

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
JUDGMENT RESERVED ON: 07.12.2008

% **JUDGMENT DELIVERED ON: 20.02.2009**

+ **(1) W.P.(C) 1995/2008**

BHARATI VIDYAPEETH & ORS. Petitioners
Through: Dr. A.M. Singhvi, and Mr. Udai
Lalit, Senior Advocates with Mr.
Prasenjit Keswani, Advocate.

versus

GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS. Respondents
Through: Mr. A. K. Singla, Senior Advocate
with Mr.G. D. Goel and Mr. Sanjiv
Goel, Advocates for respondent
no.1.
Mr. Amiet Andley, Advocate for
respondent no.2.
Mr. Amitesh Kumar, Advocate for
respondent no.3/UGC.
Mr. R. N. Singh, Advocate for
respondent no.4.

AND

(2) W.P.(C) 3885/2008

BHARATI VIDYAPEETH & ORS. Petitioners
Through: Dr. A.M. Singhvi, Sr. Advocate with
Mr. Udai Lalit, Sr. Advocate &
Mr. Prasenjit Keswani, Advocate.

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GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS. Respondents
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Mr. Amiet Andley, Advocate for
respondent no.2.
Mr. Amitesh Kumar, Advocate for
respondent no.3/UGC.
Mr. R. N. Singh, Advocate for
respondent no.4.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

VIPIN SANGHI, J.

1. By this common judgment I propose to dispose off the aforesaid two writ petitions.

2. The petitioners state that petitioner no.1, Bharti Vidyapeeth, is a registered trust and is involved in promoting education throughout the country. It is stated that petitioner No.2 Bhartiya Vidyapeeth is a deemed University under Section 3 of the University Grants Commission (UGC) Act, 1956. It is situated at Pune, having various constituent institutions in the country. Petitioner No.3, Bhartiya Vidyapeeth College of Engineering, is an engineering college set up by the petitioner No.1 trust having its campus in New Delhi. Petitioner No.3 institute imparts courses leading to the grant of B. Tech. degree in engineering. Petitioner No.4, Bhartiya Vidyapeeth Institute of Computer Applications and Management, New Delhi is an institute imparting education in the field of computer education and management. It has been set up by petitioner No.1 and has its campus at the same location as petitioner No.3 in New Delhi. Petitioner No.4 imparts courses and programmes leading to the grant of Master in Computer Applications (MCA) degree. Respondent No.1

Guru Gobind Singh Indraprastha University (GGSIP University for short) is constituted under the Guru Gobind Singh Indraprastha University Act, 1998. Petitioner Nos.3 & 4 institutions have been affiliated with respondent No.1 University since their inception. Respondent No.2 is the Government of NCT of Delhi impleaded through the Secretary, Department of Training and Technical Education (DTTE). Respondent Nos.3 & 4 are the University Grants Commission (UGC for short), constituted by the University Grants Commission Act, 1956 (herein referred to as UGC Act) and Ministry of Human Resources Development, Government of India, respectively.

3. Petitioner No.1, with a view to set up an engineering college in Delhi applied for allotment of institutional land to the DDA. This application was made on 12.05.1999. Government of NCT of Delhi recommended the case of the petitioner for allotment of land to DDA and vide communication dated 02.08.1999 informed the petitioner that it had recommended the petitioners' case to the DDA for allotment of about 5 acres of land for setting up an engineering college on various terms and conditions set out in the said letter. The DDA approved allotment of land admeasuring 14862.35 sq. meters to the petitioner No.1 on perpetual leasehold basis for setting up an engineering college and hostel for students. The premium and ground rent charged by the DDA of Rs.2,72,91,941/- was paid by the petitioner. Thereafter, the petitioner No.3 institution was developed and set up on the said land. Respondent No.4 institution was also set up on the same campus.

4. The Ministry of Human Resources (Department of Higher Education), Government of India, issued a notification dated 14.02.2007 under Section 3 of the UGC Act, whereby it was declared that upon the recommendation of the UGC, the petitioner Nos.3 & 4 were included within the ambit of "Bhartiya Vidyapeeth" deemed to be University, Pune, as its constituent institutions for the purpose of the UGC Act from the date of disaffiliation of the said two institutions from the respondent No.1, GGSIPU, the affiliating University, subject to the petitioner fulfilling various conditions mentioned in para 5 of the said notification. The notification, inter alia, required the petitioners to take immediate steps to disaffiliate themselves from the respondent No.1 University. A little later, the respondent UGC issued a notification dated 13.04.2007 in line with the notification issued by respondent No.4 on 14.02.2007 aforesaid. This notification stipulated that the constituent institutions, namely, petitioner Nos.3 & 4 shall abide by the norms laid down by UGC.

5. In the meantime, the petitioners vide letter dated 17.02.2007 informed the respondent University that from the academic year 2007-08 it would be governed by the petitioner deemed to be University. The petitioners requested the respondent University to start the gradual disaffiliation of the said two institutions. It was also stated that the students already enrolled in the courses being run by the petitioner Nos.3 & 4 institutions would continue to be students of the respondent University. Consequently, the respondent University informed respondent No.2, Government of NCT of Delhi of the aforesaid

development and sought the guidance of respondent No.2 on the subject of granting no objection certificate for disaffiliation to the petitioner Nos.3 & 4 institutions.

6. It appears that respondent No.2 expressed reservations against granting its no objection to the disaffiliation of the petitioner Nos. 3 & 4 institutions from the respondent University, as the grant of the said disaffiliation would result in liberating the said institutions from the supervision and control of the respondent State Government, inter alia, in relation to grant of admissions to students in these institutions. Admittedly, upon disaffiliation, the students would be admitted to the courses offered by petitioner Nos.3 & 4 on all India basis, whereas, as a condition of affiliation with the respondent University and under the *"The Delhi Professional Colleges or institutions (Prohibition of Capitation Fee, Regulations of Admission, Fixation of Non-Exploitative Fee and other Measures to Ensure Equity and Excellence) Act, 2007"* (hereinafter referred to "Act of 2007") the petitioner institutions have been offering 85% of the seats to students who come from Delhi region, and only the remaining 15% seats are filled on all India basis.

7. To satisfy this concern of respondent No.2, the petitioners issued a letter dated 04.04.2007 undertaking to respondent No.2 that they would grant reservation in respect of 85% of the seats from amongst students of Delhi region for being filled by merit w.e.f. the academic year 2007-08. On 26.04.2007 respondent No.2 forwarded a format of an undertaking that it required petitioner No.3 to furnish, before the

matter regarding disaffiliation is processed further. The said format is material and is reproduced hereinbelow: -

“UNDERTAKING

(to be submitted in non-judicial stamp paper of Rs.100)

I _____,
_____ of Institute is competent to give
this undertaking as authorised by the Resolution
No. _____ of the _____ Society, do
hereby undertake as under: -

1. That the institute is applying for the status of a constituent college of _____ (Deemed University), Pune.
2. That the institute is presently affiliated to the GGSIP University, Delhi for conducting course in _____ disciplines.
3. That the Government of India in the Ministry of HRD has notified the institute as constituent college of the Bhartiya Vidya Peeth vide notification no. _____ dated _____ subject to the disaffiliation for the GGSIP University.
4. That the Institute has been allotted land by the DDA on concessional rates on recommendation of Government of NCT of Delhi.
5. That the AICTE accorded the approval to the courses being run in the institute on recommendation/NOC of the Government of NCT of Delhi for facilitating technical education in Delhi.
6. That presently, the institute is following the statutes, rules, Regulations and policy guidelines of the Government of NCT of Delhi with regard to the admission, reservation of seats/quotas and fee structure.
- 7. That in lieu of the land allotted on concessional rates and the NOC granted by the GNCTD to seek approval of AICTE, the institute hereby undertakes to continue to abide by the statutes, rules, Regulations and policy guidelines of the Government of NCT of Delhi or any other institution as may be issued with regard to the admission, reservation of seats/quotas and fee structure. The institute hereby agrees to provide**

85% of its seats to students from Delhi as prescribed by the govt. of NCT of Delhi and to provide reservation to other categories as prescribed by Govt. of NCT of Delhi.

8. That in case of any violation of any of the above conditions and/or the statutes, rules, Regulations and policy guidelines of the Government of NCT of Delhi with regard to the admission, reservation of seats/quotas and fee structure, by the institute, the GNCTD may take appropriate legal action against the institute which may include the recommending the cancellation of allotment of land or payment at market rate for the land allotted to the institute to the DDA and de-recognition of courses by the AICTE and UGC.

9. That we undertake to bound by the regulation of the fee regulatory committee & the admission regulatory committee or such other authority as may be prescribed by the GNCTD in compliance of the aforementioned clauses in this undertaking.

10. That the Govt. of NCT of Delhi is authorised to verify the compliance of above mentioned conditions by calling the relevant documents/proofs.” (emphasis supplied)

8. The petitioners responded to the said requirement of respondent No.2 on 04.05.2007. It was stated that since the petitioner institutions were included within the ambit of Bhartiya Vidyapeeth deemed to be University, furnishing the undertaking as desired by respondent No.2 would tantamount to agreeing to be governed by two different controlling bodies, namely, the UGC and the Government of NCT of Delhi. The same would not be consistent with and would violate the Statutes, Rules and Regulations of the UGC. The petitioners also stated that it would continue to use the allotted land for the purpose for which it was allotted. The petitioners stated that they would not be in a position to furnish the undertaking as desired by respondent No.2.

The petitioners sent two more communications on 08.05.2007 and 08.06.2007 once again seeking issuance of no objection certificate by respondent No.2 for the purpose of disaffiliation of the petitioner institutions. The petitioners further state that even the Delhi Development Authority has given its no objection to the disaffiliation of the petitioner institutions. However, no action was taken by the respondent, Govt. of NCT of Delhi, and respondent No.1, GGSIP University, with the result that for the academic session 2007-08, the petitioners could not admit the students in terms of the UGC Regulations. Even for the academic session 2008-09, in its brochure, the respondent University continued to show the petitioner institutions as institutions affiliated to it for the purpose of filling of the seats in the petitioner institutions on the basis of the common admission test.

9. Faced with the aforesaid situation, on or about 11.03.2008 the petitioners preferred W.P.(C) No.1995/2008 against the respondent, inter alia, seeking the issuance of a writ in the nature of mandamus directing respondent Nos.1 and 2 to grant disaffiliation to the petitioner Nos.3 & 4 from the respondent No.1 University from the following academic session. In the alternative, the petitioners sought issuance of a direction to respondent Nos.1 & 2 to immediately decide the issue of grant of disaffiliation to petitioner Nos.3 & 4 before the next academic session. The Court issued notice in this petition to the respondents on 18.03.2008. The notices were accepted on behalf of the respondent Nos.1 to 4 in Court. Time was granted for filing the reply/counter affidavits.

10. During the pendency of the said writ petition, the respondent No.2 issued a communication dated 14.05.2008 stating that since the petitioners had failed to furnish the undertaking required of them in the formats sent along with the letter dated 26.04.2007, and the notification dated 13.04.2007 issued by the UGC is a conditional notification effective from the date of disaffiliation of the petitioner institutions from the affiliating University, it had been decided by the Department of Training and Technical Education of the Govt. of NCT of Delhi not to accede to the petitioner's request for granting no objection for disaffiliation of the petitioner institutions from the respondent No.1 University. The reason given by respondent No.2 in the said communication, inter alia, was that the petitioner institutions had obtained land from the DDA, based on the recommendation of the Delhi Government.

11. After the aforesaid communication was issued, the petitioners preferred W.P.(C) No.3885/2008 to impugn the said communication and also to seek the issuance of the writ of mandamus directing the respondent Nos.1 & 2 to grant disaffiliation to petitioner Nos.3 & 4 from the respondent No.1 University.

12. The submission of learned senior counsels for the petitioners, Mr. Uday Lalit and Dr. A.M. Singhvi, is that though the petitioners have no difficulty in reserving 85% of the seats for being filled up from students hailing from Delhi region, the said requirement and other regulatory requirements being insisted upon by respondent No.2 (for considering the application of the petitioners for disaffiliation) is unreasonable and

illegal. By reference to the letter of allotment dated 15.10.1999 issued by the DDA, it is submitted that no condition was placed on the petitioners to the effect that they would be bound to follow the norms/guidelines of the Government of NCT of Delhi including in relation to the admission/employment criteria, fee structure etc. It is argued that there would be no breach or violation of the conditions upon which the allotment of land was made by the DDA, merely because petitioner Nos.3 & 4 would cease to be institutions affiliated to respondent No.1 University, since they would, in any event, continue to remain institutions imparting the same educational courses, which they have been imparting from their inception.

13. It is argued that respondent No.2 cannot seek to exercise control and supervision over the petitioner institutions any more, they having been declared as constituent institutions of Bhartiya Vidyapeeth deemed to be University, Pune, vide notifications dated 14.02.2007 issued by the Government of India and 13.04.2007 issued by the UGC.

14. Reference is made to Section 2(e) of the UGC Act defines the expression "University" to mean a University established or incorporated by or under a Central Act, a Provincial Act or a State Act and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under the Act. The Commission is defined in Section 2(a) to mean, the University Grants Commission established under Section 4 of the UGC Act. Section 3 states that the Central Government may, on the advice of the

Commission, declare, by notification in the official gazettee that any institution for higher education, other than a University, shall be deemed to be a University for the purpose of the said Act, and on such a declaration being made, all the provisions of the UGC Act shall apply to such an institution as if it were a University within the meaning of clause (f) of Section 2. It is argued that the notification dated 14.2.2007 issued by the Central Government has been issued under Section 3 of the UGC Act, on the advice of the UGC whereby petitioner nos. 3 and 4 institutions, which are institutions of higher education and did not by themselves enjoy the status of being a University, have been included under the ambit of Bhartiya Vidyapeeth i.e. petitioner No.2, a deemed to be University as its constituent institution for the purposes of the UGC Act. The said position has been reiterated by the UGC vide its notification dated 13.4.2007. However, both these notifications state that petitioners 3 and 4 would become constituent institutions of Bhartiya Vidyapeeth, deemed to be University, Pune *"from the date of disaffiliation of these institutions from the affiliating University, namely Guru Gobind Indraprastha University, Kashmere Gate, Delhi"*. Reference is also made to the various conditions imposed by the Central Government in the declaration made by the Central Government. These conditions, inter alia provide:-

"2. The declaration relating to inclusion of the institutions indicated in para 1 of the notification, will be subject to the following conditions.

(a)

(b)

- (c) The 'Deemed-to-be-University' Institute shall take immediate steps for disaffiliation of the institutions concerned from Guru Gobind Singh Indraprastha University, Delhi.
- (d) Bharati Vidyapeeth shall award degrees, etc in respect of the courses run by the institutions mentioned in para 1 of the notification only to those students who are admitted/enrolled with them subsequent to the date of this notification.
- (e) As for those students who are already enrolled with the institutions mentioned in para 1 of the notification, prior to the date of this notification, the present affiliating University viz. Guru Gobind Sindh Indraprastha University, Delhi shall have to agree to examine and grant degrees to them on successful completion of the courses/programmes they are pursuing in these institutions presently.
- (f)
- (g) The deemed-to-be-University under the ambit of which the said institutions are being included, shall suitably modify/ amend its Memorandum of Association (MoA) and Rules and finalise them in conformity with the University Grants Commission's Model MoA and Rules for the Deemed to be Universities after the inclusion of these institutions, on a priority basis.
- (h) The '*Deemed-to-be-University*' as well as all its constituent shall continue to abide by the norms and guidelines as laid down by the UGC, AICTE, etc from time to time, as are applicable to 'Deemed-to-be-Universities.'

15. The submission of learned senior counsels for the petitioners is that the subject matter of "*Co-ordination and determination of*

standards in institutions for higher education or research and scientific and technical institutions” is covered by entry 66 of List I of Schedule VII of the Constitution. The University Grants Commission is constituted as a statutory body *“to make provision for the co-ordination and determination of standards in Universities”*. Once an institution for higher education and research is declared as a deemed to be University (herein also referred to as a “Deemed University”), or a constituent institution of a deemed to be University for the purposes of the UGC Act, all the provisions of the UGC Act *“shall apply to such institution as if it were a University within the meaning of clause (f) of Section 2”*. The executive power of the Central Government is co-extensive with the legislative power of the Parliament. Consequently, once an institution is declared to be a deemed University, or a constituent institution of a deemed University, such an institution is bound by all the Rules and Regulations framed by the UGC, or by the Central Government in exercise of its statutory powers under the UGC Act. The power of the State Government to legislate in respect of institutions of higher education or research and scientific and technical institutions is derived from entry 25 of List III i.e. the concurrent list of the VIIth Schedule to the Constitution which reads *“Education, including technical education, medical education and Universities, subject to the provisions of entries 63, 64, 65 & 66 of List I; vocational and technical training of labour”*. It is therefore argued that the power of the State Government to either legislate, or to issue executive directions to institutions of higher education is subject to the power of the Central Government to legislate or issue executive directions, inter alia, under

entry 66 of List I of the VIIth Schedule. Once an institution of higher education has been declared as a deemed University or a constituent institution of a deemed University under Section 3 of the UGC Act, the State Government cannot seek to legislate in respect of, or exercise executive control over such an institution. It is also submitted that the notification issued by the Central Government under Section 3 of the UGC Act cannot be nullified and/or thwarted by the State Government by withholding the grant of NOC unjustifiably. It is also argued by learned senior counsel for the petitioners that merely because respondent no.2 had recommended the case of the petitioners for allotment of institutional land to the DDA and thereafter land was allotted by the DDA at concessional rates, the respondent no.2 cannot withhold the grant of no objection to the disaffiliation of petitioners 3 and 4 institution.

16. Dr. Singhvi has also argued that the approach of respondent no.2 in seeking to exercise supervision and control, inter alia, in respect of admission to these institutions post disaffiliation, so as to preserve 85% of the seats for students from Delhi Region, is a parochial approach. If such an approach of a State Government is to be sanctioned and accorded approval, it would not be possible to accord the status of deemed University to institutions of higher education, and research in any State within the Indian Union, since all such institutions would, more often than not, be located in one or the other State of the Indian Union.

17. Learned senior counsel for the petitioners have relied upon ***State of Tamil Nadu and Another V. Adhiyaman Educational & Research Institute and Others***, (1995), 4 SCC 104, ***Jaya Gokul Educational Trust V. Commissioner & Secretary To Government Higher Education Department, Thiruvananthapuram, Kerala State and Another***, (2000) 5 SCC 231 and ***Bharti Vidyapeeth (Deemed University) & Others v. State of Maharashtra & Anr.*** in support of the aforesaid submissions.

18. Counter affidavits were filed by the respondents in W.P.C.1995/2008. Respondent no.1, GGSIP University, in its counter affidavit states that the Central Government had earlier issued a notification dated 26.4.1996, on the advice of the UGC whereby various institutions of Bhartiya Vidyapeeth at Pune were declared as deemed to be University for the purpose of the UGC Act. It is argued that Bhartiya Vidyapeeth is not an institution for the purpose of the UGC Act. It is a trust registered under the Bombay Public Trust Act. The Central Government has not conferred the status of “deemed to be University” under Section 3 of the UGC Act upon Bhartiya Vidyapeeth, Pune. It is the 12 institutions mentioned in the notification dated 26.4.1996 which have been granted the status of “deemed to be University” under Section 3 of the UGC Act. Respondent no.1 submits that the notification dated 14.2.2007 issued by the Central Government and relied upon by the petitioners recites that petitioner no. 3 and 4 institutions “are included under the ambit of Bhartiya Vidyapeeth, deemed to be University, Pune as its constituent

institutions". It is also argued that "deemed to be University" institutions are only stand alone teaching institutions, and cannot have other constituent/affiliated institutions. This declaration is, on the fact of it incorrect and defective, since Bhartiya Vidyapeeth is not a "deemed to be University".

19. Reference is made to Statute 24 framed under Section 26(2) of the GGSIP University Act, 1998 which provides that no institution can be considered for affiliation with respondent no.1 University unless it submits no objection certificate issued by the State Government and is recognized by an appropriate authority. It is argued that for seeking affiliation, an institution requires no objection certificate from the State Government, for disaffiliation as well, a no objection certificate would be required by an affiliated institution. Further NOC has to be obtained from AICTE for change of University. It is also argued that the petitioner no.3 and 4 institutions were recommended for allotment of land at concessional rates, and such rates were allowed to be charged by the DDA because reservation in seats of upto 85%, in such institutions, was made for Delhi Region students. After disaffiliation this reservation of 85% seats for students of Delhi region will vanish. Reliance is also placed on the Act of 2007 and the Rules framed thereunder. It is argued that unaided self financing institutions of higher education are required to abide by the statutory provisions made thereunder.

20. It is stated that on 6.2.2007, a meeting was held in the office of the Principal Secretary to the Chief Minister, wherein it had been agreed that since land to most of the institutions had been granted by the DDA at concessional rates on the recommendations of the Government of NCT of Delhi, there is enough justification to regulate the fee being charged by these institutions. It was also decided that wherever the case for allotment of institutional land by the land owing agency i.e. DDA had been sponsored by the Government of NCT of Delhi, for an institution to be set up in Delhi on the premise that the institution would be affiliated with the respondent University, the institution cannot withdraw from the affiliation and go in for courses which are not so affiliated, or go in for a deemed University status or to become an off-campus centre of another University, or a deemed University. In such cases, the land which had been sponsored and allotted at concessional rate will either have to be surrendered, or market rate would have to be paid before such permission can be granted by the Government of NCT of Delhi.

21. Respondent no.2, Government of NCT of Delhi in their counter affidavit in W.P(C)No.1995/08 states that the petitioners had submitted an affidavit dated 2.8.1999 of the Principal, Bhartiya Vidyapeeth College of Engineering to the effect that the petitioner society would follow all the norms and guidelines of AICTE and the directions of the Government of NCT of Delhi including the criteria for admission/employment of qualified staff/governing body, fee structure etc. It is stated that in terms of the affidavit, the society had

undertaken to provide 85% seats to students from Delhi region, and only the remaining 15% seats could be filled on All India basis. This affidavit was furnished to seek the sponsorship of its case by the respondent Government to the DDA for allotment of land at concessional rates. Reference is also made to Section 5(2) of the Delhi University Act, 1922 and on that basis it is argued that the said provision prohibits educational institutions, apart from those affiliated to Delhi University and the respondent GGSIP University from being affiliated to any other University in the country, unless allowed by the Central Government by an order in writing. According to the respondents, no such order as envisaged under Section 5(2) of the Delhi University Act, 1922 has been passed by the Central Government.

22. The University Grants Commission in their counter affidavit filed in W.P.(C) No.1995/08 states that to consider the proposals seeking confirmation of “deemed to be University” status under Section 3 of the UGC Act, the UGC has framed guidelines which lay down the requirements and minimum eligibility criteria regarding the institution’s objectives, programmes, faculty, infrastructural facilities, financial viability etc. Clause 13 of the guidelines specifically provides that in institutions declared as deemed to be University, *“admissions shall be made on all India basis to the identical courses in all the deemed to be universities through a common entrance test conducted either by the UGC or by an institution/agency identified and approved by the UGC”*.

23. Reference is also made to the Office Memorandum dated 4.10.2004 issued by the Department of Secondary and Higher Education, Ministry of Home Resources Development, Government of India which, inter alia, provides that the deemed to be universities will have the option to participate in the All India Engineering Entrance Examination (AIEEE) conducted by the Central Board of Secondary Education (CBSE), or to conduct their own entrance examination and admit students in a fair and transparent manner. Deemed Universities and Central Universities willing to participate in AIEEE will give their option to the UGC which will forward the same to CBSE and Central Council Board. The State Government shall continue to hold their own common entrance tests for admissions in institutions within their States as before. This Office Memorandum further provides that all admissions in different approved quotas shall be made strictly on the basis of *inter se* merit based on common entrance tests as above. Similarly, in relation to the MCA programme, the Government of India has issued O.M dated 7.1.2005 whereby it was decided to dispense with All India MCA Common Entrance Test (AIMCET). Instead, the deemed Universities are permitted to conduct their own entrance examination and admit students in a fair and transparent manner. The UGC also relies upon the decision of the Supreme Court in ***Bhartiya Vidyapeeth (deemed University)*** (supra).

24. It is also stated that the students who would be enrolled in the deemed University shall be entitled to get their degrees from the same deemed University on successful completion of courses/programmes.

However, students who are enrolled with the institutions while they continue to be affiliated to another University will be examined and granted degree by the affiliating University on successful completion of the courses/programmes, which they are pursuing in the institutions. The UGC has therefore supported the stand of the petitioner.

25. In W.P.(C) No.3885/2008, counter affidavit to the writ petition has been filed by respondent no.2, Government of NCT of Delhi. The stand of respondent no.2 in its said counter affidavit is a mere repetition of the stand that it had taken in its counter affidavit filed in W.P.(C) No. 1995/2008. However, it is further stated that the Government of NCT of Delhi had taken up the issue with the Central Government with regard to the withdrawal of the notification dated 14.2.2007 declaring petitioner nos. 3 and 4 as constituent institutions of petitioner no.3, deemed to be University, so that they could continue to be affiliated with respondent no.1.

26. Entry 66 of the Union List in the VIIth Schedule to the Constitution empowers the Central Government to frame legislation on the subject of *"Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."* From the Preamble of the UGC Act, 1956, it is seen that this Act has been framed by the Parliament for the purpose of making *"provision for the co-ordination and determination of standards in Universities and for that purpose to establish the University Grants Commission."* The power of the State Government to legislate in respect of *"Education, including technical education, medical education and*

Universities” is derived from Entry 25 of the Concurrent List in the VIIth Schedule to the Constitution. This entry specifically limits the power of the State Government, inasmuch as, the said power is “*subject to the provisions of entries 63,64, 65 and 66 of List I.*” Even otherwise, by virtue of Article 246(2), the legislative power of the State with respect to any of the matters enumerated in List III i.e. the Concurrent List in the VIIth Schedule is subject to the power of the Parliament to make laws with respect to any of the matters enumerated in List I of the VIIth Schedule.

27. The UGC Act, having been legislated in 1956, it cannot be said that the source of the legislative authority of the Parliament to legislate the said Act related to Entry 25 in the Concurrent List as it now stands, since Entry 25 of the Concurrent List as it now stands came into being after the Forty Second Amendment to the Constitution w.e.f. 1.3.1977. Prior to the said constitutional amendment, the relevant entry was to be found in Entry 11 of the State List which read:

“Education including Universities subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III.”

28. Even if the UGC Act is now treated to fall within the scope of Entry 25 of the Concurrent List, the Parliament having legislated on the subject, by enacting the UGC Act, the State Government cannot seek to legislate, such that it results in conflict between the Central Act. For the same reason the State Government cannot, by its executive fiat, issue directions or frame guidelines which encroach upon the authority of the Central Government or the UGC derived from the UGC Act and the Rules/Regulations framed thereunder. Consequently the exercise

of its power by the State Government to legislate and/or to issue executive directions in respect of institutions of higher education, research and scientific and technical institutions impinging on the aspect of co-ordination and determination of standards in the said institutions would be ultra vires the Constitution and suffer from legislative and executive incompetence, if the same is not in consonance with the laws, Rules, Regulations and Guidelines framed by the Central Government or by a statutory body like the UGC, legislatively created in exercise of the power referable to Entry 66 of List I.

29. In ***Adhiyaman*** (supra), the Supreme Court answered the question *whether after the coming into force of the All India Council for Technical Education Act, 1987 (referred to as the “Central Act”), the State Government has power to grant and withdraw permission to start a technical institution as defined in the Central Act.* In terms of the G.O.M No.429 dated 17.4.1984 issued by the education, science and technical department of the State of Tamil Nadu, the respondent Adhiyaman institute made an application to seek permission to start a new engineering college under the self financing scheme without any financial commitment from the State Government. The State Government granted conditional permission to the respondent trust to start a private engineering college beginning with the academic year 1987-88 vide its order dated 9.6.1987. The respondent institute applied to the Madras University for affiliation which was granted temporarily on 21.11.1987 for the academic year 1987-88 for the first year course. The affiliation for the subsequent years was to be applied

for and obtained in each year. On the basis of a report prepared by a High Powered Committee appointed by the State Government to make an assessment of the functioning of such like institutions, the respondent institute was issued a show cause notice on 16.7.1989 to explain as to why permission granted by the Government to start the college should not be withdrawn. The Syndicate of the Madras University accepted the report of the High Powered Committee and resolved to reject the request for provisional affiliation for the academic year 1989-90 and also resolved to issue a show cause notice to the respondent as to why the provisional affiliation granted to it for the academic years 1987-88 and 1988-89 should not be cancelled. The University accordingly issued show cause notice to the respondent trust. On 26.7.1989, the request for granting provisional affiliation for the years 1989-90 for the first year, and also the request for provisional affiliation of second and third year courses for 1989-90 was rejected. The aforesaid action was successfully challenged by the respondent by filing writ petitions before the Madras High Court.

30. The Supreme Court while examining the power of the State Government and the Madras University respectively to derecognize and disaffiliate the engineering college dealt with the larger issue, namely, the conflict between the Central Act on the one hand and the State Act and the Rules made thereunder on the other hand viz. the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules made thereunder and the Madras University Act, 1923 and the Statutes and Ordinances made thereunder.

31. Upon examination of the various provisions of the AICTE Act, the Supreme Court concluded that the provisions of the said Act including its Preamble make it abundantly clear that the Council has been established under the Act for co-ordinated and integrated development of technical, educational system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system. The Council is further to evolve suitable appraisal systems incorporating such norms and mechanisms in enforcing their accountability. It is required to provide guidelines for admission of students and has power to discontinue grants and to derecognize the institutions where norms and standards laid down by it and directions given by it from time to time are not followed. The Supreme Court observed:-

“..... What is further important to note is the subject covered by this statute is fairly within the scope of Entry 66 of List I and Entry 25 of List III. Further, these regulations along with other regulations made by the Council and the rules to be made by the Central Government under the Act are to be laid before the Parliament. Hence, on the subjects covered by this statute, the State could not make a law under Entry 11 of List II prior to Forty-Second Amendment nor can it make a law under Entry 25 of List III after the Forty-Second Amendment. If there was any such existing law immediately before the commencement of the Constitution within the meaning of Article 372 of the Constitution, as the Madras University Act, 1923, on the enactment of the present Central Act, the provisions of the said law if repugnant to the provisions of the Central Act would stand impliedly repealed to the extent of

repugnancy. Such repugnancy would have to be adjudged on the basis of the tests which are applied for adjudging repugnancy under Article 254 of the Constitution.”

32. The Supreme Court then proceeded to examine the provisions of the State law namely Tamil Nadu Private Colleges (Regulation) Act. It was observed that Section 1 (3) of the said Act makes it applicable to all private colleges. It could also be made applicable to colleges imparting technical education, including engineering colleges. The Supreme Court observed that the provisions of the State Act show that if it is made applicable to the technical institutions, it will overlap and will be in conflict with the provisions of the Central Act in various areas, some of which enumerated by the Court. In para 27 the Supreme Court observed:

“27. The provisions of the State Act enumerated above show that if it is made applicable to the technical institutions, it will overlap and will be in conflict with the provisions of the Central Act in various areas and, in particular, in the matter of allocation and disbursal of grants, formulation of schemes for initial and in-service training of teachers and continuing education of teachers, laying down norms and standards for courses, physical and institutional facilities, staff pattern, staff qualifications, quality instruction assessment and examinations, fixing norms and guidelines for charging tuition and other fees, granting approval for starting new technical institutions and for introduction of new courses or programmes, taking steps to prevent commercialization of technical education, inspection of technical institutions, withholding or discontinuing grants in respect of courses and taking such other steps as may be necessary for ensuring compliance of the directions of the Council, declaring technical institutions at various levels and types fit to receive grants, the constitution of the Council

and its Executive Committee and the Regional Committees to carry out the functions under the Central Act, the compliance by the Council of the directions issued by the Central Government on questions of policy etc. which matters are covered by the Central Act. What is further, the primary object of the Central Act, as discussed earlier, is to provide for the establishment of an All India Council for Technical Education with a view, among others, to plan and coordinate the development of technical education system throughout the country and to promote the qualitative improvement of such education and to regulate and properly maintain the norms and standards in the technical education system which is a subject within the exclusive legislative field of the Central Government as is clear from Entry 66 of the Union List in the Seventh Schedule. All the other provisions of the Act have been made in furtherance of the said objectives. They can also be deemed to have been enacted under Entry 25 of List III. This being so, the provisions of the State Act which impinge upon the provisions of the Central Act are void and, therefore, unenforceable. It is for these reasons that the appointment of the High Power Committee by the State Government to inspect the respondent-Trust was void as has been rightly held by the High Court.”

33. The Supreme Court then proceeded to examine the provisions of Madras University Act. It observed that a comparison of the Central Act and the Madras University Act shows that as far as institutions imparting technical education are concerned, there is a conflict between and overlapping of the functions of the Council and the University. After enumerating the various matters on which the Central Act and the University Act were found overlapping, the Supreme Court observed:

“30. Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not the

University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the Engineering Colleges. As has been pointed out earlier, the Central Act has been enacted by the Parliament under Entry 66 of the List I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List III. The provisions of the University Act regarding affiliation of technical colleges like the Engineering Colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act.”

34. While rejecting the argument that the State Government and the Madras University has the power to derecognize or disaffiliate an institution on the ground that it does not fulfill the higher requirements under the State Act, although it fulfills the requirements under the Central Act, the Supreme Court observed:

“34. So also, when the power to recognise or derecognise an institution is given to a body created under the Central Act, it alone can exercise the power and on terms and conditions laid down in the Central Act. It will not be open for the body created under the State Act to exercise such power much less on terms and conditions which are inconsistent with or repugnant to those which are laid down under the Central Act.”

35. The earlier decision of the Supreme Court in ***The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar*** 1963

Supp (1) SCR 112; AIR 1963 SC 703 was referred to by the Supreme Court. In **Krishna Ranganath Mudholkar** (supra), the Supreme Court observed:

“ The fact that the Union has not legislated, or refrained from legislating to the full extent of its powers does not invest the State with the power to legislate in respect of a matter assigned by the Constitution to the Union. It does not, however, follow that even within the permitted relative fields there might not be legislative provisions in enactments made each in pursuance of separate exclusive and distinct powers which may conflict. Then would arise the question of repugnancy and paramountcy which may have to be resolved on the application of the "doctrine of pith and substance" of the impugned enactment. The validity of the State legislation on University education and as regards the education in technical and scientific institutions not falling within Entry 64 of List I would have to be judged having regard to whether it impinges on the field reserved for the Union under Entry 66. **In other words, the validity of State legislation would depend upon whether it prejudicially affects co-ordination and determination of standards, but not upon the existence of some definite Union legislation directed to achieve that purpose. If there be Union legislation in respect of co-ordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of Article 254(1); even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the Union field would still be invalid.**”
(emphasis supplied)

36. The Supreme Court examined various other decisions rendered by it, and in Para 41, inter alia, observed as follows:

“41. What emerges from the above discussion is as follows:

[1] The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

[ii] To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Center under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

[iii] If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of Clause [2] of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

[iv] Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Center under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

[v] When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Center or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon

Entry 66 of the Union List or make a law which is repugnant to the Central law.

[vi] However, when the situations/ seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the central authority, the State authorities act illegally.”

37. In ***Jaya Gokul Educational Trust*** (supra) the appellant institution was granted conditional approval for establishing an engineering college by the AICTE. The appellant made an application to the State Government for permission to start the college. Even though the concerned University forwarded the case of the appellant for grant of affiliation, the State Government refused permission to the appellant to establish the institution. The Supreme Court formulated the two issues arising for its consideration in the following terms:

“(1) Whether in view of the judgment of this Court in *State of Tamil Nadu and Anr. v. Adhiyaman Educational & Research Institute and Ors.* 1 (1995) 4 SCC 104, the provisions of the AICTE Act, 1987 occupied the field and it was not necessary to obtain the further approval of the Government or other authority? Whether any statute in the State of Kerala if it required such approval, would be void?

(2) Whether the orders of rejection passed by the State Government were valid on merits and whether the University should have granted further orders to continue the affiliation solely on the basis of AICTE permission?”

38. After examining the provisions of the AICTE Act as well as the State Act and the Regulations made thereunder, the Supreme Court observed:

“22. As held in T.N. case, the Central Act of 1987 and in particular, Section 10(K) occupied the field relating the “grant of approvals” for establishing technical institutions and the provisions of the Central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular statute 9(7), they merely required the University to obtain the “views” of the State Government. That could not be characterised as requiring the “approval” of the State Government. If, indeed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(K) of the AICTE Act, 1987 and would again be void. As pointed out in the T.N. case there were enough provisions in the Central Act for consultation by the Council of the AICTE with various agencies, including the State Governments and the Universities concerned. The State Level Committee and the Central Regional Committees contained various experts and State representatives. In case of difference of opinion as between the various consultees, AICTE would have to go by the views of the Central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the Universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in the T.N. case it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for “approval” of the State Government.

23. Thus we hold, in the present case that there was no statutory requirement for obtaining the approval of the State Government and even if there was one, it would have been repugnant to the AICTE Act. The University statute 9(7) merely required that the “views” of the State Government be obtained before granting affiliation and this did not amount to obtaining “approval”. If the University statute required “approval”, it would have been repugnant to the AICTE Act. Point 1 is decided accordingly.”

39. While dealing with the issue as to whether the State Governments action in refusing to grant permission should be sustained, the Supreme Court observed that in view of the decision in the case of **Adhiyaman** (supra) it is obvious that there is no need to approach the State Government for its approval for starting the engineering college. There is no power vested in the State under any State Law to grant approval and even if it is so vested, it would have been void. In view of the decision in **Adhiyaman** (supra), the court held that this ground of repugnancy alone would be sufficient to quash the State Government’s letter refusing to give their approval.

40. The State Government also sought to rely upon a policy decision not to sanction any affiliation to such colleges either in the private sector or in the public sector for the year concerned. While rejecting the argument based on the said policy of the State Government, the Supreme Court observed:

“27. The so called “policy” of the State as mentioned in the counter affidavit filed in the High Court was not a ground for refusing approval. In *Thirumuruga Kirupananda and Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust v. State of T.N.* which was a case relating to Medical Education and

which also related to the effect of a Central Law upon a law made by the State under Entry 25 List III, it was held (at SCC p. 35 para 34) that the "essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone".

Therefore, the State could not have any "policy" outside the AICTE Act and indeed if it had a policy, it should have placed the same before AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and regulations had been followed under Regulation 8(4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. We may however add that if thereafter, any fresh facts came to light after an approval was granted by the AICTE or if the State felt that some conditions attached to the permission and required by the AICTE to be complied with, were not complied with, then the State Government could always write to AICTE, to enable the latter to take appropriate action."

41. These decisions have subsequently been followed by the Supreme Court in ***State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors.*** (2006) 9 SCC 1. Extracts of paragraphs 57 & 63 being relevant, are reproduced hereinbelow:

"57. It is thus clear that the Central Government has considered the subject of Secondary Education and Higher Education at the national level. The Act of 1993 also requires Parliament to consider Teacher Education System "throughout the country". NCTE, therefore, in our opinion, is expected to deal with applications for establishing new B.Ed. colleges or allowing increase in intake capacity, keeping in view 1993 Act and planned and co-ordinated development of teacher-education system in the country. **It is neither open to the State Government nor to a University to consider the local conditions or apply 'State policy' to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government,**

therefore, was contrary to law and has rightly been set aside by the High Court.”

“63. As per the scheme of the Act, once recognition has been granted by NCTE under Section 14(6) of the Act, every University ('examining body') is obliged to grant affiliation to such institution and Sections 82 and 83 of the University Act do not apply to such cases.” (emphasis supplied)

42. In **Bhartiya Vidyapeeth** (supra), upon the issuance of a notification by the Central Government on the advice of the UGC under Section 3 of the UGC Act, declaring Bhartiya Vidyapeeth as a deemed University, the same conflict arose as in the present case. Bhartiya Vidyapeeth allowed admissions to be made in the medical, engineering and dental colleges upto the academic year 1995-96 under the stream of the common entrance test conducted by the State authorities. Thereafter, they decided to keep themselves outside the scope of the State authority. As Bhartiya Vidyapeeth was sought to be reined in by the State to follow the admission process controlled by the CET authority of the State for the year 1996-97, they challenged the admission rules before the High Court. The High Court dismissed the writ petition. The Supreme Court reversed that decision. The Supreme Court referred to its earlier decisions in **Krishna Ranganath Mudholkar** (supra), and **Adhiyaman** (supra), wherein the scope of the expression “coordination” used in entry 66 of the Union had been considered. It also referred to its earlier decision in **Preeti Srivastava (Dr.) v. State of M.P.** (1999) 7 SCC 120 to hold that the process of admission falls within the scope of determination of standards. It referred to its decision **Krishna Ranganath Mudholkar** (supra) for

the proposition that the entire gamut of admission will fall within the coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Therefore, the aspect of admission of students in colleges necessarily stands excluded from the domain of the State Government. The Supreme Court analysed the provisions of the UGC Act and the Regulations and guidelines framed by it to examine the boundaries within which the State Governments cannot step. I have the advantage of that discussion, which is also relevant for the present purpose. I, therefore, reproduce the same as below:-

“18. Under Section 3 of the Act, deemed University status will be given to those institutions that for historical reasons or for any other circumstances are not Universities and yet are doing work of a high standard in specialised academic field compared to a University and that granting of a University status would enable them to further contribute to the course of higher education which would mutually enrich the institution and the University system. Guidelines for considering proposals for declaring an institution as deemed to be University were also issued by the UGC. Under the said guidelines aspects relating to admission was specifically entrusted with the UGC and admission could be made only through a common entrance test on All-India basis. Such an exercise was intended to maintain a uniform standard and level of excellence. As we have pointed out, admission plays a crucial role in maintaining the high quality of education. And for the proper maintenance of academic excellence, as intended by the UGC Act, admissions to deemed University has to be made under the control of UGC. This further goes to show that admission procedure to a deemed to be University is fully occupied by Entry 66 of List I and the State cannot exercise any powers over admission procedure.

19. Therefore, the State could not have enacted any legislation in that regard. If that is so, neither in exercise of executive power under Article 162 of the Constitution which extends only to the extent of legislative power nor in respect of power arising under

the Maharashtra State Universities Act, such rules could have been prescribed. To the extent the High Court holds to the contrary, we set aside the order of the High Court.

20. At this stage we must strike a note of caution in regard to institutions which are exclusively owned by the Government and in respect of institutions which stand affiliated to the University or in respect of institutions to which either affiliation or grant is made. Such institutions may be controlled to an extent by the State in regard to admission as a condition of affiliation or grant or owner of the institutions. But those conditions, again if they are in respect of the institutions of higher education must apply the standard prescribed by the statutory authorities such as U.G.C., Medical Council, Dental Council, AICTE, governed by Entry 66 of List I of the Constitution.

21. Though arguments have been advanced before us that even if some area is covered under Entry 25 in relation to admission, inasmuch as the power has been exercised under Entry 66 which in pith and substance falls within that scope the State legislation to that extent has to yield to Central legislation. In this case it is unnecessary to examine this aspect of the matter as the institution in question entirely falls within the scope of the U.G.C. Act. UGC has prescribed the norms of admission also which include Fees that can be collected from students and specifically debar collection of Capitation fee. The University or the State Government has no role to play either in the matter of recognition, affiliation or making any financial grants to exercise powers either as condition thereto or in exercise of Entry 25 of List II.

22. However, we may advert to the various provisions of the U.G.C. Act. The Act provides for various aspects which would be looked after. Section 12 relates to Powers and Functions of the University Grants Commission under which it shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in universities and for the purpose of performing its functions under the Act. It may have other powers, including power to establish, in accordance with the regulations made under the Act, institutions for providing common facilities, services and programmes for a group of universities or for the

universities in general and maintain such institutions or provide for their maintenance by allocating and disbursing out of the fund of the Commission such grants as the Commission may deem necessary.

23. The Commission is also authorised to frame regulations under Section 26 of the UGC Act. Section 26(1)(f) in particular defines the minimum standards of instruction for the grant of any degree by any University and regulating the maintenance of standards and the co-ordination of work or facilities in universities and to regulate the establishment of institutions referred to in Clause (ccc) of Section 12 and other matters relating to such institutions. It also provides for fees to be charged and scales of fees in accordance with which fees may be charged. It is also empowered under Section 25 to frame rules for carrying out the purposes of the Act in general and in particular any function that may be performed under Section 12 and additional functions which may be performed by the Commission under Clause (j) of the Act.

24. Learned counsel appearing for the State very strenuously urged that the U.G.C. Act is only for the purpose of making grants to various institutions governed by and it was not an authority which would create a University and give a special status to it so as to keep it out of the control of the University or the State where it is located. This argument ignores the provisions of the enactment and particularly those to which we have adverted to just now, for such institutions are recognised or granted deemed status for the maintenance of the standards in the institutions and for coordinating the teaching in universities which is a higher purpose than merely giving grants and with that object, the enactment is made. We do not think it could be confined only to making of grants as has been contended by the respondents. This argument, therefore, needs to be rejected.”(emphasis supplied).

43. The Supreme Court also dealt with a similar submission advanced by the State of Maharashtra, as has been advanced by the Government of NCT of Delhi in the present case, namely, that the institutions had originally been started in the State of Maharashtra to cater to the local needs and, therefore, now if they are being given deemed University status, they would no longer serve the local needs,

such need having been recognized by the Government by granting an essentiality certificate. This argument was rejected by the Supreme Court in the facts of that case.

44. The distinction brought out by learned counsel for the respondent State is that whereas in ***Bhartiya Vidyapeeth*** (supra) the State of Maharashtra had itself strongly recommended the case of Bhartiya Vidyapeeth to be granted the status of a deemed University when it was so consulted, in the present case, before making the declaration under Section 3 of the UGC Act in respect of petitioner nos.3 & 4, the Government of NCT of Delhi was not consulted and no consent has been given by the State Government to the issuance of the declaration under Section 3 of the UGC Act in respect of petitioner Nos.3 & 4. Para 26 of the decision in ***Bhartiya Vidyapeeth*** (supra) is particularly relied upon by learned counsel for the respondent State, which reads as under: -

“26. He further highlighted that these institutions originally started in the State of Maharashtra to cater to the local needs and therefore now if they are being given deemed status it will no longer serve the local needs, such need having been recognized by the Government by granting essentiality certificate. It would not be appropriate for the State to contend that even though the institution has now attained the deemed University status it is not beyond the clutches of the State in the matter of admissions of the students to such colleges as before granting of the deemed University status, the State was indeed consulted and the State conveyed its strong recommendation for grant of such status. Particularly when such status has been granted after consulting the Government concerned, we do not think that such argument on the basis of local needs should be accepted. Faced with this position, learned counsel, of course, stated that the problem posed by him may have to be attended to by the authority concerned.”

45. The question that, therefore, arises for my consideration is whether, the fact that the Government of NCT of Delhi had not been consulted, and that it had not given its consent or recommendation for the issuance of a notification under Section 3 of the UGC Act in respect of petitioner Nos.3 & 4, would entitle the Government of NCT of Delhi to refuse to grant its NOC for disaffiliation of petitioner Nos.3 & 4 institutions from the respondent No.1 University.

46. The power to make a declaration under Section 3 of the UGC Act thereby conferring the status of a deemed University on an institution of higher education vests in the Central Government. The said power is exercised on the advice of the UGC. As noticed by the Supreme Court in ***Bhartiya Vidyapeeth*** (supra), deemed University status is given to those institutions that for historical reasons, or for any other circumstances are not universities and yet are doing work of a high standard in specialized academic field comparable to a University. Such a status is granted to enable the institution to further contribute to the course of higher education which would mutually enrich the institution and the University system. Section 3 of the UGC Act does not mandate that the Government of the State in which the institution (which is proposed to be declared as a deemed University under Section 3 of the UGC Act) is situated has to be consulted, or that the State Government has to give its consent before such a declaration under Section 3 is made in respect of such an institution. It is entirely the decision of the Central Government on the advice of the UGC to make a declaration under Section 3, and the State Government has no

role to play in that respect. This being a position, in my view, it makes no difference whether or not the State Government has been consulted or its recommendation sought in respect of an institution situated within the State, before making a declaration under Section 3 of the UGC Act.

47. Once a declaration under Section 3 has been made, the State Government on account of its own local and parochial considerations cannot prevent the flight of the institution from the State level to the National level. The fact that the State may have genuine concerns (keeping in view the interests of the local population) when an institution gets transformed from a mere locally affiliated institution to a deemed University is a different matter. The State may be able to justify extracting its pound of flesh from an institution, which, to begin with receives the patronage of the State Government when it is established and also follows the policies and guidelines framed by the State Government, but later is declared to be a deemed University under Section 3 of the UGC Act and is therefore freed from the clutches of the State Government in the matter of, inter alia, allocation of seats. However, once a declaration is made under Section 3, the State Government cannot seek to block the declaration from taking effect, and continue to exercise its authority over the institution in respect of matters which are specifically provided for under the UGC Act, and by the UGC under its regulations and guidelines.

48. I also find merit in the submission of learned senior counsel for the petitioners that the approach of the respondent State Government

is parochial, inasmuch as the impugned decision of the respondent State Government is coloured by its stated concern for the citizens of Delhi region and the respondent State Government is ignoring the constitutional scheme and overstepping the limits on its own authority and jurisdiction. If the approach of the respondent State Government were to be sanctioned, it would mean that no institution of higher education and learning which has attained a sufficiently high level of excellence in the opinion of the Central Government and the UGC, anywhere in the country, would be entitled to be declared as a deemed University under Section 3 of the UGC Act, since every such institution would be situated within the boundaries of one or the other "constituent" States/Union Territories of the Indian Union. The whole objective of recognizing institutions of higher education and learning (which have attained excellence and high standard in specialized academic fields comparable to a University) as deemed University, is to enable such an institutions to further contribute to the course of higher education which would mutually enrich the institution and the University system. This objective would be defeated if, on such like considerations, the institutions are permitted to be held back by the State Government on account of its own local concerns. An institution in respect of which a declaration under Section 3 of the UGC Act is made, attains the freedom and flexibility enjoyed by a University, particularly the right of conferring or granting its own degrees which may be specified by the UGC by notification in the Official Gazette with the approval of the Central Government (see Section 22 of the UGC Act). The State Government cannot, on account of its own local and

parochial considerations prevent the transformation of an institution within the State into a deemed University, when the Central Government, on the advice of the UGC forms the opinion that such an institution for higher education is deserving of being treated as a deemed University under Section 3 of the UGC Act. An institution which is declared as a deemed University serves not only the interest of the citizens of the State in which it is located, but also serves a higher purpose, namely, of strengthening the University System in the country and of rendering higher education and awarding recognized degrees of its own, to students selected on the basis of a competitive examination on All India basis.

49. The Supreme Court in ***Dr. Pradeep Jain and Others v. Union of India and Others***, (1984) 3 SCC 654 commented on a similar parochial approach of the State Governments when they sought to make wholesale reservations on the basis of “domicile” or residence requirement within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the University or the States excluding all other students not satisfying this requirement, regardless of merit. The Court held this approach to be unconstitutional and observed:-

“10.....Now, the primary imperative of Article 14 is equal opportunity for all across the nation for education and advancement and, as pointed out by Krishna Iyer, J. in *Jagdish Saran v. Union of India*, (1980) 2 SCR 831 “this has burning relevance to our times when the country is gradually being ‘broken up into fragments by narrow domestic walls’ by surrender to narrow parochial loyalties.” What is fundamental, as an enduring value of our

polity is guarantee to each of equal opportunity to unfold the full potential of his personality. Any one anywhere, humble or high, agrestic or urban, man or woman, whatever be his language of religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, speciality or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. It is axiomatic, that talent is not the monopoly of the resident of any particular State; it is more or less evenly distributed and given proper opportunity and environment, every one has a prospect of rising to the peak. What is necessary is equality of opportunity and that cannot be made dependent upon where a citizen resides. If every citizen is afforded equal opportunity, genetically and environmentally, to develop his potential he will be able in his own way to manifest his faculties fully leading to all round improvement in excellence. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set up. Moreover, it would be against national interest to admit in medical colleges or other institutions giving instruction in specialities, less meritorious students when more, meritorious students are available, simply because the former are permanent residents or residents for a certain number of years in the State while the latter are not, though both categories are citizens of India.

Exclusion of more meritorious students on the ground that they are not resident within the State would be likely to promote sub-standard candidates and bring about fall in medical competence, injurious in the long run to the very region.....”

50. In ***Bhartiya Vidyapeeth*** (supra) the Supreme Court shut out the argument of the State of Maharashtra with regard to the local needs within the State by confronting the State of Maharashtra with its own strong recommendation for grant of a deemed University status to Bhartiya Vidyapeeth. That cannot be taken to mean that without the consent or recommendation of the State Government, the declaration under Section 3 of the UGC Act cannot be made, or that the State would be entitled to enforce its own directions and regulations framed under a local law to regulate the functioning of the deemed University institutions of higher education.

51. The submission of learned counsel for the respondent State that the notification dated 14.02.2007 is conditional upon the disaffiliation of petitioner Nos.3 & 4 from respondent No.1 University, in my view, is fallacious. A perusal of the notification dated 14.02.2007 shows that the same is clear and categoric, inasmuch as, it states that “*the Central Government on the advice of the UGC do hereby declare that the following two institutions are included under the ambit of Bhartiya Vidyapeeth deemed to be University Pune as its constituent institutions*”. The notification does not state that the said declaration “*is subject to*” the decision of the State Government or the respondent University whether or not to grant disaffiliation to petitioner Nos.3 & 4. The question left undetermined by the said notification is not whether

petitioner Nos.3 & 4 would ultimately be permitted to enjoy the status of a deemed University by respondent Nos. 1 & 2. The only question left undetermined is about the timing of the said declaration taking effect. This is also clear from clause 5 of the said notification which lays down the conditions subject to which the declaration is made. Sub-clause (c) thereof states that “the deemed to be University” institute shall take immediate steps for disaffiliation of the institutions concerned from the respondent University. There is no condition to be found in this notification to show that the declaration is subject to the grant of approval/No Objection Certificate by the Government of NCT of Delhi.

52. The purpose of declaring petitioner Nos.3 & 4 as deemed University from the date of disaffiliation of these institutions from respondent No.1 is not difficult to fathom. As petitioner Nos.3 & 4 institutions have been affiliated with respondent No.1 since their inception, the sudden disaffiliation, with immediate effect when the notification dated 14.02.2007 was issued would have caused hardship to, and confusion amongst the students and prospective candidates seeking admission to petitioner Nos.3 & 4 institutions. The intent of the Central Government while issuing the notification dated 14.02.2007 becomes clear upon perusal of sub-Clauses (d) & (e) of Clause 5, which reads as follows:

“(d) Bharati Vidyapeeth shall award degrees, etc in respect of the courses run by the institutions mentioned in para 1 of the notification only to those students who are admitted/enrolled with them subsequent to the date of this notification.

- (e) As for those students who are already enrolled with the institutions mentioned in para 1 of the notification, prior to the date of this notification, the present affiliating University viz. Guru Gobind Singh Indraprastha University, Delhi shall have to agree to examine and grant degrees to them on successful completion of the courses/programmes they are pursuing in these institutions presently.”

53. From the aforesaid, it is clear that the students admitted to the petitioner Nos.3 & 4 institutions from the date of disaffiliation, would be awarded degrees by Bhartiya Vidyapeeth, while those students who were admitted to the courses run by the said petitioner institutions while it continues to remain affiliated with respondent No.1 University would complete their courses/programmes as prescribed by respondent No.1, undertake the examinations conducted by respondent No.1 and be awarded degrees by respondent No.1 University.

54. Though I agree with the interpretation put forth by the respondents to Section 3 of the UGC Act, that the said Section postulates the conferment of deemed University status on institutions and not on a Trust or Society which manages such institutions, in my view, the interpretation sought to be given to the notification dated 14.02.2007 issued by the Central Government under Section 3 of the UGC Act is not correct. The Central Government issued a notification dated 26.04.1996 under Section 3 of the UGC Act, whereby 12 specific institutions of Bhartiya Vidyapeeth, Pune were declared to be deemed universities. It was not that Bhartiya Vidyapeeth, Pune, the registered

trust was declared to be a deemed University and by virtue of that declaration the 12 institutions being run by it came to be declared as deemed University. Similarly, by the notification dated 14.02.2007 the declaration made by the Central Government is to the effect that petitioner Nos.3 & 4 have also been declared to be deemed universities for the purpose of the UGC Act. The notification, no doubt, could have been better worded and does seem to suggest that Bhartiya Vidyapeeth, Pune, is a deemed University having constituent institutions to which petitioner Nos.3 & 4 have now been added as constituent institutions. However, the intent with which, and the purpose for which the said notification has been issued leaves no manner of doubt that the same has been issued in exercise of statutory power, derived from Section 3 of the UGC Act, which power is to declare institutions for higher education as deemed universities. Pertinently the UGC also issued a notification on 13.4.2007 in tune with the notification dated 14.2.2007 issued by the Central Government. This shows that there was sufficient compliance of the requirements of Section 3 of the UGC Act while issuing the notification dated 14.2.2007 declaring petitioner nos. 3 and 4 as deemed universities. I am, therefore, of the view that the poor phraseology used in the notification dated 14.02.2007 does not impinge on the declaration of petitioner Nos.3 & 4 as deemed University under Section 3 of the UGC Act.

55. No doubt the petitioners had submitted an affidavit dated 02.08.1999 with the respondent State Government, inter alia, affirming:

“1. That the society will follow all the norms/guidelines of AICTE and directions of the Govt. of Delhi including criteria for admission/employment of qualified staff/governing body/ fee structure etc.”

“4. The society/institute shall charge students, fee not exceeding the amount stipulated by the AICTE/Directorate of Training and Technical Education, as applicable.”

56. It is also a fact that the respondent State Government had conveyed its decision to recommend the case of the petitioners for allotment of 5 acres of land to the DDA for setting up the institutions wherein substantially the same conditions, as aforesaid, were reiterated. While making the recommendation of the petitioners' case for allotment of land on 02.08.1999 to the DDA, once again the same conditions, apart from others, were reiterated. Based on the said recommendations from the respondent State Government, the DDA issued allotment letter to the petitioners on 15.10.1999 making allotment of land measuring 14862.35 sq. meters. However, the aforesaid conditions were not included amongst the various conditions imposed by the DDA while making the said allotment of land. I may also refer to the DDA (Disposal of Nazul Land) Rules 1981 (as in force prior to their amendment in the year 2006), whereunder the allotment of land was made by the DDA to the petitioners. Rule 5 enables the DDA to allot nazul land to, inter alia, colleges and universities for remunerative, semi-remunerative or un-remunerative purposes at the

premia and ground rent at such rates as the Central Government may determine from time to time. Rule 20 states that no allotment of nazul land to public institutions referred to Rule 5 shall be made unless:

“(a) according to the aims and objects of that public institution,

(i) it directly subserves the interests of the population of the Union Territory of Delhi;

(b)

(c)

(d)

(e) allotment to such institution is sponsored or recommended by a Department of the Delhi Administration or a Ministry of the Central Government.”

57. So far as condition Nos. (a) (i) above is concerned, it is clear that the petitioner institutions satisfied the aforesaid condition prescribed in the Nazul Land Rules inasmuch as, when allotted was sought and made, these institutions were directly subserving the interest of the population of the NCT of Delhi. The allotment having fructified into a perpetual lease would thereafter be governed by the terms of the lease. It is nobody’s case that the petitioner institutions upon being declared as deemed universities have breached any term of the perpetual lease executed by the DDA. If it were so, the DDA would not have granted its no objection to petitioner nos. 3 and 4 upon becoming deemed universities.

58. From condition No. 5 (e) above it follows that the recommendation from the respondent State Government, or in the alternative, of the concerned department of the Central Government was essential to enable the petitioners to seek allotment of Nazul land

under Rule 5 of the DDA (Nazul Land) Rules. To obtain the sponsorship/recommendation of its case, the petitioners furnished an undertaking to *“follow all norms/guidelines of AICTE and directions of the Government of Delhi including criteria for admission/ employment of qualified staff/governing body/fee structure etc.”* and that the petitioner institutions *“shall charge students, fee not exceeding the amount stipulated by the AICTE/Directorate of Training and Technical Education, as applicable”*. Without the aforesaid undertaking the respondent State Government may not have recommended/ sponsored the case of the petitioners for allotment of nazul land by the DDA.

59. The undertaking furnished by the petitioner, however, has to be understood in the light of the situation as it existed when the same was furnished. At the relevant time, the petitioner Nos.3 & 4 institutions were being established as institutions affiliated to respondent No.1 University primarily to cater to the local needs of the citizens of Delhi region. The undertaking given by the petitioners can possibly not be interpreted to mean that the petitioners undertook to continue to remain bound by the aforesaid undertaking in the eventuality of their being declared as deemed universities under Section 3 of the UGC Act at a later point of time. Even if the petitioners had furnished an undertaking to the effect that they would continue to remain so bound irrespective of their being declared as deemed universities under Section 3 of the UGC Act, such an undertaking would have been in the teeth of Entry 66 of the Union List and the UGC Act and the Guidelines, Rules and Regulations framed by

the UGC. By adopting such a process the respondent State Government could not have nullified the effect of the UGC Act, the Rules, Regulations and Guidelines framed by the UGC. Once the petitioner Nos.3 & 4 institutions are declared as deemed universities, the said undertaking no longer remains enforceable against them after their disaffiliation takes effect. These undertakings were relevant and are enforceable only till so long as the petitioner institutions remain as mere institutions affiliated to respondent No.1 University.

60. So far as the DDA is concerned, as noticed hereinabove in the allotment letter issued by it, the DDA has not imposed any such condition as was stipulated by the respondent State Government in its letter of recommendation. Moreover, admittedly the DDA vide letter dated 17.10.2007 has intimated its no objection to petitioner Nos.3 & 4 being declared as deemed University subject to the petitioners furnishing an undertaking that they will abide by the terms and conditions of the allotment letter as well as the lease deed.

61. Therefore, in the light of the aforesaid discussion, if the respondent State Government indeed has a legal right to demand the petitioners to pay any amount as compensation on account of the fact that petitioner Nos.3 & 4 have been declared as deemed Universities and are therefore no longer in a position to abide by their undertaking given to the respondent State Government, it shall be open to the respondent State Government to take such measures as it may deem appropriate. However, as aforesaid, the effect of the declaration of the petitioner no.3 and 4 institutions as deemed universities by the Central

Government cannot be whittled down. In my view, the insistence by the respondent State Government upon extracting the undertaking as set out in para 7 above, as a condition for issuance of its NOC for disaffiliation of respondent Nos.3 & 4 from respondent No.1 University, is in direct conflict with the powers of the UGC to frame and enforce regulations and guidelines that it may have framed. The same is impermissible in law, and the respondent State Government cannot refuse to give its NOC on account of the petitioners refusal to or inability in furnishing the demanded undertaking.

62. Reliance placed by the respondents on the Act of 2007 is also of no avail in the facts of the present case. The Act of 2007 cannot be taken to be applicable to such institutions, which by themselves have acquired the status of deemed University. "Institution" under the Act of 2007 is defined to mean *"a college or institution, aided or unaided, affiliated to a University, imparting education"* in the various disciplines enumerated in Section 3(c) of the said Act. Therefore, a deemed University cannot be considered to be an "institution" within the meaning of the Act of 2007. Moreover, the Act of 2007, as is evident from its preamble itself seeks to *"provide for prohibition of capitation fee, regulation of admission, fixation of non-exploitative fee, allotment of seats to Scheduled Castes, Scheduled Tribes and other socially and economically backward classes and other measures to ensure equity and excellence in professional education in the National Capital Territory of Delhi and for matters connected therewith or incidental thereto"*. Section 5 seeks to prohibit the collection and

charging of capitation fee for granting admission or promotion to students by institutions. Section 10 provides that no institution shall collect any fee over and above the fee determined by the fee. Regulatory Committee and notified by the Government of the NCT of Delhi. Section 13 provides that an institution shall make admission through a Common Entrance Test to be conducted by the designated agency in the prescribed manner. Under Section 14, any admission made in contravention of the provisions of the Act or the Rules made thereunder shall be void. Under Section 17, the Government is empowered to issue directions from time to time to any institution, consistent with the Act and the rules made thereunder, to carry out the purpose of the Act and to give effect to the provisions of the Act and the Rules or orders made thereunder. The management of the institution is bound to comply with such directions. Section 18 creates offences and penalties.

63. The provisions of the Act of 2007, it would therefore be seen, are clearly overlapping with the UGC Act, the Rules and Regulations and guidelines framed thereunder. Therefore, even if it were to be assumed that petitioner nos. 3 and 4 could be considered as “institutions” within the meaning of Section 3(l) of the Act of 2007, upon their being declared as deemed Universities, the petitioner institution would not be bound by the provisions of the Act of 2007 in any event, in view of it being a State enactment entrenching upon the areas covered by a Central Law. No doubt, the Act of 2007 would continue to operate in respect of other institutions which fall within the

definition of the expression 'institution' contained in Section 3(l) of the Act of 2007.

64. So far as the so-called policy decision taken in the office of the Principal Secretary to the Chief Minister on 6.2.2007 is concerned, in my view the same cannot be sustained since the same is incompetent and in the teeth of Entry 66 of the Union List, the UGC Act and the Rules, regulations and guidelines framed thereunder. The argument based on Section 5 (2) of the Delhi University Act, in my view, also has no merit. The declaration made by the Central Government under Section 3 of the UGC Act meets the requirement of Section 5 of the Delhi University Act.

65. The upshot of the aforesaid discussion is that the respondent State Government has no authority to require petitioner nos. 3 and 4 to give the undertaking as desired by it as a condition for granting its no objection to the disaffiliation of petitioner nos. 3 and 4 from the respondent University. In fact, upon the issuance of the notification dated 14.02.2007, the respondent State Government and the respondent University had no option but to allow the disaffiliation of petitioner nos. 3 and 4. All that could have been considered by them was the timing of the said disaffiliation so as to avoid inconvenience or confusion amongst the students / candidates admitted to or seeking admission to petitioner no. 3 and 4 institutions.

66. For all the aforesaid reasons, in my opinion, these petitions are bound to succeed and the action of the respondent State Government in refusing to grant the no objection certificate for the purpose of

disaffiliation of petitioner nos. 3 and 4 institutions from respondent no. 1 University deserves to be quashed since the same is incompetent and is also founded upon reasons unjustified in law. Accordingly, the impugned letter bearing no.196/159/BV/2002-03/DDTE dated 14.05.2008 issued by respondent no. 2 Government of NCT of Delhi is quashed. I may note that despite the issuance of the notification under Section 3 of the UGC Act on 14.02.2007, declaring petitioner no. 3 and 4 as deemed universities, for two academic years i.e. 2007-08 and 2008-09, these institutions have not been able to function as deemed Universities due to the acts and omissions of respondent Nos. 1 & 2. I, therefore, issue a writ of mandamus directing respondent nos. 1 and 2 to pass formal orders granting disaffiliation to petitioner nos. 3 and 4 within two weeks from today so that the said petitioners are in a position to function as deemed Universities from the academic session 2009-10.

67. With the aforesaid directions, the Writ Petitions stand disposed off.

(VIPIN SANGHI)
JUDGE

February 20, 2009
as/rsk/dp