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

Date of decision: 1st April, 2019

+ W.P.(C) 2353/2019 & CM APPL. 11002/2019

SELF-FINANCING EDUCATIONAL INDTITUTIONS
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. Mukul Talwar, Sr. Adv. for
R-1 with Mrs. Anita Sahani, Adv.
Mr. Preet Pal Singh and Mr. Saurabh
Sharma, Advs. for BCI

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

ORDER (ORAL)

% **01.04.2019**

CM APPL. CM APPL. 11002/2019 (for stay)

1. 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.

2. 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.

3. 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 LLB	121	
4.	CLAT-PG	LLM	112	
5.	CAT	MBA	101	Since the test date of common admission test is over,

				<p>Central Management Admission Test Conducted by National Testing Agency is allowed after 31st 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 Indraprastha University.</p>
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By order and in the name of Lt. Governor, National Capital Territory of Delhi.

(J.P.Agarwal)”

No.	Level Test		Entrance Test code in Academic Session 2018-19	
1.	JEE-Main 1	B.Tech	131	
2	NIMCET	MCA	105	
3.	CLAT-UG	BA/BBA LLB	121	
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 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)"

5. The grievance of the petitioner is against the stipulation that the GGSIPU could adopt the scores in the CLAT (the "Common Law Admission Test", conducted every year by a Consortium of National Law Universities) for admission to undergraduate Law courses offered

by Colleges affiliated to it.

6. Various submissions have been advanced by Mr. Rajiv Bansal, learned Senior counsel for the petitioner, in support of the payer for *ad interim* stay of the operation of the impugned order, dated 11th February, 2019, and the impugned Circular, dated 26th February, 2019. I would be making reference to those submissions, which are, according to me, necessary to decide the present application, which essentially centres around the provisions of the 2007 Act.

7. The relevant provisions of the 2007 Act may be reproduced thus:

“3. In this Act unless the context otherwise requires-

(c) “capitation fees” means any amount by whatever name called whether in cash or in kind paid or collected or received directly or Indirectly, in addition to the fees determined under this Act;

(g) “designated agency” means an agency, designated by the Government, for conducting the common entrance test and counselling for admissions in the institutions;

(l) “Institution” means a college or Institution, aided or unaided, affiliated to a University, imparting education in the following disciplines, namely:

- (a) Engineering and Technology;
- (b) Medicine, Dentistry, Pharmacy, Ayurveda, Homoeopathy, Siddha, Nursing, Paramedical and the like;
- (c) Law and Legal Affairs;

- (d) Management;
- (e) Teachers Education;
- (f) any other discipline as may be notified by the Government;

(w) “single window system” means the centralized system for admissions to institutions;

(y) “University” means a university established under any law made by the Legislative Assembly of Delhi.”

8. Mr. Rajeev Bansal, learned Senior Counsel representing the petitioner – which is an association of twelve private Colleges, affiliated to the GGSIPU providing the LL.B. degree, submits that the impugned notifications are in the teeth of the provisions of the 2007 Act. Under the said Act, Ms. Bansal would seek to contend that the Common Entrance Test (CET) is required to be conducted *by the designated agency*. Mr. Bansal would contend that there is no provision, in the Act, which permits adoption of the score of another agency, *by the designated agency*, in order to effect admissions to courses conducted by it. The impugned order, dated 11th February, 2019, clearly, Mr. Bansal would seek to point out, notes that the GGSIPU was appointed as the “designated agency” *vide* order dated 5th May, 2011, and, if that was so, the CET has necessarily to be conducted by the said “designated agency”. The recital in the impugned order, dated 11th February, 2019 (*Supra*), to the effect that the GGSIPU had been appointed as the designated agency “to adopt the national level tests for admission” for courses conducted by the GGSIPU, is, according to Mr. Bansal, contrary to the provisions of the 2007 Act which do not permit any such “adoption”. As such,

Mr.Bansal would contend, that impugned order could not be supported by Clause (e) of Section 3 read with Section 13 of the 2007 Act, whereunder it purports to have been issued.

9. Mr. Bansal would also seek to contend that the scheme of the 2007 Act would require the CET and the counselling to be conducted by the same “designated agency”. He invites reference, for this purpose, to the reference to a “single window procedure” in clause (e) of Section 3 of the 2007 Act. As such, Mr. Bansal would contend, the 2007 Act militates against conducting of the CET by one agency and conducting of the counselling by any other designated agency. If the GGSIPU is the designated agency, Mr. Bansal contends the CET would necessarily have to be held by the GGSIPU itself – as had been happening in the past – and counselling would also have to be conducted by the same University.

10. Mr. Bansal has also drawn my attention to Clause 14 in the policy guidelines issued by the DHE, GNCTD, on 12th January, 2016, which reads thus:

“14. Common Entrance Test:-

The GGSIP University has been appointed as ‘Designated Agency; to conduct the Common Entrance Test and counselling for impartial & merit based selection of the students on behalf of the Government as has been done in previous years. No institution would be allowed to make admissions without CET and counselling or as per procedure prescribed and/or

notification so issued by Govt. of NCT of Delhi from time to time in this regard.”

11. Mr. Bansal has also pointed out that, according to Section 14 of the 2007 Act, any admission made in violation of Section 13 thereof would be void.

12. Mr. Bansal has also drawn my attention to the record of the deliberations which had taken place prior to the decision to adopt the score of the CLAT as the basis for effecting admissions to law courses, conducted by the GGSIPU, to point out that the said deliberations do not disclose any categorical rationale for the said decision. He also ventilates a grievance that the deliberations did not co-opt the representatives of his client, who are vital stake-holders in the entire exercise.

13. Arguing in opposition, Mr. Mukul Talwar, learned Senior counsel for the GGSIPU, relies on the following notification, issued by the DHE, GNCTD on 28th March, 2016, constituting Annexure P-20 to the writ petition:

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

Government of National Capital Territory of Delhi
Directorate of Higher Education
B-Wing, 2nd Floor 5, Sham Nath Marg, Delhi-110054

F.No. DHE-4(61)/2010-11/Part File/8525-36

Dated: 28th March, 2016

NOTIFICATION

In exercise of the powers conferred by Section 3(g) read with sections 11 and 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), and in continuation of this Directorate's Order F.No.DHE-4 (61)/20101-11 (Part File/4839-50 dated 21/10/2014, the Government of National Capital Territory of Delhi hereby designate the following agencies as designated agencies and the tests conducted by them shall be deemed as tests conducted by the designated agency for admission to relevant courses of Guru Gobind Singh Indraprastha University (GGSIPU), for filling up remaining vacancies, if any, after 31st day of July. Further if a need arise to compare scores of different tests, the percentile score shall be considered for admission:-

- (a) Common Law Admission Test (CLAT) conducted by National Law University, for admission to Guru Gobind Singh Indraprastha University, for B.A/BBA, L.L.B Programme.
- (b) NITMCA Common Entrance Test (NIMCET) conducted by National Institute of Technology, for admission to Guru Gobind Singh Indraprastha University, for MCA Programme.

This issue with the prior approval of Hon'ble Minister of Higher Education, Government of National Capital Territory of Delhi.

Sd/-
(Shiv Kumar)
Director (Higher Education)"

14. Mr. Mukul Talwar would seek to argue that, once the test conducted by the CLAT had been deemed to be the test conducting by the designated agencies for admission to courses of the GGSIPU, no infraction, of the provisions of the 2007 Act, could be set to exist. He also refutes the submission of Mr. Bansal that Section 13 of the said Act required the CET to be conducted by the designated agency itself, and would seek to submit that the said provision specifically permitted admission being made by “an institution”, through a Common Entrance Test to be conducted “by the designated agency”.

15. The fact that Section 13 of the 2007 Act refers separately to an “institution” and to a “designated agency”, according to Mr. Mukul Talwar, would permit the GGSIPU to effect admissions on the basis of the Common Entrance Test, i.e. the CLAT conducted by the agency conducting the said examination, i.e. the consortium of National Law Universities (NLUs).

16. Mr. Talwar also seeks to submit that the 2007 Act did not require the counselling to be conducted by the designated agency which held the CET and submits, in this regard, that, in order to ensure that there was no hardship or inconvenience to the students undertaking the CLAT and aspiring for admission to seats in the GGSIPU, the GGSIPU would ensure that the counselling, for such seats, would be conducted a reasonable time after the announcement of the results of the CLAT.

17. Mr. Talwar also presses a plea of delay and laches, stating that

the petitioner had represented to the Hon'ble Lieutenant Governor as far back as in October, 2018 and has chosen to approach this court only at a belated stage, when the situation has become well nigh irreversible, as, in his submission, if were this Court to hold in favour of the petitioner, the GGSIPU would be left with insufficient time to prepare question papers, etc., for holding the CET, which, according to him, is a time consuming exercise.

18. Apropos the reliance made by Mr. Bansal on the reference to a “Single Window Procedure” in clause (w) of Section 3 of the 2007 Act., Mr. Talwar would place reliance on the concurring opinion of R. Bhanumati, J, in the judgment of Constitution Bench in *Modern Dental College and Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353*.

19. He further submits that the GGSIPU was in the process of entering into a Memorandum of Understanding with the Consortium of NLUs which conducts the CLAT, in order to enable the scores of the CLAT to be adopted for admission to the law courses being conducted under its aegis.

20. In rejoinder, Mr. Bansal, learned Senior counsel for the petitioner, points out that the notification, dated 28th March, 2016 (*supra*), on which Mr. Talwar places reliance, was only for filling up vacancies remaining, in that year, after the 31st of July, i.e. after 31st July, 2016. The said notification, Mr. Bansal would submit, cannot be read as conferring the CLAT the status of a designated agency for

effecting admissions to law courses conducted by the GGSIPU in perpetuity. Rather, Mr. Bansal would submit, the authority of the GGSIPU, in that regard would be governed by Clause 14 of the policy guidelines, dated 12th January, 2016 (*supra*), issued by the DHE, GNCTD, which already stand reproduced hereinabove.

21. Answering the plea of delay and laches, advanced by Mr. Talwar, Mr. Bansal would submit that the representation addressed by his client to the Hon'ble Lieutenant Governor did not evoke any response. Moreover, Mr. Bansal would seek to submit, as the impugned order and the impugned Circular have been issued only on 11th February, 2019 and on 26th February, 2019, no delay and laches could, in any case, be attributed to his client.

22. Having heard learned counsel, I have applied my mind to the material on record and to the rival submissions made at the Bar.

23. *Prima facie*, on a reading of clauses (d) and (g) of Section 3 of the 2007 Act, in conjunction with Section 13 thereof, there appears to be substance in the submissions of Mr. Mukul Talwar, learned counsel, to the effect the said provisions do not require the institution, which is effecting admissions through a common entrance test, to itself be the designated agency which conducts the said test. Clause (g) of Section 3 of the said Act defines "the designated agency" as an agency designated by the Government for conducting CET and counselling for admission in the institution. The designated agency, and the institution, in which the admissions are to be effected, on the

basis of the CET conducted by such designated agencies are, therefore, clearly distinct and different entities, in the contemplation of the said clause. Similarly, clause (d) also refers to the “Common Entrance Test” as meaning an Entrance Test conducted for determination of merits of candidates followed by centralized counselling for the purpose of merit-based admission to an institution. Here, too, the institution, to which admissions are being made, and the designated agency which is conducting the CET for the said purpose, do not necessarily have to be the same agency. The mere reference to a “Single Window Procedure”, in the said clause, in my view, cannot, *ipso facto*, require the institution conducting the CET to be the designated agency to which admissions are made.

24. The same legal position would seem to emerge if one were to read Section 13, which permits *institutions* to make admissions through a CET *to be conducted by a designated agency*.

25. All these provisions, therefore, in my view, would, *prima facie*, support the interpretation, placed by Mr. Mukul Talwar, on the various sub-clauses of Section 3 and on the provisions of Section 13 of the 2007 Act, in preference to the submissions advanced by Mr. Rajiv Bansal, in this regard.

26. The Act does not, in my view, *prima facie*, unequivocally require the institution, to which admissions are being made on the basis of the CET, to itself be the designated agency conducting the CET.

27. Having said that, it is clear that all the above provisions, i.e. Clauses (d) and (g) of Section 3, as well as Section 13, of the 2007 Act, *require the CET to be conducted by the designated agency.*

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*).

36. The submission of Mr. Mukul Talwar, to the effect that, at this stage, it is too late in the day for the GGSIPU to conduct the CET, also fails to impress, as there is sufficient time with the GGSIPU to undertake the requisite exercise in that regard.

37. In any case, the impugned exercise, which is clearly contrary to the mandate of statute, cannot receive the imprimatur of this court, and would necessarily be require to be interdicted at this stage itself.

38. Apropos the aspect of delay and laches, too, I am of the view that such a plea would not be available to the GGSIPU, in view of the fact that the impugned order and the impugned circular, which followed thereafter, were issued on 11th February, 2019 and 26th February, 2019 (*supra*), respectively whereafter it cannot be said that the petitioner has been indolent in approaching this Court.

39. In view of the above discussion, pending further orders, there shall be an *ad interim* stay of the operation of the impugned order, dated 11th February, 2019, issued by the DHE, GNCTD as well as the consequent Circular, dated 26th February, 2019, issued by the GGSIPU.

40. The application for interim relief stands allowed accordingly.

41. Needless to say, it is clarified that this order would not, in any

manner, affect any admissions having been made in the past, to any course conducted by the GGSIPU whether on the basis of the notification, dated 28th March 2016, or otherwise.

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

W.P.(C) 2353/2019

43. Renotify on 23rd May, 2019.

44. Pleadings be completed in the meanwhile.

C. HARI SHANKAR, J

APRIL 01, 2019

dsn

भारत्यमेव जयते