
(2013) 10 GUJ CK 0019
In the Gujarat High Court

Case No : Special Civil Application Nos. 14846 and 14860 of 2012

Dharmsinh Desai University

APPELLANT

Vs

Ashishkumar M. Patel and Others

RESPONDENT

Date of Decision : 15-10-2013

Acts Referred:

Citation : (2014) 1 GLR 273

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Final Decision : Allowed

Judgement

C.L. Soni, J.—The question raised in both the petitions is about the jurisdiction of the Gujarat Universities Services Tribunal ("the Tribunal" for short) to decide the dispute between the petitioner (University) and its employees (respondent No. 1 in both the petitions) in connection with their service conditions. The case of the petitioner-University is that since it does not fall within the definition of University as per Sec. 2(f) of the Gujarat Universities Services Tribunal Act, 1983 ("the Act" for short), the Tribunal lacks jurisdiction to entertain any dispute between the petitioner-University and its employees.

2. The facts relevant for the purpose of deciding the above issue are briefly stated as under:

2.1. The petitioner is the University established under the Dharmsinh Desai University Act, 2005 ("the University Act" for short).

2.2. The service of respondent No. 1 of both the petitions came to be terminated with notice pay of three months by communication dated 9-5-2012. It is the case of the petitioner that such was simple termination of their services.

2.3. Respondent No. 1 of Special Civil Application No. 14860 of 2012 challenged the said termination order by filing Special Civil Application No. 7377 of 2012 before this Court. Since the issue had arisen before this Court as to whether the

matter could be heard by this Court or by the Tribunal, this Court was of the opinion that the point about the jurisdiction be decided first by the Tribunal. The Tribunal was then required to decide such point of jurisdiction. This Court clarified that if it turned out that the Tribunal did not have jurisdiction, it would be open to respondent No. 1 to revive the petition. The petition was accordingly disposed of. The respondent No. 1 of Special Civil Application No. 14860 of 2012 then filed Application No. 5 of 2012 before the Tribunal. Respondent No. 1 of Special Civil Application No. 14846 of 2012 also filed Application No. 4 of 2012 before the Tribunal.

3. It appears that at the time of considering the question of interim relief in Application No. 5 of 2012, the Tribunal dealt with the question of its jurisdiction and reached to the conclusion that it has jurisdiction to decide the dispute as regards service conditions of the employees of all the universities established in the State of Gujarat under the State Legislation including the petitioner-University and decided to hear the main application No. 5 of 2012 finally.

4. It appears that the Application No. 4 of 2012 filed by the respondent No. 1 of Special Civil Application No. 14846 of 2012 was also taken up for hearing with Application No. 5 of 2012.

5. In both the applications, learned Advocates for the parties declared that they did not want to adduce oral evidence. However, learned Advocate appearing for the University again raised the point of jurisdiction. The Tribunal though expressed its displeasure against raising of such issue, but it still recorded that if it has no jurisdiction to decide the application and still decide the applications on merits, it would amount to illegal order, and therefore, it granted time to the petitioner-University to get the issue of jurisdiction decided by this Court. That is how now the petitioner-University has challenged the order dated 30/31-5-2012 whereby the Tribunal has held that it has jurisdiction to decide the dispute between the petitioner and its employees, and the subsequent order dated 24-9-2012 passed by the Tribunal.

6. I have heard the learned Advocates for the parties.

7. Learned Senior Advocate Mr. Dhaval C. Dave appearing with learned Advocate Mr. P.A. Jadeja for the petitioner-University in both the matters submitted that the Dharmsinh Desai University Act, 2005 under which the petitioner-University is constituted is not included in the definition of relevant University Act. Learned Senior Advocate Mr. Dave submitted that the definition of University under Sec. 2(f) of the Act encompasses universities constituted under the State Acts included the definition of relevant University Act and the institution of Higher Education in the State declared as deemed University under Sec. 3 of the University Grants Commission Act ("the U.G.C. Act" for short). Learned Senior Advocate Mr. Dave submitted that the petitioner is also not deemed University, and therefore, does not fall within the definition of University. Mr. Dave submitted that the respondent No. 1, though an employee of the petitioner-University, still,

cannot be said to be University Employee for the purpose of taking the dispute before the Tribunal under Sec. 8 of the Act. Learned Senior Advocate Mr. Dave submitted that the Legislature was conscious when it provided for the definition of relevant University Act in Sec. 2(e) of the Act for the purpose of conferring jurisdiction to the Tribunal for deciding dispute between the University and the University Employees. Learned Senior Advocate Mr. Dave submitted that the Legislature clearly intended that except those Universities which are included in the definition of University as per Sec. 2(f) of the Act, the Tribunal would not have jurisdiction for the other Universities. Learned Senior Advocate Mr. Dave submitted that the language of definition of University is plain and unambiguous and is required to be interpreted as it is without providing additional point for construing meaning of the University. Learned Senior Advocate Mr. Dave submitted that to read the petitioner-University in the definition of University in the Act would amount to rewriting the language of the Statute which was beyond the powers and jurisdiction of the Tribunal. Learned Senior Advocate Mr. Dave submitted that the Tribunal was not justified in applying the principles of unreasonable classification and discrimination in the context of Art. 14 of the Constitution of India for assuming jurisdiction for the employees of the petitioner-University when no such jurisdiction exists on plain reading of the definition of the University contained in the Act. Learned Senior Advocate Mr. Dave submitted that the Tribunal has committed serious error in treating the petitioner-University subject to the jurisdiction of the Tribunal on the concept of social and economic justice. Learned Senior Advocate Mr. Dave submitted that the Tribunal cannot enlarge the scope of its jurisdiction on the ground that the other employees of private universities are deprived of speedy and cheap remedy. Learned Senior Advocate Mr. Dave however submitted that the petitioner-University is amenable to the writ jurisdiction of this Court since discharging public functions. Learned Senior Advocate Mr. Dave also submitted that the petitioner-University has no objection against availing of the constitutional remedy by respondent No. 1 before this Court if respondent No. 1 so chooses to avail of such remedy. He also submitted that the petitioner-University will also not raise any objection as regards delay in approaching this Court.

8. As against the above arguments, learned Advocate Mr. Nirav C. Thakkar appearing for respondent No. 1 in Special Civil Application No. 14860 of 2012 and learned Advocate Mr. Jayesh V. Bhairavia for respondent No. 1 in Special Civil Application No. 14846 of 2012 submitted that the definition of University in Sec. 2(f) of the Act includes the institution of higher education over and above the Universities constituted under the State Act included in the definition of relevant University Act and declared as deemed University under Sec. 3 of the U.G.C. Act. Learned Advocates Mr. Thakkar and Mr. Bhairavia submitted that the petitioner being the institution of higher education falls within the definition under Sec. 2(f) of the Act, and therefore, the Tribunal has jurisdiction to decide the dispute between respondent No. 1 and the petitioner-University. Learned Advocates Mr. Thakkar and Mr. Bhairavia submitted that the petitioner-University is also a

University as per Sec. 2(f) of the U.G.C. Act as it is established under the State Act, and therefore, it is deemed to be taken as University established under the relevant University Act defined under Sec. 2(e) of the Act. Learned Advocates Mr. Thakkar and Mr. Bhairavia submitted that the intention of the Legislature is to extend the jurisdiction of the Tribunal to all the Universities either established under the State Act or declared to be a deemed University under Sec. 3 of the U.G.C. Act so that no employee of any University in the State is deprived of cheap and speedy remedy for justice before the Tribunal. They submitted that the fact that the other Universities constituted under the State Act are included in the definition of relevant University Act even after the Act coming into force would go to suggest that the Legislature want all the Universities subsequently constituted under the State Act to come within the jurisdiction of the Tribunal. Learned Advocates Mr. Thakkar and Mr. Bhairavia submitted that the Tribunal has rightly considered petitioner-University within its jurisdiction on the concept of social and economic justice with avowed object to see that the employees of all the Universities established and constituted under the State Acts could be provided speedy and cheap remedy before the Tribunal. They submitted that the definition of relevant University Act does not restrict other universities subsequently established under the State Act to fall within the jurisdiction of the Tribunal. They submitted that considering the Scheme and the Object of the Act, the definition of the University under Sec. 2(f) of the Act is required to be read so as to include the petitioner-University by supplying *casus omissus*. They submitted that if the *casus omissus* is not supplied while considering the definition of University, the object of the Act for speedy and cheap remedy by the Tribunal to all the employees of the universities in the State stand frustrated. Learned Advocates Mr. Thakkar and Mr. Bhairavia submitted that such could never be the intention of the Legislature, and therefore, *casus omissus* is required to be supplied in the definition of the University under Sec. 2(f) of the Act. They, thus, urged to dismiss the petitions.

8.1. Learned A.G.P. Mr. Niraj Ashar appearing for respondent Nos. 2 and 3 has drawn attention of the Court to the amendment in the Act and also to the definitions provided in U.G.C. Act.

9. Having heard the learned Advocates for the parties, and having considered the provisions of the Act, it appears that though the constitution of the Tribunal under the Act is for the purpose of determining disputes relating to the conditions of service of members of teaching, other academic and non-teaching staff of the Universities in the State of Gujarat, however, its jurisdiction is restricted to those Universities which satisfy the definition of the University as per Sec. 2(f) of the Act.

10. Section 8 of the Act provides for the decision of the dispute by the Tribunal which reads as under:

8. Where there is any dispute between the University and any University employee, which is connected with the conditions of service of such University

employee, the University, or as the case may be, University employee may make an application to the Tribunal for the decision on the dispute.

11. As per Sec. 8 of the Act, any University employee can make application to the Tribunal for the decision of the dispute which is connected with the conditions of service of such employee. However, if the dispute is not against the University within the meaning of Sec. 2(f) of the Act, the Tribunal will have no jurisdiction to entertain such dispute. Section 2(f) for definition of "University" reads as under:

2(f) "University" means a University constituted under the relevant University Act and includes any institution of higher education in the State other than a University, declared under Sec. 3 of the University Grants Commission Act, 1956 to be deemed University for the purposes of the said Act.

By providing the above definition in the Act, the Legislature has consciously provided for the jurisdiction of the Tribunal only in respect of the employees of those Universities which are covered in the definition of the University under Sec. 2(f) of the Act and to give clear idea as to which universities established under State Acts are made amenable to the jurisdiction of the Tribunal, the legislature has incorporated definition of relevant University Act, which reads as under:

2(e) "Relevant University Act" means the Gujarat University Act, 1949 (Bom. 50 of 1949), the Maharaja Sayajirao University of Baroda Act, 1949 (Baroda Act 17 of 1949), the Sardar Patel University Act, 1955 (40 of 1955), the South Gujarat University Act, 1965 (Guj. 38 of 1965), the Saurashtra University Act, 1965 (Guj. 39 of 1965), the Bhavnagar University Act, 1978 (26 of 1978) or as the case may be, the North Gujarat University Act, 1985.

12. The definition of relevant University Act in Sec. 2(e) of the Act would go to show that the Legislature has intended that over and above the deemed university under Sec. 3 of the U.G.C. Act, only those Universities established under the different University Acts included in the definition of relevant University Act shall be subject to the jurisdiction of the Tribunal and not the other Universities though established under the State Acts but not included in the definition of relevant University Act. In fact, the definition of relevant University Act is nothing but list of Acts whereunder different Universities in the State are established. The purpose is to bring them within the jurisdiction of the Tribunal.

13. At this stage, it is required to be noted that the Act is of 1983. After the Act came into force, one more University Act called "the North Gujarat University Act, 1985" came to be added in the definition of relevant University Act (by Guj. 7 of 1994) (Amending Act). Therefore, wherever the Legislature intended to bring any State University within the jurisdiction of the Tribunal, it has so provided by further amending the definition of relevant University Act. The Legislature has not thought it fit to include the Dharmsinh Desai University Act, 2005 whereunder the petitioner-University is constituted within the definition of the relevant University Act.

14. The phrase "other than" used in the definition of University under Sec. 2(f) of the Act has great bearing for gathering the intention of the Legislature.

15. The phrase "other than" clearly conveys that only two types of Universities are meant for the purpose of the Act. One is, the Universities established under the different University Acts included in the definition of relevant University Act under Sec. 2(e) of the Act. The other one is the institution of higher education in the State which is declared as deemed University under Sec. 3 of the U.G.C. Act. Therefore, the Universities which are not covered in such two types of Universities do not fall within the meaning of University defined in Sec. 2(f) of the Act.

16. This Court had an occasion to interpret the definition of University while deciding Special Civil Application No. 12987 of 1994 (Budhabhai Naranbhai Makwana v. Gujarat Vidyapith). The question posed was whether the Gujarat Vidyapith which was declared as deemed University under Sec. 3 of the U.G.C. Act could be said to be University within the meaning of Sec. 2(f) of the Act. In the said petition, order passed by the Tribunal holding that only those Universities constituted under the State Acts included in the relevant University Act and the institution of higher education in the State other than deemed University would fall within the scope of Sec. 2(f) of the Act was under challenge. This Court in the said petition held that the institution of higher education declared to be the deemed University under Sec. 3 of the Act are included in the definition of the University under Sec. 2(f) of the Act over and above the Universities constituted under the relevant Universities Act. Following observations in Paragraphs 6 and 7 made by this Court in its judgment dated 28-6-1999 rendered in the said petition need to be quoted.

6. The definition of University as per Sec. 2(f) of the Act, provides that two types of institutions are covered by the term "University", namely - (i) A University constituted under the relevant University Act like Gujarat University under the Gujarat University Act, 1949, M.S. University under the M.S. University Act, 1950 so on and so forth, and (ii) An institution of higher education in the State of Gujarat (other than a University) declared under Sec. 3 of the University Grants Commission Act, 1956 to be a deemed University for the purposes of the said Act.

In other words, to fall within the scope of Sec. 2(f) of the Act, an institution of higher education must fall in either of the two categories enumerated above i.e. a University constituted under a statute or a deemed University under Sec. 3 of the U.G.C. Act. Even a common sense reading of the definition in Sec. 2(f) of the Act along with a perusal of the said notification under Sec. 3 of the U.G.C. Act would show that Gujarat Vidyapith is a University as defined under Sec. 2(f) of the Act.

7. Unfortunately, the Tribunal proceeded on an absolutely erroneous basis by holding that to fall within the scope of Sec. 2(f) of the Act, the institution must either be a University constituted under the relevant University Act or it should

be an institution of higher education other than a deemed University. The Tribunal has gone to the extent of holding that the second part of the definition would include an institution of higher education in the State, but it excludes an institution declared to be a deemed University under Sec. 3 of the U.G.C. Act. The question would then arise as to which institution of higher education in the State would be included in the second part of the definition. The Tribunal has gone on to hold that any institution of higher education in the State by fiction of law would be deemed to be a University if the Tribunal so feels, but an institution of higher education which is declared as a deemed University under Sec. 3 of the U.G.C. Act cannot be considered by the Tribunal to be a University under the second part of the definition. The Tribunal, therefore, came to the strange conclusion that because Gujarat Vidyapith is declared to be a deemed University under Sec. 3 of the U.G.C. Act, it stands excluded from the definition of University under Sec. 2(f) of the Act. The interpretation placed by the Tribunal defies language, logic and even common sense. The Legislature was conscious of the fact that apart from the Universities constituted under specific Statutes there are other institutions of higher education in the State which are declared to be deemed Universities under Sec. 3 of the U.G.C. Act. Even though, such a declaration under Sec. 3 of the U.G.C. Act is for the purposes of the said Act, the State Legislature has consciously and advisedly adopted such a declaration as a second alternative definition of a University for the purposes of Gujarat Universities Services Tribunal Act, 1983. Hence, the judgment of the Tribunal is required to be set aside in view of the finding being given by this Court that Gujarat Vidyapith is a University within the meaning of Sec. 2(f) of the Act. In view of the above finding, it is not necessary to examine the second prayer on merits as the matter is being remanded to the Tribunal.

17. Though, this Court has taken view in the above said judgment that the institutions of higher education declared to be deemed University fall within the definition of University under Sec. 2(f) of the Act and that only two types of Universities are included within the definition of University under Sec. 2(f) of the Act, still, learned Advocates for the respondent No. 1 submitted that the phrase "other than" used in Sec. 2(f) is required to be read with institution of higher education in the State and if so read, the other Universities constituted under the State Act and not included in the relevant University Act could be taken in the definition of University if necessary by supplying casus omissus.

18. The suggestion that the phrase "other than" is required to be read with institution of higher education in the State cannot be accepted for two reasons. One is, it is not so read by this Court in the judgment delivered in the above said petition. The second reason is, it would render the phrase "other than" meaningless. The Legislature has consciously placed the phrase "other than" between "the institution of higher education and a University" to disjunct the institution of higher education declared as deemed University from a University not formed under relevant University Act. Therefore, on plain reading of the definition of the University, when it clearly appears that the Legislature intended

only two types of Universities to be included in the definition of University under Sec. 2(f) of the Act, there is no question of supplying casus omissus in the definition in Sec. 2(f) of the Act.

19. There is one more reason for not accepting the suggestion made by the learned Advocates for the respondent No. 1. For this purpose, Sec. 3 of the U.G.C. Act needs to be referred which reads as under:

3. The Central Government may, on the advice of the Commission declare by notification in the Official Gazette that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of Sec. 2.

20. As clearly appears from the provisions of Sec. 3 of the U.G.C. Act, any institution for higher education other than a University could be declared as deemed University for the purpose of the U.G.C. Act. Placing of coma "," mark immediately after the phrase "any institution for higher education" leaves no room for doubt that any institution of higher education which is not the University under either the Central Act or the State Act as defined in Sec. 2(f) of the U.G.C. Act could be declared as University. At this stage, the definition of University in Sec. 2(f) of the U.G.C. Act is required to be referred which reads as under:

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

21. The above definition of University in the U.G.C. Act also goes to show that the deemed University under Sec. 3 of the U.G.C. Act are those institutions of higher education declared by the Central Government in exercise of the powers under Sec. 3 of the U.G.C. Act other than the Universities established under the Central or the State Act. Therefore, it is not possible to supply casus omissus so as to read the category of third University like the petitioner-University in the definition of University in Sec. 2(f) of the Act. If the State Legislature had intended to cover all the Universities established and incorporated under the State Acts within the definition of University under Sec. 2(f) of the Act, over and above, the deemed university, it was not necessary to provide for the definition of relevant University Act in Sec. 2(e) of the Act. The Legislature having selected different State University Acts to come within the definition of relevant University Act in Sec. 2(e) of the Act, it can be well said that the jurisdiction of the Tribunal is restricted to only those Universities which are covered under the definition of University under Sec. 2(f) of the Act. Howsoever good and benevolent idea about providing speedy and cheap remedy to the employees of the Universities, the same pale into insignificance if not supported by the legislative intention.

22. The meaning of casus omissus as per Law Lexicon is "a point unprovided for : if by statute, the omission can be remedied by another statute only."

23. Therefore, in any Statute, if anything is taken to have been omitted and the same is found necessary to be provided to give meaning to the purpose of the enactment, same could be supplied but such is hardly the function of the Court as held by Hon"ble Supreme Court.

24. In the case of Bharathidasan University and Another Vs. All India Council for Technical Education and Others, , Hon"ble the Supreme Court has held and observed in Paras 8, 10 and 15 as under:

8. We have bestowed our thoughtful consideration to the submissions made on either side. When the legislative intent is found specific mention and expression in the provisions of the Act itself, the same cannot be whittled down or curtailed and rendered nugatory by giving undue importance to the so-called object underlying the Act or the purpose of creation of a body to supervise the implementation of the provisions of the Act, particularly when the A.I.C.T.E. Act does not contain any evidence of an intention to belittle and destroy the authority or autonomy of other statutory bodies, having their own assigned roles to perform. Merely, activated by some assumed objects or desirability, the Courts cannot adorn the mantle of legislature. It is hard to ignore the legislative intent to give definite meaning to words employed in the Act and adopt an interpretation which would tend to do violence to the express language as well as the plain meaning and patent aim and object underlying the various other provisions of the Act. Even in endeavouring to maintain the object and spirit of the law to achieve the goal fixed by the Legislature, the Courts must go by the guidance of the words used and not on certain pre-conceived notions of ideological structure and scheme underlying the law. In the statement of objects and reasons for the A.I.C.T.E. Act, it is specifically stated that the A.I.C.T.E., was originally set up by a Government resolution as a National Expert Body to advice the Central and State Governments for ensuring the coordinated development of technical education in accordance with approved standards was playing an effective role, but "however, in recent years, a large number of private engineering colleges and polytechnics have come up in complete disregard of the guidelines, laid down by the A.I.C.T.E." and taking into account the serious deficiencies of even rudimentary infrastructure necessary for imparting proper education and training and the need to maintain educational standards and curtail the growing erosion of standards statutory authority was meant to be conferred upon A.I.C.T.E. to play its role more effectively by enacting the A.I.C.T.E. Act.

10. Since it is intended to be other than a University, the Act defines in Sec. 2(i) "University" to mean a University defined under clause (f) of Sec. 2 of the University Grants Commission Act, 1956 and also to be inclusive of an institution deemed to be a University under Sec. 3 of the said Act. Section 10 of the Act enumerates the various powers and functions of the A.I.C.T.E. as also its duties

and obligations to take steps towards fulfillment of the same. One such as envisaged in Sec. 10(1)(k) is to "grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. Section 23, which empowers the Council to make regulations in the manner ordained therein emphatically and specifically, mandates the making of such regulations only "not inconsistent with the provisions of this Act and the Rules". The Act, for all purposes and throughout maintain the distinct identity and existence of "technical institutions" and "Universities" and it is in keeping tune with the said dichotomy that wherever the University or the activities of the University is also to be supervised or regulated and guided by the A.I.C.T.E., specific mention has been made of the University along side the technical institutions and wherever the University is to be left out and not to be roped in merely refers to the technical institution only in Secs. 10, 11 and 22(2)(b). It is necessary and would be useful to advert to Secs. 10(1)(c), (g), (o) which would go to show that Universities are mentioned along side the "technical institutions" and clauses (k), (m), (p), (q), (s) and (u) wherein there is conspicuous omission of reference to Universities and reference being made to technical institutions alone. It is equally important to see that when the A.I.C.T.E. is empowered to inspect or cause to inspect any technical institutions in clause (p) of sub-sec. (1) of Sec. 10 without any reservation whatsoever, when it comes to the question of Universities it is confined and limited to ascertaining the financial needs or its standards of teaching, examination and research. The inspection may be made or cause to be made of any department or departments only and that too, in such manner as may be prescribed as envisaged in Sec. 11 of the Act. Clause (t) of sub-sec. (1) of Sec. 10 envisages the A.I.C.T.E. to only advice the U.G.C. for declaring any institution imparting technical education as a deemed University and not do any such thing by itself. Likewise, clause (u) of the same provision which envisage the setting up of a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it to make recommendation to it, or to the Council, or to the Commission or to other bodies, regarding recognition or de-recognition of the institution or the programme. All these vitally important aspects go to show that the A.I.C.T.E. created under the Act is not intended to be an authority either superior to or supervise and control the Universities and thereby super impose itself upon such Universities merely for the reason that it is imparting teaching in technical education or programmes in any of its Departments or Units. A careful scanning through of the provisions of the A.I.C.T.E. Act and the provisions of the U.G.C. Act in juxtaposition, will show that the role of A.I.C.T.E. vis-?-vis the Universities is only advisory, recommendatory and a guiding factor and thereby subserve the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except submitting a report to the U.G.C. for appropriate action. The conscious and deliberate omission to enact any such provision in the A.I.C.T.E. Act in respect of Universities is not only a positive indicator but should be also one of the

determining factors in adjudging the status, role and activities of A.I.C.T.E. v. Universities and the activities and functioning of its departments and units. All these vitally important facets with so much glaring significance of the scheme underlying the Act and the language of the various provisions seem to have escaped the notice of the learned Judges, their otherwise well-merited attention and consideration in their proper and correct perspective. The ultra activist view articulated in M. Sambasiva Rao's case, 1997 (1) Andh.LT 629 (supra) on the basis of supposed intention and imagined purpose of the A.I.C.T.E. or the Act constituting it, is uncalled for and ought to have been avoided, all the more so when such an interpretation is not only bound to do violence to the language of the various provisions but also inevitably render other statutory authorities like U.G.C. and Universities irrelevant or even as nonentities by making the A.I.C.T.E. a super power with a devastating role undermining the status, authority and autonomous functioning of those institutions in areas and spheres assigned to them under the respective legislations constituting and governing them.

15. To put it in a nutshell, a reading of Sec. 10 of A.I.C.T.E. Act will make it clear that whenever the Act omits to cover a "University", the same has been specifically provided in the provisions of the Act. For example, while under clause (k) of Sec. 10 only "technical institutions" are referred to, clause (o) of Sec. 10 provides for the guidelines for admission of students to "technical institutions" and "Universities" imparting technical education. If we look at the definition of a "technical institution" under Sec. 2(h) of the Act, it is clear that a "technical institution" cannot include a "University". The clear intention of the Legislature is not that all institutions whether University or otherwise ought to be treated as "technical institutions" covered by the Act. If that was the intention, there was no difficulty for the Legislature to have merely provided a definition of "technical institution" by not excluding "University" from the definition thereof, and thereby, avoided the necessity to use along side both the words "technical institutions" and University in several provisions in the Act. The definition of "technical institution" excludes from its purview a "University". When by definition a "University" is excluded from a "technical institution", to interpret that such a clause or such an expression wherever the expression "technical institution" occurs will include a "University" will be reading into the Act what is not provided therein. The power to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned is covered by Sec. 10(k) which would not cover a "University" but only a "technical institution". If Sec. 10(k) does not cover a "University" but only a "technical institution", a regulation cannot be framed in such a manner so as to apply the regulation framed in respect of "technical institution" to apply for Universities when the Act maintains a complete dichotomy between a "University" and a "technical institution". Thus, we have to focus our attention mainly to the Act in question on the language adopted in that enactment. In that view of the matter, it is, therefore, not even necessary to examine the scope of other enactments or whether the Act prevails over the

University Act or effect of competing entries falling under Entries 63 to 65 of List I vis-à-vis Entry 25 of List III of the Seventh Schedule to the Constitution.

25. In the case of AIR 2003 SC 2103, Hon'ble the Supreme Court has held and observed in Paras 11, 13 and 14 as under:

11. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them." (See *Lenigh Valley Coal Co. v. Yensavage*, 218 FR 547). The view was reiterated in *Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama*, .

13. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the Legislature to amend, modify or repeal it, if deemed necessary. (See *M/s. Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd.*,). "The legislative *casus omissus* cannot be supplied by judicial interpretative process. Language of Sec. 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in *N. Narasimhaiah and Others Vs. State of Karnataka and Others* and *Union of India (UOI) and Others*, . In *State of Karnataka and Others Vs. D.C. Nanjudaiah and Others*, the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot be reconciled with the language of Sec. 6(1). If the view is accepted it would mean that a case can be covered by not only clause (i) and/or (ii) of the proviso to Sec. 6(1), but also by a non-prescribed period. Same can never be the legislative intent.

14. Two principles of construction - one relating to *casus omissus* and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself, but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or Section must be construed together and every clause of a Section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce in unreasonable result", said Danckwerts, L.J., in *Artemiou v. Procopiou*, 1966 (1) QB 878, "is not to be imputed to a statute if there is some other construction available". Where to

apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in *Luke v. I.R.C.*, (1966 AC 557) where at page 577 he also observed : "this is not a new problem, though our standard of drafting is such that it rarely emerges".) Therefore, the High Court's conclusions holding proceedings under the U.P. Act to be in order are indefensible.

26. In the case of *Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others*, , Hon"ble the Supreme Court has held and observed in Paras 19, 22 and 23 as under:

19. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See *Institute of Chartered Accountants of India Vs. Price Waterhouse and Another*, . The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford v. Spooner*, 1846 (6) Moore PC 1, Courts, cannot aid the Legislatures" defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See *State of Gujarat and Others Vs. Dilipbhai Nathjibhai Patel and Another*, . It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See *Stock v. Frank Jones (Tipton) Ltd.*, 1978 (1) All ER 948 (HL)]. Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in *Vickers Sons and Maxim Ltd. v. Evans*, 1910 AC 445 (HL) quoted in *The Jumma Masjid, Mercara Vs. Kodimaniandra Deviah*,).

22. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the Legislature to amend, modify or repeal it, if deemed necessary. (See *Commissioner of Sales Tax, Madhya Pradesh Vs. M/s. Popular Trading Company, Ujjain*,). The legislative casus omissus cannot be supplied by judicial interpretative process.

23. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the

statute itself, but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or Section must be construed together and every clause of a Section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J. in *Artemiou v. Procopiou*, 1966 (1) QB 878, "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in *Luke v. I.R.C.*, 1966 AC 557 where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges").

27. In the case of *Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others*, , Hon^{ble} the Supreme Court has held and observed in Para 17 as under:

17. In support of the submission that the Legislature did not intend to apply Sec. 32-G to a surety, reliance was placed upon the case of *P.K. Unni Vs. Nirmala Industries and others [OVERRULED]*, , wherein it has been held that the Court must proceed on the assumption that the Legislature did not make a mistake and that it intended to say what it said. It was held that assuming there is a defect or an omission in the words used by the Legislature, the Court cannot correct or make up the deficiency. It was held that the Court cannot add words to a statute or read words into it which are not there, especially when a literal reading thereof produces an intelligible result. It was held that the Court is not authorized to alter a word or provide a *casus omissus*. Reliance was also placed on the case of *Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and Others etc.*, , which is to a similar effect. There can be no dispute with these propositions. It is on this basis that this Court is holding that words cannot be added in Sec. 32-G. To accept Mr. Mehta's submission would require this Court to add words to Sec. 32-G to the effect "due from the industrial concern" after the words "amount due to the financial corporation". It is presumed that the Legislature made no mistake when it omitted to use these words. It is presumed that the Legislature intended what it said, namely, that Sec. 32-G is to apply wherever any amount is found due to the financial corporation.

28. In the case of *UCO Bank and Another Vs. Rajinder Lal Capoor*, , Hon^{ble} the Supreme Court has held and observed in Paras 26 and 28 as under:

26. It is now a well-settled principle of interpretation of statutes that the Court must give effect to the purport and object of the Act. Rule of purposive construction should, subject of course to the applicability of the other principles of interpretation, be made applicable in a case of this nature.

28. All the regulations must be given a harmonious interpretation. A Court of law should not presume a "casus omissus" but if there is any, it shall not supply the same. If two or more provisions of a statute appear to carry different meanings, a construction which would give effect to all of them should be preferred. [See : Gujarat Urja Vikash Nigam Ltd. Vs. Essar Power Ltd.,]

29. In the case of Md. Shahabuddin Vs. State of Bihar and Others, , Hon"ble the Supreme Court has held and observed in Paras 179 and 180 as under:

179. Even otherwise, it is a well-settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the Courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to a recent decision of this Court in Ansal Properties and Industries Ltd. Vs. State of Haryana and Another, .

180. Further, it is a well established principle of statutory interpretation that the Legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the Legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the Courts is that such was the intention of the Legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the Legislature also intended the condition to be applied at some other place in that provision.

30. In the case of Kanwar Singh Saini Vs. High Court of Delhi, , Hon"ble the Supreme Court has held and observed in 22 and 23 Para as under:

22. There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes order/decreed having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a Court or Tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The Court cannot derive jurisdiction apart from the statute. (Vide : The United Commercial Bank Ltd. Vs. Their Workmen, ; Smt. Nai Bahu Vs. Lala Ramnarayan and Others, , Natraj Studios. Pvt. Ltd. v. Navrang Studio, AIR 1981 SC 537, Sardar Hasan Siddiqui and Others Vs. State Transport Appellate Tribunal, U.P., Lucknow and Others, ; A.R. Antulay Vs. R.S. Nayak and Another, ; Union of India and another Vs. Deoki Nandan Aggarwal, ; Karnal Improvement Trust, Karnal Vs. Parkash Wanti (Smt)

(Dead) and Another, ; U.P. Rajkiya Nirman Nigam Ltd. Vs. Indure Pvt. Ltd. and others, ; State of Gujarat Vs. Rajesh Kumar Chimanlal Barot and another, ; Kesar Singh and Others Vs. Sadhu, ; Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, and Collector of Central Excise, Kanpur Vs. Flock (India) Pvt. Ltd. C-7, Panki Industrial Area, Kanpur,).

23. When a statute gives a right and provides a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act. When an Act creates a right or obligation and enforces the performance thereof in a specified manner, "that performance cannot be enforced in any other manner". Thus, for enforcement of a right/obligation under a statute, the only remedy available to the person aggrieved is to get adjudication of rights under the said Act. (See: Doed. Rochester (BP) v. Bridges, 109 ER 1001; Barraclough v. Brown, 1897 AC 615; The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, ; and Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs.,).

31. In light of above principles of law settled by Hon"ble the Supreme Court and considering the intention of Legislature in not including all the Universities in the definition of University under Sec. 2(f) of the Act, it cannot be said that the jurisdiction of the Tribunal extends to the petitioner-University. The Tribunal could not have assumed jurisdiction for the employees of the petitioner-University on the ground that it has no sufficient work or on the socio-economic concept. Therefore, the conclusion arrived at by the Tribunal that it has jurisdiction to decide the dispute of the employees of petitioner-University in connection with their service conditions cannot stand scrutiny of law as the same runs counter to the legislative intent and purpose for the constitution of the Tribunal. For the reasons stated above, the petitions are allowed. Impugned orders passed by the Tribunal are quashed and set aside. It is held and declared that the Gujarat Universities Services Tribunal has no jurisdiction to decide the dispute between the petitioner-University and its employees including respondent No. 1 in connection with their service conditions. Consequently, the application Nos. 4 and 5 of 2012 pending before the Tribunal shall stand rejected. The Tribunal shall dispose of the applications accordingly. However, as agreed by the learned Senior Advocate Mr. Dave for the petitioner-University, the petitioner-University shall not raise any objection either for revival of the petition which was filed by the respondent No. 1 of Special Civil Application No. 14860 of 2012 or for filing separate fresh petition by him and by the respondent No. 1 of the Special Civil Application by the respondent No. 1 in Special Civil Application No. 14846 of 2012 either on the ground of delay or as regards jurisdiction of this Court. In both the petitions, Rule is made absolute to the extent stated above.