

Onwards to the AC Meeting on the 9th: FAQs about the Stay by the Delhi High Court

30 APR
2017

5 COMMENTS

On 28 April, the Hon. High Court of Delhi pronounced that the stay “of the effect and operation of the findings on law of the Id. Single Judge” on the *Shubhanshu Singh & Ors. vs Jawaharlal Nehru University* would hold till 27 July 2017, the next date of hearing. The reasons cited were the same as before: the prima face case made out by the petitioners’ Counsel that the judgement has erred as per Constitutional provisions, and that since the judgement can have “wide ramifications on not only the working of the Jawaharlal Nehru University but also on all other educational institutions prohibiting any innovation or academic developments”, it should be stayed. **Further, the court announced that any admissions that were to take place would be subject to final settlement of the Appeal.**

What does this mean exactly for the new admission policy, Prospectus 2017-18, the announced admissions, the seat cuts, the upcoming Academic Council, the binding nature of UGC Regulations, and what next? So here are some answers to FAQs, but please do feel free to ask us more, in the comments below via message. We shall keep on adding them to the post.

1. What is the ‘big picture’ meaning of the stay by the Delhi High Court?

The stay removes the judgement “erroneously granted complete supremacy to the applicability of the University Grants Commission Act” and leaves the JNU Act unaffected. What the judgement of the Ld Single Judge did was to put a stamp of approval on what the JNU administration had been saying since December 26, that since the UGC Act makes its Regulations binding, the powers and procedures laid down by the JNU Act, statutes ordinances and regulations, and established practice are subordinated to it. The stay on the judgement means that this stamp of approval is gone, and the JNU Academic Council’s statutory role, in framing and amending Ordinances, including those related to admissions is intact in terms of the JNU Act.

2. What about the admission policy under which applications have been invited for 2017-2018?

JNU currently does not have an admission policy, as nothing of which has been implemented has the approval of an Academic Council meeting. The AC may now discuss all matters relating to intake and admission policy, format of the entrance test, weightage assigned to viva and also all issues relating to adoption/ harmonisation of the JNU Statutes and Ordinances, reservation policies (including the CEI Act) with the UGC Regulations 2016. JNUTA requests members of the AC to ensure that these are proposed as agenda items. It will be up to the 143rd AC to decide whether they will put a stamp of approval on the policy the JNU administration is operating with.

3. What about deprivation points?

In the FAQs of the JNU e-prospectus, under item 21, explicit reference has been made to the 16th March judgment of the Single Judge, as disallowing deprivation points for M.Phil./PhD admissions. The direct effect of this judgement being stayed, by the Division Bench headed by the Hon'ble Chief Justice of the Delhi High Court, is that there is no legal sanction for not giving deprivation points. In addition, the UGC has since then made statements to the press saying that this decision was one that JNU has made.

4. What about the format for the entrance test and weightage for the viva voce?

The JNU administration's syllabus and format of the entrance test and 100% weightage has not been discussed or approved in the Academic Council, and its interpretation that the UGC Regulations impose a 100% viva voce is not the only legitimate interpretation. It is up to the Academic Council to harmonise the existing JNU practices that promote constitutional principles of social justice with the UGC Regulations.

5. What about qualifying marks for the entrance examination and relaxations as per reservation policies and past practices of the university?

Again, it is up to the Academic Council to determine these by harmonising the existing JNU practices, various Court judgments and Constitutionally mandated policies and the UGC Regulations 2016.

6. What about intake?

The only approved intake figures were those that were ratified by the 142nd AC meeting. A change in those figures, if any, has to be determined by the AC, through a harmonisation of the existing JNU practices, various Court judgments, the reservation policies of the Central govt (including the CEI Act), and the UGC Regulations 2016. It should be noted here that in the single letter that the JNU VC wrote to the UGC, he never made any query to it regarding intake capacity and the operations of the CEI Act.

7. What about the severing of some integrated research programmes?

The Academic Council has never approved the separation of integrated programmes like M.Tech./PhD and MPH/PhD programmes into two distinct programmes. This violation shall have to be discussed by the 143rd AC.

8. What about the interpretation of eligibility requirements for admission to PhD in many science programmes?

In admissions to science PhD programmes, M.Sc./M.Tech. has been the eligibility requirement. This has been done away by the 21 March admission policy, as has the provision that in these research programmes, UGC-CSIR scholars may be invited directly to appear at the viva voce. No amendment to this admission process have been made by any AC, and the 143rd AC will have to discuss whether it approves of this change.

9. But isn't this all *sub judice*?

The issues pending before the Hon. Delhi High Court are:

- That there were grave statutory and procedural violations in the process of adopting the UGC Notification 2016. One important violation is that the Act requires that all items pertaining to admission are discussed in the Part A meeting of the Academic Council (where students are present); but in the 141st and 142nd AC meetings, the UGC Regulations 2016 were discussed in Part B of the meeting. Another was reporting and seeking approval of the Executive Council of AC meeting minutes before they were not ratified.
- That the 'adoption' of the UGC Regulations 2016 both as the basis for admission policy as well as Ordinances was taken in the absence of complete clarity and before answers to clarification were obtained. For example, clarifications about intake capacity, retrospective application of supervisor caps, how to calculate intake, and the conflict of law with the CEI Act were neither known or clarified from the UGC. In the absence of clarity no amendment to Admission Ordinances were proposed by the Academic Council.
- That the Jawaharlal Nehru Act, 1966 and the UGC Notification 2016 must be read harmoniously to arrive at the Admission Policy, following the norm-setting precedent of the adoption of the 2009 UGC Regulations.

It is these matters and others arising from the Constitutional arguments that the Hon. High Court will rule upon when hearings begin again on 27 July. The court has been informed by the petitioners that there is an Academic Council meeting on the 9th of May and the Court has not issued any proscriptions against discussing these.

10. Supposing the AC proposes a new admission policy and new intake, could this not be struck down by the court after 27July?

If the correct procedure and statutes are respected by following the JNU Act, there is no reason why the Delhi High Court in the Shubhanshu Singh appeal will find anything done by the JNU AC as bad in law. What must happen is that all agenda items pertaining to admissions are discussed in the Part A meeting, and reasonable opportunity is given to members of the AC to discuss matters freely there, and thereafter minutes are confirmed following established procedure.

11. But aren't there SC judgments that make the UGC Regulations binding. Is there any point in discussing UGC Regulations then?

The SC judgements on UGC Regulations being binding have much more nuance than what is suggested by formulations like these, where binding and mandatory does not mean "follow chapter and verse". Even while UGC regulations may be mandatory, these can be harmoniously adopted into the University Statutes. In various SC judgements, the Supreme Court has always endorsed attempts of universities to innovate so long as they do not adversely affect the standards laid by the UGC.

Since there has been no discussion at all of these Regulations and their relation to JNU's Statutes, Regulations, Ordinances and policies, or the Central Educational Institutions Reservations Act, why should it be assumed that any decision that AC will take will be in contravention of these Regulations? JNU has always tried to, and succeeded in, harmonising UGC Regulations with its Act and Statutes, so until the effort is completed,

there can be no presumption of defiance.

It should also be noted that UGC regulations are mandatory, as long as the constitutionality validity of the regulations is not under challenge; and these have been accepted by both Houses of the Parliament within thirty days of laying the subordinate legislation in front of the parliament. In the case of these Regulations, motions to annul and amend them have been moved in Parliament.

12. Can the JNU Vice-Chancellor go to the Supreme Court and vacate the stay on the judgment?

Yes, he can. However, it is the statutory duty of the Chairperson of the Academic Council, and his legal representative the Registrar, to represent and defend the JNU Act, 1966. Should such a move be initiated, we are sure that the students' counsel shall vigorously oppose it, querying whether vacating the stay represents the best interests of the Academic Council.

13. Can the JNU Vice-Chancellor cancel the AC Meeting?

Yes, he can. However, such a move violates the Statutes of JNU which require the AC to meet at least once in a semester. No Academic Council meeting has been called since 27 December 2016. No response has been given to the multiple requisitions of the Academic Council. The JNU Act places a statutory obligation on the VC to hold the AC, and this meeting is being called after 30 AC members have requisitioned an emergency Academic Council meeting.

Ayesha Kidwai

Pradeep Shinde

President, JNUTA

Secretary, JNUTA

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GBM ON 5 MAY 2017 TO DISCUSS JNUTA'S APPROACH TO THE ACADEMIC COUNCIL MEETING

5 Comments

Akash



1 May 2017 at 1:43 am Edit

Ma'am, isn't this stay for considering the decision in another case? If that case is not decided by July, which seems probable given the slow pace and summer vacations of the court, will the court just extend the present stay in this case for more time? Since the case is by MPhil scholars, will the court consider the predicament of MPhil aspirants (currently MA students) for whom uncertainty or a delay in admission will have more ramifications (that is when we consider the court rules in favour of the students in first place.)? And even in the other case, (given it being done by a independent student body how far is it answerable to students is doubtful) can the proceedings be requested to me done in an urgent day to day manner?

Like

REPLY

Akash



1 May 2017 at 1:44 am Edit

*requested to be done

Like

REPLY

JNUTA 2017-2018



1 May 2017 at 7:12 am Edit

The stay is for the Shubhanshu Singh case and it's a stay on the judgment, as explained above, and not on new decisions about admissions. As these FAQs say, the stay leaves the AC free to determine everything about

admissions, so that's why the 9th is important. Basically, admissions can happen as and when/how the AC decides. Hypothetically, it could go with a seat cut and everything the admn has announced, in which case, no delay. Or it could take different decisions, which may lead to some delay, but more seats across programmes and a fairer

The other case will have a hearing on the 11th, so nothing is right now known as to what is going to happen there. It is good that its hearing is happening after the AC, so that it can use what happens there as input.

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[REPLY](#)

moonbeamparasite



6 May 2017 at 12:13 pm Edit

Ma'am so will the admission process and entrance test for mphil/PhD still happen this month? Or what that be against the stay orders?

Like

[REPLY](#)

JNUTA 2017-2018



6 May 2017 at 8:56 pm Edit

There is no stay on admissions. Difficult to say what the AC will decide.

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