

Before Amit Rawal, J

SIMRAN SINGH — *Petitioner*

versus

STATE OF HARYANA AND OTHERS — *Respondents*

CWP No. 23010 of 2012

March 30, 2015

Constitution of India, 1950 — Art.226 — University Grants Commission Act, 1956 — Ss. 3, 12, 13, 14, 20 & 22 — Haryana State Board of Technical Education, 2008 — S.27 — Deemed university — Recognition of diploma — Petitioner obtained a diploma in Civil Engineering from Maharishi Markandeshwar Engineering College — Petitioner applied for post of Junior Engineer(Civil) — Petitioner acquired knowledge that candidates lower in merit to petitioner had already joined service — Petitioner was informed that Maharishi Markandeshwar University is not recognised by Haryana State Board of Technical Education (HSBTE) and, therefore, diploma awarded by said University is not recognised — HSBTE has power and duty, to only, advise Government on matters of policy relating to diploma level technical education — It is not emboldened with any power to seek or ask for affiliation or recognition of any diploma obtained by any person from " Deemed University" — Maharishi Markandeshwar University, being a deemed university, declared under Section 3 of UGC Act, had approval of AICTE — University Act is a code in itself — Haryana Government by promulgation of 2008 Act cannot transgress powers, limits of Central Government— Diploma obtained by petitioner is a recognized diploma — It does not require any approval from Technical Education Department, Government of Haryana and as well as affiliation with Board — Petitioner would be entitled to appointment as Junior Engineer (Civil).

Held, that as per Section 27 of the Haryana Act No. 19 of 2008, HSBTE has the power and duty, to only, advise the Government on matters of policy relating to diploma level technical education and also lay down guiding principles for determining curricula and syllabi, but in the entire Act, it is not emboldened with any power to seek or ask for affiliation or recognition of any diploma obtained by any person from the 'Deemed University'. Even section 40, under Chapter V, empowers the Board to make regularization with the approval of Governing

Council for the purpose of carrying into effect the provisions of the Act.

(Para 28)

Further held, that Maharishi Markandeshwar University, being a Deemed University, declared under Section 3 of the UGC Act, 1956 had approval of the AICTE.

(Para 29)

Further held, that as regards the affiliation with the HSBTE is concerned, the said plea falls flat on the face of the respondents as none of the provisions of the Act provide any deep and pervasive control by the Board over the Regulations/Memorandum Association of the Deemed Universities. The role of the Board is only advisory in nature. The Regulations issued by the UGC from time to time leave no manner of doubt in the mind of the Court that it is only a Deemed University, which has been permitted to conduct examination and tests for admission to the courses for Degrees and as well as for the Diplomas. The details of the Regulations have already been given above, which may not be repeated in order to avoid any repetition.

(Para 31)

Further held, that a plain reading of the aforementioned regulations, which have been directed to be incorporated by the Institution as a Deemed University, do not tilt the balance in favour of respondent No. 4, to contend, that such regulations mandatorily require the affiliation by the Deemed University with any Board or much less approval with the Technical Education Department, Government of Haryana. The University Act is a code in itself. The Haryana Government by promulgation of 2008 Act cannot encroach/transgress the powers, limits of the Central Government.

(Para 32)

Further held, that the State had already committed a fallacy by constituting a monitoring committee with regard to the activities of the Deemed Universities/Institutions, offering AICTE approved technical courses, regarding admission related fee matters and realizing their mistake, deleted the term 'Deemed University' from the notification (Annexure P-10) vide letter dated 14-10-2009 (Annexure P-11), that too during the pendency of the writ petition, which had been filed by the University assailing the notification. Grant of status of 'Deemed University' is strictly governed by the provisions of the UGC Act. No other local Act or an attempt made by the Government by constituting

the Board can put the fetter on the powers of the UGC as has been done in the present case, whereby by taking the aid of the Act, the diploma awarded by Deemed University has been held to be not recognized on the premise that the Institution/University is not affiliated with the Board.

(Para 33)

Further held, that in view of what has been observed above, the diploma obtained by the petitioner from the College is a recognized diploma and it does not require any approval from the Technical Education Department, Government of Haryana and as well as affiliation with the Board. The petitioner, therefore, would be entitled to appointment as Junior Engineer (Civil).

(Para 35)

R. K. Malik, Senior Advocate with Tej Pal Dhull, Advocate,
for the petitioner

Gagandeep S. Wasu, Addl.A.G.Haryana, for the State

Rajesh Sheoran, Advocate, for respondent No.4

Sunil K. Nehra, Advocate, for respondent No.5

AMIT RAWAL, J.

(1) The challenge in the present writ petition is to Annexure P-6 dated 17.10.2012, whereby the petitioner was informed that the diploma obtained in Civil Engineering awarded by Maharishi Markandeshwar University, Mullana (Ambala) (for short “the University”) was not approved by the Department of Technical Education, Government of Haryana and also the University is not affiliated with Haryana State Board of Technical Education (hereinafter called “HSBTE”) and, therefore, is not recognized by HSBTE.

(2) The question of law, which arises for adjudication by this Court, is as to whether the diploma in Civil Engineering awarded by the University, which is a deemed University, would be invalid on account of having not approved by the Department of Technical Education, Government of Haryana and affiliated with HSBTE.

(3) It would be apt to give brief facts, which have resulted into communication of the impugned decision (Annexure P-6) to the petitioner.

(4) In pursuance to the advertisement No.2/2010 issued by the Haryana Staff Selection Commission-respondent No.3, various posts, including 267 posts of Junior Engineers (Civil) were advertised and the petitioner applied for the post of Junior Engineer (Civil). The educational qualifications prescribed in the aforementioned advertisement are extracted herein below:-

- i) 3 years diploma course in civil engineering from a recognized institute.
 - ii) Hindi/Sanskrit up to Matric Standard.
- Age 17 to 40 years
- Pay Scale Rs.9300-34800+3600 G.P.”

(5) Thereafter, vide corrigendum dated 18.10.2011, the posts of Junior Engineer (Civil) were increased from 267 to 422. Out of 267 advertised posts, 93 posts belonged to general category. The petitioner has passed the diploma in Civil Engineering from the University, which is a deemed University as per the notification dated 12.6.2007 (Annexure P-4), whereby the Central Government empowered under Section 3 of the University Grants Commission Act, 1956 (for brevity “1956 Act”) declared the Maharishi Markandeshwar University, Mullana-Ambala (Haryana) as “deemed University”, with effect from the date on which various institutions, which were affiliated with Kurukshetra University, Kurukshetra were disaffiliated and were affiliated with the Mullana University, the details of which are given herein below:-

- “(1) M.M.Engineering College, Mullana, Ambala;
- (ii) M.M.Institute of Computer Technology & Business Management (MCA), Mullana, Ambala;
- (iii) M.M.College of Dental Sciences & Research, Mullana, Ambala;
- (iv) M.M.Institute of Physiotherapy & Rehabilitation, Mullana, Ambala;
- (v) M.M.Institute of Computer Technology and Business Management (Hotel Management), Mullana, Ambala;
- (vi) M.M.Institute of Medical Sciences & Research, Mullana, Ambala;
- (vii) M.M.Institute of Management, Mullana, Ambala;

- (viii) M.M.College of Nursing, Mullana, Ambala;
- (ix) M.M.College of Pharmacy, Mullana, Ambala; and
- (x) M.M.Institute of Medical Sciences & Research Nursing College, Mullana, Ambala”.

(6) The Government of India, Ministry of Human Resources issued a clarification dated 7.4.2006 in respect of the role and powers of the All India Council for Technical Education (for short “AICTE”) established under the All India Council for Technical Education Act, 1987 and of the University Grants Commission (for brevity “UGC”) established under the University Grants Commission UGC Act, 1956 for the purpose of maintaining the standards of education in institutions notified as “Deemed to be Universities” under Section 3 of the UGC Act. The said clarification was issued by exercising the powers vested in the Central Government under Section 20(1) of the University Grants Commission Act, 1956. As per clarification, mentioned above, the Central Government directed the UGC and the AICTE to publisize the following clarification for the information of the general public through appropriate means, including through their respective institutional websites:-

- “1) The UGC, while making its recommendation to the Central Government, for the grant of the 'Deemed to be University' status on any institution, may seek the advice of the AICTE or other relevant Statutory Authorities, as the case may be (e.g. The AICTE for technical and management education, the Medical Council of India for medical education, the Dental council of India for dental education etc.;
- 2) Institutions notified by the Central Government under section 3 of the UGC Act as 'Deemed to be University' are empowered to award degrees as specified and notified under section 22 of the UGC Act, 1956;
- 3) It is not a pre-requisite for an institution notified as a 'Deemed to be University' to obtain the approval of the AICTE, to start any programme in technical or management education leading to an award, including degrees in disciplines covered under the AICTE Act, 1987. However, institutions notified as 'Deemed to be University' are required to ensure the maintenance of the minimum standards prescribed by the AICTE for various courses that come under the jurisdiction of the said Council. It is expected that the institutions notified as

- 'Deemed to be University' maintain their standards of education higher than the minimum prescribed by the AICTE;
- 4) In accordance with provisions under section 11(1) of the AICTE Act, 1987, the AICTE may cause an inspection of the relevant departments of the institution declared as 'Deemed to be University' offering the courses that come under the jurisdiction of the AICTE Act, 1987 in order to ensure the maintenance of standards by them;
 - 5) However, while the AICTE would not issue any directions to the institutions notified as 'Deemed to be University' on the basis of inspection report of the Council's Expert Committee, the Council may bring the findings and recommendations of its Expert committee to the notice of the University Grants Commission, which after considering the report of the Expert Committee of the AICTE and recommendations, if any, may issue necessary directions for appropriate action;
 - 6) Section 12(d) of the UGC Act, 1956 empowers the UGC to recommend, to any University including institutions notified as 'Deemed to be University' the measures necessary for the improvement of University education and advise them for all such actions as are necessary for the purpose of implementing such recommendations;
 - 7) Section 13 of the UGC Act, 1956 empowers the UGC to cause an inspection, in consultation with the University, or of any of its departments for the purpose of ascertaining its standards of teaching, examination and research, in such manner as may be prescribed by the Rules/Regulations;
 - 8) The power to inspect Universities/institutions notified as 'Deemed to be University' to the AICTE as well as to the UGC are to be seen separately in the light of the 'Preambles' and 'Statements of Reasons' of their respective Acts. The powers of inspection accorded to the AICTE, is specifically in order to ensure the maintenance of standards in management and technical education, whereas the power of inspection to the UGC, is to ensure overall functioning of Universities/ Institutions notified as 'Deemed to be University' including faculties thereof, in order to ensure overall standards like that of University including administrative and academic standards;

- 9) Section 14 of the UGC Act, 1956 deals with the consequences of failure of the Universities including the institutions which are 'Deemed to be University' to comply with recommendations of the Commission;
- 10) All institutions which are 'Deemed to be University' are required to abide by the instruction/recommendations of the UGC, failing which the UGC may even consider to recommend to the Central Government for the withdrawal of 'Deemed to be University' status;
- 11) The manner of inspections, if any, to be carried out by the UGC and the AICTE would be in accordance with the Rules/Regulations framed by the Commission and the Council under their respective Acts. However, the Rules/Regulations of the AICTE may confine only to the inspection, preparation and submission of the Report in regard to institutions which are 'Deemed to be University'. The action on the recommendations in the report needs to be dealt separately through the appropriate Regulations of the UGC in accordance with the provisions of the UGC Act, 1956;
- 12) The standards prescribed by the AICTE for various technical and Management courses and programmes as well as the UGC guidelines on institutions notified as 'Deemed to be Universities' are available on the official web-site (www.ugc.ac.in & www.aicte.ernet.in) of the UGC and the AICTE respectively."

(7) From the perusal of clarification No.3, it is evident that for a Deemed University, it is not pre-requisite to obtain the approval of the AICTE to start any programme in technical or management education leading to an award, including degrees in disciplines covered under the AICTE Act, 1987. However, it was mentioned that institutions notified as 'Deemed to be University' were/are required to ensure the maintenance of minimum standards prescribed by the AICTE for various courses that come under the jurisdiction of the said Council.

(8) It would not be out of place to mention here that prior to the according of status to the aforementioned College as Deemed University, Government of Haryana, Education Department circulated letter dated 18.3.1975 to all the Heads of Departments on the subject of recognition of different type of qualifications for appointments. The copy of the letter dated 18.3.1975 has been annexed with the writ

petition as Annexure P-3 and as per Sr.No.2, it is provided that the degrees and diploma etc., which are issued by the recognized Universities and High/Higher Secondary Board established by the State will also be recognized ipso facto. The said rule is extracted herein below:-

“2. The degrees and diploma etc. which are issued by the recognised universities and high/higher Secondary Board established by the State will also be recognised ipso facto.”

(9) The petitioner, who has passed his Matric from CBSE and Hindi, which was one of the subject, has also obtained a diploma in Civil Engineering from the Maharishi Markandeshwar Engineering College, Ambala (Haryana), which is a deemed University, which fact is evident from the copies of certificates Annexures P-1 and P-2.

(10) The petitioner applied for the post of Junior Engineer (Civil) and was issued Roll No.003426. On declaration of result, it was found that the petitioner was selected and figured at Sr.No.13 in the merit list, but the petitioner was flabbergast on acquiring the knowledge that the candidates lower in merit to the petitioner have joined in the 2nd week of August, 2012. On making enquiries, the petitioner was informed vide impugned letter/communication dated 17.10.2012 (Annexure P-6) that the Maharishi Markandeshwar University is not recognised by the HSBTE and, therefore, the diploma awarded by the said University is not recognised. The contents of the letter dated 17.10.2012 (Annexure P-6) are extracted herein below:-

“No.5182/7NGE II/2012 Dated: 17/10/12

From Engineer-in-Chief,
Haryana Irrigation Department,
Panchkula.

To Sh.Simran Singh S/o Sh.Tejwant Singh
Village Pakhana PO Taraori,
Karnal.

Sub:- Selection on the post of JE (Civil) against the
Advt.No.2/2010 Category No.25
Recommendation thereof.

Reference your application/recommendation to the post of Junior Engineer (Civil) against the Advt.No.2/2010 Category No.25 on the subject cited above.

In terms of condition No.4 of the recommendation list your Diploma in Civil Engineering awarded by Maharishi Markandeshwar University was sent to Haryana State Board of Technical Education for verification vide this office memo No.4219/7NGE-II/2012 dated 21.8.2012.

In this respect, Secretary, Haryana State Board of Technical Education has informed vide his memo No.12983/HSBTE dated 3.10.2012 that the diploma in Civil Engineering awarded by Maharishi Markandeshwar University is not approved by Department of Technical Education, Govt. of Haryana and also the awarding institution/University is not affiliated with Haryana State Board of Technical Education (HSBTE) and hence it is not recognized by HSBTE.

Keeping in view the above clarification the diploma awarded by Maharishi Markandeshwar University is not recognized by the Haryana State Board of Technical Education, as such you cannot be appointed on the post of Junior Engineer (Civil) in this Department.

Establishment Officer,
for Engineer-in-Chief, Irrigation Deptt.
Haryana, Panchkula.”

(11) In the said letter dated 17.10.2012, reference of letter dated 3.10.2012 was also given. The contents of the letter dated 3.10.2012 are also extracted herein below:-

“From

Secretary,
Haryana State Board of Technical Education,
Bays 7-12, Sec-4, Panchkula.

To

The Engineer-in-Chief, Haryana,
Haryana Irrigation department,
Panchkula.

Memo No.12983/HSBTE Dated:03/10/12

Subject: Regarding status of diploma awarded by Maharishi Markandeshwar University, Mullana-Selection on the post of Junior Engineering (Civil).

In reference to your letter no.4219/NGE-II/2012, dated 21.08.2012 on the subject noted above.

In this regard, it is stated that the diploma in Civil Engineering awarded by Maharishi Markandeshwar University is not approved by Department of Technical Education, Govt. of Haryana and also the awarding institution/university is not affiliated with Haryana State Board of Technical Education (HSBTE) and hence, it is not recognized by HSBTE.

Assistant Secretary
for Secretary, HSBTE,
Panchkula.”

(12) The petitioner has, thus, challenged the aforementioned action of the respondents by filing the present writ petition and also annexed the information received under the Right to Information Act.

(13) Mr.R.K.Malik, learned Senior Counsel appearing on behalf of the petitioner contended that since the petitioner had obtained the diploma in the Session 2008-2011, in this regard sought clarification from the AICTE as to whether the M.M.Engineering College was duly approved by the AICTE or not and as per letter dated 2.5.2008 (Annexure P-9), AICTE clarified that the M.M. Engineering College is competent to conduct the courses with the intake. The relevant portion of letter dated 2.5.2008 (Annexure P-9) is extracted herein below:-

“ALL INDIA COUNCIL FOR TECHNICAL EDUCATION

No.765-62-206(E)/ET/95

Dated: 02/05/2008

To

The Commissioner & Secretary,
Technical Education,
Govt. of Haryana,
Secretariat, Chandigarh-160001.

Sub:- Extension of approval to M.M.ENGG.COLLEGE, P.O.
MULLANA, DISTT.AMBALA, HARYANA-134203

Sir,

As per the Regulations notified by the Council vide F.No.37-3/Legal/2004 dated 14th September 2006 and norms, standards, procedures and conditions prescribed by the Council from time to time and based on the recommendations of Appraisal committee/Expert Committee, I am directed to convey the extension of approval of the Council to M.M.ENGG COLLEGE, P.O. MULLANA, DISTT.AMBALA, HARYANA-134203 for conduct of the following courses with the intake indicated below:-

<i>Name of the Course (s)</i>	<i>Existing Intake</i>	<i>Revised Intake</i>	<i>Period of approval</i>
CIVIL ENGINEERING	120	120	
COMPUTER ENGINEERING	120	120	
ELECTRICAL ENGINEERING	60	60	
ELECTRONICS & COMM.ENGG	120	120	
ELECTRONICS & INSTRUMENTATION ENGG..	60	60	
INFORMATION TECHNOLOGY	120	120	
M.TECH.COMPUTER SC&ENGG(PT)	18	18	
M.TECH.ELECTRICAL ENGG.	18	18	
M.TECH.ELECTRONIC&COMM. ENGG	18	18	
M.TECH.MANUFACTURING SYSTEMS ENGG.	18	18	
MECHANICAL ENGINEERING	120	120	
TOTAL	792	792	

The compliance Report along with requisite processing fee is required to be submitted every year by 31st August irrespective of the period of approval.

The above approval is subject to rectification of the following observations/deficiencies/specific conditions by 31st August, 2-2008.”

(14) It is evident that the M. M. Engineering College, Mullana, Ambala (Haryana) was competent to conduct the courses of Civil Engineering.

(15) Learned Senior Counsel for the petitioner further contended that the Haryana Government Technical Education Department came out with the notification dated 29.4.2009, whereby it constituted a High Powered Monitoring Committee under the Chairmanship of Technical Education Minister for monitoring the activities of the Deemed University/institutions offering AICTE approved technical courses regarding admission related fee matters. The aforementioned notification was challenged by the University in this Court vide Civil Writ Petition No.8130 of 2009 and during the pendency of the writ petition, the Director, Technical Education, Haryana issued a clarification that the words “deemed universities” were deleted from the notification dated 29.4.2009 and, thus, the grievance of the College/University was vindicated, the said writ petition was dismissed as not pressed.

(16) Learned Senior Counsel for the petitioner further contended that vide the impugned letters (Annexures P-6 and P-7), the State do not have any legislative power or competence in not recognizing the diploma, on the premise, that the same was not approved by the Department of Technical Education and affiliated with HSBTE. He further contended that 350 posts of Junior Engineers (Civil) are lying vacant.

(17) Respondent No.3-Haryana Staff Selection Committee filed a separate written statement, whereas respondent Nos.1 and 2, i.e., the Irrigation Department, Haryana and Engineer-in-Chief, Irrigation Department filed joint written statement and respondent No.4-Haryana State Board of Technical Education also filed a separate written statement.

(18) The stand taken by respondent No.1 in the written statement is that since the Maharishi Markandeshwar University is not approved by the Department of Technical Education, Government of Haryana, much less, not affiliated with the HSBTE, therefore, it is not recognised by the HSBTE and accordingly the candidate at Sr.No.1 in the waiting list, i.e., respondent No.5 Naveen Sharma has joined as Junior Engineer (Civil) on 11.12.2012 and, therefore, the selection procedure has

already been completed and the petitioner cannot claim appointment at this belated stage.

(19) Respondent No.4 in the written statement dated 21.11.2013 besides raising the preliminary objections qua the maintainability of the writ petition also took the aid of the provisions of Sections 2(g), 2(h) and 10(k) of the AICTE Act, 1987 and also attached a copy of office memorandum dated 26.10.2007 stated to have been issued by the UGC, whereby it had been mentioned that since the Maharishi Markandeshwar University, Mullana, Ambala (Haryana) had been declared as a Deemed University vide notification dated 12.6.2007 (Annexure P-4), its declaration was subject to all the conditions and heavily relied upon condition Nos.(vii), (viii) and (xii). For adjudication of the present dispute between the parties to the lis, condition Nos.(vii), (viii) and (xii), *ibid*, are extracted herein below:-

“(vii) Maharishi Markandeshwar University or any of its constituent units shall not offer or conduct any courses or programmes of study that are not duly approved by the Ministry of Health and Family Welfare and relevant Statutory Councils like Medical Council of India (MCI), Dental Council of India (DCI), Indian Nursing Council (INC) etc., as the case may be;

(viii) Maharishi Markandeshwar University shall start courses/ programmes only in accordance with the relevant prescribed norms and guidelines of the UGC, AICTE, etc. Such courses/ programmes started by it for the purpose of awarding degrees should also be in conformity with the Section 22 of the UGC Act, 1956; and

(xi) Maharishi Markandeshwar University shall regularly obtain the requisite ‘renewal’ of approval/permission of Ministry of Health and Family Welfare and other relevant Statutory Councils such as AICTE, MCI, DCI, INC, etc., as the case may be, in respect of the courses offered, intake capacity of students etc., will within the time limit as per the prescribed norms.”

Mr. Rajesh Sheoran, Advocate appearing on behalf of respondent No.4, by relying upon the office memorandum dated 26.10.2007 (Annexure R4/1) submitted that the Maharishi Markandeshwar University is required to start their courses/programmes in accordance with law with the relevant prescribed norms and guidelines of the UGC and AICTE etc. and the courses/programmes started by it for purpose of awarding

degrees should also be in conformity with Section 22 of the UGC Act, 1956 and the University is required to obtain requisite renewal of approval/permission from the Ministry of Health and Family Welfare and other relevant Statutory Councils such as AICT, MCI, DCI, INC etc. as the case may be, in respect of the courses offered, intake capacity of students etc. well within the time limit as per the prescribed norms.

(20) In order to lend support to the aforementioned submissions, the counsel also relied upon the public notice issued by the AICTE (Annexure R4/3), whereby the AICTE issued a clarification in respect of the institutions offering technical education programmes in their campuses/ rented premises in franchise mode and/or in collaboration with some Universities and relied upon condition No.5.

(21) He further referred to the provisions of Section 27 (a) and (b) of the Haryana State Board of Technical Education Act, 2008 in order to support the stand taken in the impugned decision (Annexure P-6), which essentially deals with the powers and duties of the Board. For the sake of brevity, sub-clauses (a) and (b) of the said Act are extracted herein below:-

“27. Subject to the provisions of this Act, the powers and duties of the Board shall be as follows, namely:-

- (a) to advise the Government on matters of policy relating to diploma level technical education in general, and on the following matters, namely:-
 - (i) to coordinate between national policies and State policies in diploma level technical education;
 - (ii) to coordinate between secondary, higher secondary, degree education and diploma level education;
 - (iii) to maintain uniform standard of diploma level technical education;
 - (iv) to promote industry institute interaction;
- (b) to lay down guiding principles for determining curricula and syllabi and also to prepare the detailed curricula and syllabi for diploma level technical education, for all categories, such as, regular, sandwich, part-time, correspondence course, yearly, semester pattern and the like.”

(22) By referring to the aforementioned clauses, learned counsel for respondent No.4 submitted that the Board is empowered to advise the Government on the matters of policy relating to diploma level technical education in general and on the matters prescribed and also lay down guiding principles for determining and preparing the curricula and syllabi for diploma level technical education. He has further relied upon the provisions of Section 40 of 2008 Act to contend that the Board has power to make regulations with the approval of Governing Council for the purpose of carrying into effect the provisions of this Act, i.e., the constitution, powers and duties of the Committees etc.

(23) Respondent No.4 over and above the stand taken in the written statement also filed an additional affidavit dated 20.11.2014 and took up the plea that every new polytechnic institute, approved by the AICTE, to conduct the Diploma programmes, is required to seek affiliation with the affiliating body of the concerned State before making admissions.

(24) The aforementioned contents of the affidavit were refuted by the petitioner by filing a short replication, whereby the reference to Section 2(j) was made to contend that 2008 Act is applicable only to polytechnic or other institution imparting Diploma or Post-Diploma or Advanced Diploma in Engineering or Technology or Management Education or Computer Applications or Allied Arts and Craft or Pharmacy or Town Planning and Architecture recognized by the Board and, thus, it would have no application on the "University/Deemed University". Reference to the UGC Guidelines and UGC Regulation, 2010 was also given by attaching the same as Annexures P-13 and P-14 and as per that UGC issued the guidelines for

approval of institution as Deemed University by providing, that each institution has to frame the Memorandum of Association/Trust Deed and Rules and Bye-laws and also define the powers and functions of the University, which also included, the power to confer degrees and to grant "Diplomas" and/or Certificates to persons who have satisfactorily completed the approved courses of study and/or research. Relevant Clause 4 of the Guidelines is extracted herein below:

"4. Powers and Functions of the Institute

To carry out the above objectives and for the management of the properties of the Institute, the Institute shall have the following powers:

- (i) to establish courses of study and research and to provide instruction in such branches of study as the institute deems appropriate for the advancement of learning and dissemination of knowledge in such branches;
- (ii) to confer degrees and to grant Diplomas and/or Certificates to persons who have satisfactorily completed the approved courses of study and/or research as may be prescribed and shall have passed the prescribed examinations;
- (iii) to institute and award visitor ship, fellowship, exhibits, prizes and medals.”

(25) Learned Senior Counsel for the petitioner in rebuttal referred to the set of rules to be framed by the institution annexed with the regulation by laying emphasis on Rule (xxxiv), whereby power has been given to the Management to conduct examinations or tests for admission to the courses taught in the institute and for Degrees and diplomas and to declare the results of such examinations and tests and to confer, grant or award Degrees, Diplomas, Certificates and other academic titles and distinctions. Rule (xxxiv) is extracted herein below:-

“To conduct examinations or tests for admission to the courses taught in the institute, to conduct examinations for Degrees and diplomas and to declare the results of such examinations and tests and to confer, grant or award Degrees, Diplomas, Certificates and other academic titles and distinctions.”

(26) Learned Senior Counsel for the petitioner also referred to Annexure P-14, i.e., UGC (Institutions Deemed to be Universities) Regulations, 2010 issued by the University Grants Commission, New Delhi while exercising the powers under Section 26 of the 1956 Act. He has drawn the attention of the Court to the annexure attached as Annexure P-14, which deals with the programme of the institution “Deemed to be University”, wherein it has been directed to all the institutions that while keeping with their objectives, the institutions shall spell out the nature of the degrees, diplomas and certificates to the persons who completed the approved programmes. During the course of the arguments, Mr. Malik has also handed over the copy of the letter dated 23.12.2013, vide which the UGC had invited the comments/suggestions from the stakeholders on the draft Regulation, 2013 and as per Appendix 2, the approved Titles of Courses in the stream of Engineering and Technology Level: Diploma have also been

prescribed, where the Civil Engineering has also been shown to be approved Title of Course. The relevant portion thereof is extracted herein below:-

“Appendix 2: Approved Titles of Courses

2.1 Programme: Engineering and Technology Level: Diploma.

<i>Sr. No.</i>	<i>Name of The Course (s)</i>
1	3-D Animation and Graphics
2	XXX XXX XXX
54	Civil Engineering

(27) I have heard the learned counsel for the parties, appraised the paper book and the Regulations and am of the view that the impugned letter 17.10.2012 (Annexure P-6), on the basis of the letter dated 3.10.2012 (Annexure P-7), is not legally sustainable and is, thus, liable to be set-aside for the following reasons:-

(28) As per Section 27 of the Haryana Act No.19 of 2008, HSBTE has the power and duty, to only, advise the Government on matters of policy relating to diploma level technical education and also lay down guiding principles for determining curricula and syllabi, but in the entire Act, it is not emboldened with any power to seek or ask for affiliation or recognition of any diploma obtained by any person from the “Deemed University”. Even Section 40, under Chapter V, empowers the Board to make regularisation with the approval of Governing Council for the purpose of carrying into effect the provisions of the Act.

(29) The argument of learned counsel for respondent No.4 that as per provisions of Section 22 of the Act, the Universities are empowered only to award degree not diploma especially in under graduate courses, for, as six years integrated degree offered by the Maharishi Markandeshwar University, Mullana has not been specified by the UGC and also three years diploma awarded by the University is not approved by the AICTE and, therefore, the State has rightly held that the University has not followed the condition of approval granted by the UGC vide letter dated 26.10.2007, is also not sustainable as from the relevant portion of letter dated 2.5.2008 Annexure P-9, it reveals that the AICTE had granted approval to the M. M. Engg. College, P.O. Mullana, Distt. Ambala, Haryana to conduct the course of Civil

Engineering with the specified number of intakes and this letter has not been refuted by the respondents in the entire written statement except by stating that the averment made in the preliminary submissions and foregoing paras may be treated as reply to Para 8(a). However, from the perusal of all the preliminary objections, it is evident that heavy reliance has been laid by the respondents on the office memorandum dated 26.10.2007 issued by the UGC in respect of the M. M. Engineering College, Mullana, i.e., Clauses (vii), (viii) and (xii) which only provide that the University shall start the courses/programmes only in accordance with the relevant prescribed norms and guidelines of the UGC, AICTE etc. and shall obtain the requisite renewal of approval/permission from the other relevant Statutory Councils, such as AICTE, MCI, DCI, INC, but for the purpose of repetition, the AICTE, vide letter dated 2.5.2008 (Annexure P-9), has clarified it and granted approval to the College/Institution/University for imparting Civil Engineering with a specified number of intakes. Thus, in essence, the Maharishi Markandeshwar University, being a Deemed University, declared under Section 3 of the UGC Act, 1956 had approval of the AICTE as the petitioner had done his diploma course for the Session 2008-2011.

(30) In fact, respondent No.4 has not stuck to a consistent stand in the impugned letters Annexures P-6 and P-7, wherein emphasis has been laid only with regard to the powers and the approval by the Department of Technical Education, Government of Haryana and there is no reference to adherence of the conditions imposed by the UGC while according status to the College as Deemed University. Be that as it may, in view of what has been observed above, the University had been granted approval by the AICTE.

(31) As regards the affiliation with the HSBTE is concerned, the said plea falls flat on the face of the respondents as none of the provisions of the Act provide any deep and pervasive control by the Board over the Regulations/Memorandum Association of the Deemed Universities. The role of the Board is only advisory in nature. The Regulations issued by the UGC from time to time leave no manner of doubt in the mind of the Court that it is only a Deemed University, which has been permitted to conduct examination and tests for admission to the courses for Degrees and as well as for the Diplomas. The details of the Regulations have already been given above, which may not be repeated in order to avoid any repetition.

(32) A plain reading of the aforementioned regulations, which have been directed to be incorporated by the Institution as a Deemed University, do not tilt the balance in favour of respondent No.4, to contend, that such regulations mandatorily require the affiliation by the Deemed University with any Board or much less approval with the Technical Education Department, Government of Haryana. The University Act is a code in itself. The Haryana Government by promulgation of 2008 Act cannot encroach/transgress the powers, limits of the Central Government.

(33) The State had already committed a fallacy by constituting a monitoring committee with regard to the activities of the Deemed Universities/Institutions, offering AICTE approved technical courses, regarding admission related fee matters and realizing their mistake, deleted the term “Deemed University” from the notification (Annexure P-10) vide letter dated 14.10.2009 (Annexure P-11), that too during the pendency of the writ petition, which had been filed by the University assailing the notification. Grant of status of “Deemed University” is strictly governed by the provisions of the UGC Act. No other local Act or an attempt made by the Government by constituting the Board can put the fetter on the powers of the UGC as has been done in the present case, whereby by taking the aid of the Act, the diploma awarded by Deemed University has been held to be not recognized on the premise that the Institution/University is not affiliated with the Board.

(34) Now coming to the grievance of the petitioner, the position of the petitioner of figuring at Sr.No.13 in the merit list and by appointing the person figuring at Sr.No.1 in the waiting list, i.e., respondent No.5, has not been disputed by the respondents.

(35) In view of what has been observed above, the diploma obtained by the petitioner from the College is a recognized diploma and it does not require any approval from the Technical Education Department, Government of Haryana and as well as affiliation with the Board. The petitioner, therefore, would be entitled to appointment as Junior Engineer (Civil). Even the contention of the learned Senior Counsel for the petitioner that 350 posts of Junior Engineers (Civil) are lying vacant has not been disputed by the learned State Counsel, much less, by the Board, but the fact remains that the petitioner is more meritorious than respondent No.5.

(36) As a consequence of the observations given here-in-above, the writ petition is, thus, allowed. The impugned order dated 17.10.2012 (Annexure P-6) is set-aside. The respondents are directed to

offer appointment to the petitioner on the basis of the merit to the Post of Junior Engineer (Civil). The needful be done within a period of two months from the date of receipt of certified copy of this order.

(37) It is made clear that the petitioner shall be entitled to all the benefits from the date he joins the service.

(38) However, the respondents would be at liberty to adjust respondent No.5 against the posts, if any, lying vacant.

A. Aggr.

Before Rajiv Narain Raina, J

SAWINDER KAUR — Appellant

versus

KANSO AND OTHERS — Respondent

RSA No. 554 of 2011

April 30, 2015

Code of Civil Procedure, 1908 — S. 100, O. 9 Rl. 3, O. 41 Rls. 11 & 17, O. 42 — Dismissal of appeal — Repeated adjournment motion — Appellant sought repeated adjournment and kept appeal in adjournment motion for an inordinately long time of about 4 to 5 years — Held, appellant could not assert an absolute right to hearing on merits — Present appeal not against an original decree or first appeal where merits might have to be gone into certifying fitness of admission of appeal; present appeal against an appellate decree limited to examination of substantial question of law — Complexion of two jurisdiction is vastly different; first appeal is plenary but not second appeal and, therefore, standards of admission and dismissal are disparate and dissimilar — Appeal was to be dismissed when no one appeared to press appeal.

Held, that Justice Syed Mahmood, the great Indian judge, was the first to introduce the concept of ‘statute of repose’ in the Indian law when he adorned the Bench of the Allahabad High Court at the turn of the 19th Century. I have no reason not to introduce the sound principle to second appeals languishing in the dockets of this Court for many years, litigants expecting that one day a miracle might happen or manna might fall from heaven. This is impermissible gambling and stretching luck too far. The elasticity of litigation must snap within some reasonable time, giving an assurance of litigation coming to an end.