafter, the petitioner could apply in Dual Mode Universities Manual.

6. Further pleadings are that later on, the NAAC issued notification on 03.02.2020 informing all Dual Mode Universities having valid accreditation that they may volunteer for assessment and accreditation process by the NAAC by online submission of Institutional Information for Quality Assessment (IIQA)/Self Study Report (SSR) by short closing their validity period on or before 29.02.2020. In response to mail dated 06.02.2020, the petitioner submitted undertaking on 10.02.2020.

7. It is further pleaded that due to sudden outbreak of COVID-19 pandemic and unprecedented circumstances due to which lock down was declared on 23.03.2020, the UGC cancelled application process earlier initiated on 01.12.2019 for recognition to offer programmes through Open and Distance Learning (ODL) mode vide its letter dated 30.06.2020.

On 04.09.2020, new set of regulations were notified known as the University Grants Commission (Open and Distance Learning Programmes and Online Programmes) Regulations, 2020. Regulation 3 of the Regulations of 2020 prescribed institutional level eligibility criteria for offering programmes under Open and Distance Learning (ODL) mode. It required that Higher Educational Institutions (HEIs) shall have to fulfill the condition of having accreditation by the NAAC with minimum score of 3.01 on a 4-point scale or having NAAC rank in top 100 in University category of National Institutional Ranking Framework, at least once in two



preceding years. Second proviso to the aforesaid Regulation provided that in view of unprecedented circumstances due to COVID-19 pandemic, the Higher Educational Institutions (HEIs) recognised by the UGC to offer programmes in Open and Distance Learning (ODL) mode till the academic session 2019-2020 shall be entitled to continue to offer programmes, already recognised for the academic session 2019-2020, in Open and Distance Learning (ODL) mode for a period of one year, i.e., academic session 2020-2021, starting from July 2020 subject to the condition that such Higher Educational Institutions (HEIs) had submitted undertaking to the effect that they will attain the NAAC score of 3.26 on a 4-point scale before the end of academic session July 2019-June 2020 and have also submitted application to the NAAC till 29.02.2020.

The petitioner-University was recognised as a Higher Educational Institution (HEI) to offer programmes in various courses through Open and Distance Learning (ODL) mode for the academic sessions 2018-19 and 2019-20 as per orders dated 14.08.2018 and 24.10.2018 issued by the UGC (Annexure-11 collectively attached with the writ petition). It is relevant to mention here that in both the orders, it was clearly stipulated that as HEI, NAAC score is below 3.26, the recognition given is only up to academic sessions 2018-19 and 2019-20 based on UGC ODL Second Amendment Regulations, 2018.

8. Pursuant to the Regulations of 2020, the UGC issued public notice on 12.10.2020, whereby, recognition was continued for a period of one year, i.e., academic year 2020-21, starting from July, 2020 to certain Higher Educational Institutions (HEIs) for offering



only those programmes under Open Distance Learning (ODL) mode which were already recognised for the academic session 2019-20. However, name of the petitioner-University was not included in the eligibility list of Higher Educational Institutions (HEIs) for continuation of recognition for a period of one year. Apparently, non-inclusion of the petitioner-University in the list of eligible HEIs was in view of second proviso to Regulation 3(A) to the Regulations of 2020 because the petitioner had not submitted application on or before 29.02.2022. This gave rise to cause of action to the petitioner to file this petition, challenging the validity of the impugned proviso.

9. Learned Senior Counsel appearing on behalf of the petitioner-University argued that the impugned second proviso to Regulation 3(A) of the Regulations of 2020 has an eligibility criteria for Higher Educational Institutions (HEIs) already recognised by the UGC to offer programmes till academic session 2019-20 through Open and Distance Learning (ODL) mode, for the academic session 2020-21, commencing from July, 2020, which is manifestly arbitrary, discriminatory and violative of Article 14 of the Constitution of India. Learned Senior Counsel contended that in compliance of the requirement for running Open and Distance Learning (ODL) programmes as provided in the University Grants Commission (Open and Distance Learning) Third Amendment Regulations, 2018, notified on 06.09.2018, the petitioner had duly submitted an undertaking in accordance with the statutory regulations on 10.02.2020. He would submit that the petitioner had a right to apply to the NAAC as per NAAC Manual till 30.04.2020 and subsequently by 30.04.2021, in the normal



circumstances, meaning thereby that non-submission of application on or before 29.02.2020 could not be made a basis to categorise the petitioner as a non-compliant institution, but the impugned second proviso to Regulation 3(A) of the Regulations of 2020 incorporated a manifestly arbitrary condition of application having been submitted on or before 29.02.2020, which has the effect of taking away the vested and accrued right of the petitioner retrospectively. His contention is that by making such a provision, Regulations of 2020 have been given retrospective effect from a date much prior to its promulgation to utter prejudice of the petitioner, which is contrary to the provisions contained in Section 26, sub-section (3) of the Act of 1956 as it clearly provides that the power to make regulations though include the power to give retrospective effect from a date not earlier than the date of commencement of the Act of 1956, to the regulations or any of them, but the same is circumscribed by the condition that no retrospective effect shall be given to any regulation, so as to prejudicially affect the interests of any person to whom such regulation may be applicable. Relying upon the said provision, it has been submitted that the NAAC, which is an autonomous body functioning in aid to the UGC, allowed submission of application at the first place till the end of the academic session, i.e. 30.06.2020 and the same was further extendable for a period of one year, which could not be preponed by the UGC by incorporating impugned second proviso rendering the petitioner ineligible on the ground that it had failed to submit application on or before 29.02.2020.





10. Next limb of the submission of learned Senior Counsel is that the condition prescribed by the respondents by way of impugned second proviso of having submitted an application to the NAAC till 29.02.2020 is also contrary to the NAAC Manual/Guidelines itself. The NAAC guidelines provide window up to the period of one year for making application and as the petitioner institution was enjoying the NAAC accreditation up to 30.04.2020, its Accreditation Certificate continued to remain valid for a period of one year even if it had not applied on or before 29.02.2020. Therefore, such condition of having made an application to the NAAC till 29.02.2020 itself is in breach of the NAAC Manual, which is beyond the jurisdiction of the UGC.

11. Next submission of learned Senior Counsel is that the object of introducing impugned second proviso was to provide relaxation and relief to Higher Educational Institutions (HEIs), which could not get an opportunity to obtain NAAC Certificate as required under the UGC Regulations within the stipulated period, because of the unprecedented situation of COVID-19 pandemic, but undertaking having already been filed and the UGC having already suspended all its activities, applications for recognition having been closed, NAAC expressing inability to conduct an inspection towards award of proper score, imposing such a harsh condition on the ground of failure to submit an application on or before 29.02.2022, which was even prior to the submission of an application in normal circumstances, is against the very object of introduction of relaxed criteria under impugned second proviso. Thus, the proviso on one hand, granted certain relaxation and on the other hand, took it away, rendering the provision suffering





from manifest arbitrariness and, therefore, violative of Article 14 of the Constitution of India.

12. It is also submitted that the classification of Higher Educational Institutions (HEIs) on the basis of they having applied on or before 29.02.2020 is imaginary and does not serve any purpose because in any case those institutions, which had applied prior to 29.02.2020 and the institutions, which failed to apply on or before the cut off date, none had the facility of inspection and completion of accreditation process through the agency of the NAAC till the end of the academic session 2019-2020, i.e., 30.06.2020. Therefore, the classification, made on such a basis, having no rational basis, is discriminatory and is violative of Article 14 of the Constitution of India.

13. In support of the aforesaid submissions, learned Senior Counsel has placed reliance upon the judgments of the Hon'ble Supreme Court in the cases of **Bejgam Veeranna Venkata Narasimloo & Others Vs. State of A.P. & Others, (1998) 1 SCC 563; Mahabir Vegetable Oils (P) Ltd. & Another Vs. State of Haryana & Others (2006) 3 SCC 620; State of T.N. & Another Vs. P. Krishnamurthy & Others (2006) 4 SCC 517; General Officer Commanding-In-Chief & Another Vs. Dr. Subhash Chandra Yadav & Another (1988) 2 SCC 351; State of U.P. & Others Vs. Daulat Ram Gupta (2002) 4 SCC 98; S.V.R. Mudaliar (Dead) by LRs & Others Vs. Rajabu F. Buhari (Mrs) (Dead) by LRs & Others (1995) 4 SCC 15; and Sarah Mathew Vs. Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian & Others (2014) 2 SCC 62.**





In support of the submission that even though the period of 2020-21 is over, appropriate relief in respect of subsequent courses could be granted by moulding the relief, so as to avoid multiplicity of litigation, learned Senior Counsel relied upon the judgments of the Hon'ble Supreme Court in the cases of **Pasupuleti Venkateswarlu Vs. The Motor & General Traders, AIR 1975 SC 1409; Ramesh Kumar Vs. Kesho Ram 1992 Supp (2) SCC 623 and Association of Managements of Homeopathic Medical Colleges of Maharashtra Vs. Union of India & Others, (2019) 20 SCC 511.**

14. Per contra, learned counsel appearing on behalf of the respondents-UGC, opposing the relief sought in the petition, would argue that the impugned second proviso to Regulation 3(A) of the Regulations of 2020 was introduced to deal with the cases of those Higher Educational Institutions (HEIs) which were compliant with various legal requirements and directions issued by the UGC from time to time and had submitted applications for accreditation on or before 29.02.2020 and benefit of said proviso could not be claimed by non-compliant institutions like the petitioner, which despite repeated opportunities, did not submit any application for accreditation on or before 29.02.2020. He would submit that UGC communication dated 14.08.2018 clearly provided that as HEI NAAC score was below 3.26, recognition was being given only up to academic sessions 2018-19 to 2019-20 as per the University Grants Commission (Open and Distance Learning) Second Amendment Regulations, 2018. He would further submit that the Second Amendment for the first time provided that Higher Educational Institutions (HEIs) should have a valid accreditation





from the NAAC with minimum score of 3.26 on a 4-point scale, though it provided that Higher Educational Institutions (HEIs), which had been given permission to offer programmes in Open and Distance Learning (ODL) mode earlier for the academic session 2017-18 will be allowed to continue till 2019-20 to enable them to reach the prescribed quality of NAAC score.

Further submission of learned counsel for the respondents is that thereafter, the University Grants Commission (Open and Distance Learning) Third Amendment Regulations, 2018, which were brought into effect from 06.09.2018, clearly provided that Higher Educational Institutions (HEIs) offering programmes through Open and Distance Learning (ODL) mode shall submit an undertaking to the effect that it will attain NAAC score of 3.26 on a 4-point scale before the end of the academic session of July 2019-June 2020, failing which the Commission shall not accord any further approval for Open and Distance Learning (ODL) programmes. It was further highlighted that the petitioner, being fully aware of such legal requirement under the Regulations, duly submitted an undertaking/affidavit that it will attain NAAC score of 3.26 before the end of academic session of July 2019-June 2020, failing which it will not insist on consideration of its application/proposal by the UGC for recognition of programmes under Open and Distance Learning (ODL) mode for 2020-2021 onwards. As the petitioner was not having the required NAAC score of 3.26 and if it was willing to continue with the Open and Distance Learning (ODL) programmes for the next academic session, i.e. 2020-21, it was obliged under the law to apply for accreditation on or before 29.02.2020. He would submit that the



UGC, in all those cases, where Higher Educational Institutions (HEIs) were having accreditation score of less than 3.26, informed them to apply for accreditation on or before 29.02.2020. As the petitioner was having accreditation certificate of 2.28 only, which was valid till 30.06.2020, it had no option but to apply for accreditation within the stipulated period for which repeated opportunities were given to the petitioner and all similarly situated Higher Educational Institutions (HEIs) by granting extension from time to time, but the petitioner did not file the same. He would further submit that the NAAC takes about four to six months from the date of application till the grant of NAAC score and, therefore, for achieving the same, the petitioner ought to have applied before the NAAC latest by 29.02.2020 when there was no COVID-19 pandemic. It is further argued that the petitioner has failed to come out with any ground whatsoever, much less any incapacity beyond its control, as to why it could not submit the application for accreditation on or before 29.02.2020 despite issuance of letters, which clearly shows that the petitioner was not serious and willing to continue with Open and Distance Learning (ODL) programmes beyond academic session 2019-2020. He would further submit that not only the UGC, but the NAAC also regularly informed the petitioner to initiate the process to apply for getting requisite NAAC score, but despite all this, the petitioner, however, for the reasons best known to it, kept silent and did not apply. He would further submit that in order to facilitate the compliance of various directions, the NAAC had organised workshop on 18.12.2019 regarding the process of accreditation for upgradation of NAAC score, which was also attended by the petitioner-



University, but thereafter also, the petitioner remained non-compliant.

It is further submitted that the UGC in the light of the Regulations of 2020, has granted recognition only to such Higher Educational Institutions (HEIs), which have a minimum NAAC score of 3.01 on a 4-point scale whereas the petitioner was having NAAC score of 2.28 only since 01.05.2015 and if the petitioner was willing to achieve the requisite score of 3.01, it should have applied for further academic sessions under Open and Distance Learning (ODL) mode.

15. Learned counsel for the respondents submitted that the petitioner remained non-complaint and the benefit under second proviso was confined to compliant category of Higher Educational Institutions (HEIs) which had applied till 29.02.2020 and not to Higher Educational Institutions (HEIs) which remained non-compliant. It is the contention of learned counsel for the respondents that even if there would have been no COVID-19 pandemic, as the petitioner failed to apply for accreditation on or before 29.02.2020, it lost its right of being considered for further continuance of academic programmes for academic session 2020-21 and therefore, pandemic or no pandemic, the petitioner, under any circumstances, could not have been allowed to continue with Open and Distance Learning (ODL) programmes beyond academic session 2019-2020 ending on 30.06.2020. The benefit of continuing with the programmes without completion of accreditation process due to onset of COVID-19 pandemic, was limited only to those institutions, which were willing to obtain higher accreditation score by submitting application to the NAAC



on or before 29.02.2020. As the NAAC requires four to six months to complete the process of accreditation, failure on the part of the petitioner to apply on or before 29.02.2020 completely closed the chances of the petitioner of getting accreditation of the required score before completion of academic session 2019-20, i.e. till 30.06.2020. All such non-compliant and indolent Higher Educational Institutions (HEIs) were kept out of the benefit of second proviso. Therefore, the category of the petitioner and those institutions, which had submitted application on or before 29.02.2020 are separate and distinct and cannot be said to be similarly situated. The object of impugned second proviso to Regulation 3(A) of the Regulations of 2020 was to protect the compliant and vigilant institutions. Thus, the classification bears reasonable nexus with the object sought to be achieved. Therefore, it is contended, no relief could be granted to the petitioner.

Last but not the least, learned counsel for the respondents would submit that in any case, though the academic session, for which the petitioner has filed the present petition, came to an end long back during the pendency of this petition, at this stage, no relief could be granted to the petitioner in the year 2022 in respect of the academic session for which relief has been sought by the petitioner. Adopting a fair posture, learned counsel for the respondents would submit that the petitioner's accreditation score as may be awarded to it from time to time by the NAAC will certainly entitle it for consideration for offering Open and Distance Learning (ODL) programmes in subsequent academic sessions upon fulfillment of all other eligibility criteria as prescribed under



the Regulations of 2020 and other provisions in force on the date when such application is made after obtaining required NAAC score for offering Open and Distance Learning (ODL) programmes.

16. In support of his submissions, learned counsel for the respondents placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **University Grants Commission & Another Vs. Neha Anil Bobde (Gadekar) (2013) 10 SCC 519**.

17. We have given our anxious consideration to elaborate submissions made by learned counsel for the respective parties and perused the material on record.

18. The petitioner has assailed constitutionality and validity of second proviso to Regulation 3(A) of the Regulations of 2020. Regulation 3(A) of the Regulations of 2020 is extracted hereinbelow:

"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 academic session 2020-2021 (session beginning July, 2020 and January, 2021) only and shall be reviewed subsequently by the Commission for the academic session 2021-2022 (session beginning July 2021) 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;"





19. The petitioner has questioned the constitutionality and validity of the second proviso to Regulation 3(A) of the Regulations of 2020 on two principal grounds.

First one is that while the aforesaid proviso allows Higher Educational Institutions (HEIs), recognised by the UGC to offer programmes in Open and Distance Learning (ODL) mode till the academic session 2019-20, to continue to offer programmes already recognised for the academic session 2019-20 in Open and Distance Learning (ODL) mode for a period of one year for academic session 2020-21 starting from July, 2020, it seeks to confine such benefit of continuing to offer Open and Distance Learning (ODL) programmes for the academic session 2020-21 only to those Higher Educational Institutions (HEIs) which had submitted an undertaking to the effect that they will attain a NAAC 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 NAAC till 29.02.2020. This classification, confining benefit under the second proviso to only those Higher Educational Institutions (HEIs) which had submitted application till 29.02.2020 and denying the benefit to those Higher Educational Institutions (HEIs) which could not submit such application till 29.02.2020, is challenged as arbitrary, discriminatory and violative of Article 14 of the Constitution of India. As the petitioner did not apply till 29.02.2020, it has been excluded from the benefit guaranteed under second proviso to Regulation 3(A) of the Regulations of 2020.

The other ground is that such a condition of having applied to the NAAC for accreditation till 29.02.2020 was for the first time introduced under second proviso to Regulation 3(A) of the



Regulations of 2020, which came into force and effect from 04.09.2020. According to the petitioner, under the existing guidelines of the NAAC, the petitioner should have applied up till the end of the academic session, i.e., 30.06.2020 and in any case, was entitled to complete the accreditation process for next one year to continue to offer programmes. The denial from continuing to offer the programmes for academic session 2020-21 only on the ground that it has failed to submit the application till 29.02.2020, is prejudicial to such an accrued right. As the provision, according to the petitioner, is retrospective in operation, the regulation itself is in violation of the provisions contained in Section 26, sub-section (3) of the Act of 1956.

20. The Act of 1956 has been enacted by the Parliament to make provision for the co-ordination and determination of standards in Universities. It seeks to establish, for that purpose, a University Grants Commission.

Functions of the UGC are provided in Chapter III of the Act of 1956. It declares that it shall be the general duty of the UGC to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities. Exhaustive provisions have been made under Chapter III of the Act of 1956.

21. While the Central Government has been empowered to make rules as provided under Section 25 of the Act of 1956, the UGC is empowered to make regulations consistent with the Act of 1956 and the rules framed thereunder on the subjects enumerated in Clause (a) to (j) of sub-section (1) of Section 26 of the Act of





1956. In Exercise of powers conferred under Section 26 of the Act of 1956, the UGC framed regulations to regulate Open and Distance Learning (ODL) programmes that may be offered by Higher Educational Institutions (HEIs) in the country, known as the University Grants Commission (Open and Distance Learning) Regulations, 2017 (for short 'the Regulations of 2017'). After its promulgation, the aforesaid Regulations of 2017 were amended from time to time. Vide notification dated 11.10.2017, the Regulations of 2017 were first amended vide the University Grants Commission (Open and Distance Learning) Regulations, 2017(First Amendment).

Vide another notification dated 06.02.2018, the aforesaid Regulations of 2017 suffered further amendment known as the University Grants Commission (Open and Distance Learning) Second Amendment Regulations, 2018.

Third amendment in the Regulations of 2017 was effected vide notification dated 06.09.2018 known as the University Grants Commission (Open and Distance Learning) Third Amendment Regulations, 2018.

22. Regulation 3 of the Regulations of 2017 laid down the eligibility criteria for offering teaching programmes through Open and Distance Learning (ODL) mode. The terms and conditions of eligibility were amended from time to time by first, second and third amendments referred to hereinabove. The petitioner-University is a self financed university. It imparts courses in several subjects including undergraduate and postgraduate courses not only through regular mode but also through Open and Distance Learning (ODL) mode after due recognition and permission by the UGC. The petitioner possessed NAAC



accreditation from 01.05.2015 to 30.04.2020 vide Accreditation Certificate (Annexure-1 attached with the writ petition) issued in its favour by the NAAC. The Certificate shows that it has been accredited with CGPA of 2.28 on four point scale at B grade. As the Certificate itself states, the Certificate is valid only up to April 30, 2020. The Regulations of 2017 amended from time to time required the Higher Educational Institutions (HEIs) to apply for permission on certain minimum standards of accreditation and fulfilling other eligibility criteria as provided under the Regulations from time to time.

23. One of the eligibility criteria, as contained in Clause (viii) of sub-regulation (1) of Regulation 3 introduced vide the University Grants Commission (Open and Distance Learning) Second Amendment Regulations, 2018, substituting earlier clause (viii), provided as below:

“(viii) The Higher Educational Institution has valid accreditation from National Assessment and Accreditation Council with minimum Cumulative Grade Point Average of 3.26 on a 4 point scale and has completed five years of existence:

Provided that the Higher Educational Institutes that are either State or Central or State Private Universities and were given permission by the University Grants Commission to offer programmes in open and distance learning mode for the academic session 2017-18 will be allowed to impart Open and Distance Learning education till the academic session 2019-20 to enable them reach the prescribed quality National Assessment and Accreditation Council benchmark.

Provided further, that the Higher Educational Institutes falling in the above category but currently not accredited with National Assessment and Accreditation Council shall apply for National Assessment and Accreditation Council accreditation within three months from the date of issue of this regulation.



Provided further, that this clause shall not be applicable to Open Universities till the time they become eligible for National Assessment and Accreditation Council accreditation and it shall be mandatory for Open Universities to get National Assessment and Accreditation Council accreditation within one year of their becoming eligible for the same.

Provided further, that an institution Deemed to be a University so declared by the Central Government shall offer the Open and Distance Learning courses or programmes as per the extant Deemed to be a University Regulations and also notified by the University Grants Commission from time to time in the matter.

Provided further that the higher education institutions which are Deemed to be Universities and were given permission by the University Grants Commission to offer programme in open and distance learning mode for the academic year 2017-18 shall be permitted to impart Open and Distance Learning education till the academic session 2019-20 to enable them reach the specified quality National Assessment and Accreditation Council benchmark subject to University Grants Commission specifically allowing the Deemed to be University to conduct Open and Distance Learning courses for specific programmes and after the off campus centres, study centres are individually inspected and found adequate by the University Grants Commission and the approval will be course specific.

Provided further, Deemed to be Universities falling in this category and currently not accredited with National Assessment and Accreditation Council shall apply for National Assessment and Accreditation Council accreditation within three months from the commencement of the University Grants Commission (Open and Distance Learning) Second Amendment Regulations, 2018."

Therefore, the aforesaid newly introduced eligibility criteria for continuing to offer teaching programmes in Open and Distance Learning (ODL) mode clearly required that the Higher Educational Institutions (HEIs) should have valid accreditation from the NAAC with minimum Cumulative Grade Point Average of 3.26 on a 4-point scale and have completed five years of existence. The first





proviso stated that Higher Educational Institutions (HEIs) that are either State or Central or State Private Universities and were given permission by the UGC to offer programme in Open and Distance Learning (ODL) mode for the academic session 2017-18 will be allowed to impart Open and Distance Learning education till the academic session 2019-20 to enable them to reach the prescribed quality NAAC benchmark.

Second proviso further provided that the Higher Educational Institutions (HEIs) falling in the above category but currently not accredited with the NAAC shall apply for NAAC accreditation within three months from the date of issue of the aforesaid Second Amendment Regulations, 2018.

Clearly, therefore, those Higher Educational Institutions (HEIs), which were offering Open and Distance Learning (ODL) programmes, were required to fulfill the aforesaid requirement of the Regulations, i.e., to have minimum Cumulative Grade Point Average of 3.26 on a 4-point scale and having completed five years of existence. Those institutions, which were permitted to offer programmes in Open and Distance Learning (ODL) mode for the academic session 2017-18 were allowed to impart Open and Distance Learning (ODL) education till the academic session 2019-20 to enable them to reach the prescribed quality NAAC benchmark. The petitioner, having accreditation from the NAAC with CGPA of 2.28 on a 4-point scale and having completed five years of existence, was allowed to impart Open and Distance Learning (ODL) education till academic session 2019-20 to enable it to reach the prescribed quality NAAC benchmark.

24. The third amendment to the Regulations of 2017, namely, the University Grants Commission (Open and Distance Learning)



Third Amendment Regulations, 2018, notified on 06.09.2018, substituted new Clause (viii) in place of the aforesaid clause as below:

“(viii) The Higher Educational Institution has completed five years of existence:

Provided that the Higher Educational Institutions shall submit an undertaking to the effect that it will attain a National Assessment and Accreditation Council (NAAC) score of 3.26 on a 4-point scale before the end of academic session July 2019-June 2020, failing which, the Commission shall not accord any approval to the Open and Distance Learning Programmes of the Higher Educational Institutions:

Provided further, that this clause shall not be applicable to Open Universities till the time they become eligible for NAAC accreditation and it shall be mandatory for Open Universities to get NAAC accreditation within one year of their becoming eligible for the same:

Provided further, that an institution Deemed to be a University so declared by the Central Government shall offer the Open and Distance Learning courses or programmes as per the extant Deemed to be a University Regulations and other relevant Regulations notified by the University Grants Commission from time to time and after due inspection of the off-campus centres or study centres or both as applicable, are found adequate.”

The aforesaid newly substituted provision laid down the eligibility criteria to continue to offer Open and Distance Learning (ODL) programmes for academic sessions subsequent to 2019-20. One of the condition was that Higher Educational Institutions (HEIs) should have completed five years of existence. First proviso mandatorily required the Higher Educational Institutions (HEIs) to submit an undertaking to the effect that they will attain the NAAC score of 3.26 on a 4-point scale before the end of academic session July 2019-June 2020. It clearly provided that if the Higher Educational Institutions (HEIs) fail to give such





undertaking, the UGC shall not accord any approval to Open and Distance Learning (ODL) programmes of the Higher Educational Institutions (HEI).

25. The UGC, vide public notice dated 01.11.219, invited fresh applications from eligible Higher Educational Institutions (HEIs) for offering Open and Distance Learning (ODL) programmes in the academic session 2020-21 beginning from July, 2020 onwards and the petitioner also submitted its application seeking recognition for continuing to offer Open and Distance Learning (ODL) programmes for academic session 2020-21.

26. As the regulations in force at the time of initiation of process of submission of applications mandated that the Higher Educational Institutions (HEIs) shall submit an undertaking to the effect that they will attain NAAC score of 3.26 on a 4-point scale before the end of academic session July 2019-June 2020, failing which, the UGC shall not accord any approval to Open and Distance Learning (ODL) programmes of the Higher Educational Institutions (HEIs), the Higher Educational Institutions (HEIs) were required to ensure that they apply for improvement of their NAAC score to the NAAC well in time so that the NAAC may complete the process of accreditation after due inspection and consideration of all norms, which could entitle a Higher Educational Institution (HEI) to secure NAAC score of 3.26 on a 4-point scale before the end of the academic session 2019-2020. A letter was, therefore, issued on 08.11.2019 to all the Higher Educational Institutions (HEIs) including the petitioner to submit following information by 14.11.2019:

"1. How the HEI will comply to condition of NAAC score = 3.26 by June 2020 as per clause "... the Higher Educational Institutions will attain a



National Assessment and Accreditation Council (NAAC) score of 3.26 on a 4-point scale before the end of academic session July 2019-June 2020, failing which, the Commission shall not accord any approval to the Open and Distance Learning Programmes of the Higher Educational Institutions..” of the UGC (ODL) Regulations, 2017 and its amendments?

2. Whether HEI has submitted the proposal/SSR to NAAC for reaccreditation?

If yes, date of submission (attach a documentary proof)

If No, Reasons thereof.”



27. The aforesaid information sought from the institutions was very pertinent because according to NAAC Manual, the process of accreditation consumes months. As the response of the petitioner was not received, reminders were sent to the petitioner on 18.11.2019 as also 19.11.2019.

Obviously, the UGC, while inviting applications, kept in mind that the regulations mandate NAAC score of 3.26 on a 4-point scale and the institutions, which do not apply well in time to the NAAC, may not get accreditation of the required benchmark.

In order to explain the process, the Ministry of Human Resources Development decided that all Higher Educational Institutions (HEIs), which are not having NAAC grade of the acceptable level, should be asked to reapply for NAAC accreditation before 31.01.2020 duly short closing their current accreditation period. It further decided that Director, NAAC will conduct a workshop for all such institutions on 18.12.2019 to explain the processes including short closing of the current accreditation and online application for new accreditation. The note-sheet dated 20.11.2019 of the Secretary, Department of Higher Education (Annexure R/4 attached with the reply to writ petition) further reveals that the NAAC was to be requested to



expedite the assessment of the institutions so that results are announced before 01.06.2020, ensuring that institutions can decide whether to admit new students from July, 2020 or not. A workshop was also conducted on 18.12.2019, which was attended by Higher Educational Institutions (HEIs), not having required NAAC score, which also included the petitioner. This fact has been clearly stated by the respondent-UGC in its return, which has not been disputed by the petitioner. The details of the workshop have also been placed on record. The list of the institutions, which attended the workshop on 18.12.2019, includes the petitioner-University also.

28. In order to ensure that applications for improvement of NAAC grade are submitted well in time before the NAAC by all the Higher Educational Institutions (HEIs), which did not have the NAAC score of 3.26, it required the Higher Educational Institutions (HEIs) to apply for the NAAC accreditation latest by 29.02.2020. Vide communication dated 31.01.2020 (Annexure-R/8 attached with reply to writ petition), it clearly mentioned that all concerned Dual Mode Universities had to apply for accreditation before the stipulated date i.e. 10.02.2020 and the decision/result on all such applications received will be announced by the NAAC by 01.06.2020.

The aforesaid period was further extended up to 29.02.2020 vide letter dated 03.02.2020.

29. From the aforesaid narration of facts and sequence of events as also the statutory scheme of the Regulations of 2020 in the matter of granting approval for offering teaching programmes in Open and Distance Learning (ODL) mode clearly establish that all those Higher Educational Institutions (HEIs), which were having



NAAC score less than 3.26 on a 4-point scale, were required to improve/upgrade their NAAC score as per the requirement of Regulation 3 of the Regulations of 2017 (amended from time to time) before the end of academic session July 2019-June 2020 and they could achieve this only when they had applied to the NAAC for completing the process of accreditation well in time, at least four months before the cut off date, i.e., 30.06.2020. It was for this purpose that all the Higher Educational Institutions (HEIs) of such a category were being asked to submit information as to how they will achieve NAAC score of 3.26 in time before the end of the academic session of 2019-20. Workshop was also held to explain the process of accreditation so that the institutions may apply to the NAAC for improvement of their NAAC score well in time. It was in this background that all the Higher Educational Institutions (HEIs) were asked to submit their applications for improvement of their accreditation score to the NAAC well in advance. Though, initially they were required to submit applications by 10.02.2020, that period was further extended up to 29.02.2020. The cut off date of 29.02.2020 was purposely fixed keeping in view that the NAAC takes about four to six months to complete the process of accreditation. Unless, the Higher Educational Institutions (HEIs) apply well in advance, i.e., at least four months before, they may not be able to secure required NAAC score before the end of academic session 2019-2020 ending 30.06.2020. Therefore, the cut off date of 29.02.2020 had a clear rationale and object behind it. While many institutions applied, the petitioner, for the reasons best known to it, did not apply to the NAAC for upgradation of its grading, to secure a minimum of 3.26 NAAC score on a 4-point





scale, so as to be eligible to offer Distance and Learning (ODL) programmes in the next academic year, i.e., 2020-21.

The petitioner, though knew fully well that the UGC has required all the Higher Educational Institutions with lower grading to apply latest by 29.02.2020, which was also explained to them in the workshop held on 18.12.2019, it did not even choose to challenge those conditions, but sat over the matter, remaining totally non-complaint of the aforesaid requirement of submission of application to the NAAC for upgradation of its NAAC score latest by 29.02.2020.

30. At this stage, it is necessary to refer to one of the submission made by learned Senior Counsel appearing on behalf of the petitioner that the communication done by the UGC made such compliance only voluntary and not mandatory.

31. Letter/Notification dated 03.02.2020 issued by the NAAC has been filed by the petitioner and the respondents both. The contents of the said letter are as below:

"This is to reiterate that the Dual Mode Universities (DMU's) may volunteer for NAAC Assessment and Accreditation (A&A) process either in General University Manual or Dual Mode University (DMU) Manual; this option will be continued till June 2021 as per NAAC Notification dated 14th January 2020.

All Dual Mode Universities (DMUs) who have valid accreditation, may volunteer for Assessment and Accreditation Process by NAAC by applying online IIQA/SSR by short closing their validity period on or before 29th February 2020."

32. The requirement of achieving NAAC score of 3.26 on a 4-point scale on or before 30.06.2020, in order to become eligible to offer Distance and Learning (ODL) teaching programmes for the next academic session, i.e., 2020-21, was statutorily mandated





under the Regulations of 2017 (amended from time to time). The aforesaid letter of the NAAC only gave an option to the Universities (Dual Mode) to volunteer for NAAC Assessment and Accreditation (A&A) processes either in General University Manual or in Dual Mode University Manual. The option clearly provided that those Dual Mode Universities, which have valid accreditation, may volunteer for Assessment and Accreditation Process by the NAAC by applying online IIQA/SSR by short closing their validity period on or before 29.02.2020. From this letter, it is clear that those institution, which were willing to continue in dual mode, i.e., including Open and Distance Learning (ODL) mode, were in any case required to apply on or before 29.02.2020. It cannot be said that the letter of the NAAC statutorily prescribed the criteria. It was left to the option of the universities. Obviously, those institutions, which volunteered for NAAC Assessment and Accreditation Process in General University Manual, would mean that they are not interested in Dual Mode Manual. Certainly, those intuitions, which were willing to offer programmes in dual mode, they were required to necessarily apply online IIQA/SSR by short closing their validity period on or before 29.02.2020. Higher Educational Institutions (HEIs), which were willing to offer teaching programmes in Open and Distance Learning (ODL), were required to achieve NAAC score of 3.26 on a 4-point scale on or before 30.06.2020 and, therefore, they were required to apply well in advance, otherwise they were not likely to get necessary grading. Thus, by their conduct, the Higher Educational Institutions (HEIs) were separated in two categories. One was the compliant category, which was willing to achieve the required





NAAC score of 3.26 on or before 30.06.2020 and as required by the UGC, they promptly submitted their applications till 29.02.2020. The other category was the non-complaint category like the petitioner, which despite opportunities granted, did not opt to apply on or before 29.02.2020. Those institutions like the petitioner constituted another category of non-compliant Higher Educational Institutions (HEIs). The conduct of the petitioner and similarly situated Higher Educational Institutions (HEIs), which did not apply for NAAC accreditation on or before 29.02.2020, despite repeated opportunities granted and communications made one after the other, by their conduct, could be inferred to be not willing to achieve the required NAAC grading and not willing to continue to offer Open and Distance Learning (ODL) programmes beyond academic session 2019-20.

It is pertinent to mention here that till this time, i.e., 29.02.2020, no lock down was imposed, nor the functioning of the UGC and the NAAC was suspended.

33. However, as is well known, due to out break of COVID-19 pandemic, both the UGC as well as the NAAC suspended their regular functioning. Vide letter dated 30.06.2020 (Annexure-9 attached with the writ petition), the UGC communicated to all the Higher Educational Institutions (HEIs) regarding cancellation of applications received for offering Open and Distance Learning (ODL) programmes from academic session July, 2020 onwards. The letter stated that all the applications already received towards academic session July, 2020 shall be treated as null and void in view of the new Integrated ODL and Online Regulations. It further stated that it was decided to invite applications afresh from



eligible Higher Educational Institutions (HEIs) for the academic session 2020-21 as per new Integrated Regulations. The NAAC also informed on 25.03.2020 (Annexure-15 attached with the writ petition) to all Higher Educational Institutions (HEIs) that due to lock down, except some of the essential services, all other establishments are shut down during the period. It further stated that those institutions which are pending SSR submission and DVV response submission will be given time for the same based on current prevailing situation. It was followed by another letter dated 09.07.2020 providing extension of validity period of accreditation. The contents of that letter are as below:

"Notification to all Higher Education Institution's

Extension of validity period of accreditation
(considering COVID 19 pandemic)

Accreditation validity period for those HEIs whose validity of accreditation expires during the COVID pandemic period, i.e., from 1st March 2020 provided the HEIs submit the online Institutional Information for Quality Assessment (IIQA) within three months from the Government/University notification to resume the normal academic activities by the HEI.

Any HEIs whomsoever have submitted online IIQA / online SSR within the Validity period of accreditation before/during the pandemic period, i.e., 1st March 2020, but the process has been delayed due to the Pandemic, the validity period of accreditation stands extended as per the existing provisions of NAAC i.e. until the completion of the A&A process of NAAC, provided such institutions do not withdraw their applications and agree to continue with the process within three months from the resuming the normal academic activities as per the Government/University notification.

HEIs whose validity period expired before 1st March 2020 and submitted IIQA, but the process has been delayed due to the Pandemic, the validity period of accreditation DOES NOT STAND extended as per the existing provisions of NAAC. BUT processing of their IIQA/SSR application





stages deadlines will be automatically extended for a period of 3 MONTHS after the normal academic activities resume as per the Government/University notification."

According to the aforesaid communication, accreditation validity period of those Higher Educational Institutions (HEIs), whose validity of accreditation expired during COVID-19 pandemic period, i.e., from 01.03.2020, was extended provided the Higher Educational Institutions (HEIs) submitted online Institutional Information for Quality Assessment (IIQA) within three months from the Government/University notification to resume the normal academic activities by the Higher Educational Institutions (HEIs). The benefit of extension of validity period of accreditation was that the petitioner's accreditation, which was valid up to April 30, 2020, was saved subject to fulfillment of the condition of submission of IIQA within three months from the Government/University notification of resumption of normal academic activities by Higher Educational Institutions (HEIs). The petitioner's accreditation was of 2.28 NAAC score on a 4-point scale.

34. Further, another letter was issued on 10.07.2020 informing that the NAAC shall relax the condition making flexible and open-ended provisions for deciding the academic years and further that the institutions will be permitted to make the submissions as and when they complete the academic year. It also stated that those institutions, which have already submitted their applications, in view of the pandemic situation, the NAAC shall extend the time for submitting the data including the academic year 2019-20 within three months from the Government notification to resume the normal academic activities and completion of the conduct of





examinations and other academic processes by the Higher Educational Institutions (HEIs).

35. The communications made by the NAAC from time to time, as referred to hereinabove, granted relaxations in the matter of submission of applications in view of pandemic situation, providing for extension of the validity period of NAAC accreditation.

Those complaint HEIs, which were willing to continue with Open and Distance Learning (ODL) programmes for the academic session 2020-21 and had promptly submitted their applications on or before 29.02.2020 as required by the UGC, were prejudiced because had there been no pandemic situation, their applications would have been processed by the NAAC and they would have been granted NAAC score of 3.26 on a 4-point scale, so as to become eligible to get permission to continue Open and Distance Learning (ODL) teaching programmes for the next academic session.

Those Higher Educational Institutions (HEIs), which remained non-complaint and failed to submit applications on or before 29.02.2020, were not prejudiced in any manner because they having not submitted their applications by 29.02.2020, lost their right. Those Higher Educational Institutions (HEIs), which failed to submit their applications by 29.02.2020, by their conduct, were not willing to continue with Open and Distance Learning (ODL) teaching programmes in the next academic session i.e., 2020-21. However, they were benefited with the extension of validity of NAAC accreditation, which they were possessing even though they had not applied on or before 29.02.2020. The petitioner and other non-compliant institutions,





which failed to apply on or before 29.02.2020, thus, constituted a separate and distinct class/category from those institutions, which were compliant and had applied on or before 29.02.2020.

36. The UGC came out with the new regulations known as the University Grants Commission (Open and Distance Learning Programmes and Online Programmes) Regulations, 2020 published vide notification dated 04.09.2020. Regulation 3 thereof provided for institutional level eligibility criteria for Open and Distance Learning mode as also for online mode. Sub-regulation (A) provided for Open and Distance Learning. The eligibility criteria for offering programmes through Open and Distance Learning (ODL) mode was that Higher Educational Institutions (HEIs) should be accredited by the NAAC 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). The main provisions of Regulation 3(A) of the Regulations of 2020 contain as many as five provisos including impugned second proviso which have already been quoted above.

First proviso to Regulation 3(A) of the Regulations of 2020 stated that the NAAC and NIRF Ranking requirements shall be valid for the academic session 2020-21 only and shall be reviewed subsequently by the Commission for the academic session 2021-2022. First proviso, thus, continues validity of NAAC ranking for academic session 2020-21.

Second proviso to Regulation 3(A) of the Regulations of 2020, which is impugned in this petition, sought to protect and extend benefit to the class of compliant category of Higher



Educational Institutions (HEIs) which, before suspension of normal activities of the NAAC and the UGC, had acted promptly and applied for NAAC accreditation to improve their NAAC score on or before 29.02.2020. Thus, all those Higher Educational Institutions (HEIs), which were recognised by the UGC to offer programmes in Open and Distance Learning (ODL) mode till academic session 2019-20 and had submitted their applications to the NAAC till 29.02.2020 and also submitted undertaking to the effect that they will attain NAAC score of 3.26 on a 4-point scale before the end of academic session July 2019-June 2020 were protected, in the manner that they shall continue to offer programmes, already recognised for the academic session 2019-20 in Open and Distance Learning (ODL) mode for a period of one year, i.e., academic session 2020-21, starting from July, 2020. It further required that thereafter, such Higher Educational Institutions (HEIs) shall be required to attain eligibility as mentioned in sub-clause (i) of sub-regulation (A) of Regulation 3 of the Regulations of 2020.

37. Higher Educational Institutions (HEIs), which failed to submit their applications on or before 29.02.2020, were excluded from the benefit as provided under second proviso to Regulation 3(A) of the Regulations of 2020 because they constituted a non-complaint class of Higher Educational Institutions (HEIs), which by their conduct, did not show any willingness to continue to offer Open and Distance Learning (ODL) programmes for next academic session, i.e., 2020-21, as those institutions, had they been willing, would have definitely applied before the cut off date of 29.02.2020 because they knew that NAAC accreditation process consumes



four to six months and unless they apply within the cut off date, they are not likely to get improved accreditation score of 3.26 on a 4-point scale before the end of academic session 2019-20, i.e. till 30.06.2020.

38. The complaint category of Higher Educational Institutions (HEIs), which were willing to continue with Open and Distance Learning (ODL) teaching programmes for the next session, acted promptly in response to the requirement of submission of applications latest by 29.02.2020. But for the onset of pandemic and suspension of activities of the NAAC and the UGC, they were likely to improve their NAAC grading and acquire requisite NAAC score of 3.26 on a 4-point scale. Thus, despite compliance made on their part, the assessment process by the NAAC could not be undertaken due to COVID-19 pandemic situation. It was this class, which is sought to be benefited under the second proviso to Regulation 3(A) of the Regulations of 2020.

39. On the other hand, the non-complaint category of Higher Educational Institutions (HEIs) like the petitioner were excluded from the benefit of impugned second proviso to Regulation 3(A) of the Regulations of 2020.

40. Sub classification of Higher Educational Institutions (HEIs) on the basis of they being compliant or non-complaint to the UGC requirements clearly constituted two different, separate and distinct classes. Non-compliant category of Higher Educational Institutions (HEIs) cannot claim parity of treatment or complain discrimination in the matter of grant of the benefit, which has been extended to compliant Higher Educational Institutions (HEIs).



41. The provisions of the Regulations of 2017, as amended and in force at the relevant time, mandatorily required the institutions to achieve NAAC score of 3.26 on a 4-point scale before the end of the academic session. The UGC fixed 29.02.2020 as the last date for submission of applications keeping in view that unless applications are submitted well in advance, there is no possibility of institutions achieving higher grades through NAAC accreditation process which consumes time. Therefore, fixation of cut off date of 29.02.2020, which is four months before the end of academic session, was not irrational, arbitrary or without any basis. Therefore, the classification was based on rational criteria. Further, such classification had a reasonable nexus with the object sought to be achieved. The object of second proviso to Regulation 3(A) of the Regulations of 2022 was to protect those complaint Higher Educational Institutions (HEIs), which were willing to obtain higher NAAC score by applying on or before 29.02.2020 and because of COVID-19 pandemic situation and suspension of activities by the NAAC and the UGC, could not achieve the required NAAC score of 3.26 on a 4-point scale. Thus, the object sought to be achieved and for which, such classification was made, cannot be said to be unconstitutional or in any manner illegal or oppose to public policy.

Therefore, exclusion of the petitioner, a non-complaint institution, cannot be said to be discriminatory and violative of Article 14 of the Constitution of India.

It is well established principle, settled in plethora of decisions of the Hon'ble Supreme Court that the State can make a reasonable classification for the purpose of legislation. The



Constitution permits the State to determine, by the process of classification, what should be regarded as a class for purposes of legislation and in relation to law enacted on a particular subject.

Those principles are equally applicable while testing the constitutional validity of subsidiary legislation/delegated legislation, which includes the impugned regulation framed by the UGC in exercise of its power under Section 26 of the Act of 1956.

The aforesaid principle was reiterated and thoroughly explained by the Hon'ble Supreme Court in the case of **Binoy Viswam Vs. Union of India & Others (2017) 7 SCC 59**. The principle of reasonable classification was explained thus:

"30. On the aforesaid edifice, the argument built and developed by Mr Datar is that although the power of Parliament to pass laws with respect to List I and List III is plenary, it is subject to two implied limitations:

30.1. Parliament or any State Legislature cannot pass any law that overrules a judgment; before any law is passed which may result in nullifying a decision, it is mandatory to remove the basis of the decision. Once the basis on which the earlier decision/order/judgment is delivered is removed, Parliament can then pass a law prospectively or retrospectively and with or without a validation clause.

30.2. Implied limitation not to pass contrary laws: the doctrine of harmonious construction applies when there is an accidental collision or conflict between two enactments and the Supreme Court has repeatedly read down one provision to give effect to other. Thus, both the provisions have to be given effect to. But if the collision or conflict is such that one provision cannot co-exist with another, then the latter provision must be struck down. In the present case, obtaining an Aadhaar number continues to be voluntary and explicitly declared to be so. Once the Aadhaar card is voluntary, it cannot be made mandatory by the impugned Section 139-AA of the Act. As long as the Aadhaar enactment holds the field, there is an implied limitation on the power of Parliament not to pass a contrary law.

46. Mr Divan also relied upon the judgment in *Subramanian Swamy v. CBI* (2014) 8 SCC 682. Paras 58 and 59 read as under: (SCC pp. 725-26)





"58. The Constitution permits the State to determine, by the process of classification, what should be regarded as a class for purposes of legislation and in relation to law enacted on a particular subject. There is bound to be some degree of inequality when there is segregation of one class from the other. However, such segregation must be rational and not artificial or evasive. In other words, the classification must not only be based on some qualities or characteristics, which are to be found in all persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. Differentia which is the basis of classification must be sound and must have reasonable relation to the object of the legislation. If the object itself is discriminatory, then explanation that classification is reasonable having rational relation to the object sought to be achieved is immaterial.

59. It seems to us that classification which is made in Section 6-A on the basis of status in government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt public servants are corrupters of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made between public servants against whom there are allegations amounting to an offence under the PC Act, 1988."

In the aforesaid case, constitutional validity of Section 139-AA of the Income Tax Act, 1961, inserted by the amendment vide Finance Act, 2017, was challenged. As per Section 139-AA of the Income Tax Act, 1961, in the application forms for allotment of Permanent Account Number (PAN) as well as in the income tax returns, the assessee was obliged to quote Aadhaar number. Challenge to the said legislation, on the ground of it being



discriminatory and violative of Articles 14 and 19 of the Constitution of India, was examined as below:

“Whether Section 139-AA of the Act is discriminatory and offends Article 14 of the Constitution of India?”

100. Article 14, which enshrines the principle of equality as a fundamental right mandates that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It, thus, gives the right to equal treatment in similar circumstances, both in privileges conferred and in the liabilities imposed. In *Srinivasa Theatre v. State of T.N.* (1992) 2 SCC 643, this Court explained that the two expressions “equality before law” and “equal protection of law” do not mean the same thing even if there may be much in common between them. “Equality before law” is a dynamic concept having many facets. One facet is that there shall be no privileged person or class and that none shall be above law. Another facet is “the obligation upon the State to bring about, through the machinery of law, a more equal society... for, equality before law can be predicated meaningfully only in an equal society...”. The Court further observed that Article 14 prescribes equality before law. But the fact remains that all persons are not equal by nature, attainment or circumstances, and, therefore, a mechanical equality before the law may result in injustice. Thus, the guarantee against the denial of equal protection of the law does not mean that identically the same rules of law should be made applicable to all persons in spite of difference in circumstances or conditions (see *Charanjit Lal Chowdhury v. Union of India* AIR 1951 SC 41).

101. The varying needs of different classes or sections of people require differential and separate treatment. The legislature is required to deal with diverse problems arising out of an infinite variety of human relations. It must, therefore, necessarily have the power of making laws to attain particular objects and, for that purpose, of distinguishing, selecting and classifying persons and things upon which its laws are to operate. The principle of equality of law, thus, means not that the same law should apply to everyone but that a law should deal alike with all in one class; that there should be an equality of treatment under equal circumstances. It means that equals should not be treated unlike and unlikes should not be treated alike. Likes should be treated alike.





102. What follows is that Article 14 forbids class legislation; it does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of achieving specific ends. Classification to be reasonable should fulfil the following two tests:

102.1. It should not be arbitrary, artificial or evasive. It should be based on an intelligible differentia, some real and substantial distinction, which distinguishes persons or things grouped together in the class from others left out of it.

102.2. The differentia adopted as the basis of classification must have a rational or reasonable nexus with the object sought to be achieved by the statute in question.

103. Thus, Article 14 in its ambit and sweep involves two facets, viz., it permits reasonable classification which is founded on intelligible differentia and accommodates the practical needs of the society and the differentia must have a rational relation to the objects sought to be achieved. Further, it does not allow any kind of arbitrariness and ensures fairness and equality of treatment. It is the fons juris of our Constitution, the fountainhead of justice. Differential treatment does not per se amount to violation of Article 14 of the Constitution and it violates Article 14 only when there is no reasonable basis and there are several tests to decide whether a classification is reasonable or not and one of the tests will be as to whether it is conducive to the functioning of modern society.

109. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances, in the same position, as the varying needs of different classes of persons often require separate treatment. It is permissible for the State to classify persons for legitimate purposes. The Legislature is also competent to exercise its discretion and make classification. In the present scenario the impugned legislation has created two classes i.e. one class of those persons who are assesseees and other class of those persons who are income tax assesseees. It is because of the reason that the impugned provision is applicable only to those who are filing income tax returns. Therefore, the only question would be as to whether this classification is reasonable or not. There cannot be any dispute that there is a reasonable basis for differentiation and, therefore, equal protection clause enshrined in Article 14 is not attracted. What Article 14 prohibits is class legislation





and not reasonable classification for the purpose of legislation. All income tax assesseees constitute one class and they are treated alike by the impugned provision.”

42. Much emphasis has been laid by learned Senior Counsel appearing on behalf of the petitioner on the submission that the condition for extension of benefit under impugned second proviso to Regulation 3(A) of the Regulations of 2020 being retrospective in nature could not have taken away any accrued right or benefit of the petitioner in view of the provisions contained in Section 26(3) of the Act of 1956. To appreciate the said submission, we consider it appropriate to quote relevant provision of Section 26(3) of the Act of 1956, which reads as below:

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

- (a) xxxxxxxxxx
- (b) xxxxxxxxxx
- (c) xxxxxxxxxx
- (d) xxxxxxxxxx
- (e) xxxxxxxxxx
- (f) xxxxxxxxxx
- (g) xxxxxxxxxx
- [(h) xxxxxxxxxx
- (i) xxxxxxxxxx
- (j) xxxxxxxxxx
- (2) xxxxxxxxxx

[(3) The power to make regulations conferred by this section [except clause (i) and clause (j) of sub-section (1)] shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the regulations or any of them but no retrospective effect shall be given to any regulation so as to prejudicially affect the interests of any person to whom such regulation may be applicable.]”

43. The power to make regulations under Section 26 of the Act of 1956 though includes the power to give retrospective effect from a date not earlier than the date of commencement of the Act



of 1956, to the regulations or any of them but no retrospective effect shall be given to any regulation so as to prejudicially affect the interest of any person to whom such regulation may be applicable.

The argument of learned Senior Counsel appearing on behalf of the petitioner is, therefore, required to be appreciated in the light of aforesaid provision. The argument of learned Senior Counsel is that grant of such benefit to a particular class of Higher Educational Institutions (HEIs), excluding the petitioner from such benefit of extension, seeks to deny the petitioner its right to apply up till a later date much beyond 29.02.2020 and even for a period of one year as provided under the NAAC Manual. The argument is that under the existing NAAC Manual, the petitioner could have applied to the NAAC for reaccreditation within the stipulated period of six months before the end of the cycle of the accreditation. It is further submitted that if such application is made within the stipulated period of six months before the end of cycle of accreditation, the gap between two consecutive accreditation was liable to be condoned. Further submission is that the NAAC Manual also provided that in case of other institutions, which have not applied as per the guidelines, the maximum period of condonation would be one year between the two consecutive accreditation cycles.

44. At the first place, the right to apply within the stipulated period of six months before the end of the cycle of accreditation is not taken away, nor the petitioner is prejudicially affected even if it is assumed that such provision was applicable to allow submission of application up to a maximum period of one year



between two consecutive accreditation cycles. This is so because in any case, petitioner's accreditation score was only 2.28 on a 4-point scale which was valid up to April 30, 2020. Even applying the NAAC Manual (Annexure-14 attached with the writ petition), it is NAAC accreditation of 2.28, which would continue for further period and the petitioner could apply for reaccreditation within the stipulated period of six months before the end of the cycle of accreditation and if such application is not made, the maximum period of condonation would be one year between the two consecutive accreditation cycles. This, at the most, protects the petitioner to continue with its present accreditation grading of 2.28 on a 4-point scale and nothing more. It is relevant to mention here, at the cost of repetition, that under the Regulations of 2017 amended from time to time, particularly under the University Grants Commission (Open and Distance Learning) Second Amendment Regulations, 2018 and the University Grants Commission (Open and Distance Learning) Third Amendment Regulations, 2018, the requirement was of achieving NAAC score of 3.26 on a 4-point scale and that too by the end of the academic session, i.e., 30.06.2020. Thus, the mandatory requirement of the regulations for further continuance of Open and Distance Learning (ODL) programmes for the next academic session, in force and applicable to all Higher Educational Institutions (HEIs) including the petitioner, would be new Regulations of 2020 which came into effect from 04.09.2020. Even in the absence of the impugned second proviso to Regulation 3(A) of the Regulations of 2020, it was not permissible under the law for the petitioner to continue its Open and Distancing Learning (ODL) programmes for



the next academic session, i.e. 2020-21 because it failed to apply on or before 29.02.2020. The benefit provided under the second proviso to Regulation 3(A) of the Regulations of 2020 was confined to the class of compliant category of Higher Educational Institutions (HEIs) and not to others.

45. It is worthwhile to mention here that vide notification dated 21.12.1985 issued in exercise of powers conferred by Clause (h) of sub-section (1) of Section 26 of the Act of 1956, the UGC promulgated the University Grants Commission (Establishment and Maintenance of Institutions) Regulations, 1985. It conferred power on the UGC to establish or cause to be established an autonomous organisation for purposes and functions to be specified in a project report. National Assessment and Accreditation Council (NAAC) was established by the UGC in September, 1994 at Bangalore for evaluating the performance of the universities and colleges in the country. It is an autonomous institution and registered under Karnataka Societies Registration Act, 1960. Thus, the guidelines/manual for accreditation process framed by the NAAC are not statutory in nature. Said guidelines/manual could not be made a basis to claim a right against the mandate of the regulation requiring that Higher Educational Institutions (HEIs), willing to continue with Open and Distance Learning (ODL) programmes for the academic session 2020-21, will give undertaking that they will achieve NAAC score of 3.26 on a 4-point scale before the end of the academic session, i.e. 30.06.2020. This statutory mandate obliged the petitioner to apply well in advance for improving accreditation score up to the level of 3.26 on a 4-point scale to acquire eligibility if at all it was





willing to continue Open and Distance Learning (ODL) programmes. The petitioner has not challenged the validity of either the University Grants Commission (Open and Distance Learning) Second Amendment Regulations, 2018 and the University Grants Commission (Open and Distance Learning) Third Amendment Regulations, 2018. Therefore, the argument of learned Senior Counsel appearing on behalf of the petitioner that the provision contained in impugned second proviso to Regulation 3(A) of the Regulations of 2020 applies retrospectively in a manner that it prejudicially affects petitioner's interest, cannot be accepted and the same is liable to be rejected.

46. Once we hold that the impugned second proviso to Regulation 3(A) of the Regulations of 2020 does not act to the prejudice of the petitioner in the sense that but for the impugned provision, the petitioner was eligible to apply for offering Open and Distance Learning programmes for academic session 2020-21, various decisions, which have been cited at the bar by learned Senior Counsel appearing on behalf of the petitioner, do not come to the aid of the petitioner.

47. It can be safely inferred from the conduct of the petitioner that by not applying to the NAAC on or before 29.02.2020 for improvement of its NAAC grading and to achieve NAAC score of 3.26 on a 4-point scale, the petitioner was not willing to continue to offer Open and Distance Learning (ODL) programmes for the next academic session 2020-21. The petitioner neither applied, nor challenged the communication of the UGC requiring all the Higher Educational Institutions (HEIs) to apply for NAAC accreditation on or before 29.02.2020. There is nothing on record



to show why the petitioner could not apply on or before 29.02.2020. This clearly shows that the petitioner was either not willing or was completely indolent. It is only when under the new Regulations of 2020, impugned second proviso was added to grant special benefit of continuance of Open and Distance Learning programmes to compliant institutions, which had otherwise acted promptly and applied by 29.02.2020, the petitioner sought to raise the grievance. It is relevant to note that even under the new Regulations of 2020, the requirement is of having NAAC accreditation of 3.26 on a 4-point scale whereas the petitioner's NAAC score is only 2.28. Thus, viewed from any angle, the grievance raised by the petitioner has no legitimacy, much less legal foundation.

48. In the result, the challenge to the validity of the second proviso to sub-regulation (A) of Regulation 3 of the Regulations of 2020 stands substratum and, therefore, liable to be rejected.

We must, however, hasten to add that if in the meantime, the petitioner has acquired the eligibility upon improvement of its NAAC score as per the existing norms under the Regulations of 2020, this order would not come in the way of the petitioner to get proper permission for offering teaching programmes in Open and Distance Learning (ODL) mode.

49. Writ petition is, accordingly, dismissed.

50. No order as to costs.

(SAMEER JAIN),J

(MANINDRA MOHAN SHRIVASTAVA),ACTING CJ

MANOJ NARWANI /F/cc