IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) C.W.P.No.20055 of 2015

Punjab Technical University Non-Teaching
Employees Association, Jalandhar & others

....Petitioners

Versus

State of Punjab and others

...Respondents

2) C.W.P.No.20801 of 2015(O&M)

Amritpal Singh and others

....Petitioners

Versus

State of Punjab and others

...Respondents

3) C.W.P.No.24879 of 2015 (O&M)

Continental Institute of Engineering and Technology

....Petitioner

Versus

State of Punjab and others

...Respondents

Date of decision : June 2, 2016

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MRS.JUSTICE LISA GILL

....

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

...

Present : Mr.Mahabir Singh Sindhu, Advocate
for the petitioner(s) in CWP No.20801 of 2015.

Mr.Puneet Bali, Sr. Advocate with
Mr.Paramveer Singh, Advocate and
Ms.Monika Thakur, Advocate for
the petitioner(s) in CWP No.24879 of 2015.

Mr. Akshay Bhan, Sr.Advocate with
Mr. Amandeep Singh, Advocate
for the petitioner(s) in CWP No.20055 of 2015.

Mr. Kamal Sehgal, Addl.Advocate General, Punjab.

Mr. S.S.Bhinder, Advocate
for respondents No.3 and 4 in CWP Nos.20055 of 2015
for respondent No.2 in CWP Nos.20801 and 24879 of 2015.

Mr. S.K.Sharma, Advocate
for respondent No.4 in CWP No.24879 of 2015.

Mr. Harsimran Singh Sethi, Advocate
for PTU.

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MAHESH GROVER, J.

We propose to dispose of the aforesaid three writ petitions by virtue of this order.

The Punjab Technical University (hereinafter known as 'PTU' for the sake of brevity) was created by the Punjab Technical University Act, 1996 (in short '1996 Act'). The primary object stated therein was to be the advancement of technical education and development thereof in the State of Punjab and for matters connected therewith.

The State has now created another university by a separate legislation called The Maharaja Ranjit Singh State Technical University (hereinafter known as 'MRSSTU') through an enactment known as the Maharaja Ranjit Singh State Technical University Act, 2014 (in short '2014 Act') incidentally with the same avowed object of advancement of Technical Education and development thereof in the State of Punjab and for matters connected therewith. But while doing so confined its operation to territorial limits of districts such as Bathinda, Barnala, Faridkot, Fatehgarh Sahib, Fazilka, Ferozepur, Mansa, Moga, Shri Mukatsar Sahib, Patiala and Sangrur and other regions outside the State of Punjab, as may be decided by the Board from time to time subject to relevant regulations and statutes. It further provided that notwithstanding anything contained in any other law for the time being in force, any college imparting technical education and situated within the geographical limits of the aforesaid districts shall with the effect from such date as may be notified by the State Government, be deemed to be associated with and admitted to the privileges of the University and shall cease to be associated in any way with or admitted to any privileges of the Punjab Technical University, Jalandhar.

We will extract the relevant provisions of the statute as we progress further with our reasons to deal with the controversy which has largely erupted on account of subsequent legislation of 2014 to set up MRSSTU.

Before us are three sets of petitions with separate grievances stemming from the subsequent legislation creating MRSSTU impacting the stake holders differently.

In CWP No.24879 of 2015, an institution by the name of Continental Institute of Engineering and Technology questions Section 5 of the 2014 Act to be in conflict with Articles 19(1)(c) and 19(1)(g) of the Constitution of India. Section 5(2) of 2014 Act deprives the petitioner institution of the privileges to which it was admitted under the PTU by extinguishing the arrangement and admit it to the privileges of the MRSSTU as a compulsory intendment through a deeming fiction primarily on account of geographical placement of the college in one of the prescribed districts under Section 5(1) of 2014 Act. Apart from the fact that the institution perceives it to be a violation of their fundamental right to associate and affiliate themselves to the university of their choice, it also questions the enactment and its applicability to the institution on the ground that it deprives them of already accrued benefits under PTU by virtually giving the new enactment retrospective effect thus being in conflict with the various pronouncements of the courts.

CWP No.20055 of 2015 has been preferred by the employees of the Punjab Technical University (Non-teaching Employees Association) apprehending an adverse impact on the University in view of the provisions of Section 20 of 2014 Act setting up MRSSTU which envisages capital outflow from PTU to MRSSTU thereby depleting its corpus and violating numerous terms.

Such power of the Government under Section 20(2) of the 2014 Act is pleaded to be *ultra-vires* as it interferes with the autonomy of PTU set up by a separate legislation without corresponding amendments in this regard in the 1996 Act.

The third writ petition bearing No.20801 of 2015 has been preferred by the students who took the common entrance test and contend that they were selected under the PTU but the college to which they were allocated falls within the geographical limits of MRSSTU. They have thus been forced to complete their educational course under the MRSSTU which they find detrimental to their career prospects as PTU has a better reputation and standing.

Since all the three writ petitions have a grievance against a subsequent enactment setting up the MSSTU though for different reasons which are briefly encapsulated above, the arguments raised are essentially on those lines. While the State defends its action to contend that the college would have no right to choose its affiliate university and it (State) having an unquestionable right to legislate particularly when the object to promote technical education in the State is laudable and noble, aimed at minimising the hardships of the students of a particular region. Besides, the employees' union as also the students would have no locus to question the act of the State in either setting up a university or managing its finances to run the universities. Similarly, it has been pleaded that there is absolutely no violation of any right much less a fundamental right and thus a prayer has been made to dismiss all the three writ petitions.

Now we proceed to determine the issues having segregated the challenges on the negative impact of the legislation as perceived by the separate stake holders.

1996 Act

Section 2(f) of 1996 Act defines 'University' to mean the Punjab Technical University, Jalandhar as incorporated under this Act.

The object and reason is to provide for the establishment and incorporation of a university for the advancement of technical education and development thereof in the State of Punjab and for matters connected therewith.

Section 4 of the 1996 Act provides for powers and duties of the university which may be noticed as below :-

"4. The powers and duties of the University shall be to -

(1) Make provisions for providing, upgrading and promoting technical education and training and Research in Technical Education and to create entrepreneurship and a conducive environment for the pursuit of the technical education inclose cooperation with industry.

(2) Generate and maintain resources through Consultancy services testing services, continuing education programmes national and international collaborations and transfer of intellectual property rights.

(3) Institute and confer degree, diplomas, certificates

and other academic distinctions;

(4) Hold examinations and to grant and confer degrees, diplomas, certificates and other distinctions to and on persons who-

a) Shall have pursued a course of study in the University or in one of its Colleges unless exempted therefrom in the manner prescribed by Regulations and shall have passed the examinations prescribed by the University;

b) Shall have carried on research under conditions prescribed by the regulations;

(5) Confer honorary degrees in the manner laid down by the Regulations;

(6) Institute Professorships, Readerships, lectureships and any other teaching posts required by the University and to appoint persons to such Professorships, Readerships, Lectureships and other posts;

(7) Institute and award fellowships, scholarships, studentships, exhibitions and prizes in accordance with the provisions of the Regulations;

(8) Institute and maintain Halls and Hostels;

(9) Supervise and control the residence and discipline of the students of the University and to make

arrangements for promoting their health and general welfare;

(10) Organised laboratories, libraries museums and to provide such other equipment for teaching and research as is required;

(11) Demand and received such fees and other charges as may be prescribed by regulations;

(12) Hold and Manage trusts and endowments which may be created in favour of the University;

(13) Institute and manage-

(a) Printing and Publication Departments;

(b) University Extension Boards;

(c) Information Bureau; and

(d) Employment Bureaus;

(14) Make special provisions for the spread of technical education amongst classes and communities which are educationally backward;

(15) Make provisions for-

(a) the maintenance of National Cadet Corps or other similar organisations;

(b) physical and military training; and

(c) sports and athletic clubs;

(16) Create administrative, ministerial and other necessary posts and make appointments thereto;

(17) Receive gifts, donations or benefactions from the

State Government or the Central Government and to receive bequests, donations and transfer of movable or immovable property from testers, donors or transferors, as the case may be; and

(18) do all such other acts whether incidental to the powers afro-said or not, as may be requisite in order to further the objects of the University."

Section 5 provides the territorial limits to be the whole of the State of Punjab and other regions outside the State of Punjab as may be decided by the Board of Governors from time to time subject to any regulations and statues.

Section 5 (1) and (2) and the proviso thereto are also extracted herebelow :-

"5.(1) The territorial limits in which the University shall exercise its power and perform its duties shall be the whole of the State of Punjab and other regions outside the State of Punjab as may be decided by the Board of Governors from time to time subject to any regulations and statues;

(2) Notwithstanding anything contained in any other law for the time being in force, any college imparting technical education and situated within the limits of the areas specified under sub-section (1) shall with effect from such date, as may be notified in this behalf by the State Government, be

deemed to be associated with and admitted to the privileges of the university and shall cease to be associated in any way with, or be admitted to any privileges of, the Punjab University, Chandigarh, Punjabi University, Patiala and Guru Nanak Dev University, Amritsar;

Provided that-

(a) any student of any such college affiliated to the Universities mentioned above before the said date, who was studying for any degree or diploma examination of the said universities shall be permitted to complete his course in preparation therefore and the University shall hold for such students examination in accordance with the curricula of study in force in those Universities for such period, as may be prescribed by Regulation; and

(b) any such student may, until any such examination is held by the University, be admitted to the examination of the said Universities and be conferred the degree, diploma or any other privileges or those Universities for which he qualifies on the result of such examination.

Of an equal significance is Section 14(8) and needs to be noticed herebelow :

"14.(8) The Board of Governors shall be the Supreme authority of the University and shall have the following powers and functions :-

(a) to superintend and control affairs of the University;

(b) to recommend to the Chancellor, the appointment of the Vice-Chancellor from a panel of not less than three and not more than five persons of eminence from the fields of Industry/Technology/Technical Education as prepared by a high level "Search Committee" comprising three persons of eminence in the fields of Industry/Technology/Technical Education;

(bb) to recommend the emoluments and terms and conditions of service of the Vice Chancellor

(c) to approve academic programmes;

(d) to frame and approve rules and regulations of the University;

(e) to create Departments/ Centres/Schools/ board of studies for running various academic programmes;

(f) to create faculty and staff positions in University:

(g) <u>to approve the University Budget</u>;

(h) <u>to administer and control the funds of the University and to authorise the opening and operation of Bank Accounts</u>;

(i) to accept, transfer and otherwise control the moveable, immovable and intellectual property of the University;

(j) to decide upon the form and use of common seal of the University;

(k) to appoint such committees as may be required for the efficient functioning of the University;

(l) to approve the emoluments and terms and conditions of service of faculty and staff of the University;

(m) to approve the performance of works and services on contract."

Section 16 provides for the Finance Committee and its composition which is also extracted as under :

"16.(1)The Finance Committee shall consist of the following persons namely-

i) the Vice Chancellor as Chairman

ii) the Secretary to the Government of Punjab, Department of Finance

iii) the Secretary to the Government of Punjab, Department of Technical Education and Industrial Training; and

iv) two members of the Board of Governors to be nominated by the Chairman of the Board of Governors.

(2) The Finance Committee shall advise the Board of Governors on all financial matters.

2014 Act

"**5**. (1) The territorial limits in which the University shall exercise its powers and perform its duties, shall be Bathinda, Barnala, Faridkot, Fatehgarh Sahib, Fazilka, Ferozepur, Mansa, Moga, Sri Muktsar Sahib, Patiala and Sangrur Districts of the State of Punjab and other regions outside the State of Punjab, as may be decided by the Board from time to time subject to relevant regulations and statutes.

(2) Notwithstanding anything contained in any other law for the time being in force, any college imparting technical education and situated within the limits of the area provided under sub-section (1), shall with effect from such date, as may be notified in this behalf by the State Government, be deemed to be associated with and admitted to the privileges of the University and shall cease

to be associated in any way with, or admitted to any privileges of the Punjab Technical University, Jalandhar."

"**20**. (1) The State Government may from time to time provide such amounts by way of grants for meeting the capital, recurring or other expenditure of the University, as it may deem fit.

(2) The State Government may transfer from all available funds of the Punjab Technical University, Jalandhar to the Maharaja Ranjit Singh State Technical University, Bathinda in the ratio of 50:50."

These are the only two provisions of the 2014 Act offensive to the cause of the petitioner(s) in CWP Nos.24879 and 20055 of 2015.

We may also refer to some of the rules and regulations of Corpus Fund Scheme of the Punjab Technical University, Jalandhar.

The preamble of the Corpus Fund Scheme of PTU reads as under :

"**1. PREAMBLE**

In pursuance of national policy of the Govt. of India and recent emphasis of the State Govt. on reduction of subsidies on higher & technical education and encouraging colleges/university of higher & Technical education to generate resources internally through various activities including sponsored consultancy and development projects. With a view to keep the income earned through sources other than government grants in a separate developmental fund, it is proposed to create Corpus Fund at Punjab Technical University, Jalandhar.

The Board of Governors in its meeting gave approval in principle and directed for development of detailed guidelines for creation, maintenance and operation of Corpus Fund. This will take the university to become self reliant with period of 5 years."

"3. CREATION OF THE FUND

The funding of Punjab Technical University requires both public and private resources as well as Govt. grants. The fund shall be created with the help of donors, corporate bodies involvement of the public and private sectors of the economy, governmental and non-governmental organizations, alumni, staff and students of institutions, philanthropist and all other social workers involved with Technical Education.

Creation of the Corpus fund aims at paving the way for achieving partial, if not full, self reliance of PTU in a period of 5 years. Initially Corpus Fund has been created by transferring of Rs.100 crores towards Corpus Fund Account.

4. OBJECTIVES OF THE CORPUS FUND

The objective of the corpus fund is to invest surplus funds lying with the university on long term basis so that the

University becomes self sufficient in meeting expenditure and its development. The main objectives of the corpus fund are as follows :

(i) To achieve financial self-reliance by PTU on the long-term basis.

(ii) to stimulate generation of additional fund using existing infrastructure and in reducing governmental support.

(iii) To develop industry institute partnership in the region.

iv) To create additional infrastructure in the University, so that the University can effectively play its role as a pace setting and model University in world.

(v) To create awareness and involvement of all stake holders (industries, alumni, staff, students and public) of Technical Education to ensure a balanced achievement of educational and social missions.

(vi) To support industrially oriented research and development activities and to reinforce the links between Technical education and research.

(vii) To provide financial support to the employees and for the development of the university.

(viii) To meet recurring as well as non-recurring expenditure of the university from the interest of the fund in case of financial deficit or exigencies during any financial year.

(ix) To promote financial assistance to the students for research and development work.

(x) To provide financial assistance to the economically weaker students.

5. MODE OF MOBILISATION OF CORPUS FUND

(i) The fund shall be collected from the alumni, industries, institutions, individuals, Trusts and other agencies.

(ii) The fund shall be created by transferring a fixed percentage of earnings out of Testing and Consultancy, Projects, R& D, Patent right and other offered from time to time by the University.

(iii) The percentage to be transferred to the Corpus Fund and Capital Fund from income derived, out of all sources by the University should be fixed i.e. say 50% after meeting all the legitimate expenses of the University.

(iv) The corpus fund can also be raised by creating a few industries sponsored seats in each post graduate course where the industry will be asked to contribute a certain amount per year in the Corpus fund.

(v) Any grant or contribution received from Government of India or State Govt. or other Govt.

Bodies specifically towards the Corpus Fund.

(vi) Development fees collected from students and other beneficiaries of the University programs.

(vii) Interest earned by investing the Corpus Fund collected in interest bearing fixed deposits, mutual funds, Government securities, etc.

(viii) By merging any such funds, which have already been created under various names.

(ix) Affiliation fees/establishment fees & development fee received from the college and learning center of Distance Education.

(x) By any other means as the Board of Governor of the University deems fit.

(xi) Any contribution received from individuals, industrial institute in kind or in cash will be part of Corpus Fund if received for Fund only. Any contribution for other specific purpose should be held for that particular purpose only and not for Corpus Fund.

6. MODE OF INVESTMENT OF CORPUS FUND

The corpus fund will be invested by the university in accordance with the following norms and modes.

(i) Investment in savings certificates as defined in clause (c) of section 2 of the Government Saving Certificate Act 1959 (46 of 1959) and any other securities of certificates issued by the Central Government under the Small Savings Schemes of the State Government.

(ii) Deposit in any Post Office Savings Scheme.

(iii) Deposit in any account with a scheduled/Public Bank other than cooperative bank.

(iv) Investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963) or LIC or other public bodies not having less than 51% Govt. share.

(v) Investment in any security for money granted and issued by the Central Government or State Government.

(vi) Investment in debentures issued by, or on behalf of any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government.

(vii) Deposits with or investment any bonds issued by a financial corporation which is engaged in providing long term finance for industrial development in India and which is approved by the Central Government for the purpose of clause (viii) of sub-section (i) of Section 36 of I.T.Act.

(viii) Deposits with or investment any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long term finance for construction or purchase of houses in India for residential purposes and which is approved by the Central Government for the purpose of clause (viii) of sub-section (i) of Section 36 of I.T.Act.

(ix) Investment in the Government of India Scheme of 364 days Government Treasury Bills.

(x) Investment in any debt fund, mutual fund and any other fund as per Govt. of India/State Govt. Guidelines.

(xi) Investment by any other means on recommendation of PTU Corpus Fund management committee with the approval of competent authority, as may deem fit.

The fund of 'Corpus Fund Account' will be invested in the above mentioned instrument on recommendation of the Investment committee and approval of the Vice-Chancellor.

7. MODE OF UTILISATION OF THE CORPUS FUND

The fund shall be kept in deposits as per the norms laid in para 6, above.

A. The initial contribution towards Corpus Fund shall not be used for any purpose/activity of the University.

B. The interest earned from, the investment of the Corpus Fund may be utilized by the University to cover the short fall during any financial year with the prior approval of the Finance Committee for the following purposes:

a. To meet the recurring/non-recurring/contingencies expenditure.

b. To provide financial Assistance to the employee and for the welfare activities of the employees of PTU.

c. To meet incidental expenditure for running & maintain of the fund.

d. Fund shall be used for any development activities of the university.

e. Fund created for specific purpose shall be used only for specific purpose.

C. The corpus fund will be utilized by the university for the above mentioned purpose by abiding of the following:

(i) The interest accruing from the investment of the corpus, fund initially is to be reinvested so that the fund reaches a targeted level of Rs.500 crores.

(ii) After the corpus fund has reached the targeted level, returns accruing from the investment shall be reinvested/credited to the Saving Bank Account of the University corpus fund. The returns will be utilized to the extent of availability in accordance with the following norms:

(a) Not more than 75% of the net returns on investment (after meeting administrative costs, if any) may be used for any purposes as mentioned at 7-B(a-e).

(b) What proportion of amount and for what purpose to be used in 7-C ii(a) above shall be as decided by the Management committee/Finance Committee. The amount so decided will be credited to the appropriate Head of Account.

(c) The remaining amount of the net return on investment shall be reinvested as provided in Para (6) so as to increase to the appropriate Head of account.

(iii) The corpus fund should be integral part of the statement of accounts of the University. It should be in the knowledge of the Finance Committee & Board of Governors."

Learned counsel for the petitioner has argued that Section 5(2) of the 2014 Act clearly violates their fundamental right under Article 19(1)(c) and 19(1)(g). It has been contended that they are a private college with no financial or other support from the Government. The only condition that they are bound to, is of being AICTE compliant. Being so they cannot be forced into affiliation with some university of which they do not approve particularly when PTU has a greater standing and enjoys a better reputation which attracts the students and merely because the college now falls within the geographical limits of the districts by the newly created legislation they cannot be made to abdicate their affiliation with PTU compulsorily. It is also stated that they would face unfair competition from a college which may be barely 5 to 10 KMS away but outside the geographical limits prescribed by the new statute and thus continue to enjoy the patronage of PTU attracting better and more students to adversely affect the petitioner institution. Apart from that,it is contended that the privileges conferred upon them by the PTU stand withdrawn by the new enactment virtually giving it to a retrospective effect which is impermissible.

It is contended that the subsequent enactment neither has repealing or saving clause and thus the previous legislation as also the subsequent one would have to be construed harmoniously with both holding the field so far as they do not conflict with each other but with the choice of the petitioner to submit himself to either, remaining unfettered.

The non-teaching employees with reference to the creation of corpus of the university and its management state that the university would face a capital outflow on the directives of the Government as has happened without there being any conscious decision taken by the University and repeated recurrence of such outflow, a likely consequence if its legitimacy is accepted would jeopardize the interest of the institution and consequently their own. It is stated that Section 20(1) and (2) which empowers the Government to direct capital outflow destroys the financial autonomy of the university and encourages interference by the government in matters of finance which have largely been managed by the university itself. Section 20 is thus pleaded to be an act of 'malice in law' requiring it to be struck down as beyond competence as the earlier PTU statute conferring the financial autonomy on the PTU has not been amended to attune it with the subsequent legislation - in particular Section 20. It is asserted that no independent decision has been taken by the Board and no reasoning is reflected in the approval of capital outflow.

The respondent-State as also the PTU contend that the legislative competence of the State is beyond question and thus prescription of geographical boundaries to bring into the jurisdictional field of the new university, colleges located therein cannot be questioned either by the college or by the employees and the students. Besides, it has been stated that the decision to ensure a capital outflow has been taken by the Finance Committee and the PTU Board which are duly empowered to do so. The employees cannot question the decision of the Board in this regard.

The locus of the institution, however, is not questioned by the State. The only challenge to their contention is that the college would have no right to insist on a particular affiliation and the argument of violation of fundamental rights is without any basis.

We have heard the learned counsel for the parties at some length.

We may briefly formulate the following questions to be answered :

(i) Whether Articles 19(1)(c) and 19(1)(g) of the Constitution are infringed or not ?

((ii) Whether the college can be forced into an affiliation with a university not of its choice "

We may first determine the issue of the institution in CWP No.24879 of 2015.

Article 19(1)(c) and 19(1)(g) may be extracted herebelow :

> "19. Protection of certain rights regarding freedom of speech etc.
>
> ....
>
> (c) to form association or unions;
>
> ....

(g) to practice any profession, or to carry on any occupation, trade or business."

The petitioners have relied upon *Andhra Pradesh Dairy Development Corporation Federation v. B.Narasimha Reddy and other*s, **(2011) 9 Supreme Court Cases 286**.

It is a settled principle of law that the presumption of correctness has to lean in favour of the legislation on the plea of good faith but in judicial review the court can scan whether the provisions are irrational, arbitrary, unreasonable or not having nexus to the object sought to be achieved.

In any eventuality the legislative competence has not been questioned by the petitioner and what is merely said is that the subsequent enactment has the effect of meddling with the first one (without there being any power prescribed by making corresponding amendments in either statutes and even if it is assumed that both the legislations co-exist, yet the institution cannot be forced into submitting as an affiliate of the university of the Government's choice which would clearly in conflict of Article 19((1)(c) and 19(1)(g).

In *Andhra Pradesh Dairy Development Corporation Federation' cas*e (supra) the court observed as under :-

"**21.** Article 19(1)(*c*) guarantees to all citizens, the right to form associations or unions of their choice voluntarily, subject to reasonable restrictions imposed by law. Formation of the unions under Article 19(1)(*c*) is a voluntary act, thus, unwarranted/impermissible statutory intervention is not desired

22. A Constitution Bench of this Court in *Raghubar Dayal Jai Parkash* v. *Union of India* [AIR 1962 SC 263] , while dealing with a similar issue held as under: (AIR p. 270, para 12)

> "*12.* … An application for the recognition of the association for the purpose of functioning under the enactment is a voluntary act on the part of the association and if the statute imposes conditions subject to which alone recognition could be accorded or continued, it is a little difficult to see how the freedom to form the association is affected unless, of course, that freedom implies or involves a guaranteed right to recognition also."

"24. In *Daman Singh* v. *State of Punjab* this Court examined a case where an unregistered society was by statute converted into a registered society which bore no resemblance whatever to the original society. New members could be admitted in large numbers so as to reduce the original members to an insignificant minority. The composition of the society itself was transformed by the Act and the voluntary nature of the association of the members who formed the original society was totally destroyed. The Act was, therefore, struck down by the Court as contravening the fundamental right guaranteed by Article 19(1)(*f*). (SCC pp. 680-81, para 9)

25. In *Dharam Dutt* v. *Union of India* this Court held that the first test is the test of reasonableness which is common to all the clauses under Article 19(1), and the second test, is to ask for the answer to the question, whether the restrictions sought to be imposed on the fundamental right, fall within clauses (2) to (6) respectively, qua sub-clauses (*a*) to (*g*) of Article 19(1) of the Constitution, and the Court further held that: (SCC p. 735, para 28)

> "*28*. … A right guaranteed by Article 19(1)(*c*) on [the] literal reading thereof can be subjected to those restrictions which satisfy the test of clause (4) of Article 19. The rights not included in the literal meaning of Article 19(1)(*c*) but which are sought to be included therein as flowing therefrom i.e. *every right which is necessary in order that the association brought into existence fulfils every object for which it is formed, the qualifications therefor* would not merely be those in clause (4) of Article 19 but would be more numerous and very different. Restrictions which bore upon and took

into account the several fields in which the associations or unions of citizens might legitimately engage themselves, would also become relevant."

(emphasis supplied)

26. Therefore, the freedom guaranteed under Article 19(1)(*c*) is not restricted merely to the formation of the association, but to the effective functioning of the association so as to enable it to achieve the lawful objectives."

In *DAV College, etc. etc v. State of Punjab and ors*. AIR **1971 SC 1737** the Hon'ble Supreme Court has observed as under :

"**30**. It is contended that the compulsory affiliation of the Petitioners to the University affects their fundamental right of freedom of Association as guaranteed under Article 19(1)(e), therefore the notification under Section 5(3) affiliating them to the University is bad. It is also urged that since the words "associated with and admitted to any privileges" or used in Section 5 of the Act, it would mean that Petitioners are compulsorily formed into an Association with the University. This contention however is countered by the Respondents who point out that the freedom of Association under Article 19 (1)(c) implies Association between citizens while in the case of the petitioners what is sought to be affected is an affiliation with the University which is a corporate body.

31. The right to form an association implies that several individuals get together and form voluntarily an association with a common aim, legitimate purpose and having a community of interests. It was sought to be suggested that the compulsory affiliation with the University affects the aims and objects of the association, as such its freedom is infringed. There is in our view a fallacy in this argument which on earlier occasions had also been repelled. In The *All India Bank Employees Association v. National Industrial Tribunal and ors.*, [1962 (2) SCR 269] it was observed that the right guaranteed under Article 19(1)(*c*) does not carry with it a concomitant right that the Associations shall achieve their object such that any interference in such achievement by any law would be unconstitutional unless it could be justified under Article 19(4) as being in the interests of public order or morality. The right under Article 19(1)(*c*) extends inter alia to the formation of an Association or Union.

32. In *Raghubar Dayal Jai Prakash* v. *Union of India* and ors.[1963 (2) SCR 547] it was held that if the statute imposes conditions subject to which alone recognition could be accorded or continued, it is a little difficult to see how the freedom to form the Association is effected unless, of course, that freedom implies or involves a guaranteed right to recognition also which it did not.

33. A reference has been made to a recent case of *Smt Damayanti Narang* v.*Union of India and ors.*, [(1971) 1 SCC 678] that a compulsory affiliation by statute would interfere with the right of association. This argument in our view is untenable because in that case Parliament passed a law under Entry 63 of List II of Schedule Seventh to the Constitution under which a Hindi Sammelan was to be constituted which was to consist of the first members of the Hindi Sammelan registered under the Societies Registration Act and all persons who become members thereof in accordance with the rules in that behalf. This statutory Sammelan was constituted as a body corporate the first members of which were to consist of persons who immediately before the appointed day were life members of the Society, had been Presidents of the Society or were awarded the Mangla Prasad Paritoshik by the Society. There were also other provisions by which the Hindi Sammelan Society, its constitution as well as its property was affected. In those circumstances it was held that the Act insofar as it interferes with the composition of the Society in constituting the Sammelan violated the rights of the original members of the Society to form an association guaranteed under Article 19(1)(*c*). No such thing was intended or effected by Section 5 of the Act. At any rate the D.A.V. College Trust and Management Society is not being interfered with, by any attempt to form an Association with the University. We can see no infringement of Article 19(1)(*c*)."

"**36.** In the case of Kerala Education Bill MANU/SC/0029/1958: [1959] ISCR995 dealing with Article 30(1) this Court observed at page 1053:

> The key to the understanding of the true meaning and implication of the Article under consideration are the words "of their own choice". It is said that the dominant word is

> "choice" and the content of that Article is as wide as the choice of the particular minority community may make it. The ambit of the rights conferred by Article 30(1) has therefore to be determined on a consideration of the matter from the points of view of the educational institutions themselves.

37. While so stating it was nonetheless observed :

> that the Constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institution to be aided."

It is the aforesaid observations which have been forcefully reasoned by the learned counsel for the respondents to pray for negation of the case of the petitioners.

We find that the judgment rendered in DAV College case were rendered in context of a prayer made by the DAV College institutions that it being a religious sect and denomination and a minority within the meaning of Article 30(1) of the Constitution with its colleges established on the lines of teachings and principles of Arya Samaj imparting vedic culture and religious instructions based on concept of Vedas was a inherent part of their institutions and they cannot thus be forced into submission to Guru Nanak Dev University set up in 1969 authorising the newly created university to exercise its powers and duties and jurisdiction to colleges situated in Amritsar, Gurdaspur, Jalandhar, Kapurthala. Broadly the apprehension of the DAV institutions was that the object of setting up of the university as contained in the Act was to propagate. and promote Punjabi language in Gurmukhi script which would affect the rights of the minority institutions represented by the DAV institutions with teaching as per Vedic script in Hindi. The observations thus flowed largely from the right of the minority institutions to administer themselves. Similarly the decisions rendered in *P.A.Inamdar and ors. v. State of Maharashtra and ors.* **2005(3) S.C.T.697** were also on rights of the minority, unaided institutions to run their institutes and conditions imposed by the government were questioned to be in conflict with Article 29(2), 30(1) and 19(1)(g).

In our considered view these observations would not strictly apply to the controversy raised herein as the petitioner college is not a minority institution. It is rather a purely private institution with no grant-in-aid from the Government and would have a right to run its affairs in the way it choses but subject to ensuring compliance of Regulations of the university and other regulatory bodies such as AICTE.

It has been specifically averred and not denied by the respondents that the institution adheres to the AICTE having gained recognition therefrom and has submitted itself to the conditions imposed by the PTU as well. Admittedly the college is also a completely private college receiving no grant from the Government or from the university.

In the backdrop of these facts when the college is completely privately run and managed institution, its right to affiliate itself with a university of choice would be the relevant question to be determined.

Article 19(1)(c) protects the rights of the citizens of the country to form an association which would originate from the word 'associate'. One of the meaning assigned to the word 'association' in the Oxford dictionary is 'a group of people organized for a joint purpose' or 'a connection or cooperative link between people or organisation'.

The word 'associate oneself' would mean 'allow oneself to be connected with or seen to be supportive of'. The term 'associating with' has been defined to be involved with a partner or a companion in business or at work.

It thus flows that the word 'associate with', is foundational to the word association which in turn has an inherent connotation of freedom to choose the associate and to be associated with. There would, in our opinion, be an absolute right with every citizen to choose and the State's interference limiting, prohibiting, channelizing or circumscribing such a choice would be clearly oppressive and violative of the basic liberties an individual is guaranteed under the Constitution which provides for a democratic republic with inherent democratic rights, the fundamental of which would be right to elect – a word which by its grammatical connotation means right to choose. This right is not only reflective of a political empowerment but is also a natural right inherent to each human with unrestricted freedom to choose. To accept that a government would have the authority to circumscribe such natural and democratic rights if accepted can resultantly imperil democracy to promote controlled democracy and thus be not only illegal but highly undesirable.

Individual liberties would be rendered illusory, if freedom to exercise a choice is left to the discretions of the State. A private institution with no financial aid from the Government, stands liberated from control of the Government largely bound only to observance of regulatory discipline particularly as it is involved in promoting education and thus subject to standard regulations a Government prescribes to maintain excellence but it cannot be made to fall to the dictates of the Government.

Needless to say, all such rights are circumscribed by the test of reasonableness of restrictions as no right can be an absolute one but eliminating a choice altogether cannot stand the test of reasonableness.

We find from the facts that the 1996 Act came into existence in the year 1997 and it is subsequent thereto that the petitioner college set up its institution and with a conscious effort obtained its affiliation with the university and recognition from the AICTE to commence imparting technical education to the students enrolled with it. Inherent in this exercise is a conscious decision of the institution to affiliate itself to the university of its choice. The subsequent 2014 Act strangulates this choice to forcibly affiliate the college to the newly created MRSSTU.

It is common knowledge that the students who aspire for technical education or any education for that purpose search for institutions and universities which offer quality education which can stand them in good stead in the job market. The prospective employers too give weightage to such reputed institutions and universities to employ students passing out therefrom.

It is in this backdrop that a choice of a college to affiliate itself with a university ought to be respected.

There would be another reason to disapprove of the provision under challenge. Section 5(1) forecloses any option to the colleges in the districts mentioned in the Act to an affiliation with no other university except MRSSTU but gives a choice to other institutions in areas beyond the State to affiliate either with PTU or MRSSTU. A similar choice can be denied to the colleges within the State only at the expense of accusation of an arbitrary and discriminatory exercise by the Government.

In fact it would have been a much better way to ensure competition between the universities to offer a choice to the colleges to affiliate with either of the universities which even otherwise the law of harmonious interpretation would provide. Both the statutes intending the same avowed objectives to set up different universities cannot be questioned on the issue of legislative competence but Section 5(2) which forces an affiliation upon a college has to be viewed disapprovingly more particularly when the benefit and privileges admitted to an institution by virtue of its affiliation with PTU is a right sought to be taken away by Section 5(2) withdrawing them without concurrence of the petitioner institute who naturally sees it as adverse to itself. It is thus imperative for the State to have solicited the choice of the institution in this regard.

The entire scheme of the 2014 Act does not provide for any repeal or savings implying thereby that the 1996 Act would continue unamended while the subsequent Act would operate but in the areas specified therein. Both the statutes would thus operate in their respective allocated fields with liberty to the institution particularly if it is a private institution to affiliate with a university of its choice remaining unfettered.

We now commence to examine another aspect which has engaged our attention sufficiently.

The PTU has regulations governing the operation of the corpus funds. The preamble to it as extracted above clearly encourages the PTU to generate resources internally to various activities including sponsored consultancy and development projects and the income earned through resources other than government grants to be retained in government funds.

This fund has been created under Regulation 3 warranting funding from both public and private resources as well as from government grants. The fund envisages accumulation of donation from corporate bodies, public and private sectors of the economy, governmental and non-governmental organisations, alumni, staff and students of institutions, philanthropists and social workers. To manage the corpus fund beneficially the surplus funds are permitted to be invested on long term basis so that the university becomes self sufficient in meeting expenditures for its development. Regulation 4 clearly provides for self sufficiency and self reliance by the institution. Regulation 7, on the other hand, provides for various purposes for which the expenditure can be incurred. A closer scrutiny reveals that the sole purpose of university corpus funds is for the betterment of the university and to encourage self reliance which also indicates a sufficient level of financial autonomy. Section 20 of the Act authorises the State Government to transfer all available funds of the Punjab Technical University, Jalandhar to the Maharaja Ranjit Singh State Technical University, Bathinda in the ratio of 50 : 50.

A capital outflow from PTU is not restricted to the government grants or subsidies but to all available funds including the ones which the university has generated from its donors, philanthropists, alumni and students.

We perceive this to be an outrageous and arbitrary provision which permits one separate statutory entity to make forays into the financial autonomy of another statutory entity created under 1996 Act without there being a provision in it enabling such an outflow and neither do the regulations that govern the corpus fund.

Learned counsel for the PTU has, however, stated that there is ample power with the financial committee of the university to use the funds in the manner it choses and the Board of Governors who are advised by such committees have approvingly permitted outflow of funds. He referred to the proceedings of the committee in this regard.

We would briefly refer to these deliberations as well.

Agenda Item 57.8 of the Board meeting dated 7.8.2015 indicates a reference to the committee constituted by the

Government under the Principal Secretary Technical Education for transfer of funds also authorising the committee to review and plan expenditure of both universities and make allocations to the universities. In another meeting dated 4.9.2015 while dealing with agenda item 27.9 the committee ratified the decision to transfer Rs.75 crore to MRSSTU, Bathinda in compliance of Government order and recommended the same to the Board of Governors for transfer.

Learned counsel for the PTU has contended with reference to the above powers of the finance committee that the Board of Governors is the supreme authority of the university to manage the funds including approval of the university budget and to administer and control the funds of the university and thus it is pleaded that its decision is in tune with the intended objective of the Act i.e. for advancement of technical education in the State of Punjab. He also refers to the powers and duties of the university which provides for making provisions for upgrading and promoting technical education and it is thus stated that permitting capital outflow from the university is based on the independent decision of the committee and the Board of Directors and not on the mandate of the Government.

We have also seen the reply of the State Government where reliance has been placed on Section 14(8) and Section 4(1) which is broadly in conformity with the afore noticed contention of the PTU but in reply to para 12 of the petition they have further gone on to say that to promote technical education, training and research, it was decided by the government to bifurcate the jurisdiction of the PTU and establish new technical university in the State for the districts Bathinda, Barnala, Faridkot, Fatehgarh Sahib, Fazilka, Ferozepur, Mansa, Moga, Sri Muktsar Sahib, Patiala and Sangrur and Section 20(2) was incorporated in 2014 Act to enable the State Government to transfer available funds from the PTU to MRSSTU.

To a pointed question by us as to whether there is any deliberation by the Board on any empirical data, before it warranted capital outflow in the interest of the PTU, the learned counsel for the University could not provide any such reasoning. We were rather given access to the memorandum submitted before the Council of Ministers where it has been specifically stated that creation of the new University in the existing campus of Giani Zail Singh Punjab Technical University Bathinda there would be no financial burden on the State Government. It is to be noticed that this memorandum states that there exists in Giani Zail Singh Punjab Technical University Bathinda campus since 1989 functioning as an autonomous society under the Societies Act subsequently named as Giani Zail Singh College of Engineering & Technology Bathinda in whose campus the present MRSSTU is proposed to be set up. This memorandum further reveals that PTU Jalandhar established in the year 1996 is a biggest university of the State with 283 technical institutions (Engineering, Management, Pharmacy, Architecture & Hotel Management Colleges) as it affiliates with approximately 62000 eats. It goes on to state that the workload of the university has increased and it is difficult for the university to provide time for research and development in the area of science and technology and the need is therefore felt to have another university in addition to PTU leading to the birth of MRSSTU.

Nothing has been shown to us from where it can be inferred that the PTU was at any stage associated with such deliberations. It is unknown as to what was the basis to conclude that the PTU was overburdened and unable to manage its affiliated institutions.

It is thus purely the decision of the Government with no corresponding inputs from the PTU which was intended to be having financial autonomy to manage its own affairs and thus Section 20(2) warranting capital outflow from PTU would clearly be an infringement on the financial autonomy of PTU as it permits financial poaching to deprive the PTU even of the finances which do not belong to the government and over which it would have no say. Money collected from students of PTU, alumni, philanthropist cannot be squandered away as it is clearly a breach of faith of these contributors who volunteered for the corpus fund of the PTU.

We now travel to the issue of locus largely qua the objection raised by the respondent-State qua the employees union to raise a grievance about the functionality of the institution on financial issues. They have placed reliance on a decision rendered by the Hon'ble Supreme Court in *Ayaaubkhan Noorkhan Pathan v. The State of Maharashtra and other***s** **2013(4) SCC 465** where it was held that a stranger cannot be permitted to meddle in any proceeding unless he satisfies the Authority/Court that he falls within the category of aggrieved persons. In this case it has been further observed as under :

> "Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the Appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce he performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court

> that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the Appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same.

A 'legal right' has further been said to mean an entitlement arising out of legal rules and would be defined as an advantage or a benefit conferred upon a person by the rule of law. Further, it is also observed as under :-

> "8. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised."

We would have no quarrel with this proposition but it has to be seen who exactly is a "third person or an aggrieved person."

In ***A.Subhash Babu v. State of A.P.*** **AIR 2011 SC 3031** it was held by the Hon'ble Supreme Court as below :

> "The expression 'aggrieved person 'denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant."

In *Ayaaubkhan Noorkhan Pathan's case* (supra) the Hon'ble Supreme Court has cautioned the courts against interpreting public interest litigation filed by unscrupulous persons who are as such meddlers who do not hesitate to abuse the process of court. We notice that the writ petition has been preferred by the employees with a grievance directed not only against capital outflow or mismanagement of funds but it also bring to the notice of this court Section 20 of the 2014 Act which enables capital outflow to adversely affect the corpus of the university. One of the purposes specified in the corpus is 'to provide financial support to the employees and for development of the university.' Under the heading modes of utilisation one of the objectives specified is “to provide financial assistance to the employees and for welfare activities of the employees of the PTU.'

Consequently, the employees who possibly may adversely be affected on account of the capital outflow permitted by the 2014 Act cannot be termed to be entire strangers to the petitioners to deprive them of the locus more particularly in an age when the rights of the individuals have been amplified under the right to information Act to seek information and pray for interference if their rights are being affected prejudiciously in any manner and it is not necessary for them to essentially wait for the axe to fall to approach the courts for redressal of their grievance.

Similarly, we feel that the students would also have a legitimate right to choose an institution and its affiliate university as these have a direct bearing on the quality of education and their career prospectus in life.

It would be a different matter if a particular university is assigned to a student upon competing in open merits but if a particular university has been assigned on his choice then he cannot be deprived of his legitimate desire to earn a degree from such a university or an institution to be compulsorily forced into accepting a degree from an institution not of his choosing. Similar reasoning of freedom to choose as observed in earlier paragraph would apply to the students as well.

Therefore, we conclude that Section 5(2) violates Article 19(1)(c) of the Constitution of India while Section 20 is violative of the provisions of the 1996 Act itself besides impinging upon the financial autonomy of the PTU. We, therefore, allow these two writ petitions whereas in the case of students we hold that the official respondents shall assess as to whether the students who are assigned to the PTU after participation in open competition and if that be so they be given an option as to whether they would like to earn their degree from the PTU or a subsequent university. Disposed of.

(MAHESH GROVER)
JUDGE

June 2, 2016
dss

(LISA GILL)
JUDGE