
(2013) 07 AHC CK 0250

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 3969 (M/S) of 2011 and 4253 (M/S) and 2697 (M/S) of 2013

Dau Dayal Mahila (P.G.) College

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Citation : (2014) 1 UPLBEC 66

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Heard Sri Prashant Chandra, Senior Advocate, assisted by Sri Karunanidhi Yadav, learned Counsel for the petitioner, Mohd. Mansoor, learned Chief Standing Counsel and Sri Anurag Venna, learned Counsel for the University. The writ petition No. 3969 (M/S) of 2011 has been filed by Dau Dayal Mahila (P.G.) College through its President under Article 226 of the Constitution of India against the Government orders dated 17.6.2011 and 2.7.2011 passed by the Secretary, Higher Education, Lucknow, whereby it has been held that admissions made by Dau Dayal Mahila (P.G.) College, Firozabad were not in accordance with law laid down by the Hon"ble Supreme Court in P.A. Inamdar and Others Vs. State of Maharashtra and Others, .

2. During the pendency of writ petition No. 3969 of 2011 (M/S), another writ petition, bearing No. 4253 of 2013 (M/S) was filed by Dau Dayal Manila (P.G.) College, Firozabad through its President under Article 226 of the Constitution of India, praying therein that respondent-University be directed to ensure compliance of the order dated 11.5.2013 passed by the State Government, whereby the State Government directed the University to award the degree of B.Ed. to the students admitted by the institution in the academic session 2011-2012.

3. Students of Dau Dayal Mahila (P.G.) College, who were admitted by the Institution itself for pursuing B.Ed. Course for the academic session 2011-2012, have filed writ petition No. 2697 of 2013 (M/S), praying therein that State Government be directed to lift the embargo/mandating Dr. B.R. Ambedkar University, Agra not to award degree of B.Ed. course for the academic session 2011-2012.

4. Since in all the above-captioned petitions, the grievance is consequential in nature and facts are common, as such, all the writ petitions are being decided by a common order.

5. Shorn off unnecessary details, the facts of the case are as under:

Dau Dayal Mahila (P.G.) College (hereinafter referred to as the "Institution") was established in the year 1971 with philanthropic and charitable motives, catering to the needs of women students of Firozabad and neighbouring areas.

6. According to the petitioner, the institution is running B.Ed. Course since 1994 and was granted recognition for admitting 90 students to pursue B.Ed. Course in the academic session 2000-2001 by the National Council for Teachers Education [hereinafter referred to as the "NCTE"], vide order dated 26.7.2000. The recognition of B.Ed. course was, subsequently, increased to 100 students. Thereafter, vide order dated 9.7.2003, the Institution was granted recognition for an additional intake of 60 students. The strength of the Institution was thereafter enhanced to 200 students annually vide order dated 28.5.2004. Thereafter, the Institution submitted an application for further enhancement of seats. The Regional Committee of NCTE considered the application of the petitioner and being satisfied upon an inspection that the Institution was equipped with necessary infrastructure, granted recognition for an additional 100 seats by means of an order dated 24.1.2007, pursuant to which, the total strength of the Institution stands at 300 students annually for B.Ed. Courses.

7. It has been stated that pursuant to the order dated 24.1.2007, the Institution applied before the respondent University and by means of the order dated 20.4.2007, the Chancellor granted affiliation to the Institution in respect of additional 100 seats with effect from 1.7.2006. According to him, the Institution had also applied in the year 2009-2010 for being granted the autonomous status. The University Grants Commission, in its meeting held on 12.8.2010, after considering the report of Expert Committee so constituted and on the basis of recommendation of the Expert Committee, agreed to confer autonomy to the Institution from the academic sessions 2010-2011 to 2015-2016 and the same was informed to the Registrar of the respondent-University vide letter dated 21.9.2010. On receipt of the said letter dated 21.9.2010, the Registrar of the University as well as the State Government has conferred the status of autonomous institution. After autonomy was granted to the Institution, it constituted a governing body comprising amongst others the representatives of the UGC, the State Government, Agra University and convened a meeting on

11.12.2010 for considering amongst other agenda including the agenda pertaining to the manner in which the admissions and examinations shall be held by the institution from the academic session 2011-2012 and in the said meeting, it was unanimously decided that the admissions in the B.Ed. Course for the academic session 2011-2012 will be made by the institution itself and the same was informed to the respondent-University, the State Government the NCTE and the UGC vide letter dated 13.12.2010 but as no objections were raised either by the UGC or State Government including the respondent-University and as such, the Institution conducted the entrance examination on 5.6.2011 after advertising the same in leading Daily newspaper all over the State and admitted the students strictly adhering to merit and transparency and has also satisfied the triple tests as laid down by the Hon''ble Supreme Court in PA. Inamdar (supra). Thereafter, the Institution wrote a letter dated 24.3.2011 to the Registrar of M.J.P. Rohilkhand University, Bareilly, requesting therein not to send any students for admission in B.Ed. Course in the Institution for the academic session 2011-2012 on account of the fact that the institution had been granted status of autonomous college by U.G.C. and as per the guidelines issued by the U.G.C. for autonomous college complete autonomy is given in respect of admissions, fixation of fee, designing of curriculum and conducting of examinations etc. but even then, in the prospectus for admissions for B.Ed. course for the session 2011-2012 issued by the Rohilkhand University, the University had invited applications for 300 seats in the B.Ed. Course of the petitioner's college as well.

8. On coming to know about the aforesaid advertisement issued by the Rohilkhand University, the President of the Institution had met the respondents and preferred a detailed representation dated 28.6.2011 but in spite of that, the impugned orders 17.6.2011 and 2.7.2011 were issued by the Secretary, Higher Education, informing the Vice-Chancellor of the Rohilkhand University and Secretary, University Grants Commission that the admissions made by the Institution were not in accordance with the law laid down in PA. Inamdar (supra) and as such, admissions in B.Ed. Course be made through Counselling. Feeling aggrieved, the Institution preferred writ petition No. 3969 (M/S) of 2011.

9. During the pendency of the aforesaid writ petition No. 3969 of 2011 (M/S), the Principal Secretary, Higher Education, State of U.P., vide order dated 11.5.2013, informed the Vice-Chancellor of Dr. Bhim Rao Ambedkar University, Agra that looking to the future of the students and in the interest of justice, degree of B.Ed. Course be given to the students under special circumstances and the same shall not be taken as precedence in future and as such, necessary action be done. But as the respondent-University did not take any action on the aforesaid order dated 11.5.2013, the Institution has preferred writ petition No. 4253 (M/S) of 2013 for a direction to the University to ensure compliance of the order dated 11.5.2013. Subsequently, the students, who studied in the Institution, have also preferred the writ petition No. 2697 of 2013 (M/S) for a direction to the State Government to lift the embargo mandating the respondent-University not to award degrees to the students, who were admitted by the

institution itself.

10. Sri Prashant Chandra, Senior Advocate, appearing on behalf of the petitioner submits that in the counter-affidavit filed on behalf of the State, it has been submitted that in the case of PA. Inamdar (supra), the Hon''ble Supreme Court has been pleased to provide that the admissions by private institutions whether minority or non-minority were to be made on the basis of the single window system. Submission is that the said decision of the Hon''ble Supreme Court has wrongly been taken recourse to in thrashing it upon the petitioner which is not an institution in the nature of those in respect of which the decision had been rendered in PA. Inamdar''s case in as much as the petitioner has been conferred autonomy by the UGC with the concurrence of the State Government as well as the respondent-University. Accordingly, the petitioner is entitled to take admissions on its own, with consent of U.G.C., the State Government and University representatives, who were present at the meeting of Board of Governors which was held on 11.12.2010 and communicated to all the concerned authorities on 13.12.2010. The admissions were made following the procedure prescribed by the UGC, the admissions of 300 girl students were made in the month of June, 2011 strictly in accordance with merit and the classes were commenced on 1.7.2011.

11. Sri Chandra submits that in para-8 of the counter-affidavit filed on behalf of the UGC, XI Plan Guidelines on the scheme of autonomous colleges have been reproduced, which amongst others gives freedom to autonomous colleges to make admissions on their own. He submits that from a reading of the counter-affidavit filed on behalf of the UGC, it appears that the stands of UGC is unambiguous.

12. Sri Chandra submits that when the writ petition No. 3969 (M/S) of 2011 is pending disposal, on account of pressure being created by the State Government as well as respondent-University to abide by the orders and guidelines issued by them, the petitioner''s Institution had sought clarifications from the UGC, particularly in respect of award of degrees to 300 students admitted by the petitioner in the B.Ed. course for the academic session 2011-2012. Vide letter dated 27.12.2012, the UGC clarified that the students admitted by an autonomous college were to be subjected to full control of the autonomous college including the holding of examination, declaration of result and issuance of mark-sheet and it is only after the examinations are conducted by the autonomous college, the results so prepared were to be forwarded to the University for awarding degrees by the respondent-University as contemplated in Section 22 of the U.G.C. Act, 1956.

13. Sri Chandra submits that after the admissions had been made by the petitioner''s institution for the academic session 2011-2012 and the B.Ed. course had commenced on 1.7.2011, besides having passed the order dated 2.7.2011 impugned in writ petition No. 3969 (M/S) of 2011, the State Government without awaiting any decision in the said writ petition and as a sheer show of strength,

forcibly compelled the petitioner's institution to take admission of 300 more students sent through Counselling for academic session 2011-2012 for B.Ed. course. On resistance by the petitioner's institution, the District Administration compelled it to make admissions of 300 extra students sent through Counselling under threat of arrest and detention. However, the petitioner's institution wrote a letter to the Government as well as the respondent-University that the sanctioned strength of students as determined by the NCTC was already full and that the admissions being forced upon the petitioner was subject to ratification by the NCTE which the State Government and/or the respondent-University must duly obtain. In these backgrounds, all 600 students so admitted completed their course and after completion of the course, the petitioner's institution took examination of the 300 students admitted on its own under the autonomous scheme, whereas the respondent-University only issued admit cards to the 300 students forcibly sent through Counselling and conducted their examinations. After declaration of the results both by the respondent-University as well as the petitioner's institution, degrees were awarded to students from amongst the 300 sent through Counselling, whereas there was refusal to award degrees to students admitted by the petitioner on its own under its autonomy status.

14. Sri Prashant Chandra, learned Senior Counsel appearing on behalf of the petitioner, has submitted that in the case of PA. Inamdar (supra), it has been laid down in paragraph 137 that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefor subject to its being fair, transparent and non-exploitative. He has further submitted that no rules or guidelines have been framed by the University as to how the merit list is to be prepared. Thus, in the light of the decision of the Hon"ble Supreme Court in the cases of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , and PA. Inamdar (supra), the question of admission should have been left with the discretion of the affiliated institution. There should not be any interference in the matter of admission of unaided institution.

15. Placing reliance upon the judgments of the Apex Court in Bharati Vidyapeeth [Deemed University] and Others Vs. State of Maharashtra and Another, ; State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, ; Modern Dental College & Research Centre & others v. State of Madhya Pradesh & others passed in Civil Appeal No. 4060 of 2009; Vikram Sarabhai Educational Trust & B.Ed. College, Kaipamangalam v. University of Calicut & Anr., AIR 2008 Kerala 216; Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another, ; State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, , and the judgment of Hon"ble Punjab and Haryana High Court at Chandigarh in Association of Educational Colleges (Self Financing) of Haryana v. State of Haryana, passed on 21.11.2008 in CWP No. 17284 of 2008, Sri Prashant Chandra has vehemently contended that in stark violation of the aforesaid decisions, the State Government in the order dated

11.5.2013 has held the petitioner's institution to be guilty of having made admissions on its own, even without affording any opportunity of hearing to the petitioner's institution and without assigning any reason and even without appreciating and noticing the specific provisions contained in the UGC Act and the Regulations framed by the UGC.

16. Per contra, Sri Mohd. Mansoor, learned Chief Standing Counsel submits that NCTE has framed Regulations of 2007 laying down norms and standards which is called the National Council for Teachers Education (Recognition Norms and Procedure) Regulations, 2007. Regulation 9 of the said Regulations of 2007 provides norms and standards for various teacher education courses given in Appendix I to XII. Appendix 4 of the said Regulations of 2007 provides admission procedure. Admission procedure has been mentioned thus:

4.0 Intake, eligibility and admission procedure 3.3.1 Admission procedure Admission shall be made on merit on the basis of marks obtained in the qualifying examination and/or in the Entrance Examination or any other selection process as per the policy of the State Government/U.T. Administration and the University.

17. Sri Mansoor further submitted that even in UGC Regulations, 1997 there are provisions made for admission and fees structure etc. Clause 3 (c) of the UGC Regulations, 1997 mentions that Competent Authority means University Grants Commission, Central Government, State Government or a University or any other authority as may be designated by the Commission to determine the fees or scales of fees payable by students and the allotment of students for admission to various professional institutions. Thus, the condition of affiliation is in consonance with UGC Regulations, 1997. Clause 4(11)(iii) of the University Grants Commission (Regulation of Admission and Fees of Private Non-aided Professional Institution) Regulations, 1997 provides that the Management of professional institution shall not be entitled to impose any additional eligibility criteria or condition for admission either in free seats or payment seats. The procedure cannot be said to unfair and impermissible in any manner whatsoever.

18. On drawing attention of this Court towards the Uttar Pradesh Private Professional Educational Institution (Regulation of Admission and Fixation of Fee) Act, 2006, Sri Mansoor submits that an unaided professional educational institution can admit the students against general category seats on the basis of the Common Entrance Test, in such manner as may be prescribed by the State Government and as regards the admission on the seats reserved under management category, in such manner, as may be prescribed by the State Government, through a notified order. But in the instant case, the petitioner's institution has admitted the students on its own without following the provisions as enumerated in Uttar Pradesh Private Professional Educational Institution (Regulation of Admission and Fixation of Fee) Act, 2006. Therefore, the admissions made by the petitioner's institution is illegal and cannot be said to be valid admission.

19. Sri Anurag Verma, learned Counsel appearing on behalf of the University, has submitted that condition imposed by the University for affiliation is binding and enforceable and cannot be said to be arbitrary and violative of Article 14 of the Constitution of India. There can be common entrance test or single window system as is contemplated by NCTE, U.G.C. as well as by the University. However, neither the State Government nor any of the aforesaid other bodies including U.G.C. has framed any guidelines which deviate the autonomous institutions from the aforesaid system of admission. Hence/no case for interference is made out.

20. I have heard learned Counsel for the parties and perused the records.

21. The crux of the submissions of Counsel for both the parties is whether the students are to be admitted from the list prepared on the basis of merit through Common Entrance Test (CET) conducted by the State or any authorized University or, the Entrance Test conducted by the respective individual institution such as petitioner itself and in order to substantiate the aforesaid submissions, Counsel for both the parties have placed reliance on PA. Inamdar (*supra*) but on different paras of the judgment.

22. In order to resolve the controversy to its logical end, I think it appropriate to deal first the question as to who is competent to award a degree as per the statute.

23. Section 3 of the UGC Act provides that on such a declaration being made by the Central Government for conferring the status of a deemed University, all the provisions of the UGC Act shall apply to such an Institution as if it were a University or private aided/unaided institution. Section 22 of the UGC Act deals with the right of the University or an Institution deemed to be a University to confer degrees and is reproduced below:

Section 22.--Right to confer degrees.--(1) The right of conferring or granting degree shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University u/s 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this Section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.

24. The Supreme Court in Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, , examined the provisions of the UGC Act and the purpose for which the Act was enacted and observed that it was the responsibility of the Parliament to ensure that proper standards and uniformity are maintained in Institutions for Higher Education or Research throughout the country and after noticing the

Statement of Objects and Reasons of the UGC Act, pointed out that in view of Section 22 of the Act, the right to confer or grant a degree can be exercised only by a University or an Institution deemed to be a University u/s 3 of the Act. The Supreme Court also pointed out that in view of the provisions of sub-section (3) of Section 22 of the UGC Act, the degrees that are awarded by the University or an Institution deemed to be a University should have been specified in the notifications issued by the University Grants Commission. The importance of degrees awarded by a University or an Institution deemed to be a University was also pointed out by the Supreme Court. The observations of the Supreme Court are:

33. The consistent and settled view of this Court, therefore, is that in spite of incorporation of universities as a legislative head being in the State List, the whole gamut of the university which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State Legislature on account of a specific entry on coordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which the Parliament alone is competent. It is the responsibility of the Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained.

34. In order to achieve the aforesaid purpose, Parliament has enacted the University Grants Commission Act. First para of the Statement of Objects and Reasons of the University Grants Commission Act, 1956 (for short "the UGC Act") is illustrative and consequently it is being reproduced below:

The Constitution of India vests Parliament with exclusive authority in regard to "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions". It is obvious that neither coordination nor determination of standards is possible unless the Central Government has some voice in the determination of standards of teaching and examination in universities, both old and new. It is also necessary to ensure that the available resources are utilised to the best possible effect. The problem has become more acute recently on account of the tendency to multiply universities. The need for a properly constituted Commission for determining and allocating to universities funds made available by the Central Government has also become more urgent on this account.

35. In the second para it is said that the Commission will also have the power to recommend to any University the measures necessary for the reform and improvement of university education and to advise the university concerned upon the action to be taken for the purpose of implementing such recommendation. The Commission will act as an expert body to advise the Central Government on problems connected with the coordination of facilities and maintenance of standards in universities.

36. The preamble of the UGC Act says - an Act to make provision for the coordination and determination of standards in universities and for that purpose to establish a University Grants Commission. Section 2(f) of this Act defines a university and it means a university established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the university concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act. Clause 12 provides that it shall be the general duty of the Commission to take, in consultation with the universities or other bodies concerned, all such steps as it may think fit for the promotion and coordination of university education and determination and maintenance of standards of teaching, examination and research in universities, and for the purpose of its functions under the Act, the Commission may do all such acts enumerated in subsections (a) to (j) thereof. Sections 22 and 23 are important and are being reproduced below:

22. Right to confer degrees.--(1) The right of conferring or granting degree shall be exercised only by a university established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a university u/s 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant any degree.

(3) For the purposes of this Section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.

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

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

37. It is important to note that in view of Section 22 of UGC Act, the right of conferring or granting degree can be exercised only by university or an institution deemed to be university u/s 3 of the aforesaid Act or institution especially empowered by an Act of Parliament to confer or grant degrees. What is a "degree" and what it connotes is not given in the UGC Act but the meaning of the word as given in dictionaries and standard books is as under:

Webster's Third New International Dictionary:

1. a title conferred upon students by a college, university, or professional school

upon completion of a unified programme of study carrying a specified minimum of credits, passing of certain examinations, and often completion of a thesis or other independent research project.

2. a grade or class of membership attained in a ritualistic order or society denoting a stage of proficiency often after a set ordeal or examination.

Wharton's Law Lexicon : "the state of a person, as to be a barrister-at-law, or to be a Bachelor or Master of Arts of a University."

Chambers's Twentieth Century Dictionary:

a mark of distinction conferred by universities, whether earned by examination or granted as a mark of honour.

P. Ramanatha Aiyar Law Lexicon (2nd Edn): "a mark of distinction conferred upon a student for proficiency in some art or science; university diploma of specified proficiency.

Encyclopedia Americana "Degree" the title conferred by a college or university, signifying that a certain step or grade has been attained in an area of learning. The award of a diploma conferring the bachelor's degree marks completion of undergraduate study. The master's and doctor's degrees reward graduate study. Other degrees constitute evidence of preparation for professional work-the MD (doctor of medicine) for example.

In the 20th century, however, the MA is granted in American universities and in those of England and the Commonwealth of Nations (apart from Oxford and Cambridge) on the basis of study beyond the BA and the presentation (usually) of a thesis. An exception is Scotland, where the MA has been the first degree conferred in all six universities ever since their founding. The bachelor of philosophy and bachelor of letters degrees are given for work beyond the MA.

The New Encyclopedia Britannica "Degree"-in education, any of several titles conferred by colleges and universities to indicate the extent of academic achievement. The hierarchy of degrees, dating from the 13th century, once resembled the medieval guild system. In the United States and Great Britain, the modern gradation of academic degrees is usually bachelor (or baccalaureate), master, and doctor. With some exceptions, intermediate degrees, such as those of bachelor and master, have been abandoned in the universities of continental Europe.

38. A degree conferred by a university is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. In the case of a doctorate degree, it certifies that the holder of the degree has attained a high level of knowledge and study in the concerned subject by doing some original research work. A university degree confers a kind of a status upon a person like a graduate or a postgraduate. Those who have done research work

and have obtained a PhD, DLitt., or DSc degree become entitled to write the word "Doctor" before their name and command certain amount of respect in society as educated and knowledgeable persons. That apart the principal advantage of holding a university degree is in the matter of employment, where a minimum qualification like a graduate, postgraduate or a professional degree from a recognized institute is prescribed. Even for those who do not want to take up a job and want to remain in private profession like a doctor or lawyer, registration with Medical Council or Bar Council is necessary for which purpose a degree in medicine or law, as the case may be, from an institution recognized by the said bodies is essential. An academic degree is, therefore, of great significance and value for the holder thereof and goes a long way in shaping his future. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies.

39. Mere conferment of degree is not enough. What is necessary is that the degree should be recognized. It is for this purpose that the right to confer degree has been given u/s 22 of UGC Act only to a university established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a University u/s 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this Section provides that "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette. The value and importance of such degrees which are recognized by Government was pointed out by a Constitution Bench in *S. Azeez Basha and Another Vs. Union of India (UOI)*, .

....

...

63. There is hardly any merit in the submission raised. The impugned Act which enables only a proposal of a sponsoring body to be notified as a university is not likely to attract private capital and a university so notified cannot provide education of any kind much less of good quality to a large body of students. What is necessary is actual establishment of institutions having all the infrastructural facilities and qualified teachers to teach there. Only such colleges or institutions which impart quality education allure the best students. Until such institutions are established which provide high level of teaching and other facilities like well equipped libraries and laboratories and a good academic atmosphere, good students would not be attracted. In the current scenario, students are prepared to go to any corner of the country for getting good education. What is necessary is a large number of good colleges and institutions and not universities without any teaching facility but having the authority to confer degrees. If good institutions are established for providing higher education, they can be conferred the status of a deemed university by the Central Government in accordance with Section 3 of UGC Act or they can be

affiliated to the already existing universities. The impugned Act has neither achieved nor is capable of achieving the object sought to be projected by the learned Counsel as it enables a proposal alone being notified as a university.

(emphasis supplied)

25. It is, therefore, clear that the right of conferring or granting degree can only be exercised by a University or an Institution deemed to be a University and only such degrees can be conferred or granted which have been specified by the University Grants Commission in the notifications issued in the Official Gazette.

26. The NCTE Act provides for the establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development for the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith.

27. The various courses or training in teacher education specified in the Regulations framed under the NCTE Act are:--

- (i) Diploma in Early Childhood Education (D.E.CEd.)
- (ii) Diploma in Elementary Education (D.El.Ed.)
- (iii) Bachelor of Elementary Education (B.El.Ed.) degree.
- (iv) Bachelor of Education (B.Ed.) degree.
- (v) Master of Education (M.Ed.) degree.
- (vi) Diploma in Physical Education (D.P.Ed.)
- (vii) Bachelor of Physical Education (B.P.Ed.) degree.
- (viii) Master of Physical Education (M.P.Ed.) degree.
- (ix) Diploma in Elementary Education (D.El.Ed.) through Open and Distance Learning System.
- (x) Bachelor of Education (B.Ed.) degree through Open and Distance Learning System.
- (xi) Master of Education (M.Ed.) degree through Open and Distance Learning System.
- (xii) Diploma in Arts Education (Visual Arts).
- (xiii) Diploma in Arts Education (Performing Arts).

28. In the present case, the petitioner's Institution was conducting the B.Ed. programme which aims at preparing teachers. The elementary teacher education programme carries different nomenclatures. The provisions of the NCTE Act relevant for the purposes of determining the controversy need to be reproduced.

29. Section 2(d), (e), (i), (l), (m) and (n) of the NCTE Act are as follows:

Section 2(d). "examining body" means a University, agency or authority to which an institution is affiliated for conducting examinations in teacher education qualifications;

(e) "institution" means an institution, which offers courses or training in teacher education;

...

(i) "recognised institution" means an institution recognised by the Council u/s 14;

...

(l) "teacher education" means programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools, and includes non-formal education, part-time education, adult education and correspondence education;

(m) "teacher education qualification" means a degree, diploma or certificate in teacher education awarded by a University or examining body in accordance with the provisions of this Act;

(n) "University" means a University defined under clause (f) of Section 2 of the University Grants Commission Act, 1956, and includes an institution deemed to be a University u/s 3 of that Act (3 of 1956);

30. Sections 14, 15 and 16 of the NCTE Act are as follows:

Section 14-Recognition of Institutions Offering Course or Training in Teacher Education.--(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

(2) The fee to be paid alongwith the application under sub-section (1) shall be such as may be prescribed.

(3) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall,-

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfills such other

conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) if it is of the opinion that such institution does not fulfill the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reason to be recorded in writing:

Provided that before passing an order under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3).

(6) Every examining body shall, on receipt of the order under subsection (4),-

(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation of the institution, where recognition has been refused.

15. Permission for a new course or training by recognised institution.--(1) Where any recognised institution intends to start any new course or training in teacher education, it may make an application to seek permission therefor to the Regional Committee concerned in such form and in such manner as may be determined by regulations.

(2) The fees to be paid alongwith the application under sub-section (1) shall be such as may be prescribed.

(3) On receipt of an application from an institution under sub-section (1), and after obtaining from the recognised institution such other particulars as may be considered necessary, the Regional Committee shall,-

(a) if it is satisfied that such recognised institution has adequate financial resources, accommodation, library, qualified staff, laboratory, and that it fulfills such other conditions required for proper conduct of the new course or training in teacher education, as may be determined by regulations, pass an order granting permission, subject to such conditions as may be determined by regulation; or

(b) if it is of the opinion that such institution does not fulfill the requirements laid down in sub-clause (a), pass an order refusing permission to such institution, for

reasons to be recorded in writing:

Provided that before passing an order refusing permission under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the institution concerned for making a written representation.

(4) Every order granting or refusing permission to a recognised institution for a new course or training in teacher education under sub-section (3), shall be published in the Official Gazette and communicated in writing for appropriate action to such recognised institution and to the concerned examining body, the local authority, the State Government and the Central Government.

16. Affiliating body to grant affiliation after recognition or permission by the Council.--Notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed day,-

(a) grant affiliation, whether provisional or otherwise, to any institution; or

(b) hold examination, whether provisional or otherwise, for a course or training conducted by a recognised institution, unless the institution concerned has obtained recognition from the Regional Committee concerned, u/s 14 or permission for a course or training u/s 15.

31. In exercise of the powers conferred u/s 32(2) of the NCTE Act, the NCTE framed the 2007 Regulations and Regulations 4 and 8 are as follows:

4. Eligibility.--The following categories of institutions are eligible for consideration of their applications under these Regulations:

(1) Institutions established by or under the authority of the Central/State Government/UT administration;

(2) Institutions financed by the Central/State Government/UT administration;

(3) All universities, including institutions deemed to be universities, so recognised under the UGC Act, 1956.

(4) Self-financed educational institutions established and operated by "not for profit", societies and trusts registered under the appropriate law.

...

8. Conditions for grant of recognition.--(1) An institution must fulfill all the prescribed conditions related to norms and standards as prescribed by NCTE for conducting the course or training in teacher education. These norms, inter alia, cover conditions relating to financial resources, accommodation, library, laboratory, other physical infrastructure, qualified staff including teaching and non-teaching personnel, etc.

2.11.

(12) The University or Examining Body shall grant affiliation only after issue of

the formal recognition order under sub-regulation (11) of Regulation 7 of these Regulations. Further, admissions by the institution shall be made only after affiliation by the University or Affiliating body and as per the State policy.

32. It is relevant to mention here that the UGC Act, 1956, is enacted under the provisions of Entry 66 of List I of the Seventh Schedule to the Constitution. It entitles Parliament to legislate in respect of "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

33. The short title of the UGC Act repeats the words of Entry 66 thus:

An Act to make provision for the coordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission.

34. Section 2 of the UGC Act is the definition Section and clause (f) thereof defines a University to mean-

a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act.

35. Section 12 sets out the functions of UGC. It says, so far as is relevant for our purposes:

It shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and coordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may-

xxx

(d) recommend to any University the measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation; x x x

(j) perform such other functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions.

36. Section 12A enables the UGC to regulate fees and it prohibits donations in certain cases. Sub-section (i) of Section 12A sets out certain definitions expressly for the purpose of Section 12A. Clause (d) thereof defines qualification to mean "a degree or any other qualification awarded by a University". Section 14 lays down the consequences of failure of universities to comply with the recommendations of the Commission.

37. Section 20 of the UGC Act reads as under;

(1) In the discharge of its functions under this Act, the Commission shall be guided by such directions on questions of policy relating to national purposes as may be given to it by the Central Government,

(2) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

38. Section 25 empowers the Central Government to make rules for the carrying out of the purposes of the UGC Act. Section 26 entitles the UGC, by notification in the Official Gazette, to make regulations consistent with the Act and the rules made thereunder.

39. From the above, it is seen that the Central Government enacted the UGC Act, 1956, to coordinate the standards of higher education, which include the power to evaluate, harmonise and secure proper relationship to any project of national importance. Such coordinate action in higher education with proper standards was of paramount importance to national progress. The power of the UGC to coordinate and of necessity, implied therein is the power to prevent what would make such coordination impossible or difficult. This power of UGC is wide and absolute and in absence of any compelling reasons, it has to be given full effect according to its plain and expressed intention. The State has no power at all with regard to such matters.

40. The U.P. State Universities Act was enacted by the State Assembly with a view to toning up the academic and financial administration of higher education in the State of U.P. the prefatory note appended with the Act. The relevant portion is reproduced as under:

Prefatory Note--Reasons for the Enactment.--With a view to toning up the academic and financial administration of higher education in State of U.P. a comprehensive Bill applicable to all the State Universities (except the Roorkee University and Govind Ballabh Pant Agricultural University), was prepared in the light of the recommendations made by various commissions and Committees appointed by the Government of India and the State Government and also the views of the Vice-Chancellors and other educationists.

2. The bill, inter alia, provides for the reorganisation of the Court, the executive council, the Academic Council, the Finance Committee and the Selection Committees for the appointment of teachers in the Universities with a view to making them more effective and compact bodies. It also provides for the constitution of Examination and Admission Committees. The Bill also provides for the appointment of Pro-Vice-Chancellors in certain Universities and a whole-time Finance Officer in place of Honorary Treasurer in all Universities.

41. Petitioner's Colleges have been affiliated with Dr. B.R. Ambedkar University, Agra. Accordingly, they falls within the supervisory control of the Universities so

far as maintenance of standard of education is concerned which includes the admission of students in the College.

42. u/s 13 of the Uttar Pradesh State Universities Act 1973 (in short referred as an "Act, 1973"), the Vice-Chancellor of University has got general power to supervise and control over the affairs of the University including the constituent colleges and the institutes maintained by the University and its affiliated and associated Colleges. For convenience, Subsections (1), (2) and (9) of Section 13 of the Uttar Pradesh State Universities Act, 1973 is reproduced as under:

13. Powers and duties of the Vice-Chancellor.--(1) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall--

(a) exercise general supervision and control over the affairs of the University including the constituent Colleges and the Institutes maintained by the University and its affiliated and associated colleges;

(b) given effect to the decisions of the authorities of the University;

(c) in the absence of the Chancellor, preside at meetings of the Court and at any convocation of the University;

(d) be responsible for the maintenance of discipline in the University;

(e) be responsible for holding and conducting the University examinations properly and at due times and for ensuring that the results of such examinations are published expeditiously and that the academic session of the University starts and ends on proper dates.

(2) He shall be an ex officio member and Chairman of the Executive Council, Academic Council, and the Finance Committee.

(9) The Vice-Chancellor shall exercise such other powers as may be laid down by the Statutes and the Ordinances.

43. u/s 21 of the Act, Executive Council of the University has got power to regulate and determine all other matters concerning the University as well as Institutes, constituent, affiliated and associated Colleges in accordance with this Act, the Statutes and the Ordinance. For convenience, Section 21 of the Uttar Pradesh State Universities Act, 1973 is reproduced as under:

(xvii) to regulate and determine all other matters concerning the University as well as institutes, constituent, affiliated and associated Colleges in accordance with this Act; the Statutes and the Ordinance.

44. u/s 37 of the Act, it has been provided that the Executive Council of the University shall cause every affiliated College to be inspected from time to time at intervals not exceeding five years. Various provisions contained in the U.P. State Universities Act reflects that all the affiliated or constituent Colleges shall function under the supervisory control of the University and in accordance to the orders passed by the State Government.

45. Section 45 of the Universities Act provides that the minimum qualification on the basis of which student can be admitted for higher education. It also empowers the University to provide further qualification, curriculum through its Ordinance. For convenience, Section 45 of the Universities Act is reproduced as under:

45. Admission of Students.--(1) No student shall be eligible for admission to the course of study for a degree unless--

(a) he has passed--

(i) the Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh, or of any University or Board incorporated by any law for the time being in force; or

(ii) any examination, or any degree conferred by any other University being an examination or degree recognised by the University equivalent to the Intermediate Examination or to a degree of the University; and

(b) he possesses such qualifications, if any, as may be specified in the Ordinances:

Provided that the University may prescribe by Ordinances any lower qualifications for admission to a degree.

(2) The conditions under which students may be admitted to the diploma courses of the University shall be prescribed by the Ordinances.

(3) The University shall have the power to recognise (for the purposes of admission to a course of study for a degree), as equivalent to its own degree, any degree conferred by any other University or, as equivalent to the Intermediate Examination of any Indian University, any examination conducted by any other authority.

(4) Any student whose work or conduct is unsatisfactory may be removed from the University or an Institute or a constituent College or an affiliated or associated College in accordance with the provisions of the Ordinances.

46. Section 28 of the U.P. State Universities Act, 1973 governs the procedure for admission to various courses. Under Sub-section (3) of Section 28, the Academic Council can lay down the procedures for admission of students in the University as well as institute or a constituent college as well as affiliated or associated Colleges.

47. Clause (a) of Sub-section (5) of Section 28 deals with the provision for regulation of admissions. For convenience, Section 28 of the U.P. State Universities Act, 1973 is reproduced as under:

28. Admission Committee.--(1) There shall be an Admission Committee of the University, the constitution of which shall be such as may be provided for in the Ordinances,

(2) The Admission Committee shall have the power to appoint such number of sub-Committee as it thinks fit.

(3) Subject to the superintendence of the Academic Council and to the provisions of Sub-section (5), the Admission Committee shall lay down the principles or norms governing the policy of admission to various courses of studies in the University and may also nominate a person or a sub-Committee as the admitting authority in respect of any course of study in an Institute or a constituent College maintained by the University.

(4) Subject to the provisions of Sub-section (5), the Committee may issue any direction as respects criteria or methods of admissions (including the number of students to be admitted) to constituent Colleges maintained by the State Government and affiliated or associated Colleges, and such directions shall be binding on such colleges.

(5) Notwithstanding anything contained in any other provision of this Act--

(a) reservation of seats of admission in any course of study in University, Institute, constituent College, affiliated College or associated College for the students belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens may be made and regulated by such orders as the State Government may, by notification, make in that behalf:

Provided that reservation under this clause shall not exceed fifty per cent of the total number of seats in any course of study:

Provided further that reservation under this clause shall not apply in the case of an institution established and administered by minorities referred in Clause (1) of Article 30 of the Constitution:

Provided also that the reservation under this clause shall not apply the category of Other Backward Classes of citizen specified in Schedule II to the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994-

(b) admission to the medical and engineering colleges and to course of instruction for degrees in education and Ayurvedic or Unani systems of medicine (including the number of students to be admitted) shall subject to Clause (a), be regulated by such orders) which if necessary may be with retrospective effect, but not effective prior to 1.1.1979) as the State Government may, by notification, make in that behalf:

Provided that no order regulating admission under this clause shall be inconsistent with the rights of minorities in the matter of establishing and administering educational institutions of their choice;

(c) in making an order under Clause (a), the State Government may direct that any person who willfully acted in a manner intended to contravene, or defeat the purposes of the order shall be punishable with imprisonment for a term not

exceeding three months or with the fine not exceeding one thousand rupees, or with both, as may be specified in the order.

(5-A) Every order made under Clause (a) of Sub-section (5) shall be laid, as soon as may be, before both. Houses of the State Legislature and the provisions of Sub-section (1) of Section 23A of the Uttar Pradesh General Clauses Act, 1904 shall apply as they apply in respect of rules made by the State Government under any Uttar Pradesh Act.

(6) No student admitted to any College in contravention of the provisions of this Section shall be permitted to take up any examination conducted by the University and the Vice-Chancellor shall have the power to cancel any admission made in such contravention.

48. u/s 49 of the Act various items have been given for which statute can be made. u/s 50 the procedure for making of statute has been provided. It provides that the first statute shall be made by the State Government by notification in official Gazette. Sections 51 and 52 of the Act provides for issuance of ordinance to regulate the various matters enumerated therein which includes admission of students. Section 53 provides the creation of regulations.

For convenience Section 50 is reproduced as under:

Statutes how made.--The first statutes of the University shall be made; by the State Government by notification in the Gazette and in the case of any existing University, for so long as the First Statutes are not so made, the statutes as in force immediately before the commencement of this Act, insofar as they are not inconsistent with the provision of this Act, shall, subject to such adaptations and modifications whether by way of repeal, amendment or addition as may be necessary or expedient, as the State Government may, by modification shall not be called in question.

(1-A) The State Government may, by notification in the Gazette amend whether by way of addition, substitution or omission, the First Statutes at any time up to 31.12.1990 and any such amendment may be retrospective to a date not earlier than the date of such commencement.

(1-B) Until the First Statutes of the Purvanchal University are made under this Section, the statutes of the University of Gorakhpur, as in force immediately before the establishment of the said University shall apply to it subject to such adaptations and modifications as the State Government may, by notification provide.

(2) The Executive Council may, at any time after 31.12.1990 make new or additional statutes or may amend or repeal the statutes referred to in Sub-section (1) or Sub-section (1A).

(3) The Executive Council shall not propose the draft to any statute affecting the status, power or constitution of any authority of the University until such

authority has been given an opportunity of expressing its opinion upon the proposal and any opinion so expressed shall be in writing and shall be submitted to the Chancellor.

(4) Every new Statute or addition to a Statute or any amendment or repeal of Statute shall be submitted to the Chancellor who may assent to it or withhold his assent therefrom or remit it to the Executive Council for further consideration.

(5) A statute passed by the Executive Council shall have effect from the date it is assented to by the Chancellor or from such later date as may be specified by him.

(6) Notwithstanding anything contained in the foregoing subsection the State Government, may in order to implement any decision taken by it in the interest of learning, teaching or research or for the benefit of teachers, student or other staff or on the basis of any suggestion or recommendation of the University Grants Commission or the State or National Education Policy with regard to the qualifications of the teachers, require the Executive Council to make new or additional statutes or amend or repeal the statutes referred to in Sub-section (1) or Sub-section (1-A) within a specified time and if the Executive Council fails to comply with such requirement the State Government may, with the assent of the Chancellor. Make new or additional statutes or amend or repeal the statutes referred to in Sub-section (1) or Sub-section (1-A).

(7) The Executive Council shall have no power to amend or repeal the statutes made by the State Government under subsection (6) or to make new or additional statute inconsistent with such statutes.

The degree Colleges are regulated in pursuance to provision contained in Chapter 11 of the Act.

49. A perusal of Chapter 11 shows mat Government possess effective power to control or to check the malpractices if any Committee of Management does not discharge its duty properly and for the purpose regulations can be framed. State Government has got right to issue notices u/s 57 of the Act to the Committee of Management or appoint authorised controller u/s 58. However, Section 58 does not apply to minority Colleges.

Section 57 is reproduced as under:

57. Power of the State Government to issue notice.--If the State Government receives information in respect of any affiliated or associated college (other than a College maintained exclusively by the State Government or a local authority),

(i) that its Management has persistently committed wilful default in paying the salary of the teachers or other employees of the college by the twentieth day of the month next following the month in respect of which or any part of which it is payable; or

(ii) that its Management had failed to appoint teaching staff possessing such qualifications as are necessary for the purpose of ensuring the maintenance of

academic standards in relation to the College or has appointed or retained in service any teacher in contravention of the Statute or Ordinances [or has failed to comply with the orders of the Director of Education (Higher Education) made on the basis of the recommendation of the Uttar Pradesh Higher Education Services Commission under the Uttar Pradesh Higher Education Services Commissions Act, 1980]; or

(iii) that any dispute with respect to the right claimed by different persons to be lawful office-bearers of its Management has affected the smooth and orderly administration of the College; or

(iv) that its Management has persistently failed to provide the College with such adequate and proper accommodation, library, furniture, stationery, laboratory, equipment, and other facilities, as are necessary for efficient administration of the College; or

(v) that its Management has substantially diverted, misapplied or misappropriate the property of the college to the detriment of the College;

It may call upon the Management to show cause why an order u/s 58 should not be made:

Provided that where it is in dispute as to who are the office-bearers of the Management, such notice shall be issued to all persons claiming to be so.

50. Under Chapter 11-A of the UP. State Universities Act various measures have been provided for payment of salary to aided Colleges coupled with power of inspection by the Deputy Director. A complete reading of the U.P. State Universities Act shows that for various purpose provided by the Act the Government/Universities have got power to regulate the functioning of affiliated, associated and other Colleges.

51. The definition of "examining body" in Section 2(d) of the NCTE Act also needs to be examined. It uses the words "University", "agency" or "authority" to which an Institution is affiliated. As noticed hereinabove, there are a number of courses or training in teacher education. Some of the degrees can be awarded by the University as they have been prescribed by the University Grants Commission. In such cases the University will be the examining body and in other cases it will be the "agency or authority" and this is the reason that for the B.Ed. Course, the Examination Regulatory Authority is the "examining body". Under the provisions of the NCTE and Regulations as well as the Circulars issued from time to time, it is clearly laid down that such affiliation by the examining body has to be in accordance with the norms and guidelines framed in this regard and, therefore, the Examination Regulatory Body will have the authority to scrutinise the individual status of every applicant.

52. In view of the aforesaid provisions of the UGC Act, the NCTE Act, the Regulations framed therein and the conditions attached by the University Grants Commission while conferring the status of a University and the conditions

attached by the Regional Committee of NCTE while granting permission to start B.Ed. Course and also the provisions of State Universities Act, it will be evident that the institutions, who have been granted recognition or affiliation for a particular course, should follow the same and as such, the Hon''ble Supreme Court, while considering the aforesaid provisions, have directed to hold common entrance test. Therefore, contention of learned Senior Counsel appearing on behalf of the petitioner that institution of the petitioner, who has been granted autonomous status, can admit the students on its own by taking fair and transparent competitive examination and to allow such students to pursue the respective course and to appear in the examination, result of which will be declared by such institute and the University is only to award degree to such students, cannot sustainable. Moreso, from the perusal of the above clause, it is clear that admission shall be made in accordance with the reserved policy of the State Government but it does not lay down any manner under which the admissions are to be made by the autonomous colleges such as petitioner''s institution. Thus, the aforesaid submission of the petitioner''s Counsel is not consonance with the aforesaid guidelines framed by the University Grants Commission.

In the aforesaid context, it would be useful to discuss the law laid down by the Hon''ble Supreme Court in P.A. Inamdar''s case and its effect on the present facts and circumstances of the case.

53. The Hon''ble Supreme Court in the case of P.A. Inamdar (supra) has laid down that there can be common entrance test and single-window system and no unaided institution can claim unfettered right to give admission in the manner it so desires. There is no such fundamental right available to it. The Apex Court in P.A. Inamdar''s case (supra) has laid down thus:

136. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on the same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting the common entrance test ("CET" for short) must be one enjoying utmost credibility and expertise in the matter.

This would better ensure the fulfilment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralised Counselling or, in other words, single-window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen.

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

54. The learned Senior Counsel has relied upon paragraph 137 of the decision of P.A. Inamdar (supra) quoted above. The Apex Court has considered it and law has been laid down as what has been observed in paragraph 136. The question before me is whether right of the institutions of granting admission is being unfairly dealt with by the aforesaid riders by way of condition of affiliation of the institution. The Apex Court has clearly laid down in paragraph 136 of the decision of P.A. Inamdar (supra) that holding of common entrance test followed by centralised Counselling or single-window system does not cause any violation to the right of minority unaided educational institutions to admit students of their choice. Such rights can be exercised from out of the list of successful candidates appeared in CET without altering the order of merit inter se of the students so chosen. Thus, there can be a single-window system or common entrance test.

55. It is pertinent to mention at this juncture that it is the duty of the regulating authority to see that quality of the students at the stage of admission is thoroughly examined and only deserving and suitable students are given admission in professional courses. The selection of the students for admission to the professional courses. In Dr Preeti Srivastava and Another Vs. State of M.P. and Others, , the Apex Court observed that norms of admission will have a direct respect on the students of education. The standard of education in any institution

or college would depend upon several factors and the caliber of the students to be admitted to the institutions would also be one of the relevant factors. Therefore, the State/University has the right to control education including professional courses.

56. In my considered opinion, single-window system is created by the University and admissions are given on the basis of merit of the students though they are coming from different streams preparation of merit list in the course of B.Ed. cannot be said to be suffering from any arbitrariness or illegalities. Had there been different streams in the course of B.Ed. for Science and Arts students, argument would have been justified; but there is no such different stream in the course of B.Ed. as same is common for all. I find no illegalities in the common merit list on the basis of marks obtained in the qualifying examination and is fair enough criteria so as to give admission. Even otherwise criteria imposed by the University as per condition of affiliation is binding and cannot be said to be suffering with vice of arbitrariness.

57. Thus, in para 137 of the judgment in P.A. Inamdar quoted above, the Apex Court has taken the view that all institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the triple tests of the admission procedure being fair, transparent and non-exploitative.

58. Keeping in mind the aforesaid law laid down by the Apex Court in T.M.A. Pai Foundation and P.A. Inamdar, I may now examine the admission procedure adopted by the College for admitting the students to the B.Ed. seats for the academic year 2011-2012. The College has admitted 300 students from the list of candidates selected by its own, whereas the University had conducted Common Entrance Test, in which, 300 successful candidates were recommended for admission in the petitioner's institution, pursuant to which, 300 candidates sent by the University through Counselling had been admitted by the petitioner's institution under protest and subsequently, the petitioner's institution had also permitted 300 students to pursue education of B.Ed. course, whose admission has been taken by the petitioner's institution on its own.

59. In view of the law laid down by the Apex Court in P.A. Inamdar's case, I have no hesitation to hold that the admission procedure adopted by the petitioner's institution was not in consonance with the provisions of enactments and the law laid down by the Apex Court in P.A. Inamdar's case in the absence of any other mode of prescribed admission either by U.G.C., State Government or the University, which granted affiliation and as such, it is not open for the petitioner's institution to admit students of its choice. Therefore, I find no room to interfere With the impugned orders dated 17.6.2011 and 2.7.2011 contained in Annexure Nos. 1 and 2 to the writ petition No. 3969 of 2011 (M/S).

60. Even otherwise, in the State of Uttar Pradesh, by U.P. Act No. 24 of 2006, the State Government enacted The Uttar Pradesh Private Professional Educational

Institution (Regulation of Admission and Fixation of Fee) Act, 2006 on 10.7.2006. This Act is applicable to the private aided or unaided professional educational institutions, excluding minority institutions Rule 3 of the Act, 2006 deals with definition. Rule 3 (e) provides that General category" means and implies seats from out of the sanctioned intake of a professional educational institution, not being seats in the management category Section 6 of Act, 2006 deals with allocation of seats, which provides that the State Government may, by notified order, reserve seats out of sanctioned intake, in an unaided professional educational private institution, other than minority institution, under management category; and not with standing anything to the contrary contained in any other law for the time being in force, there shall be no reservation for scheduled castes, Scheduled Tribes and other backward Classes of citizens in the seats reserved for management category. Rule 7 of the Act, 2006 deals with manner of Admission, which provides that an unaided professional educational institution shall make admission to a seat under the general category, on the basis of the Common Entrance Test, in such manner as may be prescribed by the State Government, and may make admission to a seat reserved under management category, in such manner, as may be prescribed by the State Government, through a notified order. Section 9 deals with admission, which provides that every admission to an aided or unaided educational institution shall be made in accordance with the provisions of this Act or the rules made there under and every admission made in contravention thereof shall be void; and the State Government or the Committee if satisfied that an aided or unaided professional educational institution has taken admission in violation of any provision of the Act or the rules or an order of the State Government issued in this behalf, it may recommend to the appropriate statutory body for the withdrawal of the affiliation or recognition of such institution.

61. From perusal of the aforesaid Rules of the Act, 2006 as well as the provisions of U.P. State Universities Act, 1973, reproduced hereinabove it is crystal clear that students, who have been admitted by the petitioner's institution on its own, are void as neither in the State Universities Act, 1973 nor in any statute or in any other law, it has been held that students, who have been admitted in violation of the provisions of Rules as well as law laid down in P.A. Inamdar's case, the State Government may direct the University to declare the result of such students, as such, Government Order dated 11.5.2013, directing the University to declare the result, is beyond jurisdiction. Further, the XI plan guidelines issued by the University Grants Commission, though, deals with autonomy to the Institution but nowhere it has been provided that such institution will be free to adopt/ formulate their own procedure for admission contrary to the legislative enactment existing in the State.

62. As far as the writ of Mandamus sought by the petitioner's institution in writ petition No. 4253 (M/S) of 2013 to direct the University to comply the order dated 11.5.2013 passed by the State Government, whereby the State Government directed the University to award the degree of B.Ed. of the students

admitted by the institution for the academic session 2011-2012, is concerned, it is a settled norm that the writ of mandamus is an order of the High Court or the Supreme Court commanding a person or a body to do that which it is his, of its, duty to do. Usually, it is an order directing the performance of ministerial acts. A ministerial act is one which a person or body is obliged by law to perform under given circumstances. There are three essential conditions for the issue of a writ of mandamus. First, the applicant must show that he has a real and special interest in the subject-matter and a specific legal right to enforce. Secondly, he must show that there resides in him a legal right to the performance sought, and finally, that there is no other equally effective, convenient and beneficial remedy. As stated hereinabove, Government Order 11.5.2013 is without jurisdiction as the State Government has no right to issue the directions as mentioned in Government Order dated 11.5.2013 as per the provisions of U.P. State Universities Act, 1973. Therefore, I am not inclined to issue such Mandamus to the University, which has no legal sanctity.

63. It is also relevant to mention at this juncture that Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. Since the question raised by the petitioner's institution has already been considered and decided by the Hon'ble Supreme Court in the case of P.A. Inamdar (supra), therefore, the authority of the State has no option but to comply the direction given by the Hon'ble Supreme Court in P.A. Inamdar's case. Therefore, the order dated 11.5.2013 issued by the State Government, directing the University to declare the result of the students, who have been admitted by the petitioner's institution on its own on a special circumstances, is without jurisdiction and also against the dictum of P.A. Inamdar (supra).

64. As stated hereinabove, the admissions taken by the students in the petitioner's institution through the examination taken by the petitioner's institution on its own are illegal, therefore, writ petition No. 2697 of 2013 (M/B) preferred by such students have no merit and deserves to be dismissed.

65. For the reasons aforesaid, I am of the considered view that no interference under Article 226 of the Constitution of India is made out. All the writ petitions being devoid of merit, is hereby dismissed.

66. Before parting with the judgment, I would like to mention here that Section 7 of the The Uttar Pradesh Private Professional Educational Institution (Regulation of Admission and Fixation of Fee) Act, 2006 requires an Institution like the petitioner to make admissions through a Common Entrance Test to be conducted by the designated agency, in such manner as may be prescribed. Though the petitioner's institution was fully aware of the facts that requirement of Section 7 of the Act, 2006 is only for making admission through a Common Entrance Test to be conducted by the designated agency i.e. University but even then, petitioner's institution admitted 300 students for pursuing B.ED. Course on its own apart from 300 students sent by the University through Counselling.

Subsequently, those 300 students, who were pursuing the B.Ed. Course in the institute, were allowed to pursue the said course and when the State Government issued impugned Government Orders, then petitioner's challenged the same through writ petition No. 3969 of 2011 (M/B). The petitioner however turned turtle while approaching this Court.

67. The petitioner notwithstanding the same continued with the admission of the remaining 300 students and/or admitted them knowing fully well of the illegality thereof. The petitioner was obviously guided by commercial reasons. Therefore, the petitioner's institution has played with the career of the students. Thus, I think it appropriate to penalize the institution for spoiling the career of the 300 students. Accordingly, petitioner's institution is directed to refund the entire charges, which were charged by the institution from the students at the time of admission within a month. Liberty is also granted to the students for claiming damages from the Institution, if they so desire.