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**Ref :**

**No. :**

**OPINION**

Queriests:- Sandeep Tanwar a student.

I am given a copy of opinion by Former Chief Justice of Orissa High Court Justice H.L. Agarwal, which is concurred by Former Judge of Rajasthan High Court Justice S.C. Mittal. I have carefully gone through the opinion and I find the same is based upon & supported by relevant provision of UGC Act, the University Act No. 6 of 2008 of Rajasthan State Assembly, other relevant provisions of law and also by Supreme Court judgments.

In my Opinion also University (established by an Act of Rajasthan Assembly Act No. 6 of 2008) is an autonomous statutory body with regulations making power for its functioning and it falls under the definition of Section 2(f) of UGC Act. As such, it shall be governed by UGC Act also, which shall have overriding effect over any other in consistent law. UGC regulation of 2003 do not apply to it for the reason that is not grant recurring from UGC and for other reason also an mentioned in the said opinion.

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University does not need any approval from NCTE or from any other authority for running B.Ed, M.Ed and other educational courses, degrees/diplomas and certificates granted to the students shall be valid and recognised automatically for Central/ State Govt. employment as per HRD Ministry Circular No. F.18-27/70-T2 Dated 20 November 1970 mentioned in the opinion.

Date : 7/2/07

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Section 5 of Act No. 6 of 2008 provides as under:-

Power and functions of the University: - The University shall have the following powers and functions, namely:-

- (a) to provide for instruction in the disciplines specified in Schedule II and to make provisions for research and for the advancement and dissemination of knowledge;
- (b) to grant, subject to such conditions as the University may determine, diplomas or certificate, and confer degrees or other degrees or other academic distinctions on the basis of examinations, evaluation or any other method of testing on persons, and to withdraw any such diplomas, certificates, degrees or other academic distinctions for good and sufficient cause;
- (c) to organize and to undertake extra-mural studies and extension service;
- (d) to confer honorary degrees or other distinctions in the manner prescribed;
- (e) to provide instruction, including correspondence and such other courses, as it may determine;
- (f) to institute Professorships, Readerships, Lectureships and other teaching or academic posts required by the University and to make appointment thereto;
- (g) to create administrative, ministerial and other posts and to make appointments thereto;
- (h) to appoint persons working in any other university or organization having specific knowledge permanently or for a specified period;
- (i) to co-operate, collaborate or associate with any other university or authority or institution in such manner and for such purpose as the University may determine;
- (j) to establish study centers and maintain schools, institutions and such centers, specialized laboratories or other units for research and instructions as are in the opinion of the University, necessary for the furtherance of its object;
- (k) to institute and award fellowships, scholarships, studentships, medals and prizes;
- (l) to establish and maintain hostels for students of the University;

- (m) to make provisions for research and consultancy, and for that purpose to enter into such arrangements with other institutions or bodies as the University may deem necessary;
- (n) to determine standards for admission into the University, which may include examination, evaluation or any other method of testing;
- (o) to demand and receive payment of fees and other charges;
- (p) to supervise the residences of the students of the University and to make arrangements for the promotion of their health and general welfare;
- (q) to make special arrangements in respect of women students as the University may consider desirable;
- (r) to regulate and enforce discipline among the employees and students of the University and take such disciplinary measures in this regard as may be deemed necessary by the University;
- (s) to make arrangements for the promoting the health and general welfare of the employees of the University;
- (t) to receive donations and acquire, hold, manage and dispose of any movable or immovable property;
- (u) to borrow money with the approval of the Sponsoring Body for the purposes of the University;
- (v) to mortgage or hypothecate the property of the University with the approval of the Sponsoring Body;
- (w) to establish examination centers;
- (x) to ensure that the standard of degrees, diplomas, certificates and other academic distinctions are not lower than those laid down by AICTE, NCTE, UGC, MCI, PCI and other similar bodies established by or under any law for the time being in force for the regulation of education;
- (y) to set up off campus centre within or without the State subject to the provisions of any other law for the time being in force; and
- (z) to do all such other acts and things as may be necessary, incidental or conducive to the attainment of all any of the objects of University.

Above mentioned powers and functions vested and assigned to the University are very clear in their meaning



and effect. These are specific and special provisions and as such they shall prevail over any other general provisions unless there exists any other law regulating these powers and functions. In this regard it is important to note that section 5 of the Act No. 6 of 2008 (hereinafter to be referred to 'the Act') rather expressly and specifically provides that the provisions of the Act, shall have overriding effect over any other laws of Rajasthan. From this, it clearly follows that no other law or authority in Rajasthan can regulate or restrict the powers and functions vested in a University by virtue of Section 5 of the Act.

Next question therefore arises, whether there is any other Central law, governing the Universities. Answer is UGC Act, which is a special and specific law governing the Universities and it has been enacted by Parliament in exercise of its exclusive legislative power under Entry 66 of the Central list of the Seventh Schedule of the Constitution.

Provisions of section 2(f), 12 and 22 of the UGC Act read with provisions of Section 5 of the Act, make a University autonomous statutory body with regulations making power for its functioning. In Bharathi Dasan and number of other cases Supreme Court of India has held that a University shall be governed by UGC Act and its provisions shall have overriding effect over any other inconsistent provisions of a state Law.

Supreme Court of India also, in the famous Dr. T.M.A. Pai Foundation Case has also affirmed autonomous legal status of University in carrying out its powers and functions as under:-

[51] "University Autonomy. Freedom of individual development is the basis of democracy. Exclusive control of education by the State has been an important factor in facilitating the maintenance of totalitarian tyrannies. In such States institutions of higher learning controlled and managed by governmental agencies act like mercenaries, promote the political purposes of the State, make them acceptable to an increasing number of their populations and supply them with the weapons they need. We must resist, in the interests of our own democracy, the trend towards the governmental domination of the educational process.

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Higher education is, undoubtedly, an obligation of the State but State aid is not to be confused with State control over academic policies and practices. Intellectual progress demands the maintenance of the spirit of free inquiry. The pursuit and practice of truth regardless of consequences has been the ambition of universities.

Their prayer is that of the dying Goethe: "More light." or that of Ajax in the mist "Light, though I perish in the light.

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The respect in which the universities of Great Britain are held is due to the freedom from governmental interference which they enjoy constitutionally and actually. Our universities should be released from the control of politics.

Liberal Education: All education is expected to be liberal. It should free us from the shackles of ignorance, prejudice and unfounded belief. If we are incapable of achieving the good life, it is due to faults in our inward being, to the darkness in us. The process of education is the slow conquering of this darkness. To lead us from darkness to light, to free us from every kind of domination except that of reason, is the aim of education."

(52) There cannot be a better exposition than what has been observed by these renowned educationists with regard to autonomy. The aforesaid passage clearly shows that the governmental domination of the educational process must be resisted. Another pithy observation of the Commission was that state aid was not to be confused with state control academic policies and practices. The observations referred to hereinabove clearly contemplate educational institutions soaring to great heights in pursuit of intellectual excellence and being free unnecessary governmental controls.

In view of the above discussion, I have got no manner of doubt that the functions and powers vested in the University under section 5 are not subject to any limitation

and restriction or subject to regulation of any other valid and existing law.

My attention has, however, been drawn to some regulations of 2003 formed by UGC purporting to be under section 26(f) and (g) of the UGC Act. These regulations are not applicable to the University for the simple reason that the University is not a grant receiving University. Otherwise also, UGC has not been given any authority to make any regulations to restrict or to limit or to regulate a Universities power to affiliate a College or to award degrees notified under section 22 of the UGC Act. These regulations also say that these shall apply to a new type of Private University as defined in the regulations. As such they have got no bearing or relevantly so far provisions of section 5 of the Act. These regulations also do not have the power of law because they are patently inconsistent with the provisions of UGC Act and the power given to UGC is limited to make regulations consistent with the provisions of UGC Act.

Q.2.

Section 14 of the NCTE Act is the only provision regarding recognition/approval for institutions offering or intending to offer course in teacher education. It reads as under:-

#### 14. RECOGNITION OF INSTITUTIONS OFFERING COURSE OR TRAINING IN TEACHER EDUCATION

(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.



(2) The fee to be paid along with the application under sub-section (1) shall be such as may be prescribed.

(3) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall-

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfills such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) if it is of the opinion that such institution does not fulfill the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing:

Provided that before passing an order under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3).

(6) Every examining body shall, on receipt of the order under sub-section (4), -



(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation of the institution, where recognition has been refused.

Language of this section is quite clear and unambiguous to the effect that obtaining of NCTE's approval is not mandatory, because the language used is "institutions may apply". Secondly it applies to an institution and not to a University. Institution and University are separately defined in the NCTE Act and the two are treated as two different entities. Provisions of NCTE Act and AICTE Act are similar in the matter of obtaining recognition/approval by an institution and in Bharthi Dasan Case, Supreme Court has long back held that a University does not require AICTE approval and the same principle of law would apply in case of obtaining approval/recognition from NCTE also.

A combined reading of section 14, 15 and 16 of the NCTE Act also makes it quite clear that the non-mandatory/optional requirement of NCTE approval, is available only to an Institution which requires affiliation of a University for taking examination of its students and also to award degree to them. As such, a University is quite distinct and different entity than a Institution because University does not require any affiliation for taking examination of its students and to award degree/diploma to its successful students. Bar of NCTE Act to affiliate an institution or to take examination or award degrees to the students is limited to an institute only which has not taken recognition of NCTE and does apply to a Unruly who need no affiliation. In UGC Act, a college is defined as an institution whereas a University is treated a class by itself having power of affiliating and awarding degrees.

It is also important to note that the net effect of Section 17 (4) of NCTE Act is that if an Institution has not taken an approval from NCTE, a University can still take examination of its students and award degrees, diplomas to the successful students. From this it follows Universities authority to award notified degrees under section 22 of the UGC Act, which includes education degrees also such as B.Ed., M.Ed. degrees is not taken away by NCTE Act. Such degrees shall be valid and automatically recognized for Central/State Govt. employment as per HRD Ministry circular notification No. F.18-27/70-T2 Dated 20 November 1970 Section 17(4)

merely provides that if any institution, which has obtained NCTE recognition but the same is withdrawn by NCTE, then in that case degree obtained by that institution for the students of the next academic year shall not be valid. Which means for one academic year in which recognition has been withdrawn degree obtained for the students of that batch shall be valid. For subsequent years, such degree shall be valid for all other purposes other than Govt. job. Another category covered by section 17 (4) is of those institutions, which had been offering courses in teacher education before 1993 and do not obtain NCTE recognition within six months of coming into effect of NCTE Act, degree obtained for its students shall not be valid for Govt. job. A University, to which section 14 is not applicable, neither it is required to obtain any recognition from NCTE, nor question of any withdrawal of its recognition by NCTE can arise at all.

A university's recognition is under section 2(f) of the UGC Act and no other authority is authorised to withdraw statutory powers and functions of a University to affiliate colleges under section 12 and award degrees notified under section 22 of the UGC Act. UGC has also confirmed that a University established by a State Act is empowered to award degrees notified under section 22 of the UGC Act and the same shall be valid (copy enclosed).

It is also very important to note that under NCTE Act, role assigned to NCTE to grant recognition or to withdraw recognition and nothing more. It does not at all empower NCTE to infringe upon or in any manner to regulate a University's power to affiliate a College/Institution according to its own rules and regulations.

In Bharthi Dasan case also, a plea was taken that one of the AICTE regulation was that a University shall not grant affiliation to an institution, which had not taken AICTE approval and therefore a University was also required to take its approval. Supreme Court did not accept this argument of AICTE for the simple reason that a University is always empowered to take examination of its students and award all the degrees/diplomas/certificates to its students, which shall be valid and automatically recognized for Central/State Govt. employment. One such example is of the degrees/diplomas/certificates granted by J&K Universities to students giving there from all over the country and these degrees are awarded to the students of Colleges/Institutions, which have not taken any recognition from NCTE. No doubt sections 14, 15 & 16 regarding taking



recognition by institutions from NCTE and taking affiliation or obtaining degree/diploma from a J&K University by colleges there, does not apply in the state but such qualified students apply for Govt. jobs in all other states of India, where section 17 (4) applies in full force, but still such degrees/diplomas are recognized for Govt. jobs for the simple reason of statutory sanctity being there for degrees, diplomas awarded by Universities, which is fully recognized by Central Govt. vide HRD Ministry Circular No. F.18-27/70-T2 Dated 20 November 1970.

Upshot of the above discussion is that a University is not required to take any recognition from NCTE to offer all education courses to its students and award degrees, diplomas/certificates to the successful students, which shall be valid and are entitled to be automatically recognized for Central/State Govt. employment. This answer question No. 3 also.

Q.4.

UGC Act is a specific/special law governing the Universities and enacted by Parliament in its exclusive legislative power vested in it by value of Entry 66 of the Central List of the Seventh Schedule of the Constitution. As such it shall prevail over any other inconsistent provision of any other Central/State Law. In this regard reference can be made to various Supreme Court judgments, mentioned in Bharthi Dasan Case. I am also not aware of any such law, which can be said to regulate or prevail upon the powers and privileges accorded to a University and to sanctity attached to the degree awarded by a University.

Answer to question No. 5 has already be given above i.e. the autonomy enjoyed by the University under the provisions of Section 5 of the Act is in conformity with the provisions of UGC Act, and as such it cannot be restricted, limited or regulated to prejudicially affect the autonomy.

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