

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

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Date of decision: 4th December, 2015

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W.P.(C) No.486/2015

**SAM HIGGINBOTTOM UNIVERSITY OF
AGRICULTURE, TECHNOLOGY & SCIENCE Appellant**

Through: Mr. Rakesh Dwivedi, Sr. Adv. with
Mr. Amitesh Kumar, Ms. Priti
Kumari & Ms. Sanskriti Pathak,
Advs.

Versus

UNIVERSITY GRANTS COMMISSION Respondent

Through: Mr. Apoorv Kurup along with Mr.
A.C. Boxipatru and Mr. V.C. Shukla,
Advs.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. Though this writ petition under Article 226 of the Constitution of India was filed challenging, besides the letter dated 3rd December, 2014 of the respondent University Grants Commission (UGC) to the petitioner, a deemed to be university (hereinafter referred to as the petitioner University), also the Regulations 5.0, 6.0, 7.0, 11.0, 12.0, 14.0, 15.0, 17.0, 18.0 and 22.0 of the UGC (Institutions Deemed to be Universities) Regulations, 2010 but there being no

cause of action for impugning the Regulations 5.0, 6.0, 7.0, 11.0, 14.0, 15.0, 17.0, 18.0 and 22.0, the hearing, with the consent of the parties, was confined to the challenge, besides to the letter dated 3rd December, 2014, to Regulation 12 only, with the understanding that the petitioner University as and when feels the need to challenge the other Regulations aforesaid, shall be entitled thereto.

2. The cause of action for the writ petition was the letter dated 3rd December, 2014 (supra) by which the respondent UGC informed the petitioner University that the respondent UGC had never granted any permission / approval to the petitioner University to start the Departments of, i) Public Health, ii) Pharmaceutical Sciences, iii) Medical Laboratory Technology (MLT), and, iv) Nursing, and that as per the UGC norms already circulated to the deemed to be universities (deemed Universities) a deemed university can on its own start only those courses which are allied to courses already approved by the UGC and that for all those courses which are not allied to the courses already approved, prior approval of UGC is required. Respondent UGC by the said letter also informed the petitioner University that the courses being offered by it's Departments of, i) Public Health, ii) Pharmaceutical Sciences, iii) MLT, iv) Radio Imaging Technology, and, v) Physiotherapy, are not allied to the courses approved by the UGC and hence the said courses being offered by the

petitioner University “cannot be termed as valid”. The petitioner University was further advised not to admit students to the said courses.

3. It is the case of the petitioner University that:

- (i) there is no provision in the University Grants Commission Act, 1956 (UGC Act) which requires an institution, once conferred the status of deemed University, to seek prior approval of the UGC for starting a course / programme;
- (ii) vide Section 22 of the UGC Act, deemed universities are entitled and empowered to award degrees subject to the requirements and applicability of approval / recognition if any required of other statutory bodies;
- (iii) neither the 1992 Guidelines nor the 2000 Guidelines formulated by the UGC for declaring an institution as deemed university also included any provision / condition requiring deemed university to obtain prior approval to start Programmes / Courses / Departments;

- (iv) though UGC vide its letter dated 16th March, 2004 issued Guidelines *inter alia* for establishing new departments but the same also provided for *ex post facto* approval;
- (v) various deemed universities protested to the Ministry of Human Resource Development (MHRD), Government of India regarding undue illegal insistence of the UGC vide letter dated 16th March, 2004 (supra) of seeking prior approval of UGC for starting new course / programme / department;
- (vi) the Government of India (MHRD) vide its letter dated 26th May, 2006 to the UGC expressed the opinion that while UGC's concern about letting deemed universities start the courses of professional studies without following the norms of various councils and / or without maintaining standards of technical education was valid, it was not clear as to why UGC should come in the way of deemed universities starting programmes of study which are already notified by UGC and that general courses of study where no professional standards need to be maintained other than norms of UGC which can always be ensured *ex post facto*;

(vii) in pursuance thereto, UGC vide its letter dated 15th July, 2006 to the deemed universities conveyed a decision that deemed universities would be empowered to start degree courses such as B.A., B.Sc., M.A., M.Com., M.Sc. etc. as specified and notified under Section 22 of the UGC Act without any prior approval of the UGC provided that UGC Regulations were abided by and clarifying that for the purpose of offering general courses in Sciences, Social Sciences and Humanities, deemed universities are at par with State and Central Universities and no prior approval of the UGC would be mandatory to start such general courses. Vide same letter, it was further clarified that no prior approval of the UGC would be required by the deemed universities for starting professional courses also as are related or allied to courses already on offer, subject to the norms and standards laid down by the respective statutory / professional body / councils regulating the said professional courses;

(viii) however Regulation 12 supra framed by UGC in exercise of powers under Section 26(1)(f)&(g) of the UGC Act is as under:

“12.0 NEW DEPARTMENTS, OFF-CAMPUS CENTRES AND OFF-SHORE CAMPUSES

- 12.01 An institution deemed to be university shall normally operate within its own main Campus as is declared by the Central Government in the notification and conduct approved programmes of study falling within the area of its specialization.
- 12.02 If an institution deemed to be university wishes to start a new Department dealing with a subject which is not in the field of its specialization or in an allied field, it may do so only if that field is covered under the objectives for which the institution deemed to be university was established, and with the prior approval of the Commission.
- 12.03 An institution deemed to be university may be allowed to operate beyond its approved geographical boundaries and start Off-Campus (es) / Off-shore Campus(es) under the following conditions.
- 12.04 **A new Department in the Campus or in the approved off-Campus Centre shall be established by an institution deemed to be university only with the prior approval of the Commission.”**

(emphasis added)

- (ix) the respondent UGC considered the proposal of the petitioner University for being conferred the status of a deemed university under the Guidelines of the year 2000 for declaring an institution as a deemed university and vide Notification dated 15th March,

2000 declared the petitioner then known as Allahabad Agricultural Institute, Allahabad as a deemed university;

- (x) the Notification dated 15th March, 2000 also did not include any condition requiring the petitioner University to obtain prior approval of UGC to start, conduct and commence new Programmes / Courses / Departments, nor contained any restriction on the right of the petitioner University to start, conduct and commence new Programmes / Courses / Departments after being declared as a deemed university;
- (xi) the Government of India (MHRD) vide letter dated 4th June, 2009 *inter alia* directed the UGC to take up the review of the functioning of deemed universities and report deficiencies with respect to maintenance of standards to ascertain whether they are indeed serving the purpose for which they are so declared and whether they are complying with the conditions mentioned in the Notification declaring them as deemed universities;

(xii) in pursuance to the aforesaid, the Expert Committee constituted by the respondent UGC visited the petitioner University from 18th to 20th August, 2009 and which Committee *inter alia* reported:

- (a) that the petitioner University before starting the courses of B.Ed., M.Ed., and B.P.Ed. in the year 2002, though with the approval of National Council for Teacher Education (NCTE), had not obtained the approval of UGC though claimed to have vide letter dated 16th July, 2004 sought *ex post facto* approval which was awaited;
- (b) similarly, though the petitioner University in the year 2002 introduced B. Pharma with the prior approval of Pharmacy Council of India, but without approval of UGC, though again claimed to have vide letter dated 16th July, 2004 sought *ex post facto* approval which was also awaited;
- (c) Else, the Committee reported that the petitioner University has all infrastructure and qualified faculty and staff to continue all Under-Graduates, Post-Graduates and doctoral courses which were then going on and that the courses of

College of Education and Faculty of Health and Medical Sciences although had the approval of Statutory Councils, i.e. NCTE & Pharmacy Council of India, respectively but required approval of UGC; however, the infrastructure and manpower of these faculties were also inspected and approval therefor by UGC was recommended.

- (xiii) the respondent UGC forwarded the report and recommendations aforesaid of the Expert Committee qua the petitioner University to Government of India (MHRD);
- (xiv) the Government of India (MHRD) after considering the aforesaid report of the Expert Committee placed the petitioner University in the year 2009 in Table II (or Category B) i.e. the category of deemed Universities deficient in some aspects needed to be rectified over a three years period for continuance / continuation as a deemed university;
- (xv) the National Assessment and Accreditation Council, an Autonomous Institution established under Section 12 (ccc) of the UGC Act, after considering the quality profile of the petitioner

University has awarded it grade 'A' on 25th October, 2013 and which is valid till 24th October, 2018;

(xvi) after considering the aforesaid, the Government of India, MHRD vide communication / letter dated 4th March, 2014 moved the petitioner University from the category of "deficient in some aspects which need to be rectified over a three years period for continuance / continuation as a deemed university" to the category of "having justified its continuation as a deemed university.";

(xvii) from the time of the petitioner University being notified as a deemed University in the year 2000 till 16th March, 2004, there was no requirement, even of the UGC, for prior approval for starting a new Course / Department;

(xviii) the petitioner University commenced the College of Health Sciences and Community Development with various courses thereunder in the year 2000-01 and information whereof was given to the UGC vide letter dated 16th July, 2004;

- (xix) similarly, the petitioner University introduced B. Pharma course in the year 2002 and intimated the UGC of the same vide letter dated 4th October, 2002;
- (xx) though there was no requirement thereof, but the petitioner University by abundant caution vide its letter dated 5th November, 2010 to the UGC sought *ex post facto* approval for undergraduate and Postgraduate Programmes / Courses in the field of Education, Health and Medical Sciences;
- (xxi) though the Regulation 12 supra is bad, but the petitioner vide letter dated 26th July, 2011 sought permission of the UGC for offering B.Sc. Nursing Programme from the Academic Year 2011-2012 for which all other requisite approvals had been received;
- (xxii) however, the aforesaid approvals were not being considered because the petitioner University then had grade 'B' and because grade 'B' deemed to be universities were not to be allowed to expand;

(xxiii)that the Supreme Court vide order dated 15th September, 2014 in W.P.(C) No.734/2014 titled *Symbiosis International University Vs. Union of India* has quashed the decision of not allowing category 'B' deemed universities to expand their activities unless elevated to grade 'A'.

4. We may at this stage mention that though it is also the case of the petitioner University that it is a Minority Institution but the petitioner during the course of hearing did not premise its challenge to Regulation 12 supra or to the letter dated 3rd December, 2014 supra thereon and thus we are not elaborating on the pleas of the petitioner in that respect.

5. The defence of the respondent UGC in its counter affidavit, on the aforesaid aspect, is:

(a) that the 2000 Guidelines of the UGC for considering proposals for declaring an Institution as deemed university, in Clause 15 thereof, required deemed universities to submit proposals for starting various academic courses;

- (b) that the Guidelines “for establishing of new departments within the Campus, setting up of Off-Campus Center(s) / Institution(s) / Off-shore Campus and starting Distance Education Programmes by the Deemed Universities” published by the UGC in March, 2004 also in Clauses 2.1 and 2.2 thereof provided *inter alia* that the deemed universities intending to open a new department in its campus or an Off-Campus Centre / Institution shall approach the UGC at least six months prior to opening of such center and that the deemed universities desirous of introducing a new Course / Programme in a professional subject shall comply with all the requirements of the Statutory Professional Councils and obtain their approval before approaching UGC;
- (c) that UGC vide its letter dated 19th April, 2005 also required all deemed universities to seek prior approval of UGC for any increase in intake capacity or for starting any new course and gave a one time opportunity to deemed Universities to obtain *ex post facto* approval within three months for regularization of enhancement in intake capacity already undertaken or of the courses which had already been started without UGC approval;

- (d) that the letter dated 15th July, 2006 of the UGC permitted deemed universities to start only degree courses such as B.A., B.Sc., M.A., M.Com, M.Sc. etc. as specified and notified under Section 22 of the UGC Act covered under general education in Sciences, Social Sciences and Humanities (excluding professional courses), without prior approval of the UGC and though no prior approval of the UGC was necessary for professional courses also if approved by the respective statutory / professional bodies but only if such professional courses were “related or allied to courses already on offer”;
- (e) UGC vide its letter dated 19th May, 2008 again directed that deemed universities shall not establish new departments or start new courses other than those allied to the courses already approved and being offered without obtaining the specific prior approval of the UGC;
- (f) that thus the petitioner was required, i) by Guideline 15 of the 2000 Guidelines (supra), ii) by Guidelines 2.1 and 2.2 of the 2004 Guidelines (supra), iii) by letters dated 19th April, 2005, 15th July,

2006 and 19th May, 2008 supra, to seek approval of UGC before commencing any new course or programme and is now governed by Regulation 12 supra;

- (g) that it is for this reason only that the petitioner University also claims to have sought approvals, though in the year 2008-09 and though now claimed to be without prejudice to its pleas;
- (h) that the commencement by the petitioner University in the year 2001-02 of i) B.Sc. MLT, ii) B. Pharma, iii) Bachelor of Health Sciences and of B. Physiotherapy in 2005 and of M.Sc. MLT from the year 2008 was without obtaining UGC's approval;
- (i) that several of the degrees which are being offered by the petitioner University are not in the list of the notified degrees of the UGC;
- (j) that the petitioner University was conferred the status of deemed University in the fields of i) Agriculture, ii) Agricultural Engineering and Technology, iii) Animal Science and Dairy Technology, iv) Home Economics, Environmental Science, Home

Economics and Womens Development, v) Non-formal and Continuing Education and Rural Development and Financial Management;

- (k) that the petitioner University, though vide letter dated 5th November, 2010 sought *ex post facto* approval for the aforesaid courses but by then the 2010 Regulations had come into force and which have no provision for such *ex post facto* approval;
- (l) that it is for the aforesaid reasons that the impugned letter dated 3rd December, 2014 has been issued.

6. The senior counsel for the petitioner University has argued:-

- (i) that under the UGC Act, a deemed University stands at par with a University established under a Central or a State Act; the only distinction is that a deemed University has to mention the same, so that those dealing with it are aware of its status;

- (ii) that under Section 22 of the UGC Act, a University, and which would include a deemed university, has a right of conferring or granting degrees notified thereunder;
- (iii) that the power of UGC to make Regulations is circumscribed by Section 26, unlike the power of the Central Government under Section 25 to make Rules to carry out the purposes of the Act; Section 26 does not empower UGC to make Regulations requiring deemed universities to seek prior approval of the UGC for commencing a new Course / Programme, if the same is already notified under Section 22 of the Act;
- (iv) that the courses commenced by the petitioner University under the Department of Public Health and MLT are general courses of Science and the petitioner University is granting degrees thereunder which are specified under Section 22 of the Act and there was thus no requirement for the petitioner University to obtain prior approval of the UGC; moreover the Undergraduate Courses in the

said subjects were commenced in the year 2001-2002 and though the Postgraduate Courses were commenced in the year 2008-2009, but in the subjects in which Undergraduate Courses were already being offered;

- (v) that the reliance by the UGC on Clause 15 of the Guidelines of the year 2000 is also misplaced; the same prescribes the parameters for opening of “Centers by the deemed University in its own area or in places other than its Headquarters and has no applicability to Departments/Courses in the University campus”;
- (vi) that the 2004 Guidelines, even if valid, provided for obtaining *post facto* approval within six months; the petitioner University had submitted a letter dated 16th July, 2004 and it is the respondent UGC which did not consider grant of *post facto* approval;
- (vii) that the respondent UGC is unnecessarily holding up the approval sought by the petitioner University by way of

abundant caution for the Courses / Programmes of B.Sc. Nursing and B.Sc. Radiological Imaging; and,

(viii) that UGC is under a misconception that a deemed University must confine itself to offer the courses which it was offering at the inception; reliance is placed on para 18 of *Bharati Vidyapeeth Vs. State of Maharashtra* (2004) 11 SCC 755 to contend that the Supreme Court also therein has appreciated the service being rendered by deemed Universities.

7. The counsel for the respondent UGC contended:-

- (a) that the petitioner University has not challenged the Guidelines of the year 2000 or those of the year 2004 or the power of the UGC to make/issue Guidelines;
- (b) that under the aforesaid Guidelines, the petitioner University was required to obtain prior approval; attention in this regard is drawn to Section 12(j) of the UGC Act;

- (c) Clause 15 of the Guidelines of the year 2000 though employs the term “centers”, but it is apparent from a reading thereof, that it covered new departments/new courses and the term “center” has always been treated as including new departments offering new courses;
- (d) the Guidelines of the year 2004 were very clear in this respect that it was immaterial whether the new departments were within the campus or at off campus centers;
- (e) it is also clear from a reading of the 2004 Guidelines that the requirement of obtaining prior approval from UGC before starting new Course/Department was not being introduced for the first time;
- (f) that the UGC is empowered by Section 12(j) of the Act to perform such other functions as may be prescribed or as may be deemed necessary for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of its functions and in

exercise of which powers, had issued the Guidelines aforesaid;

- (g) that UGC is entitled to treat deemed Universities as a separate and distinct class and to require them to seek prior approval before starting new Courses/Departments, because deemed Universities are fundamentally different from Universities; while a University is established under a Central or a State Act and does not require recommendations of the UGC, a deemed University is not so established and requires recommendation of the University to function as a University; the said difference has also been recognized in para 18 of the *Bharati Vidyapeeth* supra;
- (h) that the new Courses / Departments commenced by the petitioner University cannot be considered as allied or related to the Courses/Departments which it was running / offering at the time of being notified as a deemed University;

- (i) the letter dated 15th July, 2006 of the UGC also exempted prior approval only for the courses of B.A., M.A., B.Sc., M.Sc., M.Com. etc. and the courses in Health Sciences, Public Health, MLT and Pharmacy, which the petitioner University had introduced between the years 2001-2002, are not general courses;
- (j) UGC vide its letters dated 19th April, 2005 and 15th June, 2009 and show cause notice dated 6th February, 2012, had also intimated the petitioner University that the said courses are unauthorized but the petitioner University continued therewith; and,
- (k) nothing in Section 22 grants deemed University an unqualified right to confer degrees and even if it were to be held that it does confer such a right, the right can be qualified by introducing the requirement for prior approval of the UGC.

8. We may at this stage notice that though the written submissions submitted by the counsel for the respondent UGC are structured as if only

qua the application for interim relief but upon our pointing out the said error to the counsel for the respondent UGC he agreed that if the decision of the writ petition is confined as has been confined hereinabove, the same may be treated as written submissions on the writ petition itself.

9. We had during the hearing enquired from the counsel for the respondent UGC whether the UGC insists upon a University as distinct from a deemed University to seek prior approval before commencing a new Course/Department/Programme. The counsel for the respondent UGC responded that the UGC does not, if the new Course/Programme or Department is within the confines of Section 22.

10. We have considered the pleadings, oral arguments as well as the written submissions filed and proceed to adjudicate, identifying the following issues:-

A. whether the UGC Act

- i) requires a deemed University to; or
- ii) empowers the UGC to, by issuing Guidelines or instructions or by imposing it as a condition for being

notified as a deemed University or by framing Regulations,

insist upon a deemed University, before commencing any new Course/Programme of study or before establishing any new Department i.e. other than the ones in which it is already imparting education at the time of being notified as a deemed University, obtain prior approval or approval of the UGC; and,

- B. if the answer to the aforesaid is in the affirmative then whether any such restriction was in existence at the time when the petitioner University commenced the new Courses/Department.

11. The UGC Act, as per its Preamble, was enacted “to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission”. Section 2(f) of the Act defines a university as a university established or incorporated by or under a Central Act, a Provincial Act or a State Act. Section 3 of the Act empowers the Central Government to on the advice of the UGC, declare by notification in the official gazette any institution for higher education other than a university to be a deemed university and further provides that upon

such declaration being made all the provisions of the UGC Act shall apply to such deemed university as if it was a university within the meaning of Section 2(f) of the Act. Sections 4 to 11 of the Act deal with the establishment of the UGC. Section 12 of the Act prescribes the function of the UGC as, to, in consultation with the Universities or other bodies concerned, take all such steps as it may think fit for the promotion and in co-ordination of University education and for determination and maintenance of standards of teaching, examination and research in universities and empowers the UGC for performance of such function, to enquire, allocate and disburse funds, recommend to Universities measures necessary for improvement of university education, advice the Central and the State Governments including on the standards to be maintained by the universities, require the universities to furnish information and to perform such other functions as may be prescribed or may be deemed necessary by the UGC for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the functions. Sections 12A and 12B empower UGC to regulate fees, donations and grants to Universities. Section 13 vests the UGC with the power of inspection. Section 14 empowers the UGC to withhold the grants of the university which is in

defiance of the recommendations of the UGC. Sections 15 to 19 deal with the funds, budget, reports, accounts and audit of the UGC. Section 20 empowers the Central Government to issue directions to the UGC. Section 21 requires UGC to furnish to the Government such returns as the government may require. Section 22 of the Act to which reference has been made in the arguments is as under:

“22. **Right to confer degrees.** - (1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, “degree” means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.”

In exercise of powers under Section 22(3), as many as ten notifications are found to have been issued specifying the degrees within the meaning of Section 22. Lastly, vide Notification published in Gazette of

India of 5th July, 2014 in supersession of earlier Notifications, UGC with approval of Central Government has specified the nomenclature of degrees.

The consequential Section 23 of the Act is as under:

“23. Prohibition of the use of the word “University” in certain cases.-No institution, whether a corporate body or not, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word “University” associated with its name in any manner whatsoever:

Provided that nothing in this section shall, for a period of two years from the commencement of this Act, apply to an institution which immediately before such commencement, had the word “University” associated with its name.”

Section 24 of the Act deals with penalties for contravention of the Act. Section 25 of the Act contains the rule making power of the Central Government and Section 26 of the Act contains the Regulations making power of the UGC. Section 27 is the power to delegate and finally Section 28 provides for laying of Rules and Regulations before Parliament.

12. The contention of the counsel for the UGC, that Section 22 prohibits deemed Universities from setting up a new department or commencing a new course or programme, cannot be accepted. Section 22 only confers an

exclusive right in Universities to confer degrees which are specified by notification in the official gazette. It follows that once an institution of higher education has been declared as a deemed University, it can confer the degrees specified in the notifications issued in exercise of power under Section 22(3). It cannot be read as restricting the right of a deemed University to confer degrees only in those courses/programmes in which it was imparting education in at the time of being declared a University.

13. As would be obvious from the aforesaid analysis of the Act, no provision of the Act bars a university or a deemed university from commencing any new course / programme of study or from establishing any new department i.e. other than the one's in which a deemed university is already imparting education at the time of being notified as a deemed university, to confer degrees specified in Notifications under Section 22(3).

14. The Act is also not found to contain any distinction between a university established or incorporated by a Central Act, a Provincial Act or a State Act and a deemed university. Rather, Section 3 of the Act, as aforesaid, expressly provides that an institution of high education once declared and notified as a deemed university shall be treated as if a

university as defined in Section 2(f) of the Act. The counsel for UGC has admitted, as aforesaid, that there is no requirement for a University established by a Central / Provincial / State Act to seek prior approval of UGC for setting up a new department or commencing a new course to confer degrees specified in Notifications issued under Section 22(3).

15. The next question which arises is, whether the Act empowers the UGC to impose any such condition on deemed Universities.

16. UGC in this regard relies on Section 12(j) and Section 22 of the Act. Section 12 of the Act while prescribing the function of the UGC as, to take all steps as it may think fit for co-ordination and determination of standards of teaching and examination in the university, empowers the UGC to make enquiries, recommendations, advisories and to perform such other functions which may be prescribed or as may be deemed necessary by the UGC in this regard. The contention of the counsel for the UGC is that UGC, in exercise of such power, is entitled to issue guidelines prohibiting commencing of new courses / programmes and setting up of new departments by the deemed universities. The only question to be adjudicated is qua the power if any in this regard under Section 12(j) of the Act.

17. We, at the outset are of the view that once the purpose of the enactment of the Act is, to establish UGC for determination of standards in Universities and Section 12 also making it a function of UGC, determination of standards would take within its sweep a provision requiring Universities / deemed Universities to obtain approval or prior approval for commencing a new course/programme or for establishing a new department. Determination of standards in Universities cannot in our opinion be confined to laying down the syllabus, mode of imparting education, the duration of course/programme, qualifications of faculty members, minimum attendance required etc. of the programmes/courses offered. It would also in our opinion take within its ambit, making a provision for taking prior approval for commencement of a new course/programme or for establishment of a new department by satisfying UGC that the standards prescribed therefor exist and the gullible students are not prejudiced.

18. Supreme Court, as far back as in *Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar* AIR 1963 SC 703 held that the power to coordinate is not merely a power to evaluate and that there is power implied therein to prevent what would make coordination impossible or difficult. It was further held that the power given to the UGC to coordinate

is absolute and unconditional and in the absence of any controlling reasons it has to be given full effect, according to its plain and expressed intention. Similarly in *Osmania University Teachers Association Vs. State of Andhra Pradesh* (1987) 4 SCC 671 it was held that UGC has a greater role to play in shaping the academic life of the country and shall not be falter or fail in its duty to maintain a high standard in the Universities and a hope was expressed that UGC will duly discharge its responsibility and play an increasing role to bring about the needed transformation of academic life of the Universities. Yet again, in *University of Delhi Vs. Raj Singh* 1994 Supp. (3) SCC 516 it was held that the function of UGC as set out in Section 12 being “to take....all such steps as it may think fit for the promotions and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities...” would comprehend the power to require those who possess the education qualifications required for holding the post of lecturer in Universities and colleges to appear for a written test, the passing of which would establish that they possess the minimal proficiency for holding such post.

19. Supreme Court, in *Prof. Yashpal Vs. State of Chhattisgarh* (2005) 5 SCC 420 held that incorporation of a company is entirely different from incorporation of a University and the two are conceptually different. It was held that a company need not have a prior business and a mere statement of a lawful purpose in Memorandum of Association is enough; if a company is unable to achieve its objective and is unable to carry on business, the shareholders may suffer some financial loss, but there is absolutely no impact on society at large. However, a University once incorporated, gets a right to confer degrees; a University having no infrastructure or teaching facility of any kind would still be in a position to confer degrees and thereby create a complete chaos in the matter of coordination and maintenance of standards in higher studies which would be highly detrimental for the whole nation. It was further held that in the case of a Private University it is necessary it should be a pre-established institution for higher education with all the infrastructural facilities and qualities which may justify its claim for being conferred with a status of a University and only such an institution can be conferred the legal status and a juristic personality of a University. The Supreme Court held that when the Constitution has conferred power on the State to legislate on incorporation of University, any Act providing for

establishment of the University must make such provisions that only an institution in the sense of “University” as it is generally understood with all the infrastructural facilities, where teaching and research on wide range of subjects and of a particular level are actually done, acquires the status of a University. It was held that in the language of Section 2(f) of the UGC Act defining University as a University “established or incorporated” by or under a central act, a provincial act or a state act, the word ‘or’ has to be read as ‘and’. It was accordingly held that the provisions of The Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 making it possible to incorporate a university without the same being established, was bad. It was held that it is only after establishment of a basic requisites of a University (classrooms, library, laboratory, offices and hostel facility etc.) that private universities should be incorporated and conferred a juristic personality.

20. Even though the aforesaid judgments support our proposition that the power to co-ordinate, determine and maintain standards in Universities would include a power to provide that no new department will be set up and no new course / programme commenced save with prior approval of UGC but we may in this regard also notice that a statute as the UGC Act having

relevance forever has to be interpreted as serving the needs of the changing society and societal behaviour and pattern and the developments and to serve the purpose for which it was enacted.

21. Supreme Court in *S.P. Gupta Vs. President of India* 1981 Supplementary (1) SCC 87 held that interpretation of every statutory provisions must keep pace with the changing concepts and values and it must, to the extent to which its language permits or rather does not prohibit, suffer adjustments through judicial interpretation so as to accord with the requirements of the fast changing society which is undergoing rapid social and economic transformation. The language of a statutory provision was held to be not a static vehicle of ideas and concepts and it was observed that as ideas and concepts change, as they are bound to do in any democratic structure based on egalitarian values and aggressive developmental strategies, so must the meaning and content of the statutory provision undergo a change. It was further held that the law is intended to serve a social purpose and it cannot be interpreted without taking into account the social, economic and political setting in which it is intended to operate. Such an exercise of application of a given legislation to new or unforeseen needs and situations broadly falling within the statutory provision was in *V. C.*

Rangadurai Vs. D. Gopalan (1979) 1 SCC 308 held to be within the Court's province and Justice Krishna Iyer had approved of the nomenclature *legisputation* thereto. The same sentiment was expressed in ***Badshah Vs. Sou. Urmila Badshah Godse*** (2014) 1 SCC 188 by observing that law regulates relationships between people; it prescribes patterns of behaviour and reflects the values of society; the role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. It was held that law of society is a living organism and based on the given factual and social reality which is constantly changing, the law must change. It was further held that the history of law is the history of adapting the law to society's changing needs.

22. The settled principle is that the Parliament intends the Court to apply to an ongoing Act a construction that continuously updates its wordings to allow for changes since the Act was initially framed (an updating construction) while it remains law; it is to be treated as always speaking. This means that in its application on any day, the language of the Act though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat as a current law and enactment of former days is to be read in the light of dynamic processing received over the years,

with such modification of the current meaning of its language as will now give effect to the original legislative intention.

23. UGC having been established as a authority superior to the Universities and for supervising the Universities, if held to be not having the power to exercise such control over the Universities would cease to serve the purpose for which it was established. In the last over half a century since enactment of the UGC Act, the gap between the intake capacity of the educational institutions which then were largely established by the State, charitable bodies and institutions and the number of students wanting admission has forever been rising. The same, together with the consequent realization of education being a sunrise industry has led to the entry of the private sector in the field of education. The educational institutions established by the private sector though as per the requirements of law through the medium of a society or a trust have often been found to be perpetuating a commercial motive and the Courts have been constrained to comment on the commercialisation of education.

24. Supreme Court, in *State of Maharashtra Vs. Vikas Sahebrao Roundale* (1992) 4 SCC 435, observed that the field of education had

become a fertile, perennial and profitable business with the least capital outlay and that societies and individuals are establishing such institutions without complying with the statutory requirements and lamented of mushrooming of colleges all over the country, at times in complicity with the statutory authorities who failed to check this process by effectively enforcing the provisions of the various statutes. Similarly in *Swami Vivekanand College of Education.Vs. Union of India* (2012) 1 SCC 642 it was observed that the system of higher education in India has expanded rapidly and in spite of built-in regulatory mechanisms that ensure satisfactory levels of quality in the functioning of higher education institutions, there have been criticisms that the country has permitted the mushrooming of institutions of higher education with fancy programme and substandard facilities and consequent dilution of standards. Recently, Supreme Court in *DM Wayanad Institute of Medical Sciences Vs. Union of India* AIR 2015 SC 2940 has reiterated what was said in *Unni Krishnan, J.P. Vs. State of Andhra Pradesh* (1993) 1 SCC 645, that imparting education cannot be treated as a trade or business. It is for this reason only that Supreme Court in *Manohar Lal Sharma vs. Medical Council of*

India (2013) 10 SCC 60 cautioned about the grant of approval to medical colleges which would churn out half-baked Doctors.

25. The need of the hour, if not earlier, is that even a University be not allowed to commence a new course/programme or establish a department without prior approval by demonstrating to the UGC of the existence of the standards prescribed therefor. Else, the possibility of the Universities satisfying the half baked standards also commencing new course/programmes or establishing new departments and without being fully prepared admitting gullible students thereto, cannot be ruled out. Such students naturally will either be unable to clear the examinations or even if manage to do so and possessing the qualification would not have the skills thereof leading to degradation of the society.

26. Just like the Supreme Court in **Prof. Yashpal** supra held that incorporation of a University without ensuring that there exists an established University cannot be permitted, similarly, it is not safe to leave the satisfaction of the UGC of the standards prescribed being satisfied, to inspections after the commencement of the course/programme. Such inspections often take years to make and even if the Universities fail to

satisfy the test thereof, the students admitted in the interregnum suffer. Not only so, we are of the opinion that even though UGC act does not make any distinction between a University and a deemed University but the two cannot possibly fall in one class and UGC would be entitled to make such a provision for deemed Universities only.

26A. There is thus no merit in the challenge to Regulation 12 supra, which we find the UGC empowered by the Act to make.

27. A question would still arise, whether in the absence of the UGC Act containing any provision prohibiting Deemed Universities from commencing new Course / Programme or setting up a new Department without prior approval of UGC, how is the UGC, even though authorised to direct so, is to direct so i.e. whether merely by issuing an advisory or a guideline or a direction under Section 12 of the UGC Act, as it claims to have done in the year 2000 and in the year 2004 etc. or by framing a Regulation as it has done in the year 2010.

28. A close reading of Section 12 of the Act would show that the same prescribes the functions of the UGC and further prescribes that the said functions may be performed by doing the various acts as further prescribed

in Clause (a) to (j) thereunder. Clauses (a) to (cc) deal with enquiry into the financial needs of the Universities and allocation and disbursement of funds thereto. Clause (ccc) enables UGC to establish in accordance with Regulations, institutions for providing common services and facilities to a group of Universities. Clause (d) enables UGC to make recommendation to the University of the measures necessary for the improvement of education and to advise to the University the action to be taken for implementing such recommendation. Clauses (e) to (g) enable the University to advise the Government and Clauses (h) & (i) are the information collection power of the UGC. Thereafter, Clause (j) is the residuary clause enabling UGC to perform such other functions as may be prescribed or as may be deemed necessary for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the functions of the UGC.

29. Notice at this stage may be taken of the Regulation making power in Section 26. UGC has been empowered to, by Notification in the official Gazette, make Regulations,

“(f) defining the minimum standards of instruction for the grant of any degree by any University;

- (g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities.”

Section 28 requires such Regulations to be laid before each House of Parliament, while in session for a period of thirty days and vests jurisdiction in the Parliament thereover.

30. It would thus be seen that Regulation making power includes within its ambit, defining the minimum standard of instruction for grant of any degree and regulating the maintenance of standards and coordination of work or facility in the University, and which words, in *University of Delhi Vs. Raj Singh* supra have been held to entitle UGC to provide for a written test for holding post of lecturer in a University. We have hereinabove held that the said power includes a power to prescribe that no new Course / Programme shall be commenced and no new Department set up without prior approval. Thus, the power to make Regulation would include a power to make a Regulation prescribing so.

31. Once, it is held that UGC can exercise such a power by making a Regulation, the next question which arises is whether it can also do the same thing which it can do by making a Regulation, by issuing a direction or advisory under Section 12(1)(j).

32. The principle which immediately gets attracted in this respect is, that ordinarily what is statutorily prescribed to be done by making Regulations and which Regulations are required to be laid before each House of Parliament while in session for a period of 30 days, cannot be done otherwise. Else, there would be no sense left in prescribing the same to be done by Regulation. Thus, once we hold that the UGC, by Regulation, can require the Universities or deemed Universities to obtain prior approval before commencing a new course/programme, ordinarily UGC would not be entitled to insist so without framing a regulation. Supreme Court in ***PTC India Ltd. Vs. Central Electricity Regulatory Commission*** (2010) 4 SCC 603 held that if a different rate is required to be prescribed under the Electricity Act, 2003 by Regulations framed under Section 178 of the Act, it could be done only by subordinate legislation.

33. There is another reason to hold that UGC could not have in exercise of powers under Section 12 issued a direction / Guideline prohibiting deemed Universities from establishing new department or commencing new programme / course. Section 12 provides:

“12. 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 for standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may—”

Thus, anything done under Section 12 is to be in consultation with Universities. It is not the case of UGC that the directives / Guidelines on which it relies to contend that it had prohibited deemed Universities from commencing new course / programme or from establishing new department were issued in consultation with deemed Universities. On the contrary, it has come on record that the deemed Universities were protesting thereagainst. The said Guidelines / directives thus cannot be held to be in accordance with Section 12 and thus are of no avail. We also find Supreme Court in *University of Delhi* supra to have also observed that the regulation making power of the UGC can in fact be traced to Section 12(1)(j) of the Act.

34. Thus the Guidelines whether of the year 2000 or of the year 2004 or the instructions if any issued by the respondent UGC requiring the deemed Universities to obtain its prior approval before commencing a new course

are of no avail and UGC could not have insisted so without framing the Regulation and which it did only by inclusion of Regulation 12 in the Regulations of the year 2010 which came into force on 21st May, 2010.

35. In the light of the above we feel no need to go into the interpretation of the Guidelines of the year 2000 or of the year 2004 to decide whether the same required the deemed University to obtain prior approval before commencing a new course but need only mention that there was indeed some uncertainty in the matter.

36. Section 26(3) of the Act clarifies that the power of the UGC to make Regulations includes the power to give retrospective effect thereto from a date not earlier than the date of commencement of the Act but provides that no retrospective effect shall be given to any Regulations as to prejudicially affect the interests of any persons to whom such regulations may be applicable. A perusal of the 2010 Regulations shows that the same have not been given retrospective effect. Regulation 1.3 provides that the said Regulations shall come into force with effect from the date of Notification. Also, even if the said Regulations particularly Regulation 12 had been given retrospective effect by the respondent UGC, the same could not have

prejudiced the new departments established or new courses/programmes commenced by the deemed University and in establishing/commencing which the deemed University spent considerable effort and money and/or the students admitted thereto or had been conferred degrees thereunder.

37. Though UGC has also pleaded that the petitioner is offering degrees not specified in the Notifications issued under Section 22(3) of the UGC Act but neither was the said aspect for adjudication before us nor have we gone there into. UGC shall remain free to take whatever action it is entitled to and may deem proper in that regard. We may however notice that the Notification under Section 22(3) published in the Gazette of 5th July, 2014 provides under the heading “Specification of New Degrees” that “Henceforth, the Universities shall not introduce any new nomenclature of degrees, unless there is a very strong and genuine reason” and without obtaining the prior approval of the UGC.

38. The petition thus partly succeeds. Though the challenge to the Regulation 12 is dismissed but the petitioner University is entitled to the declaration that the new departments established by it and the new courses commenced by it (to confer degrees specified in Notifications under Section

22(3) of the UGC Act) prior to coming into force on 21st May, 2010 of the 2010 Regulations are valid. The said declaration shall however not preclude the respondent UGC from satisfying itself and ensuring that the petitioner University satisfies the standards of education prescribed for the said courses. However any course commenced by the petitioner University after the coming into force on 21st May, 2010 of the 2010 Regulations and without obtaining the prior approval of the UGC shall be invalid and the petitioner University hereafter also shall not be entitled to establish any new department or commence any new course/programme of study without obtaining the prior approval of the respondent UGC.

The petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

DECEMBER 04, 2015

‘gsr/pp/bs’