
(2014) 12 KL CK 0047
In the High Court Of Kerala
Case No : W.P.(C). No. 9779 of 2014 (S)

Godwiin Samraj D.P.

APPELLANT

Vs

M. Abdul Salam

RESPONDENT

Date of Decision : 20-12-2014

Acts Referred:

Calicut University Act, 1975 — Section 2, 2(2), 2(g), 3(7), 34
Constitution of India, 1950 — Article 245(1), 32
University Grants Commission Act, 1956 — Section 20(1)

Citation : (2015) 2 ILR 39 : (2015) 2 KHC 551 : (2015) 1 KLJ 550

Hon'ble Judges : Ashok Bhushan, Acting C.J.; A.M. Shaffique, J

Bench : Division Bench

Advocate : P.K. Muhammed, K.M. George and M. Abdul Rasheed, Advocate for the Appellant; Santhosh Mathew, SC and P.I. Davis, Government Pleader, Advocate for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. This Writ Petition has been filed as a public interest litigation. The first petitioner, an Associate Professor, is the member of Senate of the University of Calicut and the second petitioner is a prominent social activist in Malappuram District, where the Calicut University situates. Both the petitioners, by this public interest litigation, have highlighted the sordid state of affairs in the University and are complaining the extra jurisdictional acts of the respondents in operating beyond the territorial limits of the University by operating in various foreign countries.

2. The public interest litigation was entertained by this Court and notices were issued to respondents 8 to 31, which are study centres overseas permitted by the University of Calicut. Some of the respondents overseas have been served with notices and notices with regard to some of the centres had not been served. Learned Standing Counsel appearing for the University accepted notice for respondents 1 to 4 and 32. A counter affidavit has been filed on behalf of the

fifth respondent Chancellor of the University of Calicut. The University Grants Commission (for short, "the UGC"), 7th respondent, is also represented by the counsel, who has filed a detailed statement.

3. The facts of the case, which emerged from pleadings of the parties are: The State Legislature enacted the Calicut University Act, 1975 (hereinafter referred to as "the Act") to reorganise the University of Calicut with a view to establishing a teaching, residential and affiliating University for the northern districts of the State of Kerala. Section 4 of the Act provides for territorial limits. According to Section 4(1) of the Act, the jurisdiction of the University shall extend to the revenue districts of Cannanore, Kozhikode, Malappuram, Palghat and Thrissur of the State. The petitioners in the Writ Petition have pleaded that the first respondent, who is functioning as the Vice-Chancellor, is not only mismanaging and misconducting the affairs of the University, but also conducting grave financial irregularities, flouting the University Act and the Statute. It is stated that contravening the provisions of Section 4 of the Act, respondents 1 to 4 colluded together in granting illegal approvals and affiliations to 24 private counseling centres overseas run by respondents 8 to 31. The UGC is vested with the authority to co-ordinate and determine the standards of higher education in the country by an Act of Parliament. The UGC time and again has reiterated that no University should go beyond the territorial jurisdiction. Public notices and several notifications were issued by the UGC in that regard. It is stated that the University by distance mode of education cannot operate beyond its territorial limits of jurisdiction. It is pleaded that respondents 1 to 4 have granted permissions to respondents 8 to 31 to run study centres after entering into an MoU, which has been withheld by respondents 1 to 4 from this Court. The second respondent has visited UAE as a sales executive. Allegations have been made that vigilance enquiry is pending against the second respondent and respondents 1 and 2 are not fit persons to hold the post of Vice-Chancellor and Pro-Vice-Chancellor. In the Writ Petition the following reliefs have been claimed:

"1) issue a writ of certiorari, or any other appropriate writ, order or direction to call for records relating to Exhibits P7, P8, P8(a), P8(b), P8(c), P8(d) and P8(e) and to quash the same.

2) issue a writ of mandamus compelling the respondents 8 to 31 to close down their offshore campuses operating on the basis of the illegal grant of approvals and affiliations given by the respondents 1 to 4.

3) issue a writ of mandamus or other appropriate writ, order or direction to the 5th respondent to remove the respondents 1 to 4 from their respective posts in the University for their mismanagement, misbehaviour, maladministration, fraudulent acts and abuse of powers and to order appropriate legal action against the respondents 1 to 4."

4. A counter affidavit has been filed by the University, where it has been pleaded that the University, through the School of Distance Education, is offering contact

classes and distributing study material. Respondents 8 to 31 are not at all affiliated to the University, but they are only the selected centres, which are permitted to help the students in the matter of tuition, enrollment, examinations etc. The counter affidavit refers to the above centre as "purely as a private parallel institution, helping and guiding the student community in their effort to become a Graduate/Post Graduate". The students do not physically be present in the University for examination and the University of Calicut conducts examination in overseas. In the counter affidavit the list of approved counselling/programme centres issued by the University of Calicut (School of Distance Education) has been filed giving list of its various centres in the State and details of 25 centres overseas.

5. A statement has been filed by the UGC stating that provisional recognition to the University for offering programmes through distance mode was granted by erstwhile Distance Education Council of the Indira Gandhi National Open University, New Delhi. The erstwhile Distance Education Council, from time to time, issued directions that the University can offer programmes within the State. Reference of letter dated 17.10.2009 has been made by the UGC. Notification of the UGC dated 16.04.2009 has also been referred and quoted, which clearly directed to all the Universities in the State from not operating beyond the territorial jurisdiction of the State in any manner either in the form of off campus/study centre at the affiliated College or through franchisees. The decision has been taken by the UGC and communicated to all concerned that the State University shall operate only within the territorial jurisdiction allotted to it under its Act and in no case beyond the territory of the State of its location. Details of various notifications have been referred to in the Statute, which have been brought on record, including notification dated 23.08.2013 that no University can offer its programmes through franchising arrangement with private coaching institutions even for the purpose of conducting courses through distance mode.

6. We have heard Sri. P.K. Muhammed, learned counsel for the petitioners, Sri. S. Krishnamoorthy, Standing Counsel for the UGC, Sri. Santosh Mathew, Standing Counsel for the Calicut University and the learned Senior Government Pleader.

7. Learned counsel for the petitioners has submitted that respondents 1 to 4 and 32 are acting in breach of provisions of the Act and Statute as well as the directions issued by the UGC by operating several study centres overseas through which various courses and degrees are awarded. It is submitted that as per Section 4 of the Act, the University cannot operate beyond the territorial jurisdiction even by Distance Education Programme. It is submitted that in essence, the University has permitted such centres/franchisees out of the country and given them every authority to conduct admission, give tuition, hold examination for various degrees and programmes of the Calicut University. In spite of various notifications and directions issued by the Distance Education

Council and the UGC, asking all Universities to desist from opening a study centre even for distance education beyond the territorial jurisdiction, the Calicut University has not only defied such direction, but undauntly proceeding with its study centre violating all statutory provisions, norms and guidelines. The University authorities are acting in most arbitrary and fanciful manner in carrying out the above design. It is further submitted that various misdeeds and misconducts have been committed by the Vice-Chancellor and Pro-Vice-Chancellor with regard to which Members of the Senate have submitted a detailed memorandum to His Excellency the Government of Kerala, who is the Chancellor of the University, regarding mis management of funds in the University, arbitrary conducting the business of the University and violating the Acts and Statutes and Rules. Learned counsel for the petitioners has placed reliance on various judgments of the Apex Court in support of his submissions, which shall be referred to while considering the submissions in detail.

8. Learned counsel for the University does not deny opening of study centres overseas. It is, however, submitted that those centres, which are running overseas, are not at all affiliated to the University. It is submitted that those overseas centres are functioning "purely as a private parallel institution, helping and guiding the student community in their effort to become a Graduate/Post Graduate". It is further admitted that examinations are conducted in its overseas centres of the Calicut University, though under the supervision of the officers of the University. Allegations against respondents 1 and 2 that they are facing criminal cases have been denied. It is submitted that all the private students are to be registered through the School of Distance Education of the University. It has been pleaded that in order to cater the educational needs of the students of Malabar area beyond the territorial jurisdiction, the Syndicate resolved to take action for conducting courses through the School of Distance Education.

9. Sri. S. Krishnamoorthy, learned counsel for the UGC has submitted that the Calicut University has no jurisdiction to conduct its distance education course through any study centre outside the territorial jurisdiction of the University. It is submitted that both Distance Education Council and the UGC have issued several directions, notifications and public notices asking the Universities to carry their operation within their territorial jurisdiction alone. The Distance Education Council does not accord recommendation to study centres of any University. Referring to various notifications issued by the UGC and the directions issued by the Distance Education Council, it has been submitted that action of the Calicut University is wholly illegal and despite the directions of the University Council, the UGC is continuing with its overseas centres.

10. Before we proceed to consider the respective submission of learned counsel for the parties, it is necessary to notice the relevant statutory provisions governing the issue. The Act was enacted to provide for reorganisation of the Calicut University. It is useful to note the preamble of the Act, which is to the following effect:

"Preamble.- WHEREAS it is expedient to reorganise the University of Calicut with a view to establishing a teaching, residential and affiliating University for the northern districts of the State of Kerala."

11. Section 2 of the Act contains definition clause. Section 2(2) defines "affiliated college". Section 4 of the Act deals with territorial limits, which is to the following effect:

"4. Territorial limits. - (1) The jurisdiction of the University shall extend to the revenue districts of Cannanore, Kozhikode, Malappuram, Palghat and Trichur of the State;

(2) No educational institution situated beyond the territorial limits of the University shall, save with the sanction of the Chancellor and the Government, be affiliated to the University and no education institution within the territorial limits of the University shall, save with the sanction of the Chancellor and the Government, seek or continue affiliation to any other University established by law."

12. Section 34 of the Act provides for Statutes. Section 36 relates to Ordinances. The Calicut University First Statutes, 1977 was framed by the Government of Kerala. Chapter 43 was inserted by amendment approved by the Senate on 29.3.99, which was published in Kerala Gazette dated 22.8.2000. Chapter 43 relates to School of Distance Education. The Director of Distance Education is the convener of the Advisory Board of School of Distance Education. Statute 2 of Chapter 43 defines the academic powers and executive powers of the Director. As per Statute 2, there shall be an Advisory Board which shall make recommendations to the Academic Council/Syndicate in all matters relating to the course of studies offered by the school of Distance Education. Chapter 43 of the Statutes does not contain any provision empowering the Advisory Board, Academic Council/Syndicate and Director of Distance Education to open any study centre outside the territorial jurisdiction of the Calicut University.

13. The Indira Gandhi National Open University Act, 1985 was enacted by the Parliament for the promotion of open and distance education system. The Indira Gandhi National Open University established the Distance Education Council under Statute 28 of the Act, 1985. The Distance Education Council was contemplated as Council to regulate and co-ordinate the distance education. Various directions were issued by the Distance Education Council, which shall be referred to hereinafter. Statute 28 was repealed by the President of India by notification dated 04.05.2013. The Central Government in exercise of its power under Section 20(1) of the University Grants Commission Act, 1956 has directed that the UGC shall act as the regulator for higher education through open and distance learning and the Universities offering any programme/course in open and distance learning mode shall require recognition from the Commission. Thus, distance education was regulated by Parliamentary Act, 1985 and thereafter by the UGC, which is invested with the power and duty to co-ordinate higher

education in the country.

14. The Calicut University Act is a State enactment, which is referable to Entry 32 of List II of the Constitution of India, which is to the following effect:

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

15. The University Grants Commission Act, 1956 as well as the Indira Gandhi National Open University Act, 1985 were Parliamentary enactment referable to Entry 66 of List-I, which is to the following effect:

"66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

16. As per the Parliamentary enactment, the University Grants Commission Act, 1956 was enacted for co-ordination and determination of the students in institutions for higher education. It is useful to quote first paragraph 1 of the statement of objects and reasons, which is to the following effect:

"The Constitution of India vests Parliament with exclusive authority in regard to "co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions". It is obvious that neither co-ordination 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."

17. The issue regarding territorial jurisdiction of State University and the Parliamentary legislation enacted under Entry No. 66 of List I fell for consideration before the Apex Court in Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, . A public interest litigation was filed in the Supreme Court under Article 32 of the Constitution challenging an enactment, viz., Chhattisgarh Niji Kshetra Viswavidhyalaya (Stapana Aur Viniyaman) Adhiniyam, 2002. Some of the Universities were functioning even outside the State of Chhattisgarh under the State enactment enacted by the State of Chhattisgarh. In paragraph 4 of the judgment the Apex Court has noted the following advertisement issued by the University:

".....The universities had issued advertisements for opening up study centres in different parts of the country for award of any number of degrees and diplomas. By way of illustration, copies of advertisements issued by some of the universities have been filed. One of such universities, namely, Indian University, issued an advertisement inviting applications for Nodal Service Centres/

University Centres for awarding the following kind of degrees and diplomas....."

The Apex Court took note of University Grant Commission Act, 1956 and Entry 32 of List II and as well as Entry 66 of List I of the VII Schedule of the Constitution. The Apex Court after noticing various earlier judgments of the Supreme Court laid down the following in paragraphs 33 and 34:

"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 Parliament alone is competent. It is the responsibility of 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."

18. The Apex Court further laid down that any State Legislature which stultifies or set at naught an enactment validly made by Parliament would be wholly ultra vires. The following was laid down in paragraph 48:

"48. Any State legislation which stultifies or sets at naught an enactment validly made by Parliament would be wholly ultra vires. We are fortified in our view by a Constitution Bench decision in *R. Chitralekha and Another Vs. State of Mysore and Others*, where power of the State under Entry 11 List II (as it then existed), and Entry 25 List III qua Entry 66 List I came up for consideration. Subba Rao, J. after quoting the following passage from *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, : (*R. Chitralekha case* (1964 (6) SCR 368 : AIR 1964 SC 1823).

"The State has the power to prescribe the syllabi and courses of study in the institutions named in Entry 66 (but not falling within Entries 63 to 65) and as an incident thereof it has the power to indicate the medium in which instruction should be imparted. But the Union Parliament has an overriding legislative power to ensure that the syllabi and courses of study prescribed and the medium selected do not impair standards of education or render the coordination of such standards either on an all India or other basis impossible or even difficult."

enunciated the following principle defining the contours of the legislative powers of States vis-a-vis Union so as to steer clear of any overlap or collision:

"This and similar other passages indicate that if the law made by the State by virtue of Entry 11 of List II of the Seventh Schedule to the Constitution makes impossible or difficult the exercise of the legislative power of Parliament under the entry "Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions" reserved to the Union, the State law may be bad. This cannot obviously be decided on speculative and hypothetical reasoning. If the impact of the State law providing for such standards on Entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the Central field, it may be struck down. But that is a question of fact to be ascertained in each case."

As noted above, the Act provides for territorial jurisdiction of the University in Sec. 4. The Act thus enjoins the University to function within the territorial limits as prescribed under Sec. 4. In the State of Kerala there are other Universities with territorial jurisdiction. The enactment thus confines the jurisdiction of the Calicut University to 5 Districts of the State, namely, Kannur, Kozhikode, Malappuram, Palakkad and Thrissur. Section 4(2) states that no educational institution situated beyond the territorial limits of the University shall save with the sanction of the Chancellor and the Government be affiliated to the University. Thus even if the University wanted to affiliate an institution situated in any other District of the Kerala State, sanction of (i) the Chancellor and (2) the Government was the pre-condition. The enactment thus clearly prohibits the University to operate beyond its territorial limits.

19. We have already noted that the Calicut University First Statutes, 1977 Chapter 43 dealt with "school of distance education". One more provision of the Statutes, Chapter 44 which is relevant to note was introduced by amendment dated 07.03.2003 gazetted on 06.05.2003. Details of different Study Centres/ Institute of Engineering and Technology one established under the Statute for running cost based courses and under the direct control of the University. Study Centres which were included in Chapter 44 are the Study Centres within the territorial jurisdiction of the University. Chapter 44 is quoted for ready reference:

"1. University Study Centres/Institute of Engineering and Technology.

Study Centres/Institute of Engineering and Technology is one established under statute for running cost based courses and under the direct control of the

University.

2. Name of Study Centres/Institute of Engineering and Technology.

(i) Study Centre, Calicut.

(ii) Study Centre, Vatakara

(iii) Computer Centre, Calicut University Campus.

(iv) Centre for Printing and Technology, Calicut University Campus.

(v) Teacher Education Centres at Vadakara, Calicut, Wayanad, Manjeri, Palakkad and Thrissur.

(vi) Institute of Engineering and Technology, Calicut University Campus".

20. Now we refer to the facts of the present case to find out about the Programme Centres approved by the Calicut University. A counter affidavit has been filed by the University on behalf of respondents 1, 3 and 4 and 32 where Ext.R1 has been filed containing a list (Approved Counselling/Programme Centres in Kerala) and (Approved Counselling/Programme Centres Overseas). In the list pertaining to Counselling Centres at Kerala there are 235 institutions. In the list which is filed at page 34 to 38 (Approved Counselling Centres Overseas), there are 25 institutions. Study Centres which have been permitted by the University are in different countries including UAE, Sultanate of Oman, Kuwait, Qatar and Saudi Arabia. The petitioners in the Writ Petition has produced certain orders issued by the University of Calicut conferring status of School of Distance Education to different Counselling Centres/Programmes Overseas. One of the orders dated 12.10.2012, Ext.P8, is relevant to be extracted which is to the following effect:

"UNIVERSITY OF CALICUT

(Abstract)

School of Distance Education-Counselling/Programme Centre-MoU Executed-Regional Institute of Management and Information Technology, Riyadh-Status conferred-Final order issued.

SCHOOL OF DISTANCE EDUCATION (D"SECTION) No. SDE/D3/6118/RIMIT/CC/12
Dated, Calicut University. P.O., 12.10.12

Read: 1. U.O. No. SDE/D3/6118/RIMIT/CC/12 dated 19.09.2012.

2. MoU dated 12.09.2012 received from Mr. Abdul Bari C., Director, Regional Institute of Management and Information Technology, Riyadh.

3. MoU executed on 09.10.2012.

ORDER

As per the paper read (1) above, the Counselling/Programme Center status of School of Distance Education had been conferred to Regional Institute of Management and Information Technology, Riyadh and directed to submit the properly executed MoU along with a Demand Draft for USD 1750 (One Thousand Seven Hundred and Fifty only) drawn in favour of the Finance Officer, University of Calicut, as inspection fee before the commencement of courses granted to them. Accordingly, the Institution has submitted the MoU and a chalan for Rs. 96,145 paid at SBT, Calicut University dated 12.09.2012 equivalent amount to USD 1750 toward inspection fee vide paper read (2). As per paper read (3) MoU was executed by the Registrar.

Therefore, the status of the Counselling/Programme Centre of School of Distance Education is hereby conferred to Regional Institute of Management and Information Technology, Riyadh to conduct UG Programme with an intake of 350 students in each course PG with an intake 290 (two hundred and ninety) students in each course, MBA Programme with an intake of 30 (thirty) students, Diploma in Hotel Management (DHM) with an intake of 80 (eighty) students and PG Diploma in Foreign Trade (PGDFT) with an intake of 60 (sixty) students, Bachelor of Multimedia and Communication (BMMC) and Bachelor of Interior Design (BID) with an intake of 40 (forty) students in each courses in their institution from this academic year onwards.

Orders are issued accordingly.

Sd/- Director

To

Mr. Abdul Bari C., Director, Regional Institute of Management and Information Technology, Riyadh

Copy to: PS to V.C/ PA to PVC/PA to Registrar/ Finance/Budget/ JULFA/DR/AR I/ II/SF/FC.

Forwarded/by order SECTION OFFICER"

Another order dated 12.12.2012 filed as Ext.P8(a) is also quoted:

"UNIVERSITY OF CALICUT

(Abstract)

School of Distance Education-City College International, Ajman- MoU Executed- Status Counselling/Programme Centre conferred- Final order issued.

SCHOOL OF DISTANCE EDUCATION (D"SECTION) No. SDE/D3/1077/CCI/CC/12
Dated, Calicut University. P.O., 12.12.12

Read: 1. U.O. of even No. dated 09.10.2012.

2. MoU dated 17.11.2012 received from Mr. Abdul Hameed N.K., Managing Director, City College International, Ajman.

3. MoU executed on 10.12.2014

ORDER

As per the paper read (1) above, sanction has been accorded to rename and relocate Al Hilal Education Centre, Sharjah to City College International, Ajman along with the courses granted and directed to submit the properly executed MoU along with a Demand Draft for USD 1750 (One Thousand Seven Hundred and Fifty only) drawn in favour of the Finance Officer, University of Calicut, as inspection fee before the commencement of courses granted to them. Accordingly, the institution has submitted the MoU and forwarded the DD vide paper read (2) above. As per paper read (3) MoU was executed by the Registrar.

Therefore, the status of the Counselling/Programme Centre of School of Distance Education is hereby conferred to City College International, Ajman to conduct BA, B.Sc. Mathematics, B Com, BBA, MA, M com, M Sc. Mathematics, MBA, BMMC (for MBA and BMMC course intake is limited 30 (thirty) students each and for DHM course with an intake of 40 (forty) students in their institution subject to the terms and conditions specified in the MoU.

Orders are issued accordingly.

Sd/- Director

To

Mr. Abdul Hammed N.K., Managing Director, City College International, P.B. No. 6463, Ajman, UAE.

Copy to: PS to V.C/ PA to PVC/PA to Registrar/ Finance/Budget/ JULFA/DR/AR I/ II/SF/FC.

Forwarded/by order SECTION OFFICER"

A perusal of the said orders clearly indicate that the Status of Counselling Centres/Programme have been authorised to conduct UG Programme with an intake of students. The said orders also contain a statement that a MoU has been entered between the Institution and the University. No copy of MoU entered with the Centres has been brought on record. It was incumbent on the University to bring the MoU on record to indicate the real nature of function which it has entrusted in the MoU to programme courses. But deliberately the said MoU has been withheld from the court to conceal the real nature of the transaction between the University and Overseas Centres.

21. The University in the counter affidavit has, to some extent admitted some of the functions which it has entrusted to the Overseas Centres. The University in paragraph 4 while stating that the Centres are not affiliated to the University has quoted thus:

".... These centers are not at all affiliated to the university but only the selected centres which are permitted to help the students in matters of tuition, enrollment, exams etc., but all these are permitted strictly in adherence to the rules and guidelines framed by the university...."

Further in paragraph 5 the following has again been stated:

"...They work purely as a private parallel institution, helping and guiding the student community in their effort to become a Graduate/Post Graduate".

There is a clear statement on behalf of the University that the Centres are conducting tuition, enrollment, exams etc., The University however states that when exams are conducted under the supervision of the officials of the University. With regard to conduct of examination the following has been stated in paragraph 6.

"...Only constraint here is his/her physical presence in the examination hall for attending the examination and for the same, the University of Calicut conducts its examination in overseas centres under the strict supervision and vigilance of the officials of Calicut University".

The examinations are thus actually conducted at the Study Centres which have been approved Overseas. Teaching is also carried by the Study Centres. The order granting sanction to the Centres filed as Ext.P8 clearly provides that Centres have been authorised to conduct UG Programme with an intake of specified number of students in different courses.

22. From the above it is clear that even though affiliation has not been granted, Centres for all purposes have been recognized for conducting study and for holding examination though as per the University under its permission. We have noted above that the University is to function in its territorial limits as prescribed in Sec. 4. Even for conduct of examination by distance Education, University cannot cross its territorial limits. The Apex Court in Prof. Yaspal v. State of Chhattisgarh (supra) has noted that the University of Chhattisgarh where opening an off-campus situated in other States of the country. The Apex Court in paragraph 60 held that provision enabling a University to have an off-campus centre outside the State was beyond the competence of the State. The following was laid down in paragraph 60:

"60. Dr. Dhavan has also drawn the attention of the Court to certain other provisions of the Act which have effect outside the State of Chhattisgarh and thereby give the State enactment an extraterritorial operation. S. 2(f) of the amended Act defines "off campus centre" which means a centre of the university established by it outside the main campus (within or outside the State) operated

and maintained as its constituent unit having the university's complement of facilities, faculty and staff. S. 2(g) defines "off shore campus" and it means a campus of the university established by it outside the country, operated and maintained as its constituent unit, having the university's complement of facilities, faculty and staff. S. 3(7) says that the object of the university shall be to establish the main campus in Chhattisgarh and to have study centres at different places in India and other countries. In view of Art. 245(1) of the Constitution, Parliament alone is competent to make laws for the whole or any part of the territory of India and the legislature of a State may make laws for the whole or any part of the State. The impugned Act which specifically makes a provision enabling a university to have an off campus centre outside the State is clearly beyond the legislative competence of the Chhattisgarh Legislature".

The law is thus clear on the subject that as University functioning under a State cannot have extra territorial jurisdiction.

23. Petitioners as well as the UGC have also referred to various Orders, Notifications, guidelines in this context which are relevant to be noted. As noted above, the University Grant Commission has filed a statement bringing on record various guidelines issued by the University Grant Commission and Distance Education Council. In paragraph 5 of the statement it was stated that even as per the University Grant Commission Regulation, 2003 if the Study Centres are to be opened beyond the territorial limits concerned, the same can be done only with the permission of the UGC and the State Government where the study centre is opened. It is to be noted hereinafter that subsequently by further directions complete prohibition was imposed by the University Grants Commission from opening Study Centres outside the territorial limits of the University. In paragraph 7 of the statement the UGC has quoted letter dated 16.4.2009 issued by the UGC to all Universities after the pronouncement of the Supreme Court in Prof. Yaspal v. State of Chhattisgarh (supra). It is useful to quote the said letter which is to the following effect:

"All the State Governments

(As per list attached)

Subject: Territorial jurisdiction of State Universities/State Pvt. Universities - regarding

Dear Madam,

There is a growing trend of establishment of Private Universities by the State Governments. As on now, 37 Private Universities established by the State Governments are in existence as per the information available with the UGC. It is understood that there are some more Private Universities about which the State Government have not sent any information to the UGC. In addition there are a large number of traditionally established State Universities.

It is brought to your kind notice that the UGC has received information through

RTI applications or through various students visiting UGC office that the State Universities/State Private Universities established by the State Govt. have opened off campuses, study centers and have created franchise in the name of distance education programmes outside the State. This action on the part of the State Universities or Private Universities established by the State Governments beyond the territorial jurisdiction of the respective State Govt. is not permissible in the light of the observations made by the Hon"ble Supreme Court in favour of Yashpal's case. The Honourable Supreme Court in Annamali University's matter has held the view that Parliament alone is competent to enact laws for any part or for the whole country and the State Legislature can enact law only in respect of its territorial jurisdiction confined to the concerned State.

However, notwithstanding the above position in law and the judgment of the Honourable Supreme Court, the State Governments have enacted laws establishing State Universities and Private Universities which allow them to operate beyond the territorial jurisdiction of the concerned State in the form of OFF Campus/Study Centres, affiliated colleges and the centres operating through franchises etc., this has resulted into an anomalous situation and it is also causing hardship to the student community at large.

Keeping in view the above, I shall be grateful if you kindly use your good offices and take immediate action on the following:

To take suitable steps for amending the existing Acts made so as to bring the same in conformity with the observations made by the Honourable Supreme Court of India in the case of Prof. Yashpal and State of Chhattisgarh. This should be adhered in all future cases.

To stop all the State/State Private Universities in the State from operating beyond the territorial jurisdiction of your State in any manner either in the form of off campus/study centre/affiliated college and the centre operating through franchises.

Yours faithfully, (P.K. Chauhan) Secretary".

As noted above, under the Indira Gandhi National Open University Distance Education Council started to supervise, control and co-ordinate Distance Education Centres. Proceedings of the District Education Council are brought on record as Ext.R7(d). In the proceedings various decisions were taken. It is useful to abstract decision Nos. 9 and 10 which are to the following effect:

"9. Regarding territorial jurisdiction for offering programmes through distance mode it has been decided that the latest UGC notifications will prevail over all previous notifications and circulars. As per the UGC notifications dated June, 2009, State University can offer (i) programmes only within the State; and (ii) Deemed to be University can offer programmes from Head Quarters. However, Deemed Universities may seek the permission from UGC to open off campus centers in other States, and offer Distance Education Programmes through the

approved off campus only after approval of UGC and DEC. (iii) Central Universities ill adhere to jurisdiction as per their Act. (iv) The territorial jurisdiction of the institutions other than Universities shall be their Head Quarters, and in no case outside the State concerned. The letter of recognition will clearly state the territorial jurisdiction of the University/Institution.

10. The Distance Education Council prohibits franchising of Study Centres and this should be clearly stated in the recognition letter issued by the DEC. Each Universities will clearly state the territorial jurisdiction of the University/Institution".

On 17.12.2009, Distance Education Council of Indira Gandhi Open University has issued a letter to the Vice Chancellor of the University of Calicut. The letter clearly directed the University that territorial limits for offering distance education programmes would be as per Acts and Statutes of the University. Along with the said letter the Distance Education Council guidelines were annexed. It is useful to quote letter dated 17.12.2009 along with Distance Education Council direction No. 6:

"INDIRA GAHDI NATIONAL OPEN UNIVERSITY MAIDAN GARHI, NEW DELHI - 110 0689, INDIA

DISTANCE EDUCATION COUNCIL.

Prof. Manjulika Srivastava Director

F. No. DEC/2009/17.12.2009

Sub: Continuation of Recognition till the Committee visits - reg.

Dear Sir/Madam,

This has reference to your application requesting the Distance Educational Council for recognition of your programmes offered through distance mode from the year 2008-09 onwards.

In this connection we would like to inform you that your proposal for granting regular recognition to your University is under process. Meanwhile, your university has been granted continuation of provisional recognition till such time the Committee visits your University and submits its recommendations and a decision is taken by the Joint Committee on the same.

However, we maintain that it is the responsibility of the Institution/University to follow the norms prescribed by the concerned regulatory bodies and seek their recognition for professional/technical programme/s as per the requirements. Getting approval of concerned statutory apex body for relevant programme/s will be the sole responsibility of the Institution.

The DEC does not allow franchising of study centres.

Further, we would also like to mention that the territorial jurisdiction for offering

distance education programmes would be as per Acts and Statutes of your University and in accordance with the UGC guidelines. Your institutions shall also follow all norms/guidelines issued by the DEC for offering programmes through distance mode a copy of which is enclosed.

With regards,

Yours sincerely, Sd/- (Manjulika Srivastava)

To

The Vice Chancellor, University of Calicut, T henjipalam, Kozhikode, Calicut".

"6. Regarding territorial jurisdiction for offering programmes through distance mode the latest UGC notifications will prevail over all previous notifications and circulars. As per the UGC notification, State Universities (both private as well as Govt. funded) can offer programmes only within the State and Deemed Universities from the Headquarters and in no case outside the state. However, Deemed Universities may seek the permission to open off campus centers in other States and offer distance education programmes through the approved off campuses only after approval of UGC and DEC. Central Universities will also adhere to the UGC norms. The territorial jurisdiction for the institutions (both private as well as Govt. funded) shall be the Headquarters, and in so case outside the State. Thus the territorial jurisdiction of your Institution shall be governed by these UGC guidelines".

Further in the meeting dated 10.03.2010 of the Distance Education Council, the Council again reiterated its decision regarding territorial jurisdiction in offering programmes through distance mode. Item No. 35.3 is quoted below:

"35.3: Territorial jurisdiction in offering programmes through distance mode

The Council in its 28th meeting held on 23rd March, 2007, had decided that jurisdiction for offering programmes through distance mode will be as per the Acts and Statutes of the concerned university. However, in the ninth Joint Committee of UGC-AICTE & DEC held on 17.08.2009 regarding territorial jurisdiction for offering programmes through distance mode, it was decided that the latest UGC notifications will prevail over all previous notifications and circulars of the DEC.

The Council considered the roles and responsibility and the authority of the Joint Committee and decided that the Joint Committee cannot supersede the Statutory Authority of the Distance Education Council. The Council noted that the distance education and online education cannot have the Territorial jurisdiction and it was decided that in case of Central Universities and the State Universities, the Territorial Jurisdiction will be as per their Acts and Statutes for offering programmes through distance mode. The Territorial Jurisdiction in case of Deemed Universities will be as per UGC which mandates the prior approval of the UGC for opening Centres outside the Headquarters. The Territorial Jurisdiction in

case of Private Institutions (other than Universities) will be as decided by the Joint Committee".

The Distance Education Council of the Indira Gandhi National Open University has issued a Notification dated 01.11.2012 which has been filed as Ext.R7(f). Notification in respect of open and distance education contained directions. One of the directions was that in case of State (both government funded and private) the territorial jurisdiction will be as per their Acts and Statutes but not beyond the boundaries of their respective States. As noted above, provision for Distance Education Council was replaced and the Central Government entrusted the Co-ordination, control and management of distance education to the University Grants Commission. The UGC had issued a public notice on 27.6.2013 which has been filed by the petitioner as Ext.R7(g).

24. The University in its counter affidavit has also brought on record the said public notice. It is useful to extract the following portion of the letter:

"Public Notice on Course/Study Centres/Off campuses & Territorial Jurisdiction of Universities

No. F.27-1/2012(CPP-II)

27th June, 2013

The Commission has come across many advertisements published in National Dailies offering opportunities for the award of University degrees through various franchise programmes conducted by certain private institutions. These private establishments claiming themselves as study centres or learning centres of different universities enroll students for various degree programmes and also claim to be responsible for teaching and conduct of examinations. The faculty and the infrastructure belong to these private agencies. The concerned university except providing syllabus and teaching materials, has no mechanism to monitor and maintain the academic standards of teaching being imparted at these centres. This blatant compromise with the standards of education has led to widespread criticism. The Commission has taken a serious view of these misleading advertisements appearing in various newspapers.

It is therefore, clarified or the information of all concerned including students and parents that:

- a) a Central or State Government University can conduct courses through its own departments, its constituent colleges and/or through its affiliated Colleges;
- b) a university established or incorporated by or under a State act shall operate only within the territorial jurisdiction allotted to it under its Act and in no case beyond the territory of the state of its location.
- c) the private universities and deemed universities cannot affiliate any college or institution for conducting courses leading to award of its diplomas, degrees or other qualifications.

d) no University, whether central, state, private or deemed can offer its programmes through franchising arrangement with private coaching institutions even for the purpose of conducting courses through distance mode.

e) all universities shall award only such degrees as are specified by the UGC and published in the official gazette.

f) the Universities shall conduct their first degree and Master's degree programmes in accordance with the regulations notified by the Commission in this regard".

The UGC thereafter by letter dated 28.3.2013 has written to all the Vice Chancellors of Universities/Institutions and Directors of Distance Education Council on the subject of territorial jurisdiction and offering of programmes through off-campus/study centres, etc., by Institutions/Universities. It is useful to quote the following extract of the letter".

"ii) A University established or incorporated by or under a State Act shall operate only within the territorial jurisdiction allotted to it under its Act and in no case beyond the territory of the State of its location.

iv) no university, whether central, state, private or deemed, can offer its programmes through franchising arrangement with private coaching institutions even for the purpose of conducting courses through distance mode".

25. On 04.06.2014 the UGC has written to the Calicut University which letter has been produced as Ext.R7(c). By the said letter the UGC informed the Vice Chancellors of the Calicut University that decision has been taken to maintain status quo for 2014-15 and accordingly approval was granted to the University. The University was directed to offer programmes through distance mode which are approved by the statutory bodies of the country. Paragraph 2 of the letter however, states that the above recognition is subject to terms and conditions contained therein. Condition Nos. xi and xii are quoted as follows:

"xi) The territorial jurisdiction in respect of Universities for offering programmes through distance mode will be as per the policy of UGC on territorial jurisdiction and opening of off campuses/centres/study centres as mentioned in the UGC notification No. F.27-1/2012(CP-II), dated 27th June, a copy of which is also posted in the UGC website www.ugc.ac.in/deb. In respect of standalone Institutions (other than the Universities), the territorial jurisdiction will be headquarters.

xii) Franchising arrangement for offering programmes in distance mode in any form is not allowed".

Petitioner has brought on record a letter dated 21.04.2014 issued by the UGC addressed to the Director of the Mahatma Gandhi University filed as per Ext.P16. The School of Distance Education, M.G. University was directed to close down conducting of off-campus programmes. It is useful to quote Ext.P16.

"UNIVERSITY GRANT COMMISSION Distance Education Bureau DEC Building, IGNOU, Campus, Maidan garhi, New Delhi - 110 068 Tel No. 011-29571828, Fax No. 011 29536668

F. No. UGC/DEB/MGU/KTM/KRL/09-11)

21.04.2014

To

The Director Mahatma Gandhi University School of Distance Education Priyadarsini Hills P.O., Kottayam - 686 560 Kerala

Sub: Conducting Off Campus programmes - reg.

Sir/Madam,

This has reference to your letter dated 08.01.2014 which was received in Distance Education Bureau (DEB). University Grants Commission (UGC) on 31.01.2014 with respect to conducting of Off Campus programmes by Mahatma Gandhi University, Kovalam, Kerala.

In this connection, I am directed to inform that the DEB, UGC vide its letter dated 28.11.2013 had requested the University to close down all study centres for offering programmes through distance mode opened in violation of UGC policies. But it seems that the University has continued admitting students through these centres and thus jeopardizing the careers of students.

Hence the University is again requested to immediately close down the study centres (7 International and 6 National Centres) opened by the University in violation of UGC guidelines on territorial jurisdiction with immediate effect, failing which steps would be initiated to withdraw the recognition accorded for offering programmes through distance mode. An action taken report in this regard may be submitted by the University at the earliest.

Thanking you,

Yours faithfully, Sd/- Dev Kant Rao Dy. Director".

26. From the above materials on record it is evidently clear that both erstwhile Distance Education Council and University Grant Commission repeatedly directed all Universities not to run any Study Centre beyond its territorial jurisdiction. Universities were directed to close down its Study Centres which were opened beyond territorial limits as well as Overseas under the Distance Education Programme. Thus there is clear direction by the University Grant Commission for directing all Universities to operate under the territorial jurisdiction. Directions issued by the University Grant Commission are in exercise of its powers under the UGC Act, 1956 and are binding on the State Universities. The UGC in its letter dated 21.4.2014 has directed the Mahatma Gandhi University to close down all off-shore study centres offering programmes through Distance mode.

27. From the above it is clear that the Calicut University is running its off-campus Centres overseas against the statutory provisions of the Act as well as against the express directions issued by the Distance Education Council and the UGC as noted above. That apart, as per the letter addressed to the Vice Chancellor of the Calicut University dated 04.06.2014 (Annexure 7(c) the recognition of the Calicut University for functioning, through opening a Distance Education Centre is subject to the conditions mentioned which we have already extracted.

28. Respondents 1 to 4 are clearly acting beyond their powers in permitting and running of Study Centres Overseas for Distance Education which are referred as programme centres as noted above against the provisions of the Act as well as against the direction of the University Grant Commission and the Distance Education Council. The said action is beyond their jurisdiction and has to be condemned. The University has to close the Centre Overseas immediately failing which the UGC may take action for withdrawing recognition of their distance education course.

29. Petitioners in the Writ Petition have also made a prayer to remove respondent Nos. 1 to 4 from the respective posts.

30. We are of the view that under the Act it is the Chancellor who is empowered to take such action. We thus have not examined the allegations made in the Writ Petition nor are expressing any opinion in that regard. It is for the Chancellor under the Act to take appropriate action, if any.

In the result:

The Writ Petition is allowed to the following extent:

(i) A writ of mandamus is issued to respondents 1 to 4 and 32 to close all their offshore Centres situate Overseas operating on the basis of the permission/ approval granted by the University.

(ii) Respondents 1 to 4 and 32 shall take immediate action for closing off-shore Centres failing which the UGC shall initiate proceedings for withdrawal of the recognition of the University for running course by Distance Education as per conditions regarding territorial jurisdiction mentioned in the letter dated 04.06.2014 already issued to the Vice Chancellor of the Calicut University.

Parties shall bear their own costs.