

CWP Nos.10505 & 10715 of 2016

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**(1) CWP No.10505 of 2016
Date of decision:15.03.2017**

Mother Teresa Education Foundation and others ...Petitioners

Versus

Union of India and others ...Respondents

**(2) CWP No.10715 of 2016
Date of decision: 15.03.2017**

Aggarwal College & Web Services Trust ...Petitioners

Versus

Union of India and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. A.K.Chopra, Sr. Advocate, with
Mr. Akshit Chaudhary, Advocate, and
Mr. Munish Gupta, Advocate, for the petitioners.

Mr. J.S.Bhatia, Advocate,
for the Karnataka State Open University.

Mr. Tarun Vir S. Lehal, Advocate,
for the University Grants Commission.

Rakesh Kumar Jain, J.

This order shall dispose of two petitions bearing CWP Nos.10505 and 10715 of 2016 as the issue involved in both petitions is the same. However, for the sake of convenience, the facts are being extracted from CWP No.10505 of 2016.

The Karnataka State Open University (respondent No.2) was established on 01.06.1996 in terms of the provisions of the Karnataka State

Open University Act, 1992 (hereinafter referred to as the “Act”). Respondent No.2 entered into a Memorandum of Understanding (MoU) with petitioner No.1 initially on 21.01.2014, which was revised on 25.07.2014. The petitioners have allegedly paid an amount of ₹3 crores to respondent No.2 but respondent No.3 (UGC) issued a public notice on 16.06.2015 regarding dis-continuation of recognition of programmes through Open Distance Learning (ODL) mode but respondent No.2 issued a public notice on 19.01.2016 informing the public at large that they should not enroll any such institution for any course as their admissions will not be approved and the University will not be responsible but the students who had already taken admission in II to VIII semester/II to IV year were stated to be not affected. Respondent No.3 sent a letter to respondent No.2 on 12.02.2016 stating therein that respondent No.2 does not have any recognition for the ODL programmes from the academic years 2013-14 to 2015-16 and in case it admits the students without approval of the UGC, they will be treated as invalid/unrecognized and the University will be held responsible for the consequences, if any, arising out of it. On 05.03.2016, respondent No.2 issued a notification alleging therein that they had entered into MoUs with many private educational institutions situated outside the Karnataka State to conduct various academic programmes on behalf of the University and those collaborative institutions have in turn permitted its Study Centres to conduct above programmes but now the UGC has issued public notice that academic programmes conducted by the collaborative institutions and their study centres have no legal basis and this aspect is made more clear by the Hon'ble Supreme Court of India in **Prof. Yeshpal's**

case, therefore, the UGC had specifically directed the University to terminate the MoUs with immediate effect and hence, the MoUs are terminated with immediate effect. This notification dated 05.03.2016 has been challenged by the petitioners in CWP No.10505 of 2016.

In CWP No.10715 of 2016, the petitioner has challenged the public notice dated 11.12.2015 issued by the University, discontinuing all collaborative institutions and study centres outside the State of Karnataka, protecting the students who had already taken admissions in II to VIII semesters/II to IV years.

Counsel for the petitioners has submitted that the MoU signed by the petitioners and respondent No.2 on 21.01.2014, revised on 25.07.2014, was for a period of five years and has been abruptly terminated by it without even returning the huge amount of ₹3 crores paid from time to time. It is further submitted that even if the study centres opened by petitioner No.1 have been closed, the admissions given to the students in II to VIII semesters/II to IV years were not supposed to be affected as per the public notice dated 19.01.2016 issued by the respondent No.2. It is further submitted that the Regional Centres and Study Centres are recognized in terms of Section 3(2) of the Act, in which it is provided that the headquarters of the University shall be at such place as may be specified by the Government by notification and it may establish, maintain or recognize colleges, Regional Centres and Study Centres at such places in Karnataka and may also open centres outside Karnataka at such places as it deems fit. It is further submitted that accordingly, the petitioners have opened the Study Centres, which has also been defined in the Act under Section 2(k) of

the Act, which means the centre established, maintained or for valuation and for conducting the examination or recognized by the University for the purpose of advising, counselling or for rendering any other assistance required by the students. It is further submitted that with the closure of the study centres, career of 7000 students would be at stake and, therefore, it is prayed that the notification dated 05.03.2016 issued by respondent No.2 and the action of the UGC in not recognizing the programmes under the ODL mode from the academic years 2013-14 to 2015-16, declaring that the programmes conducted by the collaborative institutions and their study centres have no legal basis and the degrees awarded are to be declared as invalid, is illegal.

Learned counsel appearing on behalf of respondents No.3 and 4 has submitted that respondent No.2 had entered into a Collaborative/Franchise agreement (MoU) on 25.07.2014, which allows the petitioners to run courses in the State of Haryana and Punjab but as far as the policy of UGC for franchising through private institutions is concerned, UGC had issued a Circular D.O. No.f.1-52/99 (CPP-II) dated 09.08.2001 informing all the Universities that the UGC had decided that any University which proposed to enter into collaboration with any private institution would be required to take prior approval of UGC. It was also decided that no University should be permitted to go for off campus private education franchise leading to award of its degrees and as such, all the Universities were directed to stop franchising their degree education through private agencies/establishments with immediate effect and the State University is entitled to offer its programmes under the ODL mode in accordance with

the provision in its legislative Act but it cannot go beyond the geographical boundaries of the State concerned. It is further submitted that the erstwhile Distance Education Council vide its notification dated 31.01.2012 had prohibited franchising of study centres by any institution/university and provided that all the activities at the study centres such as admission, examination, personal conduct programmes etc. should be by the university/institution. The study centres cannot offer programmes nor can they conduct examination on their own and the study centres have to be managed by the University and no sub-letting of the study centres can be allowed and any such centre opened by the University will be in violation of the DEC policy. Reference was also made to the decision of the Supreme Court rendered in the case of **Prof. Yashpal and another vs. State of Chattisgarh and others**, 2005(1) S.C.T. 808. It is further submitted that the University has been conducting programmes in an authorized manner as it was not authorized to offer Distance Education beyond 2012-13 and also to franchise its programmes to other organizations. Since the franchising was never permitted either by the DEC or UGC, the existence of these so-called study centres was illegal.

Counsel for respondent No.2 has submitted that the programmes through ODL mode were discontinued by the UGC and they are bound to its directions. It is further submitted that they are bound by the terms and conditions of the agreement in which it is provided that the jurisdiction of the Court would be of Mysore and even otherwise in case of any breach of the terms and conditions of the agreement, as stated, the petitioners could have invoked the clause of arbitration.

Counsel for the UGC has also relied upon a Division Bench judgment of the Kerala High Court in the case of **Godwin Samraj vs. Abdul Salam**, 2015(1) Ker L.J. 550, in which it has been held that as per the above material on record, it is evidently clear that both erstwhile Distance Education Council and University Grant Commission repeatedly directed all Universities not to run any study centre beyond its territorial jurisdiction and the Universities were also directed to close down its study centres which were opened beyond territorial limits as well as overseas under the Distance Education Programme. Thus, there is clear direction by the University Grants Commission, directing all Universities to operate under the territorial jurisdiction and the directions issued by the University Grants Commission are in exercise of its powers under the UGC Act, 1956 and are binding on the State Universities.

I have heard learned counsel for the parties and after examining the available record, am of the considered opinion that there is no merit in the present petitions because in CWP No.10505 of 2016, the petitioners have challenged the notification dated 05.03.2016 by which respondent No.2 has terminated the MoU entered into with the petitioners for which the petitioners could have resorted to the provisions of the agreement for seeking a remedial measures much-less the arbitration. In case, respondent No.2 has not returned the amount allegedly paid by the petitioners to it and has terminated the agreement mid-way, the petitioners could have availed the remedy settled between the parties in the agreement itself instead of approaching this Court by way of a writ petition filed under Article 226 of the Constitution of India.

Insofar as the course is concerned, respondent No.2 could not have offered a degree programme in the name of opening the study centre as the franchise of the education is not permissible especially when the UGC has issued a notification on 31.01.2012, which is also attached as Annexure R-3/2 with the writ petition and has also issued the letter dated 09.08.2001 (Annexure R-3/1).

Insofar as the prayer made in CWP No.10715 of 2016 is concerned, it was only with regard to the public notice dated 11.12.2015 which has been challenged, in which respondent No.2 has discontinued the ODL mode programmes w.e.f. 08.08.2014 because respondent No.2 had no approval for the ODL mode programmes after 2013 from the UGC, therefore, until and unless approval is granted by the UGC, the programmes could not have been implemented by respondent No.2.

Thus, in view of the aforesaid discussion, I do not find any reason to interfere in both the writ petitions and hence, the same are hereby dismissed, though without any order as to costs.

March 15, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No