
(2014) 05 P&H CK 0205

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 9215 of 2013 (O&M)

Adesh University

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 01-05-2014

Acts Referred:

Adesh University Act, 2012 — Section 2(j), 25, 26, 27, 3
All India Council for Technical Education Act, 1987 — Section 2(h)
Companies Act, 1956 — Section 12, 13, 26, 33, 33(1)(i)
Constitution of India, 1950 — Article 15(5), 19(1)(g), 19(6), 30
Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006 — Section 2, 2(i), 3, 3, 4, 4
University Grants Commission Act, 1956 — Section 2(f), 22, 23

Citation : (2014) 3 SCT 147

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : K.S. Sidhu, Sr. Advocate, M.S. Brar, M.S. Kalair and Tushar Sharma, Advocate for the Appellant; H.S. Sethi, Addl. A.G. and K.S. Sandhu, Advocate for the Respondent

Final Decision : Allowed

Judgement

G.S. Sandhawalia, J.—Challenge in the present writ petition is to the decision dated 07.12.2012 (Annexure P-6) whereby, in the meeting held under the Chairmanship of Chief Secretary, it was held that admissions to the Medical/Dental colleges including the private ones of Adesh University and other private universities were to be done as per National Eligibility Entrance Test (NEET). It was also decided that the fees for the private institutions including the Medical/Dental institutes at Adesh University would be the same as fixed by the Government under the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006 (in short "the 2006 Act"). The said decision also was to apply to other private universities namely Desh Bhagat or other private universities coming up in future. The challenge is also to the subsequent notification dated 01.02.2013

(Annexure P-12) whereby, the procedure for admission to Post Graduate Degree/ Diploma courses for the year 2013 was issued and Baba Farid University of Health Sciences, Faridkot-respondent No. 5 was authorized to make admissions on the basis of NEET-PG 2013. Accordingly, a writ in the nature of mandamus praying for a direction to admit the students through its own admission process for the academic session has been prayed for and to fix the fee structure for various courses from the academic session 2013-14. The pleaded case of the petitioner-university is that it is a Body Corporate and a University established under the Adesh University Act, 2012 (in short "the 2012 University Act"). The petitioner-university is being managed and controlled by the Adesh Foundation-petitioner No. 2, the Society registered under the Societies Registration Act, 1860. The respondent No. 1 had issued the Punjab Private University Policy, 2010 (in short "University Policy") whereby, it sought to attract high quality private sector investment and expertise in the area of higher education. The petitioners applied and had fulfilled the eligibility criteria and were granted the letter of intent in terms of Clause 4.5 of the Policy and University was to be established by way of enactment. As per clause 5.5, the university was to have a single campus and was not permitted to affiliate colleges other than the colleges owned and managed by its sponsoring body and which are situated in the same campus. That on 10.07.2012, vide notification, the 2012 University Act was notified which permitted the petitioner No. 2- foundation to incorporate the University. In pursuance of the letter of intent, respondent No. 3-Baba Farid University had granted no objection to the petitioner-foundation for approval of its colleges established by it at the Bathinda campus to be transferred to the privileges of the proposed Adesh University. The said institutions being 7 in number and imparting education in Medical Sciences, Dental Sciences, Nursing, Pharmacy, Physiotherapy and Para Medical Sciences were thereafter affiliated with petitioner No. 1- University by passing resolution on 12.07.2012 by petitioner No. 2- foundation. It is pleaded that since the Act of 2012 had come into force in July, 2012 and the process for admission to various Graduate and Post Graduate courses which were run by the petitioner-university had already been initiated by the State Government, the petitioners deemed it appropriate to let the State Government continue with the same process as it was not practical to initiate fresh process for admission at that stage.

2. A communication dated 20.11.2012 (Annexure P-4) was addressed to the respondent No. 1 that there was a proposal under consideration implicitly controlling the administration/admission process, fee structure in respect of private/self financing universities and before taking any decision, the rights of the private self financing universities should be taken into consideration. The respondent No. 1 gave no opportunity of hearing and a representation was also made on 15.12.2012 (Annexure P-5) to give an opportunity to explain its stand but in the meantime, the impugned order dated 07.12.2012 was passed whereby, the right of the institutes, private universities to conduct examinations on their own and to fix their fee structure and to fill seats was taken away and it

was held that it was liable to be fixed by the Government under the 2006 Act. A letter was also written later to the Minister for Medical Education and Research on 26.12.2013 and the Minister had expressed his ignorance on any of the developments and informed the petitioners that he was neither consulted nor informed regarding the decision. Thereafter, a representation was also made on 03.01.2013 for issuing no objection for making admission in the colleges of the university independent of the system, which was earlier in place for the year 2013-14. That on 10.01.2013 also, a representation was addressed to the Director, Research and Medical Education-respondent No. 3 that for the session 2013-14, admissions would be carried out by holding entrance tests conducted by the petitioner. The respondent No. 2 had issued a Gazette notification dated 01.02.2013 inviting admissions to be done to private aided, un-aided and minority Health Sciences Education Institutions as per the procedure laid down by the 2006 Act. Accordingly, writ petition was then filed taking various pleas that once the 2012 University Act had been incorporated, the petitioners were not to be covered under the 2006 Act.

3. It was pleaded that the University is self financed and is not receiving any grant of financial assistance from the State Government and, therefore, the control of the Government on the un-aided private universities should be minimal as per the law laid down by the Apex Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and P.A. Inamdar and Others Vs. State of Maharashtra and Others, . It is also submitted that the order passed was without affording the petitioners a hearing and thus, violative of the principles of natural justice.

4. In the short affidavit initially filed by respondent No. 1, reliance was placed upon the Full Bench decision of this Court in Navdeep Kaur Gill and Others Vs. State of Punjab and Others to take the defence that the Act of 2006 was upheld and it gave power to fix and notify fee structure for private colleges. The decision accordingly was justified. The State's power of fee fixation was within the Legislative competence of the State Legislature under Entry 25 of List III of the 7th Schedule and it was pleaded that it was a reasonable restriction under Article 19(6) of the Constitution of India and a regulatory mechanism made by the State Legislature. The decision was keeping in mind the larger interest and welfare of the student community to promote merit, achieve excellence and curb malpractices and to provide a single window procedure. Reliance was also placed upon the judgments in TMA Pai Foundation's case (supra) and P.A. Inamdar's case (supra).

5. In the short affidavit filed by the Special Secretary, Higher Education, Government of Punjab, it was pleaded that the Department of Higher Education has no role in this regard and the matters in relation to course and admissions are to be controlled by the Regulatory Body/University. Another affidavit dated 13.03.2014 was also filed by the Director, Research and Medical Education, Punjab taking similar pleas and justifying the order passed.

6. Senior counsel for the petitioner, in pursuance of the pleadings, has accordingly submitted that the University Policy (Annexure P-1) had been notified on 11.06.2010 for the purpose of setting up self financed private universities in the State of Punjab. In pursuance of the said policy, the petitioner No. 2-foundation had applied for establishment of the University and it had been found conforming to the rules and regulations and in pursuance of which the Act had been notified. The same provided that the university could have the power and functions to conduct and hold examinations and to grant or confer degrees, diploma certificates and to demand such fees as may be prescribed, the decision taken by the Government was arbitrary and against the provisions of the 2012 University Act. It was submitted that apart from the arbitrary decision taken, the principle of audi alteram partem had been openly violated. The petitioner university is one of the private universities and once on 10.07.2012, by notification, the Adesh University Act, 2012 had come into force which permitted the university to admit and prescribe the fee structure, then the decision taken at the back of the university was not justified.

7. Counsel for the respondent-State on the other hand, vehemently opposed the said submissions and submitted by referring to the provisions of the 2012 University Act that the Government had the power to consider the Statutes made by the governing body of the university and could give its approval with or without such modifications. The governing body was permitted to make ordinances but the said ordinances required the approval of the Chancellor and the ordinances were to be submitted to the State Government for approval. No such procedure had been followed by the University yet and neither the university had forwarded any Statutes for approval under the 2012 University Act. Reliance was also placed upon the Full Bench judgment in Navdeep Kaur Gill's case (supra) to submit that the Act of 2006 would apply. Stress was laid that the Act governed all institutions and the institutes which had been affiliated with the petitioner university would be governed by the 2006 Act. The earlier affiliation with respondent No. 5-university was now with the petitioner-university but the Act would still prevail.

8. On the issue of personal hearing, it was submitted that even under the provisions of Sections 25 and 26 of the 2012 University Act, no personal hearing was to be granted when the Statutes and ordinances had to be approved and therefore, the decision was well justified and personal hearing was not required. On the basis of the above said pleadings, two issues which arise for consideration before this Court are:-

(i) That on the notification of the Adesh University Act, 2012 whether the petitioners could seek autonomy for purposes of fee fixation and for admitting students to the 7 institutions affiliated to the University?

(ii) Whether the impugned decision was violative of the principles of natural justice and whether before taking a policy decision, it was imperative for the petitioners to be heard?

9. For adjudicating on the dispute, it is necessary to examine the University Policy of 2010 which was notified on 11.06.2010, in pursuance of which the petitioner-university was notified. The Preamble provides that to attract high quality private sector investment and expertise in the realm of higher education and for incorporation of private self financing universities and to provide sufficient opportunity to deserving private institutions and educational promoters who had sufficient experience and exposure in the field of higher education, the Governor of Punjab was pleased to frame the said policy. The purpose apparently was that the self financed universities who were not receiving any grant or aid from the State Government were to be regulated and their functioning had already been provided under the University Grants Commission Regulations. The universities were to be established and incorporated by the Act of the State Legislative Assembly as provided u/s 2(f) of the UGC Act, 1956. As per clause 2.23, the university was to be established and incorporated in pursuance of the provisions of the policy through an Act of Punjab Legislative Assembly. The relevant clause 2.23 reads thus:-

2.23 "University" means a private University established and incorporated in pursuance to the provisions of this Policy, through an Act of the Punjab Legislative Assembly.

The main campus of the university was to be its headquarters and the institutions/units owned and managed by the same sponsoring body responsible for the establishment and running of the university. The relevant definitions read thus:-

2.11 "Institution/unit" means an institution/unit owned and managed by the same sponsoring body responsible for establishment and running of the University and includes constituent institutions, affiliated institutions, Departments, centres etc. of the University.

2.12 "main campus" means the campus of the University at its headquarters, as prescribed in the concerned University Act.

As per clause 4, the submission for proposal of establishment of university was to be made by person who had prior experience in higher education for a minimum period of 10 years. The proposal was to be evaluated under Clause 4.4 and the issuance of letter of intent was to be made and a minimum of 35 acres of land was required in one contiguous chunk. The establishment was to be done by the State Government by an Act of State Legislature and university was to seek formal approval u/s 2(f) of the UGC Act before starting academic operations such as admissions, fixation of fee, teaching activities. The university was also to have a single campus and would not be permitted for affiliating colleges other than the institutions owned and managed by the same sponsoring body within the main campus. The relevant portion of the policy as per clause 5 reads thus:-

5. Establishment of the University

5.1 The State Government, by an Act of the State Legislature, may thereafter establish a private University with such name, location, domain, jurisdiction, and with such infrastructure as may be specified in the concerned University Act.

5.2 After the establishment of the University by State legislature, the University shall seek formal approval from the UGC u/s 2(f) of the UGC Act 1956, or any other authority so constituted by the Government of India under any law for the time being in force, before starting academic operations of the University such as admissions, commencement of programmes and teaching activities.

5.3 Every University established by an Act of the State Legislature shall be a body corporate by the name as specified in the University Act and shall have perpetual succession and a common seal. It shall have the power to acquire and hold properly both movable and immovable and to make contract, and may sue and be sued by the said name.

5.4 The private University so established shall be entirely self-financed. While the Government may use its good offices to facilitate the smooth functioning of the University including but not limited to national and international collaborations, however these universities shall not be entitled to receive any grant or other financial assistance from the State Government.

5.5 The private University would have a single campus. The University shall not be permitted for affiliating colleges other than the institutions owned and managed by the same sponsoring body, within the main campus.

10. The University was to follow rules and regulations as per clause 7 and as per clause 8, there was a fee structure and regulation of fees which was to be regulated by the university at its own level. As per clause 9, the private university was to act itself as a self regulatory and an autonomous body and the admission process and all other matters were to be determined and regulated by the university at its own level as per the provisions contained in the University Act and the admission matters were to be dealt with in a fair and transparent manner. The relevant clauses 7 to 9 read thus:-

7. University to follow Rules, Regulations, etc. of the Regulating Bodies

7.1 Notwithstanding anything contained in this Policy, the University shall be bound to comply with all the applicable statutory rules, regulations, norms, etc. of the regulatory bodies established by the Central Government, in particular the UGC, and provide all such facilities and assistance to such bodies as are required by them to discharge their statutory duties and carry out their functions.

7.2 The University shall be prohibited from conferring any degrees not recognized by the University Grants Commission or its equivalent body so created by the Central Government.

7.3 All the functions and matters pertaining to the University, which inter alia shall include teaching, research, examination, admission, employment, service

conditions, remuneration, student bodies, discipline, fees, funds, scholarships and concessions, budget, annual report, accounts, audit and such other matter as may be required for proper functioning of the University shall be performed and dealt with; and may be subject to inspection, enquiry, scrutiny or alike in such manner as prescribed under the respective University Act and the Statutes, Regulations, Ordinances and Rules made there under, as the University being a self-regulatory body; provided that in case any function(s) or matter(s) not provided therein, these shall be in accordance with those prescribed by the UGC or the Central Government for the matter(s) concerned.

8. Fee structure and Regulation of Fees.

8.1 The fees shall be determined and regulated by the University at its own level for being a self regulatory body and the fee so determined shall be duly published and no charge beyond such fee, whether in shape of capitation fee/donations etc, shall be imposed upon the students or their parents.

8.2 The University shall provide full tuition fee concession/freeship to not less than 5% of the total student strength, from among candidates belonging to the weaker sections of the Society and shall develop a fair and transparent mechanism to deal with such matter.

9. Admissions and other matters

9.1 A private University shall act as self regulatory and autonomous body and the admission process and all other matters shall be determined and regulated by the University at its own level strictly as per the provisions contained in the University Act, provided that the admission and other matters should be dealt with in a fair and transparent manner.

9.2 Admission to the programmes of study at the University shall be open for the candidates from India, abroad and Punjab domicile. However, fifteen percent seats shall be exclusively reserved for the candidates of Punjab Domicile, subject to reservation Policy of the State Government for the time being in force;

Provided that any seat(s) lying vacant in the quota of Punjab domicile shall be filled like the Open Category Seats by the candidates from India or abroad including Punjab domiciles;

Provided further that any seat(s) lying vacant in the reserved category seats as above shall be filled by the General Category candidates in open category.

11. Thereafter, the University Act, 2012 was notified on 10.07.2012, perusal of which shows that u/s 2(j), the foundation was the Adesh Foundation which is petitioner No. 2 and the private university was by the name of the Adesh University as per Section 3 and the university was to be run and managed by the said Foundation. As per Section 3(5), the university was to be self financed and not entitled to receive any grant or other financial assistance and the headquarters were to be located at Village and Post Office Bhucho Kalan, Tehsil

Nathana, District Bathinda. Section 5 provided the powers and functions and sub clause (ii) provided the power to conduct and hold examinations and grant or confer degrees whereas sub-section (viii) provided right to demand fees and charges as may be prescribed. Sub section (xxi) further prescribed the fee structure of various categories of students. The relevant provisions read thus:-

5. The University shall have the following powers and functions, to be exercised and performed by it or through its officers and authorities namely:-

(i) xxx xxx xxx

(ii) To conduct and hold examinations and grant or confer degrees, diplomas, certificates, awards, grades, credits, honorary degrees, academic distinctions as well as other distinctions and certifications;

(iii) and

(iv) xxx xxx xxx

(v) to provide for equivalence of the degrees, diplomas and certificates of the students completing their courses from any other University, Board, Council or any other competent authority;

(vi) to provide for dual degree, diploma or certificate vis-a-vis other universities on reciprocal basis;

(viii) to demand such fees and other charges, as may be prescribed.

(ix) to

(xx) xxx xxx xxx

(xxi) to prescribe the fee structure for various categories of students;

Section 6 provided that the university could exercise its jurisdiction within its campus and could affiliate the educational or provisional institutions established and managed by the Foundation with regard to specific decisions which were taken by the Foundation.

12. There is no denying the fact that a decision was taken on 12.07.2012 by the Foundation (Annexure P-3/B) to affiliate the 7 institutions to the petitioner university and which are admittedly situated within the campus in one contiguous area. Section 6 reads thus:-

6. (1) The University shall exercise its jurisdiction within its campuses.

(2) The University shall affiliate to it those educational or professional institutions, established, run or managed by the Foundation with regard to which a specific decision is taken by the foundation.

13. Similarly, Section 25 provides that the governing body may from time to time, make Statutes, amend or repeal the same with the approval of the

Chancellor and sub section (4) provides that the Statues have to be submitted to the State Government for approval. Under sub section (5), the State Government was to give its approval with or without modifications as it may deem necessary and return the Statues to the university. The university, with the approval of the governing body, was to communicate its concurrence to the Statutes as approved by the State Government and if it desired not to give effect to any or all of the modifications made by the State Government, it had to give reasons thereof. Under Sub clause 7, the Statues had to be published in the Official Gazette of the University and under sub clause 8, they could not be amended without the approval of the State Government. Similar was the position to make ordinances u/s 26, which provided that fees could be charged for various courses, examinations, degrees and diplomas. Relevant provisions of Section 25 read thus:-

25. (1) The Governing Body may, from time to time, make statutes or may amend or repeal the same.

(2) The statute or any amendment made therein or repeal thereof, shall require the approval of the Chancellor.

(3) Subject to the provisions of this Act, the statutes may provide for the following matters, namely:-

(i) to (viii) xxx xxx xxx

(ix) the policy of admissions, including regulation of reservation of seats;

(4) xxx xxx xxx

(5) The State Government shall consider the statutes submitted by the University and shall give its approval without or with such modifications, if any, as it may deem necessary and return the statutes to the University.

(6) The University shall, with the approval of the Governing Body, communicate its concurrence to the statutes as approved by the State Government, and if it desires not to give effect to any or all of the modifications made by the State Government, it may give reasons therefore.

(7) After the statutes are finally approved by the State Government, these shall be published in the Official Gazette of the University.

(8) The statutes so made, shall not be amended without the approval of the State Government.

Relevant provisions of Section 26 read thus:-

26. (1) The Governing Body may, from time to time, make ordinances or may amend, or repeal the same.

(2) Every ordinance or any amendment made therein or repeal thereof, shall require the approval of the Chancellor.

(3) Subject to the provisions of this Act, the ordinances may provide for the following matters, namely:-

- (i) the admission of students to the University and their enrolment as such;
- (ii) the courses of study to be laid down for the degrees, diplomas and certificates of the University;
- (iii) the degrees, diplomas, certificates and other academic distinctions;
- (iv) the fees to be charged for the various courses, examinations, degrees and diplomas of the University;

(4) After the approval of the Chancellor, the ordinances of the University shall be submitted to the State Government for its approval.

(5) The State Government shall consider the ordinances submitted by the University and shall give its approval without or with such modifications, if any, as it may deem necessary and return the same to the University.

(6) The University shall, with the approval of the Governing Body, communicate its concurrence to the ordinances as approved by the State Government, and if it desires not to give effect to any or all of the modifications made by the State Government, it may give reasons therefor.

(7) After the ordinances are finally approved by the State Government, these shall be published in the Official Gazette of the University.

(8) The ordinances so made, shall not be amended without the approval of the State Government.

Section 27 reads thus:-

27. (1) The Governing Body may, from time to time, make regulations or may amend, or repeal the same.

(2) Every regulation or any amendment made therein or repeal thereof, shall require the approval of the Chancellor.

(3) After the approval of the Chancellor, the regulations of the University shall be submitted to the State Government for its approval.

(4) The State Government shall consider the regulations submitted by the University and shall give its approval without or with such modifications, if any, as it may deem necessary and return the same to the University.

(5) The University shall, with the approval of the Governing Body, communicate its concurrence to the regulations as approved by the State Government, and, if it desires not to give effect to any or all of the modifications made by the State Government, it may give reasons therefor.

(6) After the regulations are finally approved by the State Government, these

shall be published in the Official Gazette of the University.

(7) The regulations so made, shall not be amended without the approval of the State Government.

14. u/s 35, if any defect arose in giving effect to any of the provisions of the Act, the State Government so in consultation with the Chancellor, by an order published in the official gazette, could make such provisions which were not inconsistent with the provisions of the Act as it would may deem necessary for removing such defect and no such order could be made after expiry of two years from the date of commencement of this Act. u/s 8, the Governor of Punjab was to be the visitor of the University and under Sub section 3, he had the right to call for any information regarding the affairs of the university. In consultation with the Chancellor, inspection and scrutiny could be done after giving notice.

15. Similarly the Act of 2006 which provides for fixation of fee structure and making of reservation in private health sciences educational institutions, are necessarily to be examined. u/s 2, aided institution meant a private health science educational institution which included a minority institution receiving financial aid or assistance in whole or in part from the Central Government or the State Government or from any local body. The definition of the Institute u/s 2(i) of the Act further provided that it was wide enough to include an aided or unaided institution also. The State which is seeking the applicability of the Act even on unaided institutions would thus accordingly contend that the University also fell under the purview of the said Act which gave the power to the State Government to fix the fees and Section 4 provided that State Government had authority to conduct the Common Entrance Test to make admissions to all private Health Sciences Educational Institutions in the State of Punjab on the basis of inter se merit of the said test irrespective of the fact that they were affiliated to the petitioner-university. Relevant provisions of Section 2 of the 2006 Act reads thus:-

2. In this Act, unless the context otherwise requires:-

(a) "Aided Institution" means a private health sciences educational institution including a minority institution, receiving recurring financial aid or assistance in whole or in part from the Central Government or State Government or from any local body;

(b) to (h) xxx xxx xxx

(i) "private health sciences educational institution" means an institution, not established and administered by the Central or State Government or a local body and it includes an aided or unaided or minority institution also;

(j) to (l) xxx xxx xxx

(m) "Unaided Institution" means a private health sciences educational institution, not being an aided institution.

Section 5(3) of the 2006 Act provided that an unaided institute was to reserve upto 50% of the total sanctioned intake as a management quota seats.

16. The submission of the counsel for the State by placing strong reliance upon the judgment in Navdeep Kaur Gill's case (supra) was that in view of the above provisions which provided that all Private Health Science Educational Institutions would be covered under the Act and the applicability of the said Act had been upheld. This cannot be accepted since the question that was for consideration before the Full Bench was as to the fee fixed by the Fee Fixation Committee for the session 2006-07 was justified and whether the admission procedure violated the fundamental right of the colleges imparting medical education. The questions which were framed by the Full Bench read thus:-

Questions

(19) In view of above pleadings, the questions raised can be framed as under:-

1. Whether fee fixation by FFC for the period prior to sessions 2006-07 is excessive as stated by the students (Category I) or low as stated by the colleges (Category II)?

2. Whether fee fixation and admission procedure violate fundamental right of the colleges under Article 19(1)(g) of the Constitution (Category IV) and whether the impugned notification issued under the said Act prescribes exorbitant and arbitrary fee violating right of students (Category III)?

17. Keeping in view the above said questions, the Full Bench upheld the fee fixation and the admission procedure whereby, the Common Entrance Test was prescribed as not being violative of Article 19(1)(g) of the Constitution of India and was not interfering with the autonomy of unaided institutions on the ground that the Act was a regulatory measure while placing reliance upon the observations in TMA Pai Foundation's case (supra). The relevant observations in Navdeep Kaur Gill's case (supra) read thus:-

44. We may now consider the contention raised on behalf of the Colleges that the Act was violative of Article 19(1)(g) of the Constitution in authorizing fee to be fixed and admissions to be made. Section 7 is enabling provision for determining the fee. It provides for fixing the fee having regard to the minimum norms of infrastructure and facilities prescribed by the concerned council. Criticism against the provision is that the institutions are denied right to fix fee as per their own infrastructure and such fee could be interfered with only on the ground that the same was exploitative and did not have nexus to the cost incurred. Conduct of Common Entrance Test and making of admissions by the State under Sections 3 to 6 is challenged as being interference with the autonomy of unaided institutions.

45. We are unable to accept the submissions. The Act is a regulatory measure. Section 3 provides for regulation of admissions, fixation of fee and making of reservation. The fixation of fee by the State is by way of regulation. We have already left the question of reservation open in absence of challenge to Article

15(5) or any other statutory provisions. The admissions are regulated on the basis of Common Entrance Test and are made on inter se merit and cannot be held to be invalid being permissible regulatory measure.

46. Fee is to be determined having regard to norms of infrastructure and facilities provided by the concerned councils set up under the Central laws. There can be no objection to regulatory measures in the matter of making of admissions or fixing of fee. Objection that the fee should be fixed by the College and not by the State cannot be accepted. The observations in judgments referred to above have been made in absence of legislation. Once a legislation is enacted, its validity is to be tested on the touchstone of the Constitution. Though, establishment of educational institutions is a fundamental right under Article 19(1)(g) as held in T.M.A. Pai Foundation, the said right is not an absolute right. The same is subject to regulation. In absence of any law, under the judicial direction, the committees were constituted to oversee admission and fee fixation. The said judicial directions have now been substituted by the statutory mechanism. In the matter of fee fixation, the basis for fee is the norms of infrastructure and facilities prescribed by a council and an institution providing higher facilities is not allowed to charge higher fee. To this extent, there is departure from the observations made in above judgments to the effect that an unaided educational institution could fix its own fee structure subject to the same being not exploitative.

It is thus pertinent to notice that the University Act, 2012 came into force an year later and the petitioner-university was thus set up which has affiliated several institutions to it which are situated within its campus.

18. The submissions of the counsel for the respondent-State that the said institutions would be continued to be governed by the 2006 Act by an executive fiat are hard to digest. Respondent No. 1 has taken a decision without taking into consideration the fact of the setting up of the University by virtue of a State Act. The University is defined u/s 2(f) of the University Grants Commission Act, 1956 (in short "the UGC Act") which provides that it has to be established or incorporated under a Central or Provincial Act or a State Act. Even the policy of 2010, as noticed above, provided that the University was to be incorporated by the Act of the State Legislative Assembly as provided u/s 2(f) of the UGC Act, which reads thus:-

2(f) "University" means a University established or 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 recognized by the Commission in accordance with the regulations made in this behalf under this Act.

That sub clause (x) of Clause 4.5 of the University Policy also provides that university had to fulfill other conditions which may be prescribed under the statutory regulations of the UGC and under Clause 5.2, formal approval had to be taken from UGC before starting academic operations of the university such as admissions, commencement of programmes and teaching activities.

19. In the present case, it seems that the procedure was yet to be followed and the petitioner-university had merely written a letter to respondent No. 1 apprehending curtailment in its autonomy on the basis of which, the impugned order has been passed.

20. Counsel for the respondent-State was at pains to submit that under Sections 25 and 26, the governing body of the university had to make Statutes which were to be submitted to the State Government for its approval and it failed to do so and was wanting to admit students and fix its fee structure without the approval of such Statutes and Ordinances which were not permissible. It is submitted that the State Government had the power to reject or modify the said Statutes and they were only to be published after final approval.

21. The said submission is without any basis as that is not the reason given in the impugned order. There is no denying the fact that this was not the reasoning which had prevailed with respondent No. 1 and it was not a ground for passing of the said order. It is only in arguments that this point has now been sought to be raised. Neither this is the stand of the State in the written statement filed before this Court. It is settled principle of law that the impugned order itself has to be self speaking and the reasons cannot be supplemented at a subsequent point of time by way of written statement. The Apex Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, held to the said effect. In the present case, as noticed above, this is not even the plea taken in the written statement and is now sought to be raised for the first time in arguments which cannot be permitted as the other side has to be given an opportunity to rebut the said argument. The relevant observations read thus:-

The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji (1)*.

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

22. A perusal of the impugned order dated 07.12.2012 (Annexure P-6) would go on to show that the Committee was of the opinion that the provisions of the 2006 Act specifically regulates the procedure of admission to private health

sciences educational institutions and would also over ride any other general provision in the other University Acts. The Act of 2012 was held to be not having any non-obstante clause and it was accordingly held that its provisions would have effect notwithstanding to the contrary in any other Act. The benefits were denied on the ground that the Adesh University could not have higher rights from the Guru Nanak Dev University, Amritsar, Punjabi University, Patiala and Punjab University, Chandigarh. Accordingly, it was held that the fee also would be the same as fixed by the Government for other private Medical/Dental colleges. The Apex Court in Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, while discussing the issue of the private universities set up in the State of Chattisgarh, observed that the Universities are basically places of giving and receiving instructions in the higher branches of learning and forming institutions for the promotion and education in the higher or more important branches. The definition of University was examined and how it was to be set up. The relevant observations read thus:-

13. How the word "Universities" occurring as a legislative head in the Seventh Schedule should be interpreted, one has to look to the legislative practice regarding interpretation of Constitutional entries. For this purpose, it will be useful to refer to some well known decisions.

14 to 37 xxx xxx xxx

38. A degree conferred by a University is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. In the case of a Doctorate degree, it certifies that the holder of the degree has attained a high level of knowledge and study in the concerned subject by doing some original research work. A University degree confers a kind of a status upon a person like a graduate or a post-graduate. Those who have done research work and have obtained a Ph.D., D.Lit., or D.Sc. degree become entitled to write the word "Doctor" before their name and command certain amount of respect in society as educated and knowledgeable persons. That apart the principal advantage of holding a University degree is in the matter of employment, where a minimum qualification like a graduate, post-graduate or a professional degree from a recognized institute is prescribed. Even for those who do not want to take up a job and want to remain in private profession like a doctor or lawyer, registration with Medical Council or Bar Council is necessary for which purpose a degree in medicine or law, as the case may be, from an institution recognized by the said" bodies is essential. An academic degree is, therefore, of great significance and value for the holder thereof and goes a long way in shaping his future. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies.

39. Mere conferment of degree is not enough. What is necessary is that the degree should be recognized. It is for this purpose that the right to confer degree

has been given u/s 22 of UGC Act only to a University established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a University u/s 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Subsection (3) of this Section provides that "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. The value and importance of such degrees which are recognized by Government was pointed out by a Constitution Bench in *Azeez Basha v. Union of India*.

40 to 57 xxx xxx xxx

58. Shri Rakesh Dwivedi, learned senior counsel, who appeared *amicus curiae*, has rightly submitted that though Entry 32 in List II is in general terms dealing with "incorporation, regulation and winding up of corporations other than those specified in List I and Universities ", but incorporation of a company is entirely different from incorporation of a University and they are conceptually different. Sections 33(1)(i), 12, 13, 26, 33 and 34 of the Companies Act relate to incorporation of a Company. It need not have a prior business and a mere statement of a lawful purpose in the Memorandum of Association is enough. If a Company is unable to achieve its objective and is unable to carry on business, the shareholders may suffer some financial loss, but there is absolutely no impact on society at large. However, a University once incorporated gets a right to confer degrees. A University having no infrastructure or teaching facility of any kind would still be in a position to confer degrees and thereby create a complete chaos in the matter of co-ordination and maintenance of standards in higher studies which would be highly detrimental for the whole nation. A University may, therefore, be established either by the State in exercise of its sovereign power which would obviously be through a legislative enactment. In the case of a private University it is necessary that it should be a preestablished institution for higher education with all the infrastructural facilities and qualities which may justify its claim for being conferred with the status of a University and only such an institution can be conferred the legal status and a juristic personality of a University.

23. The college's building and other properties belonging to such bodies may be identifiable and, therefore, the submission of the counsel for the State that the institutions which were affiliated to the University would continued to be governed by the 2006 Act cannot be accepted. The University would have to have institutions which would be affiliated to it which would provide the area of higher education and teaching which was to be imparted and the petitioner-university has a right to confer degrees, diplomas and certificates u/s 5(ii). Under sub clause (v) of Section 3, the university was to be totally self financed and not entitled to receive any financial assistance or grant from the State Government and, therefore, the reasoning given which prevailed with the respondent No. 1 that the University could not be placed at a higher pedestal

than the universities in the State which receive grant-in-aid from the State Government cannot be said to be justified. There is no denying the fact that the petitioner-university is a self financed and not receiving any grant-in-aid and, therefore, once the State Legislature itself has given certain autonomy it cannot be equated with the State Universities which are funded by the State Government or by the Central Government. The reasoning thus which prevailed with respondent No. 1 cannot be held to be justified on this account.

24. Counsel for the petitioner was well justified in placing reliance upon judgment of the Apex Court in *Bharathidasan University and Another Vs. All India Council for Technical Education and Others*, The issue in the said case was whether the university set up in the State of Tamil Nadu had to seek prior approval of the AICTE to start a department for imparting a course or programme in technical education. The AICTE had filed a writ petition in the Madras High Court objecting to the courses being conducted by the university on the strength that the university had not applied for prior approval of those courses. Section 2(h) which defined technical institutions of the All India Council for Technical Education Act, 1987 were referred to which provided that an institution not being a university could offer such programmes of technical education after referring to Section 2(f) of UGC Act. It was held that the universities would remain outside the ambit of technical institutions and AICTE could not have any control over the said university. In the present case also, since the State is wanting to bring the applicability of the 2006 Act, it would be relevant to notice the sections reproduced above, which also only provide that the Act would be applicable to institutions and does not talk about any applicability to universities. The university would obviously stand at a higher pedestal being a place of higher learning than an institution. The State Government, in its wisdom, has not amended the 2006 Act whereby, the definition of the institution has been amended to include a university for the applicability of the Act. The object of setting up independent university would thus be frustrated and the purpose of it being self financed and able to run its own affiliated institutions managed by the foundations would thus be frustrated if a decision of the respondents is as such to prevail. That the observations of the Apex Court in *TMA Pai Foundation's* case (supra) whereby the right to run a private unaided non-minority educational institution was discussed and it was held that the private institutions are expanding and are most dynamic and fast growing segments. The right to admit students and set up a reasonable fee structure was upheld and the fixation of rigid fee structure dictating the formation and composition of governing bodies, compulsory nomination of teachers and nominating students for admission were held to be non-acceptable restrictions. It was held that bureaucratic or governmental interference in the administration of such an institution will undermine its independence. However, the issue of charging capitation fees and profiteering by the institutions and admitting the students on merit had to be governed by an appropriate machinery to be devised by the State of University and to ensure that no capitation fees is

charged. The relevant paras in TMA Pai Foundation's case (supra) read thus:-

Private Unaided Non-Minority Educational Institutions.

48. Private education is one of the most dynamic and fastest growing segments of post-secondary education at the turn of the twenty-first century. A combination of unprecedented demand for access to higher education and the inability or unwillingness of government to provide the necessary support has brought private higher education to the forefront. Private institutions, with a long history in many countries, are expanding in scope and number, and are becoming increasingly important in parts of the world that relied almost entirely on the public sector.

49. Not only has demand overwhelmed the ability of the governments to provide education, there has also been a significant change in the way that higher education is perceived. The idea of an academic degree as a "private good" that benefits the individual rather than a "public good" for society is now widely accepted. The logic of today's economics and an ideology of privatization have contributed to the resurgence of private higher education, and the establishing of private institutions where none or very few existed before.

50. The right to establish and administer broadly comprises of the following rights:-

(a) to admit students:

(b) to set up a reasonable fee structure:

(c) to constitute a governing body;

(d) to appoint staff (teaching and non-teaching); and

(e) to take action if there is dereliction of duty on the part of any employees.

51 to 53 xxx xxx xxx

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.

55. The Constitution recognizes the right of the individual or religious denomination, or a religious or linguistic minority to establish an educational institution. If aid or financial assistance is not sought, then such institution will be a private unaided institution. Although, in Unni Krishnan's case, the Court emphasized the important role played by private unaided institutions and the need for private funding, in the scheme that was framed, restrictions were placed on some of the important ingredients relating to the functioning of an

educational institution. There can be no doubt that in seeking affiliation or recognition, the Board or the university or the affiliating or recognizing authority can lay down conditions consistent with the requirement to ensure the excellence of education. It can, for instance, indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and curricula. It can, for the same reasons, also stipulate the existence of infrastructure sufficient for its growth, as a prerequisite. But the essence of a private educational institution is the autonomy that the institution must have in its management and administration. There, necessarily, has to be a difference in the administration of private unaided institutions and the government aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its independence. While an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including its loans or borrowings, it is important to note that the essential ingredients of the management of the private institution include the recruiting students and staff, and the quantum of fee that is to be charged.

56. An educational institution is established for the purpose of imparting education of the type made available by the institution. Different courses of study are usually taught by teachers who have to be recruited as per qualifications that may be prescribed. It is no secret that better working conditions will attract better teachers. More amenities will ensure that better students seek admission to that institution. One cannot lose sight of the fact that providing good amenities to the students in the form of competent teaching faculty and other infrastructure costs money. It has, therefore, to be left to the institution, if it chooses not to seek any aid from the government, to determine the scale of fee that it can charge from the students. One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where, therefore, normally economic forces have a role to play. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the government.

57. We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object

of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution.

58. For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions.

59. Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies.

60 to 66 xxx xxx xxx

Private Unaided Professional Colleges

67. We now come to the regulations that can be framed relating to private unaided professional institutions.

68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forgo or discard the principle of merit. It would, therefore, be permissible for the university or the government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the Management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counseling by the state agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the government according to the local needs and different percentages can be fixed for minority

unaided and non minority unaided and professional colleges. The same principles may be applied to other nonprofessional but unaided institutions viz., graduation and post graduation non-professional colleges or institutes.

69. In such professional unaided institutions, the Management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/University subject to adoption of a rational procedure of selection. A rational fee structure should be adopted by the Management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the state or university to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus for the furtherance of education is permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers.

70. It is well established all over the world that those who seek professional education must pay for it. The number of seats available in government and government-aided colleges is very small, compared to the number of persons seeking admission to the medical and engineering colleges. All those eligible and deserving candidates who could not be accommodated in government colleges would stand deprived of professional education. This void in the field of medical and technical education has been filled by institutions that are established in different places with the aid of donations and the active part taken by public minded individuals. The object of establishing an institution has thus been to provide technical or professional education to the deserving candidates, and is not necessarily a commercial venture. In order that this intention is meaningful, the institution must be recognized. At the school level, the recognition or affiliation has to be sought from the educational authority or the body that conducts the school-leaving examination. It is only on the basis of that examination that a school-leaving certificate is granted, which enables a student to seek admission in further courses of study after school. A college or a professional educational institution has to get recognition from the concerned university, which normally requires certain conditions to be fulfilled before recognition. It has been held that conditions of affiliation or recognition, which pertain to the academic and educational character of the institution and ensure uniformity, efficiency and excellence in educational courses are valid, and that they do not violate even the provisions of Article 30 of the Constitution; but conditions that are laid down for granting recognition should not be such as may lead to governmental control of the administration of the private educational institutions.

Thereafter, in P.A. Inamdar's case (*supra*), the Apex Court held that it would be unfair to apply the same rules and regulations to both aided and unaided professional institutions and it would be permissible for the university to require a private unaided institution to provide for imparting best selection and at the same time, giving the management sufficient discretion in admitting students. For graduate and post graduate level of education and unaided institutions, it

was noticed that the education could be imparted by institutions created by law such as universities, Boards. It was held that the procedure to be followed by such unaided institutes has to be fair and transparent and non-exploitive. Liberty was also granted to institutions imparting same or similar professional education to join together for holding a common entrance test specifying the above said triple tests. It was also further provided that regulations can be framed to secure admissions on merit basis. The relevant portion reads thus:-

Q. 2. Admission procedure of unaided educational institution.

115. So far as the minority unaided institutions are concerned to admit students being one of the components of "right to establish and administer an institution", the State cannot interfere therewith. Upto the level of undergraduate education, the minority unaided educational institutions enjoy total freedom.

116. However, different considerations would apply for graduate and post-graduate level of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognized by or affiliated with any competent authority created by law, such as a University, Board, Central or State Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfill these objectives, the State can and rather must, in national interest, step in. The education, knowledge and learning at this level possessed by individuals collectively constitutes national wealth.

117. Pai Foundation has already held that the minority status of educational institutions is to be determined by treating the States as units. Students of that community residing in other States where they are not in minority, shall not be considered to be minority in that particular State and hence their admission would be at par with other non-minority students of that State. Such admissions will be only to a limited extent that is like a "sprinkling" of such admissions, the term we have used earlier borrowing from Kerala Education Bill, 1957. In minority educational institutions, aided or unaided, admissions shall be at the State level. Transparency and merit shall have to be assured.

118. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common

merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting Common Entrance Test (CET, for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfillment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralized counseling or, in other words, single window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of list of successful candidates prepared at the CET without altering the order of merit inter se of the students so chosen.

119. Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admissions and the procedure there for subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the abovesaid triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing maladministration. The admission procedure so adopted by private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly.

120. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb mal-practices, it would be permissible to regulate admissions by providing a centralized and single window procedure. Such a procedure, to a large extent, can secure grant of merit based admissions on a transparent basis. Till regulations are framed, the admission committees can oversee admissions so as to ensure that merit is not the casualty.

25. In the present case, as noticed above, the State has itself granted autonomy by notifying the 2012 Act. Section 22 of the UGC Act provides that university established by a State Act can confer a degree and Section 23 of the UGC Act provides that no other institute is entitled to use the word university in whatsoever manner. Sections 22 and 23 of the UGC Act read thus:-

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 u/s 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.

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

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

26. Accordingly, keeping in view the above cumulative discussion and after a combined reading of the University Policy, the 2006 Act, 2012 Act and the UGC Act, it is apparent that the impugned order does not take into consideration all these aspects. The State seems to have put the cart before the horse. The University was only apprehensive of a policy decision. It is also, as noticed above, that it is at a fledging stage and had yet to get the necessary Statutes approved from the State Government on its policy of admissions and fee fixation which, it has not done. The approval from the UGC also had to be taken before starting the academic session of the university in accordance with the regulations under the UGC Act. Nothing has been brought on record whether any such procedure had been followed. Thus, the decision of the State Government to properly analyze the provisions of the 2012 University Act and the autonomy which has been granted to the petitioner suffers from non-application of mind and requires a fresh look. Keeping in view the observations made above the said order passed cannot be held to be justified.

27. On the issue of the not granting any opportunity of personal hearing, this Court is of the opinion that the State acted in a haste while deciding the said issue, as noticed on facts above also. There is no denying the fact that the rights of the petitioner-foundation and the university were involved and even though there may be no specific provision to grant a hearing but before passing an order which gravely prejudiced the petitioner university, it was necessary that the principles of natural justice be followed. The university had only apprehended such like decision and thereafter, applied for personal hearing but the decision was already made before the second representation on 15.12.2012 could be submitted. The Apex Court in Mahipal Singh Tomar Vs. State of Uttar Pradesh and Others, discussed the principles of natural justice and while setting aside the termination of the appellants in the said case found that no effective opportunity

was given to controvert the finding recorded by the District Magistrates who had prepared the report by looking only at one side of the coin.

28. In the present case, the right of the petitioner-university to run its institutions and admit students and fix the fees as provided by Statute has been summarily taken away without even giving an opportunity of hearing. The same cannot be held but violative of the principles of natural justice. The Apex Court in *Swamy Devi Dayal Hospital and Dental College Vs. The Union of India (UOI) and Others*, held that non-renewal of the academic session would have an adverse effect which would fix the petitioner with evil consequences to enroll fresh students in the year and even if there was absence of specific provision of giving a hearing, the hearing was to be given unless specifically excluded by statutory provisions. Accordingly, it was held as under:-

20. In the present case, the petitioner had been accorded permission in these two specialities for the previous academic session. Non-renewal thereof in the present academic session has an adverse affect. It has visited the petitioner with civil and/or evil consequences barring the petitioner to enroll fresh students in this year. We would like to reproduce the following discussion from the judgment in the case of *Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another*,

15. Rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries, therefore, the principle implies a duty to act fairly, i.e. fair play in action. As observed by this Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. (Also see: *Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta*,

16. In *Swadeshi Cotton Mills Vs. Union of India (UOI)*, R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, his Lordship observed thus (SCC p. 666):

Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) *audi alteram partem* and (ii) *nemo judex in re sua*. The *audi alteram partem* rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle - as distinguished from an absolute rule of uniform application - seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post -

decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the predecisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

17. xxxx xxxx xxxxxx

18. xxxx xxxx xxxxxx

19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.

20. We may, however, hasten to add that no general rule of universal application can be laid down as to the applicability of the principle audi alteram partem, in addition to the language of the provision. Undoubtedly, there can be exceptions to the said doctrine, therefore, we refrain from giving an exhaustive catalogue of the cases where the said principle should be applied. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of all these matters that the question of application of the said principle can be properly determined. (See: Union of India (UOI) Vs. Col. J.N. Sinha and Another,

21. It is true that even in the absence of specific provision of giving hearing, the hearing is required in such cases unless specifically excluded by a statutory provision. In such a situation the proviso to sub-section (4) of Section 10A has to be liberally construed to encompass the cases of renewal of permission as well.

Accordingly, on issue No. 2, it is held that the respondent No. 1 was not justified in passing the impugned order at the back of the petitioners. Accordingly, order dated 07.12.2012 (Annexure P-6) is quashed. It shall be open to the petitioner-university to apply afresh in accordance with the provisions of the 2012 University Act for seeking the necessary permissions which are required. The State Government then shall take into consideration the applications filed and may call for necessary material or record and take a decision on the right of the petitioner university after hearing the representative of the petitioner university/foundation and take a decision in accordance with law. It will be open for the State Government to call for all necessary material which is required as the petitioner-university is yet to comply with the statutory requirements of the 2012 University Act before taking necessary decision.

Accordingly, in view of the above observations, the writ petition is allowed.