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HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on: 20/01/2021****Order Delivered on : 17/02/2021****Writ Petition (C) No. 2269 of 2019**

1. Shri Rawatpura Sarkar University, near Shadani Darbar, village Dhaneli, Post Office Mana, Dhamtari Road, Raipur, Chhattisgarh, through its Director Shri Atul Kumar Tiwari, son of Late Shri KC Tiwari, aged about 42, R/o Shri Rawatpura Sarkar Ashram, Dhaneli, New Dhamtari Road, Raipur, Chhattisgarh, Civil and Revenue District Raipur.
2. Atul Kumar Tiwari S/o Late K.C. Tiwari Aged About 42 Years Director Shri Rawatpura Sarkar University, Resident Of Shri Rawatpura Sarkar / Ashram, Dhaneli, New Dhamtari Road, Raipur Chhattisgarh.

---- Petitioners**Versus**

1. State of Chhattisgarh, through Secretary, Higher Education Department, Mahanadi Bhawan, Atal Nagar, Raipur, Chhattisgarh.
2. University Grant Commission, through Secretary, a body constituted under the provisions of University Grants Commission Act, Bahadur Shah Zafar Marg, New Delhi.
3. Chhattisgarh Private University Regulatory Commission, Madhu Pillai Chowk, in front of Ram Mandir, Shanti Nagar, Raipur Chhattisgarh
4. Indira Gandhi Agriculture University Raipur, through its Registrar.

---- Respondents

For Petitioners : Shri B.P.Sharma with Shri M.N.Thakur and Shri M.L.Saket, Advocates.

For Respondent No. 1 : Shri Siddharth Dubey, Deputy Government Advocate.

For Respondent No. 2 : Shri Sachin Singh Rajput, Advocate.

For Respondent No. 3 : Shri Sabyasachi Bhaduri, Advocate on behalf of Shri Kishore Bhaduri, Advocate.

For Respondent No. 4 : Shri Shashank Thakur, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

CAV ORDER**Per P.R. Ramachandra Menon, Chief Justice**

1. The application put in by the Petitioner-University on 25.02.2019 for permission to commence various courses in Agriculture and allied sciences came to be rejected as per Annexure P/1 order dated 22.06.2019 issued by the 1st Respondent, pointing out that education in the field of Agriculture and

allied sciences stands vested with the 4th Respondent-University as per the Indira Gandhi Krishi Vishwavidyalaya (CG) Adhiniyam, 1987 (*for short, 'the 1987 Act'*). This made the Petitioner to challenge the said proceeding, simultaneously challenging the constitutional validity of Section 6 and 7 of the 1987 Act.

2. The prayers sought for in the writ petition are in the following terms:

"A. A writ and/or an order in the nature of writ of mandamus do issue calling for the record from the respondent authorities pertaining to the petitioners' case for its kind perusal.

B. A writ and/or an order in the nature of writ of appropriate nature do issue declaring Section 7 of the Adhiniyam, 1987 by which for the areas specified in Sub-section (1) of Section 6 Exclusive jurisdiction/authority/power has been conferred on respondent No. 4 for instruction, teaching and training in agriculture and allied sciences, ultra vires to Constitution of India, Act of 1956 and also act of 2005, as amended upto date, and consequent thereto letter (Annexure P-1) thereby creating hurdles/complications in imparting education in agriculture and allied sciences in the petitioner No. 1 University and in the facts and circumstances of the case.

C. A writ and/or an order in the nature of writ of appropriate nature do issue restraining respondent State authorities, their agents, servants and employees from causing any hindrance in imparting education in petitioner No. 1 University including admitting students, conferring degrees on them on successful completion of courses including in the course of agricultural and allied sciences and acknowledging the degrees conferred on them at par with degree in the said courses by respondent No. 4 University.

D. Any other relief which this Hon'ble Court may deem fit in the facts and circumstances of the case.

E. Cost of the petition may also be awarded."

3. The challenge is mainly on the ground that there is an encroachment from the part of the State into the field occupied by the Central Government and the Central Legislation, particularly infringing Section 22 of the University Grants Commission Act, 1956 (*for short, 'the 1956 Act'*). It is contended that the 1987 Act is confined only to three Revenue Divisions of 'Raipur, Bilaspur and Bastar' in the State, whereas the State consists of two more Divisions

by name 'Surguja' and 'Durg' and that the State is not competent to enact any law which is territorial in operation. Since nothing is mentioned with regard to the students/Institutions in the Durg and Surguja Divisions, there is a clear instance of discrimination as well and the people/students in the said two Divisions are put to utmost hardships. Since the Petitioner-University constituted under the Chhattisgarh Private Universities (Establishment and Operation) Act, 2005 (as amended in 2018) (*for short, 'the 2005 Act'*) is having jurisdiction all over the State of Chhattisgarh, the application could not have been rejected, especially when the Divisions 'Durg' and 'Surguja' stand intact/untouched by the statute. According to the Petitioner, it is a subject matter connected with 'Higher Education' and coming under the Entry 66 of List I (Union List) of the Seventh Schedule; which will override the Entries 14 and 32 of List II (State List). It is contended that the Central Act i.e. the 1956 Act will prevail over the State Act and hence, Entry 25 of the List III (Concurrent List) cannot be pressed into service. It is also pointed out that Section 6 and 7 of the 1987 Act are violative of the 'fundamental rights', also since it fixes territorial limits and no valid object is to be achieved for such course. It is further contended that because of the 1956 Act, any University, after its incorporation or conferment of the deemed status under Section 3 of the said Act, can offer any course and hence a particular subject cannot be earmarked for a particular University or no monopoly can be created in favour of any University, whether it be a State University or not.

4. The 1st Respondent-State has filed reply rebutting the averments and contending that the validity of any enactment can be challenged only on the ground of legislative incompetence or due to violation of any of the fundamental rights or such other constitutional provisions. According to the State Government, the legislative competence of the State cannot be doubted as the field of Agriculture and education in Agriculture stand

covered by Entries 14 and 32 of List II (State List). It is also pointed out that Entry 66 of List I of the Seventh Schedule cannot be pressed into service as 'Co-ordination or determination of standards of Agricultural higher education' is still being done by the Indian Council of Agricultural Research (*for short 'the ICAR'*). The Petitioners have nowhere pleaded or substantiated that any provision of the State enactment has lowered the standards of Agricultural higher education fixed by the ICAR. Reference is also made to the intention of the Parliament, contending that it was never to cover the entire field under Entry 25 of the List III of the Seventh Schedule and that the Act of 1987 is not repugnant to the 1956 Act. Intention of the Parliament is revealed from the Central Agricultural University Act, 1992 (*for short 'the 1992 Act'*) containing Section 6, which is analogous to Section 7 of the 1987 Act and it relates to the jurisdiction of the Central Agricultural University. It is further contended that the validity of Section 7 of the 1987 Act cannot be doubted under any circumstances in view of the law declared by the Apex Court in ***R.K.University v. Anand Agriculture University*** {SLP(C) No. 31813/2018, dated 11.01.2019} where it has been held that no private University can run courses in Agriculture and allied sciences by virtue of the mandate of Section 4(4) of the Gujarat Agricultural University Act, 2004 (similar to Section 7 of the 1987 Act) without getting sanction of the State and the Agricultural University. It is pointed out that Section 7 of the 1987 Act neither creates any monopoly in favour of the State nor does it affect the fundamental rights of the Petitioner-University, as it does not prevent the private colleges from offering graduate/post graduate courses in Agriculture and allied sciences but puts only a regulatory framework in place (which is stated as not in derogation with the standards of Agricultural higher education fixed by the ICAR). Fixing of the territorial limits/grant of exclusive jurisdiction to the State University is stated as only a reasonable restriction, in view of the fact that imparting Agricultural higher education at

the graduate/post graduate level not only involves teaching, but also research and extension/practical application, which is being closely monitored by creating a Governmental regulatory mechanism (Central/State Government backed). While affirming that there is no encroachment into any Entry in the Union List, it is simultaneously asserted that no State law will become invalid, even if there is some incidental encroachment, to make it *ultra vires* to the Constitution of India. Almost similar contentions have been raised from the part of the 4th Respondent as well, by filing a separate return.

5. Shri B.P.Sharma, the learned counsel for the Petitioner addressed the Court in terms of the pleadings raised from the part of the Petitioner, contending that the impugned provisions *i.e.* Section 6 and 7 of the 1987 Act are liable to be set aside, having encroached into the field occupied by the provisions brought in from the part of the Central Government, besides its territorial nature and the discrimination resulted. The learned counsel placed reliance on the verdict passed by the Apex Court in ***Maharshi Mahesh Yogi Vedic Vishwavidyalaya v. State of Madhya Pradesh & Others***; {(2013) 15 SCC 677 and submitted that the Petitioner-University has also been constituted in similar lines. Despite the fact that the present era is a century of knowledge, hindrance is being caused from the part of the State which is not liable to be justified. Making a reference to the law declared in ***State of Kerala & Others v. Kandath Distilleries***; {(2013) 6 SCC 573}, the learned counsel submits as to how monopoly is to be created/if any declaration is necessary. Making a further reference to the dictum in ***Union of India & Another v. Tarsem Singh & Others***; {(2019) 9 SCC 304, paragraph 23}, it is pointed out that, only limited protection has been given to "reasonable restriction envisaged under Article 19(6) of the Constitution" and that the question relevant is as to 'why the State monopoly'? According to the learned counsel, the verdict passed by the Apex Court in the

R.K.University (supra) is not liable to be taken as a precedent, as made clear in the order dated 11.01.2019 passed by the Apex Court. According to the learned counsel, the judgment passed by the Division Bench of the Karnataka High Court in **Bharatiya Veterinary Educational Society v. State of Karnataka** {ILR 1987 Karnataka 3615} virtually supports the Petitioner (reference is made to paragraphs 26 to 28 in this regard). According to the learned counsel, by virtue of the mandate under Section 22 of the 1956 Act, Degrees can be awarded only by the University and the Petitioner being a University in terms of the 2005 Act, is entitled to conduct any course including Agriculture and allied sciences award Degrees to the students accordingly. The observations made by the Apex Court in **Prof. Yashpal & Another v. State of Chhattisgarh & Others**; {(2005) 5 SCC 420, paragraphs 10 to 12, 19 to 23 and 28} are also cited to point out the legislative history and as to the inter-play between Entry 32 in List II (State List) and Entry 66 List I (Union List). Referring to the observations of the Apex Court made in paragraphs 36 and 54, the learned counsel submits that the Petitioner is to be regulated by the University Grants Commission and not by the State.

6. Shri Siddharth Dubey, the learned Deputy Government Advocate representing the State points that the idea and understanding of the Petitioner as to the encroachment into the Central enactment and also as to the territorial jurisdiction is thoroughly wrong and misconceived. The learned counsel submits that at the time of enactment in the year 1987, there were only three Divisions - 'Raipur, Bilaspur and Bastar' to cover the area now occupied by the State of Chhattisgarh, and hence, it was specifically mentioned with reference to the above three Revenue Divisions. As on date, two more Revenue Divisions have been carved out; 'Surguja' from the erstwhile Bilaspur in the year 2008 and Durg' from erstwhile Raipur in the year 2013 and all the 28 Districts of the State of Chhattisgarh are covered

by these five Revenue Divisions. There is no instance of any discrimination and no student or Institution affiliated to the 4th Respondent-University and situated in the Revenue Divisions of Durg and Surguja have come forward with any grievance that they are not in a position to study/run the course in the field of Agriculture and allied sciences in the areas covered by the above two Divisions. As per the intention of the Legislature, the entire area in the State of Chhattisgarh was intended to be covered when the enactment was made in the year 2017 and this alone can be the interpretation with regard to the area that is being covered by the statute as on date. The learned counsel submits that ***Maharshi Mahesh Yogi Vedic Vishwavidyalaya*** (supra) cited from the part of the Petitioner has been distinguished by the Division Bench of the Gujarat High Court in ***R.K.University v. Anand Agricultural University***; {MANU/GJ/0981/2018 : 2019 GLH (1) 418, paragraph 35}. It is further pointed out that the Central Government has not taken over the field with regard to the 'Agricultural education' and the 'University' at Entries 14 and 32 of the List II, except to the extent as dealt with under the 1992 Act, which also contains a similar provision by way of Section 6 (as Section 7 of 1987 Act) that speaks about the jurisdiction of the Central Act extending to the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Sikkim and Tripura. Teaching and Training are not dealt with under Section 22 of the 1956 Act, which on the other hand only speaks about the right to confer Degrees by the University and nothing about the various subjects/courses to be conducted in the Universities/ educational Institutions.

7. The learned counsel points out that the validity of the statute framed by the law makers is generally to be presumed favourably; unless the contrary is proved, adding that specific pleadings in this regard are quite essential. Reliance is sought to be placed on ***Bharatiya Veterinary Educational Society*** (supra). It is pointed out that the State has power to confer the field

of Agriculture including Education to be dealt with by a particular University as of the 4th Respondent (State owned University). Reference is made to ***Bharatiya Veterinary Educational Society*** (supra) (particularly paragraphs 16, 17, 22, 23, 28, 29, 36 and 44) to contend that scrutiny has to be made with reference to Article 19(1)(g) of the Constitution, read with Article 19(6), stating that if the Act is within the four walls of law, no interference is possible and that Sections 6 and 7 of the 1987 Act cannot be read in isolation (paragraph 43). After exhaustive analysis with almost similar provisions existing in the University of Agricultural Science Act, 1963 (Karnataka Act No. 22 of 1963), dealing with the field of education-Veterinary Science, the Division Bench of the Karnataka High Court, has held that there is no encroachment into the field of legislation, nor is there violation of any fundamental rights.

8. We have heard the learned counsel for the other Respondents as well who are stated as only formal parties with regard to the challenge raised against the *vires* of the provisions in the Act, 1987.
9. Coming to the question of legislative competence, the relevant entries cited by the parties on both the sides are reproduced below:

List I - Union List Entry 66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

List II - State List Entry 14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

List II - State List Entry 32. Incorporation, regulation and winding up of corporation, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

List III - Concurrent List Entry 25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

10. Entry 66 of List I clearly shows that it envisages the basic requirement of co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. It is with this object in mind that the 1956 Act was framed, as discernible from the 'Preamble' which is to the following effect:

"An Act 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 1956 Act defines the term 'University' which stipulates that, it means a University established/incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such Institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under the Act.

11. Chapter II deals with the establishment of Commission while Chapter III deals with the powers and functions of the Commission. Section 12, under Chapter III speaks about the general duty of the Commission to take steps, in consultation with the Universities or other bodies concerned, for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in the Universities. It is for the purpose of performing such functions that the various powers are conferred as dealt with under the different clauses mentioned therein, including the power to recommend to any University and advise the Central/State Government or the University with regard to various matters mentioned therein. Section 12(a) deals with regulation of fees and prohibition of donation in certain cases. Chapter IV contains the miscellaneous provisions which deals with the right to confer Degrees under Section 22, power to make Rules under Section 25 and the

powers to make Regulations under Section 26. Section 22 of the 1956 Act, which is stated as infringed because of the said enactment as contended by the Petitioner, is to the following effect:

"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."

12. Evidently, the above provision speaks about the right of conferring the Degrees which is exclusively confined upon the University established under the Central/Provincial/State Act or the deemed University under Section 3, making it clear in explicit terms under sub-section (2) of Section 22, that no other person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant any Degree. The said provision does not say or even suggest remotely that it gives absolute power to the University to start whatever course it wants or award whatever Degree it chooses to give. It rather speaks about the fact that nobody else can give any Degree except the University defined under Section 2(f) of the 1956 Act and nothing else. The 1956 Act is not an Act which speaks about the subject matter of various courses in the field of higher education, but for highlighting the necessity to co-ordinate and determine the standards in the Universities.
13. Sections 6 and 7 of the 1987 Act which are impugned in the writ petition are to the following effect:

"6. Territorial jurisdiction.-(1) Save as otherwise provided in this Act, the powers conferred on the University by or under this Act, shall extend to the areas comprised within the limits of the Revenue Divisions of Bilaspur, Raipur and Bastar.

(2) Notwithstanding anything contained in any other law for the time being in force, no college or educational institution situated within the aforesaid limits imparting instructions in agriculture and other allied sciences for bachelor's degree and/or above, shall be associated in any way with or be admitted to any privilege of any other University incorporated by the law in India and any such privilege granted, by any such other University to any educational institution within those limits prior to the commencement of this Act, shall be deemed to be withdrawn on the commencement of this Act, and such institutions shall stand affiliated to the University till the date they are transferred to the University, under Section 57.

(3) The research and extension work undertaken or conducted by or on behalf of the Jawaharlal Nehru Krishi Vishwavidyalaya in the field of agriculture and allied sciences within the aforesaid limits shall be co-ordinated with and integrated into the activities of the University,-

(a) with effect from such date or dates as the State Government may, by notification, specify and different dates may be specified for co-ordination and integration; and

(b) in such manner and to such extent as may be determined by the State Government in consultation with the Board.

7. University to have exclusive jurisdiction to provide for instruction, teaching etc., in agriculture and allied sciences.- (1) The University shall have exclusive jurisdiction throughout the areas specified in sub-section (1) of Section 6 to provide for instruction, teaching and training in agriculture and allied sciences and notwithstanding anything contained in the law relating to incorporation of any other University in the State, no other University shall be competent to provide for instruction, teaching and training in agriculture and allied sciences in such areas.

(2) Notwithstanding anything contained in this Act or Statutes and Regulations made thereunder any student of the College of Agriculture, Raipur, the College of Dairy Technology, Raipur or the College of Veterinary Science and Animal Husbandry, Anjora who immediately prior to the 20th day of January, 1987 was studying for or was eligible to appear in any examination, as the case may be, in Agriculture and other allied Sciences of the Jawaharlal Nehru Krishi Vishwavidyalaya, shall be permitted to complete his course in preparation therefor, and the University shall provide for such period not exceeding five years and in such manner as may be prescribed by the Statutes for the instruction, teaching, training and

examination of such students in accordance with the course of studies of the Jawaharlal Nehru Krishi Vishwavidyalaya."

Taking the above provisions together, it has neither been demonstrated in the pleadings nor substantiated in the course of arguments, as to how Sections 6 and 7 of the 1987 Act infringe or encroach into the field of legislation occupied by the Central Government or in what manner it contravenes the terms of Section 22 of the 1956 Act.

14. As to the scope of the 1956 Act, the scheme of the statute confers powers upon the Central Government to make 'Rules' to carry out the purposes of this Act by notification in the gazette; while power is conferred upon the Commission under Section 26 (by notification in the gazette) to make 'Regulations' consistent with the Act and the Rules made therein. It will be worthwhile to extract Sections 25 and 26 to have a clear understanding as to the scope of power as above and whether it is good enough to support the contentions raised by the Petitioner. Sections 25 and 26 of the Act, 1956 read as under:

25. Power to make rules.- (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the procedure for the retirement of members under section 6;
- (b) the disqualifications for continuing as a member of the Commission;
- (c) the terms and conditions of service of members of the Commission;
- (d) the terms and conditions of service of employees appointed by the Commission;
- (e) the additional functions which may be performed by the Commission under clause (j) of section 12;
- (f) the return and information which are to be furnished by Universities in respect of their financial position or standards of teaching and examination maintained therein;
- (g) the inspection of Universities.
- (h) the form and manner in which the budget and

reports are to be prepared by the Commission;

(i) the manner in which the accounts of the Commission are to be maintained;

(j) the form and manner in which returns or other information are to be furnished by the Commission to the Central Government;

(k) any other matter which has to be, or may be, prescribed.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.”

26. Power to make regulations.-(1) The Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder—

(a) regulating the meetings of the Commission and the procedure for conducting business thereat;

(b) regulating the manner in which and the purposes for which persons may be associated with the Commission under section 9;

(c) specifying the terms and conditions of service of the employees appointed by the Commission;

(d) specifying the institutions or class of institutions which may be recognised by the Commission under clause (f) of section 2;

(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction;

(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.

(h) regulating the establishment of institutions referred to in clause (ccc) of section 12 and other matters relating to such institutions;

(i) specifying the matters in respect of which fees may be charged, and scales of fees in accordance with which fees may be charged, by a college under sub-section (2) of section 12A;

(j) specifying the manner in which an inquiry may be conducted under sub-section (4) of section 12A;

(2) No regulation shall be made under clause (a) or clause (b) or clause (c) or clause (d) or clause (h) or clause (j) or clause (j)] of sub-section (1) except with the previous approval of the Central Government.

(3) The power to make regulations conferred by this section except clause (i) and clause (j) of sub-section (1) shall

include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the regulations or any of them but no retrospective effect shall be given to any regulation so as to prejudicially affect the interests of any person to whom such regulation may be applicable."

Despite our best efforts, we could not persuade ourselves to accept the proposition made by the learned counsel for the Petitioner that the impugned provisions are violative of Section 22 of the 1956 Act, as the scope and purpose of enactments i.e. the 1956 Act and the 1987 Act are entirely different.

15. Mushrooming of various Institutions as well as the Universities without any regard to the quality and standards of teaching and education in various parts of the country, particularly in the State of Chhattisgarh was the subject matter of challenge in a public interest litigation petition filed by Prof. Yashpal, which led to the judgment **Prof. Yashpal** (supra). The Chhattisgarh Legislature enacted the Chhattisgarh Niji Kshetra Vishwavidhyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 (*for short 'the 2002 Act'*) to establish the self-financed private Universities for higher education. Section 6 of the said Act empowered the State to incorporate and establish a University by issuing a Notification in the gazette; while Section 6 permitted such University to affiliate any College or Institution or to set up more than one campus with the prior approval of the State Government. The provisions were being used in an indiscreet and mechanical manner without having even the slightest regard to the availability of infrastructure, teaching facility or the financial resources, virtually bringing about 112 Universities within one year, some of whom had no building or campus but being run in one room tenements. The legislation was brought into force in a manner, completely doing away with any kind of control of the University Grants Commission over these private Universities. The private Universities were offering 'unheard of Courses and Degrees'

which were not part of the schedule to the 1956 Act and in clear violation of Section 22 of the said Act and the Schedule. Minimum requirement of teaching staff as laid down in the guidelines of the University Grants Commission was given a 'go-bye' and young students were being misled in enrolling themselves in the courses which did not have any substantive content and the Degrees being offered were to affect the standard of education at large. This made the 2002 Act to be challenged by Prof. Yashpal, an eminent scientist and former Chairman of the University Grants Commission by way of a public interest litigation filed under Article 32 of the Constitution for declaring the 2002 Act as *ultra-vires* and to quash the notification issued by the State, establishing various Universities. This led to the declaration of the impugned provision as *ultra-vires* to the Constitution and quashing of the impugned Notification, simultaneously giving consequential directions, holding that such Universities as mentioned therein would cease to exist. Steps were also ordered to be taken for affiliation of the existing Universities by the State Universities in accordance with the directions given in paragraph 64. It is in the said background, that an exhaustive overhauling exercise was made by the State of Chhattisgarh by bringing about the Act No.13 of 2005 i.e. Chhattisgarh Private Universities (Establishment and Operation) Act, 2005, to regulate the functions of the private Universities for imparting higher education and to regulate the functions of the private Universities in the self financing sector and the matters connected/incidental thereto.

16. Section 3(g) of the 2005 Act, under Chapter II, dealing with 'Establishment of Private Universities' says that to maintain the standard of Degrees, Diploma, Certificate and other academic distinctions in accordance with the norms laid down by the UGC, AICTE, BCI, MCI, DEC or any other Regulatory Body shall be the general object of the private University. Section 7 of the 2005 Act speaks about the conditions required to be fulfilled

to establish a private University with reference to the infrastructure/funds and such other credentials. Sub-section 4(i) of Section 7 of the 2005 Act stipulates that the programmes of study leading to a Degree and/or a Postgraduate Degree/Diploma offered by a private University shall conform to the relevant regulations/norms of the UGC or the concerned statutory bodies as amended from time to time. Similarly, by way of Section 7(4)(k) of the 2005 Act, it is mentioned that the teaching staff of the private University shall have at least the minimum qualifications prescribed by the UGC or the other regulatory bodies concerned, and be paid appropriate emoluments. Section 8(5) of the 2005 Act clearly stipulates that the State Government may, after receipt of the report from the Regulatory Commission mentioned under sub-section (4), ask the UGC for inspection of the proposed private University, casting an obligation upon the UGC to submit its report within a maximum period of three months or else to have liberty for the State Government to take such decision as it deems fit. It is only on satisfaction of the requirement as above, that a new private University will be established by the State Government by amending the Schedule appended to the Act as given under Section 9, which is extracted below:

"9. Establishment and Incorporation. - (1) The State Government, if satisfied considering the report submitted by the Regulatory Commission under Section 8 and Inspection Report of the UGC, if any, that the sponsoring body has complied with the provisions of Section 7 and a Private University may be established on the basis of its proposal, shall establish, by amending the Schedule appended to this Act, a Private University with such name and description as may be specified in this behalf.

Provided that after the establishment of the University any new teaching programme may be introduced with the prior approval of the State Government.

(2) Such a Private University shall be deemed to have been incorporated from the date of the amendment in the schedule in this behalf :

Provided that, the period between the date of incorporation as mentioned under sub-section (2) above, and the date of submission of the application mentioned under sub-section (1) of Section 4, shall not be more than 2 years.

(2A) Notwithstanding anything contained in sub-section (2), to establish a Private university under sub-section (1) of this Section, the State Government may also consider any application submitted before the period of more than two years.

(3) The Private University shall be a body corporate by such name, as shown in the Schedule, having perpetual succession, and common seal with powers subject to the provisions of this Act, to acquire and own property, to contract, and shall sue and be sued by the said name.

(4) In all the suits and other legal proceedings by or against such Private University, the pleadings shall be signed and verified by the Registrar and all processes in such suits and proceedings shall be issued to any be served on the Registrar.

(5) The main campus of the Private University shall be at such place as shown in Column 5 of the Schedule."

17. It is brought to the notice of this Court that the Petitioners have already moved this Court by filing **Writ Petition (C) No. 1601 of 2019** with the following prayers:

" (A). A writ and/or an order in the nature of appropriate writ do issue calling for the records of the respondent for its kind perusal.

(B). A writ and/or an order in the appropriate nature declaring the proviso 2 of the Section 9(1) of the CG Private University Act 2005 as inserted by CG Gazette notification dated 17th May 2010 as ultra virus to the Constitution of India and University Grant Commission Act 1956.

(C). A writ and/or an order in the appropriate nature of declaration to the effect that no prior approval is required for offering courses as mentioned in the letter dated 25.07.2018 (P/4) issued by the respondent authorities and in consequence thereto declare that the petitioner University is entitled to offer and run any academic courses like the State University subject to compliance of norms fixed if any under the University Grant Commission Act 1956 or in any other central legislation.

(D). Any other relief which this Hon'ble Court may deem fit in the facts and circumstances of the case.

(E). Cost of the petition may also be awarded."

Annexure P/4 interim order was passed on 09.05.2019 in the above case, in the following terms:

"Heard on IA No. 1 of 2019, application for grant of ad-interim relief.

Having considered the provisions contained in Section 22 of the University Grants Commission Act, 1956 and the ratio of the judgment rendered by the Supreme Court in the matter of ***Bharathidasan University & Another v. All India Council for Technical Education & Others***; (2001) 8 SCC 676, we are of the prima facie opinion that issue concerning the validity of the proviso to Section 9(1) of the Chhattisgarh Private Universities (Establishment and Operation) Act, 2005 needs deeper scrutiny.

Post the matter after summer vacation.

In the meanwhile, it is directed that the proviso to Section 9(1) of the Act 2005 shall not come in the way of the Petitioner-University in opening of new courses in the proposed subjects provided the Petitioner-University satisfies all the norms laid down by the University Grants Commission in this regard.

The opening of the new courses shall remain subject to final outcome of this writ petition."

WPC No. 1601 of 2019 was however dismissed as withdrawn, as ordered on 06.01.2021 by this Court.

18. Admittedly, when the Petitioner-University was established, as per the Chhattisgarh Private Universities (Establishment and Operation) (Amendment) Act, 2018, the Schedule was amended and the Petitioner-University was permitted to offer the courses viz. Certificate, Diploma, Under Graduate, Post Graduate Degree and integrated courses, M.Phil, Ph.D. and other research level (only regular) courses in Science, Business Management, Commerce, Engineering, Arts, Hotel Management and Fashion Designing. If at all any change was to be brought about by way of new teaching programme, it could have been introduced only with the prior approval of the State Government as stated in the 'proviso' under Section 9(1) of the 2005 Act. Insofar as the said provision stands, the Petitioner-University, having been permitted to conduct the courses only in respect of the specified disciplines as contained in the 2018 Amendment, cannot claim to conduct the courses in Agriculture and Allied Sciences as a matter of right, unless it is permitted by the State. This is more so, since Section 22 of the 1956 Act, which is heavily relied on by the Petitioner with regard to the

right to award Degree, only speaks that no one other than the University shall have the right to award the Degrees. This virtually means that such Degrees are only in respect of the courses that are permitted to be conducted and it never suggests that this is a provision which enables the University, once brought into existence, to conduct any Course or issue any Degree as it likes.

19. As mentioned already, by virtue of the specific entry of 'Agriculture, including Agricultural education and Research' by way of Entry No. 14 of List II and 'Universities' under Entry 32 of the very same List and in light of the rulings referred to already, it is very much within the domain of the State Government to bring about enactment dealing with the said subjects. It was accordingly, that the 1987 enactment was made, giving birth to the 4th Respondent University for establishing and incorporating Agricultural University for 'Krishi Tatha Sambadha Vigyan' at Raipur, to provide for education and prosecution for research in Agriculture and Allied Sciences, extension and other matters ancillary thereto. The Petitioner, who is a private University, breathed for the first time only in the year 2018, pursuant to the Amendment in the 2005 Act. At the time of making application to constitute the said University, the Petitioner was very much aware that the higher education in the field of Agriculture had already been taken over and vested with 4th Respondent as per the 1987 enactment and this being the position, it was not open for them to get the said subject also to be included as part of the course and curriculum. This is more so, in view of the specific **'proviso' to Section 9(1) of the 2005 Act** under which the Petitioner has been established. As it stands so, no loss or prejudice has been caused to the Petitioner in any manner, nor is there any instance of discrimination.
20. With regard to the plea of the Petitioner that the provisions under challenge provide for territorial legislation, it is the case of the Petitioner that the

Petitioner-University has been permitted to operate throughout the State of Chhattisgarh, whereas, the impugned provisions deal with the higher education in the field of Agriculture and allied subjects only in three Divisions such as 'Raipur, Bilaspur and Bastar'. The Petitioner contends that there are two more Divisions in the State of Chhattisgarh; by name 'Durg' and 'Surguja', and as such, the Petitioner ought to have been permitted to offer the courses in respect of the students of these two Divisions at least, and hence the total rejection of the representation vide Annexure P/1, referring to the 1987 enactment, is not correct. We find it difficult to agree.

21. At the time of enactment in the year 1987, there were only three Divisions covering the area occupied by the State of Chhattisgarh, which came into existence pursuant to the Madhya Pradesh Reorganization Act, 2000 w.e.f. 01.11.2000. Those three Divisions were 'Raipur, Bilaspur and Bastar'. Another Division by name 'Surguja' was carved out from Bilaspur in the year 2008; whereas 'Durg' Division was carved out from Raipur in the year 2013. As on date, there are as many as 28 Districts, which are grouped into the 'five' Revenue Divisions as above, as revealed from the particulars made available from the part of the Petitioners themselves, which is to the following effect:

Surguja Division	Bilaspur Division	Durg Division	Raipur Division	Bastar Division
Koriya	Bilaspur	Kabirdham (Kawardha)	Mahasamund	Kanker (Uttar Bastar)
Balrampur-Ramanujganj	Mungeli	Bemetara	Baloda Bazar	Narayanpur
Surajpur	Korba	Durg	Gariaband	Kondagaon
Jashpur	Janjgir-Champa	Balod	Raipur	Bastar
Surguja	Raigarh	Rajnandgaon	Dhamtari	Dantewada (Dakshin Bastar)
	Gaurella-Pendra-			Bijapur
	Marwahi district			Sukma

22. No complaint or grievance has been projected by any student to the effect that he has lost an opportunity to get admission in the field of Agriculture/allied sciences because of his being a resident of the 'Durg' Division or the 'Surguja' Division. As put forth by the learned counsel for the State, the admission to the said course is being conducted pursuant to the 'Pre-Agriculture Test' and anybody who is coming out successful will be getting admission in any of the Institutions affiliated to the 4th Respondent. This being the position, the contentions put forth by the Petitioners with reference to the territorial jurisdiction of the Act/provisions in the Act and as to the alleged discrimination do not hold any water and are only to be repelled. It is ordered accordingly.
23. The point considered by the Apex Court in ***Bharathidasan University & Another v. All India Council for Technical Education & Others***; (2001) 8 SCC 676, was whether the Appellant-University created under the Bharathidasan University Act, 1981, having its area of operation over the Districts of Thiruchirappalli, Thanjavur and Pudukkottai in the State of Tamil Nadu, should seek 'prior approval' of the All India Council for Technical Education (AICTE) to start a department for imparting a course or programme in technical education or a technical institution, as an adjunct to the University itself, to conduct technical courses of its choice and selection. The Andhra Pradesh High Court concluded that the AICTE Act, being a special law on a particular category of education overrides even the 1956 Act. The said verdict was set aside and the appeal filed by the University was allowed by the Apex Court, holding that the AICTE's sanction was not necessary. This does not come to the rescue of the Petitioners, as not applicable.
24. The remaining question to be considered is whether there is any repugnancy between the statutes *i.e.* the '1956 Act' framed by the Central

Government and the '2005 Act' framed by the State Government, with regard to the setting up of the 4th Respondent-University to provide higher education in the field of Agriculture and incidental subjects, with reference to Entry 25 of the List III (Concurrent List). The Constitution Bench of the Apex Court in ***West Uttar Pradesh Sugar Mills Association & Others v. State of Uttar Pradesh & Others*** {(2020) 9 SCC 548} held that presumption of constitutionality of a statute will stand and that it is for the person alleging the statute to be unconstitutional, to establish its invalidity. The Apex Court also explained as to when the question of repugnancy under Article 254 can be considered. The tests for deciding the '**doctrine of repugnancy**' and the cardinal principles were summarised and it was held that the 'doctrine of repugnancy' would not be attracted, even if the laws partially or incidentally cover the same area in a different context, which is to achieve different purpose. As discussed already, the two enactments i.e. the 1956 Act and the 1987 Act have been framed to deal with the circumstances under two separate fields and no repugnancy has been demonstrated by the Petitioners in any manner.

25. Applying the '**doctrine of pith and substance**' as well as the '**dominant object**' of the Act, it can never be inferred that the field upon which the State Government has framed the law i.e. the 1987 Act was already taken over by the Central Government while passing the 1956 Act. The contention raised by the Petitioners to the contrary can only be repelled.
26. With regard to the contention of the Petitioners that conferring the field of education in the Agriculture and incidental subject exclusively on the 4th Respondent virtually creates a monopoly on the State, is almost a similar question which had come up before the Karnataka High Court - with reference to the relevant provisions of the University of Agricultural Science Act, 1963 vesting exclusive power in the University to impart education in a

particular subject like 'Veterinary Science'. After threadbare analysis of the facts and figures and the relevant provisions of law and precedents, it was held by a Division Bench of the Karnataka High Court that the said policy cannot be attacked as violative of the fundamental rights of anyone. The Bench held that, if the State takes up the responsibility of educating the selected candidates for imparting education in such subjects as 'Veterinary Science' or 'Agricultural Science', the monopoly created in the State by law cannot be attacked as deprivation of right of livelihood by those who are unable to secure admission to those Institutions and they cannot be heard to say that they must have a right to have their own educational Institutions to educate themselves or impart education to others. The law bestowing exclusive right in such a subject, in the instrumentality of the State vesting exclusive right in the University to impart education (as the 4th Respondent in the instant case) cannot be termed as unfair or unreasonable.

27. The scope of Section 4(4) of the Gujarat Agricultural University Act, 2004 which provided that "***no educational institution imparting education in agriculture and allied sciences or conducting and guiding research in agriculture or conducting and guiding programs of extension education and situate within the University area shall, save with the consent of the University and the sanction of the State Government, be associated in any way with, or seek admission to any of the privileges of any other University established by law***" was a subject matter of challenge before a Division Bench of the Gujarat High Court at Ahmedabad in ***R.K.University v. Anand Agricultural University***; {2019 GLH (1) 418}. After exhaustive analysis of the relevant provisions of law and entries in the different Lists of the Seventh Schedule, the Division Bench (as held in paragraph 43) rejected the contention of the 1st Petitioner-University and its students that the private Universities were not required to obtain any consent and prior sanction from the State Agricultural University and State

respectively before commencement of the courses in the discipline of Agriculture. Thereafter, the Court proceeded to consider the requirement of recognition/approval from the 'ICAR' for any Institution/University for commencement of courses relating to Agriculture and allied sciences. After detailed deliberation, the Court rejected the plea of the Petitioner that ICAR being not a statutory body, no approval needed be taken. Though the ICAR may not be a body created under the specific statute, it was held as a body recognized and defined under Section 2(i) and (p) of the Gujarat Private Universities Act, 2009, coupled with Section 35 of the said Act and for all practical purposes, it had to be construed as an 'Apex body' so far as the Agricultural education and allied subjects are concerned.

28. A challenge was raised before the Apex Court against the said verdict, by the aggrieved party, but it came to be repelled; holding it in explicit terms that the Apex Court was of the opinion that it was necessary to comply with Section 4(4) of the Gujarat Agricultural University Act, 2004, as observed by the High Court. However, some concession was made, based on the submission made from the part of the State, to have the application, if any, filed for consent and sanction in respect of the students who were already undergoing their studies and the courses, treating the same as a 'special case', in view of the peculiar facts and without making it a precedent. The observation of the Apex Court is in the following lines:

"In the circumstances, we permit the universities to file application(s) for grant of consent and sanction within one month to the State and to the Gujarat Agricultural University. In the peculiar facts and circumstances of this case, as a special case, without making it a precedent, they shall consider the application(s) with retrospective effect and also for future whether such course has to be allowed or not. In case it is decided that for future, permission is not to be granted, they are free to decide on relevant consideration. However, sympathetic consideration may be made for past, as students will be deprived of the validity of the degrees obtained by them and may suffer irreparable injury for no fault of theirs, a

sympathetic consideration be made for past recognition as a special case with effect from the date the courses were started by the private universities. Let a decision be taken within six weeks. It is clear that courses could not have been started without sanction of State and consent of Agricultural University. It will also be ensured that the courses in past met the minimum standards prescribed by ICAR.

The State Government as well as the universities shall not be prejudiced by any of the observations made by the High Court in the impugned order while taking the decision.

In view of the above, the Special Leave Petitions are disposed of."

29. In view of the categorical declaration made by the Apex Court, upholding the view taken by the Gujarat High Court, the submissions made by the learned counsel for the Petitioner that the verdict in ***R.K.University*** (supra) cannot be treated as a precedent, is not correct. The reference made by the Apex Court that, 'it shall not be a precedent', is with reference to the applications to be preferred by the aggrieved Universities for grant of consent and sanction and with reference to the sympathetic consideration to be taken in respect of the admission secured by the students in the past who may not suffer for no fault of theirs; which was ordered to be treated as a "special case", and nothing else.
30. In the above facts and circumstances, we hold that the challenge raised by the Petitioners against the validity of the impugned provisions is without any basis as no encroachment of the State into the field occupied by the Central Government has been demonstrated. Equal or more so, is the position with regard to the other grounds raised and dealt with as mentioned above, which are hereby found as not tenable.

The writ petition fails. It is dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE