

(2015) 07 MEG CK 0006
In the Meghalaya High Court
Case No : WP (C) No. 177 of 2014

CMJ Foundation and Others		APPELLANT
	Vs	
State of Meghalaya and Others		RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 3
University Grants Commission Act, 1956 — Section 22

Citation : (2015) 07 MEG CK 0006

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : A. Kumar, Senior Advocate and R. Jha, for the Appellant; K.S. Kynjing, Advocate General and K. Khan, Addl. Sr. GA, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

T. Nandakumar Singh, J—Heard Mr. A. Kumar, learned senior counsel assisted by Mr. R. Jha, learned counsel for the petitioners and Mr. K.S. Kynjing, learned Advocate General assisted by Mr. K. Khan, learned Addl. Sr. GA appearing for the respondents.

2. The Meghalaya Legislative Assembly enacted the CMJ University Act, 2009 (Act No. 4 of 2009) to establish and incorporate an University in the State, with emphasis on providing high quality and industry-relevant education in the areas of Physical Sciences, Life Sciences, Technology, Medical Science and Paramedical, Management, Finance & Accounting, Commerce, Humanities, Languages & Communication, Applied and Performing Arts, Education, Law, Social Science and related areas sponsored by CMJ Foundation and to provide for matters connected therewith or incidental thereto. As the questions call for decision in the present writ petition are to be decided taking into consideration of the provisions of the CMJ University Act, 2009 (for short "the said Act of 2009"), it would be more profitable to reproduce the relevant Sections of the said Act of 2009. Accordingly,

the relevant Sections of the said Act of 2009 are reproduced hereunder:-

"1. (1) This Act may be called CMJ University Act, 2009

(2). It shall come into force on such date as the State Government may, by notification appoint.

Definitions

2. In this Act, unless the context otherwise indicates:

(i.) "Academic Council" means the Academic Council of the University;

(ii.) "Act" means the CMJ University Act, 2009;

(iii.) "AICTE" means the All India Council for Technical Education established under Section 3 of the All India Council for Technical Education Act, 1987;

(iv.) "Affiliated College" means a college or an institution which is affiliated to this University;

(v.) "Annual Report" means the annual report of the University as prepared in Section 45 of the Act;

(vi.) "BCI" means the Bar Council of India;

(vii.) "Board of Governors" means the Board of Governors of the University as referred to in Section 21 of the Act;

(viii.) "Board of Management" means the Board of the Management of the University constituted in Section 22 of the Act;

(ix.) "CMJ Foundation" means Chandra Mohan Jha Foundation, a Trust registered at Shillong and recorded in Book No. 1, Vol-2, Pages 166-188 being no.383 of the year 2004;

(x.) "Chancellor" means Chancellor of the University appointed in Section 14 of the Act;

(xiv.) "Development Fund" means the Development Fund of the University established under Section 43 of the Act;

(xv.) "Distance Education System" means the system of imparting education through any means of Information Technology, Communication and other media such as Multimedia, Broadcasting, Telecasting, Online over internet, portal, other interactive methods, email, internet, computer, interactive talk-back, e-learning, correspondence course, seminar, contact programme or a combination of any two or more of such means;

(xvi.) "Endowment Fund" means Endowment Fund of the University established under Section 41 of the Act;

(xx.) "General Fund" means General Fund of the University as referred to in Section 42 of the Act;

(xxix.) "Principal" in relation to a Constituent College, means Head of the Constituent College and includes, where there is no Principal, the Vice Principal or any other person for the time being appointed to act as Principal;

(xxxi.) "Registrar" means Registrar of the University appointed under Section 17 of the Act;

(xxxii.) "Rules & Regulations" means the Rules & Regulations of the University;

(xxxiii.) "Sponsor" means CMJ Foundation;

(xxxiv.) "State" means the State of Meghalaya;

(xxxv.) "State Government" means the State Government of Meghalaya;

(xxxvi.) "Statutes" means the Statutes of the University;

(xxxviii.) "Teachers" means a Professor, Associate Professor, Assistant Professor, Lecturer or such other person as may be appointed for imparting education or conducting research in the University or in a constituent college or institution and includes the Principal of a constituent college or institution, in conformity with the norms prescribed by the UGC;

(xxxix.) "UGC" means the University Grants Commission established under the University Grants Commission Act, 1956;

(xl.) "University" means CMJ University, established under this Act;

(xli.) "Vice Chancellor" means Vice Chancellor of the University appointed under Section 15 of the Act;

(xlii.) "Visitor" means the Visitor of the University as referred to in Section 13

Chapter 2

The University and its Object

Proposal for the establishment of the University

3.(1) The sponsor shall have the right to establish the University in accordance with the provisions of this Act and the guidelines issued by the UGC.

(2) The sponsor shall make an application containing the proposal to establish the university to the State Government.

(3) The proposal may contain the following particulars, namely:

- (a) The object of the University along with the details of the Sponsor;
- (b) The extent and status of the University and the availability of land;
- (c) The nature and type of programmes of the study and research to be undertaken in the University during a period of the next five years;
- (d) The nature of faculties, courses of study and research proposed to be started;
- (e) The campus development such as buildings, equipment and structural amenities;
- (f) The phased outlays of capital expenditure for a period of the next five years;
- (g) The item-wise recurring expenditure, sources of finance and estimated expenditure for each student;
- (h) The scheme for mobilizing resources and the cost of capital thereto and the manner of repayments to each source;
- (i) The scheme of generation of funds internally through the recovery of fee from students, revenues anticipated from consultancy and other activities relating to the objects of the University and other anticipated incomes;
- (j) The details of expenditure on unit cost, the extent of concessions or rebates in fee, freeship and scholarship for students belonging to economically weaker sections and the fee structure indicating varying rate of fee, if any, that would be levied on Non-Resident Indians and students of other nationalities;
- (k) The history and credentials of the sponsor including years of experience and expertise in the concerned discipline at the command of the Sponsor as well as the financial resources;
- (l) The system for selection of students to the courses of study at the University;
- (m) Status of fulfillment of such other conditions as may be required by the State Government to be fulfilled before the establishment of the University;
- (n) Nature and types of its partnership and affiliations; and
- (o) Such other conditions as may be required by the State Government to be fulfilled before the establishment of the University.

Establishment of the University.

4.(1) Where the State Government, after such inquiry as it may deem necessary, is satisfied that the sponsor has fulfilled the conditions, specified in Sub-Section (2), of Section 3, it may direct the Sponsor, to establish an Endowment Fund in accordance with the guidelines issued by the UGC.

(2) After the establishment of the Endowment Fund, the State Government may,

by notification in the Official Gazette, accord sanction for establishment of the University in accordance with the guidelines issued by the UGC.

(3) The headquarters of University shall be at Shillong and it may have campuses or Regional Centres, Study Centres anywhere in India and abroad with prior approval of the UGC, the respective State Governments, the Government of India and the Government of the Host Country as the case may be.

Provided that after the development of the main Campus and 5 years after the Act comes into force the University may obtain permission from the UGC to set up such off-Campus Centre(s) and/or Study Centre(s) and/or regional centres and/or off-shore campuses.

(4) The Chancellor, the Vice Chancellor, members of the Board of Governors, members of the Board of Management and the Academic Council for the time being holding office as such in the University so established, shall constitute a body corporate and can sue and be sued in the name of the University.

(5) On the establishment of the University under Sub-Section (2), the land and other movable and immovable properties acquired, created, arranged or built by the University for the purpose of the University in the State of Meghalaya shall vest in the University.

(6) The land, building and other properties acquired for the University shall not be used for any purpose, other than that for which the same is acquired.

University not to be entitled to financial assistance.

5. The University shall be self-financing and shall not make a demand to any grand-in-aid or any other financial assistance from the State Government or any other body or Corporation owned or controlled by the State Government.

Objectives of the University.

7. The objectives for which the University is established are as follows:

(a) To provide Instruction, Teaching, Training and Research in various branches and specialized fields of Physical Sciences, Life Sciences, Technology, Medical Science and Paramedical Management, Finance & Accounting, Commerce, Humanities, Languages & Communication, Applied and Performing Arts, Education, Law, Social Science and related areas and subjects and to make provisions for research, advancement and dissemination of knowledge therein.

(b) To establish a campus in the State of Meghalaya, and to have Study Centres, campuses examination, Off-Campus Centres, Offshore campuses and Regional Centres at different places in India and abroad;

(c) To provide continuing and distance education programmes;

- (d) To institute degrees, diplomas, certificates and other academic distinctions on the basis of examination, or any other method of evaluation;
- (e) To collaborate with other colleges or universities, research institutions, industry associations, professional associations or any other organization, in India or abroad, to conceptualize, design and develop specific educational and research programmes, training programmes and exchange programmes for students, faculty members and others;
- (f) To disseminate knowledge through seminars, conferences, executive education programmes, community development programmes, publications and training programmes;
- (g) To undertake programmes for the training and development of faculty members & Teachers of the University and other Institutions of India and abroad;
- (h) To undertake collaborative research with any organization in India and abroad;
- (i) To create higher levels of intellectual abilities;
- (j) To provide consultancy to industry, Government, public and private organization;
- (k) To create a Industry Academia partnership by inviting Industry in the University campus and other university places for mutual benefits.
- (l) To ensure that the standard of degrees, diplomas, certificates and other academic distinctions are not lower than those laid down by AICTE/NCTE/UGC/MCI/DEC/DCI/INC/BCI and Pharmacy Council of India;
- (m) To do all things necessary or expedient to promote the above objectives; and
- (n) To pursue any other objective as may be prescribed by State Government or Sponsor.

Powers of the University.

8. The University shall have the following powers, namely:

- (a) To establish, maintain and recognize such Regional Centres, Study Centres, Campuses, Off-campus Centres and Off-shore campuses as may be determined by the University from time to time in the manner laid down by the Statutes;
- (b) To confer degrees, diplomas, certificates or other academic distinctions etc.
- (c) To institute and award fellowships, scholarships and prizes etc;
- (d) To launch any academic & research programmes & courses, discipline of education which deemed suitable for meeting the object clause 7 of the University.
- (e) To determine, demand and receive fees, bills, invoices and collect charges to

fulfill the object of the University,

- (f) To make provisions for extra curricular activities for students and employees;
- (g) To appoint the faculties, teachers, officers and employees of the University or a constituent college, affiliated colleges, Regional Centres, Study Centres, campuses, establish, maintain and recognize such Regional Centres, Study Centres and Campuses, Off-campus Centres and Off-shore campuses located in India and abroad;
- (h) To receive donations and gifts of any kind and to acquire, hold, manage, maintain, lease, mortgage and dispose of any movable or immovable property, including Trust and Endowment properties for the purpose of the University or a constituent college, or a Regional Centre or a Off-campus centre or a Off-shore campus or a Study Centre;
- (i) To create & manage the halls and places of residence for students, officers, faculties, teachers and employees of the University or a constituent college or other partners of the University at the main campus and other campuses in India and abroad;
- (j) To supervise and control the residential facilities, and to regulate the discipline among the students and all categories of employees and to lay down the conditions of service of such employees, including their Code of Conduct;
- (k) To create academic, administrative and support staff and other necessary posts;
- (l) To cooperate and collaborate with other Universities and Institutions in such a manner and for such purposes as the University may determine from time to time;
- (m) To offer programmes on distance learning basis and continuing education and the manner in which such programmes are offered by the University;
- (n) To organize and conduct refresher courses, orientation courses, workshops, seminars and other programmes for industry executives, teachers, developers of courseware, evaluator and other academic staff;
- (o) To determine standards of admission to the University, constituent colleges, affiliated colleges, Regional Centres, Off-campus Centre, Off-shore campus, Study Centres with approval of Academic Council;
- (p) To make special provision for students belonging to the State of Meghalaya for admission in any course of the University or in a constituent college, affiliated college, Regional Centre, Off-campus centre, Off-shore campus or Study Centre;
- (q) To prescribe such courses for Bachelor Degree, Master's Degree, Doctor of Philosophy, Doctor of Science Degrees and Research and such other Degrees, Diplomas, Certificates etc.;

- (r) To provide for the preparation of instructional materials, including films, cassettes, tapes, video cassettes, CD, VCD, DVD and other software;
- (s) To recognize examinations or periods of study (whether in full or in part) of other Universities, Institutions or other places of Higher learning as equivalent to examinations or periods of study in the University and to withdraw such recognition at any time;
- (t) To create Industry Academia partnership by inviting Industry in the University campus and other university Centres for mutual benefits.
- (u) To raise, collect, subscribe and borrow with the approval of the Board of Governors whether on the security of the property of the University, money for the purposes of the University;
- (v) To enter into, carry out, vary or cancel contracts;
- (w) To create, amend and cancel the rules and regulations to fulfill the object of the University.
- (x) To do all such other acts or things whether incidental to the powers aforesaid or not, as may be necessary to further the object of the University;
- (y) To carry out all such other activities as may be necessary or feasible in furtherance of the object of the University;
- (z) To do all things necessary or expedient to exercise the above powers;

Chapter 3

Officers of the University

12. The following shall be the officers of the University:

- a) The Chancellor;
- b) The Vice-Chancellor;
- c) The Registrar;
- d) The Finance Officer; and
- e) Such other officers as may be declared by the Act to be officers of the University.

The Visitor

13. (1) The Governor of Meghalaya will be the Visitor of the University.

(2) The Visitor shall, when present, preside at the Convocation of the University for conferring Degrees, Diplomas, Designations and Certificates.

(3) The Visitor shall have the following powers namely:-

- a) To call for any paper or information relating to the affairs of the University
- b) On the basis of the information received by the Visitor, if he is satisfied that any order, proceeding or decision taken by any authority of the University is not in conformity with the Act, Regulations or Rules, he may issue such directions as he may deem fit in the interest of the University which will be binding to all concerned.

The Chancellor

14. (1) The Sponsor shall appoint a person suitable to be appointed as the Chancellor of the University subject to the approval of the Visitor.

(2) The Chancellor so appointed shall hold the office for a period of five years, which may be extended with a prior approval of the Visitor.

(3) The Chancellor shall be the head of the University

(4) The Chancellor shall preside at the meeting of the Board of Governors and shall, when the Visitor is not present, preside at the convocation of the University for conferring Degrees, Diplomas, Designations or Certificates.

(5) The Chancellor shall have the following powers, namely:

- (a) To call for any information or record;
- (b) To appoint the Vice-Chancellor;
- (c) To remove the Vice-Chancellor;
- (d) Such other powers as may be conferred on him by this Act made thereunder.

The Vice Chancellor

15.(1) The Vice-Chancellor shall be appointed on such terms and conditions as approved by the Board of Governors for a term of four years by the Chancellor.

(2) The Vice-Chancellor shall be appointed by the Chancellor from a panel of three persons recommended by the Board of Governors and shall hold office for a term of four years. Provided that, after expiration of the term of four years the Vice-Chancellor shall be eligible for re-appointment for another term not exceeding four years.

(3) The Vice-Chancellor shall be the Principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of the authorities of the University.

(4) If in the opinion of the Vice-Chancellor it is necessary to take immediate action on any matter for which powers are conferred on any other authority by or under this Act, he may take such action as he deems necessary and shall at the earliest opportunity thereafter report his action to such officers or authority as

would have in the ordinary course dealt with the matter.

Provided that if in the opinion of the concerned authority such action should not have been taken by the Vice-Chancellor, then such case shall be referred to the Chancellor, whose decision thereon shall be final.

Provided further that where any such action taken by the Vice-Chancellor affects any person in the service of the University, such person shall be entitled to prefer, within three months from the date on which such action is communicated to him, and appeal to the Board of Governors and the Board of Governors may confirm or modify or reverse the action taken by the Vice-Chancellor.

(5) If in the opinion of the Vice-Chancellor any decision of any authority of the University is outside the powers conferred by this Act, or is likely to be prejudicial to the interest of University, he shall request the concerned authority to revise its decision within seven days from the date of his decision and incase the authority refuses to revise such decision wholly or partly or fails to take any decision within seven days, then such matter shall be referred to the Chancellor and his decision thereon shall be final.

(6) The Vice-Chancellor shall exercise such other powers and perform such other duties as may be laid down by the Act and the Statutes.

(7) The Vice-Chancellor shall preside at the Convocation of the University in the absence of both, the Visitor and the Chancellor, for conferring Degrees, Diplomas, Designations or Certificates.

(8) The Chancellor is empowered to remove the Vice-Chancellor after due enquiry.

It will be open to the Chancellor to suspend the Vice-Chancellor during enquiry depending upon the seriousness of the charges, as he may deem fit.

The Registrar

17. (1) The appointment of the Registrar shall be made by the Board of Governors on such terms and conditions as approved by the Board of Governors for a term of four years.

(2) All contracts shall be signed and all documents and records shall be authenticated by the Registrar on behalf of the University.

(3) The Registrar shall exercise such other powers and perform such other duties as may be prescribed or may be required from time to time, by the Board of Governors.

(4) The Registrar shall be responsible for the due custody of the records and the common seal of the University and shall be bound to place before the Chancellor, the Vice-Chancellor or any other authority, all such information and documents

as may be necessary for transaction of their business.

(5) The Registrar shall exercise such powers and perform such duties as may be prescribed by Statutes of the University.

(6) The Board of Governors is empowered to remove the Registrar after due enquiry. It will be open to the Board of Governors to suspend the Registrar during enquiry depending upon the seriousness of the charges, as he may deem fit.

The Board of Governors and its powers

21. (1) The Board of Governors shall consist of the following members:

- (i) The Chancellor;
- (ii) The Vice Chancellor;
- (iii) Three persons nominated by the Sponsor;
- (iv) One representative of the State Government;
- (v) An educationist of repute to be nominated by the State Government;
- (vi) An educationist of repute to be nominated by the Sponsor;

The Academic Council

23. (1) The Academic Council shall consist of,-

- (a) The Vice-Chancellor as Chairman
- (b) The Registrar as Secretary
- (c) The Finance Officer
- (d) Such other members as may be prescribed in the statutes (like Dean, HOD, Professors).

(2) The Academic Council shall be the principal academic body of the University and shall, subject to the provisions of this Act, and the Rules & Regulations, coordinate and exercise general supervision over the academic policies of the University.

General Fund

41. (1) The University shall establish an Endowment Fund of at least Rupees Two Crore.

(2) The University shall have power to invest the Endowment Fund in such manner as may be prescribed.

(3) The University may transfer any amount from the General Fund or the Development Fund to the Endowment Fund. Excepting in the dissolution of the University, in no other circumstances can any monies be transferred from the Endowment Fund for other purpose.

(4) Not exceeding 75% of the incomes received from the Endowment Fund shall be used for the purposes of development works of the University. The remaining 25% shall be reinvested into the Endowment Fund.

General Fund

42. (1) The University shall establish a general fund to which the following amount shall be credited, namely:

- (a) All fees, which may be charged by the University
- (b) All sums received from any other source(s);
- (c) All contributions made by the Sponsor;
- (d) All contributions/donations made in this behalf by any other person or body, which are not prohibited by any law for the time being in force;

(2) The funds credited to the General Fund shall be applied to meet the following payments,-

- (a) The repayment of debts including interest charges thereto incurred by the University for the purposes of this Act and the Statutes made thereunder;
- (b) The upkeep of the assets of the University;
- (c) The payment of the cost of audit of the fund created under Section 46;
- (d) Meeting the expenses of any suit or proceedings to which University is a party;
- (e) The payment of salaries and allowances of the officers and the employees of the University, members of the teaching and research staff, and payment of any Provident Fund Contributions, Gratuity and other benefits to any such officers and employees, members of the teaching and research staff;
- (f) The payment of travelling and other allowances of the members of the Board of Governors, the Board of Management, Academic Council, and other authorities so declared under the Rules & Regulations of the University and of the members of the Committee or Board appointed by any of the authorities of the University in pursuance of any provision of this Act, or the Statutes made thereunder;
- (g) The payment of fellowships, freeships, scholarships, assistantships and other awards to students, research associates or trainees eligible for such awards

under the Act, or Statutes of the University under the provisions of this Act;

(h) The payment of any expenses incurred by the University in carrying out the provisions of this Act, or the Rules & Regulations made thereunder;

(i) The payment of cost of capital, not exceeding the prevailing bank rate of interest, incurred by the Sponsor for setting up the University and the investments made thereof;

(j) The payment of charges and expenditure relating to the consultancy work undertaken by the University in pursuance of the provisions of this Act, and the Statutes made thereunder;

(k) The payment of any other expenses including a management fee payable to any organization charged with the responsibility of managing the University on behalf of the Sponsoring Body, as approved by the Board of Management to be an expense for the purpose of the University;

Provided that no expenditure shall be incurred by the University in excess of the limits for the total recurring expenditure and the total non-recurring expenditure for the year as may be fixed by the Board of Management without the previous approval of the Board of Management;

Provided further that the General fund shall be applied for the object specified under sub-section (2) with the prior approval of the Board of Management of the University.

Annual Report

45. (1) The Annual Report of the University shall be prepared under the direction of the Board of Management and shall be submitted to the Board of Governors for its approval.

(2) The Board of Governors shall consider the Annual Report in its meeting and may approve the same with or without modification;

(3) A copy of Annual Report duly approved by the Board of Governors shall be sent to Visitor and the State Government on or before December 31 following close of the financial year in March 31 each year.

Dissolution of University

48.(1) If the Sponsor proposes dissolution of the University in accordance with the law governing its constitution or incorporation, it shall give at least 3 months

notice in writing to the State Government.

(2) On identification of mismanagement, mal-administration, indiscipline, failure in the accomplishment of the objectives of University and economic hardships in the management systems of University, the State Government would issue directions to the Management system of the University. If the directions are not followed within such time as may be prescribed, the right to take decision for winding up of the University would vest in the State Government.

(3) The manner of winding up of the University would be such as may be prescribed by the State Government in this behalf. Provided that no such action will be initiated without affording a reasonable opportunity to show cause to the Sponsor.

(4) On Receipt of the notice referred to in Sub-section (1), the State Government shall, in consultation with the AICTE, UGC or other regulatory bodies make such arrangements for administration of the University from the proposed date of dissolution of the University by the Sponsor and until the last batch of students in regular courses of studies of the University complete their courses of studies in such manner as may be prescribed by the Statutes."

3. CMJ Foundation means Chandra Mohan Jha Foundation, a Trust registered at Shillong and recorded in Book No. 1, Vol-2, pages 166-188 being No. 383 of the year 2004. "Sponsor" means CMJ Foundation. Under Section 3 (1) of the said Act of 2009, the Sponsor shall have the right to establish the university in accordance with the provisions of the Act i.e. the said Act of 2009 and the guidelines issued by the UGC. Under Sub-Section (2) of Section 3 of the said Act of 2009, the sponsor shall make an application containing the proposal to establish the university to the State Govt. Section 4(1) and (2) provides that where the State Govt., after such inquiry as it may deem necessary, is satisfied that the sponsor has fulfilled the conditions, specified in Sub-Section (2) of Section 3, it may direct the sponsor, to establish an Endowment Fund in accordance with the guidelines issued by the UGC and after the establishment of the Endowment Fund, the State Govt. may, by notification in the Official Gazette, accord sanction for establishment of the university in accordance with the guidelines issued by the UGC. Under Section 14(1) of the said Act of 2009, the sponsor shall appoint a person suitable to be appointed as the Chancellor of the university subject to the approval of the Visitor. The petitioner No. 1 i.e. CMJ Foundation is a registered Trust and is sponsor of CMJ University in terms of the said Act of 2009, the petitioner No. 2 is the University established under the said Act of 2009 and the petitioner No. 3 is the Trustee of the petitioner No. 1.

4. The Board of Trustees of CMJ Foundation met on 29.07.2009 at Shillong and decided to adopt resolution appointing Shri. Chandra Mohan Jha as the Chancellor of the University in terms of Section 14(1) of the said Act of 2009. The petitioner No. 1 sent letter dated 03.08.2009 to the Commissioner & Secretary Education, Govt. of Meghalaya seeking approval of the Visitor for

appointment of the Chancellor along with the said letter, bio-data and resolution of the Board of Trustees of CMJ Foundation. The bio-data of the Chancellor contained the names of number of colleges including the fact that he is the Director of the College namely Shillong Engineering and Management College. In the year 2009, the said college was affiliated to North Eastern Hill University. In response to the said letter dated 03.08.2009 of the petitioner No. 1, the Deputy Secretary to the Governor of Meghalaya vide letter dated 02.09.2009 stated that before approval is granted, certain clarifications were required from the petitioner No. 1. The Secretary of the petitioner No. 1 in reference to the application of the petitioner No. 1 for appointment of Shri. Chandra Mohan Jha as Chancellor dated 03.08.2009 vide letter dated 02.09.2009 called the Secretary as well as Chairman in the last week of September, 2009 for meeting and thereafter, the Secretary of the petitioner No. 1 and Shri. Chandra Mohan Jha met the Visitor. The petitioner No. 1/CMJ Foundation vide its letter dated 16.10.2009 to the Commissioner & Secretary Education Department Govt. of Meghalaya sought the approval of appointment of Chancellor. For easy reference, the said letter dated 16.10.2009 (Annexure-6 to the writ petition) is quoted hereunder:-

"CMJ FOUNDATION

Ref. No. CMJC/Uni.SHG/27

Date: 06.10.2009

The Commissioner and Secretary Education Department Govt. of Meghalaya, Shillong.

Sub: Approval of appointment of the Chancellor of CMJ University, Shillong, Meghalaya.

Dear Sir,

With reference to the above, I would like to place before you the following facts, for your kind perusal and necessary action:

1. The CMJ University Bill, 2009 (No. LB.47/LA/2009/2) was passed by the Hon"ble Members of the Legislative Assembly of the State of Meghalaya, in its assembly session on 3rd July, 2009 (A copy of the bill is enclosed as Annexure 1)
2. After obtaining the assent of the Hon"ble Governor of Meghalaya on 14th July, 2009 the CMJ University Act was subsequently notified in the Official Gazette of the Govt. of Meghalaya on 20th July 2009 (A copy of the Gazette Notification is enclosed as Annexure 2)
3. Under Section 14.1 of the CMJ University Act, the appointment of the First Chancellor of the University has to be made by the sponsoring body (CMJ Foundation), with the approval of the Hon"ble Governor (Visitor of the University).

4. Subsequently, under Section 40 of the CMJ University, the Chancellor of the University is empowered to appoint the first Chancellor, the first Registrar, the first Finance Officer and shall constitute the first Academic Council, the first Board of Management, the first Academic Council of the University to make it operational.

5. In pursuance of the provisions of the Section 14.1 & Section 40 of CMJ University Act No. 4, 2009, the Secretary of the CMJ Foundation vide its letter No. cmjf/univ/shg/09/26 dated 03.08.2009 recommended the name of Mr. C.M. Jha, Chairman, CMJ Foundation for appointment of the Chancellor of the CMJ University (Copy enclosed Annexure 3).

6. Now it is more than 2 months, and the approval of Governor (Visitor of the University) is yet to be received to such effect, so that the University may be made operational as per the provisions of the CMJ University Act No. 4, 2009.

We request you again, to kindly look into the above mentioned points/facts, personally so that the university may start functioning with immediate effect.

It may also be mentioned that the admission of the students to various courses for the present academic session 2009-10 is already late by 3 months and any further delay may cause huge financial losses to sustain the viability of the university in the interest of the people of the State of Meghalaya.

Enclosures as above

Thanking you,

Yours faithfully, Sd/- (Govind Jha) Secretary CMJ Foundation

Copy to:

The PS to Hon"ble Governor of Meghalaya.....for kind information and necessary action please.

The Hon"ble Chief Minister, Govt. of Meghalaya.....for kind information and necessary action please.

The Hon"ble Minister, Education Govt. of Meghalaya.....for kind information and necessary action please."

5. A reminder was sent to the Visitor to approve the appointment of the Chancellor vide letter dated 17.11.2009. The second reminder dated 09.12.2009 was sent to the Officer on Special Duty to the Govt. of Meghalaya, Education Department and it reads as follows:-

"CMJ FOUNDATION

Ref. No. CMJC/Univ/SHG/09/36

Date: 09.12.2009

To, Shri. W. Khyllap, MC Officer on Special Duty to the Govt. of Meghalaya Education Department, Govt. of Meghalaya, Shillong.

Ref No. EDN.142/2009/33 dated 30th Nov. 2009

Sub: Appointment of the Chancellor of the CMJ University.

Sir,

With reference to the above, it may be mentioned that the first Chancellor is the only competent authority to implement the provision regarding the establishment of an Endowment Fund as per Section 41(1) of CMJ University Act No. 4, 2009.

In view of the above and in pursuance of the provisions of the section 14.1 & section 40 of the CMJ University Act, the Secretary of the CMJ Foundation vide its letter

No. cmjf/univ/shg./09/26 dated 03.08.2009 recommended the name of Mr. C.M. Jha, Chairman, CMJ Foundation for approval of appointment of the First Chancellor of the CMJ University.

Since, the approval of appointment of the Chancellor, CMJ University, Shillong, Meghalaya has not yet been confirmed by the Visitor (Hon"ble Governor of Meghalaya), the process of creation of Endowment Fund is being delayed. We request you again to expedite the matter regarding the approval of the appointment of the Chancellor so that immediate action shall be taken regarding the functioning of the university as per the provisions of the CMJ University Act No. 4 of 2009.

With Highest Regards,

Yours faithfully, Sd/- (Govind Jha) Secretary CMJ Foundation

6. Vide letter dated 01.04.2010, the petitioner No. 1 again submitted to the State Govt. that if the approval is not granted by the Visitor by 25th April, 2010 (due to typographical error in letter, it was mentioned 25th February, 2010), it would be deemed that the approval of Chancellor has been granted by the Visitor. But no response was received refusing the appointment of Chancellor by the Visitor. The said letter dated 01.04.2010 (Annexure-10 to the writ petition) reads as follows:-

"CMJ FOUNDATION

Ref. No. CMJC/Uni/SHG/2010/429

Date: 01.04.2010

To,

The Under Secretary to the Govt. of Meghalaya, Education Department, Shillong.

Sub: Appointment of Chancellor for CMJ University

Ref: Your letter No. EDN.142/2001/46 dated Shillong, the 18th March 2010.

Sir,

In inviting a reference to the above cited subject, we would like to inform your good office that we have neither received your letter No. EDN.142/2009/45 dated 24.02.2010 nor the copies of letters issued by the Hon''ble Governor of Meghalaya vide memo No. GSMG/CMJ/82/2009/116 dated 02.09.2009 addressed to the Commissioner & Secretary to the Government of Meghalaya, Education Department etc. and Memo

No. GSMC/CMJ/82/2009/1286 dated 22.09.2009 addressed to the Under Secretary to the Government of Meghalaya, Education Department etc.

It may be noted that we had requested in our letter No. CMJF/UNIV/SHG/2010/423 dated 17.02.2010 that if at all the Hon''ble Governor of Meghalaya (Visitor of CMJ University) had any objection to our starting of the university and appointment of the Chancellor it may kindly be communicated to us before the 25th of February, 2010 otherwise it may be assumed that the Governor has accorded his approval for functioning of the university and also the appointment of the first Chancellor of CMJ University.

Since how we have received the copy of the communication received by the Government from the Hon''ble Governor of Meghalaya, wherein certain clarifications were sought for by him on the following issues:

1. Whether the CMJ University has complied with the UGC's norms and guidelines?

In reply to the aforesaid query, we would like to inform your good self that without and appointment of the Chancellor of the University and without constitution and approval of the Board of Governors, etc. how CMJ University will function as there is no provision in the Act in respect of appointment of a Protem Chancellor and/or Vice Chancellor. Therefore, in order to fulfill the norms and guidelines prescribed by UGC and other conditions, we need the appointment and approval of the first Chancellor as per section 14(1) of the CMJ University Act, 2009.

It needs to be mentioned here that from the date of publication of the CMJ University Act 2009 (No. 4 of 2009) in the Gazette of Meghalaya after due assent of the Hon''ble Governor of Meghalaya, we have been trying to implement the said Act and start the functioning of CMJ University and in this respect we have addressed a series of letter on 06.2009, 17.11.2009, 09.12.2009, 18.01.2010, 1.2.2010 and 17.2.2010 requesting the Government of Meghalaya to accord the approval of the appointment of Chancellor of CMJ University, copies of the aforesaid letters were also communicated to the Hon''ble Governor of Meghalaya/ Visitor of CMJ University.

2. Whether the University has fulfilled the conditions laid down in 3(1) and 4(1)

& (2) of the CMJ University Act?

As regard the fulfillment of the above mentioned conditions we would like to inform your good self that the sponsor had never received any such directions from the Government of Meghalaya to establish an endowment fund in accordance with the guidelines issued by UGC. Therefore, the sponsors have invested a considerable amount in purchasing 52 acres of land at Sumer, Ri Bhoi District, Meghalaya to establish its permanent campus apart from the investment in temporary infrastructure and other paraphernalia amounting to more than Rs. 3.00 crores for establishment of the CMJ University. However, owing to inordinate delay in according the approval of the Chancellor of the University and also delay in nomination of one State Representative and one educationalist in our Board of Governors, we have suffered irreparable loss both monetary and otherwise as we could not start functioning of CMJ University in time.

3. Whether all other conditions required before appointment of Chancellor has been fulfilled by the University.

As regards the conditions in respect of appointment of Chancellor, we have not found any such condition in the CMJ University Act which may prevent the Government of Meghalaya or the Visitor of the University to approve the appointment of the First Chancellor of CMJ University.

4. Whether the Government is satisfied that all conditions for setting up of a Public University has fulfilled.

In reply to the aforesaid query we beg to state that the Government of Meghalaya has passed the CMJ University Act 2009 after being fully satisfied about the financial capabilities of the sponsors as they are in the field of education since last twenty years.

In view of the above noted fact and circumstances we do hope that we have clarified all the queries which have been sought for by the Hon''ble Governor of Meghalaya. Therefore, we most respectfully request your kind self to look into the matter very sympathetically and send the nomination of one State representative and one educationist in order to start functioning of CMJ University for the larger interest of the student community of the State of Meghalaya and for which act of your kindness we are duty bound and shall ever remain grateful.

We assure your kind self to abide by the norms and guidelines of UGC as well as all the provisions contained in the CMJ University Act, 2009.

Awaiting an early response from your kind self.

Thanking you, Yours faithfully, Sd/- (Govind Jha) Secretary CMJ Foundation

Copy to:

1. Deputy Secretary to Hon''ble Governor of Meghalaya for kind information.

2. Hon"ble Chief Justice, Government of Meghalaya, for kind information.
3. Hon"ble Minister, Education Department, Government of Meghalaya, for kind information.
4. Principal Secretary, Education Department, Government of Meghalaya, for kind information.
5. Director of Higher & Technical Education, Meghalaya, Shillong, for kind information."

7. It is the further case of the petitioners that since, the Visitor did not object to the appointment of the Chancellor even after the said letter dated 01.04.2010, the State Government also issued a Notification dated 17.06.2010 whereby sanction was accorded for establishment of the university in accordance with the guidelines issued by the UGC. Thus, the university came to be fully established in accordance with the rules. The said Notification dated 17.06.2010 (Annexure-11 to the writ petition) issued by the State Govt. reads as follows:-

"The Gazette of Meghalaya Published by Authority

No. 23 Shillong Thursday, July 1, 2010 10th Asadha-1932 (S.E.) PART-IIA

GOVERNMENT OF MEGHALAYA ORDERS BY THE GOVERNOR

NOTIFICATIONS

The 17th June, 2010

No. EDN.142/2009/66 - In pursuance of the Section 4(2) of the CMJ University Act, 2009 the Governor of Meghalaya is pleased to accord sanction for establishment of the CMJ University.

W. KHYLLEP Officer on Special Duty to the Government of Meghalaya Education Department."

8. Section 21 (1) of the said Act of 2009 provides that the Board of Governors shall consist amongst others, one representative of the State Govt. as Educationalist of repute to be nominated by the State Govt. Having regard to the fact that the appointment of the Chancellor had not been disapproved by the Visitor, the State Govt. nominated two members in the Board of Governors of the university vide letter dated 16.07.2010 (Annexure-12 to the writ petition) which reads as follows:-

"GOVERNMENT OF MEGHALAYA EDUCATION DEPARTMENT

No. EDN.142/2009/69

Dated Shillong, the 16th July, 2010

From: Smti. E. Kharwawphlang, Under Secretary to the Government of

Meghalaya Education Department.

To: Shri. C.M. Jha, CMJ University, Modrina Mansion, Laitumkhrach, Shillong, Meghalaya-793003.

Sub: Representative of the State Government to the Board of Governor of the CMJ University.

Ref: CMJU/SHG/2010/003 dated 20.06.2010

Sir/Madam,

In inviting a reference to your letter quoted above, I am directed to inform you that Shri. W. Khyllap, MCS, Director of Higher and Technical Education, Meghalaya, Shillong is nominated as State representative and Shri. T. Marak, Retired Director of Elementary & Mass Education, Meghalaya, Shillong as Educationist to the Board of Governors of the CMJ University.

The above has the approval of the competent authority.

Yours faithfully, Sd/- Under Secretary to the Government of Meghalaya, Education Department

No. EDN.142/2009/69-A Dated Shillong, the 16th July, 2010.

Copy to:

1. The Director of Higher & Technical Education, Meghalaya, Shillong.
2. Shri. W. Khyllap, MCS, Director of Higher & Technical Education, Meghalaya, Shillong for information.
3. Shri. T. Marak, (Retired) Director of Elementary & Mass Education, Meghalaya, Shillong for information.

By order etc., Under Secretary to the Government of Meghalaya, Education Department"

9. The UGC vide its letter dated 25.11.2010 informed the CMJ University that the CMJ University had been established by an Act of State Legislature of Meghalaya as State Private University and is empowered to award degrees as specified by the UGC under Section 22 of the UGC Act, 1956 through its main campus with the approval of the statutory bodies/councils wherever required. The said letter of the UGC dated 25.11.2010 (Annexure-13 to the writ petition) reads as follows:-

"University Grants Commission Bahadurshah Zafar Marg New Delhi - 110002

www.ugc.ac.in

Speed - Post

F. No. 8-21/2010(CPP-I/PU)

25 November, 2010

The Chancellor CMJ University Modrina Mansion, Laitumkhrach, Shillong, Meghalaya - 793003

Sub: To notify CMJ University, Shillong (Meghalaya) under the list of Private Universities maintained by the UGC.

Sir,

With reference to State Government Notification No. LL(B)42/09/08 dated 20th July, 2009 on the above subject, I am directed to say that CMJ University, Shillong (Meghalaya) has been established by an Act (No. 4 of 2009) of State Legislature of Meghalaya as a State Private University and is empowered to award degrees as specified by the UGC under section 22 of the UGC Act, 1956 through its main campus with the approval of statutory bodies/councils, wherever required.

There is no provision to have Regional Centres/off Campus beyond the territorial jurisdiction of the State as per the UGC (Establishment of and Maintenance of Standards in Private University) Regulation, 2003 and the judgment of the Hon''ble Supreme Court in the case of Prof. Yashpal v. State of Chhattisgarh.

Keeping in view of the above, you are requested to ensure on the following:

1. No off campus centres(s) is opened by your University outside the territorial jurisdiction of the State in view of the judgment of Hon''ble Supreme Court of India in case of Prof. Yash Pal vs. State of Chhattisgarh.
2. In case the University has already started any off campus centre outside the State, it must be closed immediately. It may also be ensured that any off campus centre within the State shall be opened only as per the provision laid down in the UGC (Establishment of and Maintenance of Standards in Private University) Regulation, 2003 and with the prior approval of UGC.
3. The University shall not have any affiliated colleges.
4. The University has to follow UGC (Minimum standards and procedure for award of M.Phil/Ph.D degree) Regulations, 2009.

The University is required to follow the UGC (Establishment and Maintenance of Standards in Private University) Regulation, 2003 (copy enclosed) & other Regulations issued from time to time and posted on UGC website www.ugc.ac.in.

You are also requested to send the information in the prescribed format (copy enclosed) for inspection purpose as per UGC Regulation referred to above within one month from the date of receipt of this letter.

Encl: As above.

Yours faithfully, Sd/- (Uma Bali) Under Secretary

Copy to:

1. The Education Secretary, Government of India, Ministry of Human Resource Development, Department of Higher Education, Shastri Bhavan, New Delhi - 100001.
2. The Secretary (Education) Govt. of Meghalaya, Addl. Sectt. Bldg. I.G.P. Point, Meghalaya, Shillong - 793001.
3. Publication Officer, UGC, New Delhi for posting on Website.
4. JS (RO)/DS(SU)/DS(NRCB), New Delhi.

(Dr. Mahender Kumar) Section Officer"

10. Further, in order to have clarity with regard to the nature of the CMJ University and degree granted by the CMJ University, information under the Right to Information Act, 2005, were sought from the UGC and the UGC furnished the information vide its letter dated 13.02.2012 wherein, it was clearly stated that CMJ University is empowered to award degrees as specified by the UGC under Section 22 of the UGC Act, 1956 and the UGC under the said letter also categorically stated that Ph.D. degree granted by the CMJ University in regular mode from the main campus of the University can confer valid academic qualification. The said letter of the UGC dated 13.02.2012 (Annexure-14 to the writ petition) reads as follows:-

"UNIVERSITY GRANTS COMMISSION BAHADURSHAH ZAFAR MARG NEW DELHI - 110002

SPEED POST

F. No. 4-1/2011(CPP-IPU)

January, 2012

Sh. Raman Kumar Roshan, III-A/46, Nehru Nagar, Ghaziabad - 201001, Uttar Pradesh

13 FEB 2012

Subject: Information under Right to Information Act, 2005.

Sir,

With reference to your letter dated 13.01.2012 received in this office on 18.01.2012 on the above subject, I am to say as under:-

Yours faithfully, Sd/- (Shashi Bala Arora) Under Secretary & PIO (CPP-I/PU)"

11. More than three years after the petitioner No. 1 requested the Visitor for approval of the appointment of Shri. Chandra Mohan Jha as the Chancellor of the CMJ University and the Notification of the State Govt. dated 17.06.2010 that the Governor of Meghalaya is pleased to accord sanction for establishment of the

CMJ University, the Deputy Secretary to the Governor vide letter dated 04.04.2013 asked the CMJ University to give certain information by 10.04.2013 to:-

- (i) Letter of appointment of the Chancellor of the University in terms of Section 14(1) of the CMJ University Act, 2009;
- (ii) Number of off-campus counseling centres being run by the CMJ University and the location of all these centres;
- (iii) Permission, if any, for operating such off campus centres;
- (iv) Courses of studies formally approved by the Academic Council of the University;
- (v) Names and addresses of students currently enrolled for the Doctorate and M.Phil Programmes of the CMJ University (subject wise) along with date of enrolment.
- (vi) Full details of Doctorate and M.Phil degrees awarded by the CMJ University so far including name and address of the candidate, subject and thesis title, date of enrollment, name and address of the guide and date of award of degree.
- (vii) Whether the proforma for submission of information by the State Private Universities for ascertaining their norms and standards had been submitted by the CMJ University to the University Grants Commission (UGC)? If so, a copy of the same.

In response to the said letter of the Deputy Secretary to the Governor of Meghalaya dated 04.04.2013, the petitioner No. 1 vide letter 09.04.2013 forwarded the letter of appointment of Chancellor along with the resolution of the Board of Trustees of CMJ Foundation and with regard to other issues for which the information was sought, it was not possible to furnish the information in such short time, time was sought to furnish the information. In that letter of the petitioner No. 1, it was also stated that the CMJ University has not established any off campus counseling centres run by the CMJ University. With regard to collaboration, it was submitted that in terms of Section 7(e) of the said Act of 2009, collaboration has been made with apex E-learning Technologies Ltd. Bangalore for promoting Industrial Collaborating education and research programme as an innovative initiative. The petitioner No. 1 further stated that the details of courses approved by the academic council of the CMJ University. The petitioner No. 1 in clear and categorical terms stated that there is a provision of allotting Ph.D. Guideship to the qualified faculty members of the CMJ University.

12. The Visitor sent one more letter dated 11.04.2013 pointing out for the first time that the appointment of Chancellor of the CMJ University is irregular stating that it has not been approved by the Visitor and time was given to furnish the information by 22.04.2013 positively. It may be relevant to mention that in the

letter of the petitioner No. 1 dated 01.04.2010 in clear terms it was mentioned that if the approval was not granted, it will be considered as deemed approval. Thereafter, there was no communication whatsoever made by the respondent No. 2 i.e. Visitor in respect of appointment of Chancellor and after three years, the respondent No. 2 had woken up from deep slumber to make out a grievance that the appointment of the Chancellor is illegal. The Secretary to the Governor of Meghalaya vide letter dated 17.04.2013 asked the CMJ University to provide a copy of the academic collaboration agreements between CMJ University and Institute of Cost Accountants of India (ICAI) and Institute of Company Secretaries of India (ICSI). The petitioner No. 1 suspected that an illegal syndicate is engaged in the business of publishing/printing fake degree in the name of CMJ University and it also appeared that same are in circulation of the State of Assam. The petitioner No. 1 under the letter dated 18.04.2013 to the Principal Secretary to the Govt. of Assam, Department of Education, made it clear that the CMJ University has been conducting courses only through its campus on regular basis. The CMJ University further requested the authority to all concerned Departments to get all such degrees verified from the office of the CMJ University. The CMJ Foundation vide communication bearing No. CMJF/SHG/GOV/2013/429 dated 22.04.2013 furnished the academic collaboration agreements between CMJ University and Institute of Cost Accounting of India and Institute of Company Secretaries of India to the Deputy Secretary to the Governor of Meghalaya. Further, vide communication bearing No. CMJF/SHG/GOV/2013/430 dated 22.04.2013, the CMJ University furnished the list of students awarded degree of M.Phil and Ph.D. degree.

13. Vide letter dated 24.04.2013 issued by the Deputy Secretary to the Governor of Meghalaya directed the petitioner No. 1 to provide the actual fact as to the Assam based newspaper publishing several names who belong to Assam are awarded with Ph.D. degree by the CMJ University. Again on 26.04.2013, the Deputy Secretary to the Governor of Meghalaya sought information regarding list of students enrolled in M.Phil programme, address of the students and date of enrollment and similar information in respect of Ph.D. qualification and also as to whether the CMJ University had awarded Ph.D. degree during the calendar year 2010 and 2011. The said voluminous information was to be furnished by the petitioner No. 1 within a period of three days i.e. 29.04.2013. The Principal Secretary to the Governor of Meghalaya lodged a complaint on 26.04.2013 against the CMJ University and its officials to the Director General of Police, Meghalaya, Shillong and requested for investigation into the functioning of the CMJ University in Meghalaya. On the same day, the Visitor sought more information. It is the further case of the petitioners that criminal case was lodged with the object to ensure that officials of the CMJ University would not be in a position to provide the desired information. The registration of the FIR clearly shows that the State authorities had been used to prosecute the innocent and hapless officials and members of the CMJ University. It is the further case of the petitioners that the Visitor without having any authority in law passed an order in

the form of letter dated 30.04.2013 that many irregularities had been committed by the CMJ University and no fresh admission of students shall be undertaken by the CMJ University till the compliance of the instructions given therein and till appointment of the Chancellor in accordance with Section 14(1) of the said Act of 2009. The said letter dated 30.04.2013 of the Principal Secretary to the Governor of Meghalaya i.e. Visitor (Annexure-25 to the writ petition) reads as follows:-

"GOVERNOR'S SECRETARIAT :: MEGHALAYA RAJ BHAVAN :: SHILLONG

No. GSMG/CMJU/82/2009/413

Date 30th April, 2013

To, Shri. Chandra Mohan Jha, Chairman, CMJ Foundation, Modrina Mansion Laitumkhrah, Shillong.

Sub: Directives by the Visitor under Section 13(3)(b) of the CMJ University Act, 2009.

Sir,

I am directed to state that on perusal of the records and information submitted by the CMJ University, following irregularities have been observed:

1. The Chancellor of the University appointed by the sponsors does not have the approval of the Visitor. This is in violation of Section 14(1) of the CMJ University Act, 2009. Consequently all further actions of the CMJ University resulting from the appointment of the Chancellor are illegal and void ab initio.
2. In the proposal submitted for appointment of the Chancellor by CMJ Foundation in 2009, the Bio-data of the recommended candidate Shri Chandra Mohan Jha was enclosed stating that he is the Director of a number of colleges within and outside Meghalaya without clearly indicating their University affiliation. One of these colleges viz., The Shillong Engineering and Management College was deaffiliated by NEHU w.e.f. academic session 2011-2012.
3. The CMJ University has enrolled the following number of students in various courses.
4. The CMJ University has awarded Ph.D. degree to 434 students during 2012-2013 and has enrolled 490 students for the Ph.D. Programme during 2012-2013. On the other hand the faculty strength of the CMJ University is only 10 teachers with Ph.D. qualification. The enrollments and award of Ph.D. degrees are in contravention of the UGC (Minimum Standards and Procedure for Awards of M.Phil/Ph.D. Degree) Regulations, 2009.
5. The CMJ University issued a false and misleading newspaper advertisement in the Shillong Times on April 22nd 2013 claiming that the University has not yet awarded any Ph.D. degree to any of the students enrolled from the State of Assam. On the other hand this office has reliable information that the CMJ

University has awarded Ph.D. degree to candidates from Assam.

6. The CMJ University has not submitted the Annual Reports to the Visitor in violation of Section 45(3) of the CMJ University Act, 2009.

7. CMJ University has also acted in contravention of Section 52 of the CMJ University Act, 2009 in respect of maintenance of standards and other related matters applicable to Private Universities.

In view of the above, the Governor of Meghalaya, in his capacity as the Visitor of the CMJ University issued the following directions under the Section 13(3)(b) of the CMJ University Act, 2009 for immediate compliance:

1. The CMJ University shall recall/withdraw all the degrees awarded so far and publish this fact in national and local newspapers at their own cost.

2. The CMJ Foundation shall submit a fresh proposal for appointment of the Chancellor along with the correct Bio-data of the candidate recommended and supporting document.

3. The CMJ University shall frame rules and procedures for admission into the M.Phil and Ph.D. degree programmes, allocation of supervisor, course work, evaluation, assessment and other related matters in accordance with the UGC (Minimum Standards and Procedure for Awards of M.Phil/Ph.D. Degree) Regulation, 2009.

4. No fresh admission of students shall be undertaken by the CMJ University till compliance of the above instructions and till the appointment of the Chancellor in accordance with Section 14(1) of the CMJ University Act, 2009.

You are hereby required to comply with the above directives and submit a compliance report to the Visitor by 21st May 2013.

Yours faithfully, Sd/- (M.S. Rao) Principal Secretary to the Governor of Meghalaya"

14. The petitioners challenged the said order/letter of the Visitor dated 30.04.2013 by filing a writ petition being WP(C)No. (SH) 106/2013 in this Court. The main ground taken in the writ petition for assailing the said order dated 30.04.2013 was that as the Visitor failed to give reply to the request of the CMJ University for approval of the appointment of the Chancellor for a considerable period of more than three years, there shall be deemed approval of the appointment of the Chancellor. This Court (learned Single Judge) dismissed the writ petition vide judgment and order dated 16.05.2013. Against the said judgment and order of the learned Single Judge dated 16.05.2013, the petitioners filed writ appeal being Writ Appeal No. (SH)16/2013 in the Division Bench of this Court. The Division Bench of this Court vide judgment and order dated 31.05.2013 dismissed the writ appeal. The said judgment and order of the Division Bench dated 31.05.2013 was incidentally authored by this Court (Justice T. Nandakumar Singh). Paras 11, 12, 13, 14, 15 & 16 of the said Judgment and

order of the Division Bench dated 31.05.2013 (Annexure-29 to the writ petition) read as follows:-

"11. Thereafter, there were many correspondences between the CMJ University and the Office of the Visitor of the CMJ University regarding these matters. For easy reference, the said letter of the Deputy Secretary to the Governor of Meghalaya dated 02.09.2009 is quoted herein under:-

"GOVERNOR'S SECRETARIAT::MEGHALAYA RAJ BHAVAN, SHILLONG

No. GSMG/CMJ/82/2009/1116

September 2, 2009.

From: Shri K.G. Choudhury, Deputy Secretary to the Governor of Meghalaya, Raj Bhavan, Shillong.

To: The Commissioner & Secretary to the Government of Meghalaya, Education etc. Departments, Shillong.

Sub: Appointment of the Chancellor of the CMJ University.

Sir,

I am enclosing herewith a copy of letter No. Cmjf/univ/shg/09/26 dated 3rd August, 2009 regarding recommendation the name of Shri Chandra Mohan Jha as the first Chancellor of the CMJ University by the Governor who is the visitor of the said University. Before approval of the same, the Governor desires to have the clarifications on the following issues:

- (1) Whether the CMJ University has complied with the UGC's norms and guidelines?
- (2) Whether the University has fulfilled the conditions laid down in Section 3(1) and 4(1) & 4(2) of the CMJ University Act?
- (3) Whether all other conditions required before appointment of Chancellor has been fulfilled by the University and
- (4) Whether the Govt. is satisfied that all conditions for setting up Public University has been fulfilled.

The same may kindly be sent to the undersigned at the earliest for information of the Governor.

Yours faithfully Sd/- (K.G. Choudhury) Deputy Secretary to the Governor of Meghalaya"

12. The further case of the appellants/writ petitioners projected in the writ petition i.e. WP(C) No. (SH)106/2013 is that the informations called for by the Office of the Visitor i.e. the Governor of Meghalaya under different letters could not be furnished by the CMJ University, inasmuch as, the documents relating

with the said information are very bulky and also the Office of the CMJ University had been sealed by the investigating authority illegally. It is the further case of the appellants/writ petitioners in the writ petition that the University could furnish all the informations as called for by the Office of the Visitor, but it will take time.

13. In the above factual backdrop, the Principal Secretary to the Governor of Meghalaya, issued a letter dated 30.04.2013 to the Chairman, CMJ Foundation, Modrina Mansion, Laitumkhrah, Shillong. From the above facts, it is clear that all the informations called for by the Office of the Visitor (Governor of Meghalaya) could not be furnished by the CMJ University. It appears that as the CMJ University failed to furnish all the informations called for by the Visitor (Governor of Meghalaya), the Principal Secretary to the Governor of Meghalaya issued the impugned letter dated 30.04.2013.

14. Mr. Amit Kumar, learned counsel for the appellants/writ petitioners strenuously contended that the impugned order/letter dated 30.04.2013, had violated the fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India. However, we are not convinced with his submission as the citizen has no right to practice any profession illegally but however, the right guaranteed under Article 19(1)(g) of the Constitution of India is with regard to the type of profession which can be practiced legally. The right to practice profession under Article 19(1)(g) of the Constitution of India is also subject to reasonable restriction.

15. For the forgoing reasons and discussions, we are not impressed by the submission of the learned counsel for the appellants/writ petitioners that the impugned letter/order dated 30.04.2013 was issued by the Principal Secretary to the Governor of Meghalaya illegally and irregularly. We have also given our anxious consideration to the judgment and order passed by the learned Single Judge dated 16.05.2013 and are in complete agreement with the reasons given by the learned Single Judge, vide judgment and order dated 16.05.2013, for declining to interfere with the impugned order/letter dated 30.04.2013.

16. Accordingly, this writ appeal is dismissed."

15. The petitioners filed SLP being SLP (Civil) No(s). 19617/2013 against the said judgment and order of this Court dated 31.05.2013 in the Supreme Court. The CMJ University in view of the pending cases before the Apex Court and also in view of the fact that the police had arrested its officials Registrar, Deputy Registrar, Director etc. was handicapped in providing the information sought for by the Visitor. The learned counsel for the CMJ University approached the police for providing the copies of seized documents and also approached the Chief Judicial Magistrate for the purpose of seeking compliance of the directives of the Visitor on 10.06.2013. A request was also made to the Visitor vide letter dated 10.06.2013 seeking time to comply with the direction without prejudice to the rights and contentions of the University by the counsel of CMJ Foundation. The

Visitor in haste, without giving adequate opportunity held that the University had acted in contravention of various statutory provisions and also held that there was criminal liability on the part of the University and recommended the State Govt. to consider dissolution of the CMJ University vide order of the Visitor dated 12.06.2013. The Apex Court, after considering the said order of the Visitor dated 12.06.2013 produced by the learned counsel for the Visitor passed the final judgment and order dated 13.09.2013 in the said SLP that ends of justice will be served by directing the State Govt. to take an appropriate action under Section 48 of the said Act of 2009 after giving notice and reasonable opportunity of hearing to the petitioners and within three months from the date of passing the judgment and order the State Govt. shall, after giving an opportunity to the petitioners to show cause against the action proposed to be taken, pass a speaking order under Section 48 of the said Act of 2009. The said judgment and order of the Apex Court dated 13.09.2013 passed in SLP (Civil) No(s).19617/2013 (Annexure-32 to the writ petition) is quoted hereunder:-

"ITEM No. 61 COURT No. 2 SECTION XIV SUPREME COURT OF INDIA RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).19617/2013

(From the judgement and order dated 31/05/2013 in WA No. 16/2013 of The HIGH COURT OF MEGHALAYA AT SHILLONG)

CMJ FOUNDATION & ORS. Petitioner(s) VERSUS STATE OF MEGHALAYA & ORS. Respondent(s)

(With appln(s) for permission to file additional documents and prayer for interim relief))

WITH S.L.P.(C)...CC No. 13359 of 2013 (With office report)

Date: 13/09/2013 These Petitions were called on for hearing today.

CORAM:

HON"BLE MR. JUSTICE G.S. SINGHVI

HON"BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Mr. Pallav Shishodia, Sr. Adv.

Mr. Amit Kumar, Adv.

Mr. Ankit Rasghana, Adv.

Mr. Sanjay Parikh, Adv.

Mr. Pukhrambam Ramesh Kumar, AOR

For Respondent(s) (Visitor) Mr. Siddharth Luthra, ASG

Mr. Ranjan Mukherjee, Adv.

For State Mr. Ranjan Mukherjee, Adv.

UPON hearing counsel the Court made the following

ORDER

The petitioners in the connected petition are permitted to file the special leave petition. These petitions are directed against judgment dated 31.5.2013 of the Division Bench of the Meghalaya High Court whereby the appeal filed against the order of the learned Single Judge refusing to quash order dated 30.4.2013 passed by Principal Secretary to the Governor of Meghalaya under Section 13(3) (b) of the CMJ University Act, 2009 (for short, "the 2009 Act") was dismissed.

During the pendency of the special leave petitions, the Visitor-cum-Governor, Meghalaya made comprehensive recommendations on 12.6.2013 for dissolution of the University on the grounds of mismanagement, maladministration, indiscipline and failure in the enforcement of the objectives of the University, apart from criminal liability. The note containing the decision of the Visitor including the recommendations made by him reads as under:

"1. I have perused the letter dated 10th June, 2013 from Shri S.P. Sharma, Advocate for CMJ Foundation with reference to the Directives issued by this office vide letter No. GSMG/CMJU/82/2009/311 dated 24th May, 2013. It is observed that the CMJ Foundation/University has moved the Court of Chief Judicial Magistrate seeking copies of documents for the purpose of compliance of the Directives, after much delay, on 10th June, 2013 the last date fixed for compliance of the Directives. It thus appears that the CMJ Foundation is not sincere about compliance with the Directives. Moreover, all the Directives that were issued vide this office letter No. GSMG/CMJU/82/2009/143 dated 30th April, 2013 could have been complied by the CMJ Foundation without recourse to the documents seized by the State Police. The Directives issued on 30th April, 2013 are stated below:

- i) The CMJ University shall recall/withdraw all the degrees awarded so far and publish this fact in national and local newspapers at their own cost.
- ii) The CMJ Foundation shall submit a fresh proposal for appointment of the Chancellor along with the correct bio-data of the candidate recommended and supporting documents.
- iii) The CMJ University shall frame rules and procedures for admission into the M.Phil and Ph.D degree programmes, allocation of supervisor, course work/evaluation, assessment and further related methods in accordance with the UGC (Minimum Standards and Procedure for Awards of M.Phil/Ph.D degree) Regulation, 2009.
- v) No fresh admission of students shall be undertaken by the CMJ University till compliance of the above instructions and till the appointment of the Chancellor in accordance with Section 14(1) of the CMJ University Act, 2009.

2. It is unfortunate that the Chairman of CMJ Foundation has remained incommunicado all these days and chosen to communicate only through his counsel. According to media reports his counsel says he is in Bihar attending on his sick parent. Even if it is true it cannot be the reason for not addressing the issues for so long.

3. It is worth mentioning that immediately after the first directives were issued the University alleged that the students had vandalized the office and equipment in the University which subsequently was found to be false by police. According to police it was engineered by the university staff at the instance of one of the Directors. It was a deliberate attempt to destroy evidence and the case is under police investigation.

4. All these cast a shadow on the sincerity of the University to adhere to the requirement of law, initiate corrective actions and uphold the standards of higher education.

5. The commissions and omissions of University are in two parts; i) It started functioning without the Chancellor whose appointment has not been approved by the Visitor, and ii) it functioned in gross violation of the standards and norms set by the University Grants Commission and other regulatory bodies, CMJU Act 2009, and Meghalaya Private Universities (Regulations of Establishment and Maintenance of Standards) Act 2012. This is even more serious an offence; it constitutes a breach of trust in addition. Even with the legally appointed Chancellor no university can be allowed to function with such fraudulent intent and vitiate the academic environment, disgrace the institution of higher learning and bring disrepute to the state where it is established.

6. On the basis of facts and circumstances available it is concluded that the university committed the following grave irregularities:

i) The University functioned from 17/10/2010 with the self-appointed Chancellor without the approval of the Visitor in terms of Section 14(1) of the CMJ University Act, 2009 on the presumption of "deemed approval" of the Visitor. This is not legally valid and the position has been affirmed by the order dated 16th May, 2013 of the Hon'ble High Court of Meghalaya which has further been upheld by the Division Bench of the Hon'ble High Court of Meghalaya in their order dated 31st May, 2013.

(ii) It awarded B.Ed degree through Distance Mode without the requisite approval of the regulatory bodies and without affiliation. The B.Ed degrees awarded by the CMJ University were held to be invalid in the eye of Law by the order dated 24th May, 2013 of the Hon'ble High Court of Gauhati.

(iii) The Shillong Engineering and Management College was de-affiliated by NEHU from academic session 2011-2012. This College, which was in existence prior to the sanction for establishment of the CMJ University, cannot be affiliated with the CMJ University. While the fate of the students of this College was already

uncertain in view of the said deaffiliation, the College continued to make admissions by misleading the students that the degrees will be issued by the CMJ University.

iv) The University had reported that during 2012-2013 it had awarded PhD degrees to 434 students and enrolled another 490 students. These figures though extraordinarily high do not reflect the correct position. Information is available with us that another 29 students have also received PhD degree from the University and more information is coming on a daily basis. So it is obvious that the actual number of award of and enrolment for, PhD and other programs will be much higher than was reported. The University awarded PhD even in subjects like the Bodo and Punjabi languages where the guides/faculty are not easily available. These constitute gross abuse of the university's power and violation of the UGC (Minimum Standards and Procedure for Awards of M.Phil/ Ph.D Degree) Regulation, 2009.

v) The University furnished a list of 10 faculty members with PhD which is inaccurate. One of the faculty members is only a research scholar at NEHU. The list includes the Vice-Chancellor, Registrar and other functionaries of the University as faculty which is quite misleading. In fact the University does not have adequate teachers to introduce courses which it had been doing.

vi) The University is running several off campus centres outside Meghalaya which is not permissible under the UGC (Establishment of and Maintenance of Standards of Private University) Regulations, 2003 and the decision of the Hon'ble Supreme Court (2005) in the case of Prof. Yashpal & Anr. Versus State of Chhattisgarh & Ors.

vii) It is offering distance education programme outside the boundaries of Meghalaya and outside India. These actions are in gross violation of UGC Regulations and guidelines.

viii) Total students enrolled by CMJ University as per information submitted by the University in 2010-11:176, 2011-12: 469, 2012-13: 2734. All these admissions are illegal as all its actions are ab initio void in absence of a legally appointed Chancellor.

x) The University has violated Section 45(3) and Section 46(4) of the CMJ University Act, 2009 by not submitting the Annual Report and the Annual Accounts/Balance Sheet and the Audit Report to Visitor.

xi) Even after the initiation of actions by the Visitor the University continued to mislead the students and public by press statements. It issued a news paper advertisement in the Shillong Times on 22nd April, 2013 claiming it has not yet awarded any PhD degree to any of the students enrolled from the State of Assam which is false. Again it issued advertisement in newspaper on 2nd May and 16th May, 2013 in matters of holding Convocation and Award of PhD Degree knowing full well that there can be no Convocation without the legally appointed

Chancellor and that the admissions of the courses and award of the degrees were illegal.

x) The University has violated Section 41(1) of the CMJ University Act relating to establishment of Endowment Fund and indulged in cheating by withdrawing the deposit of Rs. 210 lakhs within days of making the deposit.

xi) The University repeatedly acted in contravention of Section 52 of the CMJ University Act 2009 in respect of maintenance of standards and other related matters applicable to private universities.

7. All these established facts clearly indicate mismanagement, mal-administration, indiscipline and failure in the accomplishment of the objectives of the University, apart from criminal liability. In the interest of maintaining proper standards of higher education it would be desirable that the CMJ University be wound up. The state government is accordingly being addressed to consider Dissolution of the CMJ University in terms of Section 48 of the CMJ University Act, 2009."

(emphasis supplied)

In terms of the recommendations made by the Visitor-cum-Governor, the State Government is required to take action under Section 48 of the 2009 Act.

Shri Ranjan Mukherjee, learned counsel appearing for the Government of Meghalaya says that he is not in a position to make a statement whether the State Government has taken action in furtherance of the recommendations made by the Visitor-cum-Governor.

In view of the above, we feel that ends of justice will be served by directing the State Government to take an appropriate action under Section 48 of the 2009 Act after giving notice and reasonable opportunity of hearing to the petitioners.

The special leave petitions are accordingly disposed of with a direction that within three months from today the State Government shall, after giving an opportunity to the petitioners to show cause against the action proposed to be taken, pass a speaking order under Section 48 of the 2009 Act.

The students whose admissions and degrees were declared illegal may also make representation to the State Government and seek an opportunity of hearing from it. The request made by them shall be sympathetically considered by the State Government.

16. In pursuance of the order of the Apex Court dated 13.09.2013, the State Govt. issued Show Cause bearing No. EDN.110/2013/33 dated 12.11.2013 (Annexure-33 to the writ petition) to the petitioners, which reads as follows:-

"GOVERNMENT OF MEGHALAYA EDUCATION DEPARTMENT

No. EDN.110/2013/33 Dated Shillong, the 12th November, 2013.

From: Shri.B.S. Sohliya, Deputy Secretary to the Govt. of Meghalaya, Education Department.

To: Vice Chancellor/Registrar, CMJ University, Laitumkhrah, Shillong.

Subject: Show cause against the on mismanagement, mal administration, indiscipline, failure in the accomplishment of the objectives of CMJ University.

In pursuance of orders of the Hon"ble Supreme Court dated 13/9/2013, the CMJ University is asked to show cause why action under Section 48 of the 2009 Act may not be taken for the following alleged failures:-

1. Whereas, on the basis of facts and records the University functioned from 7.10.2010 with a self appointed Vice Chancellor without approval of the Visitor as required under Section 14(1) of the CMJ University Act, 2009 (hereinafter referred to as the "Act").

2. Whereas, the University has not submitted the annual report and the annual account, balance sheet and audit report as required under Section 45(3) and Section 46(4) of the Act since its inception.

3. Whereas, the University vide Letter 25.5.2010 informed the creation of Endowment Fund for CMJ University Endowment Fund vide Ref: (1) Letter No. EDN.142/2009/52 and dated 5.4.2010 and (2) Letter No. CE/Estt/CMJU/1/2009/62 dated 19.04.2010 is as below:

4. Whereas, the Assistant General Manager, Bank of Baroda vide Letter No. CRA/FD-2013-14 dated 20.05.2013 in response to Government Letter No. CE/Estt/CMJU/1/2009/106 dated 20.5.2013 has informed that the Fixed Deposit of Endowment Fund was prematurely closed by the CMJ University (Account Holder) on 21.5.2010.

5. Whereas, it is found that you have kept the Endowment Fund only for a period of one day i.e. from 20.5.2010 to 21.5.2010 and on such closure of the Fixed Deposit the CMJ University has ceased to have an Endowment Fund which is in contravention of sub-section (1) of Section 41 read with sub-sections (1) & (2) of Section 4 of the Act.

6. Whereas, the State Government observed that CMJ University has not adhered to or complied with the provisions section 52 of the Act which provides that the CMJ University shall be subject to the UGC (Establishment and Maintenance of Standard in Private Universities) Regulation 2003 and any other regulations or direction as may be issued by the UGC and the State Government from time to time.

7. Whereas, as per UGC norms had given clear direction that no off campus centre/study centre/affiliate colleges and centre operating through franchise can be opened by any private university outside the territorial jurisdiction of the State and the CMJ University had violated the aforesaid directions.

8. Whereas, University awarded Ph.D./M.Phil Degree purportedly on payment to some students of CMJ University which is in violation of Regulation No. 7 of the UGC (Minimum Standard and Procedure for the award of M.Phil/Ph.D. Degree) Regulation, 2009 and whereas the norms laid down by the U.G.C. not followed.

9. Whereas, B.Ed degree are awarded through Distance Mode without the requisite approval of the regulatory bodies and without affiliation. The B.Ed. degrees awarded by the CMJ University were held to be invalid in the eye of Law by the order dated 24th May, 2013 of the Hon"ble High Court of Gauhati.

10. Whereas, the Shillong Engineering and Management College was de-affiliated by NEHU from academic session 2011-2012. This College, which was in existence prior to the sanction for establishment of the CMJ University, cannot be affiliated with the CMJ University. While the fate of the students of this College was already uncertain in view of the said de-affiliation, the College continued to make admissions by misleading the students that the degrees will be issued by the CMJ University.

11. Whereas, the CMJ University continued to mislead the student and public by incorrect press statement through Newspaper advertisement in the Shillong Times on 22nd April, 2013, 2nd May, 2013 and 16th May, 2013 regarding the Ph.D. Degree, convocation etc.

12. Whereas, CMJ University have failed to comply with the directions of the Visitor as directed vide No. GSMG/CMJU/82/2009/143 dated 30th April, 2013 and No. GSMG/CMJU/82/2009/311 dated 24th May, 2013.

13. Whereas, the CMJ University Authorities are clearly guilty of mismanagement and mal administration resulting in failure to accomplish the objectives of the University.

Therefore, you are directed to show cause under Section 48(2) & (3) of the Act read with sub-section (2) of Section 6 of the Meghalaya Private Universities (Regulation of Establishment and Maintenance of Standards) Act, 2010, within 15 (fifteen) days of receipt of this notice as to why action should not be taken against the CMJ University as per law.

Sd/- Deputy Secretary to the Govt. of Meghalaya Education Department"

17. In response to the said show cause notice, the Deputy Registrar of CMJ University filed a detailed show cause statement or show cause reply dated 25.11.2013. The Joint Secretary to the Govt. of Meghalaya, Education Department issued another show cause dated 24.01.2014 in continuation of the earlier show cause dated 12.11.2013 and the said show cause dated 24.01.2014 (Annexure-35 to the writ petition) reads as follows:-

"GOVERNMENT OF MEGHALAYA EDUCATION DEPARTMENT

No. EDN.CC/18/2013/69 Dated Shillong, the 24th January, 2014

From: Shri. B.S. Sohliya, Joint Secretary to the Govt. of Meghalaya, Education Department.

To,

The Vice Chancellor/Registrar, CMJ University, Laitumkhrah, Shillong.

Subject: Show Cause against the on mismanagement mal administration in discipline, failure in the accomplishment of the objectives of CMJ University.

In continuance of the Show Cause Notice No. EDN.110/2013/33, Dated: 12th November, 2013, CMJ University is asked to further asked to Show Cause why action under Section 48 of the Act No. 4 of 2009 may not be taken for the reason indicated below:

Whereas, on the basis of the fact and records, the University functioned from 17.10.2010 with self appointed Chancellor without approval of the Visitors as required under Sec. 14(1) of the CMJ University Act, 2009;

Therefore you are directed to Show Cause under Section 48(2) & (3) of the Act, read with Sub-Section (2) of the Section 6 of Meghalaya Private Universities (Regularization of Establishment and Maintenance of Standards) Act, 2010 within 10 (ten) days of receipt of this Notice as to why action should not be taken against the CMJ University as per law.

Yours faithfully, Sd/- Joint Secretary to the Govt. of Meghalaya, Education Department"

18. In response to the second show cause notice dated 24.01.2014, the Registrar of the CMJ University submitted the show cause reply with the assurance that if any direction are issued in future for rectification of any alleged shortcoming, the management system of the University would follow them accordingly and in earnest. The State Govt. without issuing direction to the management system of the University to correct the mismanagement and mal administration, if any, and also without affording reasonable opportunity as provided under Sub-Sections (2) & (3) of Section 48 issued the impugned order dated 31.03.2014 for dissolution of the CMJ University with immediate effect. The main ground for challenging the impugned order dated 31.03.2014 is that the State respondents did not comply with the mandatory requirement as provided under Sub-Sections (2), (3) and (4) of Section 48 and also the directions of the Apex Court in the judgment and order dated 13.09.2013 in passing the impugned order dated 31.03.2014 as well as in issuing the show cause notices dated 12.11.2013 and 24.01.2014. Learned senior counsel appearing for the petitioners by placing heavy reliance under Section 48(2) & (3) of the said Act of 2009 contended that it is the State Govt. who would issue the direction to the management of the University on identification of mismanagement, mal administration, in-discipline, failure in the accomplishment of the objectives of the University and economic hardships in the management of the University and it is not the Visitor to issue such direction under Section 48(2) of the said Act of 2009. For easy reference,

under Section 48(1), (2), (3) and (4) of the said Act of 2009 is reproduced hereunder:-

"48.(1) If the Sponsor proposes dissolution of the University in accordance with the law governing its constitution or incorporation, it shall give at least 3 months notice in writing to the State Government.

(2) On identification of mismanagement, mal-administration, in-discipline, failure in the accomplishment of the objectives of University and economic hardships in the management systems of University, the State Government would issue directions to the Management system of the University. If the directions are not followed within such time as may be prescribed, the right to take decision for winding up of the University would vest in the State Government.

(3) The manner of winding up of the University would be such as may be prescribed by the State Government in this behalf. Provided that no such action will be initiated without affording a reasonable opportunity to show cause to the Sponsor.

(4) On Receipt of the notice referred to in Sub-section (1), the State Government shall, in consultation with the AICTE, UGC or other regulatory bodies make such arrangements for administration of the University from the proposed date of dissolution of the University by the Sponsor and until the last batch of students in regular courses of studies of the University complete their courses of studies in such manner as may be prescribed by the Statutes."

19. It is well settled law that wish and desire of the Legislature has to be given full effect [Ref: State of Tamil Nadu Vs. M/s. Arooran Sugars Ltd., (1996) 8 AD 473 : AIR 1997 SC 1815 : (1996) 10 JT 116 : (1996) 8 SCALE 71 : (1997) 1 SCC 326 : (1996) 8 SCR 193 Supp : (1997) AIRSCW 1188 . It is settled rule of interpretation of statute that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all. In other words, where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice. For this settled principle of law, it would be sufficed to refer to the decisions of the Apex Court in (i) Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others, AIR 1963 SC 1077 : (1963) 2 SCR 812 Supp (ii) State of Gujarat Vs. Shantilal Mangaldas and Others, AIR 1969 SC 634 : (1969) 1 SCC 509 : (1969) 3 SCR 341 and; (iii) Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others, AIR 1976 SC 789 : (1976) 2 SCC 128 : (1976) 2 SCR 1060 .

The relevant portion of Para 12 of the AIR in Patna Improvement Trust case (Supra) reads as follows:-

"12.....A combined effect of the said two principles may be stated thus: a

general Act must yield to a special Act dealing with a specific subject-matter and that if an Act directs a thing to be done in a particular way, it shall be deemed to have prohibited the doing of that thing in any other way. Under the Act, the Trust is authorized to implement the improvement schemes in a particular way and for the purposes of implementing them to acquire the land in a prescribed manner....."

The relevant portion of Para 55 of the SCC in Shantilal Mangaldas's case (Supra) reads as follows:-

"55.....Land required for any of the purposes of a town planning scheme cannot be acquired otherwise than under the Act, for it is a settled rule of interpretation that when the power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all....."

Para 18 of the SCC in Hukum Chand Shyam Lal's case (Supra) reads as follows:-

"18. It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice....."

20. The Apex Court again reiterated in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, AIR 2003 SC 511 : (2002) 10 JT 55 : (2003) 2 SCC 111 : (2003) 1 UJ 80 that the statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof.

21. The Apex Court vide judgment and order dated 13.09.2013 passed in SLP (Civil) No(s).19617/2013, clearly directed that the State Govt. is to take an appropriate action under Section 48 of the said Act of 2009 after giving notice and reasonable opportunity of hearing to the petitioners. After passing of the said judgment and order of the Apex Court dated 13.09.2013, the State respondents in compliance of the mandatory requirement under Section 48(2) of the said Act of 2009, did not issue any direction to the petitioners to follow after identification of mismanagement, mal administration, in-discipline, failure in accomplishment of the objectives of the University and economic hardships in the management of the University. This is the case of the petitioners. It is the further case of the petitioners that the impugned show cause notice dated 12.11.2013 cannot be treated as a direction of the State Govt. to be followed by the petitioners as contemplated under Section 48(2) of the said Act of 2009. Learned Advocate General appearing for the State respondents contended that sufficient directions had been issued by the Visitor by referring to the earlier

directions discussed in the aforesaid paras before passing the said judgment and order of the Apex Court dated 13.09.2013. On plain perusal of Section 48(2) of the said Act of 2009, it is clear that it is not the Visitor who is to issue direction but it is the State Govt. to issue the direction under Section 48(2) of the said Act of 2009. The show cause notice is the one for asking explanation as to why action of punitive nature should not be taken against a person to whom show cause notice had been issued. The learned senior counsel appearing for the petitioners by referring to the impugned show cause notice dated 12.11.2013 further contended that the impugned show cause notice only referred to the direction of the Visitor to the University before passing the said judgment and order of the Apex Court dated 13.09.2013. Learned senior counsel further contended that the post-decisional hearing was not contemplated under Section 48(3) of the said Act of 2009 inasmuch as, the State respondents in the impugned show cause notice dated 12.11.2013 had already taken the decision that the CMJ University authorities are clearly guilty of mismanagement and mal administration resulting in failure to accomplish the objectives of the University. Para 13 of the impugned show cause notice dated 12.11.2013 reads as follows:-

"13. Whereas, the CMJ University Authorities are clearly guilty of mismanagement and mal administration resulting in failure to accomplish the objectives of the University."

22. It is the further submission of the learned senior counsel that there is no justification to think of post-decisional hearing in the given case. Thus, there is a clear violation of the principles of natural justice and also the violation of Section 48(3) of the said Act of 2009 in passing the impugned order dated 31.03.2014. Learned senior counsel regarding this point placed heavy reliance on the decisions of the Apex Court in (i) H.L. Trehan and Others Vs. Union of India (UOI) and Others, AIR 1989 SC 568 : (1989) 65 CompCas 673 : (1989) 1 CompLJ 191 : (1988) 4 JT 464 : (1989) LabIC 1031 : (1988) 2 SCALE 1376 : (1989) 1 SCC 764 : (1988) 3 SCR 925 Supp : (1989) 1 UJ 54 (ii) Shri Shekhar Ghosh Vs. Union of India (UOI) and Another, (2007) 112 FLR 661 : (2007) 1 JT 63 : (2006) 11 SCALE 363 : (2007) 1 SCC 331 : (2007) 1 SCC(L&S) 247 : (2006) 8 SCR 274 Supp and; (iii) K.I. Shephard and Others Vs. Union of India (UOI) and Others, AIR 1988 SC 686 : (1989) 1 CompLJ 167 : (1987) 3 JT 600 : (1988) LabIC 1497 : (1988) 1 LLJ 162 : (1987) 2 SCALE 599 : (1987) 4 SCC 431 : (1988) 1 SCR 188 : (1988) 1 SLJ 105 .

Para 12 & 13 of the SCC in H.L. Trehan's case (Supra) read as follows:-

"12. It is, however, contended on behalf of CORIL that after the impugned circular was issued, an opportunity of hearing was given to the employees with regard to the alterations made in the conditions of their service by the impugned circular. In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-

decisional opportunity.....

13. The view that has been taken by this Court in the above observation is that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. Thus, even if any hearing was given to the employees of CORIL after the issuance of the impugned circular, that would not be any compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution. The High Court, in our opinion, was perfectly justified in quashing the impugned circular."

Para 14 of the SCC in Shekhar Ghosh's case (Supra) reads as follows:-

"14. A post-decisional hearing was not called for as the disciplinary authority had already made up its mind before giving an opportunity of hearing. Such a post-decisional hearing in a case of this nature is not contemplated in law. The result of such hearing was a foregone conclusion."

Paras 15 & 16 of SCC in K.I. Stephard's case (Supra) read as follows:-

"15. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilization and the content thereof is often considered as a proper measure of the level of civilization and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame. On the other hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalised so that a hearing commensurate to the situation is afforded before a section of the employees is thrown out of employment.

16. We may now point out that the learned Single Judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now represent and their cases could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then given them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a

condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose."

23. Under Section 14(1) of the said Act of 2009, sponsor shall appoint a person suitable to be appointed as the Chancellor of the University subject to the approval of the Visitor. Therefore, prior approval is not required for appointment of the Chancellor. There is a clear distinction between "prior approval" and "subject to approval". In the case of appointment subject to approval, appointment is good so long it is not disapproved. In the present case, this Court vide judgment and order dated 31.05.2013 passed in WA No. (SH) 16/2013 had already held that there cannot be legal friction of deemed approval of the Chancellor under Section 14(1) of the said Act of 2009. However, as the appointment of the Chancellor is subject to the approval of the Visitor, the appointment of the Chancellor is good so long it is not disapproved. In the present case, the Trustees of the CMJ Foundation as early as 29.07.2009 had adopted the resolution appointing Shri. Chandra Mohan Jha as Chancellor of the University in terms of Section 14(1) of the said Act of 2009 and the petitioner No. 1 sent the letter dated 03.08.2009 to the Commissioner & Secretary, Education Department, Govt. of Meghalaya, seeking approval of the Visitor for appointment of the Chancellor i.e. Shri. Chandra Mohan Jha. Several reminders had been sent to the Visitor to approve the appointment of the Chancellor. As the Visitor did not object to the appointment of the Chancellor, the State Govt. issued a Notification dated 17.06.2010, that the Governor of Meghalaya is pleased to accord sanction for the establishment of the CMJ University and the CMJ University had started functioning with Shri. Chandra Mohan Jha as Chancellor. Three years after the said resolution dated 29.07.2009 for appointing Shri. Chandra Mohan Jha as Chancellor, the Deputy Secretary to the Govt. of Meghalaya under his letter dated 11.04.2013 informed the CMJ University that the appointment of the Chancellor of the University by the CMJ Foundation is irregular, as the said appointment does not have the approval of the Visitor which is mandatory under Section 14(1) of the said Act of 2009. Where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. The authorities cannot be allowed to take undue advantage of their own fault in failure to act in accordance with law. In the present case, the Visitor, to whom an obligation is cast under Section 14(1) of the said Act of 2009 to decide as to whether he approves or not the appointment of the Chancellor, was sitting on the matter for three years and he cannot be permitted to take advantage of such situation. The Apex Court in *Kusheshwar Prasad Singh Vs. State of Bihar and Others*, (2007) 5 JT 237 : (2007) 4 SCALE 534 : (2007) 11 SCC 447 : (2007) 4 SCR 95 held that "the appellant is also right in contending before this Court that the power under Section 32-B of the Act to initiate fresh proceedings could not have been exercised. Admittedly, Section 32-B came on the statute book by Bihar Act 55 of 1982. The case of the appellant was over much prior to the amendment of the

Act and insertion of Section 32-B . The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law and initiate fresh proceedings. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in *Mritunjoy Pani and Another Vs. Narmanda Bala Sasmal and Another*, AIR 1961 SC 1353 : (1962) 1 SCR 290 wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim *commodum ex injuria sua nemo habere debet* (no party can take undue advantage of his own wrong)".

24. The appointment of the Chancellor of the CMJ University does not require the prior approval but subject to approval of the Visitor and the appointment of the Chancellor is good so long it is not disapproved. It would be sufficed to refer to the decisions of the Apex Court in (i) *U.P. Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and another*, AIR 1996 SC 114 : AIR 1995 SC 114 : (1995) 3 SCALE 604 : (1995) 3 SCC 456 Supp : (1995) 3 SCR 729 : (1995) 2 UJ 274 (ii) *High Court of Judicature for Rajasthan Vs. P.P. Singh and Another*, AIR 2003 SC 1029 : (2003) 1 JT 403 : (2003) 1 SCALE 445 : (2003) 4 SCC 239 : (2003) 1 SCR 593 : (2003) 1 UJ 460 : (2003) AIRSCW 5027 : (2003) AIRSCW 539 : (2003) 6 Supreme 701 : (2003) 1 Supreme 909 and; (iii) *Ashok Kumar Das and Others Vs. University of Burdwan and Others*, (2010) 125 FLR 400 : (2010) 3 JT 49 : (2010) 2 SCALE 110 : (2010) 3 SCC 616 : (2010) 1 SCC(L&S) 886 : (2010) 3 SCR 429 : (2010) 3 UJ 1504 .

Para 6 of the SCC in *U.P. Avas Evam Vikas Parishad's case* (Supra) read as follows:-

"6. This Court in *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, AIR 1986 SC 1370 : (1986) 59 CompCas 548 : (1986) 1 CompLJ 91 : (1986) 8 ECC 189 : (1985) 2 SCALE 1289 : (1986) 1 SCC 264 : (1985) 3 SCR 909 Supp , considering the distinction between "special permission" and "general permission" "previous approval" or "prior approval" in paragraph 63 held that "we are conscious that the word "prior" or "previous" may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29(1) of the Act". Ordinarily, the difference between approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently granted may validate the previous act. As to the word "approval" in Section 33(2)(b) of the Industrial Disputes Act, it was stated in *The Lord Krishna Textile Mills Vs. Its Workmen*, AIR 1961 SC 860 : (1961) 2 FLR 112 : (1961) 1 LLJ 211 : (1961) 3 SCR 204 that the management need not obtain the previous consent before taking any action. The requirement that the management must obtain approval was distinguished from the requirement that

it must obtain permission, of which mention is made in Section 33(1)."

Para 40 of the SCC in High Court of Judicature for Rajasthan case (Supra) read as follows:-

"40. When an approval is required, an action holds good. Only if it is disapproved it loses its force. Only when a permission is required, the decision does not become effective till permission is obtained (See U.P. Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and another, AIR 1996 SC 114 : AIR 1995 SC 114 : (1995) 3 SCALE 604 : (1995) 3 SCC 456 Supp : (1995) 3 SCR 729 : (1995) 2 UJ 274 In the instant case both the aforementioned requirements have been fulfilled."

Para 10 of the SCC in Ashok Kumar Das's case (Supra) read as follows:-

"10. Learned counsel for the respondents Nos. 1 to 3, on the other hand, submitted that Section 21(xiii) used the expression "approval of the State Government" and not "prior approval of the State Government" and it has been held by this Court in U.P. Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and another, AIR 1996 SC 114 : AIR 1995 SC 114 : (1995) 3 SCALE 604 : (1995) 3 SCC 456 Supp : (1995) 3 SCR 729 : (1995) 2 UJ 274 and High Court of Judicature for Rajasthan Vs. P.P. Singh and Another, AIR 2003 SC 1029 : (2003) 1 JT 403 : (2003) 1 SCALE 445 : (2003) 4 SCC 239 : (2003) 1 SCR 593 : (2003) 1 UJ 460 : (2003) AIRSCW 5027 : (2003) AIRSCW 539 : (2003) 6 Supreme 701 : (2003) 1 Supreme 909 that when an approval is required, an action holds good and only if it is disapproved it loses its force. He further submitted that promotions made on the basis of Resolution of the Executive Council of the University adopted on 26.06.1995, therefore, hold good and now that the State Government has approved the Resolution of the Executive Council of the University adopted on 26.06.1995 by order dated 10.10.2002, the promotions made on the basis of the Resolution dated 26.06.1995 of the Executive Council of the University hold good and cannot be set aside by this Court."

25. Judicial review generally speaking, is not directed against a decision, but is directed against the decision-making process. The Apex Court in Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, AIR 1977 SC 183 : (1977) 1 SCC 133 : (1977) 1 SCR 763 held that it is also clear that, even a technically correct recital in an order or notification stating that the conditions precedent to the exercise of a power have been fulfilled may not debar the Court in a given case from considering the question whether, in fact, those conditions have been fulfilled. And, a fortiori, the Court may consider and decide whether the authority concerned has applied its mind to really relevant facts of a case with a view to determining that a condition precedent to the exercise of a power has been fulfilled. If it appears, upon an examination of the totality of facts in the case, that the power conferred has been exercised for an extraneous or irrelevant purpose or that the mind has not been applied at all to the real object

or purpose of a power, so that the result is that the exercise of power could only serve some other or collateral object, the Court will interfere.

The Apex Court in *Ranjit Thakur Vs. Union of India (UOI) and Others*, AIR 1987 SC 2386 : (1988) CriLJ 158 : (1987) 4 JT 93 : (1988) 1 LLJ 256 : (1987) 2 SCALE 773 : (1987) 4 SCC 611 : (1988) 1 SCR 512 : (1989) 1 SLJ 109 held that Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In *Council of Civil Service Unions v. Minister for the Civil Service* : (1984) 3 WLR 1174 (HL) : (1984) 3 All ER 935, 950 Lord Diplock said:

"Judicial Review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety". That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognized in the administrative law of several of our fellow members of the European Economic Community"..... "

26. The Apex Court in *State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo*, AIR 2005 SC 2080 : (2005) CriLJ 2179 : (2005) 4 JT 109 : (2005) 5 SCC 181 : (2005) 1 SCR 151 : (2005) AIRSCW 1987 : (2005) 3 Supreme 214 held that administrative action is stated to be referable to broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. The scope of judicial review of administrative orders is rather limited. The consideration is limited to the legality of decision-making process and not legality of the order per se. The test is to see whether there is any infirmity in the decision-making process and not in the decision itself. Mere possibility of another view cannot be ground for interference. The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those classes of cases which relate to deployment of troops, entering into international treaties, etc. The distinctive features of some of the recent cases signify the willingness of the courts to assert their power to scrutinize the factual basis upon which discretionary powers

have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality", the second "irrationality" and the third "procedural impropriety". The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

27. It is now well settled that judicial review of the administrative action/quasi judicial orders passed by the Govt. is limited only to correcting the errors of law or non compliance with/breach of fundamental procedural requirements which may lead to manifest injustice. The Apex Court in *Kalinga Mining Corporation Vs. Union of India (UOI) and Others*, (2013) 3 AD 580 : (2013) 2 SCALE 286 : (2013) 5 SCC 252 : (2013) AIRSCW 1427 held that it is by now well settled that judicial review of the administrative action/quasi judicial orders passed by the Government is limited only to correcting the errors of law or fundamental procedural requirements which may lead to manifest injustice. When the conclusions of the authority are based on evidence, the same cannot be re-appreciated by the court in exercise of its powers of judicial review. The court does not exercise the powers of an appellate court in exercise of its powers of judicial review. It is only in cases where either findings recorded by the administrative/quasi judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on the basis of the material available that the court would be justified to interfere with the decision. The scope of judicial review is limited to the decision making process and not to the decision itself, even if the same appears to be erroneous. This Court in *Tata Cellular Vs. Union of India*, AIR 1996 SC 11 : AIR 1994 SC 11 : (1994) 4 JT 532 : (1994) 6 SCC 651 : (1994) 2 SCR 122 Supp upon detailed consideration of the parameters within which judicial review could be exercised, has culled out the following principles: (SCC pp.675 & 677-78, paras 70 & 77)

"70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

ii) Irrationality, namely, Wednesbury unreasonableness.

iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time"

The aforesaid judgment has been followed again and again. It was clearly observed in the said judgment that where the Court comes to the conclusion that the administrative decision is arbitrary, it must interfere. However, the Court cannot function as an appellate authority substituting the judgment for that of the administrator."

28. The Apex Court in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, AIR 2002 SC 834 : (2002) 1 BC 568 : (2002) 110 CompCas 20 : (2002) 3 CompLJ 8 : (2002) 1 JT 482 : (2002) 1 SCALE 481 : (2002) 3 SCC 496 : (2002) 1 SCR 621 : (2002) AIRSCW 500 : (2002) 1 Supreme 404 held that the obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, AIR 1970 SC 150 : (1969) 2 SCC 262 : (1970) 1 SCR 457 . Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot do so in the case of

administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred" (as per Lord Diplock in *Secy. of State for Education and Science v. Metropolitan Borough Council of Tameside*: 1977 AC 1014 : (1976) 3 All ER 665 : (1976) 3 WLR 641, All ER at p. 695f). The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene. To quote the classic passage from the judgment of Lord Greene M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*: (1947) 2 ALL ER 680 : (1948) 1 KB 223 (CA) : (All ER pp. 682H-683A)

"It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."

29. For the foregoing discussions, this Court is of the considered view that there was non-compliance with or breach of the fundamental procedural requirements as provided under Section 48 of the said Act of 2009 as well as principles of natural justice and the concept of the obligation of the administrative authorities to act fairly in issuing the show cause notices dated 12.11.2013 and 24.01.2014 and passing the impugned order dated 31.03.2014 which would lead to many facets injustice. Thus, the impugned order dated 31.03.2014 and the show cause notices dated 11.12.2013 and 24.01.2014 are hereby quashed and set aside.

30. In the result, the State Govt. may take steps in strict compliance with the provisions of the CMJ University Act, 2009 (Act 4 of 2009), the Meghalaya Private Universities (Regulation of Establishment and Maintenance of Standards) Act, 2012 (Act No. 8 of 2012), principles of natural justice and the concept of the obligation of the administrative authorities to act fairly in interest of justice from the stage where the Apex Court passed the said judgment and order dated 13.09.2013.

31. Writ petition is allowed to the extent indicated above.

32. Parties are to bear their own costs.