

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

Date of decision: 27th August, 2012

+ **LPA 756/2011**

STATE OF HARYANA Appellant
Through: Mr. Neeraj K. Jain, Sr. Adv. with Ms.
Anubha Agrawal, Adv.

Versus

**GLOBAL EDUCATIONAL & SOCIAL
TRUST & ORS** Respondents
Through: Ms. Jyoti Singh, Sr. Advocate with Mr.
Yashpal Rangi & Saahila Lamba, Adv. for
R-1.
Mr. Amitesh Kumar, Adv. for AICTE.
Mr. Mukul Talwar, Adv. for GGSIP
University.

AND

+ **W.P.(C) 8394/2011**

**SETH POKHARMAL EDUCATIONAL
SOCIETY AND ANR** Petitioners

Through: Mr. Rajiv Bansal, Adv.

Versus

GGSIP UNIVERSITY AND ORS Respondents
Through: Mr. Mukul Talwar, Adv. for GGSIP
University.
Mr. Amitesh Kumar, Adv. for AICTE
Mr. Najmi Waziri, Adv. for GNCTD.

AND

+ **W.P.(C) 1566/2012**

**GURU PREMSUKH MEMORIAL
COLLEGE OF ENGINEERING & ANR** Petitioners

Through: Mr. R.K. Saini with Mr. Sitab Ali
Chaudhary, Adv.

Versus

GGSIP UNIVIERISTY & ORS. Respondents
Through: Mr. Mukul Talwar, Adv. for GGSIP
University.
Mr. Amitesh Kumar, Adv. for AICTE.

Mr. Najmi Waziri, Adv. for GNCTD.

AND

+

W.P.(C) 1982/2012

**JAGANNATH GUPTA MEMORIAL
EDUCATIONAL SOCIETY & ANR**

..... Petitioners

Through: Mr. R.K. Saini with Mr. Sitab Ali
Chaudhary, Advs.

Versus

GGSIP UNIVERSITY & ORS

..... Respondents

Through: Mr. Mukul Talwar, Adv. for GGSIP
University.

Mr. Amitesh Kumar, Adv. for AICTE.

Mr. Najmi Waziri, Adv. for GNCTD.

Mr. Anil Mittal & Mr. Amritansh Batheja,
Advs. for R-4.

AND

+

W.P.(C) 2090/2012

DALAL GLOBAL TRUST

..... Petitioner

Through: Mr. M.C. Dhingra and Mr. Sumit Dalal &
Ms. Ruchika Bhan, Advocates.

Versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY AND ORS**

..... Respondents

Through: Mr. Mukul Talwar, Adv. for GGSIP
University.

Mr. Amitesh Kumar, Adv. for AICTE.

AND

+

W.P.(C) 2416/2012

**MANAGEMENT EDUCATION & RESEARCH INSTITUTE
(ASANDHA) & ANR**

..... Petitioners

Through: Mr. R.K. Saini with Mr. Sitab Ali
Chaudhary, Advs.

Versus

GGSIP UNIVERSITY & ORS

..... Respondents

Through: Mr. Mukul Talwar, Adv. for GGSIP
University.

Mr. Amitesh Kumar, Adv. for AICTE.

Mr. Najmi Waziri, Adv. for GNCTD.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The common question for adjudication in all these proceedings is, the validity of the requirement (in Clause 3(ii)(b) of Statute 24 of Guru Gobind Singh Inderprastha University (GGSIPU) of a 'No-Objection Certificate' (NOC) from the concerned State Government, for affiliation with GGSIPU. The contention of the Colleges/Institutions parties to these proceedings and having their campuses, though in the National Capital Region (NCR) but in the States of Haryana or Uttar Pradesh, and seeking affiliation with GGSIPU, is that no such NOC from the Governments of the States of Haryana or Uttar Pradesh can be insisted upon by GGSIPU. Alternatively, they contend that the said State Governments cannot withhold such NOC and seek mandamus for issuance thereof. Of course, the States of Haryana and Uttar Pradesh and GGSIPU contend such NOC to be essential; the State Governments also cite their own local laws to contend that they are justified in refusing such NOC.

2. Having highlighted the legal issue, the factual matrix in each case, in so far as relevant, may be stated.

2A. The LPA No.756//2011 impugns the judgement dated 18th August, 2011 of the learned Single Judge allowing W.P.(C) No. 5218/2011 preferred by the Institution, respondent therein, by directing the State of Haryana to issue NOC in favour of the said institution for starting MBA course from the academic session 2011-2012 at its campus situated in Haryana, to enable

GGSIPIU to grant affiliation to the said Institution. Notice of the appeal was issued and by way of interim arrangement, admissions were permitted as provisional affiliate of GGSIPU, on the students so admitted furnishing an undertaking making the said admission subject to final adjudication in the appeal.

2B. W.P.(C) No. 8394/2011, 1566/2012, 1982/2012, 2416/2012 have been filed impugning the requirement aforesaid of Statute 24 of GGSIPU.

2C. W.P.(C) No. 2090/2012 is also filed impugning refusal of GGSIPU to grant affiliation for non production of such NOC by the State Government and though was pending before the learned Single Judge but was transferred to this Bench for the reason of entailing the same issue as in the LPA and the other writ petitions.

3. The judgment under appeal in LPA No.756/2011 is predicated on the statement made by the then counsel for the State of Haryana before the learned Single Judge that the State had no policy for issuance of such NOC. The learned Single Judge also relied on judgment dated 1st September, 2003 of the Division Bench of this Court in CWP No. 3065/2008 titled ***Charanjiv Charitable Trust Vs. AICTE***. It is the case of the State of Haryana that neither was there any authorization for such statement to be made nor is the said statement tenable in law. Be that at it may, since the same question is arising for consideration in the other matters also and is of considerable importance, we have heard the counsels *de hors* the statement made.

4. The part of Statute 24 of the GGSIPU which is impugned, is as under:-

“3. Essential conditions of affiliation of colleges & institutions.

(ii) No college or institution shall be admitted to the privileges of the University unless-

(b) it has been granted a no-objection certificate by the concerned state government and recognized by the appropriate statutory authority, wherever applicable, for the subjects and courses of study for which affiliation is being sought.”

5. The counsels for the Colleges/Institutions seeking affiliation to GGSIPU have argued:-

- A. That each of them have established their respective Colleges/Institutions at a huge expense on land and building and other infrastructure;
- B. That each of them has been granted approval by the All India Council for Technical Education (AICTE);
- C. That the AICTE prior to granting approval seeks the views/consults the University with which affiliation is proposed as well as the Government of the State where the College/Institution is situated – it is thus argued that the stage for the University or the State Government to oppose, is before the AICTE and once AICTE approval is granted, the State Government ought to be deemed to have issued the NOC and the University cannot withhold affiliation for the reason of such an NOC having not been issued;

- D. Principle of estoppel is invoked by contending that the Colleges/Institutions having altered their position, the concerned State Governments and GGSIPU are estopped from withholding NOC and from denying affiliation on the said ground respectively. Reliance in this regard is placed on *M/s. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh* (1979) 2 SCC 409 and *M/s. Cauvery Coffee Traders, Mangalore Vs. M/s Hornor Resources (International) Co. Ltd.* (2011) 10 SCC 420, on *St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education* (2003) 3 SCC 321 on the aspect of deemed approval and on *Cauvery Coffee Traders, Mangalore* (supra) on ‘the duty to speak’;
- E. Reference is invited to the judgment dated 21st February, 2007 of a Single Judge of this Court in W.P.(C) No. 13751/2006 titled *Aditya College of Pharmacy & Science Vs. Guru Gobind Singh I.P. University* holding that once AICTE grants approval, the question of affiliation has to be considered by the University without insisting upon factors which are inconsistent with the AICTE Act or its Regulations and that Statute 24 of the GGSIPU is applicable only to the extent not inconsistent with the said Act. Reliance is also placed on *Mata Sudarshan Tilak Raj Dhawan Educational Trust, Panchkula Vs. State of Haryana* AIR 2003 P&H 39 striking down the requirement for NOC;

- F. Attention is also invited to judgment dated 21st July, 2008 of a Single Judge of this Court in W.P. (C) No. 4244/2008 titled ***Trinity Institute of Higher Education Vs. Govt. NCT of Delhi*** MANU/DE/1007/2008 holding that the State Government has no power to refuse NOC once recognition had been granted by the National Council for Teachers Education (NCTE) and directing GGSIPU to grant affiliation without insistence on the NOC – on the basis thereof it is argued that once approval of AICTE is obtained, there can be no requirement for obtaining NOC from the State Government. It is further informed that though LPA No.542/2008 was preferred by GGSIPU against the said judgment but was withdrawn without insisting on compliance of Statute 24;
- G. that GGSIPU has been established under The Indraprastha Vishwavidyalaya Act, 1998 (GGSIPU Act)- under Section 4 of the said Act, GGSIPU exercises power over the entire NCR as defined in the National Capital Region Planning Board Act, 1985 (NCR Act) and not merely over Delhi;
- H. That no distinction can thus be made by GGSIPU between Colleges/Institutions located in Delhi and outside Delhi, in the NCR;
- I. That GGSIPU, in the past, has granted affiliation to several institutions located in Haryana and Noida falling in the NCR;
- J. That the requirement of such NOC of the State Government as a condition for affiliation is bad - Reliance in this regard is

placed on *Jaya Gokul Educational Trust Vs. The Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram* (2000) 5 SCC 231;

- K. That the refusal of the State of Haryana to issue such NOC is without any reasons, whimsical and arbitrary;
- L. That the Government of Haryana, in the past has given such NOCs to five institutions who have obtained affiliation to GGSIPU and is now arbitrarily denying NOCs;
- M. That the Societies which have set up the Colleges/Institutions seeking affiliation are Delhi based and want to grow in Delhi only but have been forced to set up Colleges/Institutions in Haryana/Uttar Pradesh for the reason of scarcity of land in Delhi;
- N. That the Colleges/Institutions affiliated to the Universities of the States of Haryana or Uttar Pradesh do not attract and are unable to fill even their sanctioned strength; on the contrary, colleges affiliated to GGSIPU are in demand and are overflowing with students;
- O. Reliance is also placed on judgment dated 7th August, 2012 of a Division Bench of the Kerala High Court in WP(C) No. 12323/2012 (M) titled *St. Joseph's Hospitals Trust Vs. The Kerala University of Health Science*;
- P. Reference is also made to the judgment dated 9th August, 2006 of Division Bench of the Madras High Court in W.A.

No.1940/2002 titled *The State of Tamil Nadu Vs. V.S. B. Educational Trust* MANU/TN/9615/2006. The educational institutions therein were situated in the State of Tamil Nadu and were seeking affiliation to the University in the State of Andhra Pradesh. NOC in this regard was withheld by the Government of the State of Tamil Nadu. Relying on *Jaya Gokul Educational Trust* and on amendment w.e.f. 28th November, 2005 of the AICTE Regulations doing away with the requirement of the NOC of the concerned State Government, it was held that the University could not insist upon the NOC.

6. The senior counsel for the State of Haryana has argued:-
 - I. That Section 4A of the Maharshi Dayanand University Act, 1975 (Haryana Act 25 of 1975) prohibits any other person or Institution from conferring any degree, diploma or certificate within the territorial jurisdiction of the said University and contravention of the said provision is an offence punishable with imprisonment of upto two years;
 - II. That all the subject Colleges/Institutions are situated within the territorial jurisdiction of Maharshi Dayanand (MD) University and The MD University Act does not allow the Government of the State of Haryana to allow any College/Institution in the said territory to affiliate with GGSIPU by issuing a NOC therefor;
 - III. That the NOCs earlier granted to few Institutions are in violation of MD University Act;

- IV. That though a Notification dated 13th September, 1999 was issued by the Education Department of the Government of State of Haryana (in exercise of powers under Section 4(1) of the MD University Act) enabling the State Government to, on merits and demerits of each case, grant NOC to a College/Institution situated within the territorial jurisdiction of MD University but within the NCR, for affiliation with GGSIPU (and on which Notification reliance was placed by the counsels for Colleges/Institutions) but was amended vide subsequent Notification dated 25th February, 2002 which has no such provision allowing the Government to issue NOC for affiliation with GGSIPU;
- V. That the GGSIPU Act of the Govt. of National Capital Territory of Delhi (GNCTD) enabling GGSIPU to exercise powers outside Delhi also, in the NCR, is in contravention of Article 245 of the Constitution of India. It is contended that GNCTD could not have legislated for areas outside Delhi;
- VI. Attention is invited to ***Prof. Yashpal Vs. State of Chhattisgarh*** 2005 (5) SCC 420 where the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 enabling the University to have an off-campus center outside the State was held to be beyond the legislative competence of the Chhattisgarh legislature;
- VII. Attention is invited to ***GVK Industries Ltd. Vs. Income Tax Officer*** (2011) 4 SCC 36 in support of the proposition that only

Parliament and not the State legislatures, has the legislative competence to enact laws with respect to matters that implicate the use of State power to effectuate some impact or effect on aspects or causes that occur, arise or exist or may be expected to do so, outside the State territory;

- VIII That Section 4 of the GGSIPU Act in so far as extends the powers of the University outside Delhi is bad and can be upheld only when read with Statute 24 requiring NOC of the concerned State Government;
- IX That the NCR Act does not empower GNCTD to legislate in the field of education;
- X AICTE is not concerned with affiliation;
- XI That the AICTE Regulations apply to Central Government Universities and not to State Universities;
- XII That the State cannot object at the stage when the approval of AICTE is sought;
- XIII Attention is invited to Regulation 8 (11) of the AICTE (Norms & Guidelines for Fees and Guidelines for Admissions in Professional Colleges) Regulations, 1994 which provides for admission to be made by a competent authority of the State and not by the out of State affiliating body;
- XIV On the plea of estoppel, it is argued that the State has never represented that it will give NOC for approval with GGSIPU;

- XV That even otherwise, there can be no estoppel against the Statute;
- XVI That merely because NOC has been given in the past is no ground for directing issuance thereof;
- XVII That the learned Single Judge, in the judgment impugned in the appeal, has not decided the said issue;
- XVIII That the judgment in *Charanjiv Charitable Trust* was not concerned with the aspect of territorial operation of State laws;
- XIX That the standards of the State Universities will improve only upon good Colleges/Institutions affiliating - else will continue to languish.

7. The State of Uttar Pradesh, which is respondent in W.P.(C) No. 1982/2012 has filed a counter affidavit through the Registrar of Mahamaya Technical University, Gautam Budh Nagar, Uttar Pradesh pleading that as per the Uttar Pradesh Technical University Act, 2000 the Uttar Pradesh Technical University exercises jurisdiction over the whole of the State of Uttar Pradesh and every college or institution other than existing colleges at the commencement of the Act, imparting technical education in the State of Uttar Pradesh, would be deemed to be affiliated to Uttar Pradesh Technical University and would cease to be affiliated to or associated with the Universities established under Uttar Pradesh State Universities Act, 1973; that by the Amendment Act of the year 2010, separate Universities for different areas of the State were created and now Mahamaya Technical University exercises control over colleges and institutions imparting

technical education in Meerut, Sharanpur, Agra, Aligarh and Muradabad Divisions. It is further pleaded that the College/Institution established at Noida, to impart technical education is deemed to be affiliated to Mahamaya Technical University and as such NOC for affiliation with GGSIPU was refused since a technical college in Uttar Pradesh cannot be affiliated to any other University.

8. The counsel for AICTE has invited attention to ***Jaya Gokul Educational Trust*** (supra) laying down that AICTE is the sole body authorized to grant approval and provisions of any enactment conferring powers on State Government or University inconsistent with AICTE would be void.

9. The counsel for the GGSIPU has contended:-

- a). That though the petitions challenge the *vires* of Statute 24 of GGSIPU but without specifying any ground therefor;
- b). That to enable GGSIPU to regulate its affiliated college situated in another State, it is necessary to have the NOC of the concerned State Government;
- c). That GGSIPU has not only been set up by the GNCTD but has a very close association with GNCTD and is guided by GNCTD but has no administrative linkages to the State Governments of Haryana, Uttar Pradesh or Rajasthan and unless affiliation is with the approval and consent of those State Governments, GGSIPU would not be assured of their help and cooperation;
- d). That even independently of Clause 3(ii)(b) of Statute 24,

GGSIU can always ask for such an NOC in as much as there is no right in any of the Colleges/Institutions to seek affiliation;

- e). Attention is also invited to the judgment dated 13th August, 2010 of one of us (R.S.Endlaw, J) in W.P.(C) No. 4771/2010 titled ***Gitarattan Institute of Advanced Studies & Training Vs. Director Higher Education*** MANU/DE/2730/2010 where the earlier judgment in ***Trinity Institute of Higher Education*** was distinguished and it is informed that the Intra Court appeal preferred thereagainst was withdrawn;
- f). Attention is invited to ***Adarsh Shikha Mahavidyalaya Vs. Subhash Rahyangdale*** (2012) 2 SCC 425 taking the same view as ***Gitarattan Institute of Advanced Studies & Training***;
- g). Reference is made to the directive of the University Grants Commission (UGC) advising Universities against granting affiliation to any College/Institute situated outside the State and it is informed that owing thereto the GGSIPU this year is not affiliating any College/Institute outside Delhi. Letter dated 10th May, 2012 of the GNCTD to GGSIPU in this regard was handed over;
- h). That Section 4 of the GGSIPU Act which enables GGSIPU to exercise powers over the NCR is valid in view of the creation of NCR - that in view of the NCR Act, the judgment in ***Prof. Yashpal*** (supra) is not applicable;
- i). That State of Haryana is estopped from challenging the authority of GGSIPU to grant affiliation to

Colleges/Institutions within the NCR;

- j). With respect to the argument of deemed NOC, it is stated that each of the Institutions (except in LPA No.756/2011) in their application to AICTE had proposed affiliation to the MD University and not to GGSIPU and thus the question of deemed NOC does not arise;
- k). The judgment in *Trinity Institute of Higher Education* is also argued to be *per incuriam* qua Statute 24 (supra). In any case it is stated that *Trinity Institute of Higher Education* was concerned with NOC from GNCTD and not from other States.

10. In the aforesaid state of affairs the question which arises for consideration is whether GGSIPU established by GNCTD is entitled to grant affiliation to Colleges/Institutions situated outside Delhi, though within the NCR.

11. If the answer to the above is 'yes', then whether the condition for NOC of the State Government is bad.

12. However before adverting to determination of two issues aforesaid, the judgments cited at the bar may first be noticed in as much as, if the said issues are covered by the said judgments, especially of the Supreme Court, the need for determination by this Court would not arise.

13. Though *Jaya Gokul Educational Trust* is cited to contend that the requirement of such NOC of the State Government as a condition for affiliation is bad but a perusal of the facts of that case as recorded in the

judgment shows that the College/Institution granted approval by the AICTE in that case was within the State of Kerala and it was in this context that it was held by the Apex Court that once AICTE had granted approval, the NOC of the Government of the State in which the College/Institution is situated was not necessary, also not for affiliation with the University of the same State. The recent judgment cited of the Kerala High Court in ***St. Joseph's Hospitals Trust*** was also a case of Colleges/Institutions with their campuses within the State of Kerala being denied affiliation for the reason of not entering into agreement with the State Government enabling the State Government to make admission to 50% of the seats. It was in this context that relying on ***Jaya Gokul Educational Trust*** it was held by the Division Bench of Kerala High Court that NOC of the State Government for affiliation was not necessary.

14. Similarly ***Mata Sudarshan Tilak Raj Dhawan Educational Trust, Panchkula*** judgment of the Punjab and Haryana High Court also pertains to refusal by the Government of the State of Haryana to issue NOCs (insisted upon by the Universities of the State of Haryana as a condition for affiliation) to Colleges/Institutions which had been granted approval by the AICTE. It was in these facts that it was held that the University was not entitled to insist on NOC as a condition for affiliation.

15. The judgments of this Court in ***Aditya College of Pharmacy & Science*** and in ***Trinity Institute of Higher Education*** also were in the context of the issuance of the NOC by the Governments of the State within whose territory the Colleges/Institutions were situated and the University concerned viz. GGSIPU was also of the same State.

16. However these are not the facts on which the objection of the State of Haryana is predicated. The stark difference in the facts of the present case is that the NOC being sought by GGSIPU as a condition for affiliation is not of GNCTD (which has set up GGSIPU) but of the Governments of the States where the College/Institution is situated. The NOC of the State Government, provided for in Statute 24 of GGSIPU is stated to be, not of the nature which was discussed in *Jaya Gokul Educational Trust* and other judgments supra and which was held to be not necessary, but is stated to be intended to enable GGSIPU set up by GNCTD to have extra territorial operation in the portions of the States of Haryana, Rajasthan and Uttar Pradesh falling in the NCR. The argument of the senior counsel for the State of Haryana, invoking Article 245 of the Constitution of India, remained to be met by the counsels for Colleges/Institutions. This singular factual difference makes the judgment of the Apex Court in *Jaya Gokul Educational Trust* inapplicable to the present cases. The Supreme Court in *Official Liquidator Vs. Dayanand* (2008) 10 SCC 1 has held that even one additional fact may make a lot of difference in the precedential value of a decision and disposal of cases by blindly placing reliance on a decision is not proper.

17. Though undoubtedly in *Charanjiv Charitable Trust* the College/Institution was situated in the State of Haryana and was seeking affiliation to GGSIPU and the Division Bench of this Court to which one of us, (Acting Chief Justice) was a party, following *Jaya Gokul Educational Trust* directed GGSIPU to make admissions to the College/Institution notwithstanding refusal by the State of Haryana of the NOC but the plea of

Article 245 was neither raised nor discussed and the direction given was in the face of the State of Haryana having issued the NOC for the previous years. Since the important plea of Article 245 of the Constitution was not noticed in the said judgment and the Colleges/Institutions in the present cases are different, we do not feel the need to refer the matter to Larger Bench, more so when the same may result in an academic year being lost. None of the counsels also made any such request. Similarly, the question of the power of the State University to grant affiliation to an out of State College/Institution was not adverted to in *V.S. B. Educational Trust*.

18. Section 4 of the GGSIPU Act enacted by GNCTD empowering GGSIPU established thereunder, to exercise power outside Delhi in the NCR is undoubtedly contrary to the spirit of Article 245(1) of the Constitution empowering the legislature of a State to make laws for the whole or any part of the State only. Once the legislature of a State is empowered to make laws having force only within the State and not outside the State, it is axiomatic that such laws cannot create/establish bodies which will exercise powers outside the State. A University established by the law of one State cannot exercise powers outside the State. Grant of affiliation by a University is not an empty exercise and is not such an action on the part of the University which can be said to be confined to the State which has established the University or which action would have no impact or effect outside the State. The College/ Institution so affiliated to GGSIPU, is required, under Statute 24, to adhere to the provision of the GGSIPU Act, the Statutes, ordinances, regulations and directions of GGSIPU including as to appointment of teachers and their service conditions, admission of

students and the terms and conditions of such admission and to also submit itself to inspections by GGSIPU. There thus has to be a strong nexus between GGSIPU and its affiliate colleges and Institutions. Such affiliation tantamounts to the Colleges / Institutions, though situated in the States of Haryana or Uttar Pradesh being governed by the law enacted by GNCTD. The close nexus required between the University and its affiliate is however broken by the two being situated in territories of two different States. The grant of affiliation by GGSIPU is also coupled with the right of withdrawal of affiliation and it is the general principle that such withdrawal of affiliation attributable to the erring College / Institution is not to be to the prejudice of the students already admitted and such students have to be accommodated in other Colleges / Institutions of the University or of its other affiliates. However such transposition of students is also bound to pose a problem where the affiliated College / Institution is situated in a territory outside the State which has established the University. The University is also required to hold examinations at the affiliated Colleges / Institutions and which also requires enforcement of the conditions of such examinations and requires the support of the government, as the University has no machinery of its own to enforce orderly conduct of examinations. Non cooperation of the State Government in all these respects would virtually defeat enforcement of the conditions of affiliation. The role of the University has been highlighted by one of us (R.S. Endlaw, J.) in *Gitarattan Institute of Advanced Studies & Training* (supra). Even in para 20 of *Bharati Vidyapeeth [Deemed University] Vs. State of Maharashtra* (2004) 11 SCC 755 it was observed that the State may to a certain extent control the Colleges / Institutions affiliated to the University in regard to admission

or ownership of the Institutions. The same is also indicative of a coordination being required between the University and the State and which coordination cannot be expected when the two are in different States. To keep alive the said nexus, the co-operation of the State in which the College/Institution is situated is required and to elicit which, the NOC is required.

19. Regulation 8(11) of the AICTE (Norms & Guidelines for Fees & Guidelines for Admission in Professional Colleges) Regulations, 1994 also provides that where the Institutions are affiliated to an out of State affiliating body, the seats in such Institutions shall be included in the seats available in the State in which the Institution is actually located and admission shall be made by competent authorities in that State in accordance with the procedure specified under the regulations. The same also shows the need for a coordination between the affiliating University and the State in which the affiliate College/Institution is situated and which coordination can be secured only with the consent through the NOC. Though the said regulation was cited by the counsels for the Colleges/Institutions to demonstrate that AICTE itself has contemplated of such a situation but we are of the view that the occasion for application thereof will arise only when both consent to such a situation and the same cannot be treated as enabling/empowering such affiliation.

20. We may at this stage also notice that though ***Jaya Gokul Educational Trust*** had held the State Government to be having no role once AICTE had granted approval but subsequently in ***Govt. of Andhra Pradesh Vs. J.B. Educational Society*** (2005) 3 SCC 212 it was held that the provisions of the

AICTE Act, 1987 have to be harmonized with the State laws to secure a coordinated action in the higher education and it is the State authorities alone which can decide about the educational facilities and the needs of the locality. Similarly in *Chairman, Bhartia Education Society Vs. State of Himachal Pradesh* (2011) 4 SCC 527, it was observed that the University as the examining body can impose its own requirement in regard to the eligibility of the students for admission to a course in addition to those prescribed by NCTE and “the State Government and the examining body may also regulate the manner of admissions”. It was further held that the process of affiliation cannot be of an automatic rubber stamping once approval by NCTE is given. Recently in *Society for Unaided Private Schools of Rajasthan Vs. Union of India* (2012) 6 SCC 1 also it was observed that though there may be a fundamental right to set up an educational institutions but there is no such right to seek affiliation.

21. Our own research has led us to *Ambaji Physiotherapy College Managed by Ambaji Education Vs. State of Gujarat through Secretary MANU/GJ/0914/2011* where a Division Bench of the Gujarat High Court was faced with a near identical question; the Colleges / Institutions situated in the State of Gujarat were demanding NOC from the Government of State of Gujarat for affiliation with a University situated outside the State of Gujarat, in the State of Maharashtra; the Maharashtra Universities Act, 1994 permitted such affiliation. It was held that no object was sought to be achieved by the Maharashtra Act enabling a University of the State of Maharashtra to grant affiliation to Colleges situated outside the State of Maharashtra and that the Maharashtra University would not be able to

exercise any control over Colleges in the State of Gujarat. It was accordingly held that the State of Gujarat had no legal duty to issue such NOC and the Colleges / Institutions had no legal right to seek the same. We are in respectful agreement with the view so taken.

22. However that is not the end of the road. The Parliament in its wisdom has enacted the NCR Act creating the NCR. The preamble thereto shows the same to be in pursuance to Article 252 (1) of the Constitution and Resolutions passed by the Houses of the legislatures of the States of Haryana, Rajasthan & Uttar Pradesh to the effect that a Planning Board for the preparation of a plan for the development of NCR and for coordinating and implementation of such plan and for evolving harmonized policies for the control of land uses and development of infrastructure in the NCR so as to avoid any haphazard development. Section 3 of the said Act provides for constitution of a Board called NCR Planning Board by the Central Government. Section 7 of the said Act prescribes the functions of the NCR Planning Board as preparation of regional and functional plans and to coordinate enforcement and implementation thereof to ensure proper and systematic programming by the participating States and the Union Territory in regard to determination of priorities in the NCR. However Sections 10 & 11 thereof, while providing for the contents of the regional and sub-regional plans provide for the manner in which the land in the NCR shall be used including reservation for areas for specific land use, road network, coordination of traffic and transportation, proposals for supply of drinking water and drainage and any other matter which is necessary for proper development. It may be highlighted that education is not mentioned as the

subject matter of such plans, unless the same is deemed to be included in the residuary clause of ‘any other matter for proper development’, as education can certainly be said to be. However neither of the counsels for the Colleges/Institutions have argued so and we have our reservations on holding the NCR Planning Board to be empowered to plan for coordinated education in the NCR when the contents of the plan are limited to land use. Be that as it may, it is not the case of the Colleges/Institutions also that as per the plan drawn up by the NCR Planning Board, Universities of one State are empowered to affiliate Colleges/Institutions situated in another State. Need is thus not felt to render any final view on the said subject though we are of the opinion that the same is in the interest of and necessary to give meaning to the creation of NCR. Cases are not unknown where students of an educational institution in one State of the NCR are residents of another State in the NCR and which is creating problems qua the rules of admission pertaining to domicile, institutional preference etc. We thus strongly recommend to all Governmental/agencies concerned to bestow their attention on the said aspect and find a solution beneficial to the public at large. While the want of the State of Haryana to have unaided Colleges/Institutions with good infrastructure though in the NCR but in the State of Haryana affiliated to the University of the State of Haryana is understandable but the same is pitted against the facts highlighted by the Colleges/Institutions that the students seeking admissions give priority to Colleges/Institutions affiliated to Universities of Delhi and not to the State Universities. The same is evident of the standards enforced by the Universities of Delhi being better than the State Universities and the employers in the matter of giving employment giving preference to

degrees/qualifications of Universities of Delhi. We are of the opinion that a solution by the NCR Planning Board, permitting Colleges/Institutions in the NCR a choice of affiliation to the Universities of any of the States of NCR will not only be for the benefit of the students of NCR but will also bring about a healthy competition enabling all such Universities to grow and improve. In this regard, it may be seen that by virtue of Section 27 thereof, the NCR Act overrides anything inconsistent contained in any other law. We may also notice that at least a Single Judge of the Allahabad High Court in *Shresth Shiksha Sanstha Vs. State of Uttar Pradesh through Secretary Department of Higher Education and Guru Gobind Singh Indraprastha University* MANU/UP/1579/2006 quashed the refusal by the State of Uttar Pradesh of NOC for affiliation with GGSIPU and directed the State Government to reconsider the matter in the light of the NCR Act.

23. However as the position stands today, we are unable to hold that the requirement by GGSIPU of such NOC is bad or to command the States of Haryana or Uttar Pradesh to issue such NOCs.

24. Though the counsels for the Colleges/Institutions had also referred to Guru Jambheshwar University, Hisar (Amendment Act, 1996) (Haryana Act 11 of 1996) to contend that the same itself negates the MD University Act but both Universities and laws being of the State of Haryana, we do not find the same to be of any impact on the matter in controversy.

25. The College/Institution in W.P.(C) No.1566/2012 was granted affiliation by GGSIPU when it was located in rented premises in Delhi but has now set up campus at Murthal, District Sonapat, Haryana and is seeking

permission of GGSIPU to shift. Though the counsels have contended that the case is therefore different, but not in our view.

26. Similarly, on behalf of College/Institution in LPA No.756/2011, reference is made to earlier orders, at the stage of grant of interim relief, to contend that the matter stands concluded. However, neither can any exception be made in favour of one College/Institution, nor do we find the affiliation to be workable in the face of opposition by State of Haryana.

27. We are also of the view that the refusal of the Governments of the States of Haryana and Uttar Pradesh to issue NOC cannot be said to be arbitrary. The local laws of the respective States do not permit Colleges/Institutions located therein to be affiliated to any University other than the respective State Universities. The refusal is thus in consonance with local laws to which there is no challenge.

28. We are thus unable to concur with the judgment of the learned Single Judge under challenge in LPA No.756/2011 and set aside the same. We also do not find any merit in the writ petitions.

29. Of all the Colleges/Institutions parties to these proceedings, only the College/Institution in LPA No.756/2011, under interim arrangement was granted provisional affiliation to GGSIPU and permitted to admit students. Further application of the said College/Institution to make admissions in the current academic year is also pending. Though we have allowed the appeal but we direct the State of Haryana to take all steps, subject to compliance by the said College/Institute of the requisite norms, for ensuring takeover of the students already so admitted, by the MD University. We

otherwise also direct the States of Haryana and Uttar Pradesh to, notwithstanding the last dates if any fixed in this regard having lapsed, allow consideration of applications of all Colleges/Institutions parties to these proceedings for affiliation to the concerned Universities for the current academic year, to enable admission of students.

30. The appeal is thus allowed and the writ petitions are dismissed. Axiomatically, the applications for interim relief qua the current academic year are also dismissed.

No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

AUGUST 27, 2012

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