

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Appeal No. 221 of 2014**

1. Abhay Chandra Paul S/o Shri Nohar Das Paul Aged About 40 Years R/o Sagardeep Colony, Mig 54, Uslapur, Bilaspur Tahsil & District. Bilaspur, Chhattisgarh (Petitioner No. 3)
2. Lokesh Sharma, S/o S.P. Sharma, Aged About 30 Years R/o Jawahar Colony, Kharsiya, Distt. Raigarh, Chhattisgarh (Petitioner No. 4)
3. Narayan Singh Burman, S/o Shri Lakhan Lal Burman, Aged About 39 Years R/o Village Parsiya, Post Badra (Thakur), Distt. Mungeli, Chhattisgarh (Petitioner No. 5)
4. Kamlesh Kumar Denjare S/o Shir K. R. Denjare, Aged About 37 Years R/o Near F. C. I. Godown, Hira Nagar, Raigarh, Distt. Raigarh, Chhattisgarh (Petitioner No. 2)
5. Mahendra Kumar Sahu S/o Shri Rupsay Sahu, Aged About 38 Years R/o Village Pahariya, Tahsil Baloda, Distt. Janjgir Champa, Chhattisgarh (Petitioner No. 7)

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1. State Of Chhattisgarh Through The Secretary, Department Of Higher Education, Mahanadi Bhawan, Mantralaya, Raipur, Chhattisgarh (Respondent No. 1)
2. Chhattisgarh Public Service Commission, Through The Secretary, C.G. P. S. C., Shankar Nagar Road, Raipur, Chhattisgarh (Respondent No. 2)
3. University Grant Commission, Through The Secretary, U. G. C. Bahadur Shah Jafar Marg, New Delhi -110002 (Respondent No. 3)
4. The Global Open University, Established Under The Global Open University, Nagaland Act, 2006, Govt. Of Nagaland, Through Its Interim Headquarters Opposite Railway Station, Dimapur, Nagaland (Respondent No. 4)
5. Union Of India Through The Secretary, Ministry Of Human Resources Development, Shastri Bhawan, New Delhi (Respondent No. 5)
6. Baba Martandya Prasad, S/o Shri Umashankar, Aged About 31 Years R/o Village Koni, Government Engineering College Campus (E-7), Bilaspur, District Bilaspur, Chhattisgarh (Petitioner No. 1)
7. Madhvilata Ratre W/o Shri Lalit Kumar Sonwani, Aged About 28 Years R/o Navapara, Church Ground, Ambikapur, District Surguja, Chhattisgarh (Petitioner No. 6)
8. Amritlal, S/o Shri Gabrel Ekka, Aged About 32 Years R/o Village Shivrathpur, P. O. Surga, Tehsil Sitapur, District Surguja, Chhattisgarh (Petitioner No. 8)

9. Smt. Kalpana Gupta, S/o Shri Ramkishan Gupta, Aged About 34 Years
R/o Badi Bazar, Near Nutan Chowk, Ratanpur, District Bilaspur,
Chhattisgarh (Petitioner No. 9)

-----Respondents

Writ Appeal No. 214 of 2014

1. Pradeep Narayan Sharma, S/o Shri R.K. Sharma, Aged About 35 Years R/o Near Badamath Champa, District Janjgir- Champa, Chhattisgarh
2. Veerendra Kumar Banjarey, S/o Shir Kashiram Banjarey, Aged About 31 Years R/o Village & Post Kotmisonar, Thana Aklatara, Tahsil Akaltara, District Janjgir- Champa, Chhattisgarh
3. Naresh Kumar Khatker, S/o Nandlau Khatker, Aged About 33 Years R/o Head Post Bambhanpuri-Via- Sarsiva, Tahsil Bhilaigarh, District Raipur, Chhattisgarh
4. Vinod Kumar Sahu, S/o Shri Shiv Prasad Sahu, Aged About 39 Years R/o Head Post Dansar, Tahsil Sarangarh, District Raigarh, Chhattisgarh

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Versus

1. State Of Chhattisgarh Through The Secretary Department Of Higher Education, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh
2. Chhattisgarh Public Service Commission Through Its Secretary, Shankar Nagar Road, Raipur, Chhattisgarh
3. University Grants Commission Through Its Secretary, Bahadur Shah Zafar Marg, New Delhi 110002
4. Distance Education Council, Indira Gandhi National Open University, Maidan Garhi, New Delhi
5. The Global Open University, A University Duly Established Under The Global Open University (Nagaland) Act 2006, Having Its Interim Headquarter At Opp. Railway Station, Dimapur, Nagaland

---Respondents

Writ Appeal No. 53 of 2015

Smt. Manju Pandey W/o Shri Rajeev Pandey Aged About 36 Years R/o House No. 754, Sunder Nagar, Raipur Tahsil & District Raipur C.G.

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary Department Of Higher Education Dau Kalyan Singh Bhawan Raipur C.G.
2. Chhattisgarh Public Service Commission Through Secretary, C.G.P.S.C. Shankar Nagar, Road, Raipur, Distt. Raipur (Cg)
3. University Grant Commission, Bahadur Shah Jafar Mar, New Delhi

4. The Global Open University Established Under The Global Open University Nagaland Act 2006 Govt. Of Nagaland Through Its Director A-14, Paryavarab Complex, New Delhi
5. Union Of India Through The Secretary Ministry Of Human Resources Department Shastir Bhawan, New Delhi

-----Respondents

For Appellants:	Shri Kishore Bhaduri along with Shri Pawan Kesarwani and Shri Amrito Das along with Shri Pradeep Narayan Sharma and Shri Prateek Sharma, Advocates for respective Appellants.
For Respondent/State:	Shri Prafull N. Bharat, Additional Advocate General.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

24/02/2016

1. The Appellants are aggrieved by order dated 16.4.2014 dismissing their Writ Petitions. The Learned Single Judge declined to interfere with the decision of the Chhattisgarh Public Service Commission (hereinafter referred to as 'the Commission') debarring the Appellants as ineligible to be considered for the post of Assistant Professor as their M. Phil qualifications from the Global Open University, Nagaland established under the Global Open University (Nagaland) Act, 2006 (hereinafter called 'the University') by notification dated 18.9.2006 was not recognized by the State of Chhattisgarh.

2. Common submissions have been made on behalf of the Appellants in the first two appeals that they are not concerned with and do not raise issues regarding validity of establishment of off-campus centre or study centre outside Nagaland by the University. Their claims for eligibility to be considered for appointment on basis of their M. Phil qualifications is based on the solitary issue that they have only appeared at the M. Phil examinations held by the University at examination Centers in the State of Chhattisgarh regarding which there is no express prohibition in the law. No further issue is pressed on

behalf of the Appellants.

3. In Writ Appeal No.53/2015, an additional submission was made that the Learned Single Judge has erred in holding that the mark sheets issued to the Appellant from Dimapur was not valid in terms of Regulations 2.2 and 3.3 of the Distance Education Council guidelines. There was no prohibition for an off-campus centre within the State under Regulation 2.2. The Nagaland University is not a Deemed university but an open University and therefore the Distance Education Council guidelines have no application. The main University campus is at Nokha in the State of Nagaland, and Dimapur within the State of Nagaland is an off-campus centre. Otherwise, similar arguments were made that they have only appeared at the examination centre in the State of Chhattisgarh.

4. Learned Additional Advocate General opposing the Appeal submitted that the University Grants Commission (Establishment and Maintenance Of Standards in Private Universities) Regulations, 2003 (hereinafter referred to as 'the Regulations') framed under the University Grants Commission Act, 1956 (hereinafter referred to as 'the Act') provides in Regulation 2.1 that a private University may be established by a State/ Central Act. Under Regulation 2.2 and 2.4 read with Regulation 3.3, no off-campus centre or study center can be opened by a private University outside the State where the University is situated, except in exceptional circumstances and that too after completion of five years of its coming into existence and with the prior approval of the State Government where the off-campus centre outside the parent State is sought to be established. He further relied upon (2005) 5 Supreme Court Cases 420 (Prof. Yashpal vs. State of Chhattisgarh) referred to by the Learned Single Judge that off-campus centers outside the State were clearly impermissible in the law as being beyond the legislative competence of the concerned parent State where the University was situated.

The University was established in 2006 only. The minimum period before an off-campus centre could be opened anywhere was five years under Regulation 3.3. The question of an off-campus centre having been established in Chhattisgarh in the year 2009, and that too without the approval of the State Government simply does not arise. If an off-campus center outside the State where the University is situated requires concurrence of the State where it is proposed to be established it stands to reason that no examination center can also be opened in the new State without the approval of the concerned State. Without prejudice to the same it was submitted that there is no provision in the Regulations for an off-campus examination center. If there was any such center as claimed it obviously was illegal.

5. We have considered the submissions on behalf of the parties.

6. If the Appellants claim that they have not pursued their M. Phil course at any off-campus centre of the University within the State of Chhattisgarh, it naturally raises a presumption that they have taken their admissions at Nagaland and pursued their M. Phil course there itself. Surprisingly the Writ Petition is completely silent and wanting in any details whatsoever with regard to when they took the admission in the M. Phil course at Nagaland, the duration of the course, who their guide was and when they submitted their dissertation.

7. If the private University itself was established in 2006 the question of establishing any off-campus center in 2009 before expiry of five years simply does not arise. The issue of any approval by the State government therefore becomes redundant at this stage since the primary requirement itself was not fulfilled. If establishment of an off-campus center or study center was impermissible, the question of opening an examination center in the State of Chhattisgarh by the University simply does not arise. What could not be done

directly cannot be done indirectly. There exists no provision in the Regulations neither is there any provision for the opening of an off-shore examination center only by a private University outside its boundaries. If the examination centre itself does not have any legal sanctity, the plea for having appeared at the M. Phil examination at any examination center in the State of Chhattisgarh is but an argument in desperation which merits no consideration at all.

8. We may usefully also refer to a public notice by the Commission dated 7.12.2009 inter alia mentioning name of the present University as not having been permitted by it to have any off-campus centre.

9. We therefore find no reason to interfere. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE