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

Judgment Reserved on: 26.04.2018

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Judgment Pronounced on: 01.10.2018

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W.P.(C) 3032/2017, C.M. APPL.13252/2017

STUDENTS FEDERATION OF INDIA AND ORS.Petitioners

Through: Sh. Gaurav Bhardwaj, Advocate.

Versus

UNION OF INDIA & ORS.Respondents

Through: Ms. Monika Arora, Standing Counsel for JNU
with Mr. Harsh Ahuja, Mr. Kushal Kumar and Mr. Vibhu
Tripathi, Advs.

Mr. J.P. Sengh, Sr. Adv. with Mr. Manoj R. Sinha, Ms.
Manisha Mehta, Ms. Vaishali Tanwar and Ms. Mrigna
Shekhar, Advs. for UGC.

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W.P.(C) 2665/2018, C.M. APPL.10866/2018

ARUN KRISHNAN AND ANR.Petitioners

Through: Sh. Gaurav Bhardwaj, Advocate.

Versus

UNION OF INDIA & ORS.Respondents

Through: Ms. Monika Arora, Standing Counsel for JNU
with Mr. Harsh Ahuja, Mr. Kushal Kumar and Mr. Vibhu
Tripathi, Advs.

Mr. Chander Shekhar, Adv. for UGC.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K.CHAWLA

S.RAVINDRA BHAT, J.

Facts

1. The petitioners are aggrieved by the implementation of the University Grants Commission (Minimum Standards and Procedure for Award of M.Phil./Ph.D. Degrees) Regulations, 2016 (hereafter “*the impugned regulations*”) and complain that they are unreasonable and arbitrary and have the effect of inducing a drastic reduction in M.Phil./Ph.D. seats all over the country, thereby undermining the future of lakhs of students, both in the reserved and unreserved category. They complain that the third respondent - Jawaharlal Nehru University (“*JNU*” hereafter) has provided only 102 seats in the M. Phil / PH. D courses in the current academic year i.e. 2017-18 as compared to 970 seats in the previous academic year i.e. 2016-17.

2. The brief facts are that the University Grants Commission (“*UGC*” hereafter) was constituted by virtue of an Act of Parliament in 1956. Thereafter in 1966, the JNU was set up under a separate Parliamentary enactment. The petition refers to the ninety third constitution amendment, brought into force with effect from 20th January, 2006, which added the following provision, after Article 15 (4):

"(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30."

3. The petitioners also allude to the Central Educational Institutions (Reservation In Admission) Act, 2006 ("*CEI Act*" hereafter) came into force which provides for the reservation in admission of the students belonging to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes of citizens, to certain Central Educational Institutions established, maintained or aided by the Central Government, and for matters connected therewith or incidental thereto. It is pertinent to mention that Section 5 of the Act provides for mandatory increase of seats notwithstanding the number of annual permitted seats in terms of Section 3 (3) of the CEI Act, for the academic session immediately preceding the date of the coming into force of the said Act. This, it is said, implied a 54% increase in the number of seats in reference to the number of seats available in 2006. It is submitted that for academic year (AY) 2008-09, in compliance with Section 5 (of the CEI Act) and having regard to the ruling of the Supreme Court in the *Ashok Kumar Thakur vs. Union of India*, (2008) 6 SCC 1, JNU started implementing the reservation policy to admit students of the OBC (Other backward Classes) in a phased manner. In this background, reference is made to the UGC (Minimum Standards and Procedure for Award of M.Phil./Ph.D. Degrees) Regulations, 2009 (hereafter "*the 2009 regulations*") brought into force with effect from 1st June, 2009.

4. It is submitted that in wake of these developments, the Vice Chancellor of the JNU intimated that the impugned regulations, once notified were of mandatory nature and would be followed. On 4th November 2016, a committee known as the '*Nafe committee*' was constituted by JNU on the basis of an analysis of the data received from different centres/schools which arrived at the conclusion that there existed

discrimination in the admission process with reference to the viva-voce marks and therefore, recommended that the marks allocation should be revised and limited to only 15% of the total marks (for viva voce) and 85% weightage to be given to written examination. On, 3rd February 2017, JNU released a press note concerning the minutes of meeting of the standing committee on admissions, which stated that 80% weightage would be given in the written exam and 20% weightage to viva voce for final selection, apart from the suggestion of a phased reduction in intake of students in the wake of the 2016 UGC Regulations. The Director of Admissions stated that the policy-for admission-would be finalised only after seeking UGC's clarification regarding the notification.

5. The petitioners complain that in this background in February 2017, the new impugned admission policy was published on the JNU website, which provided for the intake of students in terms of the UGC 2016 regulations. It provided for 80% weightage to be given to the written exam and 20% weightage to viva voce for final selection. It is alleged that this new admission policy neither found mention in the admission prospectus for academic year 2017-18, nor was available on the JNU website.

6. The petitioner states that this is a clear ambiguity in the current admission policy of JNU, which is *ultra vires* the Article 14 of the Constitution and also regulation 5.5.2 of the UGC Regulations which directs higher educational institutions to notify well in advance, in their website and through advertisement in at least two newspapers, the number of seats for admission, subject and discipline wise distribution of available seats, criteria for admission, procedure for admission, examination centers where such tests are to be conducted and all other relevant information. In the

background of these circumstances on 20.03.2017, the admission prospectus for academic year, 2017-18, was published by the JNU in its official website showing the timeline for filling up and submission of application forms and time schedules for admission. It is alleged that the admission prospectus provides for just 102 seats for M. Phil/PhD courses as compared with 970 seats in the previous academic session 2016-17.

7. The petitioner alleges that the UGC 2016 Regulations are unreasonable, arbitrary and unconstitutional for several reasons. It is alleged that these regulations have the effect of restricting access to entry to higher educational institutions to the general public, which include general category candidates and specially those belonging to the disadvantaged and reserved category groups for whom special provisions were made under the CEI Act of 2006, pursuant to the amendment to Article 15 of the Constitution of India. It is highlighted that on account of the massive street cuts in the intake capacity and no relaxation in the qualifying marks to the reserved category in the written examination those hurt or affected most are the SC/ST candidates. The petitioners urge that the admission procedure has been reduced to utterly arbitrary process, whereby 100% weightage is given to viva voce assessment, which has been held as unreasonable consistently by the Supreme Court.

8. Counsel submitted that the criteria for admission which is reduced to merely a qualifying examination, thus giving hundred percent weightage to viva voce examination. Thus, these cumulatively result in utter arbitrariness. The petitioners submit that regulation 5.4.1 of the UGC Regulations of 2016 reduce the written examination as a mere qualifying process which means that the candidate whose eligibility on account of

passing or clearing the examination, (for attempting which the candidate must obtain at least 55% marks) would be of no avail. It is submitted that the JNU conducted qualifying exam places importance to the extent of 50% on research methodology and 50% as subject specific. The score in this exam, which is based on an objective assessment of the written performance of the candidate in the methodology (of research) and the particular research subject, by the JNU itself is deemed wholly irrelevant; it merely entitles her to entry for interview She or he would be then considered on entirely on the basis of viva voce marks.

9. Learned counsel for the petitioner argued that this stipulation flies on the teeth of the Constitution bench decision in *Ajay Hasia v Khalid Mujib* 1981 SCR (2) 79, which had held that allocation of more than 15% total marks for oral interview, in an admission procedure, for selection to an educational institution University or college would be arbitrary and unreasonable. It is further alleged that the decision in *Ajay Hasia* has here has now become a part of the jurisprudence that conferring wide un-canalized and unstructured power, in the hands of a few or only one, who decides the fate of candidates who are otherwise eligible and competent, since they possess the minimum required to undergo the concerned course, whether M. Phil PhD, and also fulfill the criteria of having qualified in the written examination, is fraught. It submitted that the lack of or in the absence of any credit given to the core performance in the written examination – which is part of the qualifying process for selection, and the complete and exclusive weightage given for interview and viva voce is disproportionate and unreasonable.

10. Learned counsel urged that the manner in which the JNU has sought to implement the UGC Regulations has meant a drastic reduction in the seat intake in almost every school of study in the university. It is submitted that the new norm whereby professors, associate professors and assistant professors cannot guide more than a specified number of candidates, has resulted in the current and unique situation whereby the number of seats is exceeded by 4 to 5 times, by the total faculty membership. It is furthermore submitted that the disproportionately in the number of scholars which professors were handling or tutoring in the past, needed to be tapered and streamlined over a phased manner rather than reducing the intake drastically. Learned counsel submitted that the sudden manner of implementation of the UGC regulations, in the pretext of promoting excellence has meant two things: first, practically no category of candidate belongs to the reserved class can secure admission; and second, the number of seats available, has gone down. Furthermore, it is submitted that one of the significant fallouts has been that in many faculties, there are hardly any scholars admitted in the academic year. All these point to utter arbitrariness.

11. Learned counsel also submitted that whilst it is necessary to ensure excellence and promote standards, at the same time, those in authority cannot be unmindful of the fact that only those students and scholars who complete their Ph.D. or M Phil., are eligible to teach in higher educational institutions, such as colleges and universities. Given the proliferation of these colleges, universities and other affiliated institutions, the drastic reduction in the number of candidates available for teaching would mean that institutions of higher learning would be starved of teaching faculty. It is submitted that, therefore, applicability of foreign and overseas standards, is

not appropriate and the UGC, though under a duty to ensure standards, has to balance between the standards spelt out in countries with far lesser populations needing to be educated and those in developing nations like India. It is submitted that as long as the education policy or the policy which promotes higher learning, which means opening of new colleges and an increase in intake of existing institutions, to cater to the educational needs of the growing population, the policy has to accommodate the entry of meaningful teaching staff. This is not addressed by merely devising a static statistical formula, but rather by more scientific and in-depth analysis of the causes that lead to loss of standards.

12. It is submitted that fixing up of a minimum eligibility criteria as high as 50% *vis-a-vis* the degree for admission to the M. Phil / Ph. D programme under Regulation 2 & 3 of UGC Regulations, 2016 and further no relaxation of marks in the "*qualifying exam*" to the candidates of reserved category, thus keeping them at par with that General Category (i.e. the unreserved category), effectively restricting them at the entry level itself, defeats the objectives of the 93rd Constitutional Amendment Act, 2006 as well as the CEI Act. Counsel stated that after the 93rd Constitution Amendment Act, 2006 as well as Section 5 the CEI Act, providing for increase in seats for the purpose of implementation of 27% OBC reservations and further directions given in judgment of the Hon'ble Supreme Court in *Ashok Kumar Thakur* (supra), JNU started implementing the OBC reservation policy in a phased manner in the academic year 2008-09. This implied a 54% increase in the number of seats in reference to the number of seats available in 2006. However, with the massive fall in the seats in view of the UGC Regulations

2016, the same runs contrary to reservation policy as envisaged in the constitution as well as the CEI Act.

13. It is urged that executive policy matter is amenable to judicial scrutiny and liable to be struck down, if it is arbitrary and fails the test of reasonableness, in violation of Article 14 of the Constitution. Reliance is placed on *Union of India and Anr. vs. International Trading Co. & Anr.*, (2003) 5 SCC 437. It is argued that in the backdrop of a sudden massive seat cut, a further deviation from the established policy of giving relaxation in marks to "no relaxation" to the reserved categories, by an unprecedented absolute denial of any relaxation in the qualifying exam, for the alleged attainment of better standards, grossly restricting their access to higher education, and is unreasonable and arbitrary and in violation of Article 14 of the Constitution of India. Lastly, counsel urged that non-compliance of the "mandatory" requirement of laying of the UGC Regulation, 2016 before both Houses of Parliament, in terms of Section 28 of the UGC Act, would render the UGC Regulation 2016 null and void, having no effect in law. The power of the Central Government to make Rules and the UGC to make Regulations by virtue of Section 25 and 26 of the UGC Act, respectively, are followed by Section 28 which mandates that the Rules and the Regulations shall be laid before Parliament "as soon as may be" after it is made and in thirty days. Reliance is placed on *Quarry Owners Association, Etc. v. State of Bihar and Ors.* (2000) 8 SCC 655, where the Supreme Court noted that "requirement of mere placement of the rules or the provisions before the State Legislature is also one of the forms of check on the State Government to exercise its power as a delegate". A perusal of Section 28 makes it clear that a docile and perfunctory placement of the Rules and Regulations is not what is

envisaged in the UGC Act and the same are mandatory in nature, empowering the Parliament to either modify it or annul them.

14. The University Grants Commission (UGC) in its counter affidavit relied upon provisions of University Grants Commission Act, 1956, and highlights its powers under Section 26 of that Act, which authorizes it to define minimum standard of instructions for grant of any degree by any university (Section 26(1)(f)). The UGC contends that to maintain the quality and to check the mushrooming of substandard research degree for the first time 2009 Regulations were framed to effectively maintain and streamline the procedure for award of M.Phil and Ph.D degrees; these were notified on 11th July, 2009. The 2009 Regulations apply to Universities and constituent or affiliated colleges of the institution. Clauses 6 and 7 of those Regulations, empowered universities etc. to spell out the criteria for faculty to be recognised as a research supervisor for M.Phil and Ph.D programmes; they could also decide on the annual basis, a pre-determined and manageable number of M.Phil and Ph.D students depending on the number of available eligible faculty supervisor. The 2009 Regulations place a cap that not more than 8 Ph.D. Scholars and 5 M.Phil. Scholars in respect of each research supervisor. It is stated that 2009 Regulations were superseded by, the impugned 2016 Regulations. The UGC emphasized that Regulation 6 prescribes the criteria for allocation of Research Supervisor as also a number of Ph.D. and M.Phil. Scholars available for Supervisor. It is stated that teacher student ratio in India in technical courses is approximately 1:15 and 1:20 in non-technical courses. However, surprisingly in JNU, the ratio was one supervisor is to for 44 students for M.Phil. and Ph.D. courses much above the norms with some supervisors of JNU, according to the 2009 and

2016 Regulations. In this context, it is stated a comparison between the students and supervisor ratio between Indian universities and foreign universities such as Cornell University, Harvard University, Caltech University and Yale University is unfavourable inasmuch as that no faculty can supervise more than three to five at any given point of time. The UGC registered and denied the baseless attack to the Regulations, especially the Regulation 6 of 2016 Regulation, by the petitioners. It is stated that the Regulations cannot be termed arbitrary.

15. Learned counsel appearing for the UGC relied upon *Annamalai University v. Secretary to Government Information and Tourism Department & Ors.*, (2009) 4 SCC 590; learned counsel also relies upon a judgment of learned Single Judge in *Shubhanshu Singh and Ors. v. JNU* delivered in W.P.(C) No.1557 of 2017 which has not challenged the vires of 2016 Regulations but raised identical issues. It is submitted by the counsel that the 2016 Regulations, accords to weightage at each and every stage for admission process to a candidate on merit and performance. In this context, learned counsel relied upon the *UGC v. Neha Anil Bobde (Gadekar)*, (2013) 10 SCC 519. In that judgment, the Supreme Court stated very categorically that any academic matter in the absence of clear violation of the statutory provisions, regulations or notification, the court have to adopt a “hands off” approach leaving such matters to the best judgment of academic experts. It is stated that whether the procedure for admission and the extent of weightage as well as the criteria with respect to teacher supervisor ratio, are not subject to the scrutiny of the Court since these are left to the best judgment of the regulating and expert body.

16. The JNU in its affidavit adopted a line which is identical to that spelt out by the UGC. According to the JNU, the intake in 2016-17 in M.Phil. and Ph.D. courses was 908 which has now reduced to 102 after the UGC regulations of 2016. It is stated that with respect to pre-Ph.D./Ph.D. courses the original intake was 37; after merger with Ph.D the total intake is 52. Likewise, for M.Tech/Ph.D the intake was 31 in 2016-17 and now M.Tech (School of Computer and System Sciences; Computational and Integrative Sciences and Nano Sciences) have become 49. It is stated that PG Diploma in Big Data Analytics with an intake of 15 also exists. Thus, again a total intake of 970 in M.Phil/Ph.D and the previous year intake scheme which now conforms to the UGC Regulation, 2016. JNU in its counter affidavit also states as follows:

5. *It is further submitted that the number of teachers eligible to supervise research scholars as the level of M.Phil/Ph.D in the Respondent University is as follows:*

<i>Professor</i>	<i>252</i>
<i>Associate Professor</i>	<i>118</i>
<i>Assistant Professor</i>	<i>128</i>
<i>Total</i>	<i>498</i>

As per the UGC Regulation, 2016, the maximum limit for each Professor is as follows:

	<i>Ph.D. Scholars</i>	<i>M.Phil Scholars</i>
<i>Professor</i>	<i>8</i>	<i>3</i>
<i>Associate Professor</i>	<i>6</i>	<i>2</i>
<i>Assistant Professor</i>	<i>4</i>	<i>1</i>

As per the above mentioned charts, Respondent University has determined the intake, as per the UGC Regulations, 2016. 47 professors who are superannuating by December 2018 are not considered for the purpose of calculating the number of vacancies. Similarly, 4 Associate Professors and 11 Assistant Professors, who do not possess Ph.D. degree, are not eligible for supervising Ph.D. scholars. Because the exact number of vacancy will remain dynamic due to the above reasons. Therefore, number of vacancies announced by the Respondent University was kept tentative.

6. It is further submitted that Ph.D. is not like classroom teaching programs where one teacher can have more than 40-60 students. Presently, many teachers have a number of M.Phil/Ph.D scholars exceeding the cap prescribed by the UGC Notification 2016. They are also expected to teach in terms of UGC Regulations in addition to supervision of research scholars. Keeping such a large number of research scholars by teachers in excess of UGC cap is bound to affect either teaching or research because a highly over-burdened teacher cannot do justice to his main objective of producing quality students at M.Phil/Ph.D. level by any standards.....”

17. The JNU states that the criteria for admission and the admission procedure are reasonable. It is submitted that at the first level to determine eligibility, the stipulation of the concern should possess minimum marks (with some concession to SC/ST candidates) followed up with a written *qualifying* test which evaluates the student in the particular subject as well in his/her research capabilities is necessary. It is only if the student qualifies the examination, he or she is called for interview and based upon the power point presentation made in the course of the interaction and assessment (viva-voce) the decision whether to admit a particular candidate or not admit is taken. Learned counsel emphasizes that unlike in the case of normal

courses such as entry level courses at the under graduate level, those who wish to join M.Phil/Ph.D have to display high degree of not only proficiency and familiarity in the subject but also the ability to think originally and creatively. Furthermore, learned counsel emphasizes that the viva-voce has to consider three aspects which are clearly spelt out in Para 5.5 i.e. that the candidate possesses the competence for the proposed research (Para 5.5.1); that the research work can be suitably undertake by the institution/.college (Para 5.5.2); and lastly that he proposed area of research can contribute to new/additional knowledge (Para 5.5.3).

18. Ms.Monika Arora, learned counsel for the JNU submitted that given the compulsion and necessity to take into consideration the broad heads relevant for each subject, it cannot be said that those who judge the suitability of the candidate, would do so arbitrarily. She also submitted that the UGC Regulations are mandatory and binding upon all Central Universities including the JNU, therefore, the grievance that the JNU has been especially in some manner object all adverse decision, cannot be sustained. Learned counsel also relies upon a tabular chart, giving the break-up of the number of supervisors at all level i.e. the Professors, Associate Professors and Assistant Professors and stated that the number of students who were under the supervision of such academics was excessive and disproportionate to the ability of such senior faculty to give attention in any meaningful manner for research, ultimately ensure that the standard of research of that kind of JNU could expect from its students and research scholar. Learned counsel also relies upon the decision of the Supreme Court in *State of Tamil Nadu v. Adhiyaman Educational Research Institute*, (1995) 4 SCC 104 and submitted that the prescription of standard, is the

primary role and duty of the UGC and to the extent that uniformly the UGC prescribed certain criteria with respect to the procedure for admission as also as regards to the students-supervisor ratio and such standard cannot be faulted or termed arbitrary. Doing so would mean that the Court is placing itself in the position of regulator or decision maker. Learned counsel also relies upon the judgment in *P.V.Inderesan v. Union of India*, (2009) 7 SCC 300, which stated that minimum standard i.e. by way of minimum cut off marks, in relation to reserved category candidates, linked with the open from the candidate mark *per se* is not arbitrary or unconstitutional.

Analysis and Conclusions

19. The petitioners' challenge has to be examined at two levels: the alleged unreasonableness in respect of the admission criteria (with the allied argument that no concession has been provided to SC/ST candidates) and the alleged arbitrariness and unreasonableness with respect to drop in student intake. The UGC and JNU have clearly spelt out that the criteria are not JNU specific but are universally applied on account of the 2016 UGC regulations. They also urge that the power to frame regulations has been conferred by statute and the courts should be slow to, if at all intervene in judicial review in academic matters.

20. For convenience, it would be relevant to extract the regulations impugned to the extent they are relevant; they are as follows:

“1. Short title, Application and Commencement:

1.1 These Regulations may be called University Grants Commission (Minimum Standards and Procedure for Award of M.Phil./Ph.D. Degrees) Regulations, 2016.

1.2 They shall apply to every University established or incorporated by or under a Central Act, a Provincial Act, or a State Act , every affiliated college, and every Institution Deemed to be a University under Section 3 of UGC Act, 1956.

1.3 They shall come into force from the date of their publication in the Gazette of India.

1. Eligibility criteria for admission to the M.Phil. programme:

2.1 Candidates for admission to the M.Phil. programme shall have a Master's degree or a professional degree declared equivalent to the Master's degree by the corresponding statutory regulatory body, with at least 55% marks in aggregate or its equivalent grade 'B' in the UGC 7-point scale (or an equivalent grade in a point scale wherever grading system is followed) or an equivalent degree from a foreign educational Institution accredited by an Assessment and Accreditation Agency which is approved, recognized or authorized by an authority, established or incorporated under a law in its home country or any other statutory authority in that country for the purpose of assessing, accrediting or assuring quality and standards of educational institutions.

2.2 A relaxation of 5% of marks, from 55% to 50%, or an equivalent relaxation of grade, may be allowed for those belonging to SC/ST/OBC(non-creamy layer)/Differently-Abled and other categories of candidates as per the decision of the Commission from time to time, or for those who had obtained their Master's degree prior to 19th September, 1991. The eligibility marks of 55% (or an equivalent grade in a point scale wherever grading system is followed) and the relaxation of 5% to the categories mentioned above are permissible based only on the qualifying marks without including the grace mark procedures.

*2. Eligibility criteria for admission to Ph.D. programme:
Subject to the conditions stipulated in these Regulations,*

the following persons are eligible to seek admission to the Ph.D. programme:

3.1 Master's Degree holders satisfying the criteria stipulated under Clause 2 above.

3.2 Candidates who have cleared the M.Phil. course work with at least 55% marks in aggregate or its equivalent grade 'B' in the UGC 7-point scale (or an equivalent grade in a point scale wherever grading system is followed) and successfully completing the M.Phil. Degree shall be eligible to proceed to do research work leading to the Ph. D. Degree in the same Institution in an integrated programme. A relaxation of 5% of marks, from 55% to 50%, or an equivalent relaxation of grade, may be allowed for those belonging to SC/ST/OBC(non-creamy layer)/differently-abled and other categories of candidates as per the decision of the Commission from time to time.

4. Duration of the Programme:

4.1 M.Phil.programme shall be for a minimum duration of two (2) consecutive semesters / one year and a maximum of four (4) consecutive semesters / two years.

4.2 Ph.D.programme shall be for a minimum duration of three years, including course work and a maximum of six years.

4.3 Extension beyond the above limits will be governed by the relevant clauses as stipulated in the Statute/Ordinance of the individual Institution concerned.

4.4 The women candidates and Persons with Disability (more than 40% disability) may be allowed a relaxation of one year for M.Phil and two years for Ph.D. in the maximum duration. In addition, the women candidates may be provided Maternity Leave/Child Care Leave once in the entire duration of M.Phil/Ph.D. for up to 240 days.

5. Procedure for admission:

5.1 All Universities and Institutions Deemed to be Universities shall admit M.Phil/Ph.D. students through an Entrance Test conducted at the level of Individual University/Institution Deemed to be a University. The University/Institution Deemed to be a University may decide separate terms and conditions for Ph.D. Entrance Test for those students who qualify UGC-NET (including JRF)/UGC-CSIR NET (including JRF)/SLET/GATE/teacher fellowship holder or have passed M.Phil programme. Similar approach may be adopted in respect of Entrance Test for M.Phil programme.

5.2 Higher Educational Institutions (HEIs) referred to in sub-clause 1.2 above and Colleges under them which are allowed to conduct M.Phil. and/or Ph.D. programmes, shall:

5.2.1 decide on an annual basis through their academic bodies a predetermined and manageable number of M.Phil. and/or Ph.D. scholars to be admitted depending on the number of available Research Supervisors and other academic and physical facilities available, keeping in mind the norms regarding the scholar- teacher ratio (as indicated in Para 6.5), laboratory, library and such other facilities;

5.2.2 notify well in advance in the institutional website and through advertisement in at least two (2) national newspapers, of which at least one (1) shall be in the regional language, the number of seats for admission, subject/discipline-wise distribution of available seats, criteria for admission, procedure for admission, examination centre(s) where entrance test(s) shall be conducted and all other relevant information for the benefit of the candidates;

5.2.3 *adhere to the National/State-level reservation policy, as applicable.*

5.3 *The admission shall be based on the criteria notified by the Institution, keeping in view the guidelines/norms in this regard issued by the UGC and other statutory bodies concerned, and taking into account the reservation policy of the Central/State Government from time to time.*

5.4 *HEIs as mentioned in Clause 1.2 shall admit candidates by a two stage process through:*

5.4.1 *An Entrance Test shall be qualifying with qualifying marks as 50%. The syllabus of the Entrance Test shall consist of 50% of research methodology and 50% shall be subject specific. The Entrance Test shall be conducted at the Centre(s) notified in advance (changes of Centres, if any, also to be notified well in advance) at the level of the individual HEI as mentioned in clause 1.2; and*

5.4.2 *An interview/viva-voce to be organized by the HEI as mentioned in clause 1.2 when the candidates are required to discuss their research interest/area through a presentation before a duly constituted Department Research Committee.*

5.5 *The interview/viva voce shall also consider the following aspects, viz. whether:*

5.5.1 *the candidate possesses the competence for the proposed research;*

5.5.2 *the research work can be suitably undertaken at the Institution/College;*

5.5.3 *the proposed area of research can contribute to new/additional knowledge.*

5.6 *The University shall maintain the list of all the M.Phil./ Ph.D. registered students on its website on year-wise basis. The list shall include the name of the registered candidate, topic of his/her research, name of his/her supervisor/co-supervisor,*

date of enrolment/registration. A person whose M.Phil. dissertation has been evaluated and the viva voce is pending may be admitted to the Ph.D. programme of the same Institution;

Candidates possessing a Degree considered equivalent to M.Phil. Degree of an Indian Institution, from a Foreign Educational Institution accredited by an Assessment and Accreditation Agency which is approved, recognized or authorized by an authority, established or incorporated under a law in its home country or any other statutory authority in that country for the purpose of assessing, accrediting or assuring quality and standards of educational institutions, shall be eligible for admission to Ph.D. programme.

6. *Allocation of Research Supervisor: Eligibility criteria to be a Research Supervisor, Co- Supervisor, Number of M.Phil./Ph.D. scholars permissible per Supervisor, etc.*

6.1 Any regular Professor of the University/Institution Deemed to be a University/College with at least five research publications in refereed journals and any regular Associate/Assistant Professor of the university/institution deemed to be a university/college with a Ph.D. degree and at least two research publications in refereed journals may be recognized as Research Supervisor. Provided that in areas/disciplines where there is no or only a limited number of refereed journals, the Institution may relax the above condition for recognition of a person as Research Supervisor with reasons recorded in writing.

6.2 Only a full time regular teacher of the concerned University/Institution Deemed to be a University/College can act as a supervisor. The external supervisors are not allowed. However, Co- Supervisor can be allowed in inter-disciplinary areas from other departments of the same institute or from other related institutions with the approval of the Research Advisory Committee.

6.3 *The allocation of Research Supervisor for a selected research scholar shall be decided by the Department concerned depending on the number of scholars per Research Supervisor, the available specialization among the Supervisors and research interests of the scholars as indicated by them at the time of interview/viva voce.*

6.4 *In case of topics which are of inter-disciplinary nature where the Department concerned feels that the expertise in the Department has to be supplemented from outside, the Department may appoint a Research Supervisor from the Department itself, who shall be known as the Research Supervisor, and a Co-Supervisor from outside the Department/ Faculty/College/Institution on such terms and conditions as may be specified and agreed upon by the consenting Institutions/Colleges.*

6.5 *A Research Supervisor/Co-supervisor who is a Professor, at any given point of time, cannot guide more than three (3) M.Phil. and Eight (8) Ph.D. scholars. An Associate Professor as Research Supervisor can guide up to a maximum of two (2) M.Phil. and six (6) Ph.D. scholars and an Assistant Professor as Research Supervisor can guide up to a maximum of one (1) M.Phil. and four (4) Ph.D. scholars.*

6.6 *In case of relocation of an M.Phil/Ph.D. woman scholar due to marriage or otherwise, the research data shall be allowed to be transferred to the University to which the scholar intends to relocate provided all the other conditions in these regulations are followed in letter and spirit and the research work does not pertain to the project secured by the parent institution/ supervisor from any funding agency. The scholar will however give due credit to the parent guide and the institution for the part of research already done.”*

21. It is evident that Higher Educational Institutions (‘HEIs’ hereafter) covered by the regulations are to apply to them (by virtue of Regulation 5.3) for admission. Admission is by a two-stage process, wherein first the

candidate has to qualify (secure at least 50%) in a written test that evaluates her knowledge and aptitude by testing research method and knowledge in the subject (both of equal value 50% each). *The candidate is declared successful entirely based on the performance in viva voce.* Here again, the interview board or selection board is not obliged to indicate any sub division towards knowledge of the candidate, her aptitude, ability to communicate, evaluate the power point presentation, etc. Nor are the marks scored by the candidate in the written exam given any weightage.

22. No doubt, a number of Supreme Court judgments have emphasized on a generally deferential judicial review standard with respect to academic standards and issues concerning academic excellence. Yet, the court has also emphasized that in all matters where bodies: technical or expert statutory bodies, exercise delegated legislative power, the rules or regulations so framed do not enjoy the same level of protection as in the case of Parliamentary legislation. The courts have repeatedly stressed that if the regulations are shown to be plainly or manifestly arbitrary or unreasonable, they would be declared so. Thus, in *Sharma Transport v Govt. of Andhra Pradesh*, (2002) 2 SCC 188, the Supreme Court held:

“... The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not

done or acting according to reason or judgment, depending on the will alone. ...”

Earlier, in *Indian Express Newspaper (Bombay) Pvt. Ltd. v Union of India*, AIR 1986 SC 515 it was held that:

“In India arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. In India any enquiry into the vires of delegated legislation must be confined to the grounds on which plenary legislation may be questioned, to the ground that it is contrary to the statute under which it is made, to the ground that it is contrary to other statutory provisions or that it is so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.”

23. Later, in *Khoday Distilleries Ltd. v State of Karnataka*, (1995) 1 SCC 574, the Supreme Court stated as follows:

*“...there is nothing in this provision which makes it imperative to impose the restrictions in question only by a law enacted by the legislature. Hence the restrictions in question can also be imposed by any subordinate legislation so long as such legislation is not violative of any provisions of the Constitution. This is apart from the fact that the trade or business in potable liquor is a trade or business in *res extra commercium* and hence can be regulated and restricted even by executive order provided it is issued by the Governor of the State. We, therefore, answer the question accordingly.”*

In *State of UP v Renusagar Power Co*, (1988) 4 SCC 59, the court ruled as follows:

"The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary.

Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated".

24. In the present case, the first issue is whether the grant of marks or 100% weightage to viva voce performance as the sole basis for selection to M.Phil./Ph.D seats is valid or is it arbitrary. *Ajay Hasia* (supra), the Supreme Court had dealt with the proportion of marks given for declaring a candidate successful in an admission process, and held as follows:

*"The marks allocated for the oral interview were 50 as against 100 allocated for the written test, so that the marks allocated for the oral interview came to 33 1/3% of the total number of marks taken into account for the purpose of making the selection. This, contended the petitioners, was beyond all reasonable proportion and rendered the selection of the candidates arbitrary and violative of the equality clause of the Constitution. Now there can be no doubt that, having regard to the drawbacks and deficiencies in the oral interview test and the conditions prevailing in the country, particularly when there is deterioration in moral values and corruption and nepotism are very much on the increase, allocation of a high percentage of marks for the oral interview as compared to the marks allocated for the written test, cannot be accepted by the Court as free from the vice of arbitrariness. It may be pointed out that even in *Peeriakaruppan's* case (supra), where 75 marks out of a total of 275 marks were allocated for the oral interview, this Court observed that the marks allocated for interview were on the high-side. This Court also observed in *Miss Nishi Maghu's* case (supra): "Reserving 50 marks for interview out of a total of 150... does seem excessive, especially when the time spent was not more than 4 minutes on each candidate". There can be no doubt that allocating 33 1/3 of the total marks for oral interview is plainly arbitrary and*

unreasonable. It is significant to note that even for selection of candidates for the Indian Administrative Service, the Indian Foreign Service and the Indian Police Service, where the personality of the candidate and his personal characteristics and traits are extremely relevant for the purpose of selection, the marks allocated for oral interview are 250 as against 1800 marks for the written examination, constituting only 12.2% of the total marks taken into consideration for the purpose of making the selection. We must, therefore, regard the allocation of as high a percentage as 33 1/3 of the total marks for the oral interview as infecting the admission procedure with the vice of arbitrariness and selection of candidates made on the basis of such admission procedure cannot be sustained.”

25. In *Nishi Maghu and Ors. v. State of J & K and Ors.*, (1980) 4 SCC 95 the Court held that 50% marks out of total 150 marks allotted for interview were excessive. In *Lila Dhar v. State of Rajasthan and Ors.*, 1981 AIR 1777, it was held as follows:

*“In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has perforce to be given to performance in the written examination. The importance to be attached to the interview-test must be minimal. Therefore, the ratio of the decisions in *Minor A. Peeriakaruppan etc. v. State of Tamil Nadu and Ors.* [1971] 2 SCR 430 and *Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors.* (1981). 1 LLJ 103 (SC) , in this regard, cannot be applied in case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way subject to basic and essential academic and professional requirements being satisfied.”*

26. The distinction between admission (to a course in an academic institution) and appointment to a service or post was highlighted in *Kiran*

Gupta and Ors. vs. State of U.P. & Ors., 2000 (7) SCC 719, when it was emphasized that for admission to an academic course, selection based on a high interview or viva voce marks or exclusively based on interview would be arbitrary and that the position might be different in the case of recruitment to posts, especially higher posts, where the process might be only interview:

“It will be useful to bear in mind that there is no rule of thumb with regard to allotment of percentage of marks for interview. It depends on several factors and the question of permissible percentage of marks for an interview test has to be decided on the facts of each case. However, the decisions of this Court with regard to reasonableness of percentage of marks allotted for interview in cases of admission to educational institutions/schools will not afford a proper guidance in determining the permissible percentage of marks for interview in cases of selection/ appointment to the posts in various services. Even in this class, there may be two categories: (i) when the selection is by both a written test and viva voce; and (ii) by viva voce alone. The courts have frowned upon prescribing higher percentage of marks for interview when selection is on the basis of both oral interview and a written test. But, where oral interview alone has been the criteria for selection/appointment/promotion to any posts in senior positions the question of higher percentage of marks for interview does not arise.”

27. In *Ms. Anvita Singh v. Union of India*, 2012 (129) DRJ 28, a Division Bench of this court held as follows:

“18. There cannot be any quarrel about the principles of law which can be culled out from the judgments cited by the learned counsel for both the parties as they are crystalised and firmly established in those judgments. What is to be seen in all these judgments is that while examining the rule giving weightage to the interview viva voce marks, the courts have made distinction between those cases which pertain to admission to educational

institutions from the cases which deal with the appointment to a post. When it comes to admission in academic courses in educational institutions, the law laid down by the Apex Court in Ajay Hasia (supra) is restricting the marks of viva voce has been consistently followed and the principle which is laid down is that in such cases, normally the weightage to be given to the viva voce marks should normally be 15 per cent and should not be in any case not more than 15 to 20 per cent. However, when it comes to admission, the higher degree courses, little higher percentage of marks is permitted. On the other hand, when it comes to appointment to a WP(C) No.4376/2011 Page 20 post in service, large interplay in the interview/viva voce marks is held permissible. In such cases, how much weightage is to be given to the interview marks depends upon the nature of post to which the appointment is made. In Ashok Kumar Yadav (supra), which was a case of ex- servicemen officer, 25 per cent marks allotted for interview was held to be justified. On the other hand, when it comes to appointment to a post which is of high ranking and/or is of the nature where personal tests are also important which can be judged only in viva voce test, not only a very high percentage assigned to the interview is upheld, even when selection to such post is solely on the basis of interview, even that is held to be permissible. This was so highlighted by the Supreme Court in K.H. Siraj (supra). In the cases of selection for entry into public service or such post, the object is to secure the post and most suitable person for the job avoiding patronage and favouritism.”

28. The courts have also held that not indicating the minimum qualifying marks, especially in an interview or viva voce process, amounts to permitting the selection board to evolve its own criteria, without publishing it previously. This too has been held illegal. In *Ramesh Kumar v. High Court of Delhi & Anr.*, AIR 2010 SC 3714, it was held as follows:

“11. In Shri Durgacharan Misra v. State of Orissa and Ors. AIR 1987 SC 2267, this Court considered the Orissa Judicial Service Rules which did not provide for prescribing the

minimum cut-off marks in interview for the purpose of selection. This Court held that in absence of the enabling provision for fixation of minimum marks in interview would amount to amending the Rules itself. While deciding the said case, the Court placed reliance upon its earlier judgments in B.S. Yadav and Ors. v. State of Haryana and Ors. AIR 1981 SC 561, P.K. Ramachandra Iyer and Ors. v. Union of India and Ors AIR 1984 SC 541 and Umesh Chandra Shukla v. Union of India and Ors. AIR 1985 SC 1351 wherein it had been held that there was no "inherent jurisdiction" of the Selection Committee/Authority to lay down such norms for selection in addition to the procedure prescribed by the Rules. Selection is to be made giving strict adherence to the statutory provisions and if such power i.e. "inherent jurisdiction" is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the Rules is likely to cause irreparable and irreversible harm.

12. Similarly, in *K. Manjusree v. State of A.P.* AIR 2008 SC 1470, this Court held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The rules of the game cannot be changed after the game is over. The competent authority, if the statutory rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible.

13. Thus, the law on the issue can be summarised to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum benchmarks for written test as well as for viva voce.”

29. To summarize: the earmarking or allocation of a high percentage of marks in an admission process has been consistently held to be arbitrary by the courts; however, where the process involves *selection* to a post or service, higher weightage for entry or lower levels of service is seen to be arbitrary, whereas for appointment or promotion to senior and higher levels, higher percentage, or even 100% weightage is permissible.

30. In the present case, the M.Phil./Ph.D. aspirants *are not desirous of joining any service under the University or the government; nor are do they aspire to join any public service.* The evaluation under the guidelines pure and simple is for assessment of their potential, aptitude, knowledge and ability in the research topic or subject. They are made to clear a qualifying examination, the results of which are entirely based on the objective assessment of their worth, in all relevant parameters. Having so cleared (without being aware of what are the marks in such written exam- which can be as high as 90%), the candidate is evaluated by a panel. Members of this panel are allowed the widest discretion; no separate marking or evaluation by each appears to be mandated; (no weightage is given to marks in the written test). Whereas one- of the panel, may be objective, the others might give full reign to their prejudices, - regional, caste, sectarian or as to all those extraneous factors which are proscribed as arbitrary. Absolutely no weightage to the performance in the written examination, conducted by the University is given.

31. In the opinion of this court, the entire weightage to performance of a candidate in the interview, or viva voce, based on the evaluation of the “power point” presentation affords the widest latitude to arbitrary and

capricious behaviour of the members of the board, who know that the fate of admission hangs in their hands. Discretion, wherever allowed, is to be minimized; more so when it concerns admission to academic institutions. Academics are no doubt brilliant in their fields; however they are not immune to baser tendencies, such as unconscious bias (subject matter, mannerisms, perceived lack of respect, etc). This can tend to cloud their wisdom and conferring the exclusive power to admit a student at M.Phil./Ph.D. levels would therefore be arbitrary. Therefore, para 5.4 of the impugned regulations are held to be arbitrary.

32. As far as the second grievance with respect to absence of any concession to reserved category candidates – SC/ST/OBC in the qualifying examination goes, this Court notices that the eligibility criteria lowers the acceptable minimum from 55% in the case of M.Phil./Ph.D. aspirants respectively, the concession is to the extent of 5% inasmuch as certain reserved category candidates can compete in the qualifying examination though they possess lower than the minimum cut-off of 55%. There are observations in *Dr. Preeti Srivastava v. State of M.P.*, (1999) 7 SCC 120; equally, the judgment of the Supreme Court in *P.V. Inderesan* (supra) – both being Constitution Bench rulings – have indicated that in respect of higher courses too, a certain element of concession is permissible, to reserved category candidates. In *Preeti Srivastava* (supra) the Constitution Bench held as follows:

“Consequently, it cannot be said that even though short-listing of eligible candidates is permissible to the State authorities, while doing so, the State authorities can completely give a go-by to the concept of merit and can go to the extent of totally

dispensing with qualifying marks for SC,ST and OBC candidates and can short-list them for being considered for admission to reserved categories of seats for them in postgraduate studies by reducing the qualifying marks to even zero. That was rightly frowned upon by this court in Sadhana Devis case (supra) as that would not amount to short-listing but on the contrary would amount to completely long listing of such reserved category candidates for the vacancies which are reserved for them and on which they would not be entitled to be admitted if they did not qualify according to even reduced bench marks or qualifying marks fixed for them. As seen earlier, keeping in view the ratio of the Constitution bench of this court in M.R. Balajis case (supra) it must be held that along with the permissible reservation of 50% of seats for reserved category of candidates in institutions imparting postgraduate studies, simultaneously if further concessions by way of facilities are to be given for such reserved category of candidates so as to enable them to effectively occupy the seats reserved for them, such concessions by way of dilution of qualifying marks to be obtained at the entrance test for the purpose of short-listing, can also not go beyond the permissible limits of 50% of the qualifying marks uniformly fixed for other candidates belonging to general category and who appear at the same competitive test along with the reserved category of candidates. It is found from the records of these cases that qualifying marks at the entrance test for general category of candidates are fixed at 50%. In fact such is the general standard of qualifying marks suggested by the Medical Council of India even at the stage of entrance examination to MBBS course which is at the gross-root level of medical education after a student has completed his secondary education. Thus it would be proper to proceed on the basis that minimum qualifying marks for clearing the entrance test by way of short-listing for getting admitted to postgraduate medical courses uniformly for all candidates who appear at such examination should be 50% but so far as reserved category of candidates are concerned who are otherwise eligible for competing for seats in the postgraduate medical courses, 50% reduction at the

highest of the general bench marks by way of permissible concession would enable the State authorities to reduce the qualifying marks for passing such entrance examination up to 50% of 50% i.e. 25%. In other words, if qualifying marks for passing the entrance examination for being admitted to postgraduate medical courses is 50% for a general category candidate, then such qualifying marks by way of concession can be reduced for reserved category candidates to 25% which would be the maximum permissible limit of reduction or deviation from the general bench marks. Meaning thereby, that a reserved category candidate even if gets 25% of the marks at such a common entrance test he can be considered for being admitted to the reserved vacancy for which he is otherwise eligible. But below 25% of bench marks for reserved category of candidates, no further dilution can be permitted.”

33. *P.V. Inderesan (supra)* was a decision rendered specifically on the issue of whether cut-off marks for selection having reference to the general category candidates' last cut-off of marks, is permissible. The court ruled that if such a criteria is made known in advance and actually used, it would not be disturbed. However, it was emphasized that such minimum “cut off marks” prescribed, benchmarking the performance with the last open or general category candidate should not result in any reserved seat going vacant. The materials placed on record as well as the pleadings of both the JNU and UGC do not anywhere show that an expert Committee had determined whether the change in the criteria, could impact reserved category candidates adversely. No doubt, the M.Phil and Ph.D. courses lead to acquisition of superior academic qualifications. The general clubbing of reserved category candidates with merited candidates – both of whom are deemed eligible depending on the eligibility criteria (for qualifying in the written exam), can act to the disadvantage of reserved category candidates if

the same criteria of qualification (50%) is admitted. Admittedly, a number of reserved seats have been kept apart to be filled by the reserved category candidates. Given the pattern of admission and the procedure adopted where 100% or entire weightage is given to the interview process, the possibility of bias and also adverse impact to SC/ST and other reserved category candidates is palpable and real. Having regard to these facts, the Court is of the opinion that the JNU and UGC ought to have worked out a criteria to give some concession to SC/ST category candidates – and to the extent permissible under the Rules, to the OBC category candidates. The same considerations would also apply to persons with disabilities (PWD) candidates for whom a 5% reservation is statutorily mandated.

34. As far as the last ground with respect to the drastic reduction in the student intake is concerned, JNU had contended– in support of its contention that the regulations are valid, the total faculty strength in the Ph.D. seats with respect to the UGC Regulations, 2016, would be 3604 as against which the Ph.D. students enrolled were 3525. According to the JNU, the total intake of 2018-19 was 342 and as on 30.04.2018, the total number of vacancies in the PhD course was 79. Likewise, the total number of vacant M.Phil. seats were 368. In the submissions made on behalf of the JNU – on 08.05.2018 – it was contended that after implementation of the regulations, the total faculty strength of 498 supervisors was found (252 Professors, 118 Associate Professors and 128 Assistant Professors). These could cater to 1120 M.Phil. and 3236 PhD scholars in terms of clause 6.5 of the regulations. The JNU contended that the total number of M.Phil. students was 899 and there were total 2880 Ph.D. students. These statistics only go to

show that despite the approved capacity of 3236 Ph.D. scholars and 1120 M.Phil. seats, 657 seats went unfilled. In these circumstances, the assertion that there was no “seat cut” cannot be taken at face value. It thus appears to the Court that 657 seats (221 M.Phil. and 436 Ph.D.) vacancies existed. Clearly these were unfilled despite existence of capacity in the JNU.

35. It appears to the Court that the regulations with respect to the fixation of a cap on a number of students that the faculty at the level of Professor, Associate Professor and Assistant Professor can supervise, at any given point of time, cannot be a matter of judicial review. That remains within the expertise of regulatory bodies such as UGC. The petitioner’s argument with respect to arbitrariness in regard to the guidelines with respect to the supervisor-student ratio cannot, therefore, be upheld. However, clearly, the JNU, in implementing the UGC Regulations, 2016 has either deliberately or on account of wrong implementation, left unfilled a substantial number of (about 657 M.Phil. and Ph.D. seats). In the opinion of this Court, this is not healthy; it amounts to a national waste and requires to be redressed appropriately.

36. In view of the foregoing discussion, this Court holds as follows:

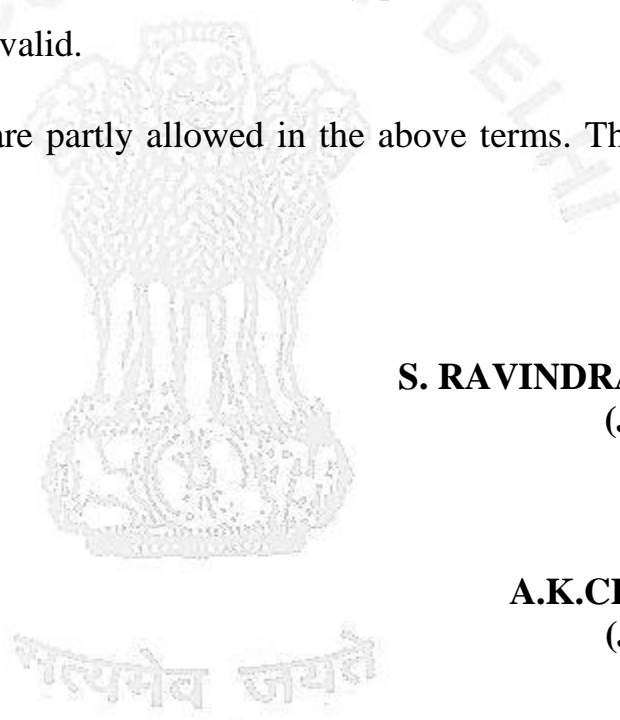
(1) That Regulation 5.4 of the UGC Regulations in so far as it permits filling of M.Phil./Ph.D. entirely on the basis of cent percent evaluation of performance in the *viva voce* process is arbitrary. The said regulation is, therefore, declared void and contrary to Article 14;

(2) The absence of any concession with respect to the minimum qualifying marks in the written test, in the UGC Regulations of 2016 to

reserved category candidates (SC/ST/OBC) and physically disabled candidates is also without proper application of mind. Appropriate concession is to be given by the UGC and the JNU, taking into account the seats filled, having regard to the implementation of the regulations in the last two academic years;

(3) The JNU is directed to take suitable review action to ensure that in any given academic year, no M.Phil./Ph.D. seat is left unfilled. It is also held that the UGC guidelines of 2016 in so far as they prescribe the supervisor-researcher/student ratio is valid.

37. The writ petitions are partly allowed in the above terms. There shall be no order on costs.



S. RAVINDRA BHAT
(JUDGE)

A.K.CHAWLA
(JUDGE)

OCTOBER 01, 2018