
(1997) 03 AP CK 0048

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17787 of 1996

M. Veera Siva Nagi Reddy and Others

APPELLANT

Vs

Osmania University and Another

RESPONDENT

Date of Decision : 29-03-1997

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 26, 37, 38(1)

University Grants Commission Act, 1956 — Section 12, 26(1)

Citation : (1997) 4 ALT 243

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : Philkhana Rama Rao, for the Appellant; K. Ramakanth Reddy, S.C. for Respondent No. 1 and P. Innayya Reddy, S.C. for Central Government, for the Respondent

Judgement

G. Bikshapathy, J.—Common questions of law are involved in all these Writ Petitions and hence they are decided jointly.

2. The Writ Petitions are filed assailing the action of the Respondents in not conducting External Examinations for B.A., B.Com., B.Sc, and M.A., M.Com., and M.Sc. (Maths) and for appropriate direction to the Respondents to conduct the examinations.

3. The petitioners hail from poor families and some of them are working in private organisations. They are unable to continue their higher education by attending regular colleges and therefore decided to acquire higher educational qualifications by preparing privately and appearing for the External Examinations that are being conducted by the Osmania University and Kakatiya University. The External Examinations are being conducted by the Universities throughout India including Osmania and Kakatiya Universities for certain types of under-graduate and post-graduate degrees. The said examinations were being held once in a year. The participants for the examination need not undergo regular classes in the colleges and they are required to prepare in their homes and appear for the

examination by paying necessary fees. For the purpose of appearing examination they are required to register their names and the said registration is valid for a period of five years. The Universities issue prospectus every year calling upon the candidates to register their names for appearing the examinations which are normally held once in a year separately for under-graduate and post-graduate examinations. The eligibility criteria for appearing the External Examination is a pass in Pre-University examination or equivalent examination. The graduate level examinations are conducted in Part I and Part II examination. There should be a gap of two years between Intermediate and Part I examination. Similarly for appearing Part II examination there should be a gap of three years. It is also open for the candidates to appear for three year degree course in Part I and Part II examinations simultaneously. In respect of post-graduate degree examination there should be two years gap from the graduation. The syllabus, method and manner of examinations are being informed to the candidates through prospectus. These examinations were being conducted for more than two decades. Even in 1995 also such examinations are conducted by the University. The petitioners state that this scheme of examination is only introduced with a view to benefit the poor people, employed persons, women and other weaker sections, who are unable to prosecute their studies in regular colleges for various reasons such as poverty, employment, defence services etc. It is the grievance of the petitioner that the programme for the year 1996 of external examinations for undergraduate and post-graduate degrees was not announced as usual by the Osmania University. It is also the case of the petitioners that the Kakatiya University has in fact issued prospectus inviting applications from the candidates for registration of their names for appearing for examination for undergraduate examination. However for the reasons best known to them they did not conduct examinations. In the meanwhile there was a press statement that the practice of conducting External Examination was dispensed with. There was also news to the effect that allowing the candidates to acquire degree in one sitting was also opposed by the University Grants Commission (for short "U.G.C."). It is the grievance of the petitioner that the distant education scheme introduced by the University at the instance of the U.G.C., is primarily to help the candidates who are not in a position to prosecute higher studies in the regular colleges. Number of students had appeared for such examinations and more than eighty thousand students throughout the country are appearing or the External Examination system. The petitioners also contend that there was no notification either by the University- Grants Commission or by the respective Universities to the effect that the system has been dispensed with so that the persons who are aspiring to acquire higher educational qualifications could work out their respective remedies. Therefore, it is also alternatively submitted that the authorities should have given sufficient notice before dispensing with the present system of External Examinations for appearing for Part I and Part II examinations for the degree course in the 2nd and 3rd year respectively. Therefore, they seek appropriate direction.

4. The averments in Writ Petition No. 27155 of 1996 are almost identical but the additional issue which is brought out was that the Kakatiya University issued notification on 19-11-1996 proposing to conduct External Examinations for undergraduate and post-graduate degrees and invited candidates to submit their applications within the time stipulated along with necessary fees. It is the case of the petitioners that they have come to know through press news that the University has decided not to conduct examinations by allowing private candidates to write degree examination.

5. Counter affidavit has been filed on behalf of the Osmania University and the University Grants Commission. It is stated by the Osmania University that hitherto the External Examinations are being conducted by the University in accordance with the scheme introduced by them, but however, in 1995 the Vice-Chancellor wanted to have the report on the functioning of the system so as to streamline the working of the examination if need arises. Therefore, the Committee headed by Prof. C.H. Raghuram was requested to prepare the report. The said committee had submitted the report and the same was placed before the Standing Committee on 16-10-1995. One of the members of the Committee Prof. R.S. Sharma had struck a dissent note stating that the External Examination system was introduced to help the in service teachers to improve their qualifications and to make the higher education within the reach of women and other weaker sections of the society who have no access to higher education and that he felt that the said system should be continued on a restrictive form for the students residing within the jurisdictional area of Osmania University. When the matter was placed before the Standing Committee, it was decided that "instead of following the External Examination system, steps should be taken to improve the conduct of the examination, and therefore, it resolved to constitute a Committee to go into this aspect." Accordingly, Committee headed by Mr. R. Thippa Reddy was constituted for suggesting improvements in the existing External Examination system. The said Committee noticed certain aspects which are as follows:

"1. In the past, the enrolment was restricted to teachers and women. Subsequently, the rules were liberalised. With this, the enrolment went upto an unmanageable proposition (sic. proportion), leading to enrolment chaos in the external section. Further, it created many problems in conducting the examinations due to lack of institutional strength. As per the norms of enrolment, a candidate with 10+2 pass certificate having three years standing can appear for all the degree papers viz., Part-I and Part-II in any medium at a stretch.

2. Even the documents required for enrolment have been dispensed with except pass-cum-provisional certificate.

3. There is no upper limit of ceiling on enrolment.

4. Registration through various agencies other than candidate concerned is

accepted now.

5. The minimum percentage of marks (40%) in the qualifying examination for the purpose of enrolment in the P.G. External is waived off.

6. Even with regard to passing of the examinations only the aggregate marks in the subject without insisting on the minimum pass marks in each paper is accepted for getting through the examination.

7. The candidates are permitted to pay the examination fee even before issuing the Registration Cards"

The Committee suggested remedies which are extracted as follows:

" 1. Enrolment may be restricted to English, Telugu and Urdu media only. Practice of arranging spot valuation centres outside the State should be avoided.

2. In view of the revision of eligibility criteria as above, there is no need to fix any ceiling.

3. The system of passing the whole examination in one attempt may be done away with. The earlier norm of taking the examinations Part I and Part II at the U.G. level and previous and final at the P.G. level separately may be considered for revival.

4. Minimum marks in the qualifying examination i.e. 40% in the concerned subject of the qualifying examination may be insisted for the enrolment in P.G. Courses;

5. A criterion of passing in every paper of the subject may be introduced dispensing with the aggregate both for U.G. and P.G.

6. For the purpose of enrolment in P.G, courses, pass certificate of the qualifying degree examination along with other essential documents like memorandum of marks can be made a pre-requisite.

7. Unless the registration card is issued in advance, the examination fee from any candidate should not be accepted.

8. Proper identification marks and photo are to be attested by a Government Gazetted Officer only, for the registration purposes;

9. Identical/common addresses furnished by the candidates for Correspondence may be treated as a malpractice. The candidates are required to furnish the residential or office address of place of work for correspondence with the University failing which the candidates will not be issued their Hall Tickets.

10. The schedule of the registration/enrolment, examinations may be prepared only after careful planning taking into account the institutional facilities and it should not allow any deviation later.

11. It is observed that the existing system of moderation, grace marks do not

reflect the actual performance of the candidates and this requires examination along with other regular examinations.

12. The existing practice regarding examination Centres and allotment of candidates is as follows:

The Joint Director, AAC only furnishes list of Examination Centres with their seating capacity and it is the Controller of Examinations who allots the candidates among these centres. This may be continued.

13. In view of the continued increase of registered candidates from year to year at the rate of about 20% the strength of the staff of Examination Branch should be increased proportionately.

14. Management information system should be evolved on emergency basis to streamline registration, valuation and publication of results".

The Report of the said Committee was placed before the Executive Council on 4-6-1996 which resolved as follows:

"The recommendations of the Committee for conducting the External examinations by the Registrar in Telugu, English and Urdu medium be accepted. Further resolved that passing of the examination in one attempt may be done away with. In the case of under-graduate examination, the candidate must take the examination in two sittings. In the 1st sitting they would be examined in all papers in Part-I and also in three papers in Part-II examination. The details have to be worked out by the Controller of Examinations in consultation with the Head and Chairman, Board of Studies. In the second sitting the candidates will be examined in all the 3 papers of Part-II examination. P.G. examination would be conducted for previous and final separately"

However, a D.O. was issued by the University Grants Commission on 17-5-1996 and the Committee was constituted to study the implications of the said D.O. and the following decisions were arrived by the Committee:

"1. The existing rules of Osmania University External examinations are not in tune with U.G.C. instructions (Lr.No. F11-4/92(CPP-II dated 17-5-96).

2. A fresh notification by Osmania University for External examinations requires modification of the existing rules.

3. The proposed modification may be as follows:

(a) The candidate will be registered after 10+2 for "non-formal course of instructions". He will appear for the first examinations at the end of two years. At the end of three years from the date of Registration he will appear for the second examinations along with backlogs. The registration will be valid for a period of six years.

(b) What should be "Non-formal course of instructions" is to be decided. This may be in the form of attending contact classes, correspondence, tutorial

colleges, or other modes of Distance Education.

4. Similar decisions apply to Osmania University P.G. External Examinations."

Therefore, it is submitted by the University that the decision was taken not to close the distance education scheme, but to introduce some modifications. The candidates will be registered for non-formal course of instruction and they will appear for the first examination at the end of the second year and at the end of the third year from the date of registration. The registration of the candidates will be valid for a total period of six years. This was introduced only in the interests of maintaining academic excellence and there is no illegality or irregularity in the system. The Standing Committee in its meeting held on 7-9-1996 considered the Committee report headed by Prof. Thippa Reddy and resolved as follows:

"Item No. 1 - External Examinations - suggestion for improvement of External Examination system - Report of the Committee - consideration of-

The Executive Council at its meeting held on 4-6-1996 decided that the recommendation of Prof. Tippa Reddy Committee for conducting External Examinations by restricting them to Telugu, English and Urdu medium be accepted and that the system of passing the whole examinations in one attempt should be done away with. The Executive Council suggested passing the examinations in the two sittings the details of which have to be worked out by the Controller of Examinations. On 17-5-1996 R.P. Gangurde, Additional Secretary, U.G.C. New Delhi informed that according U.G.C. guidelines/regulations both "formal/ non-formal degree courses" must be of 3 years duration and that no private appearance should be permitted. When the matter was discussed with U.G.C. authorities by both the Dean, U.G.C. and Controller of Examinations, the U.G.C. expressed the view that the present External Examination of the Osmania University should be given-up. In the light of U.G.C. letter dated 17-5-1996 and in view of the opinion expressed by the U.G.C. before two University officials, and in view of the decision taken by the Executive Council, the Vice-Chancellor appointed a Committee consisting of the Dean U.G.C. Director, CDE, Programmer Co-ordinator NSS and Controller of Examinations which recommended for issuing a fresh notification suggesting certain modifications. The report of this Committee was considered by the Standing Committee, which resolved that:-

(i) The candidates will hereafter, be registered after 10+2 for "non-formal course of instruction". The candidates so registered will appear for the 1st examination at the end of (2) years and at the end of (3) years he will appear for II examination along with backlogs. The registration will be valid for (6) years,

(ii) There will not be any private appearance.

(iii) Resolved that Non-formal courses of instruction may be in the form of attending "Contact Classes" "Correspondence", and other mode of Distance

Education.

(iv) Resolved that similar procedure be adopted in respect of P.G. Degree External Examinations."

6. Therefore, it is submitted that the Osmania University Distant Education Programme is not completely closed and there is only a change in the system and the intending candidates may appear for such examination by registering their candidature. If the existing system has to be conducted they will not be recognised by the other University. The University Grants Commission was also not in favour of conducting examination on the existing pattern. External Examination system was discontinued with immediate effect and the students will be permitted to complete their examination as per the rules applicable to them. Therefore it was submitted that the change in external examination system was introduced only after thorough deliberations. Hence, no fault can be found with the scheme. However, the existing registered candidates were given one more opportunity and they were directed to complete their examination within certain time stipulated by the University. It was also accepted that the University did not make any commitment or give any assurance to the Public by way of print media, broad-cast media or marks media about the change in the pattern. There was also no assurance from any quarter that the examinations will be continued for ever. It is subject to variations depending on the circumstances in which the examinations are conducted. Therefore the present system is only open for the candidates who are already enrolled and the candidates who were yet to enrol have to avail the distant education scheme. Hence the modified system of External Examinations cannot be said to be arbitrary or illegal and the Writ Petition is not maintainable against the decision of academic bodies.

7. The University Grants Commission states in the counter affidavit that the matter regarding obtaining the Degree in one sitting was under the consideration of the Commission since July, 1994 and it was referred to a Committee for Report with reference to the academic soundness of private appearance in the examinations. Accordingly, the Committee headed by Mr. R.G. Takwale, Vice-Chancellor of Indira Gandhi National Open University submitted its recommendations. The Committee observed the minimum standard of instructions for the grant of first degree through non-formal/ distance education for the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Science Regulations, 1985 which were given effect from 1-6-1996 are mandatory. The practice of awarding first degree within one sitting by private appearances was not in consonance with the regulations as there was no teaching-learning process in the Universities. The Universities also should not avoid their responsibility of teaching either conventional or distance mode. The Commission in its meeting held on 20-2-1996 considered the recommendations and decided as under:

"1. According to the U.G.C. regulations of minimum standards, both the formal and non-formal degree course must be of three years duration.

2. The undergraduate programme has been generally accepted as three year programme in most of the Universities. However, it was noted that in some States, the Universities offer a two-year degree course after plus 2. However, such students are not eligible for admission to the Master's degree programme.

3. It was desired that the U.G.C. regulations of minimum standards for formal as well as non-formal education be circulated to the Universities for compliance.

4. It was decided that the U.G.C. requirement for a 3 year degree course should also be notified.

5. No private candidate should be permitted to appear for examination."

Therefore, a communication was issued to all the Universities to implement the regulations. But, however, some representations were received. In view of the fact some of the students have already registered their candidature for one sitting Graduate Courses, the matter was considered on 10-9-1996 and decided as follows:

"In view of the 1985 Regulations for the minimum requirements for the first degree, no University is allowed to enrol candidates for one sitting B.A. degree course from the year 1996-97 onwards. Representations were received from many candidates. It was decided that the candidates already enrolled should complete their degree by the year 1998-99. The Universities violating this decision may be debarred from receiving plan assistance from the Commission. The degrees of the candidates enrolled for the one time Bachelor's Degree programme, upto the year 1995-96 may be treated as valid. The degree of the candidates declared valid may be treated on par with other degrees of the same University for all purposes, including admission to higher degrees and employment"

It is contended by the Commission that the regulations u/s 26(1) (f) of the Act regarding the minimum standards of instructions for grant of first degree is mandatory and binding on all the Universities. Therefore, as per the regulations, no student shall be eligible for award of first degree unless he successfully completes 3 years degree course. The regulations were published in Gazette and they became effective from June, 1986. The Commission in its meeting held on 10-9-1996 has validated B.A., one sitting degree of the candidates who have enrolled their names upto 1995-96.

8. The learned Senior Counsel for the petitioners Mr. S. Venkat Reddy advancing arguments submits that the right to education is a fundamental right embraced by the Article 21 of the Constitution of India and therefore, the action of the Respondents falls foul of the said fundamental right. He also submits that Kakatiya University in fact issued a notification for conducting External Examinations and number of persons who fall within the eligible criteria have made arrangements for registering their candidatures and also made preparations in that regard. Now cancelling the said examinations has adversely

effected their right. Hence, the action is per se, illegal and arbitrary. The learned Counsel relied on the decision of the Supreme Court reported in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., .

9. Sri Rama Rao submits that the regulations framed u/s 26(1)(f) are illegal and void and there is no such power vested with the Commission. He also submits that u/s 12 of the University Grants Commission Act, the consultation with the Universities is necessary before framing any regulations. In the instant case, no such consultation was made and hence the action of the Commission is illegal and incompetent. It is also submitted by the learned Counsel for the petitioners that the respondents are required to act fairly and reasonably. Even assuming that the regulations were passed in 1985, they were not given effect till 1996 and there was no notice to the public about the change in the pattern. The very purpose of External Examinations is to enable the persons, who cannot undergo regular and formal education in the colleges and they were under bonafide impression that they could acquire higher qualifications by preparing at their houses. Hence, sufficient notice should have been given to the public, so that the intending candidates could have made their own arrangements either to join the distance education programme or otherwise. The guidelines issued by the University Grants Commission are not mandatory and they have no binding effect. He relied on the decision of Supreme Court in J.R. Raghupathy and Others Vs. State of A.P. and Others, . He also submits that the petitioners were denied legitimate expectation in as much as the Universities having assured that the External Examinations will be held and the fact that these examinations were being conducted for lost more than two decades, they acquire a right to appear for external examinations and hence the action is per se, illegal and arbitrary. He placed reliance on Council of Civil Service Unions and Ors. v. Minister for the Civil Service (1984) 3 All E.R. 935 and R.V. Secretary of State for the Home Department, Ex Parte Ruddock and Ors., (1987) 2 All E.R. 518. The learned Counsel also submits that the guidelines issued by the University are only a directory and not mandatory. It is also argued by the learned Counsel that the action is arbitrary, unreasonable and unfair and relied on M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, and Neelima Misra v. Harinder Kaur Paintal, : [1990]2SCR84 .

10. Let us consider whether the right to education a fundamental right under Article 21 of the Constitution of India was held by the Supreme Court in Unni Krishnan's case (1st cited supra) and whether impugned actions discontinuing the External Examination system for undergraduate and post graduate courses are wholly arbitrary. He relies on the judgment of the Supreme Court in Unni Krishnan's case (1st cited supra). It is true that in the said case, the Supreme Court held that the citizens have a fundamental right to education which flows from Article 21, but the said right is available upto the age of 14 years and thereafter the right to education is subject to limits of economic capacity and development of State. While partly over-ruling the judgment of the Supreme Court in Miss. Mohini Jain Vs. State of Karnataka and others, , B.P. Jeevan Reddy

J, speaking for himself and for Ratnavel Pandyan J, said in para 145 as follows:

"In the above state of law, it would not be correct to contend that Mohini Jain (1992 AIR SCW 2100) was wrong in so far as it declared that "the right to education flows directly from right to life." But the question is what is the content of this right? How much and what level of education is necessary to make the life meaningful? Does it mean that every citizen of this country can call upon the State to provide him education of his choice? In other words, whether the citizens of this country can demand that the State provide adequate number of medical colleges, engineering colleges and other educational institutions to satisfy all their educational needs? Mohini Jain seems to say, yes. With respect, we cannot agree with such a broad proposition. The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution. So far as the right to education is concerned, there are several Articles in Part IV which expressly speak of it. Article 41 says that the "State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want". Article 45 says that "the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years". Article 46 commands that "the State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation." Education means knowledge - and "knowledge itself is power." As rightly observed by John Adams, "the preservation of means of knowledge among the lowest ranks is of more importance to the public than all the property of all the rich men in the country" (Dissertation on canon and fuedal law, 1765). It is this concern which seems to underline Article 46. It is the tyrants and bad rulers, who are afraid of spread of education and knowledge among the deprived classes. Witness Hitler railing against universal education. He said "Universal education is the most corroding and disintegrating poison that liberalism has ever invented for its own destruction." (Rauschning, The voice of destruction: Hitler speaks). A true democracy is one where education is universal, where people understand what is good for them and the nation and know how to govern themselves. The three Articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these Articles that the content and parameters of the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41, means: (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years, and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. We may deal with both these limbs separately.

Right to free education for all children until they complete the age of fourteen years (45-A). It is noteworthy that among the several articles in Part IV, only Article 45 speaks of a time-limit; no other article does; Has it no significance? Is it a mere pious wish, even after 44 years of the Constitution? Can the State flout the said direction even after 44 years on the ground that the Article merely calls upon it to "endeavour to provide" the same and on the further ground that the said Article is not enforceable by virtue of the declaration in Article 37. Does not the passage of 44 years - more than four times the period stipulated in Article 45 - convert the obligation created by the Article into an enforceable right? In this context, we feel constrained to say that allocation of available funds to different sectors of education in India disclose an inversion of priorities indicated by the Constitution. The Constitution contemplated a crash programme being undertaken by the State to achieve the goal set out in Article 45. It is relevant to notice that Article 45 does not speak of the "limits of its economic capacity and development" as does Article 41, which inter alia speaks of right to education. What has actually happened is - more money is spent and more attention is directed to higher education than to - and at the cost of - primary education. (By primary education, we mean the education, which a normal child receives by the time he completes 14-years of age). Neglected more so are the rural sectors, and the weaker sections of the society referred to in Article 46. We clarify we are not seeking to lay down the priorities for the Government-we are only emphasising the constitutional policy as disclosed by Articles 45, 46 and 41. Surely, the wisdom of these constitutional provisions is beyond question. This inversion of priorities has been commented upon adversely by both the educationists and economists.

Gunnar Myrdal, the noted economist and sociologist, a recognised authority on South Asia, in his book "Asian Drama" (abridged Edition - published in 1972) makes these perceptive observations at page 335:

"But there is another and more valid criticism to make. Although the declared purpose was to give priority to the increase of elementary schooling in order to raise the rate of literacy in the population, what has actually happened is that secondary schooling has been rising much faster and tertiary schooling has increased still more rapidly. There is a fairly general tendency for planned targets of increased primary schooling not to be reached, whereas targets are over-reached, sometimes substantially, as regards increases in secondary, and particularly, tertiary schooling. This has all happened in spite of the fact that secondary schooling seems to be three to five times more expensive than primary schooling, and schooling at the tertiary level five to seven times more expensive than at the secondary level.

What we see functioning here is the distortion of development from planned targets under the influence of the pressure from parents and pupils in the upper strata who everywhere are politically powerful. Even more remarkable is the fact that this tendency to distortion from the point of view of the planning objectives

is more accentuated in the poorest countries, Pakistan, India, Burma and Indonesia, which started out with far fewer children in primary schools and which should therefore have the strongest reasons to carry out the programme of giving primary schooling the highest priority. It is generally the poorest countries that are spending least, even relatively, on primary education, and that are permitting the largest distortions from the planned targets in favour of secondary and tertiary education."

In his other book "Challenge of world poverty" (published in 1970) he discusses elaborately - in chapter 6 "Education" - the reasons for and the consequences of neglect of basic education in this country. He quotes J.P. Naik, (the renowned educationist, whose Report of the Education Commission, 1966 is still considered to be the most authoritative study of education scene in India) as saying "Educational development.....is benefitting the "haves" more than the "have nots". This is a negation of social justice and "planning" proper" - and our Constitution speaks repeatedly of social justice (Preamble and Article 38(1)). As late as 1985, the Ministry of Education had this to say in para 3.74 of its publication "Challenge of Education - a policy perceptive". It is stated there:

"3.74. Considering the constitutional imperative regarding the universalisation of elementary education it was to be expected that the share of this sector would be protected from attribution. Facts, however, point in the opposite direction. From a share of 56 per cent in the First Plan, it declined to 35 per cent in the Second Plan, to 34 per cent in the Third Plan, to 30 per cent in the Fourth Plan. It started going up again only in the Fifth Plan, when it was at the level of 32 per cent, increasing in Sixth Plan to 36 per cent, still 20 per cent below the First Plan level. On the other hand, between the First and the Sixth Five years Plans, the share of university education went up from 9 percent to 10 per cent."

Be that as it may, we must say that at least now the State should honour the command of Article 45. It must be made a reality - at least now. Indeed, the "National Education Policy - 1986" says that the promise of Article 45 will be redeemed before the end of this century. Be that as it may, we hold that a child (citizen) has a fundamental right to free education upto the age of 14 years."

11. That right to education understood in the context of Articles 45 and 41, means; (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years, and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. Apart from holding that the right to education being a fundamental right upto the age of 14 years, the Supreme Court further held that the right to education further means that citizen has a right to call upon the State to provide education facilities to him within the limits of its economic capacity and development. The Supreme Court further held as follows:

"The right to education further means that a citizen has a right to call upon the

State to provide educational facilities to him within the limits of its economic capacity and development. By saying so, we are not transferring Article 41 from Part IV to Part III. We are merely relying upon Article 41 to illustrate the content of the right to education flowing from Article 21. We cannot believe that any State would say that it need not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State.

In the light of the above enunciation, the apprehension expressed by the Counsel for the petitioners that by reading the right to education into Article 21, this Court would be enabling each and every citizen of this country to approach the Courts to compel the State to provide him such education as he chooses must be held to be unfounded. The right to free education is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development. Indeed we are not stating anything new. This aspect has already been emphasised by this Court in *Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others*, . While elaborating the scope of the right guaranteed under Article 21, this Court stated:

"But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes right to live with human dignity and all that goes along with it viz., the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about the mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the Country, but it must in any view of the matter, include a right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the humankind."

12. In *Miss. Mohini Jain's* case (7th cited supra) the Supreme Court held that every citizen has a right to education under Constitution and that the State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligations through State or private educational institutions. When State Governments grants recognition to private educational institutions, it creates an agency to fulfil its obligation under the Constitution. The students were given admission to educational institution whether State owned or State recognised educational institutions in recognition of their right to education under the Constitution. Therefore, charging capitation fee on students of private educational institutions is denial of citizens right to education under the Constitution.

13. As already stated supra, the said finding was modified by the Supreme Court in *Unni Krishnan's* case (1st cited supra) to the effect that the right to education

upto the age of 14 years is a fundamental right and thereafter it depends on the economic capacity of the State and its development. The Supreme Court in Miss. Mohini Jain's case (7th cited supra), held at page No. 1864 as follows:

"The right to education is a concomitant to the fundamental rights enshrined under Part-III of the Constitution. The Directive Principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part-III. These principles have to read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part-III could be enjoyed by all. Without making "right to education" under Article 41 of the Constitution a reality of the fundamental rights under Chapter-III shall remain beyond the reach of the large majority which is illiterate."

The above view expressed by the Supreme Court was re-affirmed by the Constitution Bench of the Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . It is observed:

"In order to treat a right as a fundamental right it is not necessary that it should be expressly stated as one in Part III of the Constitution. The provisions of Parts III and IV are supplementary and complementary to each other. Fundamental rights are but a means to achieve the goal indicated in Part IV and must be construed in the light of the directive principles."

It is further observed that though the right to education is not stated expressly in Constitution it is a right guaranteed under Art. 21 having regard to the broad interpretation given by the Court:

"The right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world. In Miss. Mohini Jain Vs. State of Karnataka and others, the importance of education has been duly and rightly stressed.....We agree with the observation that without education being provided to the citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail."

From the two important decisions of the Supreme Court, it is now well established that even though it is not expressly stated in Article 21 regarding the right to education, it forms part of the concept of "right to life". The right to education is implicit in the right to life and personal liberty guaranteed under Article 21. This right to education is to be understood in the background of Articles 45 and 41 of the Constitution and the State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. However, the Court held:

"Right to education, understood in the context of Articles 45 and 41, means; (a) every child /citizen of this country has a right to free education until he

completes the age of fourteen years and (b) after a child/citizen completes 14 years, high right to education is circumscribed by the limits of the economic capacity of the State and its development."

Article 21 acts as shield against the deprivation of such right. Therefore, there cannot be two opinions as to whether right to education is part of the fundamental rights."

14. Basing on the above decisions, the learned Counsel submits that it is a case of conferring under-graduate and post graduate degrees by External Examination system with a view to help and assist the economically poor, employed persons and women who will not be in a position to undertake regular course of studies in the colleges or universities. It is not the case of the University that they are compelled to dispense with the system on account of economic impediments. The right to education itself is a fundamental right subject to the economic capacity and development of the State. So long as the State does not plead economic incapacity, the right to education should continued to be a fundamental right. The Supreme Court in *State of H.P. Vs. H.P. State Recognised and Aided Schools Managing Committees and Others*, , held that barring economic capacity of the State, the right to education is a fundamental right embedded in Article 21 of the Constitution of India. As observed by the Supreme Court in *University of Delhi v. Ram Nath* AIR 1982 SC 1873, "Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development." It is well settled that "if life is so interpreted as to bring within it right to education, it has to be interpreted in the light of directive principles." In *State of Kerala and Another Vs. N.M. Thomas and Others*, it was held as follows:

"There is complete unanimity of judicial opinion of this Court that the Directive Principles and the Fundamental Rights should be construed in harmony with each other and every attempt should be made by the Court to resolve apparent inconsistency.

The Directive Principles contained in Part IV constitute the stairs to climb the High edifice of a socialistic State and the Fundamental Rights are the means through which one can reach the top of the edifice.

The Directive Principles form the fundamental feature and the social conscience of the Constitution which enjoins upon the State to implement these Directive Principles. The Directives thus provide the policy, the guidelines and the end of socio-economic freedom and Articles 14 and 16 are the means to implement the policy to achieve the ends sought to be promoted by the Directive Principles. So far as the Courts are concerned where there is no apparent inconsistency between the Directive Principles contained in Part IV and the Fundamental Rights mentioned in Part III, there is no difficulty in putting a harmonious construction which advances the object of the Constitution."

In *Pathumma and Others Vs. State of Kerala and Others*, the Supreme Court observed as follows:

"In fact in the case of His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, all the Judges constituting the Bench have with one voice given the Directive Principles contained in the Constitution a place of honour. Hegde and Mukherjee, JJ. as they then were have said that the fundamental rights and the Directive Principles constitute the "conscience" of our Constitution. The purpose of the Directive Principles is to fix certain socio and economic goals for immediate attainment by bringing about a non-violent social revolution. Chandrachud, J. observed that our Constitution aims at bringing about a synthesis between "Fundamental Rights" and the "Directive Principles of State Policy" by giving to the former a place of pride and to the latter a place of performance."

In *Fatehchand Himmatlal and Others Vs. State of Maharashtra*, , the Supreme Court observed as follows:

"Incorporation of Directive Principles of State Policy casting the high duty upon the State to strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice-social, economic and political-shall inform all the institutions of the national life, is not idle point but command to action. We can never forget, except at our peril, that the Constitution obligates the State to ensure an adequate means of livelihood to its citizens and to see that the health and strength of workers, men and women, are not abused, that exploitation, moral and material, shall be extruded. In short, State action defending the weaker sections from social injustice and all forms of exploitation and raising the standard of living of the people, necessarily imply that economic activities, attired as trade or business or commerce, can be de-recognised as trade or business."

Even Article 26 of the Universal Declaration on education, states:

"Every one has right to education technical and professional, professional and technical shall be made available and higher education shall be equally accessible to all on the basis of the merit."

Therefore, the Supreme Court in *Unni Krishnan's* case (1st cited supra) after considering the Directive Principles enshrined in Articles 39-A, 45 and 46 observed that, though right to education was not stated as expressly a fundamental right, yet it did not follow the rule that unless a right is expressly stated as a fundamental right, it cannot be treated as one. The word "Life" occurring in Article 21 of the Constitution of India too has received a broad and expansive interpretation. An important face of that right is the right to livelihood, because no person can live without the means of living i.e. the means of livelihood. Article 39-A, a Directive Principle of State Policy provides that State shall in particular direct its policy towards securing to its citizens (men and women equally) right to an adequate means of livelihood. Article 41 is another Directive Principle provides that the State shall within the limits of its economic capacity and development make effective provision for securing the right to work

in case of unemployment and of undeserved want. Article 37 provides that the Directive Principles though not enforceable by any Court are nevertheless, fundamental in the governance of the country. The principles contained in Articles 39-A and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life (See: *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, . Similarly in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, . the Supreme Court held that Article 21 must be construed in the light of the Directive Principles of State Policy. It held at a para 137 at page No. 2228 as follows:

"This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities of children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity....."

15. The Supreme Court has been consistently adopting the approach that fundamental rights and directive principles are complementary to each other and that the Fundamental Rights are but a means to achieve the goal indicated in Part IV. The Fundamental Rights should be construed and interpreted in the light of Directive Principles of State Policy. The initial hesitation to recognise the profound significance of Part-IV was given up long ago, as can be seen from the following cases.

16. In *Kerala Education Bill* (See: AIR 1958 SC 956), the Supreme Court observed as follows:

"Nevertheless, in determining the scope and ambit of the fundamental rights relied upon by or on behalf of any person or body, the Court may not entirely ignore these Directive Principles of State Policy laid down in Part-IV of the Constitution, but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible."

Similarly in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, , the same principle was adopted by the learned Judges. In the words of Hegde and Mukherjee JJ:

"The Fundamental Rights and Directive Principles constitute the "conscience" of the Constitution.....To ignore Part IV is to ignore the sustenance provided for in the Constitution, the hopes held out to the nation and the very ideals on which our Constitution is built.....There is no anti-thesis between the

Fundamental Rules and the Directive Principles.....One Supplements the other."

In the words of Shelat and Grover, JJ:

"Both Parts III and IV.....have to be balanced and harmonised.....then alone the dignity of the individual can be achieved.....They (Fundamental Rights and Directive Principles) were meant to supplement each other."

Mathew, J. said:

"The object of the people in establishing the Constitution was to promote justice, social and economic liberty and equality. The modus operandi to achieve these objectives is set out in Parts III and IV of the Constitution. Both Parts III and IV enumerate certain moral rights. Each of these parts represents in the main the statements in one sense of certain aspirations, whose fulfilment was regarded as essential to the kind of society which the Constitution-makers wanted to build. Many of the Articles, whether in Part III or Part IV, represent moral rights which they have recognised as inherent in every human being in this country. The task of protecting and realising these rights is imposed upon all the organs of the State, namely, legislative, executive and judicial. What then is the importance to be attached to the fact that the provisions of Part III are enforceable in a Court and the provisions in Part IV are not? Is it that the rights reflected in the provisions of Part III are somehow superior to the moral claims and aspirations reflected in the provisions of Part IV? I think not. Free and compulsory education under Article 45 is certainly as important as freedom of religion under Article 25. Freedom from starvation is as important as right to life. Nor are the provisions in Part III absolute in the sense that the rights represented by them can always be given full implementation."

Y.V. Chandrachud, J. observed:

"As I look at the provisions of Part III and IV, I feel no doubt, that the basic object of conferring freedoms on individuals is the ultimate achievement of the ideals set out in Part-IV.....May I say that the directive principles of State policy should not be permitted to become "a mere rope of sand". If the State fails to create conditions in which the fundamental freedoms can be enjoyed by all, the freedom of the few will be at the mercy of the many and then all freedoms will vanish."

In *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, it was observed that:

"the fundamental rights are not an end in themselves, but are the means to an end. The end is specified in Part-IV"

"Thus, it is well established by the decisions of the Supreme Court that the provisions of Parts III and IV are supplementary and complementary to each other and that Fundamental Rights are but a means to achieve the goal indicated

in Part-IV. Fundamental Rights should be construed in the light of Directive Principles."

In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, , the Supreme Court further held that the right to life guaranteed under Article 21 does take in "educational facilities". Having regard to the fundamental significance of education to the life of an individual and the nation and adopting the reasoning and logic adopted in the earlier decisions of the Supreme Court, it was held that the right to education is implicit and flows from the right to life guaranteed under Article 21 of the Constitution. That the right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country, but all over the world. The fact that right to education occur in as many as three Articles namely Articles 41, 45 and 46, the importance of right to education need not be over-emphasised. Even Articles 29 and 30 do speak of education. The U.S. Supreme Court in *Brown v. Board of Education* (See: (1953) 98 Law.Ed. 873), also emphasised the right to education by saying :

"Today, education is perhaps the most important function of State and local governments.....It is required in the performance of our most basic responsibilities, even service in the armed forces, it is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."

Again in *Wisconsin v. Yoder* (See: (1972) 32 Law. Ed.2d 15), the Court recognised that:

"Providing public schools ranks at the very apex of the function of a State."

Thus, the right to education has to be construed as a fundamental right, subject to economic capacity and development of the State. It has to be now seen whether the State can plead economic inability in this case. It is not in dispute that the External Examination system has been in vogue for the last more than two decades, and at no point of time, the Respondents expressed any economic inability. The decision in *Unni Krishnan's* case (1st cited supra), was again referred in a recent decision of the Supreme Court in *H.P. State Recognised & Aided Schools*" case (8th cited, supra). The Supreme Court held in paras 16 and 17 as follows:

"16. The constitutional mandate to the State, as upheld by this Court in *Unni Krishnan's* case - to provide free education to the children up to the age of fourteen - cannot be permitted to be circumvented on the ground of lack of economic capacity or financial incapacity. 17. It is high time that the State must accept its responsibility to extend free education to the children up to the age of fourteen. Right to education is equally guaranteed to the children who are above the age of fourteen, but they cannot enforce the same unless! the economic

capacity and development of the State permits the enforcement of the same. The State must endeavour to review and increase the budget allocation under the head "Education". The Union of India must also consider to increase the percentage of allocation of funds for "Education" out of the Gross National Product."

Thus, it is clear that right to education is also a fundamental right guaranteed under Article 21 of the Constitution of India, unless the economic capacity and development of the State prohibits enforcement of the same. I have to accordingly hold that, in the absence of any material placed before this Court as to the economic incapacity of the State, the petitioners have fundamental right to education. Imparting education is a public duty imposed by the Constitution and hence it can be enforced by a Writ of mandamus, if the authorities fail to discharge the public duty or act in an illegal or perfunctory manner that there is in fact no performance.

17. It is nextly urged by the learned Counsel for the petitioner that the directions issued by the U.G.C. with regard to the non-formal education is only a guideline and it is not statutorily binding on the Universities. Therefore, it is not necessary for the Universities to meticulously obey the directions issued by the U.G.C. As already stated, the U.G.C. framed 1985 Rules by virtue of power under Clause (f) of Sub-Section 1 of Section 26 of the University Grants Commission Act (for short U.G.C. Act). The said Regulations came into force with effect from 1-6-1986. Regulations 2 and 3 relates to admission of students and programme of study which reads as follows:

"2. Admission/students

(1) No student shall be eligible for admission to the 1st Degree Course in these faculties unless he has successfully completed 12 years schooling through an examination conducted by a Board/University. The admission shall be made on merit on the basis of criteria notified by the Institutions after taking into account the reservation order issued by the Government from time to time.

(2) Student enrolment shall be in accordance with the number of teachers and physical facilities available.

(3) No student shall be eligible for the award of the first degree unless he has successfully completed a three year course. This degree may be called the B.A./B.Sc./B.Com.. (General/Honours/Special) degree as the case may be:

Provided no student shall be eligible to seek admission to the Master's Course in these faculties, who has not successfully pursued the first Degree Course of three years duration.

Provided further that as a transitory measure where the Universities are unable to change over to a three year degree course, they may award a B.A/B.Sc./B.Com (Pass) degree or successful completion of two year course, but that no student of this stream shall be eligible for admission to the Master's course

unless he has undergone a further one year badge course and passed the same. The three year degree course after 10+2stage should in no case be termed as B.A./B.Sc./B.Com. (Pass) degree.

3. Working days:

(1) Even University enrolling students for the 1st Degree Course shall ensure that the number of actual teaching days does not go below 180 in an academic year.

Explanation:

The working days shall exclude holidays and vacations, the time set apart for completing normal admission, time required for the preparation and conduct of examinations but shall include the days on which classes such as lectures, tutorials, seminars, practicals etc. are held or conducted.

(2) The total periods provided in the time table shall not be less than 40 clock hours a week. The time-table on working days shall be so drawn up that physical facilities are adequately utilized, and not used only for a few hours a day.

(3) The University shall not only lay down the syllabus for each course but also the manner of its implementation, namely, through number of lectures, tutorials, laboratory sessions, seminars, field work, projects etc. Students shall be encouraged to study some part of the syllabus themselves and shall be given assignment so as to make them as the library or laboratory etc.

(4) When a student offers a combination of course-

(i) It shall be ensured that the total weekly work load on the student is not more than 30 clock hours a week thus enabling him to undertake some study at his own initiative or to prepare his tutorials, seminars etc.

(ii) the total work-load on a student shall also be adequate so as to keep him busy.

(iii) lectures shall be supplemented by tutorials and/or problem solving sessions (which shall be around 25% of the lecture work load), term papers etc. so that a student derives maximum benefit from the programme of study.

(5) Minimum number of lectures, tutorials, seminars, practicals etc. which a student shall be required to attend before being eligible for appearing at the examinations shall be as prescribed by the University which on an average shall not be less than 75% of the total number of lectures, tutorials, seminars, practicals etc."

Admittedly these provisions were not insisted by the U.G.C. on the other Universities for the last several years and the External Examinations system continued to govern the field. Though they were communicated to all the Universities in 1986 itself, no perceptible change has taken place.

18. The Osmania University issued a Press Notification dated: 19-9-1996 to the effect that in view of the U.G.C. guidelines, it is decided to discontinue the External Examination system with effect from the academic year 1996-97 and that fresh registration of the candidates for B.A., B.Com., M.A., M.Com., M.Sc, (Maths) will not be accepted through Centre for Distance Education. However, the candidates who have registered during 1995 and earlier will be permitted to appear for examinations. It is only when a communication was received from U.G.C. on 17-5-1996 to the effect that formal and non-formal Degree Courses must be of 3 years course and no private appearance should be permitted, the matter was again reviewed and decision was taken to the effect that the intending students can avail the Osmania University Distance Education programme and that nonformal course of instructions may be in the form of contact classes, correspondence and other modes of distance education. Therefore, the Respondents submit that the system has not been abolished as such, but only a modification has now been brought out that is, they have to attend the classes for correspondence course through the Distance Education programme.

19. The question is whether the directions issued by the University Grants Commission are binding on these Universities?

20. Though there is no provision either in the A.P. Universities Act, 1991 or in the University Grants Commission Act, yet for the purpose of maintaining the uniformity in the educational system through out the country, the U.G.C. has issued instructions and being a funding agency to all the Universities, it has issued the said directions in the form of an order. But, at the same time, it has to be seen that irrespective of the guidelines issued by the U.G.C. it is open for the University to review its own system and bring modifications if any which are required in the scheme for the maintaining higher standards of education. Therefore, it has to be held that the University de hors guidelines issued by the U.G.C. has power to modify the system.

21. The learned Counsel for the petitioners submit that there was no deterioration in the economic soundness by virtue of the External Examination system and on the other hand the results are more encouraging. But, however, the learned Standing Counsel for the Central Government submits that the decision was taken in the interest of the academic standards and with a view to maintain the contact between the Teacher and the Student. I am not inclined to go into these aspects, in as much as, the authorities have right to bring necessary changes in the interest of the academic excellency. It is now well settled that the policy decision of the academic and expert bodies are normally not susceptible for interference under Article 226 of the Constitution of India, unless they fall foul of Article 14 of the Constitution of India.

22. The learned Counsel for the petitioner again submits that the Respondents are estopped from dispensing with the External Examination system. Therefore, the action is hit by promissory estoppel. The learned Counsel also submits that

the petitioners have acquired legitimate expectation of pursuing higher studies by means of External Examination system and therefore the same cannot be denied. Alternatively also he submits that the change in the system should have brought into effect in a phased manner and by bringing the system at once for the first time in the year 1996, it has caused irreparable loss to the petitioners and other similarly situate persons, who are intending to register their candidature for External Examination system. He relies on the decision of the Supreme Court in *Union of India and others Vs. Hindustan Development Corpn. and others*, , *Council of Civil Service Unions*" case (3rd cited supra), *R.V. Secretary of State for the Home Department*" case (4th cited supra). It is now settled that a writ of mandamus will not issue to enforce a contract against the Government which has not been made in exercise of statutory power. But, writ may issue to enforce a promise made by the State relying on which the petitioners have altered their position to their prejudice. In such a case, the Rules of Promissory estoppel may apply and appropriate relief can be granted in proper cases under Article 226 of the Constitution of India. But, in the instant case, such a situation did not arise. By virtue of the scheme introduced by the Universities, External Examination system was continued and there was no promise that the system will continue for ever. That apart, the petitioners have also not established that they altered their position to their prejudice relying on the promise made by the Universities. The learned Counsel for the petitioner submits that by introducing the revised system, the action of the University should be construed as going back on i the promise and the petitioners could not take alternative mode of education. In effect, the learned Counsel submits that sufficient notice should have been given to the intending students so as to make alteranative arrangements. As to the sufficient notice, I shall deal with the same in the succeeding paragraphs. But, suffice to say that the case does not fall under promissory estoppel. Coming to the alleged legitimate expectation, the Supreme Court in *Hindustan Development Corporation's* case (15th cited supra) observed thus:

"In Halsbury's Laws of England, Fourth Edition, Volume 1(1) 151, a passage explaining the scope of "legitimate expectations" runs thus:

"81. Legitimate expectations. A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice.

The existence of a legitimate expectation may have a number of different consequences: it may give locus standi to seek leave to apply for judicial review: it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so: or it may mean that, if the authority proposes to defeat a person's legitimate expectation, it must afford him an opportunity to make representations on the matter. The

Courts also distinguish for example in licensing cases, between original applications, applications to renew and revocations; a party who has been granted a licence may have a legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant."

The Supreme Court explained the meaning and scope of the doctrine of legitimate expectation. Paras 27 and 28 are extracted below:

"27. Of late the doctrine of legitimate expectation is being pressed into service in many cases particularly in contractual sphere while canvassing the implications underlying the administrative law. Since we have not come across any pronouncement of this Court on this subject explaining the meaning and scope of the doctrine of legitimate expectation, we would like to examine the same a little more elaborately at this stage. Who is the expectant and what is the nature of the expectation? When does such an expectation become a legitimate one and what is the foundation for the same? What are the duties of the administrative authorities while taking a decision in cases attracting the doctrine of legitimate expectation.

28. Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."

After examining the various Indian and English decisions the Supreme Court held as follows:

"33-34. On examination of some of these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straight way from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an

overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the Courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the Court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors."

The Supreme Court further held that:

"If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the Court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the Courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the Court out of review on the merits", particularly when the element of speculation and uncertainty is inherent in that very concept. As cautioned in Attorney General for New South Wales" case the Courts should restrain themselves and restrict such claims duly to the legal limitations. It is a well-meant caution. Otherwise a

resourceful litigant having vested interests in contracts, licences etc. can successfully indulge in getting welfare activities mandated by the directive principles thwarted to further his own interests. The caution, particularly in the changing scenario, becomes all the more important."

23. It is true that the petitioners were under bonafide impression that the scheme would continue for 1996 and thereafter on the ground that it was being continued for the last more than two decades. But, can it be said that the petitioners have acquired a legal right to demand that the scheme should be continued without any modifications. There cannot be any dispute that the Respondents are entitled to modify the scheme, but any such action in that regard should not be arbitrary. The petitioners cannot claim any opportunity before switching over to new system. But, at the same time fair-play in action is a most important aspect which should not only be treasury but also appear to have been present in every administrative action of the State. The principles of legitimate expectation may take shape in various forms depending on the circumstances and there cannot be any exhaustive list. It may arise in cases of promotion which are in normal course expected though not guaranteed by way of statutory right. It may also arise in case of contract distribution of largesse by the Government and in somewhat similar situations. However, in cases of discretionary grant of Licences, permits and the like, they carry with them a reasonable expectation though not a legal right for renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. There also the Court again has to see whether it was done as a policy or in the public interest either by way of G.O. or Rule or Legislation. If that be so, decision denying a legitimate expectation based on such ground does not qualify for interference unless in a given case, the decision or action taken amounts to abuse of power. The observations of the Supreme Court in para 36 of the judgment are very much apt which are extracted below:

"Legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the governmental activities. They shift and change so fast that the start of our list would be obsolete before we reached the middle. By and large they arise in case of promotions which are in normal course expected, though not guaranteed by way of a statutory right, in cases of contracts, distribution of largesse by the Government and in somewhat similar situations. For instance in cases of discretionary grant of licences, permits or the like, carries with it a reasonable expectation, though not a legal right to renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. But there again the Court has to see whether it was done as a policy or in the public interest either by way of G.O., rule or by way of a legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power. Therefore the limitation is extremely confined and if the according of natural justice does

not condition the exercise of power, the concept of legitimate expectation can have no role to play and the Court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the Court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the Court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. For instance if an authority who has full discretion to grant a licence and if he prefers an existing licence holder to a new applicant, the decision cannot be interfered with on the ground of legitimate expectation entertained by the new applicant applying the principles of natural justice. It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. In other words such a legal obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. As observed in *Attorney General For New South Wales*" case (1990 (64) Aus. LJR 327). "To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the Courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law"

24. It was held in *Council of Civil Service Unions*" case (3rd cited supra) thus:

"An aggrieved person was entitled to invoke judicial review if he showed that a decision of a public authority affected him by depriving him of some benefit or advantage which in the past he has been permitted to enjoy and which he could legitimately expect to be permitted to continue to enjoy either until he was given reasons for its withdrawal and the opportunity to comment on those reasons or because he had received an assurance that it would not be withdrawn before he had been given the opportunity of making representations against the withdrawal. The appellants' legitimate expectation arising from the existence of a regular practice of consultation which the appellants could reasonably expect to continue gave rise to an implied limitation on the minister's exercise of the power contained in Article 4 of the 1982 order, namely an obligation to act fairly by consulting the GCHO staff before withdrawing the benefit of trade union membership. The minister's failure to consult prima facie entitled the appellants to judicial review of the minister's instruction (See: *A-G of Hong Kong v. Ng Yuen Shiu* (1983 (2) All. E.R. 346) considered."

25. The administrative action is subject to control by judicial review under three

heads: (1) illegality, where the decision-making authority has been guilty of an error of law, e.g. by purporting to exercise a power it does not possess; (2) irrationality, where the decision-making authority has acted so unreasonably that no reasonable authority would have made the decision; (3) procedural impropriety, where the decision making - authority has failed in its duty to act fairly (See: *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.* (See: 1947 (2) All.E.R. 680).

26. In *R.V. Secretary of State for the Home Department*'s case (4th cited supra), the facts are:

"The applicant, a prominent member of the Campaign for Nuclear Disarmament, discovered as a result of a statement made in a television programme by a former intelligence officer that his telephone calls had been intercepted pursuant to a warrant signed by the Secretary of State for the Home Department in or about August 1983. He applied for judicial review of the Secretary of State's decision to sign the warrant, contending (i) that the interception had been unlawful because it did not meet the published criteria governing such interceptions and has been done to obtain information for party political purposes and (ii) that he had a legitimate expectation that the Secretary of State would follow the published criteria when deciding whether his telephone should be intercepted. The applicant sought, inter alia, a declaration to that effect and damages for misfeasance in a public office. The Secretary of State, as a matter of policy in the interest of national security, declined to confirm or deny the existence of any warrant but contended (i) that the Court ought to decline jurisdiction because it would be detrimental to national security for the Court to investigate, discuss and make findings on a warrant the existence of which was not admitted and (ii) that the doctrine of legitimate expectation did not apply where the applicant could have no expectation of being consulted or given an opportunity of making representations before a decision adverse to him was made."

Following the dicta of Lord Diplock in *O'Reilly v. Mackman* (See: 1982 (3) All.E.R. 1126) of Lord Scarman in *Findlay v. Secretary of State for the Home Dept.* (See: 1984 (3) All.E.R. 830), *Council of Civil Service Unions v. Minister for the Civil Service* (See: 1984(3) All.E.R. 935), *Dictum of Dunn L]* in *R v. Secretary of State for the Home Dep, exp Khan* (See: 1985 (1) All.E.R. 52) and *Bourgoin SA v. Ministry of Agriculture Fisheries and Food* (See: (1985) 3 All.E.R. 585), the Court observed:

"The doctrine of legitimate expectation imposed, in essence, a duty to act fairly and was not restricted to cases where the expectation was to be consulted or to be given the opportunity to make representation before a decision was made. Where ex hypothesi there was no right to be heard it could be more important to fair dealing that a promise or undertaking given by a minister as to how he would proceed should be kept. Since the criteria governing the issue of interception warrants had been published six times between 1952 and 1982 and

had been expressly adopted by the Secretary of State, that clearly established a legitimate expectation that he would in fact follow the criteria when deciding whether to issue a warrant".

27. Even though the system was in vogue for the last more than two decades, yet the question is whether the principle of legitimate expectation would arise in this case. There is no legal right to the intending persons appearing for External Examination system and it is only a privilege or benefit that is conferred on them to enable these persons to appear for such examinations. At the same time it has to be seen that the very purpose of External Examination system is to help the weaker sections, women and other employed persons who cannot afford to go to regular colleges and it must be said that the scheme was introduced in public interest. When such a scheme is sought to be taken away and substituted by another modified scheme, in all fairness, the Respondents ought to follow the principle of fair-play in action and should have given sufficient notice to the public before switching over to modified method to enable the aspirants to work out their respective alternative modes. An administrative order involving Civil consequences must be made consistently with the rule expressed in the Latin Maxim *audi altram partem*. Even in purely administrative decisions duty is enjoined upon the State to act fairly consistent with the rule of natural justice. When such decisions affect one's personal right, property rights or the loss of or prejudicially affect something which would juridically called atleast a privilege (See: *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, . By dispensing with External Examination system, and bringing into effect the modified scheme all of a sudden, in my considered view, the respondents have denied the legitimate expectations of the petitioners. Though the convention or practice which is in existence for the last several years, it cannot take the shape of legal right, but, yet, the law requires that the action of the State should not be arbitrary, unreasonable or unfair. Therefore, dispensing the system abruptly with the academic year 1996 without giving sufficient time appears to be unreasonable. The fact that the U.G.C. itself has brought into effect the revised regulations in 1985 and the same were not implemented through out the country for nearly a decade, itself shows that the authorities were not inclined to switch over to new system. In case of Kakatiya University, even the notification was published and abruptly the process was stopped. Though the benefit of the existing system was extened to the persons, who have already registered, yet fair-play requires that the aspirants to the existing system should have also been put on notice by giving sufficient time.

28. Under these circumstances, the Court feels that atleast a period of three years could have been fixed for the aspirants to register themselves and authorities could have made known to the public that after expiry of three years, there shall be no registration of External Examination system. While I do not express any opinion about the modified system, under the Distance Education scheme, for the reasons stated above, I direct the respondents to continue the External Examination system for the undergraduate and postgraduate courses by

registering the candidates as last batch and thereafter abolish the same. Since the scheme is extended for the benefit of the general public, the respondents are directed to give wide publicity through various media.

29. The Writ Petitions are disposed of accordingly. No costs.