

(1995) 10 AP CK 0051

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 716 of 1993 and Criminal Revision No. 651 of 1993

Nazir Ahmed Ansari

APPELLANT

Vs

Lateef Bi and Others

RESPONDENT

Date of Decision : 19-10-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 126, 127, 128

Citation : (1996) 1 ALD(Cri) 396 : (1996) 1 ALT(Cri) 419 : (1996) CriLJ 1548 : (1996) 1 DMC 300

Hon'ble Judges : V. Rajagopala Reddy, J

Bench : Single Bench

Advocate : Mohd. Azizullakhan and Mohd. Mohruddin, for the Appellant; Public Prosecutor, for the Respondent

Judgement

This Judgment has been overruled by : Danial Latifi and Another Vs. Union of India, (2001) 8 AD 1 : AIR 2001 SC 3958 : (2001) CriLJ 4660 : (2001) 2 DMC 714 : (2001) 8 JT 218 : (2001) 6 SCALE 537 : (2001) 7 SCC 740 : (2001) AIRSCW 3932 : (2001) 7 Supreme 297

T.Ch. Surya Rao, J. 1. The petitioner seeks a writ of mandamus declaring the Andhra Pradesh State Council of Higher Education Act, 1988 and university Grants Commission Instructions, under which the said Act purported to have been passed, as illegal, invalid, void, and ultra vires of the Constitution of India.

2. A resume of the events that led to the passing of the impugned Act is expedient to be set forth for an effective adjudication of the matter hereunder thus:

3. The Central Government evolved a National Education Policy, 1986. The policy, inter alia, recommended that a State Level Planning for co-ordination of the Higher Education should be done through Councils of Higher Education. The University Grants Commission ("the UGC" for brevity) and these Councils would

develop co-ordinative methods to keep a watch on the standards of higher education. Since there was no effective machinery for planning and co-ordination of higher education at the State Level and the coordination of State level programme with those of the UGC, in order to fill up that gap, it was proposed to set up State Councils of Higher Education as statutory bodies.

4. Pursuant to the said policy, the UGC constituted a committee so as to go into the matter and to make its recommendations regarding setting up of the State Councils of Higher Education as per the National Policy on Education, 1986, and the programme of action in that regard. The Committee realised that there has been a pressing need for constituting effective machinery for promotion and co-ordination of higher education at the State level and co-ordination of State level programmes with those of the UGC. Thereafter, the UGC formulated certain guidelines for setting up the State Councils of Higher Education as recommended by the Committee. Accordingly, the Andhra Pradesh State passed an Act known as "The Andhra Pradesh Commissionerate of Higher Education Act, 1986", as per the recommendation of the Vice-Chancellors Committee regarding the Higher Education in the State of Andhra Pradesh. The said Act was challenged by the petitioner and four others in WP No. 15733 of 1986 and also the Osmania University Teachers' Association in WP No. 15582 of 1986. A Full Bench of this Court dismissed both the writ petitions by its judgment dated 24-3-1987. The matter was carried to the Apex Court, and the Apex Court by its judgment dated 13-08-1987 allowed the appeals and directed the State Government not to enforce the provisions of the impugned Act.

5. Thereafter, the Department of Education, Government of India requested the Commission to review the guidelines. Accordingly, the guidelines were reviewed with the help of law panel of the Commission, and issued revised guidelines as approved by the Commission in January, 1988. Pursuant to those guidelines, the State Government decided to fill the gap by constituting State Council of Higher Education as recommended in the National Educational Policy of the Government of India and as recommended by the Committee constituted by the UGC. As a consequence, the Government passed the Andhra Pradesh State Council of Higher Education Act, 1988 (Act 16 of 1988). The petitioner now challenges the said Act on the premises that the Act is outside the legislative competence of the State Legislature, and the Act 16 of 1988 is nothing but the repetition of Act 26 of 1986 and therefore, it is a colourable legislation.

6. The State Government resisted the writ petition on the premise that Act 16 of 1988 has been enacted without encroaching upon the powers of the Central Government and within the legislative competence of the State.

7. Before adverting to the respective contentions raised on either side, it is expedient to refer the relevant provisions of the Constitution of India and the law laid down by the Apex Court for brevity and better understanding of the matter.

8. According to Article 246 of the Constitution of India, Parliament has exclusive

power to make laws with respect to any of the matters enumerated in List I, and, subject to clause (1) the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the VII Schedule, which is otherwise known as Concurrent List, and the Legislature of any State has exclusive power to make laws in respect of any of the matters enumerated in List II.

9. Entry 66 of List I of VII Schedule of the Constitution of India reads as follows:

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

Entry 25 of List III reads as hereunder:

"25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 List I, vocational and technical training of labour".

Both these entries are the subject-matter of interpretation and discussion by the Apex Court. In *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, the Apex Court held thus:

"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 co-ordination of such standards either on an All India or other basis impossible or even difficult.

Thus, though the powers of the Union and of the State are in the Exclusive Lists, a degree of overlapping is inevitable. It is not possible to lay down any general test, which would afford a solution for every question, which might arise on this head. On the one hand, it is certainly within the province of the State Legislature to prescribe syllabi and courses of study and, of course, to indicate the medium or media of instruction. On the other hand, it is also within the power of the Union to legislate in respect of media of instruction so as to ensure co-ordination and determination of standards, that is, to ensure maintenance or improvement of standards. The fact that the Union has not legislated, or refrained from legislating to the full extent of its powers does not invest the State with the power to legislate in respect of a matter assigned by the Constitution to the Union. It does not, however, follow that even within the permitted relative fields; there might not be legislative provisions in enactments made each in pursuance of separate exclusive and distinct powers, which may conflict. Then would arise the question of repugnancy and paramountcy, which may have to be resolved on the application of the "doctrine of pith and substance" of the impugned enactment. The validity of the State legislation on University education and as regards the education in technical and scientific institutions not falling within

Entry 64 of List I would have to be judged having regard to whether it impinges on the field reserved for the Union under Entry 66. In other words, the validity of State legislation would depend upon whether it prejudicially affects coordination and determination of standards, but not upon the existence of some definite Union legislation directed to achieve that purpose. If there be Union legislation in respect of co-ordination and determination of standards, that would have paramountcy over the State Law by virtue of the first part of Article 254(1); even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the Union field would still be invalid".

10. The question for determination before the Apex Court was (1) Whether the Gujarat University had the power under the Gujarat University Act to prescribe Gujarati or Hindi or both as exclusive medium or media of instruction and examination; and (2) Whether the legislation authorising the University to impose such media is constitutionally valid in view of Entry 66 of List I of VII Schedule of the Constitution.

11. Placing reliance on the above judgment in *Osmania University Teachers' Association Vs. State of Andhra Pradesh and Another*, the Apex Court held in paras 13 and 14 as under:

"Entry 25, List III relating to education, including technical education, medical education and Universities has been made subject to the power of Parliament to legislate under entries 63 to 66 of List I. Entry 66, List I and entry 25, List III should, therefore, be read together. Entry 66 gives power to Union to see that a required standard of higher education in the country is maintained. The standard of Higher Education including scientific and technical should not be lowered at the hands of any particular State or States. Secondly, it is the exclusive responsibility of the Central Government to co-ordinate and determine the standards for higher education. That power includes the power to evaluate, harmonise and secure proper relationship to any project of national importance. It is needless to state that such a co-ordinate action in higher education with proper standards, is of paramount importance to national progress. It is in this national interest, the legislative field in regard to "education" has been distributed between List I and List in of the Seventh Schedule.

The Parliament has exclusive power to legislate with respect to matters included in List I. The State has no power at all in regard to such matter. If the State legislates on the subject falling within List I that will be void, inoperative and unenforceable".

12. In para 18 at the end, the Apex Court in its Judgment held as follows:

"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".

13. In State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, , the Apex Court held as follows:--

"Entry 66 of List I of the Seventh Schedule to the Constitution has remained unchanged since the inception of the Constitution. After the Constitution (Forty-second Amend) Act, 1976 the constitutional position on that score has not undergone any change. All that has happened is that Entry II was taken out from List II and amalgamated with Entry 25 of List III. However, even the new Entry 25 of List III is also subject to the provisions, among others, of Entry 66 of List I. Thus, the legislation with regard to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions has always been the preserve of Parliament

To the extent that the State legislature is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative. If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List will have to be determined by the examination of two laws and will depend upon the facts of each case".

In para 30 at the end, the Apex Court in its judgment held as under:

"As has been pointed out earlier, the Central Act has been enacted by Parliament under Entry 66 of List I to co-ordinate and determine the standards of technical institutions as well as under Entry 25 of List III. The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it u/s 10 of the Central Act".

That was a case where the question arose for determination was whether after coming into force of All India Council for Technical Education Act, 1987, the State Government has power to grant and withdraw permission to stop a technical institution as defined in Central Act. It was held that since the provisions of Central statute on the one hand and of the State statute on other being inconsistent and, therefore, repugnant with each other, the Central statute will prevail and the de-recognition by the State Government or the disaffiliation by the State University on grounds which are inconsistent with those enumerated in the Central statute will be inoperative.

14. In *Medical Council of India Vs. State of Karnataka and Others*, , the Apex Court held as under:

"Scope of Entry 66 of list I was construed by 6 Judges Bench judgment of this Court in *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, . The question of determination before the Court was (1) whether the Gujarat University had the power under the Gujarat University Act to prescribe Gujarati or Hindi or both as exclusive medium or media or instructions and examination and (2) whether legislation authorising the University to impose such media was constitutionally valid in view of Entry 66 of List I of the Seventh Schedule of the Constitution. The controversy raised in that case would, however, not survive after the 42nd Amendment when Entry 11 of List II has been deleted. Reading Entry 11 List II as it existed, the Court said that power of the State to legislate in respect of education including Universities must to the extent to which it is entrusted to the Union Parliament, whether such power is exercised or not, is deemed to be restricted. If a subject of legislation is covered by entries 63 to 66 even if it otherwise falls within the larger field of "education including Universities" power to legislate on that subject must lie with the Parliament. Entry 11 of List II and Entry 66 of List I must be harmoniously construed. The two entries undoubtedly overlap but to the extent of overlapping, the power conferred by Entry 66 of List I must prevail over the power of the State under Entry 11 of List II. It is manifest that excluded heads deal primarily with education in institutions of national or special importance and institutions of higher education including research, science, technology and vocational training of labour".

15. To the same effect is the legal principle enunciated by a Constitution Bench of the Supreme Court in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, . The Constitution Bench was dealing with the criteria for admission into Super Speciality Medical Courses and held that the regulations under the Medical Council Act, 1956 govern the subject and not the State Act.

16. Much depends upon the interpretation of the expression "coordination" used in Entry 66 of Union List of the VII Schedule. In *State of Tamil Nadu v. Adhiyaman Educational and Research Institute and others* (supra) the expression "co-ordination" used in Entry 66 of the Union List has been construed as under:

"The expression "co-ordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things, which are necessary to prevent what would make "co-ordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention".

17. It is manifest thus that the Parliament has exclusive power to legislate in respect of a subject falling in any of the Entries from 63 to 66 of List I. Any law made by the State Legislature which trenches upon the field entrusted to the Parliament under Entries 63 to 66 of List I would be void and inoperative. Even when the State legislation is purported to have been made under Entry 25 of the Concurrent list but in effect encroaches upon the Central legislation including the subordinate legislation made under Entry 25 of the Concurrent list or a legislation made by the State to give effect to the Entry 66 of the Union list it would be void and inoperative. The fact that the union has not legislated or refrained from legislating to the full extent of its powers does not invest the State with the power to legislate in respect of a matter assigned by the Constitution to the Union. The expression "Co-ordination" includes all things, which are necessary for promotion and co-ordination of higher education, and also to prevent disparities and to prevent what could make co-ordination either impossible or difficult. Whether the laws made by the State would really encroaches upon the area allotted to the Parliament or not is always a question of fact and is to be determined by looking at the pith and substance of the State Legislation in juxtaposition to the pith and substance of the Central Legislation.

18. The University Grants Commission Act, 1956 was passed with an intention to make a provision for the co-ordination and determination of standards in Universities. As can be seen from the preamble of the UGC Act, and Sections 12-A, 12-B and 13, the important provisions therein which deal with the functions of the Commission and its powers, for the main purpose of performing its functions under the Act, the Commission may in consultation with Universities or other bodies concerned take such steps as it may think fit for the promotion and co-ordination of the University education and for the determination and maintenance of standards of teaching, examination and research in Universities.

19. The intention of the State Government in bringing in Andhra Pradesh State Commissionerate of Higher Education Act 26 of 1986 was to advice the Government in matters relating to higher education in the State and to oversee the development of higher education with perspective planning and the matters connected therewith or incidental thereto. In *Osmania University Teachers' Association v. State of Andhra Pradesh* (supra) the Apex Court held that the Parliament has exclusive power to legislate with respect to a matter included in List I. The State has no power at all in regard to such matters. If the State legislates on the subject falling within List I that will be void, inoperative and unenforceable. The Apex Court further held as under:

"It is apparent from this discussion that the Commissionerate Act has been drawn by and large in the same terms as that of the UGC Act. The Commissionerate Act, as we have earlier seen, also contains some more provisions. Both the enactments, however, deal with the same subject-matter. Both deal with the co-ordination and determination of excellence in the standards of teaching and examination in the Universities. Here and there, some of the

words and sentences used in the Commissionerate Act may be different from those used in the UGC Act, but nevertheless, they convey the same meaning. It is just like referring the same person with different descriptions and names".

20. The Apex Court then proceeded to consider the provisions of both the Acts by keeping them in juxtaposition and ultimately of the view that both the enactments deal with the same subject-matter and deal with the co-ordination and determination of excellence in the standards of teaching and examination in the Universities. Ultimately, it has come to the conclusion that the Commissionerate Act has practically taken over the economic programmes and activities of the Universities and the Universities have been rendered irrelevant, if not non-entities.

21. Now the intention of the State legislature in having enacted the Andhra Pradesh State Council of Higher Education Act 16 of 1988 is to advise the Government in matters relating to higher education in the State and to oversee the development with perspective planning and matters connected therewith and incidental thereto. The object which is discernible from the preamble in all the three enactments is verbatim the same.

22. It is expedient hereto extract the provisions of the Act 26 of 1986 and the impugned Act 16 of 1988 keeping them in juxtaposition hereunder:

"S.3 : Constitution of Commissionerate of Higher Education : ?

The Government may, by notification, and with effect on and from such date as may be specified therein constitute a Commissionerate for the purpose of this Act to be called the Andhra Pradesh Commissionerate of Higher Education.

S.3. Constitution of State Council of Higher Education : ?

(1) The Government may, by notification, and with effect on and from such date as may be specified in this behalf, constitute a State Council for the purpose of this Act to be called the Andhra Pradesh State Council of Higher Education.

(2)

The Commissionerate shall be body corporate having perpetual succession and a common seal and shall sue and be sued by the said corporate name.

(2) (a)

The State Council shall be a body corporate having perpetual succession and a common seal and shall sue and be sued by the said corporate name.

(2) (b) x x x x x (b)

In all suits and other legal proceedings by or against the State Council the proceedings shall be signed and verified by the Secretary and all processes in such suits and proceedings shall be issued to and served on the Secretary.

(3)

The Headquarters of the State Council shall be located at Hyderabad.

S.4. Composition of the Commissionerate :-

(1) The Commissionerate shall consist of?

S.4 Composition of the State Council :?

(1) The State Council shall consist of the following members, namely : ?

(i) A Chairman (I) Full time Members : ?

(ii) A Vice-Chairman, and (i) A Chairman and

(iii)

not more than ten members to be appointed by the State Government.

(ii)

A Vice-Chairman to be appointed by the Government from among eminent educationists.

II. Ex-officio Members :?

(i)

the Secretary to Government, Education Department;

(ii)

the Secretary to Government, Finance Department;

(iii)

the Secretary to Government, Labour, Employment and Technical Education;

(iv)

the Secretary or any other officer of the University Grants Commission not below the rank of a Joint Secretary nominated by the Chairman, University Grants Commission;

III.

Other Members .?

(i)

four persons to be appointed by the Government from among eminent educationists;

(ii)

one person who shall represent the industry to be appointed by the Government;

(iii)

three persons of whom one shall be a technical expert, to be nominated by the State Government.

(2)

Every appointment under this section shall take effect from the date on which it is notified by the Government.

S.8. Temporary association of persons with the Commissionerate for particular purpose.

S.8. Temporary association of persons with the Council for particular purpose : ?

S. 11. Powers and Functions of the Commissionerate : ?

It shall be the general duty of the Commissionerate to :

S.11. Powers and junctions of the Council :?

It shall be the general duty of the Council to co-ordinate and determine standards in institutions of Higher Education or Research and Scientific and Technical institutions in accordance with the guidelines issued by the University Grants Commission from time to time.

(a)

evolve a perspective plan for the development of Higher education in the State;

(b)

administer and release grants-in-aid to Universities and private colleges in the State and report the same to the Government;

(2)

The functions of the Council shall include : ?

(c) x x x x I. Planning and Co-ordination :

(d)

monitor and evaluate the academic programmes in higher education and enforce accountability in the system;

(i)

to prepare consolidated programmes in the sphere of Higher Education in the State in accordance with the guidelines that may be issued by the University Grants Commission from time to time. and to assist in their implementation. keeping in view the overall priorities and perspectives to Higher Education in the State;

(e) x x x x

(f) X X X X X X X X

(g)

co-ordinate the academic activities of various institutions of higher education to the State;

(a) X X X X (ii)

to assist the University Grants Commission in respect of determination and maintenance of standards and Education in the State;

(p)

perform any other functions necessary to furtherance and maintenance of excellence in the standards of higher education in the State.

(ii)

to evolve perspective plans for development of Higher Education in the State;

(2)

Notwithstanding anything contained in any law relating to Universities in the State the Board of Intermediate Education Act, 1971 and the Andhra Pradesh Education Act, 1982 every University or college including a private college in the State shall obtain the prior approval of the Commissionerate in regard to ?

(iv)

to forward the Developmental Programmes of Universities and Colleges in the State to the University Grants Commission along with its comments and recommendations;

(i) creation of new posts; (v)

to monitor the progress of implementation of such developmental programmes".

(ii) financial management; and

(iii)

starting of new higher educational institutions.

(vi)

to promote co-operation and co-ordination of educational institutions among themselves and explore the scope for interaction with industry and other related establishments;

(3)

In giving its approval under sub-section (2) the Commissionerate shall follow the general guidelines issued by the Government in this behalf from time to time.

(vii)

to formulate the principles as per the guidelines of the Government and to decide upon, approve and sanction new educational institutions by according permission keeping in view the various norms and requirements to be fulfilled;

(vii)

to suggest ways and means of meeting additional resources for higher education in the State.

II. Academic Functions : ?

(i)

to encourage and promote innovations in curricular development, restructuring of course and updating of syllabi in the University and the Colleges;

(ii)

to promote and co-ordinate the programme of autonomous colleges and to monitor its implementation;

(iii)

to devise steps to improve the standards of examinations conducted by the Universities and suggest necessary reforms;

(iv)

to facilitate training of teachers in colleges and Universities;

(v)

to develop programmes for greater academic co-operation and interaction between University teachers and college teachers and to facilitate mobility of students and teachers within and outside the State;

(vi)

to conduct entrance examination for admission to institutions of higher education and render advice on admissions;

(vii)

to encourage sports, games, physical education and cultural activities in the Universities and colleges;

(viii)

to encourage extension activities and promote interaction with agencies concerned with regional planning and development;

(ix)

to prepare an overview report on the working of the Universities and the colleges in the State and to furnish a copy of the report to the University Grants Commission.

III.

Advisory Functions : ? To advise the Government ?

(i)

in determining the block maintenance grants and to lay down the basis for such grants;

(ii)

on setting up a State Research Board so as to link research work of educational institutions with that of the research agencies and industry, keeping in view the overall research needs of the State;

(iii)

on the statutes and Ordinances to various Universities in the State (excluding Central Universities) and on the statutes proposed by the Universities in the State;

(iv)

to work in liaison with the Southern Regional Committee of the All India Council for Technical Education in the formulation of the schemes in the State;

(v)

to make new institutions self-sufficient and viable;

(vi)

on the policy of earning while learning;

(vii)

to perform any other functions necessary for the furtherance of higher education in the State.

S.I3. Inspection : ? 20. Inspection and enquiry : ?

(1)

For the purpose of ascertaining the financial needs of a University or its standards of teaching examination and research, the Commissionerate may, after consultation with the University, cause an inspection of any department or departments thereof to be made in such manner as may be prescribed and by such person or persons as it may direct.

(1)

The Government shall have the right to cause an inspection to be made by an officer not below the rank of Secretary to the Government authorised by it, of the State Council and also to cause an inquiry to be made into the work done by the State Council in respect of any matter entrusted to it. The Government shall in every case give notice to the State Council of its intention to cause such inspection or inquiry to be made and the State Council shall be entitled to be represented thereat. The officer making the inspection or inquiry shall inform the Government of the results thereof.

(2)

The Commissionerate shall communicate to the University the date on which any inspection under sub-section (1) shall be made and the University shall be entitled to be associated with the inspection in such manner as may be prescribed.

(3)

The Commissionerate shall communicate to the University its views in regard to the result of any such inspection and may, after ascertaining the opinion of the University, recommend to the University, the action to be taken as a result of such inspection and may, after ascertaining the opinion of the University, recommend to the University, the action to be taken as a result of such inspection, and the University shall comply with any such direction.

(2)

The Government shall communicate to the State Council its views with reference to the results of such inspection or inquiry and may, advise the State Council upon the action to be taken.

(3)

The State Council shall, within such time as the Government may fix, report to it, the action, if any, which is proposed to be taken or has been taken upon such advise.

(4)

The Government may, where action has not been taken by the State Council within a reasonable time to its satisfaction, issue such directions as it may think fit, and the State Council shall comply with such directions.

S.12. Fund of the Commissionerate :? 13. Fund of the Council :-

(1)

The Commissionerate shall have its own fund consisting of the grants from Government voted by the Legislative Assembly of the State towards grants to Universities, and aided Junior and Degree Colleges and grants received from Central Government for higher education.

(1)

The Council shall have its own Fund consisting of the grants from Government voted by the Legislative Assembly of the State towards grants to Universities and Colleges and grants received from Central Government for higher education and such other funds as may be received by the Council from any other source.

(2)

All moneys belonging to the fund shall be deposited in such banks or invested in such banks or invested in such manner as may, subject to the approval of the Government be decided by the Commissionerate.

(2)

The Government may pay to the Council in each financial year such sums as may be considered necessary for the functioning of the Council.

(3)

The Commissionerate may spend such sums as it thinks fit for performing its functions under this Act, and such sums shall be treated as expenditure payable out of the fund of the Commissionerate.

(3)

All moneys belonging to the fund any all receipts of the Council shall be deposited or invested in such manner as may be prescribed.

(4)

The Council may spend such sums as it may think fit for performing its functions under this Act, and such sums shall be treated as expenditure payable out of the fund of the Council.

S. 14 Annual report : ? The Commissionerate shall prepare once in every year, in such form and at such time as may be prescribed an Annual Report giving a true and full account of its activities "during the previous year, and copies thereof shall be forwarded to the .Government and the Government shall cause the same to be laid before the Legislative Assembly of the State.

16. Annual report : ? The Council shall prepare once in every year, in such form and at such time as may be prescribed an annual report giving a true and full account of its activities during the previous year, and copies thereof shall be forwarded to the Government and the Government shall cause the same to be laid before the Legislative Assembly of the State. A copy of the report shall also be sent to the University Grants Commission.

S. 16 Directions by the Government : ? 18. Directions by the Government : ?

(1)

In the discharge of its functions under this Act, the Commissionerate shall be guided by such directions on question of policy relating to State proposes or in case of any emergency as may be given to it by the Government.

(1)

In the discharge of its functions under this Act, the Council shall be guided by such directions on questions of policy relating to State purpose or in case of any emergency as may be given to it by the Government.

(2)

If any dispute arises between the . Government and the Council as to whether a question is or is not a question of policy relating to State purpose, or whether an emergency has arisen the decision of the Government thereon shall be final.

(2)

If any dispute arises between the Government and the Commissionerate as to whether a question is or is not a question of policy relating to State purpose, or whether an emergency has arisen, the decision of the Government thereon shall be final.

S.18 Power to make rules. 22. Power to make rules.

S.19 Power to make regulations. 23. Power to make regulations.

24. Power to remove difficulties.

23. u/s 11(1) of the Andhra Pradesh Commissionerate of Higher Education Act 1986, the Commissionerate has powers in matters relating to evolving a perspective plan for the development of higher education in the State to administer and release the grants-in-aid to the Universities and private colleges in the State, to monitor and evaluate the academic programmes in higher education and enforce the accountability in the system, to coordinate the academic activities of various institutions of higher education in the State and to evolve any other functions necessary to the furtherance and maintenance of excellence in the standards of higher education in the State. Under sub-section (2) of Section 11, the Commissionerate assumed sweeping powers over the University by mandating every University or college to obtain the prior approval of the Commissionerate in regard to creation of new posts, financial management and starting of new higher educational institutions. Section 11 is the main section and is the heart of the Act.

24. In an identical section, the Council under the Act 16 of 1988 has sought to derive the powers; to co-ordinate and determine the standards of institutions of Higher Education or research and scientific and technical institutions include planning and co-ordination, to prepare consolidated programmes in the sphere of Higher Education in the State keeping in view the overall priorities and perspectives of Higher Education in the State; to assist the UGC in respect of

determination and maintenance of standards and suggest remedial action, to evolve perspective plan for development of Higher Education in the State; to forward the developmental programmes of Universities, and Colleges in the State to the UGC along with its comments and recommendations; to monitor the progress of implementation of such development programmes; to promote co-operation and co-ordination of educational institutions among themselves and to explore the scope for interaction with industry and other related establishments; to formulate the principles as per the guidelines of the Government to decide upon, approve and sanction new educational institutions by according permission keeping in view the various norms and requirements to be fulfilled; to suggest the ways and means of meeting additional resources for higher education in the State. Of course, all this shall be done in accordance with the guidelines issued by the UGC from time to time. The academic functions of the Council include to encourage and promote innovations in curricular development, restructuring of course and updating of syllabi in the Universities and the Colleges; to promote and co-ordinate the programme of autonomous colleges and monitor its implementation; to devise steps to improve the standards of examinations conducted by the Universities and suggest necessary reforms; to facilitate training of teachers in the Colleges and Universities; to develop programmes of greater academic co-operation and interaction between University teachers and College teachers and to facilitate mobility of students and teachers within and outside the State; to conduct entrance examination for admission to institutions of higher education and render advice on admissions; to prepare an over view report on the working of the Universities and the Colleges in the State and to furnish a copy of the report to the UGC. In addition to the academic functions, it has also advisory functions to advise the Government in determining the block maintenance grants and to lay down basis for such grants; on setting up a State Research Board so as to link research work of educational institutions with that of the research agencies and industry, keeping in view the overall research needs of the State; on the statutes and ordinances to various Universities in the State; to work in liaison with the Southern Regional Committee of the All India Council for Technical Education in the formulation of the schemes in the State; to make new institutions self-sufficient and viable; on the policy of "earning while learning"; to perform any other functions necessary for the furtherance of higher education in the State.

25. On a comparative study of the provisions of the Act 26 of 1986 and Act 16 of 1988, the functions of the Commissionerate and the functions of the State Council well nigh are the same except to the extent of stating that the Council should act in accordance with the guidelines issued by the UGC from time to time. Thus, the pith and substance of Act 16 of 1988 is to co-ordinate and determine the standards of institutions of higher education or research and scientific and technical institutions and for that purpose to evolve perspective plans, to monitor the programmes and implementation of such developmental programmes; to formulate the principles; etc. Therefore, in the field of co-

ordination and determination of standards in institutions of higher education or research and scientific and technical institutions, the Council has a role to play whether it acts independently or in accordance with the guidelines issued by the UGC from time to time, the functions to be evolved are same. What was expected to be acted independently by the Commissionerate under the Act 26 of 1986 is now sought to be acted by the Council under the Act 16 of 1988 in accordance with the guidelines issued by the UGC from time to time. In fact the council has to perform more functions for the development and co-ordination of the higher education including setting up a State Research Board to work in liaison with the Southern Regional Committee of All India Council.

26. In our considered view, the object and intention being the same in both the enactments, the powers and functions are well nigh the same, the Andhra Pradesh State Council of Higher Education Act, 1988 is nothing but a repetition of earlier Act with a slight deviation by making the Council to function in accordance with the guidelines issued by the UGC from time to time. All said and done, in respect of the same subject-matter, the State Government which passed Andhra Pradesh Commissionerate of Higher Education Act, 1986 has now brought in the impugned legislation namely Andhra Pradesh State Council of Higher Education Act, 1988 when the former Act was struck down by the Supreme Court, with slight modification so as to take it away from the vice of ultra vires of the Constitution. The purpose being the same, the powers and functions being also the same, it matters little even if the Council is expected to act in accordance with the guidelines issued by the UGC from time to time.

27. The question is the competence of the State Legislature to pass the impugned enactment in respect of the subject falling within Entry 66 of List I of the VII Schedule. Whatever may be the reason, obviously the Act 16 of 1988 has been passed by the State Government in respect of a subject, which squarely falls in Entry 66 of List I of VII Schedule. The Council being an autonomous body either to act independently or to act in accordance with the guidelines issued by the UGC, should act ultimately for the purpose of development of higher education in the State by evolving the necessary perspective plans to promote co-operation and coordination of educational institutions among themselves. Undoubtedly, the Act 16 of 1988 pertains to a subject falling in List I of VII Schedule, which deals with coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Therefore, the State Government lacks the legislative competence to enact such an enactment. The State Government cannot get the necessary competence to enact a law in respect of the subject falling in Entry 66 of List I of VII Schedule.

28. Even when the Act has been enacted in accordance with the guidelines issued by the UGC and pursuant to the recommendations made by the High Level Committee when the State Government lacks the necessary legislative competence, such an Act must necessarily be held to be ultra vires of the

Constitution. When the State Government lacks the legislative competence to enact on a subject falling in List I of VII Schedule, the University Grants Commission - an institution created under the University Grants Commission Act passed by the Parliament - cannot confer the necessary competence on the State Government to bring any legislation on a subject falling in List I of VII Schedule. If any statutory body were to be constituted to assist the UGC, invariably that body has to perform to the powers and functions that are to be exercised by the UGC. Perhaps, that may augur the development of higher education in the State by effectively assisting the UGC. Nonetheless, that statutory body has to perform the powers and functions, which powers and functions are, expected to be performed by UGC and in respect of a subject on which the Parliament has the exclusive power to legislate. Therefore, under the guise of assisting the UGC for the development of higher education in the State by evolving the perspective plans by forwarding the developmental programmes of the Universities and Colleges in the State to the UGC along with the necessary comments and recommendations by monitoring the progress of implementation of such developmental programmes so as to promote co-operation and co-ordination of the education institutions among themselves. In other words, the planning and coordination by the Council and its academic functions all come within the realm of the subject directly dealt with under Entry 66 of List I of VII Schedule. The State, therefore, cannot arrogate to itself the necessary legislative competence under the guise of assisting the UGC, nor such a legislative competence could be delegated to the State by the UGC. It is note worthy the observations made by the Apex Court in Gujarat University's case while parting with the matter at the end in para 28 :--

"The Constitution of India vests Parliament with exclusive authority in regard to co-ordination and determination of standards in institutions for higher education. The Parliament has enacted the UGC Act for that purpose. The University Grants Commission has, therefore, a greater role to play in shaping the academic life of the country. It shall not falter or fail in its duty to maintain a high standard in the Universities. Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs. It is hoped that University Grants Commission will duly discharge its responsibility to the Nation and play an increasing role to bring about the needed transformation in the academic life of the Universities".

29. For the foregoing reasons, we are of the considered view that the impugned legislation is a clear case of colourable legislation and the State Government has no legislative competence to enact the impugned legislation. A.P. Act No.16 of 1988 is accordingly declared as ultra vires of the Constitution. The writ petition is allowed. No costs.