

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) No. 8163/2019

Judgment reserved on : 29.07.2019

Date of decision : 13.08.2019

CHANDERPRABHU JAIN COLLEGE OF HIGHER EDUCATION
& SCHOOL OF LAW & ANR. Petitioners

Through: Mr. Sameer Rohatgi, Mr.
Akshit Pradhan, Mr. Kunal
Kumar, Mr. Dipender Chauhan
& Mr. Soumya Sarin,
Advocates.

versus

DIRECTORATE OF HIGHER EDUCATION & ORS

..... Respondents

Through: Mr. Gautam Narayan, Advocate
with Mr. Anuj Aggarwal,
Advocate for R-1.

Mr. Preetpal Singh, Advocate
for BCI.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner No.1 Chanderprabhu Jain College of Higher Education & School of Law was founded under the aegis of the Petitioner No.2 the Rishi Aurobindo Educational Society at Plot No. OCF Sector A-8, Narela, Delhi- 110040, in the year 2007 and in the

year 2012 and 2013, the respondent No.1, i.e, the Directorate of Higher Education granted a 'No Objection Certificate' to the petitioner's college for the intake of 140 students in BA LLB course for the academic session 2012-2013 in terms of the approval granted by Respondent No.3, i.e., the Bar Council of India, for intake of 140 students. The petitioner No.1 thereafter is stated to have started the BBA LLB course for the academic year 2014-15 with an intake of 120 seats for the first time and a 'No Objection Certificate' dated 31.7.2014 was issued by the respondent No.1, i.e., the Directorate of Higher Education, for the same. In the year 2015 to 2017, the respondent No.1 i.e, the Directorate of Higher Education, issued an NOC to the petitioner No.1's college for an intake of 120 students for the BBA LLB course. The petitioner No.1 is indicated to have applied to the respondent No.1 for an increase in the intake by 60, thereby increasing the total seats to 180 for their BBA LLB course for the academic year 2017-18, and an NOC was duly granted by the respondent No.1 without any protest vide its letter dated 16.06.2107. The petitioner No.1 is stated to have applied to the respondent No.3, i.e, the Bar Council of India, seeking extension of approval for 180 seats in BBA LLB course for the academic year 2017-18, which was also granted vide its letter dated 23.06.2017. The petitioner No.1 submits that in the year 2018 it applied to the respondent No.2, i.e., the Guru Gobind Singh Indraprastha University, for the grant of NOC for BBA LLB course for an intake of 180 students for the academic year 2018-19, which was duly granted vide letter dated 5.6.2018.

2. *Inter alia*, it has been submitted that the respondent No.3, i.e., the Bar Council of India, vide their letter dated 03.04.2018 granted extension of approval to the Petitioner College for continuing the BBA LLB course with 180 seats for the academic year 2018-19. It has been submitted on behalf of the petitioner that on 27.4.2018 the Joint Assessment Committee comprising of members from both the respondent No.1 i.e. the Directorate of Higher Education and respondent No.2, i.e., the Guru Gobind Singh Indraprastha University, visited the premises of the Petitioner College for conducting an inspection and thereafter granted the approval for intake of 180 students in the BBA LLB course for the academic session 2019-2020 and the respondent No.1 i.e, the Directorate of Higher Education, on 23.5.2018 issued the impugned letter dated 23.5.2018 whereby it had not granted the NOC to the Petitioner College for conducting the BBA LLB course in the academic year 2018-19 and that the petitioner college vide its letter dated 28.5.2018 wrote to respondent No.2, i.e., the Guru Gobind Singh Indraprastha University to approach the respondent No.1 i.e, the Directorate of Higher Education, for granting NOC for the BBA LLB course for the academic year 2018-19 and the respondent No.2, i.e., the Guru Gobind Singh Indraprastha University, vide its letter to the respondent No.1 i.e, the Directorate of Higher Education, dated 5.6.2018 requested the respondent No.1 i.e, the Directorate of Higher Education, to re-consider the grant of NOC to the petitioner college for the BBA LLB course for the academic year 2018-19 but

it was to no avail which thus constrained the petitioner to file a Writ Petition bearing no. 6698/2018 titled as '**Chanderprabhu Jain College of Higher Education & School of law v. Directorate of Higher Education & Anr**' against the non-grant of NOC by Respondent No.1 for conducting BBA LLB course for academic session 2018- 2019.

3. It is further submitted on behalf of the petitioner that vide order dated 25.06.2018 in the said Writ Petition No.6698/2018, the petitioner is stated to have been allowed to continue the BBA LLB course with 180 seats for the academic session 2018-2019, subject to an undertaking by the Petitioner College to construct additional area of 810 sq. mtrs. by the academic year 2019-2020, which would be required for the academic session of 2019-20.

4. The petitioner further submits that it was constrained to file another Writ Petition bearing no. 9405/2018 titled as 'Rishi Aurobindo Educational Society V. DDA & Ors. when the Petitioner College was unable to abide by the said undertaking to construct additional area due to non-sanction of building plans by the DDA. The said Writ Petition is stated to be pending before this Court. The Writ Petition (C) No. 6698/2018 is also pending before this Court.

5. The petitioner has submitted that the respondent No.2, i.e., the Guru Gobind Singh Indraprastha University, has granted provisional affiliation to the Petitioner College towards conducting the BBA LLB course with 180 seats for the academic year 2019-20 and that on an application made by the petitioner College to the

respondent No.3, i.e, the Bar Council of India on 24.12.2018 for extension of approval for the BBA LLB course for the academic session 2019-20 with an intake of 180 students, Respondent No.3 conducted an inspection on 23.02.2019. The petitioner submits that on 9.5.2019 during the pendency of the Writ Petition (C) no. 6698 of 2018, the petitioner filed an application bearing C.M. no. 22825/2019 and the petitioner sought grant of interim direction to grant status quo as on date for conducting BBA LLB course for the academic year 2019-20. The said CM APPL.22825/2019 was dismissed as withdrawn vide order dated 05.08.2019 in WP (C) 6698/2018.

6. The petitioner further submitted that the respondent No.3, i.e, the Bar Council of India, granted affiliation to the Petitioner College for conducting BBA LLB Course with an intake of 180 students for the academic session 2019-2020 vide its letter dated 25.5.2019.

7. According to the petitioner on 8.7.2019 during the pendency of the W.P.(C) No. 6698/2018, the petitioner herein filed an application CM No. 30124/2019 vide which the petitioner sought direction to the respondent No.1 i.e, the Directorate of Higher Education, to issue NOC to the Petitioner College, for intake of 180 students for BA LLB and BBA LLB courses for the academic year 2019-20, in accordance with the approval letter issued by the respondent No.3, i.e, the Bar Council of India, dated 25.05.2019 which however has also since been dismissed as withdrawn as prayed by the petitioner herein on 5.8.2019 The respondent No.1 is stated to have further issued the NOC

to the petitioner's college granting approval for 120 seats for BBA LLB course for the academic session 2019-2020.

8. Vide the impugned letter dated 19.7.2019 of the respondent No.1 i.e, the Directorate of Higher Education, addressed to the respondent No.2, i.e., the Guru Gobind Singh Indraprastha University, it was mentioned to the effect:

“ The JAC report in respect of the above said institute has been perused and it has been noticed that Part-I of the JAC report is more relevant in respect of land issues and statutory compliances of the institute and remaining Part-II &III of JAC report is related to academic matters including -infrastructure pertaining to GGSIP University. Since no documents has been attached/enclosed along with copy of JAC report forwarded by GGSIPU, hence it is presumed that the JAC headed, by Retd. Senior Officers, other subject experts and representative, of University as members/has seen and examined all the relevant documents/statutory clearances as. per policy guidelines during the, inspection and recommendations has been made in accordance with policy guidelines. Further the GGSIPU vide, its letter dated 27.06.2019 informed that the Board of Affiliation of University has decided that the-recommendation of the JAC should also be considered as the recommendation of the University.

Therefore, considering the facts above and based on the recommendation of JAC and GGSIP University the provisional NOC for course with intake for (1) BBA-75/3 Yrs & BBA [2nd shift]-75/3 Yrs.(2) BBA (CAM) -30/3 Yrs. & BBA (CAM) (2nd Shift)-30/3 Yrs. (3) BCA-30/3 Yrs. (5) BA,LL.B.-180/5 Yrs (2) BBA, LL.B.-120/5 Yrs is granted subject to following conditions:-

The Society/institute shall abide by all the rules and regulations in force in Delhi by the Government, Local authorities and the affiliating University.

- a. **The Society/Institute shall abide by all the rules and regulations in force in Delhi by the Government, Local authorities and the affiliating University.**
- b. The Society/ Institute shall follow the fee structure prescribed by the University/Govt. of NCT of Delhi
- c. If it comes to the knowledge of Govt. of NCT of Delhi that the NOC has obtained by giving any false or misleading information or by concealing or suppressing any material facts or information, the NOC granted shall be withdrawn/cancelled.
- d. The University shall monitor compliance of the terms & conditions on a quarterly basis. If it is found during the course of monitoring of the compliance of the terms & conditions of grant-of NOC that the institute has not complied with these terms & conditions, the
- e. University may take penal action against the institute after following proper legal procedure.
- f. **The University may ensure the space norms prescribed by the Statutory Authorities/University/AICTE/UGC etc are complied with.**
- g. The Institute/University shall strictly follow the policy guidelines prescribed by Directorate of Higher Education, GNCT of Delhi vide letters dated 12.01.2016 & 03.02.2017 in letter and spirit.
- h. All the statutory compliances' and removal of all; other deficiencies/ shortcomings/suggestions noticed in the JAC report must be complied with by the concerned institute latest by 30th September, 2019. It is emphasized that the required precaution be taken immediately and all deficiencies removed in the given time frame failing Which appropriate action as per guidelines/policy should be taken by GGSIPU, under Intimation to the Department. The GGSIP University must ensure the compliance of the same within stipulated time period and get the institute again inspected by the JAC and submit the compliance report to this department by October, 2019 in respect of all the deficiencies shortcomings/suggestions given in the JAC

report forwarded by GGSIP University vide letter dated 27.06.2019 referred above.”,

with it having further been observed in para ‘h’ of the same to the effect:

“All the statutory compliances' and removal of all; other deficiencies/ shortcomings/suggestions noticed in the JAC report must be complied with by the concerned institute latest by 30th September, 2019. It is emphasized that the required precaution be taken immediately and all deficiencies removed in the given time frame failing Which appropriate action as per guidelines/policy should be taken by GGSIPU, under Intimation to the Department. The GGSIP University must ensure the compliance of the same within stipulated time period and get the institute again inspected by the JAC and submit the compliance report to this department by October, 2019 in respect of all the deficiencies shortcomings/suggestions given in the JAC report forwarded by GGSIP University vide letter dated 27.06.2019 referred above.”

(emphasis supplied)

9. The petitioner is aggrieved by the letter dated 19.7.2019 of the respondent No.1 i.e, the Directorate of Higher Education, to the extent that it fails to grant NOC to the Petitioner College for the continuance of the BBA LLB course for the academic year 2019-20 with an additional intake of 60 students and further seeks that the respondent No.1 be directed to issue NOC to the petitioner college for continuing of the BBA LLB course for the academic year 2019-20 with an intake of 180 students.

10. It has been submitted by the petitioner that the illegal and arbitrary action of the respondent No. 1 for the non-grant of NOC to

the petitioner college for the academic year 2019-20 of the BA. LLB. course for an intake of 180 students is in violation of the policy guidelines dated to 12.01.2016 and the approval granted by the respondent No. 3 vide letter dated 25.05.2019. It has further been submitted by the petitioner that the respondent No. 1 cannot take a contrary stand in as much as for the year 2012- 2013 they granted the approval granted by the respondent No. 3 and in complete disregard thereof had now failed to follow the same.

11. *Inter alia*, the petitioner submits that it has adequate number of classrooms, infrastructure, faculty area and other facilities as are necessary to continue the BA. LL.B. course with an intake of 180 students for the academic session 2019-20. The petitioner submits that the sanction granted by the Bar Council of India to the petitioner college to admit 180 students for the BBA LL.B. course for the academic year 2019-20 is sacrosanct, it being a statutory body governing the field of legal education. The petitioner further submits that the Bar Council of India had undertaken a thorough and detailed inspection of the premises of the petitioner's College qua the requisite infrastructure as is evident from the inspection report of the Bar Council of India dated 23.02.2019. The petitioner further submits that it is settled law that in the case of a possible conflict between the rules and regulations for granting approval, prescribed by the apex body of the statutory body governing the said discipline, and rules and regulations as stipulated by the State government, the rules and regulations for granting approval prescribed by the apex of the statutory body must prevail.

12. The petitioner has further submitted that the Bar Council of India, Rules of Legal Education, 2008 is a special enactment traceable to the 66th Entry in the List 1 of the 7th schedule of the Constitution of India, 1950, which covers and occupies the entire field of legal education as well as coordination and determination of standards in institutions for higher education. The petitioner submits that the Advocates Act, 1961, read with the Rules of Legal Education, 2008 has precedence over any other law including the policy guidelines of the respondent No. 1 dated 12.01.2016 and the Guru Gobind Singh Indraprastha University Act, 1998.

13. The petitioner further submits that it is settled law that if the provisions of the Central Statute and a State Statute are inconsistent and repugnant to each other, the Central Statute has to prevail over the State Statute and denial of affiliation by the State University on the grounds that are inconsistent with those enumerated in the Central Statute have to be inoperative. The petitioner has further submitted that the respondent No. 1 is precluded from imposing any condition for grant of NOC to the petitioner college which is inconsistent with the provisions made under the Advocates Act, 1961 read with the Rules of Legal Education 2008.

14. The petitioner has further submitted that the impugned action of the respondent No. 1 by the non-grant of the NOC for conducting the BBA LL.B. course with an intake of 180 students is contrary to the provisional affiliation granted by the respondent No. 2 university to the petitioner college, wherein it has been categorically mentioned/stated that seat intake admissions will only be allowed on

the basis of recommendations of JAC, NOC of the concerned State government (wherever applicable) and Bar Council of India and submission of the same in the affiliation branch, GGSIP University, for the concerned academic session 2019-2020.

15. The petitioner submits that there are inherent contradictions in the said policy guidelines dated 12.01.2016 as observed by the respondent No. 1 in its notice dated 09.07.2012 where it has been recorded:

“Under the existing guidelines, it is stated that wherever the approval is required from any statutory body, the norms prescribed. If available precisely, from that body for that program would have to be adopted mutalis mutandis.

The Bar Council of India in its communication dated 01-08-2009 extended its approval for 80 students along with 01 additional section of 60 students from the academic session 2009-10. However, the college at that time requested for admission of 120 students in place of 140 students. Now it has applied for 180 seats from the academic year 2012-13 with sanctioned intake of 140 students and additional intake of 40. Since this figure of 140 has already been approved by Bar Council of India, we may issue NOC on the strength of the approval of the Bar Council of India for 140 seats. If it is not necessary to review the existing guidelines, the exercise may be carried out”

16. *Inter alia* the petitioner submits that the inspection committee of the respondent No. 3 consists of experts and there cannot be any challenge made to the recommendation granted by it and *inter alia* submits that the members of the inspection committee of the respondent No. 3 were:

- a) Hon'ble Mr. Justice Bhanwar Singh, Former Judge, Allahabad High Court;
- b) Mr. Vijay Bhatt, Advocate, M.T. Bar Council of Trust;
- c) Mr. Sunil Gupta, Member, Respondent no. 3;
- d) Mr. Kumar Mukesh, (Special Invitee), member, State Respondent no.3;
- e) Mr. Sanjay Rathi, STBC, Delhi (Special invitee). Member State Bar Council of Delhi;
- f) Dr. K.K. Mittal (For Law), Dean, CCS University, Meerut
- g) Dr. Harphool Singh (For Eco & Management)

17. *Inter alia* the petitioner submits that it undertakes to comply with the order dated 25.06.2018 and the undertaking given pursuant thereto as soon as the Writ Petition (C) No.9405 of 2018, seeking direction to the Delhi Development Authority to sanction the building plans of the petitioner college, is decided.

18. The respondent No. 1 that is the Directorate of Higher Education submits that the petitioner college is not entitled to an intake of 180 students in the BBA LL.B. course as sought by it, for the reason that it does not satisfy the minimum space requirement as stipulated in the applicable policy guidelines issued by the respondent No. 1 on 12.01.2016 which mandates a minimum built-up area of 4.5 sqm, as per standard clause 1 (1.1) (iii) (a), which reads to the effect:

“a. For the programmes within the purview of GGSIP University such as BBA, BCA, B.Com & BJMC, the Institute would be required to have built-up space in the ratio of 4.25 sqm. (all inclusive per student). For LLB, the built-up space in the ratio of 4.5 sqm. (all inclusive per student) till specific space factor is defined by Bar Council of India. For B.Voc, the built up space in the ratio of 5.0 sqm. (all inclusive per student)”

19. The respondent No. 1 submits that the plain reading of clause 1 (1.1) (iii) (d) of the policy guidelines contemplates a situation wherein the norms, if available precisely laid down by statutory body, for a program would be made applicable in the matter of consideration of the grant of NOC and the respondent No. 1, i.e., Directorate of Higher Education and submits that the Bar Council of India has not laid down any norms with regard to the space requirements for the conduct of the BBA LL.B. course and on the contrary the Bar Council of India has under the Rules of Legal Education, 2008 governing *inter alia* inspection of universities for recognizing degrees in law, laid down under section 7(1)(h) and 7(1)(i), 24(1)©(iii), 49(ag), 49(ad) of the Advocates Act, 1961 in Para 3 of Schedule III, expressly provided as under:

“What is the adequate space for the said purpose shall be decided by the respective authority of the University under the regulation as guided by the UGC”,

(emphasis supplied)

The respondent No. 1 has thus submitted that it is therefore apparent beyond any *iota* of doubt that the minimum space required for conducting a course would be prescribed by the policy guidelines of 12.01.2016 No.DHE-4(60)/Policy/ggsipu/2014-15/5890-5904 and in any event as has been submitted on behalf of the respondent No. 3 during the hearing on 29.07.2019, any prescription by the Bar Council of India with respect to space is only, the minimum requirement and the institution concerned will be required to adhere to the space requirements laid down by the University of the State government. The respondent No. 1 has

further submitted that the inspection report of the Bar Council of India dated 25.05.2019 itself reveals that the petitioner has insufficient classrooms namely 27 as against the requirement of 29 and the shortage is made up by utilizing spaces such as the committee halls and the auditorium and that the said report of the Bar Council of India further records the assurance given by the Director of the College that it would be constructing additional classrooms in a short while to make up the paucity of space.

20. The respondent No. 1 has further submitted that despite the undertaking given by the petitioner at the time of grant of the *ad interim* order on 25.06.2018 in Writ Petition (C) No. 6698 of 2018 when the petitioner was permitted an intake of 180 students for counselling in the BBA LL.B. course, the petitioner has failed to comply with that undertaking and the shortfall continues till today. The respondent No. 1 further submits that owing to the inability of the petitioner to comply with the undertaking the admission of 60 additional students of the petitioner is illegal and that the said admissions are liable to be cancelled and that it is unfortunate that the petitioner seeks to imperil the future and careers of students, by making admissions beyond the permissible optimum capacity, in order to maximize its commercial gains.

21. *Inter alia* the respondent No. 1 has submitted that the petitioner contrary to the undertaking given by the petitioner to the Court on 25.06.2018 in W.P. (C) 6698/ 2018 now seeks to contend that it be granted an intake of 180 students for the BBA LL.B. course based on the letter of the respondent No. 3 dated 23.05.2019 and that such

conduct of the petitioner disentitles it to the grant of any relief. **The respondent No. 1 has reiterated that the respondent No. 3 only assesses and lays down the minimum space requirement and the prescription by the respondent No. 1 will be binding, with regard to the minimum requirement of space.**

22. The respondent No. 1 has further submitted that the reliance placed by the petitioner on *Jaya Gokul Educational Trust v. Secretary Government of Higher Education & Ors* (2005) 5 SCC 231 is entirely misplaced and has no application to the facts of the case and that in the said judgment there was an interpretation of the provisions of the All India Council for Technical Education Act, 1987 and it was laid down that, once an approval has been granted by the AICTE under the said Act and Regulations framed thereunder, no further approval of the State Government was necessary.

23. The respondent No. 1 submits that in the facts of the present case however, it is apparent from a reading of the Rules of Legal Education, 2008 framed under the Advocates Act, 1961 as referred to herein above, that the primacy in the matter of assessment of space, is given to the norms laid down by the University. The respondent No. 1 has further submitted that clause 3(i)(b) of Statute 24 of the respondent University which is framed in exercise of the power under section 26 (2) of the Guru Gobind Singh Indraprastha University Act, 1998 itself prescribes the grant of NOC by the State Government as a mandatory pre-condition of affiliation to any desirous college and institution. The respondent No. 1 has the submitted that the

petitioner's contention is misconceived both in fact and law and therefore merits dismissal.

24. The respondent No. 2 the Guru Gobind Singh Indraprastha University submits that the impugned order dated 19.7.2019 issued by the respondent No. 1 that is the Directorate of Higher Education suffers from no illegality or infirmity in as much as the petitioner college does not have the adequate space to accommodate the additional intake of 60 students for the BBA LL.B. course. The respondent No. 2 further submits that it is an admitted fact that the petitioner does not have the adequate space to accommodate the additional intake of 60 students and the additional intake of 60 students made as an interim measure through its undertaking dated 25.06.2018 has till date not been fulfilled by the petitioner and has been duly considered by the JAC in its report dated 19.06.2019 and by the Scrutiny Committee in its decision dated 14.05.2019.

25. The respondent No. 2 has submitted that the Scrutiny Committee and JAC report for the year 2019-20 were deliberately not annexed with the petition by the petitioner and had been handed over during the proceedings by the petitioner on the Court query and that the petitioner had suppressed the minutes of the meeting of the Scrutiny Committee held on 14.05.2019 at 11 AM to scrutinize the proposal submitted by the institutes including the petitioner for grant of professional admission for the act affiliation for the academic year 2019-20 have been placed on record by the respondent No. 2 which indicates that for the BBA LL.B. integrated 5 year course the intake for the academic year was 2018-19 was 180 and the intake applied for

2019-20 was 180 and that the recommendations of the Scrutiny Committee were to the effect:

Existing							
S. No.	Name of the Institute	Programme	Duration	Intake for A.Y. 2018-19	Applied Intake 2019-20	Status	Recommendations of the Scrutiny Committee
1.	Chanderprabhu Jain College Of Higher Studies & School of Law, Plot No. OCF, Sector - A - 8, Narela, Delhi	BBA	3 yrs	75	75	No Change	Reference minutes of meeting held on 12.04.2019 & 20.04.2019. Institute vide letter dated 23.04.2019 submitted that plans are under consideration of DDA for sanction. Institute admitted that no construction activity on undertaking of 810 sq mtr. given to Hon'ble High Court of Delhi could be taken up. Institute has also admitted that there is shortage of 262 sq mtr. for the Academic Year 2019-20. Thus, the additional 60 seats of BBA LLB (Integrated) granted in 2017-18 be put in No Admission Category for the Academic Year 2019-20.
		BBA (2nd Shift)	3 yrs	75	75		
		BCA	3 yrs	30	30		
		BCA (2nd Shift)	3 yrs	30	30		
		BBA (CAM)	3 yrs	30	30		
		BBA (CAM) (2nd Shift)	3 yrs	30	30		
		BA LLB (Integrated)	5 yrs	180	180		
		BBA LLB (Integrated)	5 yrs	180	180		
		B.Com. (Hons.)	3 yrs	30	30		
		B.Com. (Hons.) (2nd Shift)	3 yrs	30	30		

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II. Recommendations regarding programmes:

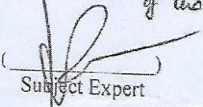
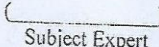
S.N.	Programme(s)	Intake Duration	Yes - recommended	No	If not recommended reasons thereof
1	BBA	75/3Yrs	Yes - Recommended		—
2	BBA 2nd Shift	75/3Yrs	Yes - Recommended		—
3	BBA (CAM)	30/3Yrs	Yes - Recommended		—
4	BBA (CAM) 2nd Shift	30/3Yrs	Yes - Recommended		—
5	BCA	30/3Yrs	Yes - Recommended		—
6	BCA (2nd Shift)	30/3Yrs	Yes - Recommended		—
7	B.Com (Hons)	30/3Yrs	Yes - Recommended		—
8	B.Com (H) 2nd Shift	30/3Yrs	Yes - Recommended		—
9	B.A LLB	180/5Yrs	Yes - Recommended		—
10	BBA LLB	120/5Yrs	Yes - Recommended		—
11					
12					
13					
14					
15					

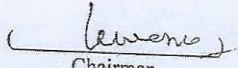
Date of Visit: 19 June 2019

Note:

- All pages of the report are to be duly signed by all members of the committee, including the Chairman.
- Any cuttings/ over writings should be avoided; if any such cutting is unavoidable the same must be authenticated only by countersignatures of the Chairman of the Committee.
- The names in capital letters of all the members of the Committee should be indicated below the respective signatures at the end of Part I and at the last page of the report.
- The copy of the JAC report may be collected by the Institute after 10 days of date of Inspection.

the Institute in the last Academic year had given an undertaking to increase, construct additional space for accommodating 180 students of BBA LLB to make up the shortfall of mandatory space required for strength of 180 students of BBA LLB. The Hon'ble High Court had however allowed the intake of 180 students. Since no additional space has been provided to accommodate the strength of 180 students, the committee is constrained to recommend the intake of 120 students. It would be appropriate if the intake is restricted to 120 in view of the available area with institute.

 Subject Expert
  Subject Expert
  Subject Expert

 Convener
  Chairman

which indicates that for the year 2019-20 the recommendations for intake by the Scrutiny Committee for the petitioner was only 120 with it having been specified to the effect that the institute in the last academic year had given an undertaking to increase, construct

additional space for accommodating 180 students of the BBA LL.B. to make up the shortfall of mandatory space required for strength of 180 students of the BBA LL.B. and that this Court had allowed the intake of 180 students for that year provisionally and that since no additional space has been provided to accommodate the strength of 180 students the Committee was constrained to recommend only an intake of 120 students in the area available with the institute.

26. During the course of submissions made on behalf of the respondent No. 3, that is the Bar Council of India, it was contended that with respect to space the prescription by the Bar Council of India was only the minimum requirement and that the institution concerned has to adhere to the space requirements laid down by the University of the State Government.

27. The Bar Council report indicates that as per requirement of the number of students only 27 rooms were available as of now and that the shortage is done up in relation to the requirement of 29 classrooms as per the number of students by making arrangements of the classes in accommodation like committee hall and auditoriums and that the director had also informed the representatives of the Bar Council of India that the institute was going for construction of more classrooms and would be able to accomplish the requirement in a short while. The report of the Bar Council of India reads to the effect:

“ The library has good space and large number of books. It must keep it up large number of periodicals including online journals. In all, it's a rich library. As per requirement of the number of students 29 class rooms are required but there are only 27 rooms available as of now.

The shortage is done up by making arrangements of the classes in accommodation like committee hall and auditoriums. Also the Director informed us that they are going for construction of more class rooms and will be able to accomplish the requirement in a short while."

28. The contention that is raised on behalf of the petitioner is to the effect that the legal aspect which requires determination is whether in a case of conflict between the recommendation of the approval for an intake of students by a statutory body that is the respondent No. 3 that is the Bar Council of India as in the instant case and recommendation of approval by the State government that is the respondent No. 1 through its Directorate of Higher Education and the University that is the respondent No. 2 Guru Gobind Singh of Indraprastha University in this case, which of the recommendations/approval would have an overriding effect and would prevail.

29. The JAC report in relation to the institution reads to the effect:

1. Justification on the basis of space factor (in terms of built-up area) as stipulated by the concerned Statutory Body / University. Kindly refer Annexure appended herewith.				
S. No.	Programme recommended	Intake Recommended / duration of programme	Space factor (in Sq. Mtrs.)	Space required per programme (in Sq. Mtrs.)
1	BBA (G)	75 / 3 yrs	4.25	956.25
2	BBA (G) 2ND Shift	75 / 3 yrs	—	—
3	BBA (CAM)	30 / 3 yrs	4.25	382.5
4	BBA (CAM) 2ND Shift	30 / 3 yrs	—	—
5	BCA	30 / 3 yrs	4.25	382.5
6	BCA 2ND Shift	30 / 3 yrs	—	—
7	B.Com (H)	30 / 3 yrs	4.25	382.5
8	B.Com (H) 2ND Shift	30 / 3 yrs	—	—
9	B.A LLB	180 / 5 yrs	4.50	4050
10	BE LLB	120 / 5 yrs	4.50	3240
11				9393.75
12				
13				
14				
15				
Total of Space required for all the programme/ intake recommended				9393.75
Total built up space available at the site for conduct of existing/ proposed programmes and their recommended intake (Sq. Mtrs / Acres) 9401.3 Sq. mtrs.				
Total plot area (Sq. Mtrs./Acres) 4154.29 Sq. mtrs.				
Note: (i) Programmes/ intake should be recommended subject to the availability of built-up space.				
(ii) In case of Institutions which are conducting PGDBM Programme, the total built-up area should be mentioned excluding the area required for PGDBM programme.				
(iii) While calculating the requirement of built-up area, Norms for Space mentioned in point 9 & 16 of the Policy Guidelines conveyed vide letter no. DHE-4(61)/2010-11/304, dated 06.05.2011 of DHE have to be referred.				

II. Recommendations regarding programmes:

S.N.	Programme(s)	Intake / Duration	Yes - recommended	No	If not recommended reasons thereof
1	BBA	75/3yrs	Yes - Recommended		—
2	BBA 2nd Shift	75/3yrs	Yes - Recommended		—
3	BBA (CAM)	30/3yrs	Yes - Recommended		—
4	BBA (CAM) 2nd Shift	30/3yrs	Yes - Recommended		—
5	BCA	30/3yrs	Yes - Recommended		—
6	BCA (2nd Shift)	30/3yrs	Yes - Recommended		—
7	B.Com (Hons)	30/3yrs	Yes - Recommended		—
8	B.Com (H) 2nd Shift	30/3yrs	Yes - Recommended		—
9	B.A LLB	180/5yrs	Yes - Recommended		—
10	B.BA LLB	120/5yrs	Yes - Recommended		—
11					
12					
13					
14					
15					

Date of Visit: 19 June 2019

Note:

1. All pages of the report are to be duly signed by all members of the committee, including the Chairman.
2. Any cuttings/ over writings should be avoided; if any such cutting is unavoidable the same may be authenticated only by countersignatures of the Chairman of the Committee.
3. The names in capital letters of all the members of the Committee should be indicated below their respective signatures at the end of Part I and at the last page of the report.
4. The copy of the JAC report may be collected by the Institute after 10 days of date of Inspection.

The institute in the last Academic year had given an undertaking to increase, construct additional space for accommodating 180 students of BBA LLB to make up the shortfall of mandatory space required for strength of 180 students of BBA LLB. The Honble High Court had however allowed the intake of 180 students. Since no additional space has been provided to accommodate the strength of 180 students, the committee is constrained to recommend the intake of 180 students. It would be appropriate if the intake is restricted to 120 in view of the available area with institute.

Subject Expert

Subject Expert

Subject Expert

Convener

Chairman

30. On behalf of the respondent No. 3 that is the Bar Council of India it has been submitted that in terms of section 49(1)(d) the Advocates Act, 1961 the Bar Council of India is empowered to make rules with regard to laying down standards of legal education to be mandatorily observed by law colleges in India as well as for the inspection of the Law Colleges for the same. *Inter alia* the Bar Council of India submits that it is solely responsible to promote legal education and lays down standards of such education in consultation with the universities in India imparting legal education and the State bar Council and that in relation thereto the Rules of 2008 (Part IV of BCI Rules) were framed for the entire country under section 7(1)(h) and (i), (m), 24(1)(c)(iii) and 3(a), 49(1)(af),(ag) and (d) of the Advocates Act, 1961,

The Bar Council of India, Part IV Rules of Legal Education Chapter-II standards of professional legal education prescribes to the effect:

“11. Minimum infrastructure

Any institution conducting legal education by running either of the law degree courses or both leading to conferment of graduate degree in law on successful completion of the course shall have minimum standard infrastructure facility stipulated by the Bar Council of India specified in Schedule III of these Rules.

The University shall ensure that all its Centres of Legal Education under the University maintain the standard infrastructure and other facilities for the students to suitably impart professional legal studies.”

31. Reliance was placed on behalf of the respondent No. 2 on the verdict of the Hon’ble High Court of Delhi in **Rahul Dhaka Vikas**

Society & Anr v. Guru Gobind Singh Indraprastha University & Ors
2001(58)DRJ290(DB) with the specific reference to observations therein to the effect:

11. At this stage, for the purpose of answering the aforesaid question, one may point out that the University or the examining bodies may have their own rules for grant of affiliation. In the instant case itself the University which is also a creature of Statute namely the Indraprastha Vishwavidyalaya Act, 1998 is regulated by the provisions of the said Act. It has its own provisions for grant of affiliation. We may note the provisions of this Act relevant to this context. Preamble to the Act reads to say that the Act is enacted to establish and incorporate an affiliating and teaching University at Delhi to facilitate and promote studies, research and extension work in emerging areas of higher education with focus on professional education, for example engineering, technology, management studies, medicine, pharmacy, nursing, education, law, etc., and also to achieve excellence in these and connected fields and other matters connected therewith or Incidental thereto. University is defined in Section 2(za) to mean the Indraprastha Vishwavidyalaya as incorporated under this Act. Section 4(2) stipulates that no college or Institution situated within the jurisdiction of the University shall compulsorily be affiliated to the University, and affiliation shall be granted by the University only to such college or institution as may agree to accept the Statutes and the Ordinances. Thus grant of affiliation to an institution is the discretion of the University, Section 5 lays down powers of the University and Sub-section 33 thereof provides that

University and Sub-section 33 thereof provides that University has the power to prescribe the code of conduct for managements of affiliated colleges and institutions. Section 21 of the Act provides for the Board of Affiliation which shall be responsible for admitting colleges of and institutions to the privileges of the University. Section 25 of the Act enumerates the matters which Statutes may provide and Section 26 prescribes the procedure as to how Statutes are to be made. Section 27 deals with Ordinances and Section 28 deals with Regulations. Thus before an institution is granted affiliation, the Board of Affiliation is to be satisfied that such institution would conform to the provisions of Act, Statutes, Regulations which, inter alia, provide for standards of teaching, examinations and output characteristics of its graduates. The affiliation is not compulsory or automatic and it is within the discretion of the Board of Affiliation or for that matter the University. University as an examining body issues the degrees to the successful students in the exams who belong to affiliated institutions. Thus any institution which is affiliated to the University, its students are given the degrees of the University on passing the concerned exams. Therefore, it is the right of the University to ensure the concerned institution conforms to all standards set by its Act. Statutes, Ordinances and Regulations because ultimately the students of such a institution would get the degrees/ certificates of the University.

12. It is, keeping in view the provisions of the Indraprastha Vishwavidyalaya Act, 1998 that provisions of Section 16 of the NCTE Act are to be given an interpretation. If the interpretation as

suggested by Institute is given, following would be the consequences :

- a) Grant of recognition would mean grant of automatic affiliation with any University.*
- b) Depriving the University of its power to give affiliation or refuse affiliation.*
- c) Possessed with the order of recognition and institution can go to any University for affiliation. In other words, it would be the sole prerogative of the institution to decide the University with which it wants to be affiliated and such University has no choice but to grant affiliation.*
- d) University will have to grant affiliation even if the particular institution does not conform to the standards or meets the requirements of the Act, Statutes, Ordinances and Regulations of that University.*

*13. Naturally, such an interpretation as suggested by the institute which leads to the aforesaid appalling and blighting consequences and may have effect of destroying the very autonomy of an University and may give license to an institution to violate the provisions of the Acts, Statutes, Ordinance etc. of the University with impunity, cannot be accepted. Merely because the NCTE Act is a Central Statute, does not mean that it has to be interpreted in a manner which destroys the very fabric and edifice of the University. **Therefore need is to interpret the provisions of the two Acts, one Central and other State, harmoniously so that both are able to survive in their respective fields and also able to achieve their respective objectives.** It is only when the provisions of the State*

Act are repugnant to that of Central Act that the provisions of State Act have to give way to the provisions of Central Act. Article 254 of the Constitution of India deals with the situation where there is inconsistency between laws made by the Parliament and laws made by the legislatures of States interpreting the principle of repugnancy contained in this Article, following principles can be culled out from various judgments :

- 1. The State law does not become void as soon as the Union Parliament legislates with respect to the same subject. There is nothing to prevent the State legislature to legislate with respect to a Concurrent subject merely because there is a Union law relating to the same subject, Article 254(2) is attracted only if the State law is 'repugnant' to the Union Act, which means that the two cannot stand together. The doctrine of 'occupied field' has no application in the interpretation of the present Article.*
- 2. There is no question of applying Article 254, unless the State law is, in its 'pith and substance' a law relating to the Concurrent List. If it is covered by an Entry in the State List, but only touches the Concurrent List incidentally, there is no application of Article 254.*
- 3. The onus of showing the 'repugnancy' and the extent thereof is on the party who attacks the validity of the State law."*

ANALYSIS

32. On a consideration of the entire available record and submissions addressed on behalf of either side, the Court is of the considered view that the prayer made by the petitioner cannot be

granted in as much as it has been brought forth through the contentions that have been made on behalf of either side that the Bar Council of India, i.e., the respondent No. 3, through its rules provides for minimum standards of legal education and the grant of temporary extension of approval of affiliation to the petitioner Institute for running the 5 year BA LLB Hons and BBA LLB Hons. course with an intake of 3 sections of 60 students in each section in each course for the academic year 2019-20 was and is subject to the conditions as communicated to the petitioner by the letter of the Bar Council of India dated 25.05.2019. The said letter clearly provided to the effect that :

“The University/ College is directed to also fulfill the other conditions stipulated as per Legal Education Rules 2008 and by the Committee Failure of which may lead to subsequent necessary and proper action being taken in this regard.”

33. The policy guidelines for the issuance of the NOC to the new and existing institutions situated in confirming/nonconforming areas and allied matters related to self-financed institutions affiliated to the respondent No. 2 as communicated by letter dated 12.01.2016 by the Directorate of Higher Education to the respondent No. 2 itself provides vide clause 1(1.1)(iii) to the effect that the covered area of the building in which the courses proposed to be as follows:

“For the programmes within the purview of GGSIP University such as BBA, BCA, B.Com & BJMC, the Institute would be required to have built-up space in the ratio of 4.25 sqm. (ail inclusive per student). For LLB, the built-up space in the ratio of 4.25 som. fall inclusive per student) till specific space factor is

defined by Bar Council of India. For B.Voc, the built up space in the ratio of 5.0 sqm. (all inclusive per student).” ,

and vide clause 1(1.1)(iii) it was provided to the effect:

“d. Wherever the approval is required from any statutory body, the norms prescribed. If available precisely, from that body for that program would have to be adopted mutatis mutandis” ,

34. Further vide clause h, it is provided to the effect:

“The built-up area as assessed and verified by the JAC during their visit to an institute in conforming area and mentioned in their report may be considered for granting the course(s)/ intake to that Institute, subject to the maximum limit as prescribed. Considering the fact that any building in use may have common operational areas like Basement, stairs etc., JAC may be advised not to take covered area strictly as built up area, Instead, the built up area as certified by the local body/ architect may be taken as final.” ,

35. Further clause 11 provides to the effect:

“11. Other clearances

11.1. All the Institutions should also submit Completion Certificate, Structural Safety Certificate, Earthquake Resistance Certificate and Fire Safety Certificate from the relevant authorities/ departments, along with the report of the JAC duly recommended by the University, as per the provisions contained in the GGSIP Act, 1998. The University may ensure that they comply with the U.G.C. Regulation 2009 notified on 20.02.2010 and amendments thereof notified on 26.03.2012.” ,

36. Clause 4.2 which provides for the validation of NOC in nonconforming area reads to the effect:

“The revalidation of NOC for the courses running in Institutes located in non-conforming areas like Lai Dora /Extended Lal Dora will be given on annual basis till notification of MPD 2021 subject to the condition that they are under consideration of DDA for regularization in MPD 2021. However, till that time no addition

*and alteration shall be allowed in the existing infrastructure as on date which is annexed as per the annexure-I (as per academic year 2014-15). **Addition of new courses, additional intake will be allowed within the existing infrastructure only on the recommendation of the JAC.** Space norms will be applicable as mentioned in section I.l(ill)(a) to I.l(iii)(d). This will further be subject to the condition that the Institutions would procure a communication from DDA clarifying that the institute is located either in the conforming area or area proposed for inclusion as institutional land or area proposed for regularization as per policy of DDA. Further documentary -proof of legal possession of the premises will be provided.”*

(emphasis supplied)

37. Further the letter dated 19/07/2019 issued by the, respondent No.1, i.e. Directorate of Higher Education, to the respondent No. 2 vide clause **h** categorically state stipulates to the effect:

“All the statutory compliances' and removal of all; other deficiencies/ shortcomings/suggestions noticed in the JAC report must be complied with by the concerned institute latest by 30th September, 2019. It is emphasized that the required precaution be taken immediately and all deficiencies removed in the given time frame failing Which appropriate action as per guidelines/policy should be taken by GGSIPU, under Intimation to the Department. The GGSIP University must ensure the compliance of the same within stipulated time period and get the institute again inspected by the JAC and submit the compliance report to this department by October, 2019 in respect of all the deficiencies shortcomings/suggestions given in the JAC report forwarded by GGSIP University vide letter dated 27.06.2019 referred above.”

and categorically grants an intake of **120** students for the 5 years BBA LLB course for the academic year 2019-20. The Rules of Legal Education, 2008 made by the Bar Council of India in consultation with

universities and State Bar Councils categorically provide **vide Schedule III** qua minimum infrastructural furniture required in a Centre for legal education for applying permission to run a law course with affiliation from GGSIP University, and vide Clause 3 thereof stipulates freehold and leasehold property as under:

*“3. Freehold or Leasehold Property; Each Centre of Legal Education providing education in law either in the Department of law of a University or its constituent or affiliated college must have either on freehold or on long leasehold land adequate to provide academic buildings, library, indoor and outdoor sports facilities, halls of residences for male and female students separately, as the case may be, in the name of the Centre of Legal Education or organization running the Centre of Legal Education. However, lease in the name of the Centre of Legal Education shall be for a period of not less than ten years. **What is the adequate space for the said purpose shall be decided by the respective authority of the University under its affiliation regulation and as guided by the UGC.***

Provided that sufficient land and adequate floor space area completely and exclusively devoted for a Centre of Legal Education, based on the size of its student population, faculty requirement infrastructure facilities. Library space requirement, indoor and outdoor games facilities and other requirements can be considered sufficient accommodation in compliance with this clause, for the purpose in a multi-faculty Institution on land possessed by the Management of a Society/ Trust/ Non Profit Company running multi-faculty institutions in a metropolitan or in a class 1 city.” (emphasis supplied)

thus stating categorically that what is the adequate space for the said purpose that is the imparting of law courses shall be decided by the

respective authority of the University under the regulation as guided by the U.G.C.

38. In the instant case the JAC report which is not refuted by the petitioner as well as the inspection report conducted by the Bar Council of India brings forth that there is inadequate space for conducting of two classes. The reliance placed on behalf of the petitioner on clause **1.iii (d)** of the policy guidelines dated 12.06.2019 of the respondent no.1 have to be read in harmony with the policy guidelines of the respondent no.1 for issuance of NOCs to the new/existing institutions situated in conforming/non-conforming areas and allied matters related to self-finance institutions affiliated to GGSIP University for the year 2016-17 and onwards and thus to **contend that the norms prescribed by the Bar Council of India apply *mutatis mutandis*** and when the approval had been accorded by the Bar Council of India the same ought to suffice and hold sway even for the space requirement of a course, cannot be accepted.

39. Further, the said rules of the Bar Council of India itself stipulate that the space requirements have to be in accordance with the regulations as guided by the respective authority of the University under the regulations guided by the UGC and the Rules of 2008 of the Bar Council of India which in the instant case bring forth that there has been a non-conformity of the space guidelines and criteria for conducting of the BBA LL.B. course for an intake of 180 students. Furthermore, it cannot be overlooked that the undertaking given by the petitioner dated 26.05.2018 in W.P.(C) No. 6698/2018 is yet to be complied with by the petitioner.

40. The contention of the petitioner that it shall comply with the said order dated 25.06.2018 as soon as W.P.(C) No.9405/2018 seeking direction to the DDA to sanction the building plans of the petitioner college is decided does not aid the petitioner in any manner in as much as the records of the said petition bring forth that the said petition which is *sub judice* as brought forth vide proceedings dated 05.08.2019 indicates that even the necessary party the concerned Municipal Corporation of Delhi which the DDA sought to contend is the body that could look into the aspect of sanction of increase in the construction area was not even made a party by the petitioner and has been directed to be arrayed vide order dated 05.08.2019 as a necessary party to the *lis*.

41. Reliance that has thus been placed on behalf of the petitioner on the verdicts relied upon i.e. ***State of Tamil Nadu v. Adhiyaman Educational and Research Institute***; [1995 (4) SCC 104], ***Jaya Gokul Educational Trust V. Commissioner & Secretary to Government of Higher Education Department***; [2005 (5) SCC 231] and ***Maa Vashno Devi Mahila Mahavidyala v. State of Uttar Pradesh and Ors***; [(2013) 2 SCC 617] is wholly misplaced in the facts and circumstances of the instant case in as much as the Bar Council of India Rules of Legal Education Part IV and the Policy Guidelines of the respondent no.1 Directorate of Higher Education have to be read in harmony and are not in conflict with each other for as per the letter dated 25.05.2019 of the Bar Council of India granted temporary extension of approval of affiliation for running five years BA, LL.B (Hons) course and five year BBA LL.B (Hons.) course with intake of

three sections of 60 students in each section in each course for the academic year 2019-20, and the University/College has been directed **to also fulfil the other conditions** stipulated as per Legal Education Rules 2008.

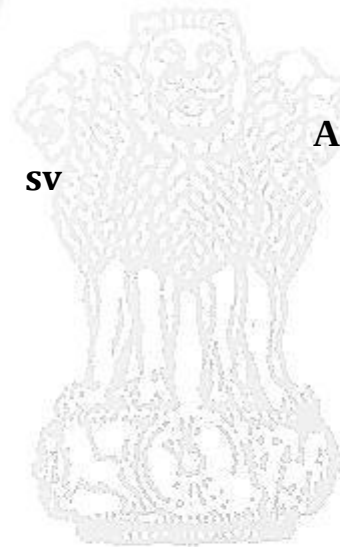
CONCLUSION

42. The petition and accompanying applications are thus declined.

43. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of WP (C) 6698/2018 & WP (C) 9405/2018.

AUGUST 13th, 2019/ sv

ANU MALHOTRA, J.



सत्यमेव जयते