

(2022) 03 SHI CK 0057

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No.2796 Of 2021

Promila Devi

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 21-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 142, 142(1), 245(1)
University Grants Commission (Establishment Of And Maintenance Of Standards In Private Universities) Regulations, 2003 — Regulation 3(1), 3.3, 7
University Grants Commission (Open And Distance Learning Programmes And Online Programmes) Regulations, 2020 — Regulation 4(i)(B)
University Grants Commission (Establishment and Maintenance of Institutions) Regulations, 1985 — Regulation 2
University Grants Commission Act, 1956 — Section 2(f), 2(g), 3, 3(7), 12A(1)(d), 12A(2)(a), 12A(2)(c), 26(1)(f), 26(1)(g), 26(1)(h)

Citation : (2022) 03 SHI CK 0057

Hon'ble Judges : Tarlok Singh Chauhan, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Surender Sharma, Ashok Sharma, Rajiv Jiwan, Ajit Sharma

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. The instant petition has been filed for the grant of following reliefs:-

"(i) That the impugned Annexure-P9, i.e communication dated 2nd March, 2021, sent by respondent No.2, may kindly be quashed and set aside;

(ii) That the respondent No.2 may kindly be directed to offer appointment to the petitioner as Lecturer (School New) in the subject of English on contract basis on the basis of recommendations made by H.P Public Service Commission, vide Annexure-P7, forthwith;

(iii) That the respondent No.2 may kindly be directed to grant all consequential benefits to the petitioner as the similarly situated incumbents stood already

appointed w.e.f. 06.03.2021."

2. The petitioner after passing her Bachelor of Arts in 2000 pursued her B.Ed Degree which she obtained in the year 2007. Thereafter, she obtained her M.A.Degree in English from Eastern Institute for Integrated Learning in Management (EIILM) University Sikkim through distance education mode. In the year 2018, the petitioner passed Teacher Eligibility Test (TGT Arts).

3. An advertisement was issued by the H.P Public Service Commission in the year 2019 for filling up various posts Lecturers (School New) (English) on contract basis. The written objective type examination for these posts was held on 16.02.2020 and after having successfully cleared the same, the petitioner was called for personal test/evaluation on 27.11.2020. However, the candidature of the petitioner was rejected on the ground that Degree of M.A. obtained by the petitioner was not recognized constraining her to file the instant petition for the reliefs as quoted above.

4. Even though respondent No.3. i.e. H.P University has filed its reply, however, the same has no bearing in this case and, therefore, need not refer to.

5. As regards UGC, it has filed its counter-affidavit wherein it has been stated that the EIILM University, Sikkim, is a State Private University which was recognized by the erstwhile Distance Education Council (DEC), IGNOU, for only one academic year i.e. 2009-2010 to offer three programmes through distance mode, namely (i) B.A. (Hospitality & Tourism), (ii) Bachelors in Computer Applications (BCA) and (iii) Master's in Business Administration (MBA). The copy of recognition letter is dated 09.09.2009. No further recognition has been accorded to above University. The year-wise recognition status of Universities approved to offer education through distance mode along with the approved programmes is already in public domain and can be accessed at UGC website.

6. In addition to the aforesaid, it is specifically averred that a private university is not authorized to open study centre /off campus centre beyond the territorial jurisdiction of the State as per the observations of Hon'ble Supreme Court in the case of Prof. Yashpal and another vs. State of Chhattisgarh and others (2005)5 SCC 420. The Private Universities cannot affiliate any college or institution for conducting courses leading to award of its diploma(s), degrees or other qualifications. Also, the Private University cannot offer their programmes through franchising arrangement with private institutions for the purpose of conducting courses through distance mode or even for regular mode.

7. It is also averred that Private University cannot open its centre(s) even within the State as per the provision of UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 without the approval of UGC. The UGC has issued Public Notice dated 27.06.2013 on territorial jurisdiction of the Universities and other matters related to distance education. The UGC has not granted any approval to the University to open off campus/ study centre anywhere. The public notice dated 27.06.2013 was only reiteration

of earlier policy of UGC on territorial jurisdiction of Universities. The UGC vide circular D.O. No. F 1-52/99 (CPP-II) dated 09.08.2001 directed all universities as under:-

"That the Universities can conduct courses through its own departments, its constituent colleges and/or through its affiliated institutions.

There is, however, no provision for leaving it to private institutions for conducting courses leading to award of its degrees. As per recent UGC guidelines, the universities are permitted to impart education and award its degrees through their own campuses located elsewhere in the country or even at their own off shore campuses with the approval of the UGC.

Looking into the wide spread menace of franchising the university education through the private institutions, the UGC has decided that any university which propose to enter into collaboration with any private institution, would be required to take prior approval of the UGC. The Commission has also decided that no university should be permitted to go for off campus private educational franchise leading to the award of its degrees. Accordingly, all the universities are being directed to stop franchising their degree education through private agencies/ establishments with immediate effect...."

In pursuance to the observations of the Hon'ble Supreme Court of India in case of Prof. Yash Pal vs. The State of Chhattisgarh, UGC issued letter No. F 9-8/2008(CPP-1) dated 16.04.2009 addressed to all the State Governments and letter dated 28.04.2009 addressed to Vice Chancellors of all Private Universities.

Vide letter dated 16.04.2009 addressed to State Governments, it was requested to take immediate action for amending the existing Acts made so as to bring the same in conformity with the observations made by the Hon'ble Supreme Court of India, to stop all the State/Private Universities in the State from operating beyond the territorial jurisdiction of their State in any manner.

The UGC has also informed the State Governments vide letter No. F 9-8/2008 (CPP-I) dated 16.04.2009 its stand on the issue following the observations of the Hon'ble Supreme Court of India.

"Keeping in view the above facts, you are requested to please ensure that:

1. No off-campus/study centre/outreach centre is established by your esteemed university outside the territorial jurisdiction of the state.
2. If you are a private university, even within the state, the off-campus/study centre outreach/centre should be established with the prior approval of the UGC as mandated in the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003.

You are requested to ensure the strict compliance of this letter."

All the Institutions are hereby directed to follow the UGC policy on ODL norms

and territorial jurisdiction which are applicable for all academic activities including setting up of examination centres for distance education.

The students and parents are requested to ascertain the territorial jurisdiction of the institutions before seeking admission in the same and refrain from studying in these institutions which violate the norms of the UGC."

Vide letter dated 28.04.2009 addressed to Vice Chancellors of Private Universities, it was requested to:

i) ensure that no off campus centre(s) is opened by your University outside the territorial jurisdiction of the State in view of the judgment of Hon'ble Supreme Court of India in case of Prof. Yash Pal vs. Government of Chhattisgarh.

ii) In case your university has already started any off-campus centre outside the State, it must be immediately closed. It may also be ensured that any off-campus centre within the State shall be opened only as per the provisions laid down in the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 and with the prior approval of UGC.

MHRD vide Gazette Notification No.6-1/2013 dated 10.06.2015 (published in Gazette on dated 25.07.2015) has notified that- "all the degrees/diploma/certificate including technical education degrees/diploma awarded through Open and Distance Learning mode of education by the Universities established by an Act of Parliament or State Legislature, Institutions Deemed to be Universities under Section 3 of the UGC Act, 1956 and Institutions of National importance declared under an Act of Parliament stand automatically recognized for the purpose of employment to posts and services under the Central Government, provided they have been approved by the UGC."

Prior to this, the Gazette Notification No. 44 dated 01.03.1995 was effective. As per this the approval of Distance Education Council (DEC), wherever required by AICTE, was necessary for the recognition of qualifications acquired through ODL mode of education. The degrees acquired through distance education mode are recognized for the purpose of employment in central government and also for pursuing higher education in other educational institutions provided the same has been awarded by the university/institution(s) recognized specifically to offer education through distance mode in conformity with the norms, guidelines and regulations of UGC.

As far as examination centres are concerned, UGC vide public notice F No.12-9/2016 (DEB-III) dated 19.07.2016, clarified as under:

"It has come to notice of the UGC that some Institutions/Universities/Institutions Deemed to be Universities are conducting examinations for their Open and Distance Learning (ODL) programmes outside the State of their location or beyond their territorial jurisdiction which is wholly illegal. The policy of the UGC with regard to territorial jurisdiction and campuses/study centres has been clearly articulated in public notice dated 27.06.2013."

UGC had notified UGC (ODL) Regulations, 2017 on 23rd June, 2017. As per Clause (ii) of Sub- Regulation(1) of Regulation 3 of UGC (ODL) Regulations, 2017- the Higher Educational Institution (HEI) shall adhere to the policy of territorial jurisdiction.

UGC had notified UGC (Open and Distance Learning Programmes and Online Programmes) Regulations, 2020 on 4th September, 2020. As per Clause B (i) of Regulation 4 of UGC (Open and Distance Learning Programmes and Online Programmes) Regulations, 2020- The Higher Educational Institution shall adhere to the policy of territorial jurisdiction.

Admissions taken in the approved ODL programme during recognition period stands recognized till the completion of course even if the University does not have recognition for further years provided the programme is offered as per UGC norms of territorial jurisdiction and in conformity with the extant guidelines and/or UGC Regulations and Regulations of respective Regulatory Bodies.

8. We have heard the learned counsel for the parties and have gone through the records of the case.

9. The moot question is whether the University established or incorporated by or under the State Act can operate only within the territorial jurisdiction allotted to it under the Act or can operate beyond the territory of the State or its location.

10. This issue is no longer re integra and has infact been taken into consideration by one of us (Justice Tarlok Singh Chauhan) while adjudicating the same in Business Institute of Management Studies vs. State of Himachal Pradesh and others 2016 ILR (HP) 1410 wherein after noticing the large scale menace of education institutions being commercial shops, it was held as under:-

"24. Education institution of the petitioner is no less than a commercial shop, where the aspiring needs of the students stand defeated due to the malpractices and frivolous activities of the petitioner. This is a classical example where the petitioner institute has presented an imaginary and illusory picture for making a successful career to the innocent students admitted in their institute, that too, by charging exorbitant fees and thereafter leaving them in the lurch to fend for themselves little knowing that even the courses undertaken by them may probably not even be recognized in the country. This practice is not only to be deprecated, but is also to be handled and dealt with a heavy hand.

25. In Prof. Yashpal and another Vs. State of Chhattisgarh and others, (2005) 5 SCC 420, the Hon'ble Supreme Court has expressed its deep anxious and concern about the quality of education. It had also expressed its concern about mushrooming growth of fake education institutions. The relevant portion reads as under:-

"63. There is hardly any merit in the submission raised. The impugned Act which enables only a proposal of a sponsoring body to be notified as a University is not likely to attract private capital and a University so notified cannot provide

education of any kind much less of good quality to a large body of students. What is necessary is actual establishment of institutions having all the infrastructural facilities and qualified teachers to teach there. Only such colleges or institutions which impart quality education allure the best students. Until such institutions are established which provide high level of teaching and other facilities like well equipped libraries and laboratories and a good academic atmosphere, good students would not be attracted. In the current scenario, students are prepared to go to any corner of the country for getting good education. What is necessary is a large number of good colleges and institutions and not Universities without any teaching facility but having the authority to confer degrees. If good institutions are established for providing higher education, they can be conferred the status of a deemed University by the Central Government in accordance with Section 3 of UGC Act or they can be affiliated to the already existing Universities. The impugned Act has neither achieved nor is capable of achieving the object sought to be projected by the learned counsel as it enables a proposal alone being notified as a University."

26. Even otherwise, the issue raised in the present writ petitions is no longer *res integra*. The Hon'ble Supreme Court in Prof. Yashpal's case *supra* has clearly held that the State Legislature can only make laws for its own State and not for whole of India. The relevant portion of the judgment is reproduced herein below:-

"60. Dr. Dhawan has also drawn the attention of the Court to certain other provisions of the Act which have effect outside the State of Chhattisgarh and thereby give the State enactment an extra territorial operation. Section 2(f) of the amended Act defines 'off-campus centre' which means a centre of the University established by it outside the main campus (within or outside the State) operated and maintained as its constituent unit having the university's complement of facilities, faculty and staff. Section 2(g) defines "off-shore campus" and it means a campus of the university established by it outside the country, operated and maintained as its constituent unit, having the university's complement of facilities, faculty and staff. Section 3(7) says that the object of the University shall be to establish main campus in Chhattisgarh and to have the study centres at different places in India and other countries. In view of Article 245 (1) of the Constitution, Parliament alone is competent to make laws for the whole or any part of the territory of India and the legislature of a State may make laws for the whole or any part of the State. The impugned Act which specifically makes a provision enabling a University to have an off-campus centre outside the State is clearly beyond the legislative competence of the Chhattisgarh legislature."

27. That apart, the University Grants Commission (UGC) has framed the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 and the same are applicable to private universities such as Sikkim Manipal University.

28. Regulation 3.3 of these regulations puts restriction on establishment of an

University outside the State by any State. The same reads thus:-

"3.3. A private university established under a State Act shall operate ordinarily within the boundary of the State concerned. However, after the development of main campus, in exceptional circumstances, the university may be permitted to open off-campus centres, off-shores campuses and study centres after five years of its coming into existence, subject to the following conditions....."

29. It has come in the order impugned herein that the UGC has not granted any permission to Sikkim Manipal University to open its study centre outside the State of Sikkim and therefore, in such eventuality the Sikkim Manipal University could not have extend its arms/activities beyond the State of Sikkim by setting up study centre outside the State. Therefore, what follows is that the Sikkim Manipal University constituted under the State Law passed by the legislature of the State of Sikkim, *prima facie*, could not have extra territorial authority, i.e. it cannot run, manage or supervise study centres outside the State of Sikkim.

30. Following the decision in Prof. Yashpal case (*supra*), the Hon'ble Supreme Court in Rai University Vs. State of Chattisgarh and others (2005) 7 SCC 330 had clarified that "institutions of the erstwhile private Universities, if otherwise eligible, may apply and seek affiliation with any other University which has jurisdiction over the area where the institution is functioning and is empowered under the relevant Rules and Regulations and other provisions of law applicable to the said University to grant affiliation".

31. The issue thereafter came up before the Hon'ble Supreme Court in Annamalai University Represented by Registrar versus Secretary to Government, Information and Tourism Department and others (2009) 4 SCC 590 wherein it was held that the provisions of the UGC Act are binding on all universities whether conventional or open. They apply equally to Open Universities as also to formal conventional universities. It was further held that in the matters of higher education, it is necessary to maintain minimum standards of instructions and such minimum standards of instructions are required to be defined by the UGC. It is apt to quote relevant observations which read thus:-

"40. The UGC Act was enacted by the Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas Open University Act was enacted by the Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the statement of objects and reasons of Open University Act shows that the formal system of education had not been able to provide an effective means to equalize educational opportunities. The system is rigid *inter alia* in respect of attendance in classrooms. Combinations of subjects are also inflexible.

41. Was the alternative system envisaged under the Open University Act was in substitution of the formal system is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal

system and informal system is in the mode and manner in which education is imparted. UGC Act was enacted for effectuating co- ordination and determination of standards in Universities. The purport and object for which it was enacted must be given full effect.

42. The provisions of the UGC Act are binding on all Universities whether conventional or open. Its powers are very broad. Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-Section (1) of Section 26 are of wide amplitude. They apply equally to Open Universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the co- ordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of the UGC are all pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12A and clauses (a) and (c) of sub- section (2) thereof.

43. Indisputably, as has been contended by the learned counsel for the appellant as also the learned Solicitor General that Open University Act was enacted to achieve a specific object. It opens new vistas for imparting education in a novel manner. Students do not have to attend classes regularly. They have wide options with regard to the choice of subjects but the same, in our opinion, would not mean that despite a Parliamentary Act having been enacted to give effect to the constitutional mandate contained in Entry 66 of List I of the Seventh Schedule to the Constitution of India, activities and functions of the private universities and open universities would be wholly unregulated.

44. It has not been denied or disputed before us that in the matter of laying down qualification of the teachers, running of the University and the matters provided for under the UGC Act are applicable and binding on all concerned. Regulations framed, as noticed hereinbefore, clearly aimed at the Open Universities. When the Regulations are part of the statute, it is difficult to comprehend as to how the same which operate in a different field would be ultra vires the Parliamentary Act. IGNOU has not made any regulation; it has not made any ordinance. It is guided by the Regulations framed by the UGC. The validity of the provisions of the Regulations has not been questioned either by IGNOU or by the appellant - University. From a letter dated 5.5.2004 issued by Mr. H.P Dikshit, who was not only the Vice-Chancellor but also the Chairman of the DEC of IGNOU it is evident that the appellant - University has violated the mandatory provisions of the Regulations.

45. The amplitude of the provisions of the UGC Act vis-a`-vis the Universities constituted under the State Universities Act which would include within its purview a University made by the Parliament also is now no longer a res integra.

50. The UGC Act, thus, having been enacted by the Parliament in terms of Entry 66 of List I of the Seventh Schedule to the Constitution of India would prevail over the Open University Act.

51. With respect, it is difficult to accept the submissions of learned Solicitor General that two Acts operate in different fields, namely, conventional university and Open University. UGC Act, indisputably, governs Open Universities also. In fact, it has been accepted by IGNOU itself. It has also been accepted by the appellant - University.

55. The submission of Mr. K. Parasaran that as in compliance of the provisions contained in Regulation 7, UGC had been provided with information in regard to instructions through non-formal/distance education relating to the observance thereof by itself, in our opinion, would not satisfy the legal requirement. It is one thing to say that informations have been furnished but only because no action had been taken by UGC in that behalf, the same would not mean that an illegality has been cured. The power of relaxation is a statutory power. It can be exercised in a case of this nature.

56. Grant of relaxation cannot be presumed by necessary implication only because UGC did not perform its duties. Regulation 2 of the 1985 Regulations being imperative in character, non compliance thereof would entail its consequences. The power of relaxation conferred on UGC being in regard the date of implementation or for admission to the first or second degree courses or to give exemption for a specified period in regard to other clauses in the regulation on the merit of each case do not lead to a conclusion that such relaxation can be granted automatically. The fact that exemption is required to be considered on the merit of each case is itself a pointer to show that grant of relaxation by necessary implication cannot be inferred. If mandatory provisions of the statute have not been complied with, the law will take its own course. The consequences will ensue.

57. Relaxation, in our opinion, furthermore cannot be granted in regard to the basic things necessary for conferment of a degree. When a mandatory provision of a statute has not been complied with by an Administrative Authority, it would be void. Such a void order cannot be validated by inaction.

58. The only point which survives for our consideration is as to whether the purported post facto approval granted to the appellant - University of programmes offered through distance modes is valid. DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. It having accepted in its letter dated 5.5.2004 that the appellant - University had no jurisdiction to confer such degrees, in our opinion, could not have validated an invalid act. The degrees become invalidated in terms of the provisions of UGC ACT. When mandatory requirements have been violated in terms of the provisions of one Act, an authority under another Act could not have validated the same and that too with a retrospective effect."

32. At this stage, I may also refer to the Distance Education Council (DEC) guidelines for regulating the Establishment and Operation of Open and Distance Learning (ODL) Institutions in India issued by DEC. The Preamble to these guidelines clearly sets out the mischief that is sought to be remedied by these guidelines. The relevant portion whereof reads as under:-

"Of late, it has been seen that there is indiscriminate proliferation of Open and Distance Learning (ODL) Institutions in India. Even single-mode conventional universities are becoming dual mode to offer programmes in the distance mode. This has happened due to the fact that the formal system of face-to-face instruction has failed to cope up with the educational requirements of the ever-increasing number of aspiring students after plus two stage. At present more than 20% students of higher education in the Country are enrolled in the ODL system. What is disturbing to note is that distance mode has become purely commercial venture with little or no attention being paid to the quality of education offered to the learners. Many Universities awarding sub- standard certificate/diploma/degree programmes are not adhering to even the guidelines issued by the concerned regulatory bodies. In order to safeguard the interest of the students in India and to ensure the quality of education, the DEC has framed Guidelines, 2006 for regulating the establishment and operation of Open and Distance Learning (ODL), Institutions in India."

33. It would be evident from the above that the parent institutions shall not establish their study centres/regional centres outside their jurisdiction as specified in the parent institutions Act/MOA. Further in case of "deemed university" offering distance education programmes, the same will be confined to the state in which the main campus of the parent institution is located, except for programmes that are culturally and linguistically relevant even outside their State and for that explicit approval of DEC should be obtained for offering such programmes (guideline 3.3).

34. Guideline 9.2 further states that the Study Centres shall be opened only in affiliated and constituent colleges, and in such other academic institutions which the parent institution may deem fit. The Study Centre should be located only within the jurisdiction of the parent institution after signing MOU. In case of "deemed university", the study centres should be only in the State where its headquarter is located.

35. The blatant compromise with the standards of education by these franchisees/study centres etc. in fact compelled the DEC to issue a public notice dated 27th June, 2013 on courses/study centres/off-campus and territorial jurisdiction of universities, which reads as follows:-

"Public Notice

On

Courses/Study Centres/Off Campuses & Territorial Jurisdiction of Universities

27th June, 2013

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

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

- a) a Central or State Government University can conduct courses through its own departments, its constituent colleges and/or through its affiliated Colleges;
- b) a university established or incorporated by or under a State act shall operate only within the territorial jurisdiction allotted to it under its Act and in no case beyond the territory of the state of its location;
- c) the private universities and deemed universities cannot affiliate any college or institution for conducting courses leading to award of its diplomas, degrees or other qualifications;
- d) no University, whether central, state, private or deemed, can offer its programmes through franchising arrangement with private coaching institutions even for the purpose of conducting courses through distance mode.
- e) all universities shall award only such degrees as are specified by the UGC and published in the official gazette.
- f) the Universities shall conduct their first degree and Master's degree programmes in accordance with the regulations notified by the Commission in this regard.

In this connection, the students and the general public are also hereby informed of the following regulating provisions pertaining to different types of universities;

A. UGC Regulations on Private Universities

A private university established under a State Act shall be a unitary university. A private university may be permitted to open off campus centres, off shore campuses and study centres after five years of its coming into existence subject

to the fulfillment of conditions as laid down under UGC (Establishment of & Maintenance of Standards in Private Universities) Regulations, 2003. As of now, the UGC has not granted permission to any Private University to establish off-campus/study centre.

B. UGC Regulations on Deemed Universities

A Deemed University shall operate only within its Headquarters or from those off campuses/off shore campuses which are approved by the Government of India through notification published in the official gazette.

In case of distance education programmes, no institution deemed to be university, so declared by the Govt. of India after 26th May, 2010 (date of publication of UGC (Institutions Deemed to be Universities) Regulations, 2010) is allowed to conduct courses in the distance mode.

The institutions deemed to be universities declared before 26th May, 2010 are not allowed to conduct courses in distance mode from any of its off -campus centres/off-shore campuses approved after 26th May, 2010.

Approval for new courses and extension of approval of the courses already run by the Deemed to be Universities under distance mode would be granted by the UGC subject to the fulfillment of conditions as laid down by the UGC.

The UGC has not granted approval to any deemed to be university to establish study centre.

Any information/clarification with regard to recognition of private Universities/ Deemed Universities and the course offered by them may be obtained from JS (CPP-I) UGC, Bahadurshah Zafar Marg, New Delhi.

C. Distance Education programmes of the Central Universities and State Govt. Universities.

The Central/State Govt. Universities can conduct courses through distance mode in accordance with the provisions of their respective Act and after the approval of the UGC.

The information relating to recognized universities, list of specified degrees and all the relevant regulations/instructions/guidelines of the UGC are available on UGC website: www.ugc.ac.in.

The students are advised not to take admission in the unapproved Study Centres, Off-Campus

Centres, Franchisee Institutions, Colleges/Institutions claiming to be affiliated with Private Universities or Deemed Universities.

Sd/-

(Akhilesh Gupta)

Secretary”

36. Not only this when the universities/deemed universities began issuing misleading advertisements by stating that their programmes were recognized by the UGC, then the UGC itself had to intervene and issued a public notice cautioning the students, parents and public in general regarding these misleading advertisements by issuing a public notice dated 04.06.2015 which reads thus:-

“UNIVERSITY GRANTS COMMISSION

BAHADUR SHAH ZAFAR MARG

NEW DELHI- 110 002

PUBLIC NOTICE- DISTANCE EDUCATION PROGRAMME

F.No.11-5/2015 (DEB-III) Dated 04.06.2015.

It has come to the notice of the UGC that some

Universities/ Deemed to be Universities/Institutions are offering programs through Open & Distance Learning (ODL) mode in gross violation of the policy of the erstwhile DEC/UGC. These Universities/ Deemed to be Universities/ Institutions are issuing misleading advertisements by stating that their programmes are recognized by the UGC.

As per the present policy, State Universities (both Public & Private) cannot set up their off-campus/study centre outside the State where they have been established. And, even within the State, Private Universities are required to take prior permission of the UGC to establish their study centre/off- campus. Similarly, Deemed to be Universities are required to take prior permission of the UGC to establish any off-campus centre/study centre outside their main campus. It is pertinent to mention that No University/Institution Deemed to be University/ Institution is permitted to offer Diploma/Bachelor/Master level programmes under ODL mode in Engineering & Technology. The policy of the UGC with regard to territorial jurisdiction and off-campus/study centres has been clearly articulated in its Public Notice dated 27.06.2013, which is posted on the UGC website for the knowledge of the public. It may also be noted that the UGC has so far not accorded recognition to any university/institution to offer 'online' programmes.

Students, parents and public in general, are hereby, informed that the list of the recognized institutions (alongwith the courses), which are permitted to offer programmes through ODL mode is posted on the UGC's website and can be accessed from www.ugc.ac.in/deb. The qualifications acquired through ODL mode from a non-recognized institution of higher learning shall neither be recognized for the purpose of employment in government service nor for pursuing higher education.

Sd/-

Secretary, UGC"

37. At this stage, I may also take note of a very important development. The Sikkim Manipal University had approached the High Court of Sikkim by filing writ petition No.4 of 2013 challenging therein amongst other things the decision taken by Indira Gandhi National Open University in its 40th meeting dated 08.06.2012 wherein it was decided that State University could not have study centres outside the geographical limits of the State even if the State legislation permitted it to do so. Four questions were framed by the learned Court for consideration which read thus:

"(a) Does the UGC have supervening position upon the IGNOU, DEC and the Universities, both Private and Government funded, created under the State Acts?

(b) Can it be said that Regulations 2003 was never applied after it was framed and that UGC Regulation, 1985 continued to be in force?

(c) Would the letters issued to the Petitioner-University by the IGNOU and DEC in contravention to letter dated 29-12- 2012, Annexure P29, of the Ministry of Human Resource Development, Respondent No.2, amount to abandonment of Regulations 2003?

(d) Can it, therefore, be said that it was permissible for the Universities of all categories to run DEP outside the territorial limits of the State?"

38. After detailed discussion, question No.(a) was answered in the affirmative. Thereafter questions No.(b) to (d) being inter-related were taken up together for consideration and thereafter even questions No.(b) to (d) were answered in favour of the respondents and all the prayers made in the writ petition, save and except prayer No.(a), were rejected by the Court vide its decision dated 26.06.2015. However, the University was granted liberty to approach the concerned UGC and IGNOU for recognition of its programme through ODL mode.

39. Now, insofar as prayer No.(a) is concerned, the same reads thus:-

"(a) issue an appropriate writ, order or direction directing Respondent No.1 to expeditiously dispose of the Petitioner's application for continuation of recognition dated 10-07-2012;"

Thus, it would be clear that insofar as the substantive relief of the University is concerned, the same was disallowed.

40. For completion of record, it may be mentioned that UGC did assail the aforesaid judgment before the Hon'ble Supreme Court in SLP(C) No.26223/2015 which was, however, dismissed on the ground that since the questions of law raised by the University were decided in favour of the UGC and it was only in the peculiar facts of the case as it had been noted by the High Court that relief had been granted to the students, who had undergone the distant learning courses,

the Court declined to interfere. This would be evident from the order passed by the Hon'ble Supreme Court on 21.09.2015 which is reproduced herein under:-

"Applications for exemption from filing certified copy of the impugned judgment and application for permission to place additional documents on record are allowed.

Insofar as the questions of law raised by the petitioner-University Grants Commission before the High Court were concerned, they have been decided in favour of the petitioner. However, in the peculiar facts of the case as noted by the High Court, relief is granted to the students who had undergone the distant learning courses. We are not inclined to interfere with those directions passed by the High Court on those facts.

The special leave petitions are, therefore, accordingly, dismissed.

Obviously, such an order would not be cited as a precedent in any other case."

41. The petitioner is the so called franchisee of the Sikkim Manipal University based at Sikkim and claims to be running its study centre at Shimla. It is evident from the decisions of the Hon'ble Supreme Court in Prof. Yashpal's case, Rai University's case and Annamalai's case (supra) as also the guidelines framed by the DEC, the regulations framed by the UGC in 2003 which have also been taken note of in the judgment rendered in Prof. Yashpal's case that a private university established under the State Act can operate ordinarily within the boundaries of the State and it is only after the development of main campus that in exceptional circumstances the university may be permitted to open off-campus centres, off-shores campuses and study centres after five years of its coming into existence that too subject to various conditions.

42. This position has further been clarified in the public notice issued by the DEC on 27.06.2013 (supra) wherein it has again been clarified that a university established or incorporated by or under a State Act shall operate only within the territorial jurisdiction allotted to it under its Act and in no case can it operate beyond the territory of the State or its location. It has also been clarified that the private universities and deemed universities cannot affiliate any college or institution for conducting courses leading to award of its diploma, degrees or other qualifications and lastly it has been categorically made clear that no university, whether Central, State, Private or Deemed, can offer its programmes through franchising arrangement with private coaching institutions even for the purpose of conducting courses through distance mode.

43. This issue stands further clarified in the public notice issued by the UGC on 04.06.2015 wherein it has been categorically brought to the notice of the public that in terms of the prevalent policy, State Universities (both Public and Private) cannot set up their off-campus/study centres outside the State where they have been established."

11. Confronted with the judgment, learned counsel for the petitioner would argue

that the degree obtained by the petitioner was valid in terms of the Indira Gandhi National Open University letter dated 09.09.2009 (Annexure AF/1). However, we find no merit in this contention because the UGC only accorded recognition to the EIILM University for a period of one academic year i.e. academic year 2009-

10 that too for the following programmes through distance education mode:-

S.No.

Name of the Programme

Duration

Eligibility

1.

B.A. (Hospitality & Tourism)

3 years

10+2 from a recognized Board

2.

BCA

3 years

10+2 or equivalent / 3 year Diploma from State Board of Technical Education and Six month Computer Course from reputed Institution OR 3 year Diploma IT/ CS from a State Board of Technical Education.

3.

MBA

3 years

BBA/BBM from a recognized University OR 3-year Graduation with 6 months Management Diploma from an Institution and min. 1 year managerial/ supervising experience in reputed Organization thereafter OR 3 year graduation and 3 year Managerial/ supervising experience in a reputed Organization thereafter

12. It would be noticed that the degree as obtained by the petitioner does not figure in the Course/Programme mentioned in the aforesaid letter. That apart, the recognition given by the UGC is only for one academic year i.e. 2009-2010, whereas, the petitioner has obtained her M.A. (English) during the academic years 2010-2012. In such circumstances, obviously, the petitioner cannot take any advantage of the recognition.

13. As a last ditch effort, the learned counsel for the petitioner would place reliance upon the order passed by the Hon'ble Supreme Court on 21.09.2015 in

Special Leave to Appeal (C) No. 26223/2015 in case titled University Grants Commission versus Sikkim Manipal University and others, wherein it was held as under:-

"UPON hearing the counsel the Court made the following

ORDER

Applications for exemption from filing certified copy of the impugned judgment and application for permission to place additional documents on record are allowed.

Insofar as the questions of law raised by the petitioner-University Grants Commission before the High Court were concerned, they have been decided in favour of the petitioner. However, in the peculiar facts of the case as noted by the High Court, relief is granted to the students who had undergone the distant learning courses. We are not inclined to interfere with those directions passed by the High Court on those facts.

The special leave petitions are accordingly, dismissed.

Obviously, such an order would not be cited as a precedent in any other case."

14. It is clearly evident from the aforesaid order that the same has been passed by the Hon'ble Supreme Court in exercise of its powers under Article 142 of the Constitution for doing complete justice to the parties. Such powers have not been conferred upon the High Court and the jurisdiction of the High Court while dealing with a writ petition is circumscribed by the limitations discussed and declared by the judicial decisions and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge.

15. No doubt, the High Court is entitled to exercise its judicial discretion while deciding the writ petitions, but this discretion has to be confined in declining to entertain the petitions and refusing to grant reliefs, asked for by the petitioners on adequate considerations and it does not permit the High Court to grant relief on such a consideration alone.

16. The powers under Article 142(1) to do complete justice is entirely of different level or of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of the Hon'ble Supreme Court. Once the Hon'ble Supreme Court is in seisin of a case, cause or matter before it, it has power to issue any order or direction to do complete justice in the matter. This constitutional power of the Hon'ble Supreme Court cannot be limited or restricted by provisions contained in statutory law. However, as discussed above, this power has not been conferred nor exercisable by the High Court in its writ jurisdiction.

17. In view of the aforesaid discussion, we find no merit in this petition and the same is accordingly dismissed, leaving the parties to bear their own costs. Pending application, if any, also stands disposed of.